



**CITY OF SEWARD**  
**City Council**  
**Regular Meeting**  
**Agenda**

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**Tuesday, May 5, 2020 7:00 PM**

**Municipal Building Council Chambers**

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**NOTICE IS HEREBY GIVEN** that a meeting of the City Council of the City of Seward, Nebraska will be held at 7:00 PM on Tuesday, May 5, 2020, in Municipal Building Council Chambers 142 North 7th St, Seward, NE 68434, which meeting will be open to the public. The Mayor and City Council reserve the right to adjourn into Closed Session as per Section 84-1410 of the Nebraska Revised Statutes. An Agenda for such meeting, kept continually current, is available at the Office of the City Clerk, 537 Main Street, Seward, Nebraska, during normal business hours. Individuals requiring physical or sensory accommodations, who desire to attend or participate, please contact the City Clerk's Office at 402.643.2928 no later than 3:30 PM on the Friday preceding the Council Meeting.

City financial claims and related invoices will be available for Council member review, audit and voluntary signatures at Council Chambers beginning 30 minutes prior to the scheduled meeting time.

**MEETING BEING HELD VIA VIDEO/TELE-CONFERENCE UNDER STATE OF NEBRASKA, GOVERNOR PETE RICKETTS, EXECUTIVE ORDER NO. 20-03 (CORONA VIRUS- PUBLIC MEETINGS REQUIREMENT WAIVER)**

**TO PARTICIPATE - Join Via Computer, Tablet, or Smart Phone:**  
**Enter this URL into your Browser: <https://zoom.us/join>**

**Enter Meeting ID: 823 8062 8357**

**TO PARTICIPATE - Join Via Telephone - call one of the numbers below:**  
**1-669-900-6833**  
**1-346-248-7799**

**Enter Meeting ID: 823 8062 8357**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**DISCLOSURE OF OPEN MEETINGS ACT & OTHER NOTIFICATIONS**

This is an Open Meeting of the Seward Nebraska Governing Body. The City of Seward abides by the Nebraska Open Meetings Act in conducting business. A copy of the Nebraska Open Meetings Act is displayed on the north wall of this meeting room facility as required. Disclosure of meeting recording processes is posted in the Meeting Room. A participant sign-in sheet is available for use by any Citizen addressing the Council. Presenters shall approach the podium, state their name & address for the Clerk's record and are asked to

limit remarks to five minutes. All remarks shall be directed to the Mayor who shall determine by whom any appropriate response shall be made. The City of Seward reserves the right to adjust the order of items on this Agenda if necessary and may elect to take action on any of the items listed.

**ROLL CALL**

**MINUTES**

1. Draft Minutes of April 21, 2020- City Clerk Otte
2. Draft Minutes of April 30, 2020 Special City Council Meeting- City Clerk Otte

**CONSENT AGENDA**

1. Claims & Payables Reports
2. City Codes Director Report
3. Infrastructure Cost Items Reimbursable Back to the City

**ADMINISTRATIVE ITEMS**

1. Agreement with BNSF Railway for Line Under the Mainline Rail to Serve the New Electric Substation

**REPORTS**

1. City Administrator's Report - City Administrator Butcher

**FUTURE REQUESTS FOR COUNCIL AGENDA ITEMS OR ADMINISTRATIVE ACTION**

**MOTION TO ADJOURN**

April 21, 2020

The Seward City Council met at 7:00 p.m. on Tuesday, April 21, 2020, via conference call, allowed under State of Nebraska, Governor Pete Ricketts, Executive Order No. 20-03 (Corona Virus - Public Meetings Requirement Limited Waiver), dated March 17, 2020, with Mayor Joshua Eickmeier presiding and Assistant Administrator /Clerk-Treasurer /Budget & Human Resources Director Bonnie Otte recording the proceedings. Upon roll call, the following Councilmembers were present: Jonathon Wilken, Ellen Beck, Sid Kamprath, Jessica Kolterman, Karl Miller, John Singleton, Chris Schmit, Alyssa Hendrix. Absent: None. Other officials present: City Administrator Greg Butcher and City Attorney Kelly Hoffschneider.

Notice of the meeting was given in advance thereof by the method of communicating advance notice of the regular and special meetings of the City Council of the City of Seward, Nebraska, as stated in Ordinance No. 2015-08, which was adopted on the 5th day of May, 2015; said method stating that the notice of such meeting, with the agenda thereon, be posted in the following places: City Hall, Seward County Courthouse, Municipal Building, and Seward Memorial Library. The certificate of posting notice is attached to these minutes.

Notice of this meeting was simultaneously given to the Mayor and all members of the City Council and a copy of their acknowledgment of receipt of notice and the agenda are attached to these minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Mayor and Council of this meeting. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public.

THE PLEDGE OF ALLEGIANCE

Mayor Eickmeier announced that a copy of the Agenda for this meeting is posted on the north wall of the Municipal Building and copies are available on the north wall where a copy of the Open Meetings Act is also posted for public inspection. He also noted that any citizen participating in the conference call wishing to address the Council, should state their name and address and limit their comments to five minutes. All remarks should be directed to the Mayor/Chairperson, who will then determine who will make any appropriate response. The City of Seward reserves the right to adjust the order of items on this agenda if necessary and may elect to take action on any of the items listed.

1. APPROVAL OF MINUTES OF APRIL 7, 2020 COUNCIL MEETING

Councilmember Schmit moved, seconded by Councilmember Singleton, that the minutes of the April 7, 2020 City Council meeting be approved.

Aye: Wilken, Beck, Kamprath, Kolterman, Miller, Singleton, Schmit, Hendrix  
Nay: None  
Absent: None. Motion carried.

1-4. CONSENT AGENDA CONSIDERATION ITEMS

The following Consent Agenda items were approved in one single motion made by Councilmember Singleton, seconded by Councilmember Schmit:

1. Claims & Payables Reports
2. City Treasurer Report
3. Police Department Report
4. Infrastructure Cost Items Reimbursable Back to the City

CLAIMS LIST  
4-21-20  
COUNCIL MEETING

April 21, 2020

Abbreviations: Bu, Building Upkeep; Eq, Equipment; Ex, Expense; Ma, Maintenance; Mi, Mileage; Misc, Miscellaneous; Re, Repairs; Sa, Salaries, Se, Services; Su, Supplies; Ut, Utilities, CI, Capital Improvements; GU, Grounds Upkeep.

AKRS Equipment	Re	51.98
All Road Barricades Inc	Signs	372.48
Altec Industries Inc	Tools	960.38
Bartels Whitney	Refnd	90.00
Bishop Michael	Ex	90.00
Bizco Technologies	Se	4,320.78
Black Hills Energy	Ut	987.32
Blackburn Manufacturing Co	Re	593.77
Border States Industries	Su, Re, Un, Eq	6,481.48
Brown Heather	Refnd	60.00
Brunckhorst Kent	Ex	90.00
Bruning State Bank	Cart Lease	2,860.00
Callaway Golf	Su	232.98
Capital Business-Cheyenne	Ma	160.00
Carroll Construction Supp	Su	2,433.49
Cash-Wa Distributing Co	Su	65.00
Cihal Alan F	Ex	90.00
City Seward Buildings/Gr	Op/Ma	3,000.00
City Seward General Fund	Franchise Fees	278,937.50
City Seward Library Petty	Su	80.16
City Seward Merchant Serv	Ex	2,442.54
City Seward Payroll Accou	Payroll	132,766.87
Constellation Newenergy	Ut	1,980.54
Cross Creek Animal Health	Se	60.00
Curtis Jonathan	Refnd	30.00
Dollar General 1547	Incentive	320.00
Durre Plumbing	Re	290.00
E M C Insurance Companies	Ins	153.39
Eakes Office Solutions	Su	127.98
Farmers Coop Seward	Su, Re	2,680.18
Fastenal Company	Su, Re	189.26
Firstar Fiber Inc	Se	185.62
Frisbie Dan	Refnd	30.00
Gerhold Concrete Co Inc	Re, Ci	4,517.64
Graybar	Ci	3,616.60
Hach Company	Su	812.06
Hall Nichole	Refnd	30.00
Hamilton Equipment Company	Re	105.00
Hobson Automotive & Tire	Re	22.00
Hochstein Jared	Ex	90.00
Home Depot Pro	Su	72.94
Husker Electric Supply Co	Inv, Re	6,620.36
Hydraulic Equipment Service	Tools	69.36
I E S Commercial Inc	Ci	73,325.14
IoT Integrators LLC	Se	4,346.50
J E O Consulting Group In	Se	9,804.50
Jack's Uniforms & Equipment	Eq	426.84
Jackson Services Inc	Su	137.32
Jacobsen Rock & Gravel	Su	3,470.49
Jones Bank	Eq	17,395.78
K & Z Distributing	Su	99.20
Kennedy Heather	Refnd	30.00
Konica Minolta Business S	Ma	40.27
Krieser Drywall/Insulate	Re	2,742.18
Lee's Refrigeration	Eq	8,738.28
Lenning Breanne	Refnd	90.00
Lincoln Winwater Works	Re	502.87
M C 2 Inc	Ma	385.90

April 21, 2020

Memorial Health-Drug	Se	34.00
Menards North	Gu, Bu	601.64
Menards South	Su	129.93
Metering & Technology Sol	Re, Eq	8,474.40
Mid-American Benefits Inc	Ins	2,467.88
Midwest Auto Parts	Re, Su	281.15
Midwest Automotive	Re	2,245.12
Midwest Laboratories Inc	Se	816.57
Midwest Turf & Irrigation	Re	94.40
Ne Association Prop/Evid	Dues	60.00
Nebraska D A S Acct OCIO	Se	231.00
Nebraska Municipal Power	Dues	2,599.56
Nebraska Pub Pow-Desmoine	Incentive, Ut	410,538.35
Nebraska Treasurer	Fees	62.22
Niemann's Port-A-Pot Llc	Se	200.00
Norris Public Power Dist	Ut	762.23
Odeys Inc	Gu	1,507.00
Olsson	Se	57,780.23
One Call Concepts Inc	Se	133.30
One Source Background Che	Se	19.00
O'Reilly Automotive Inc	Su, Re, Ma	51.19
Orscheln Farm & Home	Su, Bu, Gu, Tools	389.52
Overhead Door Co-Lincoln	Bu, Re	206.00
Pac 'N' Save Discount Foo	Gu, Bu, Su, Tools, Meals	3,306.18
Paper Tiger Shredding	Se	30.00
Pecka Brook	Ex	90.00
Precision Tool & Machine	Su	30.60
Quality Brands Of Lincoln	Su	203.65
Quill Corp	Su, Eq	811.86
Reed Electric	Bu	90.00
Rose Equipment Inc	Re	562.00
Ruether Larry L	Ex	90.00
Sam's Club (Lib-Rec-Pool)	Bu, Su	261.26
Schemmer Architects Engin	Se	1,275.00
Seward Appliance Repair	Bu	171.54
Seward County Clerk/Reg D	Ex	44.00
Seward County Independent	Ex	908.25
Seward County Treasurer	Se	18,692.50
Seward Electronics	Tools	152.39
Seward Lumber & Home Cent	Gu, Su, Bu	1,456.87
Seward Machine & Tool	Re	25.50
Seward School District	Fines, Fees	1,395.32
Seward Wind LLC	Ut	40,802.98
Short Elliott Hendrickson	Se	13,074.93
Sirchie Fingerprint Labor	Su	128.05
Siteone Landscape Supply	Gu	784.79
Sparetime Lounge & Grill	Meal	363.60
St Louis Michelle	Ex	90.00
State Distributing Co	Su	202.40
Total Fire & Security Inc	Se	245.00
Trafficalm Systems	Re	818.11
Ty's Outdoor Power & Serv	Re	52.79
Valentino's	Su	47.39
Verizon Wireless	Se	211.92
Wesco Distribution Inc	Su, Re	3,718.66
Wilcox Judy	Incentive	800.00
Windstream Nebraska Inc	Se	1,874.91
Woods & Aitken LLP	Se	840.00
	CLAIMS TOTAL	<u>\$1,164,042.07</u>

April 21, 2020

Aye: Wilken, Beck, Kamprath, Kolterman, Miller, Singleton, Schmit, Hendrix  
Nay: None  
Absent: None. Motion carried.

**MAYOR APPOINTMENTS**

Councilmember Singleton moved, seconded by Councilmember Hendrix, that Robert M. (Bob) Miers be appointed to Street Superintendent, effective May 2, 2020.

Aye: Wilken, Beck, Kamprath, Kolterman, Miller, Singleton, Schmit, Hendrix  
Nay: None  
Absent: None. Motion carried.

Assistant Administrator/Clerk-Treasurer/Budget & HR Director Otte will administer the Oath of Office with Bob on Wednesday, April 22, 2020.

**ADMINISTRATIVE ITEMS**

**1. PROFESSIONAL SERVICES AGREEMENT WITH OLSSON FOR MATERIAL TESTING SERVICES FOR EAST SEWARD STREET PROJECT**

Councilmember Schmit moved, seconded by Councilmember Wilken that the professional services agreement with Olson for material testing services for the East Seward Street Project be approved.

Aye: Wilken, Beck, Kamprath, Kolterman, Miller, Singleton, Schmit, Hendrix  
Nay: None  
Absent: None. Motion carried.

**2. AGREEMENT WITH JEO CONSULTING GROUP, INC FOR SURVEY SERVICES FOR EAST SEWARD STREET IMPROVEMENT PROJECT CONSTRUCTION STAKING**

Councilmember Beck moved, seconded by Councilmember Kolterman that the agreement with JEO Consulting Group for survey services for construction staking for the East Seward Street Project be approved.

Aye: Wilken, Beck, Kamprath, Kolterman, Miller, Singleton, Schmit, Hendrix  
Nay: None  
Absent: None. Motion carried.

**3. RESOLUTION ADOPTING NEW FLOOD INSURANCE RATE MAPS FOR THE CITY OF SEWARD AND THE CITY'S TWO-MILE EXTRATERRITORIAL JURISDICTION**

Councilmember Schmit introduced the following resolution:

RESOLUTION NO. 2020-23

WHEREAS, the City of Seward, Nebraska, has flood control jurisdiction of all lands within the City of Seward corporate limits and as extended by its' extraterritorial zoning jurisdiction;

WHEREAS, Mayor, Seward City Council, City Administrator and Zoning Administrator have determined that it is in the best interest of the residents of the City of Seward to have all lands within the jurisdiction of the City of Seward subject to the terms and requirements of the Flood Insurance Rate Map (FIRM) for Seward County.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SEWARD, NEBRASKA THAT:

April 21, 2020

1. This resolution shall apply to all lands within the jurisdiction of City of Seward identified on the Flood Insurance Rate Maps (FIRM) for Seward County and Incorporated Areas Panel Numbers 31159C0150D, 31159C0161D, 31159C0162D, 31159C0163D, 31159C0164D, 31159C0175D, 31159C0250D, and 31159C0275D dated May 1, 2020; along with the FIRM Index 31159CIND0A and Flood Insurance Study 31159CV000A dated May 1, 2020.

Councilmember Wilken moved, seconded by Councilmember Miller that the resolution be adopted.

Aye: Wilken, Beck, Kamprath, Kolterman, Miller, Singleton, Schmit, Hendrix  
Nay: None  
Absent: None. Motion carried.

The Mayor declared the resolution adopted.

Dated this 21st day of April, 2020

THE CITY OF SEWARD, NEBRASKA

ATTEST:

\_\_\_\_\_  
Joshua Eickmeier, Mayor

\_\_\_\_\_  
Bonnie Otte  
Assistant Administrator/  
Clerk-Treasurer/  
Budget & Human Resource Director

(SEAL)

4. AWARD DOWNTOWN REVITALIZATION PROGRAM (CDBG 17DTR-107) FORGIVABLE LOANS

City Administer presented the Downtown Revitalization (DTR) grant applications for the remainder of the DTR funding (unused funding from first application process).

- A. Scott Dinslage, 511 Bradford Street, \$10,037.50
- B. Kach Roberts BLDG, LLC, 647 Seward Street, \$47,713.42 (amount amended by LB840 recommendation)
- C. Michael Mullally, 510 Seward Street, \$2,250.00
- D. Alison Koch, 514 Seward Street, \$3,398.88
- E. Thomas Suhr & Mark Suhr, 141 N. 5<sup>th</sup> Street, \$1,977.50
- F. Thomas Suhr & Mark Suhr, 145 N. 5<sup>th</sup> Street, \$4,433.50

Mr. Butcher stated it is a recommendation of Trey Ertmer with SENDD that due to finalizing program requirements with SHPO referencing preservation of historic aesthetics of the buildings covered in the application, he is recommending holding off any action on applications C, D, and F. The applications will be presented at a future meeting for action.

Councilmember Hendrix stated she would abstain from any discussion or voting on agenda item B (Kach Roberts BLDG, LLC, 647 Seward Street) due to a conflict of interest.

Councilmember Kolterman moved, seconded by Councilmember Beck that a Downtown Revitalization Program (CDBG 17DTR-107) forgivable loan be awarded to Scott Dinslage, 511 Bradford Street in the amount of \$10,037.50.

Aye: Wilken, Beck, Kamprath, Kolterman, Miller, Singleton, Schmit, Hendrix

April 21, 2020

Nay: None

Absent: None. Motion carried.

Councilmember Schmit moved, seconded by Councilmember Wilken that a Downtown Revitalization Program (CDBG 17DTR-107) forgivable loan be awarded to Kach Roberts BLDG, LLC, 647 Seward Street, in the amount of \$47,713.42.

Aye: Wilken, Beck, Kamprath, Kolterman, Miller, Singleton, Schmit, Hendrix

Nay: None

Absent: None. Motion carried.

Councilmember Beck moved, seconded by Councilmember Schmit that a Downtown Revitalization Program (CDBG 17DTR-107) forgivable loan be awarded to Thomas Suhr & Mark Suhr, 141 N. 5th Street in the amount of \$1,977.50.

Aye: Wilken, Beck, Kamprath, Kolterman, Miller, Singleton, Schmit, Hendrix

Nay: None

Absent: None. Motion carried.

No action was taken on the following applications: Michael Mullally, 510 Seward Street, \$2,250.00; Alison Koch, 514 Seward Street, \$3,398.88; Thomas Suhr & Mark Suhr, 145 N. 5<sup>th</sup> Street, \$4,433.50

## **REPORTS**

### **1. CITY ADMINISTRATOR'S REPORT**

Councilmember Kolterman moved, seconded by Councilmember Singleton, that City Administrator Butcher's report of April 21, 2020 be accepted.

Aye: Wilken, Beck, Kamprath, Kolterman, Miller, Singleton, Schmit, Hendrix

Nay: None

Absent: None. Motion carried.

### **FUTURE REQUESTS FOR COUNCIL AGENDA ITEMS OR ADMINISTRATIVE ACTION**

### **MOTION TO ADJOURN**

Councilmember Singleton moved, seconded by Councilmember Hendrix, that the April 21, 2020 City Council Meeting be adjourned.

Aye: Wilken, Beck, Kamprath, Kolterman, Miller, Singleton, Schmit, Hendrix

Nay: None

Absent: None. Motion carried.

THE CITY OF SEWARD, NEBRASKA

\_\_\_\_\_  
Joshua Eickmeier, Mayor

\_\_\_\_\_  
Bonnie Otte  
Assistant Administrator  
Clerk-Treasurer  
Budget & Human Resources Director

April 30, 2020

The Seward City Council, met for a special meeting at 7:00 p.m., on Thursday, April 30, 2020, via conference call, allowed under State of Nebraska, Governor Pete Ricketts, Executive Order No. 20-03 (Corona Virus - Public Meetings Requirement Limited Waiver), dated March 17, 2020, with Mayor Joshua Eickmeier presiding and Assistant Administrator /Clerk-Treasurer /Budget & Human Resources Director Bonnie Otte recording the proceedings. Upon roll call, the following Councilmembers were present: Jonathon Wilken, Ellen Beck, Sid Kamprath, Jessica Kolterman, Karl Miller, John Singleton, Chris Schmit, Alyssa Hendrix. Absent: None. Other officials present: City Administrator Butcher and City Attorney Kelly Hoffschneider.

Notice of the meeting was given in advance thereof by the method of communicating advance notice of the regular and special meetings of the City Council of the City of Seward, Nebraska, as stated in Ordinance No. 2015-08, which was adopted on the 5th day of May, 2015; said method stating that the notice of such meeting, with the agenda thereon, be posted in the following places: City Hall, Seward County Courthouse, Municipal Building, and Seward Memorial Library. The certificate of posting notice is attached to these minutes. Notice of this meeting was simultaneously given to the Mayor and all members of the City Council and a copy of their acknowledgment of receipt of notice and the agenda are attached to these minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Mayor and Council of this meeting. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public.

THE PLEDGE OF ALLEGIANCE

Mayor Eickmeier announced that a copy of the Agenda for this meeting is posted on the front glass of the Municipal Building and copies are available where a copy of the Open Meetings Act is also posted for public inspection. He also noted that any citizen participating in the conference call wishing to address the Council, should state their name and address and limit their comments to five minutes. All remarks should be directed to the Mayor/Chairperson, who will then determine who will make any appropriate response. The City of Seward reserves the right to adjust the order of items on this agenda if necessary and may elect to take action on any of the items listed.

ADMINISTRATIVE ITEMS

1. ORDINANCE TO ADOPT DIRECTED HEALTH MEASURES THRU MAY 3, 2020, AND LIFT RESTRICTIONS ON CERTAIN BUSINESSES IN THE CITY OF SEWARD ON MAY 4, 2020

Ordinance No. 2020-12 adopting Directed Health Measures thru May 3, 2020 and repealing Ordinance No. 2020-11 was adopted.

Councilmember Schmit moved, seconded by Councilmember Kamprath that an emergency be declared and that Ordinance No. 2020-12 be effective immediately upon passage and publication.

Aye: Wilken, Beck, Kamprath, Kolterman, Miller, Singleton, Schmit, Hendrix  
Nay: None  
Absent: None. Motion carried.

Councilmember Wilken moved, seconded by Councilmember Kolterman, that the minutes of the proceedings of the Mayor and Council of the City of Seward, Seward County, Nebraska in the matter of passing and approving: **Ordinance No. 2020-12**, "AN ORDINANCE TO ADOPT DIRECTED HEALTH MEASURES THRU MAY 3, 2020; TO HELP PREVENT, LIMIT, OR SLOW THE SPREAD OF THE NOVEL CORONAVIRUS (COVID-19) AMONG THE CITIZENS OF THE CITY OF SEWARD; TO REPEAL ORDINANCE 2020-11; TO PROVIDE FOR PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM; AND, TO PROVIDE FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT", be preserved and kept in a separate and distinct volume known as "Ordinance Record, City of Seward, Nebraska",

April 30, 2020

and that said separate and distinct volume be incorporated in and made a part of these proceedings and the same as though it were spread at large herein.

Aye: Wilken, Beck, Kamprath, Kolterman, Miller, Singleton, Schmit, Hendrix  
Nay: None  
Absent: None. Motion carried.

MOTION TO ADJOURN

Councilmember Schmit moved, seconded by Councilmember Singleton, that the April 30, 2020 City Council Special Meeting be adjourned.

Aye: Wilken, Beck, Kamprath, Kolterman, Miller, Singleton, Schmit, Hendrix  
Nay: None  
Absent: None. Motion carried.

THE CITY OF SEWARD, NEBRASKA

\_\_\_\_\_  
Joshua Eickmeier, Mayor

\_\_\_\_\_  
Bonnie Otte  
Assistant Administrator  
Clerk-Treasurer  
Budget & Human Resources Director

CLAIMS LIST  
5-5-20

COUNCIL MEETING

Abbreviations: Bu, Building Upkeep; Eq, Equipment; Ex, Expense; Gu, Ground Upkeep; Inv, Inventory; Ma, Maintenance; Mi, Mileage; Misc, Miscellaneous; Re, Repairs; Sa, Salaries, Se, Services; Su, Supplies; Ut, Utilities, CI, Capital Improvements, Gu, Grounds Upkeep.

Akrs Equipment	Re	105.97
Altec Industries Inc	Tools	356.53
American Water Works Asso	Dues	393.00
Anderson Cory	Soc Refnd	30.00
Berge Jean	Soc Refnd	30.00
Bisbee Jill	Soc Refnd	30.00
Blue Cross Blue Shield Ne	Ins	48,125.05
Bluestem Network LLC	Se	100.00
Bohuslavsky Sarah	Soc Refnd	30.00
Bolling Kim	Soc Refnd	30.00
Border States Industries	Re, Tools, Un, Su	7,703.64
Boyer Ryan	Soc Refnd	30.00
Boyll Travis	Soc Refnd	60.00
Brackett Kylea	Soc Refnd	60.00
Brecka Joanie	City Band Music	399.75
Brown Caiti	Soc Refnd	60.00
Buell Tom	Soc Refnd	60.00
Busse Carrie	Soc Refnd	60.00
Butcher Greg	Soc Refnd	30.00
Callaway Golf	Merchandise	1,541.73
Capital Business-Dallas	Ma	351.00
Carroll Construction Supp	Re	896.00
Chase Card Service		2,593.03
Amazon Mktp	Su	478.62
Dollar General	Su	58.85
Walmart	Su	194.63
LogMeIn	Se	374.49
USPS	Su	14.15
Runza	Meals	68.85
QP Ace Hdware	Tools	396.80
Tractor Supply Co	Tools	30.02
PayPal Cripe Dist Ebay	Su	74.69
Samsclub.com	Su	112.17
American Fence Co	Gu	94.76
Uline Ship Supplies	Bu, Su	249.53
Prime Instruments	Re	186.51
Zoom.us	Se	16.03
Menards	Su	19.99
CLB Great Plains GFOA	Trng	50.00
Talech	Se	67.00
MSFT	Se	105.94
City Seward Buildings/Gr	Op	3,000.00
City Seward Electric Fund	Ut	32,899.86
City Seward Library Petty	Su	83.82
City Seward Payroll Accou	Payroll	190,566.62
Clark Kim	Soc Refnd	60.00
Commonwealth Electric Co	Ma	225.00
Cook Robert	Soc Refnd	90.00
Cornhusker International	Eq	64,750.00
Cradick Stephanie	Soc Refnd	30.00

Daberkow Patrick/Emily	Soc Refnd	60.00
Danko Emergency Equipment	Eq	488.50
Daro Jordan	Soc Refnd	30.00
Dorcey Joshua	Soc Refnd	30.00
Douglass Christine	Soc Refnd	30.00
Duncan Karsen	Soc Refnd	30.00
Dyer Stacie	Soc Refnd	30.00
Eakes Office Solutions	Un	71.64
Ehlers Electronics	Ci	1,639.92
Einspahr Gregg	Soc Refnd	30.00
Emergency Medical Product	Su	1,048.80
Erwin Sarah	Soc Refnd	30.00
Evans Bill / Jennifer	Soc Refnd	30.00
Fastenal Company	Su	391.25
Ficke Tara	Soc Refnd	30.00
Fischer Amy	Soc Refnd	30.00
Fisher Wendy	Soc Refnd	30.00
Fleek, Kelli	Soc Refnd	30.00
Galls LLC	Un	50.65
Garcia Brooke	Soc Refnd	30.00
Garcia Iii Alejandro M	Soc Refnd	30.00
Gehring Construction	Ci	1,900.00
Geidel Amanda / Jeremy	Soc Refnd	30.00
Gerhold Concrete Co Inc	Ci, Re, Ma	3,895.87
Gesell Michelle	Soc Refnd	30.00
Great Plains Communication	Se	586.00
Hach Company	Su	70.25
Hackbart Jaime	Soc Refnd	30.00
Hall Nichole	Soc Refnd	30.00
Hamilton Equipment Company	Re	96.52
Hansen Samantha	Soc Refnd	30.00
Harmony Caiti	Soc Refnd	30.00
Harrison Katrina	Soc Refnd	30.00
Hawkins Inc	Su	826.65
Heidtbrink Megan	Soc Refnd	60.00
Herrold Stacy	Soc Refnd	30.00
Hibbert Jodi	Soc Refnd	30.00
Hibbert Natasha	Soc Refnd	30.00
Hoffschneider Law Pc LLO	Se	4,500.00
Holliday Hilary	Soc Refnd	60.00
Home Depot Pro	Su	38.28
Hotovy Jeremy / Lindsay	Soc Refnd	30.00
Husker Electric Supply Co	Re, Tools, Ci	6,205.99
Hydraulic Equipment Service	Re	213.38
Imig Briianne	Soc Refnd	30.00
J C I Industries Inc	Re	7,985.00
Jackson Amanda	Soc Refnd	60.00
Janousek Tim	Soc Refnd	30.00
Jarzynka Kelly	Soc Refnd	60.00
Juranek Jeff / Jenny	Soc Refnd	30.00
K & Z Distributing	Su	145.60
Kahler Daniel S	Soc Refnd	60.00
Kallhoff Kylie	Soc Refnd	30.00
Kaspar Angela	Soc Refnd	30.00
Kiner Supply Company	Re	98.95
Kinnamon Nichole	Soc Refnd	60.00
Koch Jeston	Soc Refnd	30.00
Koenig Nicole	Soc Refnd	30.00
Koprince Peter	Soc Refnd	30.00
Koranda Jennifer	Soc Refnd	30.00

Korell Lance/Tae'Lor	Re	50.00
Kosmicki Chelsey	Soc Refnd	60.00
Kozisek Jaime	Soc Refnd	60.00
Kratochvil Bryan	Soc Refnd	60.00
Kreutzer Jennifer	Soc Refnd	30.00
Krohe Allyson	Soc Refnd	30.00
Last Mile Network Consult	Se	150.60
Luebbe Kristine	Soc Refnd	30.00
Makey Casey	Soc Refnd	60.00
Matheson Tri-Gas Inc	Re, Su	119.01
Mcewen Robert	Soc Refnd	30.00
Mclaughlin Cassidy	Soc Refnd	30.00
Meier Mindy	Soc Refnd	30.00
Meinberg Charlie	Soc Refnd	30.00
Menards North	Su	253.97
Mid-American Benefits Inc	Ins	581.91
Midwest Turf & Irrigation	Re	174.90
Miller Greg / Mindy	Soc Refnd	30.00
Miller Karl / Rachel	Soc Refnd	60.00
Moberly Jonathan	Soc Refnd	30.00
Morenzoni Liz	Soc Refnd	30.00
Morse Stephanie	Soc Refnd	30.00
Mueller Angela	Soc Refnd	30.00
Municipal Supply Omaha	Inv	3,096.47
Naber John / Krystel	Soc Refnd	30.00
Nantkes Jeff	Soc Refnd	60.00
Nebraska Health Environme	Se	127.00
Neenah Foundry Company Mu	Ci	768.00
Newman Mary	Soc Refnd	30.00
Newquist Marie	Soc Refnd	30.00
Nickolite Hope	Soc Refnd	30.00
Nitzsche Bill / Natalie	Soc Refnd	30.00
Nix Emily	Soc Refnd	60.00
Norris Public Power Distr	Ut, Ci	1,940.41
Oberhauser Doug	Soc Refnd	30.00
Olson Leigh	Soc Refnd	30.00
Olsson	Se	27,254.67
Opfer Jamie / Shanna	Soc Refnd	30.00
O'Reilly Automotive Inc	Su	146.50
Orscheln Farm & Home	Su, Gu, Un, Re	1,026.88
Osten Tasha	Soc Refnd	30.00
Overhead Door Co-Lincoln	Bu	178.75
Owens John	Soc Refnd	30.00
Palik Allison	Soc Refnd	30.00
Petersen Sandra	Soc Refnd	30.00
Peterson Dawn	Soc Refnd	30.00
Pfeil Heather	Soc Refnd	30.00
Pierce Heather	Soc Refnd	30.00
Pinkall Jenny	Soc Refnd	30.00
Pollak Cody	Soc Refnd	30.00
Principal Financial Group	Ins	2,116.89
Quality Brands Of Lincoln	Su	468.45
Quill Corp	Su	125.94
Republic National	Su	1,149.50
Rose Equipment Inc	Re	1,858.56
Rucker Amber	Soc Refnd	60.00
Saltzman Damara	Soc Refnd	30.00
Sampson Jessie	Soc Refnd	30.00
Sam's Club (Lib-Rec-Pool)	Su	193.74
Samuels Mark	Soc Refnd	30.00

Schemmer Architects Engin	Se, Ci	7,238.50
Schermbeck Rebecca	Soc Refnd	90.00
Schlueter Taunya	Soc Refnd	60.00
Schmidt Jacob / Megan	Soc Refnd	30.00
Schmidt Tiffany	Soc Refnd	30.00
Schoepf Jeosuha	Soc Refnd	30.00
Scholl Amber	Soc Refnd	30.00
Seegebarth Heather	Soc Refnd	30.00
Seward County Chamber & D	Ma	123.05
Shrum Megan	Soc Refnd	30.00
Sommerfeld Allison N	Soc Refnd	60.00
Soukup Renee	Soc Refnd	90.00
Southern Glazer's Of Ne	Su	2,051.89
Spickelmier & Son Inc	Ci	950.00
Sports Express	Un	95.50
St P J Supply Inc	Un	49.56
Stanek Ronald	Soc Refnd	30.00
State Distributing Co	Su	87.40
Steckler Alex	Soc Refnd	60.00
Steinmeyer Zach / Crystal	Soc Refnd	30.00
Stokes Robert	Soc Refnd	30.00
Strauss Cait	Soc Refnd	30.00
Strauss Todd	Soc Refnd	30.00
Svehla Austyn	Soc Refnd	30.00
Teledyne Instruments Inc	Ma	238.00
Tempel Brent	Soc Refnd	30.00
Thieszen Jenna	Soc Refnd	30.00
Tiemann Casey	Soc Refnd	30.00
Time Warner Cable	Se	732.28
Towle Faith/TJ	Soc Refnd	120.00
Towle Raissa	Soc Refnd	30.00
Troester Joe	Soc Refnd	30.00
U S Cellular	Se	214.02
United Seeds Inc	Gu, Su	1,877.50
Van Kirk Bros Contracting	Ci	390,540.72
Venekamp Lindsey	Soc Refnd	30.00
Verizon Wireless	Se	300.67
Wagenknecht Jason	Soc Refnd	60.00
Wake Melanie	Soc Refnd	30.00
Wesco Distribution Inc	Tools	2,253.96
White Kayla	Soc Refnd	30.00
Wobken Brett	Soc Refnd	30.00
Wynegar Ann	Soc Refnd	30.00
Zero9 Holsters	Su	209.60
Zywiec Heidi	Soc Refnd	30.00
CLAIMS TOTAL		<u>\$837,889.05</u>

**CURRENT YEAR: March 2020**

Permits	Quantity	Permit Fee	Valuation
NEW CONST.	4	\$ 10,655.58	\$ 1,687,767.39
REMODEL/ADDIT.	8	\$ 708.00	\$ 165,258.00
ACCESSORY	29	\$ 1,244.50	\$ 57,235.00
RELOCATE	0		
ELECTRIC			
PLUMBING	14	\$ 910.00	
MECHANICAL	5	\$ 565.00	
SEWER TAP	4	\$ 1,000.00	
WATER TAP	4	\$ 3,524.00	
TEMP. ELEC.	4	\$ 200.00	
ELECTRIC SER.	4	\$ 1,600.00	
<b>TOTALS</b>	<b>76</b>	<b>\$ 20,407.08</b>	<b>\$ 1,910,260.39</b>

**LAST YEAR: March**

Permits	Qty.	Permit Fee
NEW CONST.	0	\$ -
REMODEL/ADDIT.	7	\$ 417.00
ACCESSORY	5	\$ 2,187.50
RELOCATE	1	\$ 25.00
ELECTRIC	5	\$ 480.00
PLUMBING	7	\$ 405.00
MECHANICAL	5	\$ 350.00
SEWER TAP	0	\$ -
WATER TAP	0	\$ -
TEMP. ELEC.	0	\$ -
ELECTRIC SER.	0	\$ -
<b>TOTALS</b>	<b>30</b>	<b>\$ 3,864.50</b>

**YEAR TO DATE January to December 2020**

Permits	Quantity	Permit Fee	Valuation
NEW CONST.	11	\$ 22,899.78	\$ 3,258,748.02
REMODEL/ADDIT.	14	\$ 5,807.84	\$ 2,700,658.00
ACCESSORY	41	\$ 2,593.75	\$ 236,096.64
RELOCATE	0	\$ -	\$ -
ELECTRIC		\$ -	\$ -
PLUMBING	37	\$ 3,645.00	\$ -
MECHANICAL	19	\$ 1,655.00	\$ -
SEWER TAP	11	\$ 2,750.00	\$ -
WATER TAP	11	\$ 9,691.00	\$ -
TEMP. ELEC.	11	\$ 550.00	\$ -
ELECTRIC SER.	11	\$ 1,800.00	\$ -
<b>TOTALS</b>	<b>166</b>	<b>\$ 51,392.37</b>	<b>\$ 6,195,502.66</b>

**YEAR TO DATE January to December**

Permits	Qty.	Permit Fee
NEW CONST.	3	\$ 2,185.90
REMODEL/ADDIT.	19	\$ 1,898.95
ACCESSORY	11	\$ 3,457.00
RELOCATE	3	\$ 75.00
ELECTRIC	20	\$ 1,825.00
PLUMBING	25	\$ 1,355.00
MECHANICAL	29	\$ 2,640.00
SEWER TAP	3	\$ 750.00
WATER TAP	3	\$ 2,643.00
TEMP. ELEC.	3	\$ 150.00
ELECTRIC SER.	3	\$ 600.00
<b>TOTALS</b>	<b>122</b>	<b>\$ 17,579.85</b>





Jones Lang LaSalle Brokerage, Inc.  
4200 Buckingham Rd., Suite 110  
Fort Worth, Texas 76155  
tel +1 817-230-2600, fax +1 817 306-8265

April 22, 2020

City of Seward  
Attention: Mr. Greg Butcher  
537 Main Street  
Seward, NE 68434

20-65301

Dear Mr. Butcher:

Attached please find a copy of the requested contract for execution by an official authorized to execute contract agreements on behalf of your company. Please print one (1) copy, execute, and **return with original signature** for completion on part of BNSF Railway Company ("BNSF") to this office, along with the following requirements:

- A check in the amount of \$3,700.00.00 payable to BNSF Railway Company which covers the contract fee.

Please note the agreements cannot be executed by BNSF without an approved insurance certificate. If there are any issues with your insurance, you will be contacted by a member of the Risk Management team of BNSF Railway.

1. A Certificate of Insurance as required in the agreement.
2. A **separate policy** for Railroad Protective Liability Insurance as required in the agreement (**ORIGINAL POLICY MUST BE PROVIDED**). BNSF Railway Company will be the only insured party; OR;

**In lieu of providing a separate policy for Railroad Protective Liability Insurance**, you may participate in the BNSF's Railroad Protective Policy by checking the appropriate box in the contract and including an additional \$506.00 with your check.

**PLEASE ADVISE IF THIS PROJECT IS ARRA FUNDED.**

Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the premises completes the safety orientation program at the website [www.BNSFcontractor.com](http://www.BNSFcontractor.com) prior to entering upon the premises. The certification is good for one year, and each person entering the premises must possess the card certifying completion.

Acceptance and deposit of any check by BNSF does not constitute an agreement between BNSF and Licensee for the requested license. BNSF shall not be obligated to hold the check in a separate fund, but may commingle the funds with other funds of BNSF, and in no event shall BNSF be responsible for interest on said funds.

The enclosed permit is not a binding agreement and shall become binding only when, and if, it is executed by you and fully approved and executed by BNSF Railway Company. Upon completion on behalf of BNSF, one fully executed counterpart will be returned for your records.

**The specifications/plans you provided may differ from BNSF's minimum specification requirements. Therefore, prior to your installation, please review the Exhibit A to determine the specifications necessary for your installation.**

Please be informed that if contracts, fees, and insurance are not returned within sixty (60) days, the processing fee will increase to \$1,600.00.

Sincerely,

*Flor Flores*

Flor Flores  
Manager - Permits  
Attachment

**LICENSE FOR ELECTRIC SUPPLY LINE  
ACROSS OR ALONG RAILWAY PROPERTY**

(Electric Light, Power Supply, Irrespective of Voltage, Overhead or Underground)

THIS LICENSE FOR ELECTRIC SUPPLY LINE ("**License**") is made to be effective \_\_\_\_\_, 20\_\_ (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **CITY OF SEWARD**, a NE corporation ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

**GENERAL**

1. **Grant of License.** Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), an electric supply line containing a maximum of three (3) conductor(s), together with its supporting or containing structures (collectively, the "**Electric Supply Line**"), across or along Licensor's rail corridor at or near the station of Seward, County of Seward, State of Nebraska, Line Segment 0004, Mile Post 29.10 as shown on the attached Drawing No. 78389, dated March 31, 2020, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").
2. **Term.** This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. **Existing Improvements.** Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. **Use of the Premises.** Licensee shall use the Premises solely for construction, maintenance, and use of the Electric Supply Line in accordance with the Drawings and Specifications. Licensee shall not use the Premises for any other purpose.
5. **Alterations.** Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

**COMPENSATION**

6. **License Fee.** Licensee shall pay Licensor, prior to the Effective Date, the sum of three thousand seven hundred and No/100 Dollars (\$3,700.00.00) as compensation for the use of the Premises.
7. **Costs and Expenses.**
  - 7.1 For the purpose of this License, "cost" or "costs" and "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.
  - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Electric Supply Line, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays

(as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

- 7.3 Licensor, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.
8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

### **LICENSOR'S RESERVED RIGHTS**

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Electric Supply Line) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
- 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
- 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.
10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Electric Supply Line, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Electric Supply Line as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Electric Supply Line, or the construction of a new electric line to replace the Electric Supply Line. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Electric Supply Line promptly upon Licensor's request.

### **LICENSEE'S OPERATIONS**

11. **Construction and Maintenance of the Electric Supply Line.**
- 11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's Roadmaster, Scott Farrell@bnsf.com at 14th & Grant Ave, York, NE 68467, telephone (402)362-5501, at least ten (10) business days prior to installation of the Electric Supply Line and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.

- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
- 11.4 Any contractors or subcontractors performing work on the Electric Supply Line or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee 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 Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Electric Supply Line, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Electric Supply Line in such a manner and of such material that the Electric Supply Line will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Electric Supply Line shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Electric Supply Line or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Electric Supply Line at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Licensor for the cost of such observation or inspection related services pursuant to Section 8. If ordered at any time to halt construction or maintenance of the Electric Supply Line by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Electric Supply Line, it being solely Licensee's responsibility to ensure that the Electric Supply Line is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.
- 11.8 Licensee shall, at its sole cost and expense, construct and at all times maintain the Electric Supply Line in accordance with the National Electric Safety Code.

- 11.9 If the operation or maintenance of the Electric Supply Line at any time causes interference, including but not limited to physical interference from electromagnetic induction, electrostatic induction, or from stray or other currents, with the facilities of Licensor or of any lessee or licensee of Licensor, or in any manner interfere with the operation, maintenance, or use by Licensor of its right-of-way, tracks, structures, pole lines, signal and communication lines, radio, or other equipment, devices, other property or appurtenances thereto, Licensee agrees immediately to make such changes in the Electric Supply Line and furnish such protective devices and/or replacement equipment to Licensor and its lessees or licensees as shall be necessary, in the judgment of Licensor's representative, to eliminate such interference. The cost of such protective devices and their installations shall be borne solely by Licensee. If any of the interference covered by this **Section 11.9** shall be, in the judgment of Licensor, of such importance to the safety of Licensor's operations as to require immediate corrective action, Licensee, upon notice from Licensor, shall either, at Licensor's election, cease using the Electric Supply Line for any purpose whatsoever and remove same, or reduce the voltage or load on the Electric Supply Line, or take such other interim protective measures as Licensor may deem advisable, until the protective devices and/or replacement equipment required by this **Section 11.9** have been installed, put in operation, tested, and found to be satisfactory to correct the interference.
- 11.10 Licensee shall, at its sole cost and expense, remove all combustible material from around wooden poles on the Premises, if any, and will at all times keep the space around such poles free of such material, and if removal of such combustible material shall not be attended to with fifteen (15) days after having been requested by Licensor to do so, Licensor shall have the right itself to perform the work and Licensee hereby agrees to reimburse Licensor for the expense so incurred.
- 11.11 Cutting head must travel at 0.0% grade (or downward) beginning 25' (minimum) from centerline of track until it reaches a point 25' (minimum) from the centerline of track. Minimum pressure must be applied to pumping the slurry to the cutting head during drilling. This will deter the bentonite slurry used for lubrication from seeping up and fouling the track roadbed. A BNSF Flagman must be present during installation and will monitor the ballast and roadbed.

## 12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3<sup>rd</sup> parties mark the location of utilities. Licensee 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 hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the State Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Electric Supply Line by contacting Licensor's Telecommunications Helpdesk, currently at 1-800-533-2891 (option 1, then option 7), at least ten (10) business days prior to installation of the Electric Supply Line. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Electric Supply Line and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.
- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor 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 Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor

has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

- 12.3 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee 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 Licensee shall be:

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

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

## **LIABILITY AND INSURANCE**

### 13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**

13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**

13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**

13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**

13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**

- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES, AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES**

**AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**

- 13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, 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.**
- 13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**
- 13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.
14. Personal Property Risk of Loss. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**
15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:
- 15.1 Commercial General Liability "CGL" Insurance.
- a. The policy will provide a minimum of \$2,000,000 per occurrence and an aggregate limit of at least \$4,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
    - Bodily Injury and Property Damage
    - Personal Injury and Advertising Injury
    - Fire legal liability
    - Products and completed operations
    - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
  - b. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Licensor's employees.
  - c. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 Business Automobile Insurance.

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
  - Bodily injury and property damage.
  - Any and all vehicles owned, used or hired.
- b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
  - Waiver of subrogation in favor of and acceptable to Licensor.
  - Additional insured endorsement in favor of and acceptable to Licensor.
  - Separation of insureds.
  - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance.

- a. The policy will provide coverage of all employees performing any part of the work or services including coverage for, but not limited to:
  - Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services are to be performed. The policy will cover all of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).
  - 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.
- b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
  - Waiver of subrogation in favor of and acceptable to Licensor.

- 15.4 Railroad Protective Liability Insurance. The policy will name only Licensor as the Insured and will provide coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Electric Supply Line. **THE CONSTRUCTION OF THE ELECTRIC SUPPLY LINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Electric Supply Line is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:
- Endorsed to include the Pollution Exclusion Amendment.
  - Endorsed to include the Limited Seepage and Pollution Endorsement.
  - Endorsed to remove any exclusion for punitive damages.
  - Endorsed to include Evacuation Expense Coverage Endorsement.
  - No other endorsements restricting coverage may be added.
  - The original policy must be provided to Licensor and Licensee shall not perform services or work of any kind under this agreement until Licensor has reviewed and approved the policy.
  - The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$506.00.

- Licensee **elects** to participate in Licensor's Blanket Policy;
- Licensee **declines** to participate in Licensor's Blanket Policy.

## 15.5 Other Requirements.

- 15.5.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.
- 15.5.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Licensor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.
- 15.5.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.
- 15.5.4 Licensee is not allowed to self-insure without the prior written consent of Licensor. If Licensor allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licensor liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.5.5 Prior to commencing any services or other work under this agreement, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.5.6 Licensee agrees to provide evidence to Licensor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage.
- 15.5.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor 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.
- 15.5.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.5.9 Licensee agrees to provide evidence to Licensor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage.
- 15.5.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.5.11 Not more frequently than once every five years, Licensor may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.5.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensor as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor under this agreement.
- 15.5.13 Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.

- 15.5.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.5.16 In the event of a claim or lawsuit involving Licensor arising out of this agreement, Licensee will make the policy covering such claims or lawsuits available to Licensor.
- 15.5.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, Licensor requires and shall be entitled to the broader coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Licensor.
- 15.5.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services are performed under this License.
- 15.5.18 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

## **COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS**

### 16. Compliance with Laws, Rules, and Regulations.

- 16.1 Licensee shall observe and comply with any and all applicable federal, state, local and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Electric Supply Line and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable, renew) the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Electric Supply Line and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.

16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Electric Supply Line in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements 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, and CERCLA (collectively referred to as the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body on the Premises. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this **Section 17.2**.

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

17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Electric Supply Line which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

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

**DISCLAIMER OF WARRANTIES**

18. No Warranties.

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE 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.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE ELECTRIC SUPPLY LINE WILL**

**VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. Disclaimer of Warranty for Quiet Enjoyment. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**
20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.

**LIENS AND TAXES**

21. Liens and Charges. Licensee 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 Licensee on the Premises. Licensor 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 Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.
22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Electric Supply Line or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

**DEFAULT, TERMINATION, AND SURRENDER**

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:
- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.
- 23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
- 23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after

termination hereof.

24. Surrender of the Premises.

- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 24.1.1 if so directed by Licensor in writing, remove the Improvements, the Electric Supply Line and all appurtenances thereto, or, at the sole discretion of Licensor, appropriately decommission the Electric Supply Line with a method satisfactory to Licensor;
- 24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
- 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
- 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date or as otherwise agreed to by Licensor.
- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, 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 Licensee surrenders the Premises and all of the Restoration Obligations are completed.
- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Electric Supply Line and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Electric Supply Line and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Electric Supply Line and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Electric Supply Line and the other Improvements to Licensor for no additional consideration.

**MISCELLANEOUS**

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. Assignment.
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.
- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive the expiration or earlier termination of this License.
- 26.4 Licensor shall have the right to transfer and assign, in whole or part, all of its rights and obligations under this License, and upon any such transfer or assignment, Licensor shall be released from any further obligations hereunder and Licensee agrees to look solely to the successor in interest of Licensor for the performance of such obligations.
27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.
- If to Licensor:                    Jones Lang LaSalle Brokerage, Inc.  
4200 Buckingham Rd., Suite 110  
Fort Worth, TX 76155  
Attn: Permits/Licenses
- with a copy to:                    BNSF Railway Company  
2650 Lou Menk Drive  
Fort Worth, TX 76131  
Attn: Senior Manager Real Estate
- If to Licensee:                    City of Seward  
537 Main Street  
Seward, NE 68434
28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, 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 Electric Supply Line and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.

29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.
30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.
31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License 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 License.
32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.
33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

**END OF PAGE – SIGNATURE PAGE FOLLOWS**

This License has been duly executed by the parties hereto as of the Effective Date.

**LICENSOR:**

**BNSF Railway Company**, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.  
4200 Buckingham Road, Suite 110  
Fort Worth, TX 76155

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**LICENSEE:**

**City of Seward**, a(n) NE corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

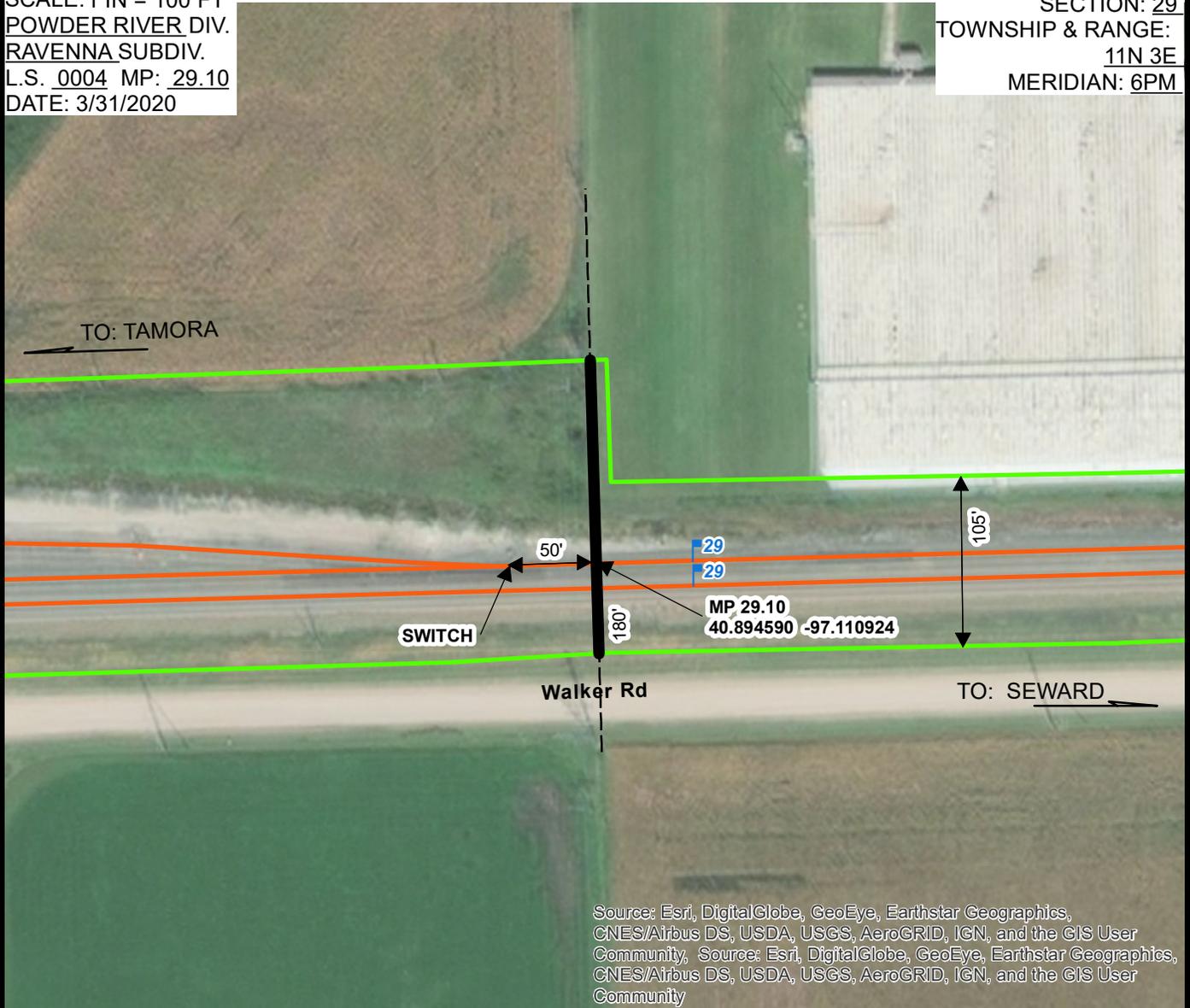
**EXHIBIT "A"**  
 ATTACHED TO CONTRACT BETWEEN  
**BNSF RAILWAY COMPANY**  
 AND



**CITY OF SEWARD**

SCALE: 1 IN = 100 FT  
 POWDER RIVER DIV.  
 RAVENNA SUBDIV.  
 L.S. 0004 MP: 29.10  
 DATE: 3/31/2020

SECTION: 29  
 TOWNSHIP & RANGE:  
11N 3E  
 MERIDIAN: 6PM



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

NOTE:  
 1-8" HDPE OCCUPIED CONDUIT W/  
 1-6" INNERDUCT  
 1 OCCUPIED W/  
 1-3 CT ELECTRIC WIRE  
 0 VACANT

DESCRIPTION OF WIRES UNDER TRACK  
 WIRES LOCATED AS SHOWN BOLD

TYPE	<b>ELECTRIC</b>	SIZE OF CONDUIT	<b>8"</b>
NUMBER OF CONDUITS	<b>1</b>	CONDUIT MATERIAL	<b>HDPE</b>
VOLTAGE	<b>12.47 KV</b>	WALL THICKNESS	<b>0.784"</b>
		LENGTH ON R/W	<b>180'</b>
		BASE OF RAIL TO TOP OF CONDUIT	<b>12'</b>

NOTE: CONDUIT TO BE INSTALLED BY HORIZONTAL DIRECTIONAL DRILL

**SEWARD**  
 COUNTY OF SEWARD

STATE OF NE

JPE

## **CITY ADMINISTRATORS REPORT – 5/5/20**

- Continued to work with FEMA on projects.
- Worked on Easement issue with John Heath for the Rail Campus.
- Reviewed status of all DTR project with Trey (SENDD) and Suzanne. Document preparation for second round.
- Unified Command Team Meetings with Four Corners Health (twice weekly).
- Seward County Covid-19 Response Meeting (weekly) w/Four Corners Health.
- Governor’s First Class Cities Meeting re: Covid-19.
- Preparing P&Z Items for June.
- Updating Farm Leases due to construction projects.
- Budget preparation with Nick Wolf.

The departments are working on the following projects to name a few:

### **Police Department**

- Preparing to hire a new officer and civil service process.
- Taser training.
- Railroad Safety Training.

### **Clerk’s Office**

- New hire paperwork for seasonal workers.
- Application review for City Hall Admin Assistant.
- Preparing annual TIF report.
- Employee handbook review and recommended changes.
- Suzanne Gligorevic’s last day was April 29<sup>th</sup>.

### **Water/Wastewater Department**

- Working on new fire hydrant locations.
- Preparing for 6<sup>th</sup> Street water main Project, sent notices to home owners.
- Working on piping at secondary lift station.
- Assisting with getting pool online for summer.

### **Parks and Rec/Cemetery/Golf/Pool**

- Golf Course has full alcohol sales.
- Golf is working on getting cart cleaning regiment so we can open for league play.
- Installing new playground equipment at Karol Kay Park.
- Mowing parks, fields, golf course, and cemetery.
- Armory Park install is still waiting on equipment (Jeep) and install time due to Covid-19.

### **Electric Department**

- Temp power on Augusta Ave.
- Finishing Substation work at Rail Campus.
- Finishing 3 Phase Bank and Pole for new Bottle Rocket Facility.

### **Street Department**

- Dig and pour footings for new salt building.
- Started cleaning storm sewer openings.
- Set and pour sidewalk approaches at 2<sup>nd</sup> & Pinewood and 2<sup>nd</sup> & Ash.

### **Library**

- Library continues to do drive thru pickup.
- Finalizing new digital sign programming.
- Doing an online story time for all Seward Pre-Schoolers.

- Book groups moved online.
- Library Board met via Zoom.

#### **Building Inspection/Planning Department**

- Tim Dworak is out for at least two more weeks.
- Mindy Meier, Dan Hansen, and Greg Butcher have been covering this office.

#### **Engineering**

- Interviewing and accepting applications for City Engineer candidates.
- Jake Vasa continues to work on projects under the approved contract.

#### **Finance Department**

- Budget preparation.
- Month end financials.
- Reviewing LB 840 funds.
- Quarterly payroll tax returns.