

EXHIBIT HH

PEDESTRIAN BRIDGE EASEMENT

THIS PEDESTRIAN BRIDGE EASEMENT ("**Easement**") is made to be effective as of the ____ day of _____, 20__ ("**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**") and the **CITY OF LINCOLN, NEBRASKA**, a Nebraska municipal corporation ("**Grantee**").

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

1. GENERAL.

1.1 Grantor hereby grants Grantee a non-exclusive easement, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, licenses, easements, liens or other encumbrances, and upon the terms and conditions set forth below, to use the area of Grantor's property shown on **Exhibit A** attached hereto and incorporated herein by reference, situated at or near Lincoln, County of Lancaster, State of Nebraska, Line Segment 2, Mile Post 59.17 to 60.0 (the "**Premises**") for the Permitted Uses more particularly defined and described in **Section 1.2** below.

1.2 Grantee shall use the Premises exclusively as a site for ingress and egress for, and site preparation, construction, reconstruction, inspection, use, operation, maintenance, repair and replacement of a pedestrian bridge and ramp, including support structures (collectively, the "**Pedestrian Bridge**") in the location shown on **Exhibit A** attached hereto (collectively, such purposes are referred to herein as the "**Permitted Uses**"). Grantee shall not use the Premises for any other purpose whatsoever. Grantee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("**CERCLA**") or petroleum or oil as defined by applicable Environmental Laws on the Premises.

1.3 In the event the Permitted Uses will affect any improvements or facilities of Grantor or Grantor's existing lessees, licensees, easement beneficiaries, or lien holders (collectively "**Other Improvements**"), if any, or interfere with the use of the 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 and/or interfere with the Other Improvements and obtain the owner's written approval prior to initiating any of the Permitted Uses.

1.4 Grantor and Grantee mutually agree that no construction activities for the Permitted Uses, nor future maintenance of any improvements which have a reasonable likelihood to delay train traffic on Grantor's main lines, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to Grantor's Network Operations Center (telephone number: 800 832-5452). Grantor and Grantee mutually understand and agree that trains cannot be subjected to delay during this time period.

1.5 In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, Grantor shall not be liable to refund Grantee any compensation paid hereunder or for any damage Grantee sustains in connection therewith.

1.6 Any contractors or subcontractors performing work on the Premises, or entering the Premises on behalf of Grantee shall be deemed servants and agents of Grantee for purposes of this Easement.

2. **TERM.** This Easement shall commence on the Effective Date and shall continue in perpetuity, subject to prior termination as hereinafter described.

3. **COMPENSATION.**

3.1 Grantee shall pay Grantor, prior to the Effective Date, the sum of No Dollars (\$) as compensation for the use of the Premises.

3.2 Subject to the provisions of the C&M Agreement (as defined below) concerning Grantee's reimbursement of costs and expenses, including without limitation flagging costs, incurred by Grantor in connection with Grantee's use of the Premises, Grantee agrees to reimburse Grantor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Grantor in connection with Grantee's use of the Premises, including but not limited to the furnishing of Grantor's flaggers, and any vehicle rental costs incurred. The cost of flagger services provided by Grantor, when deemed necessary by Grantor's representative, will be borne by Grantee. Flagging costs shall include, but not be limited to, the following: pay for at least one eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); Grantor and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for Grantor labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. The governmental flagging rates in effect at the time of performance by the flaggers will be used to calculate the costs of flagging pursuant to this **Section 3.3.**

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

4. **COMPLIANCE WITH LEGAL REQUIREMENTS AND GRANTOR REQUIREMENTS.**

4.1 Grantee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the use of the Premises.

4.2 Prior to entering the Premises, Grantee shall and shall cause its contractor to comply with all of Grantor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Grantee shall complete and shall require its contractor to complete the safety training program at the Website "<http://contractororientation.com>". This program must be completed no more than one year in advance of Grantee's entry on the Premises.

4.3 Grantee shall, at all times, comply with all provisions contained in that certain Construction and Maintenance Agreement between Grantor and Grantee dated _____, 2010 (the "**C&M Agreement**"). In the event of conflicts between the terms of this Easement and the C&M Agreement, the most restrictive provisions shall apply to Grantee.

4.4 In addition to and not in limitation of the foregoing or any other obligations of Grantee set forth in this Easement or the C&M Agreement, the following provisions shall apply to the Pedestrian Bridge:

4.4.1 Grantee will own and maintain, at its sole cost and expense, the Pedestrian Bridge, the approaches (if any), and appurtenances thereto, lighting, drainage and any access roadways to Grantor gates installed pursuant to that certain Master Development Agreement between Grantor and Grantee dated _____, 2010 (the "**Master Agreement**").

4.4.2 The provisions of **Exhibit B** attached hereto and incorporated herein by reference shall apply to the Pedestrian Bridge.

4.4.3 Grantee must, at Grantee's sole cost and expense, keep the Pedestrian Bridge painted and remove any graffiti in a timely manner.

4.4.4 Grantee must, at Grantee's sole cost and expense, apply and maintain (i) vertical clearance signs which consistently and accurately describe the minimum actual vertical clearance from the bottom of the Pedestrian Bridge to the top of any track or pavement, and (ii) all signs required by the federal Department of Transportation and the Nebraska Department of Roads ("**NDOR**").

4.4.5 Grantee must provide Grantor with any and all necessary permits, including without limitation all NDOR permits, at no cost to Grantor, whenever requested by Grantor to allow Grantor to inspect the Pedestrian Bridge or to make emergency repairs thereto.

4.4.6 It is expressly understood by Grantee and Grantor that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.

4.4.7 Grantee must, at Grantee's sole cost and expense, keep the Pedestrian Bridge and surrounding Grantee-owned areas clean and free from birds, scavengers, vermin, creatures and other animals that could become a nuisance or a public health problem.

4.4.8 Grantee must provide one set of as-built plans (prepared in English Units) to Grantor, as well as one set of computer diskettes or other electronic storage device approved in advance by Grantor containing as-built CAD drawings of the Pedestrian Bridge and identifying the software used for the CAD drawings. The "as-built plans" must comply with the Bridge Requirements set forth on **Exhibit B** and depict all information in Grantor 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.

4.4.9 Grantee, prior to performing any maintenance, repairs, replacement or removal of the Pedestrian Bridge, which may reasonably be expected to affect Grantor's property or operations, will notify Grantor of such proposed work and coordinate such activities

with Grantor as may be necessary to ensure maximum safety and minimum inconvenience to both roadway users and railway functions.

5. DEFINITION OF COST AND EXPENSE. For the purpose of this Easement, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

6. RIGHT OF GRANTOR TO USE.

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

6.1.1 to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;

6.1.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or

6.1.3 to use the Premises in any manner as Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Permitted Uses.

6.2 In addition to the terms and conditions set forth in the C&M Agreement, Grantor and Grantee agree that Grantor may, at its option, perform maintenance on the Pedestrian Bridge in order to avoid conflicts with train operations. Grantor will notify Grantee prior to performing any such maintenance on the Pedestrian Bridge. In the event such maintenance involves emergency repairs, Grantor will notify Grantee at its earliest opportunity.

6.3 Grantor has the right to, at its sole cost and expense, make future changes or additions to the railroad components of the Pedestrian Bridge if necessary or desirable, in Grantor's sole discretion, including, without limitation, the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, and/or (iii) the right to build other facilities in connection with the operation of its railroad. If it becomes necessary or desirable, in Grantor's sole discretion, in the future to change, alter, widen or reconstruct the Pedestrian Bridge to accommodate railroad operations, the cost of such work, including any cost incidental to alteration of railroad facilities made necessary by any such changes to the Pedestrian Bridge, will be the sole responsibility of Grantor.

7. GRANTEE'S OPERATIONS.

7.1 Grantee shall notify Grantor's Roadmaster, Gary Marcellus, at 201 N. 7th Street, Lincoln, NE 68508, telephone (402) 458-7538, at least ten (10) business days prior to initially entering the Premises and prior to entering the Premises for any subsequent maintenance thereon. Grantee shall notify Grantor in writing upon the completion of construction of the Pedestrian Bridge.

7.2 In performing the Permitted Uses, Grantee shall use only public roadways to cross from one side of Grantor's tracks to the other. In the event Grantee must cross from one side of Grantor's tracks to the other at a location or locations other than a public roadway, and

such location or locations are approved by Grantor in advance, then Grantee shall enter into Grantor's then-current Agreement for Private Crossing for each such private crossing location.

7.3 Under no conditions shall Grantee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Grantee has obtained prior written approval from Grantor. Grantee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Grantor, or the safe operation and activities of Grantor. If ordered to stop using the Premises at any time by Grantor's personnel due to any hazardous condition, Grantee shall immediately do so. Notwithstanding the foregoing right of Grantor, the parties agree that Grantor has no duty or obligation to monitor Grantee's use of the Premises to determine the safe nature thereof, it being solely Grantee's responsibility to ensure that Grantee's use of the Premises is safe. Neither the exercise nor the failure by Grantor to exercise any rights granted in this Section will alter the liability allocation provided by this Easement.

7.4 Grantee shall, at its sole cost and expense and subject to the supervision of Grantor's Roadmaster, locate, construct and maintain the Pedestrian Bridge in such a manner and of such material that it will not at any time be a source of danger to or interference with the present or future tracks, roadbed and property of Grantor, or the safe operation of Grantor's railroad. If at any time Grantee shall, in the judgment of Grantor, fail to perform properly its obligations under this **Section 7.4**, Grantor may, at its option, itself perform such work as it deems necessary for the safe operation of its railroad, and in such event Grantee agrees to pay, within fifteen (15) days after bill shall have been rendered therefor, the cost so incurred by Grantor, but failure on the part of Grantor to perform the obligations of Grantee shall not release Grantee from liability hereunder for loss or damage occasioned thereby.

7.5 During the construction and any subsequent maintenance performed on the Pedestrian Bridge, Grantee shall perform such work in a manner to preclude damage to the property of Grantor, and preclude interference with the operation of its railroad. The construction of the Pedestrian Bridge shall be completed no later than December 31, 2014. Upon completion of the construction of the Pedestrian Bridge and after performing any subsequent maintenance thereon, Grantee shall, at Grantee's own cost and expense, restore the Premises to their former state as of the Effective Date, subject only to the presence of the Pedestrian Bridge.

7.6 Prior to Grantee conducting any excavating or boring work on or about the Premises, Grantee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Grantee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Grantee's written request, which shall be made thirty (30) business days in advance of Grantee's requested entry on the Premises, Grantor will provide Grantee any information that Grantor's Engineering Department has in its possession concerning the existence and approximate location of Grantor's underground utilities and pipelines on the Premises. Prior to conducting any such boring work, Grantee will review all such material. Grantor does not warrant the accuracy or completeness of information relating to

subsurface conditions and Grantee's operations will be subject at all times to the liability provisions herein.

7.7 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by Grantee and reviewed by Grantor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Grantor's reasonable opinion that granular material is present, Grantor may select a new location for Grantee's use, or may require Grantee to furnish for Grantor's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once Grantor has approved any such remedial plan in writing, Grantee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

7.8 Any open hole, boring or well constructed upon Premises by Grantee shall be safely covered and secured at all times when Grantee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Grantee shall be:

7.8.1 filled in to surrounding ground level with compacted bentonite grout; or

7.8.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Grantor's property for more than ten (10) days, but must be properly disposed of by Grantee in accordance with applicable Legal Requirements.

7.9 Upon completion of construction and installation of the Pedestrian Bridge, Grantee shall, at its sole cost and expense:

7.9.1 remove all of its equipment from the Premises;

7.9.2 report and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;

7.9.3 remedy any unsafe conditions on the Premises created or aggravated by Grantee; and

7.9.4 leave the Premises in the condition which existed as of the Effective Date, subject only to the presence of the Pedestrian Bridge.

7.10 Grantee's on-site supervisors shall retain/maintain a fully-executed copy of this Easement at all times while on the Premises.

8. LIABILITY.

8.1 TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL, AND SHALL CAUSE ITS CONTRACTORS TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS GRANTOR AND GRANTOR'S 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 (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART):

- 8.1.1 ANY RIGHTS OR INTERESTS GRANTED TO GRANTEE OR ANY GRANTEE PARTY (DEFINED BELOW) PURSUANT TO THIS EASEMENT;**
- 8.1.2 THE USE, OCCUPANCY OR PRESENCE OF GRANTEE AND/OR GRANTEE PARTIES (DEFINED BELOW) AND/OR ANY WORK PERFORMED BY GRANTEE OR ANY GRANTEE PARTIES IN, ON, OR ABOUT THE PREMISES, GRANTOR'S RIGHT-OF-WAY OR OTHER GRANTOR PROPERTY, INCLUDING WITHOUT LIMITATION INSTALLATION, MAINTENANCE AND USE OF THE PEDESTRIAN BRIDGE;**
- 8.1.3 ANY ENVIRONMENTAL MATTERS ARISING FROM GRANTEE AND/OR GRANTEE PARTIES' USE AND OCCUPANCY OF THE PREMISES, GRANTOR'S RIGHT-OF-WAY OR OTHER GRANTOR PROPERTY, INCLUDING WITHOUT LIMITATION USE AND OCCUPANCY OF THE PREMISES FOR THE INSTALLATION, MAINTENANCE AND USE OF THE PEDESTRIAN BRIDGE;**
- 8.1.4 ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATION LINES IN CONNECTION WITH THE WEST HAYMARKET PROJECT (AS DEFINED IN THE C&M AGREEMENT) BY GRANTEE AND/OR GRANTEE PARTIES, INCLUDING BUT NOT LIMITED TO (a) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES AS A RESULT OF SUCH DAMAGE OR DESTRUCTION, AND/OR (b) ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE BY, OR LOSS OF SERVICE BY A CUSTOMER OR USER OF SUCH TELECOMMUNICATION COMPANY(IES) AS A RESULT OF SUCH DAMAGE OR DESTRUCTION;**
- 8.1.5 GRANTEE'S OR ANY GRANTEE PARTY'S BREACH OF THE TERMS AND CONDITIONS OF THIS EASEMENT OR THE C&M AGREEMENT;**
- 8.1.6 USE OR OCCUPATION OF THE PEDESTRIAN BRIDGE OR ANY OTHER PART OF THE PREMISES BY MEMBERS OF THE GENERAL PUBLIC; OR**
- 8.1.7 ANY ACT OR OMISSION OF GRANTEE OR GRANTEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS (SUCH OFFICERS, AGENTS, INVITEES, EMPLOYEES AND CONTRACTORS BEING REFERRED TO HEREIN INDIVIDUALLY AS A "GRANTEE PARTY" AND COLLECTIVELY, "GRANTEE PARTIES"), OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.**

THE LIABILITY ASSUMED BY GRANTEE WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT ANY DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF GRANTOR, ITS AGENTS,

SERVANTS, EMPLOYEES OR OTHERWISE, BUT EXCLUDING CLAIMS WHOLLY CAUSED BY GRANTOR'S SOLE NEGLIGENCE AND EXCLUDING CLAIMS TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF GRANTOR.

8.2 FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL, AND SHALL CAUSE THE GRANTEE PARTIES TO, NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT GRANTOR IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE PEDESTRIAN BRIDGE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. GRANTEE WILL, AND WILL CAUSE THE GRANTEE PARTIES TO, INDEMNIFY, DEFEND AND HOLD GRANTOR HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF GRANTOR. GRANTEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS EASEMENT SHALL NOT IN ANY WAY SUBJECT GRANTOR TO CLAIMS THAT GRANTOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD GRANTOR HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL GRANTOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

8.3 TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE AGREES, AND SHALL CAUSE THE GRANTEE PARTIES TO AGREE, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF GRANTOR, TO INDEMNIFY, AND HOLD HARMLESS GRANTOR AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY GRANTOR UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF GRANTEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF GRANTOR OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

8.4 Upon written notice from Grantor, Grantee agrees to assume the defense of any lawsuit or other proceeding brought against Grantor by any entity, relating to any matter covered by this Easement for which Grantee has an obligation to assume liability for and/or save and hold harmless Grantor. Grantee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

8.5 Grantee's indemnification obligations herein shall be in addition to, and not in limitation of, Grantee's indemnification obligations pursuant to the terms and provisions of the C&M Agreement.

8.6 To the fullest extent permitted by law, Grantee waives its municipal immunity and its sovereign immunity with respect to Grantor and this Easement, including, without limitation, for claims (i) arising out of work performed by Grantee or its contractors pursuant to the

provisions of this Easement, and (ii) arising out of continuing rights of Grantee to enter onto property of Grantor, including work performed by Grantee and the Grantee Parties on property of Grantor. Any lawful waiver of Grantee's sovereign immunity herein shall be in addition to, and not in limitation of, any lawful waiver of Grantee's sovereign immunity pursuant to the terms and provisions of the C&M Agreement.

9. PERSONAL PROPERTY WAIVER. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF GRANTEE ONLY, AND GRANTOR WILL NOT BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF GRANTOR.

10. INSURANCE. During the Development Period (as defined in the Master Agreement), Grantee shall comply with all provisions contained in Section 3.8 of the C&M Agreement, and all such provisions contained in Section 3.8 of the C&M Agreement shall be incorporated herein by reference. Upon commencement of the Post-Development Period (as defined in the Master Agreement) and continuing thereafter, Grantee shall, and shall require Grantee's contractors to, at Grantee's sole cost and expense, procure and maintain during the life of this Easement the following insurance coverage:

10.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by Grantee. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

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

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

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

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

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

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

- Bodily injury and property damage

- Any and all vehicles owned, used or hired
- Waiver of subrogation in favor of and acceptable to Grantor.
- Additional insured endorsement in favor of and acceptable to Grantor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Grantor.

10.3. Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

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

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

- Waiver of subrogation in favor of and acceptable to Grantor.

10.4 Railroad Protective Liability Insurance. This insurance shall name only Grantor as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pedestrian Bridge. In addition to and not in limitation of the foregoing, Grantee or its contractors and/or agents must procure and maintain the following insurance coverage: (i) if construction of the Pedestrian Bridge is not completed within one (1) year after the Effective Date, or (ii) if, after completion of the initial construction of the Pedestrian Bridge, Grantee (including its contractors and agents) performs (a) alterations or modifications to the Pedestrian Bridge, or (b) any maintenance or other work on the Pedestrian Bridge with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (c) any maintenance or other work outside the limits of the deck of the Pedestrian Bridge vertically above the top of the rail:

Railroad Protective Liability insurance naming only Grantor 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 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93).
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Grantor prior to performing any work or services under this Easement.

10.5 Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Grantee agrees to waive its right of recovery against Grantor for all claims and suits against Grantor, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Grantor. In addition, its insurers,

through policy endorsement, waive their right of subrogation against Grantor for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Grantor. The certificate of insurance must reflect waiver of subrogation endorsement. Grantee further waives its right of recovery, and its insurers also waive their right of subrogation against Grantor for loss of its owned or leased property or property under its care, custody, or control, except for rights of recovery and rights of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of Grantor.

Grantee is allowed to self-insure up to \$250,000 per occurrence and \$250,000 aggregate on General Liability and Automotive Liability and up to \$500,000 per occurrence and \$500,000 aggregate on Worker's Compensation Liability without the prior written consent of Grantor. Any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Grantee in lieu of insurance. Any and all Grantor Liabilities that would otherwise, in accordance with the provisions of this Easement, be covered by insurance will be covered as if Grantee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing any work, Grantee shall furnish to Grantor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Grantor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Grantor, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Upon notification to Grantor of cancellation, non-renewal, substitution or material alteration of any such policy(ies), Grantor shall have the option to (i) if feasible, pay, on behalf of the Grantee, any and all such premiums, penalties, fees or expenses necessary to keep such policy(ies) in full force and effect; or (ii) in the event that such policy(ies) cannot be kept in full force and effect, enter into the open market and procure such policy(ies) of insurance on behalf of Grantee as required by this Easement at the then-current market rate. Upon any of the above occurrences, Grantor shall invoice Grantee for reimbursement of all such premiums, penalties, fees or expenses advanced on Grantee's behalf plus an additional fifteen (15%) of such advanced amounts as remuneration for Grantor's overhead. Such amounts advanced by Grantor shall be paid by Grantee within thirty (30) days after delivery of a statement for such expense. Any insurance policy shall be written by a reputable insurance company acceptable to Grantor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

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

agent(s)/broker(s) have been informed that Grantee's insurance coverage being procured by Grantee herein is to protect, defend, indemnify and hold harmless Grantor from any and all Liabilities, as such term is defined herein, that may arise in connection with this Easement and Grantee, to the fullest extent allowed by law, waives its sovereign and municipal immunity and any caps or limitations on legal liability that may result therefrom.

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

If any portion of the operation is to be subcontracted by Grantee and not included as part of Grantee's OCIP coverage, Grantee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Grantor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Grantor to the same extent and under the same terms and conditions as Grantee is required to release, defend and indemnify Grantor herein.

Failure to provide evidence as required by this **Section 10** shall entitle, but not require, Grantor to terminate this Easement immediately. Acceptance of a certificate that does not comply with this **Section 10** shall not operate as a waiver of Grantee's obligations hereunder.

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

For purposes of this **Section 10**, Grantor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

11. ENVIRONMENTAL.

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

11.2 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 the best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

11.3 In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pedestrian Bridge which

occurred or may occur during the term of this Easement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Grantor's right-of-way.

11.4 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. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

12. **ALTERATIONS.** Grantee may not make any alterations of the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Grantor's prior written consent.

13. **NO WARRANTIES.** GRANTOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS EASEMENT AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY GRANTOR OTHER THAN THOSE CONTAINED IN THIS EASEMENT. GRANTEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. **QUIET ENJOYMENT.** GRANTOR DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

15. **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. 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 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 15** or any other Section of this Easement.

16. **DEFAULT; TERMINATION.**

16.1 During the Development Period and until the commencement of the Post-Development Period, if default shall be made in any of the covenants or agreements of Grantee contained in this Easement, Grantor may pursue any and all remedies set forth in Section 24 of the Master Agreement.

16.2 Upon commencement of the Post-Development Period, if at any time Grantee fails to properly perform its obligations under this Easement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, (ii) terminate this Easement if Grantee fails to perform such obligation within sixty (60) days after written notice thereof from Grantor to Grantee, or (iii) at Grantee's sole cost, 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 of 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 shall not alter the liability allocation set forth in this Easement.

16.3 In addition to and not in limitation of the foregoing, Grantor has the right, but not the obligation, to terminate this Easement upon written notice to Grantee in the event that Grantee fails to complete construction of the Pedestrian Bridge by December 31, 2014.

16.4 Upon termination of this Easement, 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:

16.4.1 remove all of its equipment from the Premises;

16.4.2 if construction or installation of the Pedestrian Bridge is incomplete upon termination, and if requested by Grantor, remove the Pedestrian Bridge and all appurtenances thereto from the Premises at Grantor's sole discretion;

16.4.3 convey the Pedestrian Bridge to Grantor by bill of sale reasonably acceptable to Grantor and Grantee, provided that Grantor has not required Grantee's removal of the Pedestrian Bridge pursuant to the provisions of **Section 16.4.2** above;

16.4.4 repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;

16.4.5 remedy any unsafe conditions on the Premises created or aggravated by Grantee; and

16.4.6 leave the Premises in the condition which existed as of the Effective Date (subject only to the presence of the Pedestrian Bridge, provided that Grantor has not required Grantee to remove the Pedestrian Bridge pursuant to the provisions of **Section 16.4.2** above).

16.5 If this Easement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth in **Section 16.4** 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. Termination will not 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, if later, the date when the Pedestrian Bridge is removed by or for Grantee, if applicable, and the Premises are restored to its condition 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 is surrendered.

16.6 Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any Section of this Easement. The remedy set forth in this **Section 16** shall be in addition to, and not in limitation of, any other remedies

that Grantor may have at law or in equity.

17. ASSIGNMENT. No assignment of Grantee's rights hereunder shall be effective unless the proposed assignee assumes in writing all of Grantee's obligations under this Easement. Notwithstanding any contrary provision herein, Grantee shall have the right to assign this Easement to the West Haymarket Joint Public Agency, a Nebraska joint public agency ("**JPA**") without further consent of Grantor provided (i) Grantee delivers prior written notification to Grantor of the assignment, (ii) Grantee and JPA enters into Grantor's then-standard Consent to Assignment form, pursuant to which Grantee will remain jointly and severally liable for all of Grantee's obligations hereunder, including without limitation Grantee's liability and indemnification obligations; provided that Grantor agrees it will first send any claim or notice of default to JPA and will not pursue any action against Grantee until thirty (30) days after the date of such claim or notice to JPA, unless failure to pursue action against Grantee during such time would otherwise prejudice Grantor's rights, and (iii) Grantee's entire interest under that certain Master Development Agreement between Grantor and Grantee dated _____, 2010 (the "**Master Agreement**"), that certain Exchange Agreement between Grantor and Grantee dated _____, 2010, the C&M Agreement, and all Rights of Entry agreements (as defined in the Master Agreement) are assigned at the same time to JPA.

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

If to Grantor: Jones Lang LaSalle Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131
Attn: Licenses/Permits

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Grantee: City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508
Attn: City Attorney

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

20. RECORDATION. A memorandum of this Easement may be recorded at either party's written request.

21. APPLICABLE LAW. All questions concerning any interest in real property created or

affected by this Easement shall be governed by the laws of the state of Nebraska.

22. VENUE. To the fullest extent permitted by law any dispute arising under or in connection with this Easement or related to any subject matter which is the subject of this Easement shall be subject to the sole and exclusive jurisdiction of the United States District Court for the District of Nebraska. The aforementioned choice of venue is intended by Grantor and Grantee to be mandatory and not permissive. Grantor and Grantee each hereby irrevocably consents to the jurisdiction of the United States District Court for the District of Nebraska in any such dispute and irrevocably waives, to the fullest extent permitted by law, any objection that it may now have or hereafter have to the laying of venue in such court and that any such dispute which is brought in such court has been brought in an inconvenient forum.

23. SEVERABILITY. To the maximum extent possible, each provision of this Easement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Easement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Easement.

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

25. MISCELLANEOUS.

25.1 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.

25.2 The waiver by Grantor of the breach of any provision herein by Grantee shall in no way impair the right of Grantor to enforce that provision for any subsequent breach thereof.

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

25.4 Jones Lang LaSalle Global Services – RR, Inc. is acting as representative for BNSF Railway Company.

[Signature page follows]

IN WITNESS WHEREOF, this Easement has been duly executed by the parties as of the day below each party's signature; to be effective, however, as of the Effective Date above.

GRANTOR:

BNSF Railway Company

By: Jones Lang LaSalle Global Services – RR, Inc.

By: _____

Name: _____

Title: _____

Date: _____

GRANTEE:

City of Lincoln, Nebraska

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Premises

[See attached]

EXHIBIT B

BNSF Bridge Requirements

BRIDGE DESIGN, PLANS & SPECIFICATIONS:

Except for the design of temporary falsework and shoring, Grantor review of the Pedestrian Bridge plans will be limited to the vertical and horizontal clearances, sight distance for existing train signals, foundation dimensions and drainage characteristics as they relate to existing and future tracks. Grantor will not review structural design calculations for the permanent Pedestrian Bridge unless a member or members are influenced by railroad live loads.

Temporary falsework and shoring plans and calculations must be reviewed and approved by Grantor prior to beginning construction. Grantee shall perform an independent review of the design calculations for temporary falsework and shoring prior to submitting them to Grantor for approval. Temporary construction clearances must be no less than 15 feet measured horizontally from the centerline of the nearest track and 21 feet-6 inches measured vertically from the top of rail of the most elevated track to the bottom of lowest temporary falsework member. State regulatory agencies may have more restrictive requirements for temporary railroad clearances.

The permanent Pedestrian Bridge will have a minimum of a thirty-one (31) foot high vertical clearance over Grantor's tracks from the top of the rail to the bottom of the Pedestrian Bridge and twenty-five (25) foot horizontal distance measured perpendicular from the centerline of the existing or future track to the face of the pier or abutment structure, and shall be subject to Grantor's additional requirements with respect to operation and usage, as determined by Grantor in Grantor's sole and absolute discretion, and notification to Grantor's local roadmaster prior to undertaking any work at or upon the Pedestrian Bridge which may interfere with or be a real or potential hazard to the passage of trains or other railroad operations.

For the permanent Pedestrian Bridge, Grantee will submit plans showing the least horizontal distance from the centerline of existing and future tracks to the face of the nearest member of the proposed Pedestrian Bridge. The location of the least horizontal distance must be accurately described such that Grantor can determine where it will occur in both the horizontal and vertical plane.

For the permanent Pedestrian Bridge, Grantee will submit plans showing the least vertical clearance from top of the most elevated rail of existing and future tracks to the lowest point of the proposed Pedestrian Bridge. A profile of the existing top of rail elevation shall be plotted on the bridge plans. The profile shall extend for 500 feet in each direction of the proposed overpass and a separate profile shall be plotted for each track. If the existing top of rail profile(s) is not uniform such that a sag exists in the vicinity of the proposed Pedestrian Bridge, the permanent Pedestrian Bridge vertical clearance shall be increased sufficiently to accommodate a raise in the track profile to remove the sag. Prior to beginning construction of the permanent Pedestrian Bridge, the top of rail elevations should be checked and verified that they have not changed from the assumed elevations utilized for the design of the Pedestrian Bridge.

The current BNSF Railway-Union Pacific Railroad Guidelines for Railroad Grade Separation Projects (the "**Guideline Document**") shall serve as the guideline document for all of Grantee's

submission requirements, preferred details, and all other aspects of the construction, maintenance, and operation of the Pedestrian Bridge. Grantee shall strictly comply with all applicable requirements of the Guideline Document, including without limitation the requirement for throw fences.

Prior to issuing any invitation to bid on construction of the Pedestrian Bridge, Grantee should conduct a pre-bid meeting where prospective Contractors have the opportunity to communicate with Grantor personnel regarding site specific train speeds, train density, and general safety requirements for men and equipment working near live tracks. Any invitation to bid and specifications for the Pedestrian Bridge must be submitted to Grantor for review and approval prior to letting of bids.

BRIDGE CONSTRUCTION:

After awarding the bid, but prior to the Contractor entering Grantor's right-of-way or property, Grantee should conduct a pre-construction meeting with Grantor personnel in attendance to reiterate the safety requirements of construction activity adjacent to live tracks.

During construction, Grantor may require an independent engineering inspector to be present during certain critical activities of the Pedestrian Bridge work, including but not limited to: driving foundation piles, erecting falsework, construction of shoring and retaining walls, placing concrete, placing soil backfill and compaction processes. Grantee shall reimburse Grantor for all costs of supplemental inspection services.

Within 90 days of the conclusion of the Pedestrian Bridge work and final acceptance by Grantor, Grantee will provide Grantor with a complete electronic set of the bridge plans labeled "As Built". Those plans will reflect any and all deviations from the original plans that occurred during construction. The "As Built" plans will be submitted in Micro Station *.dgn electronic format (preferred) or AutoCAD *.dwg format. Electronic plans are to be submitted in the original format used for CAD plan preparation and not converted to another format prior to submission. Actual measured "as constructed" clearances shall be shown as well as depth, size and location of all foundation components. The plans shall show dimensioned locations of existing and relocated utilities.

BRIDGE MAINTENANCE:

Grantee will be responsible for maintenance and repair of the Pedestrian Bridge including the earth retention components, embankment slopes, erosion control, surface drainage, fencing, deck drains, landscaping, paint, walkways, handrails, lighting, and other improvements associated with the Pedestrian Bridge.

Fencing and other pedestrian access controls within Grantor's right-of-way and incorporated into the Pedestrian Bridge shall be designed and maintained by Grantee. Trespasser control shall be the responsibility of Grantee. Graffiti removal will be the responsibility of Grantee.

BRIDGE INSPECTION:

Grantee will conduct routine structural inspections in accordance with schedules required under applicable Legal Requirements for inspections of pedestrian overpasses, but in any event no less often than once every twenty-four (24) months during the term of this Easement. In the event of an earthquake, fire, flood, damage from vehicular impacts or other emergent situations, the Grantee will provide an immediate inspection by qualified personnel and notify Grantor of damage that may affect safe passage of trains. If necessary the Grantee will embargo weights or provide lane closures or other such measures to protect the structural integrity of the Pedestrian Bridge such that there can be continuous safe passage of trains until repairs are made.

BRIDGE ALTERATIONS:

Except as provided otherwise by this Easement, there will be no alterations made to the Pedestrian Bridge that will alter the railroad vertical or horizontal clearances provided by the original design. Pipelines will not be added or attached to the Pedestrian Bridge without first submitting plans and calculations to Grantor for review and approval.