



North Dakota Department of Transportation

Grant Levi, P.E.
Director

Jack Dalrymple
Governor

July 11, 2014

ADDENDUM 2 – JOB 4

TO: All prospective bidders on Project SS-3-281(104)900 & SS 3-281(119)900, Job No. 4 scheduled for the July 18, 2014 bid opening

The following proposal revision shall be made:

Proposal Revisions:

Add Special Provision 1478(08) Railroad Requirements.

This addendum is to be incorporated into the bidder's proposal for this project.

A handwritten signature in black ink, appearing to read "Cal J. Gendreau".

CAL J. GENDREAU – CONSTRUCTION SERVICES ENGINEER

80:dch

Enclosure

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION

RAILROAD REQUIREMENTS

3-281(104)900 - PCN #18107

This Special Provision incorporates the Construction and Maintenance Agreement entered into by and between the North Dakota Department of Transportation and the Burlington Northern and Santa Fe Railway Company (BNSF).

Bidders shall become familiar with all the provisions of the agreement and submit their bid for the construction of this Project based on a plan for construction which will meet all conditions of the agreement.

The Contractor on this Project shall be responsible for fulfilling all the applicable requirements and complying with all the terms and conditions as contained in the Construction and Maintenance Agreement attached hereto.

The Contractor shall be responsible for coordinating all flagging activities with BNSF's Roadmaster. The Contractor shall submit a weekly schedule of work activities and documentation of all discussions with BNSF's Roadmaster coordinating flagging activities to the Project Engineer. If the Contractor fails to coordinate flagging activities and provide the required documentation, the Contractor will pay for flagging deemed unnecessary by the Department.

The Department will make the payments to the Railroad for all flagging. Monies due from the Contractor for unnecessary flagging will be withheld from money owed the Contractor on this project or future projects.

(Construction and Maintenance Agreement with BNSF attached.)

**EASEMENT AGREEMENT
FOR ROADWAY CONSTRUCTION, MAINTENANCE AND USE**

THIS EASEMENT AGREEMENT FOR ROADWAY CONSTRUCTION, MAINTENANCE AND USE ("**Easement Agreement**") is made and entered into as of the 12 day of June 2014 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), and NORTH DAKOTA DEPARTMENT OF TRANSPORTATION ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of City of **Churchs Ferry**, County of Ramsey, State of North Dakota, LS 0033-3 and LS0267-1 at Mile Post 104.38, [Project # SS-3-281(104)900], PCN 18107, as described or depicted on **Exhibit "A"** attached hereto and made a part hereof (the "**Premises**").

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

C. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

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 the construction, maintenance and use of a public roadway and related surface improvements (collectively, "**Improvements**") to be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the Plans and Specifications (as hereinafter defined). Grantee expressly acknowledges and agrees that the Easement Purpose does not include, and no rights are granted hereunder, for an elevated roadway or related improvements or any subsurface rights.

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 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 Laws (as hereinafter defined), including without limitation zoning laws, regulations, and ordinances of municipal and other governmental authorities, if any.

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.

1.4 Term of Easement. The term of the Permanent Easement, Parcel 1-1, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual. The term of the Temporary Easement, Parcels 1-2, 1-3 and 1-4, unless sooner terminated under provisions of this Easement Agreement shall expire on the date that is three (3) years after the Effective Date.

Section 2 Compensation. Grantee shall pay Grantor, prior to the Effective Date, the sum of Three Thousand Ninety-three dollaars and 53/100 Dollars (\$3,093.53) as compensation for the grant of this Easement.

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 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 Plans and Specifications for Improvements. Grantee shall submit to Grantor for its review detailed information concerning the design, location and configuration of the Improvements ("**Plans and Specifications**"). As soon as reasonably practicable after Grantor's receipt of the Plans and Specifications and other information required by Grantor about the proposed location of the Improvements, Grantor will notify Grantee in writing whether or not, in Grantor's sole judgment, construction, maintenance, operation or removal of all or any part of the Improvements constructed in accordance with the Plans and Specifications would cause Grantee to violate any of the provisions of Section 6.3 hereof. Following any notice from Grantor that implementation of the Plans and Specifications would in Grantor's judgment cause Grantee to violate any of the provisions of Section 6.3 hereof, Grantee shall have the right to modify the location, configuration or other aspects of the Plans and Specifications of the proposed Improvements and to resubmit such modified information to Grantor for its further review. Despite Grantor's review of the Plans and Specifications, any deficiency in design or construction shall be solely the responsibility of Grantee.

Section 6 Improvements.

6.1 Construction of Improvements. Grantee, and Grantee's Contractors, at Grantee's sole cost and expense, shall locate, configure, construct and maintain the Improvements: (i) in a good and workmanlike manner and in strict accordance with the Plans and Specifications pursuant to the provisions of **Section 5** above, (ii) in conformance with applicable building uses and all applicable engineering, safety and other Laws, (iii) in accordance with the highest accepted industry standards of care, skill and diligence, and (iv) in such a

manner as shall not adversely affect the structural integrity or maintenance of the Premises, any structures on or near the Premises, or any lateral support of structures adjacent to or in the proximity of the Premises. The construction of the Improvements within the Premises shall be completed by Grantee and Grantee's Contractors within two (2) years after the Effective Date. Grantee shall provide as built drawings of all Improvements to Grantor promptly upon completion of construction and shall use its best efforts to cause such as built drawings to be electronically accessible to Grantor.

6.2 Maintenance of Improvements. Grantee shall at all times during the term of this Easement Agreement, at Grantee's sole cost and expense, keep and maintain the Improvements located upon the Premises in a structurally safe and sound condition, in good repair and in compliance with the Plans and Specifications and this Easement Agreement. Grantee shall also promptly repair any damage to the Premises or the Improvements caused, either in whole or in part, by Grantee Parties (as hereinafter defined). Grantee shall not cause or permit another person to cause any damage to the Premises or the Improvements, and Grantee shall be responsible for any such damage which may occur as a result of any Grantee Party's action or inaction. Grantee shall not permit the existence of any nuisance or the accumulation of junk, debris or other unsightly materials on the Premises and shall keep the Premises in a clean and safe condition. Grantee shall keep the 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 the Premises, said work of cutting and removal to be done at such times and with such frequency as to comply with local Laws and regulations and abate any and all hazard of fire. Grantor shall have no obligation whatsoever, monetary or non-monetary, to maintain the Improvements in the Premises.

6.3 No Interference. During the construction of, and any subsequent maintenance performed on, operation of, or removal of, all or any portion of the Improvements, Grantee, at Grantee's sole cost, shall perform all activities and work on or near Grantor's rail corridor or property and/or the Premises in such a manner as to preclude injury to persons or damage to the property of Grantor, or any party on or with property on Grantor's rail corridor or property, and shall ensure that there is no interference with the railroad operations or other activities of Grantor, or anyone present on Grantor's rail corridor or property with the authority or permission of Grantor. Grantee shall not disturb any improvements of Grantor or Grantor's existing lessees, licensees, license beneficiaries or lien holders, if any, or interfere with the use of such improvements. Grantor may direct one of its field engineers to observe or inspect the construction, maintenance, operation or removal of the Improvements, or any portion thereof, at any time to ensure such safety and noninterference, and to ensure that the Improvements comply with the Plans and Specifications. If any Grantee Party is ordered at any time to leave the Premises or to halt any activity on the Premises, then the party conducting that activity immediately shall cease such activity and leave the Premises, if the order was issued by Grantor's personnel to promote safety, such noninterference with other activities or property, or because the Improvements were not in compliance with this Easement Agreement. Notwithstanding the foregoing right of Grantor, Grantor has no duty or obligation to observe or inspect, or to halt work on, the Premises, it being solely Grantee's responsibility to ensure that the Improvements are constructed, maintained, operated and removed in strict accordance with all Laws, safety measures, such noninterference and the Plans and Specifications and in compliance with all terms hereof. Neither the exercise nor the failure by Grantor to exercise any right set forth in this **Section 6.3** shall alter the liability allocation set forth in this Easement Agreement.

6.4 No Alterations. Except as may be shown in the Plans and Specifications for the Easement, Grantee may not make any alterations to the Premises, or permanently affix anything to the Premises, without Grantor's prior written consent. If Grantee desires to change either the location of any of the Improvements or any other aspect of the Plans and Specifications of any of the Improvements, Grantee shall submit such change and modified Plans and Specifications to Grantor in writing for its review in the same manner as provided for in **Section 5**. Grantee shall have no right to commence any such change until after Grantee has received Grantor's written comments of its review.

6.5 Approvals; Compliance with Laws and Safety Rules.

- (a) 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 approvals or authorizations from applicable governmental authorities.

- (b) Prior to entering the Premises, and at all times during the term of this Easement Agreement, Grantee shall comply, and shall cause its contractor, any subcontractor, any assignee, and any contractor or subcontractor of any assignee performing work on the Premises or entering the Premises on behalf of Grantee (collectively, "**Grantee's Contractors**"), to comply, with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) (collectively, "**Laws**"), and all of Grantor's applicable safety rules and regulations including those found on the website noted below in **Section 6.5(c)**.
- (c) No employees of Grantee's Contractors, or its subcontractors, agents or invitees, may enter the Premises without first having completed Grantor's safety orientation found on the website: www.contractororientation.com.

6.6 Other Improvements. 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 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.

6.7 Flagging and Other Costs. Grantee shall not conduct any activities on, or be present on, any portion of the Premises or Grantor's rail corridor or property that is within twenty-five (25) feet of any active railroad track, except in the presence of a flagman. In any case where a flagman or flagmen are required in connection with the presence of individuals on Grantor's rail corridor or the Premises, Grantee shall provide as much advance notice as possible prior to any entry upon the Premises. Grantor shall arrange for the presence of the flagman or flagmen as soon as practicable after receipt of such notice from Grantee. Grantee shall reimburse to Grantor, within thirty (30) days following Grantee's receipt of each bill therefor, Grantor's costs in arranging for and providing the flagman or flagmen, which shall be billed to Grantee at Grantor's then applicable standard rate. The estimated cost of one flagger as of the Effective Date is \$800 for an eight hour basic day with time and one-half or double time for overtime, rest days and holidays, plus the cost of any vehicle rental costs or other out-of-pocket costs. Grantee agrees to reimburse Grantor (within ninety(90) days after receipt of a bill therefor) for all other costs and expenses incurred by Grantor in connection with Grantee's use of the Premises or the presence, construction, maintenance, and use of the Improvements situated thereon.

6.8 No Unauthorized Tests or Digging. Grantee, and Grantee's Contractors, must not 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 Grantor's rail corridor or property (whether or not such centerline is located within the Premises), except after Grantee has obtained written approval from Grantor, and then only in strict accordance with the terms and any conditions of such approval.

6.9 Boring. Prior to conducting any boring work on or near Grantor's rail corridor or property (which shall only be permitted within the Premises), Grantee and Grantee's Contractors 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 proposed construction or modification of Improvements, Grantor will provide to Grantee any information that Grantor has in the possession of its Engineering Department concerning the existence and approximate location of Grantor's

underground utilities and pipelines at or near the vicinity of the proposed Improvements. Prior to conducting any boring work, Grantee, and Grantee's Contractors, shall review all such material. Grantor does not warrant the accuracy or completeness of information relating to subsurface conditions and Grantee's, and Grantee's Contractors', operations at all times shall be subject to the liability provisions set forth herein. For all bores greater than 20 inches in diameter and at a depth less than ten (10) feet below the bottom of a rail, Grantee, and Grantee's Contractors, shall perform a soil investigation which must be 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, and Grantee's Contractors, to furnish for Grantor's review and approval, in Grantor's sole discretion, a remedial plan to deal with the granular material. Once Grantor has approved any such remedial plan in writing, Grantee, and Grantee's Contractors, at Grantee's sole cost, shall carry out the approved plan in accordance with all terms thereof and hereof. Any open hole, boring or well constructed on the Premises by Grantee, or Grantee's Contractors, shall be safely covered and secured at all times when anyone who is not creating it, working in it or using it as permitted hereunder is present in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises shall be promptly filled in by Grantee and Grantee's Contractors to surrounding ground level with compacted bentonite grout, or otherwise secured or retired in accordance with any applicable Laws. No excavated materials may remain on Grantor's rail corridor or property for more than ten (10) days, and must be properly disposed of by Grantee and Grantee's Contractors in accordance with applicable Laws.

6.10 Drainage of Premises and Property. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Premises shall be made and maintained by Grantee in such manner, form and to the extent as will provide adequate drainage of and from the Premises and Grantor's adjoining right of way; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from the Property and Grantor's adjoining right of way, Grantee shall construct and maintain such culverts or drains within the Premises as may be requisite to preserve such natural and pre-existing drainage. Grantee shall wherever necessary, construct extensions of existing drains, culverts or ditches through or along the Premises, such extensions to be of adequate sectional dimensions to preserve flowage of drainage or other waters, and/or material and workmanship equally as good as those now existing.

6.11 Modification, Relocation or Removal of Improvements. If at any time, Grantor desires the use of its rail corridor in such a manner that, in Grantor's reasonable opinion, would be interfered with by any portion of the Improvements or the Easement, Grantee, at Grantee's sole cost, shall make such changes in the Improvements and/or Premises that, in the sole discretion of Grantor, are necessary to avoid interference with the proposed use of Grantor's property, including, without limitation, Grantee relocating or removing all or a portion of the Improvements from the Premises. Grantor acknowledges that, in some instances, Improvements will not need to be moved or removed from the Premises, but can be protected in place, subject to approval by Grantor's engineering department. Where it is practicable to do so, Grantor shall provide to Grantee at least one hundred twenty (120) days prior written notice that Improvements must be modified, removed or relocated, and in circumstances where one hundred twenty (120) days notice is not practicable, Grantor shall provide to Grantee as much notice as it reasonably can, and in no case less than twenty (20) days prior written notice. Grantee shall ensure that all Improvements are modified, removed or relocated as required on or before the date set forth in Grantor's written notice.

Section 7 Indemnification.

7.1 TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTEE SHALL CAUSE GRANTEE'S CONTRACTORS AND SUBCONTRACTORS TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS GRANTOR AND GRANTOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY, "LIABILITIES") OF ANY NATURE, KIND

OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- (i) THIS EASEMENT AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS EASEMENT AGREEMENT,**
- (iii) OCCUPATION AND USE OF THE PREMISES BY GRANTEE OR GRANTEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS, INVITEES, LESSEES OR LICENSEES, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER (INDIVIDUALLY, A "GRANTEE PARTY," AND COLLECTIVELY, "GRANTEE PARTIES"),**
- (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY GRANTEE PARTIES, OR**
- (v) ANY ACT OR OMISSION OF GRANTEE PARTIES,**

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH GRANTEE'S CONTRACTORS AND SUBCONTRACTORS ARE NOT REQUIRED TO INDEMNIFY AN INDEMNITEE ARE LIABILITIES (1) TO THE EXTENT THAT THEY ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THAT INDEMNITEE, OR (2) THAT ARE WHOLLY CAUSED BY THE SOLE NEGLIGENCE OF THAT INDEMNITEE.

7.2 GRANTEE SHALL CAUSE GRANTEE'S CONTRACTORS AND SUBCONTRACTORS TO NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT GRANTOR IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE IMPROVEMENTS FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. NOTWITHSTANDING THE LIMITATION IN SECTION 7.1, GRANTEE'S CONTRACTORS AND SUBCONTRACTORS SHALL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. GRANTEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS EASEMENT AGREEMENT SHALL NOT IN ANY WAY SUBJECT GRANTOR TO CLAIMS THAT GRANTOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS, AND GRANTEE'S CONTRACTORS AND SUBCONTRACTORS SHALL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS.

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

7.4 Upon written notice from Grantor, Grantee's Contractors agree to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this Easement Agreement for which Grantee's Contractors have an obligation to assume liability for and/or save and

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hold harmless any Indemnitee. Grantee's Contractors 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. It is understood by the parties that Grantee will have no direct contract with its contractors' subcontractors and that Grantee shall be deemed to be in compliance with this Section 7 by requiring by contract that Grantee's Contractors require that each of their subcontractors comply with the terms of this Section 7 and Section 8 hereof.

Section 8 Insurance. Grantee shall cause Grantee's Contractors to procure and maintain during the life of the project the following insurance coverages:

Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. 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 employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.

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.

Any exclusions related to the explosion, collapse and underground hazards shall be removed.

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

B. 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

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

◆ Grantee's Contractors' statutory liability under the worker's compensation Laws of the state(s) in which the work is to be performed. If optional under State Law, the insurance must cover all employees anyway.

◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

Railroad Protective Liability Insurance is required if there is any construction or demolition activities. This insurance shall name only Grantor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

No other endorsements restricting coverage may be added.

The original policy must be provided to Grantor prior to entering upon the Easement Premises

If available and in lieu of providing a Railroad Protective Liability Policy, any contractor of Grantee may participate in the Railway's Blanket Railroad Protective Liability Insurance Policy. The limits of coverage are the

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same as above. Any contractor electing to participate in this policy must make arrangements in writing with Grantor prior to entering upon the Easement Premises.

Other Requirements:

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

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Grantor and Jones, Lang, La Salle Company as additional insureds with respect to work performed under this Easement Agreement. Severability of interest and naming Grantor and Jones, Lang La Salle Company as additional insureds shall be indicated on the certificate of insurance.

Prior to commencing work, Grantee's Contractors 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 and referencing the contract audit/folder number if available. 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 shall be furnished.

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 of North Dakota.

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.

If any portion of the operation is to be subcontracted by any of Grantee's Contractors, such contractor(s) shall require that each of its subcontractors 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 each of Grantee's contractors is required to release, defend and indemnify Grantor herein.

Failure to provide evidence as required by this **Section 8** shall entitle, but not require, Grantor to terminate the Easement immediately. Acceptance of a certificate that does not comply with this **Section 8** shall not operate as a waiver of Grantee's Contractors' obligations hereunder.

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

Section 9 Environmental.

9.1 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.

9.2 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.

9.3 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, and was caused, contributed to, aggravated or made more dangerous by the actions or inaction of Grantee or one of its contractors, subcontractors, agents, lessees, licensees or invitees, 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. 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.

9.4 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.

9.5 Evidence of Compliance. Grantee agrees to furnish to Grantor, upon receiving a written request from Grantor, proof satisfactory to Grantor that Grantee is in compliance with this **Section 9**. Should Grantee not comply fully with the above-stated obligations of this **Section 9**, or correct any noncompliance within thirty (30) days of its receipt of information concerning such noncompliance, then, notwithstanding anything contained in any other provision hereof, Grantor, at its option, may terminate this Easement Agreement by serving thirty (30) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 12**.

Section 10 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 NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

Section 11 Default and Termination.

11.1 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.

11.2 Grantor's Termination Rights. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee: (i) if default shall be made in any of the covenants or agreements of Grantee contained in this Easement Agreement, (ii) in case of any assignment or transfer of the Easement by operation of law, or (iii) 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.

11.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any obligation under this Easement Agreement 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 12**.

11.4 Non-exclusive Remedies. The remedies set forth in this **Section 11** shall be in addition to, and not in limitation of, any other remedies that Grantor may have at law or in equity.

Section 12 Surrender of Premises.

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

12.2 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 obligation under this Easement Agreement resulting from any acts, omissions or events happening prior to the date of termination, or, if later, 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 obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 13 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 13** or any other section of this Easement Agreement.

Section 14 Tax Exchange. Grantor reserves the right to assign this Easement Agreement to Apex Property & Track Exchange, Inc. ("**Apex**"). Apex is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.1031(k)-1(g), for the purpose of completing a tax-deferred exchange under said Section 1031. Grantor shall bear all expenses associated with the use of Apex, or necessary to qualify this transaction as a tax-deferred exchange, and, except as otherwise provided herein, shall protect, reimburse, indemnify and hold harmless Grantee from and against any and all reasonable and necessary additional costs, expenses, including, attorneys fees, and liabilities which Grantee may incur as a result of Grantor's use of Apex or the qualification of this transaction as a tax-deferred transaction pursuant to Section 1031. Grantee shall cooperate with Grantor with respect to this tax-deferred exchange, and upon Grantor's request, shall execute such documents as may be required to effect this tax-deferred exchange.

Section 15 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: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Fort Worth, Texas 76131
Attn: Director of Real Estate

With a copy to: JLL Rail Practice Group
3400 Amon Carter Blvd
Fort Worth, Texas 76155
Attention: Real Estate

With a copy to: Jones Lang LaSalle
4105 Lexington Ave N, Suite 200
Arden Hills, MN 55126

If to Grantee: North Dakota Department of Transportation
608 East Boulevard Avenue
Bismarck, North Dakota 58505-0700
Attn: Environmental and Transportation Services Division

Section 16 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B"** (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 30 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 17 Miscellaneous.

17.1 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 North Dakota without regard to conflicts of law provisions.

17.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of

Law Department Approved

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.

17.3 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.

17.4 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.

17.5 This Easement Agreement 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.

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

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

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: Carrie Thompson
Name: Carrie Thompson
Title: Manager - Land Revenue Management

GRANTEE:

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

By: Grant Levis
Name: Grant Levis
Title: Director

Approved as to substance by:

Mark S Baydos
Division Director (typed or printed)

MS Baydos
Signature

5/5/14
Date

PROJECT NO.	PCN	PARCEL	PLAT NO.	SUPPLEMENTS
SS-3-281(104)	18107	1-1 thru 1-4	1 of 1	ONE
MILE 900				

03/06/14 Created Parcel 1-3 & Revised Parcels 1-1, 1-2, 1-4 (Linda Brown)

Churches Ferry, ND
 Lots 15 thru 19, Block 2 Original Townsite of the Village of Churches Ferry and Gov Lot 7
 6-155-66
 Parcel No. 1-1 3,270 SF
 Permanent Maintenance Easement
 Great Northern Railway Company
 Valuation Section No. 17
 Line Between Churches Ferry and Minot BETWEEN MILEPOSTS 104 & 105 APPROXIMATE R.R. STA. 64689+37
 PO Box 961089
 Fort Worth, TX 76161

Parcel No. 1-2 42,630 SF
 Temporary Easement
 Great Northern Railway Company
 Valuation Section No. 17
 Line Between Churches Ferry and Minot BETWEEN MILEPOSTS 104 & 105 APPROXIMATE R.R. STA. 64689+37
 PO Box 961089
 Fort Worth, TX 76161

Parcel No. 1-3 5,000 SF
 Temporary Easement
 Great Northern Railway Company
 Valuation Section No. 17
 Line Between Churches Ferry and Minot BETWEEN MILEPOSTS 104 & 105 APPROXIMATE R.R. STA. 64689+37
 PO Box 961089
 Fort Worth, TX 76161

Parcel No. 1-4 10,500 SF
 Temporary Easement
 Great Northern Railway Company
 Valuation Section No. 17
 Line Between Churches Ferry and Minot BETWEEN MILEPOSTS 104 & 105 APPROXIMATE R.R. STA. 64689+37
 PO Box 961089
 Fort Worth, TX 76161

Churches Ferry, ND
 Lots 8 thru 10, Lots 13 thru 22, Block 2 Original Townsite of the Village of Churches Ferry and Gov Lot 7
 6-155-66
 Parcel No. 1-2 42,630 SF
 Temporary Easement
 Great Northern Railway Company
 Valuation Section No. 17
 Line Between Churches Ferry and Minot BETWEEN MILEPOSTS 104 & 105 APPROXIMATE R.R. STA. 64689+37
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 Valuation Section No. 17
 Line Between Churches Ferry and Minot BETWEEN MILEPOSTS 104 & 105 APPROXIMATE R.R. STA. 64689+37
 PO Box 961089
 Fort Worth, TX 76161

3/10/2014 11:05:59 AM
 DATE SURVEY WAS COMPLETED: 02/10/12
 PLAT MADE BY: Aaron Cook
 CHECKED BY L.S.: Linda Brown
 DATE: 02/25/14
 Rce Sec Ctr N 464998.40
 E 2285408.67

Assumed Coordinates
 11:05:59 AM
 3/10/2014

THIS PLAT IS FOR INFORMATION ONLY. THE DATA ON THE PLAT IS NOT OFFICIAL UNTIL THE PLAT IS SEALED AND SIGNED BY A REGISTERED LAND SURVEYOR.

LEGEND
 ○ Iron Monument found
 ● Iron Monument set
 ● Iron Monument to be set
 □ Concrete Monument to be set
 ↑ Controlled access point

GRAPHIC SCALE (in feet)
 0 100 200 300
 1" = 100'

Supervisor's Seal
 This document is preliminary and not for recording or implementation purposes.

APPROVED
 NAME _____
 DATE _____

RIGHT OF WAY PLAT
 PROJECT NO. SS-3-281(104)900
 RAMSEY COUNTY

NORTH DAKOTA
 DEPARTMENT OF TRANSPORTATION



PROJECT NO. SS-3-281(104) 900
PCN.
1st SUPPLEMENT TO PLAT NO. 1 OF 1

Parcel Number 1-1

A portion of Lots 15 thru 19, Block 2, of the Original Townsite of the Village of Churchs Ferry and a portion of Government Lot 7 of Section 6, Township 155 N, Range 66 W, of the 5th Principal Meridian, County of Ramsey, State of North Dakota, described as follows and as shown on plat 1 of 1:

Commencing at the SW corner of section 6, thence northerly along the west line of section 6, N 00 deg. 57 min. 54 sec. W a distance of 606.70 feet. Thence N 89 deg. 02 min. 06 sec. E a distance of 33.00 feet to the point of beginning. Thence N 00 deg. 57 min. 54 sec. W along the easterly right of way line of U.S. 281 Spur a distance of 218.00 feet. Thence S 89 deg. 02 min. 06 sec. E a distance of 15.00 feet. Thence S 00 deg. 57 min. 54 sec. W a distance of 218.00 feet. Thence S 89 deg. 02 min. 06 sec. W a distance of 15.00 feet to the point of beginning.

Said parcel is shown on the plat as parcel 1-1 and contains 3270 SF more or less, and is subject to any easements or rights of way previously acquired.

END OF DESCRIPTION.

The legal description was prepared by Linda H. Brown, Statitec, 3717 23rd Street S, St. Cloud, Minnesota, 56301.

Parcel Number 1-2

A portion of Lots 8 thru 10, Lots 13 thru 22, Block 2, of the Original Townsite of the Village of Churchs Ferry and a portion of Government Lot 7 of Section 6, Township 155 N, Range 66 W, of the 5th Principal Meridian, County of Ramsey, State of North Dakota, described as follows and as shown on plat 1 of 1:

Commencing at the SW corner of section 6, thence northerly along the west line of section 6, N 00 deg. 57 min. 54 sec. W a distance of 624.70 feet. Thence N 89 deg. 02 min. 06 sec. E a distance of 33.00 feet to the point of beginning. Thence N 00 deg. 57 min. 54 sec. W along the easterly right of way line of U.S. 281 Spur a distance of 251.23 feet. Thence S 89 deg. 02 min. 06 sec. E a distance of 15.00 feet. Thence S 00 deg. 57 min. 54 sec. W a distance of 251.23 feet to the point of beginning.

It is a condition of this assessment that it shall not be filed for record and that all rights conveyed to the state of North Dakota and North Dakota Department of Transportation by this instrument shall terminate upon completion of construction of said project, or in five years from the date of conveyance, whichever comes first.

Said parcel is shown on the plat as parcel 1-2 and contains 42630 SF more or less, and is subject to any easements or rights of way previously acquired.

END OF DESCRIPTION.

The legal description was prepared by Linda H. Brown, Statitec, 3717 23rd Street S, St. Cloud, Minnesota, 56301.

Parcel Number 1-3

A portion of Government Lot 7 of Section 6, Township 155 N, Range 66 W, of the 5th Principal Meridian, County of Ramsey, State of North Dakota, described as follows and as shown on plat 1 of 1:

Commencing at the SW corner of section 6, thence northerly along the west line of section 6, N 00 deg. 57 min. 54 sec. W a distance of 33.00 feet to the point of beginning. Thence N 89 deg. 02 min. 06 sec. E a distance of 50.00 feet. Thence S 00 deg. 57 min. 54 sec. W along the easterly right of way line of U.S. 281 Spur a distance of 50.00 feet. Thence S 89 deg. 02 min. 06 sec. E a distance of 100.00 feet. Thence S 00 deg. 57 min. 54 sec. W along the easterly right of way line of U.S. 281 Spur a distance of 100.00 feet to the point of beginning.

It is a condition of this assessment that it shall not be filed for record and that all rights conveyed to the state of North Dakota and North Dakota Department of Transportation by this instrument shall terminate upon completion of construction of said project, or in five years from the date of conveyance, whichever comes first.

Said parcel is shown on the plat as parcel 1-3 and contains 5000 SF more or less, and is subject to any easements or rights of way previously acquired.

END OF DESCRIPTION.

The legal description was prepared by Linda H. Brown, Statitec, 3717 23rd Street S, St. Cloud, Minnesota, 56301.

Parcel Number 1-4

A portion of Government Lot 7 of Section 6, Township 155 N, Range 66 W, of the 5th Principal Meridian, County of Ramsey, State of North Dakota, described as follows and as shown on plat 1 of 1:

Commencing at the SW corner of section 6, thence northerly along the west line of section 6, N 00 deg. 57 min. 54 sec. W a distance of 1252.86 feet. Thence N 89 deg. 02 min. 06 sec. E a distance of 33.00 feet to the point of beginning. Thence N 00 deg. 57 min. 54 sec. W along the easterly right of way line of U.S. 281 Spur a distance of 70.00 feet to the easterly right of way line of U.S. 281 Spur. Thence N 00 deg. 57 min. 54 sec. W along the easterly right of way line of U.S. 281 Spur a distance of 150.00 feet to the point of beginning.

It is a condition of this assessment that it shall not be filed for record and that all rights conveyed to the state of North Dakota and North Dakota Department of Transportation by this instrument shall terminate upon completion of construction of said project, or in five years from the date of conveyance, whichever comes first.

Said parcel is shown on the plat as parcel 1-4 and contains 10500 SF more or less, and is subject to any easements or rights of way previously acquired.

END OF DESCRIPTION.

The legal description was prepared by Linda H. Brown, Statitec, 3717 23rd Street S, St. Cloud, Minnesota, 56301.

EXHIBIT "B"

Memorandum of Easement

THIS MEMORANDUM OF EASEMENT is hereby executed this 12 day of JUNE, 2014, 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 North Dakota Department of Transportation ("**Grantee**"), whose address for purposes of this instrument is 608 East Boulevard Ave, Bismarck, ND 58505-0700, 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 Ramsey County, North Dakota as described on Exhibit "A" attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated June 12, 2014 (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across a portion of the Premises (the "**Easement**"); and

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

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

The term of the Permanent Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. The term of the Temporary Easements, unless sooner terminated under provisions of this Easement Agreement, shall expire on the date that is two years after the Effective Date. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

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

[Signature page follows]

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

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: *Carly*
Name: *Carly Thompson*
Title: Manager - Land Revenue Management

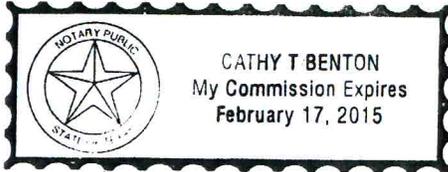
GRANTEE:
North Dakota
Department of Transportation
By: Grant Levi
Name: *Grant Levi*
Title: Director

Approved as to substance by:
Mark S Baydos
Division Director (typed or printed)
WSS Baydos
Signature
5/5/14
Date

Law Department Approved

STATE OF TEXAS §
§
COUNTY OF TARRANT §

This instrument was acknowledged before me on the 12 day of JULY, 2014, by CAROL THOMPSON (name) as Manager - Land Return Dept. (title) of BNSF RAILWAY COMPANY, a Delaware corporation.



Cathy T. Benton
Notary Public

(Seal)

My appointment expires: Jul 17, 2015

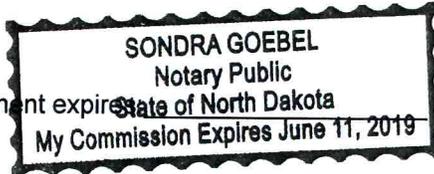
STATE OF North Dakota §
§
COUNTY OF Burleigh §

This instrument was acknowledged before me on the 12 day of May, 2014, by Grant Levi (name) as Director (title) of North Dakota Dept. of Transportation, a State agency.

Sandra Goebel
Notary Public

(Seal)

My appointment expires state of North Dakota
My Commission Expires June 11, 2019

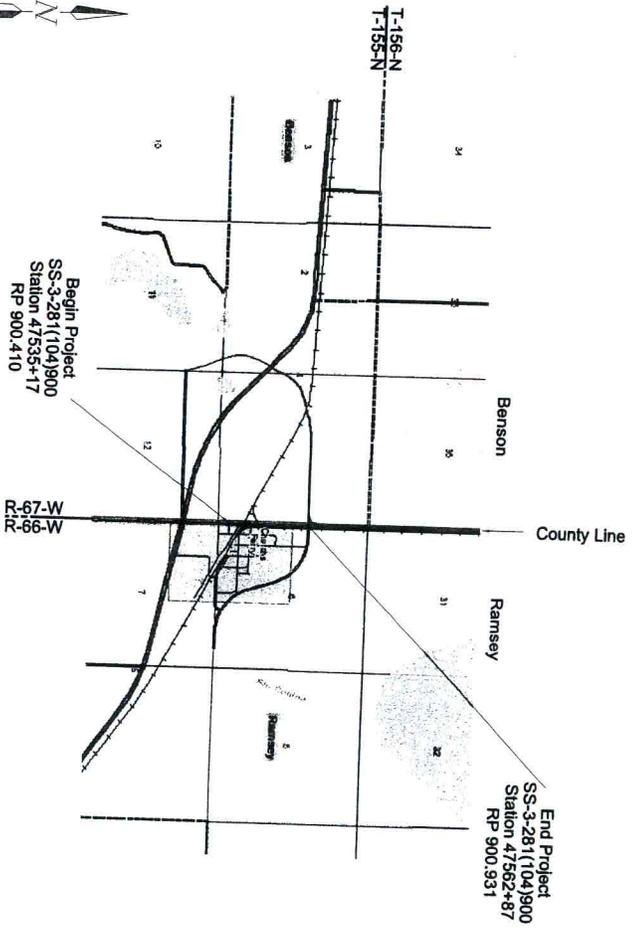
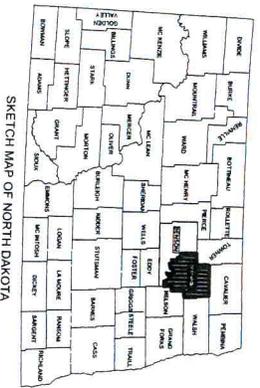


SURVEYOR'S SEAL
 This document is preliminary and not for recording or implementation purposes.

Name _____
 REGISTERED LAND SURVEYOR
 DATE _____

For Recording Purposes Only

NORTH DAKOTA
 DEPARTMENT OF TRANSPORTATION
 RIGHT OF WAY PLAT OF
 SS-3-281(104) 900
 PCN. 18107
 In
 RAMSEY COUNTY



PLAT NO.	PARCELS
1 of 1	1-1 to 1-4

Parcel Number 1-1

A portion of Lots 15 thru 19, Block 2, of the Original Townsite of the Village of Fry and a portion of Government Lot 7 of Section 6, Township 155 N, Range 66 W, of the 5th Principal Meridian, County of Ramsey, State of North Dakota, described as follows and as shown on plat 1 of 1:

Commencing at the SW corner of section 6, thence northerly along the west line of section 6, N 00 deg, 57 min, 54 sec, W a distance of 605.70 feet, Thence N 89 deg, 02 min, 06 sec, E a distance of 33.00 feet to the point of beginning, Thence N 00 deg, 57 min, 54 sec, W a distance of 218.00 feet, Thence N 89 deg, 02 min, 06 sec, E a distance of 218.00 feet, Thence N 89 deg, 02 min, 06 sec, E a distance of 3.00 feet, Thence S 00 deg, 57 min, 54 sec, E a distance of 218.00 feet, Thence S 89 deg, 02 min, 06 sec, W a distance of 15.00 feet to the point of beginning.

Said parcel is shown on the plat as parcel 1-1 and contains 3270 SF more or less, and is subject to any assessments or rights of way previously acquired.

END OF DESCRIPTION.

The legal description was prepared by Linda H. Brown, Statistic, 3717 23rd Street S, St. Cloud, Minnesota, 56501.

Parcel Number 1-2

A portion of Lots 8 thru 10, Lots 13 thru 22, Block 2, of the Original Townsite of the Village of Church's Ferry and a portion of Government Lot 7 of Section 6, Township 155 N, Range 66 W, of the 5th Principal Meridian, County of Ramsey, State of North Dakota, described as follows and as shown on plat 1 of 1:

Commencing at the SW corner of section 6, thence northerly along the west line of section 6, N 00 deg, 57 min, 54 sec, W a distance of 624.70 feet, Thence N 89 deg, 02 min, 06 sec, E a distance of 48.00 feet to the point of beginning, Thence S 00 deg, 57 min, 54 sec, W a distance of 194.00 feet, Thence N 89 deg, 02 min, 06 sec, E a distance of 250.00 feet, Thence S 00 deg, 57 min, 54 sec, W a distance of 251.23 feet, Thence N 89 deg, 02 min, 06 sec, E a distance of 152.43 feet to the point of beginning.

It is a condition of this assessment that it shall not be filed for record and that all rights conveyed to the state of North Dakota and North Dakota Department of Transportation by this instrument shall terminate upon completion of construction of said project, or in five years from the date of conveyance, whichever comes first.

Said parcel is shown on the plat as parcel 1-2 and contains 42630 SF more or less, and is subject to any assessments or rights of way previously acquired.

END OF DESCRIPTION.

The legal description was prepared by Linda H. Brown, Statistic, 3717 23rd Street S, St. Cloud, Minnesota, 56501.

Parcel Number 1-3

A portion of Government Lot 7 of Section 6, Township 155 N, Range 66 W, of the 5th Principal Meridian, County of Ramsey, State of North Dakota, described as follows and as shown on plat 1 of 1:

Commencing at the SW corner of section 6, thence northerly along the west line of section 6, N 00 deg, 57 min, 54 sec, W a distance of 882.06 feet, Thence N 89 deg, 02 min, 06 sec, E a distance of 33.00 feet to the point of beginning, Thence N 00 deg, 57 min, 54 sec, W a distance of 50.00 feet, Thence S 89 deg, 02 min, 06 sec, E a distance of 50.00 feet to the easterly right of way line of U.S. 281 Spur, Thence N 00 deg, 57 min, 54 sec, W along the easterly right of way line of U.S. 281 Spur a distance of 100.00 feet to the point of beginning.

It is a condition of this assessment that it shall not be filed for record and that all rights conveyed to the state of North Dakota and North Dakota Department of Transportation by this instrument shall terminate upon completion of construction of said project, or in five years from the date of conveyance, whichever comes first.

Said parcel is shown on the plat as parcel 1-3 and contains 5000 SF more or less, and is subject to any assessments or rights of way previously acquired.

END OF DESCRIPTION.

The legal description was prepared by Linda H. Brown, Statistic, 3717 23rd Street S, St. Cloud, Minnesota, 56501.

Parcel Number 1-4

A portion of Government Lot 7 of Section 6, Township 155 N, Range 66 W, of the 5th Principal Meridian, County of Ramsey, State of North Dakota, described as follows and as shown on plat 1 of 1:

Commencing at the SW corner of section 6, thence northerly along the west line of section 6, N 00 deg, 57 min, 54 sec, W a distance of 1332.96 feet, Thence N 89 deg, 02 min, 06 sec, E a distance of 710.00 feet to the point of beginning, Thence N 00 deg, 57 min, 54 sec, W a distance of 150.00 feet, Thence S 89 deg, 02 min, 06 sec, E a distance of 150.00 feet to the easterly right of way line of U.S. 281 Spur, Thence N 00 deg, 57 min, 54 sec, W along the easterly right of way line of U.S. 281 Spur a distance of 150.00 feet to the point of beginning.

It is a condition of this assessment that it shall not be filed for record and that all rights conveyed to the state of North Dakota and North Dakota Department of Transportation by this instrument shall terminate upon completion of construction of said project, or in five years from the date of conveyance, whichever comes first.

Said parcel is shown on the plat as parcel 1-4 and contains 10500 SF more or less, and is subject to any assessments or rights of way previously acquired.

END OF DESCRIPTION.

The legal description was prepared by Linda H. Brown, Statistic, 3717 23rd Street S, St. Cloud, Minnesota, 56501.