

**AGENDA**  
**CITY COUNCIL MEETING**  
**CITY OF SHELBY**  
**April 7, 2025**  
**6:30 P.M.**

**ROLL CALL OF MEMBERS**

**PLEDGE OF ALLEGIANCE**

**POLICY ON CONDUCT AND MANNER OF ADDRESSING COUNCIL**

**APPROVAL OF MINUTES**

- Regular Council Meeting, 3/17/25 (pgs. 5-6)

**APPEARANCE REQUESTS**

- Agenda Items
- Non-Agenda Items

**CLAIMS REPORT 3/31/2025 (pgs. 7-23)**

**COMMITTEE REPORTS**

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**CLOSE PUBLIC HEARING**

**CITY FINANCE OFFICER**

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**CITY ATTORNEY**

- Neta Track Use Agreement (pgs. 24-28)
- Construction Lease – BNSF (pgs. 29-60)
- Industry Track Agreement – BNSF (pgs. 61-73)

**CITY SUPERINTENDENT**

**OTHER MATTERS**

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•

**ADJOURN**

## CITY OF SHELBY MEETING SCHEDULE

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### April 7, 2025

6:00 p.m.      **Audit Committee**  
(Mayor, Finance Officer, Clark, Frydenlund, Moritz)

6:30 p.m.      **Regular City Council Meeting**

### April 14, 2025

6:30 p.m.      **City-County Planning Board**  
(Mayor, Flesch, Clark)

### April 21, 2025

6:30 p.m.      **Regular City Council Meeting**

### April 28, 2025

6:30 p.m.      **Park & Recreation Meeting**  
(Mayor, Superintendent, Frydenlund, Kimmet)

## City Council Packet Listing

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- A. Agenda
- B. Agenda Items
  - 1. Minutes of Regular Council Meeting, 3/17/25
  - 2. Claims Report, March 2025
  - 3. Neta Railroad Track Use Agreement
  - 4. BNSF Railway Company Lease of Land for Construction/Rehabilitation of Track
  - 5. BNSF Railway Company Industry Track Agreement
- C. Correspondence
  - 1.
  - 2.
- D. Reports
  - 1.
- E. Handouts
  - 1.

## **Policy on Conduct and Manner of Addressing Council**

The public is invited to speak on any item after recognition by the presiding officer.

1. Public comments will be accepted only on items within the jurisdiction of the City of Shelby.
2. Comments shall be limited to 5 minutes per meeting, unless such time is extended by a majority vote of the Council members.
3. While the Council is in session, those in attendance must preserve order and decorum. No member of the public shall delay or interrupt the Council proceedings; disturb any member who may be speaking; or refuse to obey the orders of the Council or its presiding officer.
4. Prepared statements are welcome and should be given to the Finance Officer prior to a Council meeting. Prepared statements that are also read, however, shall be deemed unduly repetitious. All prepared statements for public hearings shall become part of the hearing record.
5. All remarks shall be addressed to the Council as a body and not to any member of the Council or Staff.
6. Public members recognized by the presiding officer, shall:
  - a. Stand, if able
  - b. For the record, give his/her name and address
  - c. If applicable, give the person, firm or organization he/she represents
  - d. Limit comments to the matter of fact
  - e. Address the Council as a body and not to any individual member of the Council or City Staff
  - f. Ask no questions of individuals who are Council members, staff or other public members, except through the presiding officer
  - g. Limit comments to a maximum of 5 minutes, unless such time is extended by a majority vote of Council members.

The Council thanks public members for respectfully and courteously providing constructive and valuable information.



MINUTES OF REGULAR COUNCIL MEETING OF THE SHELBY CITY COUNCIL  
HELD IN COUNCIL CHAMBERS  
March 17, 2025

Mayor McDermott called the meeting to order at 6:30 p.m.  
Present were: Sanna Clark, Lyle Kimmet, Joe Flesch, Bill Moritz,  
Patrick Frydenlund, Jayce Yarn, Council Members; Jade Goroski,  
Finance Officer; Eric Kary, City Superintendent; Logan Fehler,  
City Attorney. Absent & Excused: None.

Other citizens present: Tyler Foss.

PLEDGE OF ALLEGIANCE

POLICY ON CONDUCT AND MANNER OF ADDRESSING COUNCIL

APPROVAL OF MINUTES

- Regular Council Meeting, 3/3/2025  
KIMMET MADE A MOTION TO APPROVE THE 3/3/2025 MINUTES.  
SECONDED BY FLESCH. VOTE AYES - FRYDENLUND, YARN, FLESCH,  
MORITZ, KIMMET, CLARK. NOES - NONE. ABSENT - NONE.

APPEARANCE REQUESTS

- AGENDA ITEMS -
- NON-AGENDA ITEMS -

COMMITTEE REPORTS

- Law Enforcement - Tyler Foss

CITY FINANCE OFFICER

1. City Judge's Report, 2/28/2025
2. Bank Account Report, Budget Year to Date, Vendor Summary, Enterprise Funds, Statement of Expenditures, Revenues, Cash Flow Report, 2/28/2025  
FRYDENLUND MADE A MOTION TO APPROVE THE REPORTS. SECONDED BY CLARK. VOTE AYES - FRYDENLUND, YARN, FLESCH, MORITZ, KIMMET, CLARK. NOES - NONE. ABSENT - NONE.
3. Annual Landfill Trust Deposit  
FRYDENLUND MADE A MOTION TO APPROVE THE \$50,000 LANDFILL TRUST DEPOSIT. SECONDED BY KIMMET. VOTE AYES - FRYDENLUND, YARN, FLESCH, MORITZ, KIMMET, CLARK. NOES - NONE. ABSENT - NONE.
4. Roxy Repair  
FRYDENLUND MADE A MOTION TO APPROVE THE REPAIR. SECONDED BY KIMMET. VOTE AYES - FRYDENLUND, YARN, FLESCH, MORITZ, KIMMET, CLARK. NOES - NONE. ABSENT - NONE.

CITY ATTORNEY

- Resolution No. 2102 re: Order to Vacate, 744 W ROOSEVELT HWY  
KIMMET MADE A MOTION TO APPROVE. SECONDED BY MORITZ. VOTE  
AYES - FRYDENLUND, YARN, FLESCHE, MORITZ, KIMMET, CLARK.  
NOES - NONE. ABSENT - NONE.
- Quit Claim Deed, 434 6<sup>th</sup> Ave S  
FRYDENLUND MADE A MOTION TO APPROVE. SECONDED BY MORITZ.  
VOTE AYES - FRYDENLUND, YARN, FLESCHE, MORITZ, KIMMET,  
CLARK. NOES - NONE. ABSENT - NONE.

CITY SUPERINTENDENT

Eric provided an update on the public works department.

OTHER MATTERS

ADJOURN

AT 7:20 P.M., FLESCHE MADE A MOTION TO ADJOURN THE MEETING.  
SECONDED BY KIMMET. VOTE AYES - FLESCHE, MORITZ, KIMMET, CLARK,  
FRYDENLUND, YARN. NOES - NONE. ABSENT - NONE.

\_\_\_\_\_  
Gary McDermott, Mayor

ATTEST:

\_\_\_\_\_  
Jade Goroski, Finance Officer

04/04/25  
08:19:01

CITY OF SHELBY  
Claim Details  
For the Accounting Period: 3/25

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Report ID: AP100

\* ... Over spent expenditure

Claim Line #	Check Invoice #/Inv Date/Description	Vendor #/Name/ #/Inv Date/Description	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
240648	02615 NORMAN'S SPORT & WESTERN		349.65					
1	01/31/25 clothing-Lenneman boots/shirt		209.90*		35205	1000 430200	220	101000
2	03/05/25 clothing-Bentley-pants		139.75*		35205	1000 430200	220	101000
240649	00400 UTILITIES UNDERGROUND LOCATION		12.25					
1	5025109 02/28/25 7 Locates for 3/25		12.25*		35209	5210 430500	300	101000
240650	31097S 00144 POSTMASTER		445.60					
1	03/24/25 3/25 UB Postage		148.53			5210 430570	310	101000
2	03/24/25 3/25 UB Postage		148.53			5310 430670	310	101000
3	03/24/25 3/25 UB Postage		148.54*			5410 430870	310	101000
240651	31094S 00043 SHELBY GAS ASSOCIATION		9,457.65					
1	03/10/25 3/10 Gas Bill		159.45			1000 411200	343	101000
2	03/10/25 3/10 Gas Bill		863.00			1000 420400	343	101000
3	03/10/25 3/10 Gas Bill		863.00			1000 420401	343	101000
4	03/10/25 3/10 Gas Bill		1,054.50			1000 460445	343	101000
5	03/10/25 3/10 Gas Bill		805.45*			1000 460442	343	101000
6	03/10/25 3/10 Gas Bill		368.55			5410 430840	343	101000
7	03/10/25 3/10 Gas Bill		513.65*			1000 430200	343	101000
8	03/10/25 3/10 Gas Bill		513.65			5210 430500	343	101000
9	03/10/25 3/10 Gas Bill		513.65			5310 430600	343	101000
10	03/10/25 3/10 Gas Bill		513.65			5410 430830	343	101000
11	03/10/25 3/10 Gas Bill		118.28			1000 411202	343	101000
12	03/10/25 3/10 Gas Bill		118.28			5210 430520	343	101000
13	03/10/25 3/10 Gas Bill		118.28			5310 430620	343	101000
14	03/10/25 3/10 Gas Bill		118.26			5410 430820	343	101000
15	03/10/25 3/10 Gas Bill		119.50			5210 430500	343	101000
16	03/10/25 3/10 Gas Bill		1,817.45*			1000 460465	343	101000
17	03/10/25 3/10 Gas Bill		85.50			1000 470270	300	101000
18	03/10/25 3/10 Gas Bill		793.55*			7030 470000	200	101000
240652	01851 CT CLEANING		300.00					
1	03/20/25 3/25 Janitorial Service		75.00			1000 411202	390	101000
2	03/20/25 3/25 Janitorial Service		75.00			5210 430520	390	101000
3	03/20/25 3/25 Janitorial Service		75.00			5310 430620	390	101000
4	03/20/25 3/25 Janitorial Service		75.00			5410 430820	390	101000
240653	02368 OPTUM FINANCIAL INC		4.25					
1	1721942 03/13/25 HSA Service Fee		1.06			1000 410550	300	101000
2	1721942 03/13/25 HSA Service Fee		1.06			5210 430570	300	101000
3	1721942 03/13/25 HSA Service Fee		1.06			5310 430670	300	101000
4	1721942 03/13/25 HSA Service Fee		1.07			5410 430870	300	101000

04/04/25  
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240654	01862 MOUNTAIN ALARM		58.32					
1	5933584 03/01/25 3/25 Fire Alarm Monitoring		58.32			1000 420401	300	101000
240655	02563 DPHHS-LABORATORY		25.00					
1	54623 02/28/25 NCMRWA Water Samples		25.00*			5210 430500	300	101000
240656	00048 TOOLE COUNTY CLERK & RECORDER		56,190.95					
1	03/04/25 City Judge/Sec Wages		3,169.79			1000 410360	100	101000
2	03/04/25 City Judge/Sec Medicare		45.39*			1000 410360	142	101000
3	03/04/25 City Judge/Sec SS		194.08			1000 410360	141	101000
4	03/04/25 City Judge/Sec Unemploy Ins		4.55			1000 410360	145	101000
5	03/04/25 City Judge/Sec Workers Comp		13.38			1000 410360	146	101000
6	03/04/25 City Judge/Sec PERS		165.02			1000 410360	143	101000
7	03/04/25 City Judge Health Insurance		504.25			1000 410360	147	101000
8	03/04/25 City Judge Supplies		74.01			1000 410360	200	101000
9	03/04/25 City Judge Phone		20.48			1000 410360	344	101000
11	03/04/25 Law Enforcement		37,270.00			1000 420000	300	101000
12	03/04/25 Law Enforcement		4,910.00			5210 420100	300	101000
13	03/04/25 Law Enforcement		4,910.00			5310 420100	300	101000
14	03/04/25 Law Enforcement		4,910.00			5410 420100	300	101000
240657	31095S 00026 MARIAS RIVER ELECTRIC COOP INC		16,611.15					
1	03/10/25 3/25 Electric Bill		125.86			1000 411200	342	101000
2	03/10/25 3/25 Electric Bill		410.29			1000 420400	342	101000
3	03/10/25 3/25 Electric Bill		410.29*			1000 420401	342	101000
4	03/10/25 3/25 Electric Bill		67.48			1000 411202	342	101000
5	03/10/25 3/25 Electric Bill		67.48			5210 430520	342	101000
6	03/10/25 3/25 Electric Bill		67.48			5310 430620	342	101000
7	03/10/25 3/25 Electric Bill		67.48			5410 430820	342	101000
8	03/10/25 3/25 Electric Bill		185.34*			1000 430200	342	101000
9	03/10/25 3/25 Electric Bill		185.34			5210 430500	342	101000
10	03/10/25 3/25 Electric Bill		185.32			5310 430600	342	101000
11	03/10/25 3/25 Electric Bill		185.34			5410 430830	342	101000
12	03/10/25 3/25 Electric Bill		170.37			1000 440600	342	101000
13	03/10/25 3/25 Electric Bill		170.36*			1000 460430	342	101000
14	03/10/25 3/25 Electric Bill		147.45*			1000 460430	342	101000
15	03/10/25 3/25 Electric Bill		567.31*			1000 460465	342	101000
16	03/10/25 3/25 Electric Bill		102.72			1000 460439	342	101000
17	03/10/25 3/25 Electric Bill		1,176.19			1000 460442	342	101000
18	03/10/25 3/25 Electric Bill		72.54			1000 460445	342	101000
19	03/10/25 3/25 Electric Bill		4,494.32			2400 430263	342	101000
20	03/10/25 3/25 Electric Bill		6,457.21			5210 430500	342	101000
21	03/10/25 3/25 Electric Bill		939.07			5310 430600	342	101000
22	03/10/25 3/25 Electric Bill		67.86			5410 430840	342	101000

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23	03/10/25 3/25 Electric Bill		55.57*			1000 460430	342	101000
24	03/10/25 3/25 Electric Bill		48.43			1000 470270	300	101000
25	03/10/25 3/25 Electric Bill		184.05*			7030 470000	200	101000
240658	01388 3 RIVERS COMMUNICATIONS INC		749.19					
1	03/01/25 3/25 Phone Bill		20.66*			1000 420500	344	101000
2	03/01/25 3/25 Phone Bill		39.40			1000 410550	344	101000
3	03/01/25 3/25 Phone Bill		39.39			5210 430570	344	101000
4	03/01/25 3/25 Phone Bill		39.40			5310 430670	344	101000
5	03/01/25 3/25 Phone Bill		39.40			5410 430870	344	101000
6	03/01/25 3/25 Phone Bill		18.02*			1000 430200	344	101000
7	03/01/25 3/25 Phone Bill		18.02			5210 430500	344	101000
8	03/01/25 3/25 Phone Bill		18.02			5310 430600	344	101000
9	03/01/25 3/25 Phone Bill		18.02			5410 430830	344	101000
10	03/01/25 3/25 Phone Bill		177.67			1000 460442	344	101000
11	03/01/25 3/25 Phone Bill		71.46			1000 420400	344	101000
12	03/01/25 3/25 Phone Bill		71.45			1000 420401	344	101000
13	03/01/25 3/25 Phone Bill		6.95			1000 410200	344	101000
14	03/01/25 3/25 Phone Bill		6.96			5210 430512	344	101000
15	03/01/25 3/25 Phone Bill		6.95			5310 430612	344	101000
16	03/01/25 3/25 Phone Bill		6.96			5410 430812	344	101000
18	03/01/25 3/25 Phone Bill		85.58			5310 430600	344	101000
19	03/01/25 3/25 Phone Bill		32.44			5210 430500	344	101000
20	03/01/25 3/25 Phone Bill		32.44			5210 430500	344	101000
240659	00309 PREFERRED OFFICE EQUIPMENT		439.38					
2	53662 03/03/25 3/25 Maintenance/Copies		64.40			1000 410550	300	101000
3	53662 03/03/25 3/25 Maintenance/Copies		64.40			5210 430570	300	101000
4	53662 03/03/25 3/25 Maintenance/Copies		64.40			5310 430670	300	101000
5	53662 03/03/25 3/25 Maintenance/Copies		64.40			5410 430870	300	101000
6	53801 03/03/25 3/25 Maintenance/Copies Shop		11.37*			1000 430200	300	101000
7	53801 03/03/25 3/25 Maintenance/Copies Shop		11.37*			5210 430500	300	101000
8	53801 03/03/25 3/25 Maintenance/Copies Shop		11.37			5310 430600	300	101000
9	53805 03/03/25 3/25 Maintenance/Copies Shop		11.36			5410 430840	300	101000
11	53802 03/17/25 3/25 Maintenance/Copies CC		111.31			1000 460442	300	101000
12	53663 03/15/25 3/25 Maintenance/Copies		6.25			1000 410550	300	101000
13	53663 03/15/25 3/25 Maintenance/Copies		6.25			5210 430570	300	101000
14	53663 03/15/25 3/25 Maintenance/Copies		6.25			5310 430670	300	101000
15	53663 03/03/25 3/25 Maintenance/Copies		6.25			5410 430870	300	101000

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240660	-98052E 00111 FIRST STATE BANK		55.00					
1	03/31/25 FSB Billing ACH Origination		18.33			5210 430570	300	101000
2	03/31/25 FSB Billing ACH Origination		18.33			5310 430670	300	101000
3	03/31/25 FSB Billing ACH Origination		18.34			5410 430870	300	101000
240661	02517 VALLI INFORMATION SYSTEMS INC		45.00					
1	99406 02/28/25 Express Pay Online Monthly Fee		15.00			5210 430570	300	101000
2	99406 02/28/25 Express Pay Online Monthly Fee		15.00			5310 430670	300	101000
3	99406 02/28/25 Express Pay Online Monthly Fee		15.00			5410 430870	300	101000
240662	01700 ORKIN, INC		203.00					
1	275401180 03/01/25 CFD fire hall		203.00			1000 420400	300	101000
240663	01137 AQUA TECH LABORATORY		150.00					
	PWSID# MT0000328							
1	41196 03/06/25 Monthly Coliform Water Testing		125.00*		35194	5210 430500	300	101000
2	41250 03/19/25 well 3 coliform water testing		25.00*		35194	5210 430500	300	101000
240664	01137 AQUA TECH LABORATORY		25.00					
	PWSID# MT0000200							
1	41198 03/06/25 DWI Monthly Water Test		25.00*		35194	5210 430500	300	101000
240665	01137 AQUA TECH LABORATORY		25.00					
	PWSID# MT0004936							
1	41197 03/06/25 NCMRWA Monthly Water Test		25.00*		35194	5210 430500	300	101000
240666	31098S 02584 VISA		5,711.96					
1	02/19/25 amazon-roxy laptop		499.00*			7030 470000	200	101000
2	02/19/25 amazon-roxy harddrive etc		173.46*			7030 470000	200	101000
3	02/26/25 albertsons-animal control		52.35*			1000 440600	200	101000
4	02/27/25 roxy-dyson		399.99*			7030 470000	200	101000
5	02/26/25 Fehler-MMIA attorney conf		27.50*			1000 411100	370	101000
6	02/26/25 Fehler-MMIA attorney conf		27.50*			5210 430513	370	101000
7	02/26/25 Fehler-MMIA attorney conf		27.50*			5310 430613	370	101000
8	02/26/25 Fehler-MMIA attorney conf		27.50*			5410 430813	370	101000
9	03/05/25 USPS water samples		20.55*			5210 430500	300	101000
10	03/09/25 mobile charge		47.33			1000 440600	344	101000
11	03/09/25 mobile charge		77.22*			1000 430200	344	101000
12	03/09/25 mobile charge		77.22			5210 430500	344	101000
13	03/09/25 mobile charge		77.22			5310 430600	344	101000
14	03/09/25 mobile charge		77.22*			5410 430840	344	101000
15	03/13/25 UPS landfill methane test ret		46.26			5410 430840	300	101000
16	03/13/25 sleep inn-rural water conf Kar		261.04			5210 430500	370	101000
17	03/13/25 sleepin inn-rural water conf J		261.04			5210 430500	370	101000

04/04/25

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Claim Line #	Check Invoice #/Inv Date/Description	Vendor #/Name/ Line \$	Document \$/ Line \$	Disc \$	EO #	Fund Org Acct	Object Proj	Cash Account
18	03/12/25 CC dish network		148.10			1000 460442	300	101000
19	03/18/25 CC amazon foam foot rollers		49.98			1000 460442	200	101000
20	03/18/25 dell-roxy-printer/ink		393.99*			7030 470000	200	101000
21	03/18/25 square-roxy-register ststem		2,640.00*			7030 470000	200	101000
22	03/18/25 CC dyson vacuum		299.99			1000 460442	300	101000
240667	-98056E 01486 USDA RURAL DEVELOPMENT		1,603.00					
1	03/05/25 Fire Hall Improvement Loan		857.57			1000 490527	610	101000
2	03/05/25 Fire Hall Improvement Loan Int		745.43*			1000 490527	620	101000
240668	31093S 02586 DIS TECHNOLOGIES		963.00					
1	15797 03/05/25 Monthly Managed Services		126.88			1000 410550	300	101000
2	15797 03/05/25 Monthly Managed Services		126.88			5210 430570	300	101000
3	15797 03/05/25 Monthly Managed Services		126.87			5310 430670	300	101000
4	15797 03/05/25 Monthly Managed Services		126.87			5410 430870	300	101000
5	15797 03/05/25 Monthly Managed Services		72.50*			1000 411050	300	101000
6	15797 03/05/25 Monthly Managed Services		72.50			1000 460442	300	101000
7	15797 03/05/25 Monthly Managed Services		54.37*			1000 430200	300	101000
8	15797 03/05/25 Monthly Managed Services		54.37*			5210 430500	300	101000
9	15797 03/05/25 Monthly Managed Services		54.38			5310 430600	300	101000
10	15797 03/05/25 Monthly Managed Services		54.38			5410 430830	300	101000
11	15797 03/05/25 Monthly Microsoft 365		23.25			1000 410550	300	101000
12	15797 03/05/25 Monthly Microsoft 365		23.25			5210 430570	300	101000
13	15797 03/05/25 Monthly Microsoft 365		23.25			5310 430670	300	101000
14	15797 03/05/25 Monthly Microsoft 365		23.25			5410 430870	300	101000
240669	01677 STAPLES		1,338.89					
1	6025630972 02/28/25 vinegar		8.49		34677	1000 411202	200	101000
2	6025630972 02/28/25 vinegar		8.49		34677	5210 430520	200	101000
3	6025630972 02/28/25 vinegar		8.50		34677	5310 430620	200	101000
4	6025630972 02/28/25 vinegar		8.50		34677	5410 430820	200	101000
5	6025630975 02/28/25 colored copy paper		12.48*		34677	1000 410550	200	101000
6	6025630975 02/28/25 colored copy paper		12.49*		34677	5210 430570	200	101000
7	6025630975 02/28/25 colored copy paper		12.49*		34677	5310 430670	200	101000
8	6025630975 02/28/25 colored copy paper		12.49*		34677	5410 430870	200	101000
9	6025630974 02/28/25 sharpie twin tip		4.88*		34677	1000 410550	200	101000
10	6025630974 02/28/25 sharpie twin tip		4.87*		34677	5210 430570	200	101000
11	6025630974 02/28/25 sharpie twin tip		4.87*		34677	5310 430670	200	101000
12	6025630974 02/28/25 sharpie twin tip		4.87*		34677	5410 430570	200	101000
13	6025630977 02/28/25 mailing seals		14.47*		34677	1000 410550	200	101000
14	6025630977 02/28/25 mailing seals		14.47*		34677	5210 430570	200	101000
15	6025630977 02/28/25 mailing seals		14.48*		34677	5310 430670	200	101000
16	6025630977 02/28/25 mailing seals		14.48*		34677	5410 430870	200	101000
17	6025630976 02/28/25 CC return-incorrect toilet		-59.00		34776	1000 460442	200	101000
18	6025630973 02/28/25 CC toilet paper		52.09		34776	1000 460442	200	101000



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19	6028190988 03/31/25 CC sanitizer/toilet cleane		293.16		34777	1000 460442	200	101000
20	6028190992 03/31/25 copy paper		39.69*		34679	1000 410550	200	101000
21	6028190992 03/31/25 copy paper		39.69*		34679	5210 430570	200	101000
22	6028190992 03/31/25 copy paper		39.69*		34679	5310 430670	200	101000
23	6028190992 03/31/25 copy paper		39.69*		34679	5410 430570	200	101000
24	6028190994 03/31/25 comet/pine sol/dawn		416.55		35219	1000 460430	200	101000
25	6028190990 03/31/25 hand towels/bath tissue		262.01		35219	1000 460430	200	101000
26	6028190987 03/31/25 bleach		54.00		35219	5210 430500	200	101000
240670	00117 QUILL CORPORATION		35.38					
1	43069320 02/27/25 HDMI cable 8 ft		1.59*		34676	1000 410550	200	101000
2	43069320 02/27/25 HDMI cable 8 ft		1.60*		34676	5210 430570	200	101000
3	43069320 02/27/25 HDMI cable 8 ft		1.60*		34676	5310 430670	200	101000
4	43069320 02/27/25 HDMI cable 8 ft		1.60*		34676	5410 430870	200	101000
5	43051620 02/27/25 HDMI cable 15ft		7.24*		34676	1000 410550	200	101000
6	43051620 02/27/25 HDMI cable 15ft		7.25*		34676	5210 430570	200	101000
7	43051620 02/27/25 HDMI cable 15ft		7.25*		34676	5310 430670	200	101000
8	43051620 02/27/25 HDMI cable 15ft		7.25*		34676	5410 430870	200	101000
240671	01946 ALL SEASON HEATING & AIR service & materials		524.75					
1	54637 02/27/25 Roxy install 2 thermostats		524.75*			7030 470000	200	101000
240672	01125 MT DEQ/PERMITTING & COMPLIANCE		1,500.00					
1	5L2501326 03/05/25 MT0031488 - Outfall Charge		1,500.00			5310 430600	300	101000
240673	01470 RMR AGGREGATE		3,713.62					
1	4941 03/05/25 crushed base		3,713.62*			1000 430200	400	101000
240674	02638 JONES LEGAL SERVICES		337.86					
	matter 5009 prosecution of Jimmy L. Anderson/A-1 Towing							
1	6341 03/03/25 12/30/24-2/27/25 Legal Service		84.47			1000 411100	350	101000
2	6341 03/03/25 12/30/24-2/27/25 Legal Service		84.46			5210 430513	350	101000
3	6341 03/03/25 12/30/24-2/27/25 Legal Service		84.47			5310 430613	350	101000
4	6341 03/03/25 12/30/24-2/24/25 Legal Service		84.46			5410 430813	350	101000
240675	02590 SHELBY KIWANIS		500.00					
	approved via email 3/6/25							
1	03/07/25 TBID kite festival sponsorship		500.00			7199 460301	701	101000



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240676	00442 SHELBY AREA CHAMBER OF COMMERCE		1,650.00					
	via email 3/7/25							
	approved during meeting 1/16/25							
1	03/10/25 TBID chamber raise & bonus		1,450.00			7199 460301	701	101000
2	03/10/25 TBID chamber bucks-art contest		200.00			7199 460301	701	101000
240677	02370 JUNKERMIER, CLARK, CAMPANELLA,		37,000.00					
1	909072 02/28/25 fy 24 audit		9,250.00			1000 410530	350	101000
2	909072 02/28/25 fy 24 audit		9,250.00			5210 410530	350	101000
3	909072 02/28/25 fy 24 audit		9,250.00			5310 410530	350	101000
4	909072 02/28/25 fy 24 audit		9,250.00			5410 410530	350	101000
240678	01736 MUNICIPAL EMERGENCY SERVICES,		200.88					
1	2214496 03/04/25 CFD pick axes		200.88*		34939	1000 420400	200	101000
240679	02639 BTI MONTANA		297.36					
1	830387 03/15/25 RFD white tag power service		119.81		34938	1000 420401	200	101000
2	CL37041 02/28/25 RFD fuel		177.55		34938	1000 420401	230	101000
240680	00119 SHELBY VOLUNTEER FIRE DEPT		609.87					
1	02/06/25 CFD Johnson Lumber-door lock k		449.97*			1000 420400	200	101000
2	03/06/25 CFD carquest check valve		159.90*			1000 420400	200	101000
240681	-98055E 02690 ZORO.COM		613.98					
1	03/10/25 CC zero - dumbbells		613.98			1000 460442	200	101000
240682	02691 MCANALLY, BLAIR		1,580.00					
	travel, labor, elliptical & treadmill parts							
1	03/03/25 CC service call equipment		1,580.00		34775	1000 460442	300	101000
240683	-98053E 01978 USPS POSTAL STORE		1,688.00					
1	03/11/25 stamped envelopes		422.00*		34678	1000 410550	200	101000
2	03/11/25 stamped envelopes		422.00*		34678	5210 430570	200	101000
3	03/11/25 stamped envelopes		422.00*		34678	5310 430670	200	101000
4	03/11/25 stamped envelopes		422.00*		34678	5410 430870	200	101000
240684	999998 JADE M GOROSKI		119.00					
1	03/12/25 mileage-rural water workshop		29.75*			1000 410550	370	101000
2	03/12/25 mileage-rural water workshop		29.75*			5210 430570	370	101000
3	03/12/25 mileage-rural water workshop		29.75*			5310 430670	370	101000
4	03/12/25 mileage-rural water workshop		29.75*			5410 430870	370	101000

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240685	-98054E 02522	MACON SUPPLY INC	3,150.00					
1	251784 03/03/25 20" guard 11.7hp saw		1,050.00			5210 430500	200	101000
2	251784 03/03/25 20" guard 11.7hp saw		1,050.00*			5310 430830	200	101000
3	251784 03/03/25 20" guard 11.7hp saw		1,050.00			1000 430200	200	101000
240686	01899 T.P. CONSTRUCTION INC		1,270.00					
	Dick Irving to reimburse for 1/2							
1	25-RW-002 03/13/25 equipments/operator 19.5hrs		1,270.00*			2310 430000	300	101000
240687	31096S 01124	FIRST INTERSTATE BANK	50,000.00					
	Landfill Trust Annual - Closure/Post-Closure							
1	03/19/25 Landfill Closure Annual		25,000.00			5410 430840	581	101000
2	03/19/25 Landfill Post Closure Annual		25,000.00			5410 430840	581	101000
240688	02601	NORTHERN PLAINS ELECTRIC LLC	15,000.43					
	materials and labor (97hrs)							
1	1941 03/19/25 Roxy-electrical		15,000.43*			7030 470000	200	101000
240689	00534	IVERSON CONSTRUCTION & CONCRETE	8,238.00					
1	03/20/25 626 Granite materials & labor		8,238.00			7030 470000	900 2298	101000
240690	00653	GREAT WEST ENGINEERING	2,440.00					
	verification/testing & final report							
1	35641 03/20/25 wellfield investigation		2,440.00			5210 430501	950 2296	101000
240691	00653	GREAT WEST ENGINEERING	2,994.00					
	construction & post-construction							
1	35640 03/20/25 Stormwater South Side		2,994.00			5720 430246	950 2288	101000
240692	00653	GREAT WEST ENGINEERING	4,942.89					
	Construction							
1	35639 03/20/25 Airport Tank Transmission Main		4,942.89			5210 430501	950 2286	101000
240693	0263	STUTZ, JENNIFER	3,500.00					
1	03/25/25 3/25 legal services		875.00			1000 411100	350	101000
2	03/25/25 3/25 legal services		875.00			5210 430513	350	101000
3	03/25/25 3/25 legal services		875.00			5310 430613	350	101000
4	03/25/25 3/25 legal services		875.00			5410 430813	350	101000

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240694	02684 AQUASOURCE DRILLING		16,390.48					
1	3645 01/06/25 well maintenance		11,310.00*			5210 430500	300	101000
2	3707 04/03/25 well maintenance		5,080.48*			5210 430500	300	101000
240695	02684 AQUASOURCE DRILLING		3,590.00					
1	3708 03/04/25 wellfield investigation		3,590.00			5210 430501	950 2296	101000
240696	00039 PETTY CASHIER		42.00					
5	3034 03/19/25 3/25 legal filings		10.50			1000 410550	300	101000
6	3034 03/19/25 3/25 legal filings		10.50			5210 430570	300	101000
7	3034 03/19/25 3/25 legal filings		10.50			5310 430670	300	101000
8	3034 03/19/25 3/25 legal filings		10.50			5410 430870	300	101000
240697	00001 DEPARTMENT OF REVENUE		23.47					
1	03/31/25 Accom Tax Shel-oolle Campground		23.47			7110 212500		101000
240698	02486 MARIAS RIVER CONTRACTING LLC		10,550.00					
	concrete and addition materials & labor							
1	1185 03/27/25 labor/materials- willett house		10,550.00			7030 470000	900 2291	101000
240699	02595 PONDEROSA PUBLICATIONS LLC		48.00					
1	63567 03/26/25 Roxy-ITB wall mortar repair		48.00*			7030 470000	200	101000
240700	999998 KEITH THAUT		35.00					
1	03/31/25 mileage - 1 trip		35.00*			1000 420500	370	101000
240701	02692 C & C PLUMBING		3,810.00					
	installation of grease interceptor							
1	2111 03/31/25 Roxy-labor and materials		3,810.00*			7030 470000	200	101000
240702	00037 NORTHWEST PIPE FITTINGS INC		2,408.08					
1	2308001 03/19/25 8" hymax coupler x2		856.28		35200	5210 430500	200	101000
2	2284118 03/03/25 neptune 360 amr x594		1,526.80		35200	5210 430500	200	101000
3	2313449 03/27/25 meter gasket		25.00		35221	5210 430500	200	101000
240703	02569 COLONIAL RESEARCH		2,425.28					
1	153376 03/21/25 tight spot		133.63		35195	1000 430200	200	101000
2	153376 03/21/25 tight spot		133.63		35195	5210 430500	200	101000
3	153376 03/21/25 tight spot		133.63		35195	5310 430600	200	101000
4	153376 03/21/25 tight spot		133.64*		35195	5410 430840	200	101000
5	153293 02/26/25 citra burst/paint/degreaser		279.56		35195	1000 430200	200	101000
6	153293 02/26/25 citra burst/paint/degreaser		279.56		35195	5210 430500	200	101000
7	153293 02/26/25 citra burst/paint/degreaser		279.56		35195	5310 430600	200	101000
8	153293 02/26/25 citra burst/paint/degreaser		279.57*		35195	5410 430830	200	101000

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9	153293 02/26/25	count/enzymes	772.50		35195	5310 430600	200	101000
240704		02485 RDO EQUIPMENT CO	2,101.36					
1	P8969313 03/06/25	hub/freight	157.83		35193	1000 430200	200	101000
2	P8977313 03/13/25	filters	99.06		35193	1000 430200	200	101000
3	P8976313 03/12/25	hydraulic motoe	1,844.47		35193	1000 430200	200	101000
240705		02304 MOTOR POWER GREAT FALLS INC	67.82					
1	02GI357902 03/17/25	heater/fan knobs-blue truc	67.82		35198	1000 430200	200	101000
240706		02683 PINE ENVIRONMENTAL SERVICES, LLC	439.61					
1	US1-250016 03/18/25	menthanesampler-rental	439.61*		35199	5410 430840	200	101000
240707		01161 USA BLUE BOOK	443.02					
1	650895 03/13/25	lockout/tagout kit	443.02		35197	5210 430500	200	101000
240708		01439 CONRAD BUILDING CENTER INC	761.09					
1	113586 03/25/25	pine/enclosure	206.90		35192	1000 460445	200	101000
2	113162 03/18/25	metal/screws/ridge material	638.75		35192	1000 460445	200	101000
3	04/01/25	volume discount 10%	-84.56			1000 460445	200	101000
240709		02097 FASTENAL COMPANY	575.31					
1	238349 03/20/25	shrink tubing/bits	53.76		35196	1000 430200	200	101000
2	238349 03/20/25	shrink tubing/bits	53.78		35196	5210 430500	200	101000
3	238349 03/20/25	shrink tubing/bits	53.78		35196	5310 430600	200	101000
4	238349 03/20/25	shrink tubing/bits	53.78*		35196	5410 430840	200	101000
5	238073 03/04/25	ss bolts/gloves/ss nuts	37.88		35196	1000 430200	200	101000
6	238073 03/04/25	ss bolts/gloves/ss nuts	37.89		35196	5210 430500	200	101000
7	238073 03/04/25	ss bolts/gloves/ss nuts	37.89		35196	5310 430600	200	101000
8	238073 03/04/25	ss bolts/gloves/ss nuts	37.89*		35196	5410 430840	200	101000
9	238192 03/12/25	ss bolts	52.15		35196	1000 430200	200	101000
10	238192 03/12/25	ss bolts	52.17		35196	5210 430500	200	101000
11	238192 03/12/25	ss bolts	52.17		35196	5310 430600	200	101000
12	238192 03/12/25	ss bolts	52.17*		35196	5410 430840	200	101000
240710		02623 SHELBY PAINT & HARDWARE	640.43					
1	43440 03/24/25	simple green cleaner	1.49		35216	1000 430200	200	101000
2	43440 03/24/25	simple green cleaner	1.50		35216	5210 430500	200	101000
3	43440 03/24/25	simple green cleaner	1.50		35216	5310 430600	200	101000
4	43440 03/24/25	simple green cleaner	1.50*		35216	5410 430830	200	101000
5	43571 03/26/25	glass cleaner	1.48		35216	1000 430200	200	101000
6	43571 03/26/25	glass cleaner	1.50		35216	5210 430500	200	101000
7	43571 03/26/25	glass cleaner	1.50		35216	5310 430600	200	101000
8	43571 03/26/25	glass cleaner	1.50*		35216	5410 430830	200	101000
9	43171 03/21/25	all purpose cleaner	3.24		35216	1000 430200	200	101000

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10	43171	03/21/25 all purpose cleaner	3.25		35216	5210 430500	200	101000
11	43171	03/21/25 all purpose cleaner	3.25		35216	5310 430600	200	101000
12	43171	03/21/25 all purpose cleaner	3.25*		35216	5410 430830	200	101000
13	42919	03/18/25 highlighters	2.28		35216	1000 430200	200	101000
14	42919	03/18/25 highlighters	2.30		35216	5210 430500	200	101000
15	42919	03/18/25 highlighters	2.30		35216	5310 430600	200	101000
16	42919	03/18/25 highlighters	2.30*		35216	5410 430830	200	101000
17	42067	03/07/25 tidepods/mop heads	7.40		35216	1000 430200	200	101000
18	42067	03/07/25 tidepods/mop heads	7.39		35216	5210 430500	200	101000
19	42067	03/07/25 tidepods/mop heads	7.39		35216	5310 430600	200	101000
20	42067	03/07/25 tidepods/mop heads	7.39*		35216	5410 430830	200	101000
21	41432	02/27/25 storage tote	9.75		35216	1000 430200	200	101000
22	41432	02/27/25 storage tote	9.74		35216	5210 430500	200	101000
23	41432	02/27/25 storage tote	9.74		35216	5310 430600	200	101000
24	41432	02/27/25 storage tote	9.74*		35216	5410 430830	200	101000
25	41465	02/27/25 storage totes	9.00		35216	1000 430200	200	101000
26	41465	02/27/25 storage totes	8.99		35216	5210 430500	200	101000
27	41465	02/27/25 storage totes	8.99		35216	5310 430600	200	101000
28	41465	02/27/25 storage totes	8.99*		35216	5410 430830	200	101000
29	41816	03/04/25 markers-dry erase	2.49		35216	1000 430200	200	101000
30	41816	03/04/25 markers-dry erase	2.50		35216	5210 430500	200	101000
31	41816	03/04/25 markers-dry erase	2.50		35216	5310 430600	200	101000
32	41816	03/04/25 markers-dry erase	2.50*		35216	5410 430830	200	101000
33	42384	03/11/25 showerhead	28.99		35216	1000 460442	200	101000
34	43633	03/26/25 wd-40	7.99		35216	1000 460442	200	101000
35	43385	03/24/25 d batteries	19.99		35216	5210 430500	200	101000
36	41356	02/26/25 screws	29.77*		35216	1000 460465	200	101000
37	41603	03/01/25 clorox/cleaner	21.57*		35216	7030 470000	200	101000
38	43453	03/24/25 lath-wooden	39.99*		35216	5410 430840	200	101000
39	42386	03/11/25 brass nozzle	9.99		35216	1000 460445	200	101000
40	42546	03/13/25 floor register-heat shell	33.98		35217	1000 430200	200	101000
41	42371	03/11/25 wood stakes	16.70		35217	1000 430200	200	101000
42	42278	03/10/25 wood stakes/paint	66.89		35217	1000 430200	200	101000
43	44016	03/31/25 toilet/keys	215.93		35220	1000 460430	200	101000
240711	02045	NAPA AUTO PARTS	731.76					
1	230325	03/20/25 adapters	13.76		35212	1000 430200	200	101000
2	230293	03/20/25 ow-20 oil	43.98		35212	1000 430200	200	101000
3	229951	03/13/25 air freshner	3.99		35212	1000 430200	200	101000
4	229636	03/06/25 air filters	111.44*		35212	5410 430830	200	101000
5	229312	02/27/25 argon gas	126.98*		35212	5410 430830	200	101000
6	230561	03/25/25 napa filters	2.56		35212	1000 430200	200	101000
7	230561	03/25/25 napa filters	2.58		35212	5210 430500	200	101000
8	230561	03/25/25 napa filters	2.58		35212	5310 430600	200	101000
9	230561	03/25/25 napa filters	2.58*		35212	5410 430840	200	101000

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10	229635	03/06/25 25ft cable	90.75		35212	1000 430200	200	101000
11	229635	03/06/25 25ft cable	90.75		35212	5210 430500	200	101000
12	229635	03/06/25 25ft cable	90.75		35212	5310 430600	200	101000
13	229635	03/06/25 25ft cable	90.75*		35212	5410 430840	200	101000
14	229771	03/10/25 marker	0.73		35212	1000 430200	200	101000
15	229771	03/10/25 marker	0.75		35212	5210 430500	200	101000
16	229771	03/10/25 marker	0.75		35212	5310 430600	200	101000
17	229771	03/10/25 marker	0.75*		35212	5410 430840	200	101000
18	229638	03/06/25 glass cleaner	1.63		35212	1000 430200	200	101000
19	229638	03/06/25 glass cleaner	1.62		35212	5210 430500	200	101000
20	229638	03/06/25 glass cleaner	1.62		35212	5310 430600	200	101000
21	229638	03/06/25 glass cleaner	1.62*		35212	5410 430840	200	101000
22	229558	03/04/25 napa filter	1.94		35212	1000 430200	200	101000
23	229558	03/04/25 napa filter	1.93		35212	5210 430500	200	101000
24	229558	03/04/25 napa filter	1.93		35212	5310 430600	200	101000
25	229558	03/04/25 napa filter	1.93*		35212	5410 430840	200	101000
26	229566	03/04/25 napa filters	10.27		35212	1000 430200	200	101000
27	229566	03/04/25 napa filters	10.28		35212	5210 430500	200	101000
28	229566	03/04/25 napa filters	10.28		35212	5310 430600	200	101000
29	229566	03/04/25 napa filters	10.28*		35212	5410 430840	200	101000
240712		00088 CARQUEST AUTO PARTS	357.80					
1	382936	03/05/25 1/2 offset ratchet	24.37		35211	5210 430500	200	101000
2	383181	03/12/25 cons tape	111.82		35211	1000 430200	200	101000
3	383514	03/20/25 hyd fittings	27.54		35211	1000 430200	200	101000
4	383642	03/24/25 hyd hose/fittings	111.71		35211	1000 430200	200	101000
5	382699	02/27/25 engine clean spray	1.48		35211	1000 430200	200	101000
6	382699	02/27/25 engine clean spray	1.49		35211	5210 430500	200	101000
7	382699	02/27/25 engine clean spray	1.49		35211	5310 430600	200	101000
8	382699	02/27/25 engine clean spray	1.49*		35211	5410 430830	200	101000
9	382967	03/06/25 air freshner	1.00		35211	1000 430200	200	101000
10	382967	03/06/25 air freshner	1.00		35211	5210 430500	200	101000
11	382967	03/06/25 air freshner	1.00		35211	5310 430600	200	101000
12	382967	03/06/25 air freshner	1.00*		35211	5410 430830	200	101000
13	383277	03/14/25 cleaning wipes	3.36		35211	1000 430200	200	101000
14	383277	03/14/25 cleaning wipes	3.36		35211	5210 430500	200	101000
15	383277	03/14/25 cleaning wipes	3.36		35211	5310 430600	200	101000
16	383277	03/14/25 cleaning wipes	3.36*		35211	5410 430830	200	101000
17	383397	03/17/25 cleaning spray	3.41		35211	1000 430200	200	101000
18	383397	03/17/25 cleaning spray	3.41		35211	5210 430500	200	101000
19	383397	03/17/25 cleaning spray	3.41		35211	5310 430600	200	101000
20	383397	03/17/25 cleaning spray	3.41*		35211	5410 430830	200	101000
21	383399	03/17/25 towels	1.59		35211	1000 430200	200	101000
22	383399	03/17/25 towels	1.58		35211	5210 430500	200	101000
23	383399	03/17/25 towels	1.58		35211	5310 430600	200	101000

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Claim Line #	Check Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
24	383399 03/17/25 towels		1.58*		35211	5410 430830	200	101000
25	383705 03/26/25 tap & die set		9.75		35211	1000 430200	200	101000
26	383705 03/26/25 tap & die set		9.75		35211	5210 430500	200	101000
27	383705 03/26/25 tap & die set		9.75		35211	5310 430600	200	101000
28	383705 03/26/25 tap & die set		9.75*		35211	5410 430830	200	101000
240713	00027 MARKS TIRE & ALIGNMENT		3,070.00					
1	79104 02/26/25 container truck tires x2		1,200.00		35202	5410 430840	300	101000
2	79090 02/24/25 container truck tires x2/valve		1,220.00		35202	5410 430840	300	101000
3	79086 02/24/25 used tire/flat repair		85.00		35202	5410 430840	300	101000
4	78929 02/03/25 flat repair		25.00*		35202	5210 430500	300	101000
5	79041 02/18/25 dump truck tire		540.00*		35202	1000 430200	300	101000
240714	02376 MOBILE TWI LLC		205.00					
1	030425D 03/04/25 random DOT testing		205.00*		35208	1000 430200	300	101000
240715	02069 NATIONAL LAUNDRY CO		24.07					
1	58152 03/12/25 red shop towels/laundry		6.01*		35207	1000 430200	300	101000
2	58152 03/12/25 red shop towels/laundry		6.02*		35207	5210 430500	300	101000
3	58152 03/12/25 red shop towels/laundry		6.02		35207	5310 430600	300	101000
4	58152 03/12/25 red shop towels/laundry		6.02		35207	5410 430840	300	101000
240716	00147 MID AMERICAN RESEARCH CHEMICAL		680.63					
1	843359 03/12/25 orange crush degreaser		170.16		35206	1000 430200	200	101000
2	843359 03/12/25 orange crush degreaser		170.16		35206	5210 430500	200	101000
3	843359 03/12/25 orange crush degreaser		170.16		35206	5310 430600	200	101000
4	843359 03/12/25 orange crush degreaser		170.15*		35206	5410 430830	200	101000
240717	02547 CENTRAL MONTANA LOCK & SAFE LLC		62.50					
1	24830 03/06/25 15 key copies		62.50		35204	5210 430500	200	101000
240718	02592 WASTE TEK SOLUTIONS		148.00					
1	1819 03/03/25 mag switch		148.00*		35203	5410 430830	200	101000
240719	00554 TORGERSON'S LLC		3,647.50					
1	P94237 03/18/25 hy-tran fluid		237.50		35201	1000 430200	200	101000
2	R01016 12/12/24 backhoe rental 12/11/24-1/7/25		852.50*			1000 430200	300	101000
3	R01016 12/12/24 backhoe rental 12/11/24-1/7/25		852.50*			5210 430500	300	101000
4	R01016 12/12/24 backhoe rental 12/11/24-1/7/25		852.50			5310 430600	300	101000
5	R01016 12/12/24 backhoe rental 12/11/24-1/7/25		852.50			5410 430840	300	101000



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240720	02639 BTI MONTANA		7,029.69					
1	837440 03/18/25 25# rozol		250.00		35213	1000 460430	200	101000
2	836614 03/13/25 DEF		168.00*		35213	5410 430830	200	101000
3	832988 02/25/25 hyd fluid		79.81*		35213	5410 430830	200	101000
4	839394 03/25/25 diesel fuel		1,512.84		35213	5410 430840	230	101000
5	324252 03/05/25 propane-uv building		871.26		35213	5210 430500	200	101000
6	CL36908 02/28/25 fuel-animal control		169.11*		35213	1000 440600	230	101000
7	CL36908 02/28/25 fuel-garbage truck		561.16		35213	5410 430830	230	101000
8	CL36908 02/28/25 fuel-streets		1,500.00		35213	1000 430200	230	101000
9	CL36908 02/28/25 fuel-water		658.29		35213	5210 430500	230	101000
10	60505 03/20/25 keyed padlock		15.99		35213	5210 430500	200	101000
11	58823 02/24/25 propane/lighter		23.18		35213	5210 430500	200	101000
12	59103 02/27/25 teflon/brass adapter		25.27		35213	5210 430500	200	101000
13	59105 02/27/25 return pf brass adapter		-13.99		35213	5210 430500	200	101000
14	59776 03/10/25 pipe plug		2.79*		35213	5410 430840	200	101000
15	59842 03/11/25 clew/nut setter/screws		18.64		35214	1000 430200	200	101000
16	59842 03/11/25 clew/nut setter/screws		18.64		35214	5210 430500	200	101000
17	59842 03/11/25 clew/nut setter/screws		18.64		35214	5310 430600	200	101000
18	59842 03/11/25 clew/nut setter/screws		18.64*		35214	5410 430830	200	101000
19	59933 03/12/25 cut wheel		5.12		35214	1000 430200	200	101000
20	59933 03/12/25 cut wheel		5.12		35214	5210 430500	200	101000
21	59933 03/12/25 cut wheel		5.12		35214	5310 430600	200	101000
22	59933 03/12/25 cut wheel		5.12*		35214	5410 430830	200	101000
23	59841 03/11/25 cat litter		5.24		35214	1000 430200	200	101000
24	59841 03/11/25 cat litter		5.25		35214	5210 430500	200	101000
25	59841 03/11/25 cat litter		5.25		35214	5310 430600	200	101000
26	59841 03/11/25 cat litter		5.25*		35214	5410 430830	200	101000
27	59825 03/10/25 markers/circ blade/fasteners		14.73		35214	1000 430200	200	101000
28	59825 03/10/25 markers/circ blade/fasteners		14.73		35214	5210 430500	200	101000
29	59825 03/10/25 markers/circ blade/fasteners		14.73		35214	5310 430600	200	101000
30	59825 03/10/25 markers/circ blade/fasteners		14.73*		35214	5410 430830	200	101000
31	60297 03/17/25 pin anchor		9.98		35214	1000 430200	200	101000
32	60297 03/17/25 pin anchor		10.00		35214	5210 430500	200	101000
33	60297 03/17/25 pin anchor		10.00		35214	5310 430600	200	101000
34	60297 03/17/25 pin anchor		10.00*		35214	5410 430830	200	101000
35	60279 03/17/25 connectors/fluorescent ties		3.42		35214	1000 430200	200	101000
36	60279 03/17/25 connectors/fluorescent ties		3.44		35214	5210 430500	200	101000
37	60279 03/17/25 connectors/fluorescent ties		3.44		35214	5310 430600	200	101000
38	60279 03/17/25 connectors/fluorescent ties		3.44*		35214	5410 430830	200	101000
39	59535 03/06/25 ratchet straps		22.49		35214	1000 430200	200	101000
40	59535 03/06/25 ratchet straps		22.50		35214	5210 430500	200	101000
41	59535 03/06/25 ratchet straps		22.50		35214	5310 430600	200	101000
42	59535 03/06/25 ratchet straps		22.50*		35214	5410 430830	200	101000
43	60917 03/26/25 penetrating oil		2.13		35214	1000 430200	200	101000



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Claim Line #	Check Invoice #	Vendor #/Name/ Inv Date/Description	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
44	60917	03/26/25 penetrating oil	2.12		35214	5210 430500	200	101000
45	60917	03/26/25 penetrating oil	2.12		35214	5310 430600	200	101000
46	60917	03/26/25 penetrating oil	2.12*		35214	5410 430830	200	101000
47	60943	03/27/25 concrete mix/tape	17.98		35214	1000 430200	200	101000
48	60943	03/27/25 concrete mix/tape	17.99		35214	5210 430500	200	101000
49	60943	03/27/25 concrete mix/tape	17.99		35214	5310 430600	200	101000
50	60943	03/27/25 concrete mix/tape	17.99*		35214	5410 430830	200	101000
51	61255	03/31/25 key tag	0.28		35214	1000 430200	200	101000
52	61255	03/31/25 key tag	0.30		35214	5210 430500	200	101000
53	61255	03/31/25 key tag	0.30		35214	5310 430600	200	101000
54	61255	03/31/25 key tag	0.30*		35214	5410 430830	200	101000
55	60715	03/24/25 flat d rings	59.35		35214	5310 430600	200	101000
56	60508	03/20/25 nails/thermostat cover	41.48		35214	1000 460442	200	101000
57	60902	03/26/25 concrete mix/knife	213.32		35214	1000 460442	200	101000
58	60025	03/13/25 bulk iron/fasteners	21.88		35215	1000 430200	200	101000
59	60005	03/13/25 paint supplies	114.05		35215	1000 430200	200	101000
60	59923	03/12/25 bulk iron/caulk	73.45		35215	1000 430200	200	101000
61	60350	03/18/25 clew hook	32.97		35215	1000 430200	200	101000
62	60047	03/13/25 chain/chain links	207.42		35215	1000 430200	200	101000
63	59790	03/10/25 wood stakes	12.80		35215	1000 430200	200	101000
64	59877	03/11/25 water filter	10.99		35218	1000 460445	200	101000
65	59389	03/04/25 tie wire	4.49		35218	1000 430200	200	101000
66	59389	03/04/25 tie wire	4.50		35218	5210 430500	200	101000
67	59389	03/04/25 tie wire	4.50		35218	5310 430600	200	101000
68	59389	03/04/25 tie wire	4.50*		35218	5410 430830	200	101000
240721		02335 CINTAS CORPORATION	342.28					
1	5262097903	04/01/25 RX cabinet restock	34.39			1000 410550	300	101000
2	5262097903	04/01/25 RX cabinet restock	34.39			5210 430570	300	101000
3	5262097903	04/01/25 RX cabinet restock	34.40			5310 430670	300	101000
4	5262097903	04/01/25 RX cabinet restock	34.40			5410 430870	300	101000
5	5252441809	02/04/25 restock med cabinet	51.18*		35210	1000 430200	300	101000
6	5252441809	02/04/25 restock med cabinet	51.18*		35210	5210 430500	300	101000
7	5252441809	02/04/25 restock med cabinet	51.17		35210	5310 430600	300	101000
8	5252441809	02/04/25 restock med cabinet	51.17		35210	5410 430840	300	101000
240722		02628 SCOONES LAW PLLC	3,625.00					
14.5hrs								
1	206	04/01/25 water court appeal of DNRC	3,625.00*			5210 430500	300	101000

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Claim Line #	Check Invoice #/Inv Date/Description	Vendor #/Name/ Invoice #/Inv Date/Description	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
240723	02294 KANEFF EXCAVATING		10,200.00					
17hrs								
1	03/21/25 haul decomp granite from Clanc		5,100.00*			2600 460400	400	101000
2	03/31/25 haul decomp granite from Clanc		5,100.00*			2600 460400	400	101000
240724	-98051E 00144 POSTMASTER		9.35					
1	03/18/25 USPS water samples		9.35*			5210 430500	300	101000
240725	00343 ENERGY LABORATORIES INC		50.00					
	invoice 687537 payment discrepancy of \$50 in February							
2	687537 01/30/25 Lagoon Effluent Ecoli/BOD/TSS		50.00		35166	5310 430600	300	101000
240726	01758 ROBERT W HERMANCE		3,000.00					
	TBID approved via email 4/3/25							
1	33125 03/31/25 Annual Service Contract		1,500.00			1000 411201	300	101000
2	33125 03/31/25 TBID Annual Service Contract		1,500.00			7199 460301	701	101000
240727	01663 SHELBY GLASS & DOOR INC		2,130.00					
1	26584 03/05/25 CC weight room mirror replacem		800.00			1000 460442	300	101000
2	26597 03/14/25 Roxy-theater emergency exit		1,330.00*			7030 470000	200	101000
# of Claims 80 Total: 316,333.79								
Total Electronic Claims			7,119.33	Total Non-Electronic Claims		309214.46		

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Fund Summary for Claims  
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Fund/Account	Amount
1000 GENERAL	
101000 Cash-Operating	86,743.05
2310 TAX INCREMENT FINANCING DISTRICT (TIFD)	
101000 Cash-Operating	1,270.00
2400 STREET LIGHTING DISTRICT NO. 35	
101000 Cash-Operating	4,494.32
2600 PARK MAINTENANCE DISTRICT #1	
101000 Cash-Operating	10,200.00
5210 WATER UTILITY	
101000 Cash-Operating	63,296.54
5310 SEWER UTILITY	
101000 Cash-Operating	23,666.90
5410 SOLID WASTE UTILITY	
101000 Cash-Operating	75,388.72
5720 STORM DRAINAGE	
101000 Cash-Operating	2,994.00
7030 HOUSING FUND	
101000 Cash-Operating	44,606.79
7110 ACCOMMODATIONS TAX	
101000 Cash-Operating	23.47
7199 TOURISM BUSINESS IMPROVEMENT DIST (TBID)	
101000 Cash-Operating	3,650.00
Total:	316,333.79

## **Railroad Track Use Agreement**

THIS Agreement, hereinafter "the Agreement," by and between Northern Express Transportation Authority, whose address is 226 1<sup>st</sup> St S, Shelby, Montana 59474, hereinafter referred to as LICENSOR, and the City of Shelby, whose address is 112 1<sup>st</sup> St S Shelby, Montana 59474, hereinafter referred to as LICENSEE;

In consideration of their mutual covenants hereinafter contained, the parties agree as follows:

1. **Monetary Consideration:** LICENSEE shall pay LICENSOR monetary consideration in the amount of ten dollars and zero cents (\$10.00).
2. **Use Permit:** LICENSOR shall grant LICENSEE a nonexclusive permit allowing rail cars entering and exiting a rail spur owned by LICENSEE, hereinafter "City Spur," to travel upon railroad track owned by LICENSOR, hereinafter "NETA Track," for the purpose of connecting City Spur with railroad track owned by BNSF Railway Company, hereinafter "BNSF Track." City Spur, NETA Track, and BNSF track are all depicted and identified in Exhibit "A," attached to and incorporated into the Agreement. In Exhibit "A," City Spur is identified as "City Spur"; NETA Track is identified as "Track 2970"; and BNSF track is identified as "BNSF Mainline."
3. **Term:** The nonexclusive use permit shall be for a term of five (5) years, starting February 1, 2025, and ending January 31, 2030.
4. **Necessary Construction Work:** For the purpose of enabling the movement of rail cars between NETA Track and City Spur, LICENSOR shall permit LICENSEE to permanently connect City Spur with NETA Track at the point of an already existing rail switch, identified as "City Spur POS" in Exhibit "A" and hereinafter referred to as "Connecting Switch." LICENSOR acknowledges that the actual construction work to connect City Spur with NETA Track will be done by one or more private companies under contract with LICENSEE specifically for this project. LICENSOR shall permit such contractors to make any alterations to Connecting Switch or other property owned by LICENSOR in the vicinity of Connecting Switch that are necessary to connect City Spur with NETA Track.
5. **Permitted Users:** When used in the Agreement, the term PERMITTED USER/S shall be construed to mean any third party invitee permitted by LICENSEE to use City Spur for the transport of rail cars within the scope of what is permitted in Section 2 of the Agreement.
6. **Switching Operations:** LICENSEE shall not be obligated to operate Connecting Switch. LICENSOR shall be obligated to either operate Connecting Switch itself or arrange for a third party to operate Connecting Switch. LICENSOR shall also be obligated to ensure that rail cars transported pursuant to the Agreement are switched between NETA Track and BNSF Track by either itself or a third party. LICENSOR shall exercise industry standard practices for switching railcars between NETA Track and City Spur or between City Spur and NETA Track, barring natural disaster and/or inclement weather of a nature that makes rail travel temporarily unsafe or unfeasible.

7. **Switching Fees:** LICENSEE shall not be obligated to pay LICENSOR switching fees for any rail cars traveling between City Spur and NETA Track merely by virtue of being the owner of City Spur or entering into the Agreement. Any switching fees charged by LICENSOR shall be assessed to PERMITTED USERS in adherence to the fee schedule provided in Exhibit "B," attached to and incorporated into the Agreement.
8. **Switching Fee Delinquency Exemption from Switching Obligations:** PERMITTED USERS shall be considered delinquent on payment of switching fees in the event that any switching fee balance remains unpaid more than thirty (30) days after a switching fee invoice from LICENSOR was received. In the event that a PERMITTED USER is delinquent, LICENSOR shall be relieved of its switching obligations under the Agreement pertaining to the switching of cars owned or leased by that specific PERMITTED USER. The delinquency of one PERMITTED USER shall not justify any refusal by LICENSOR to switch cars owned or leased by other, non-delinquent PERMITTED USERS.
9. **Rail Access & Maintenance Fees:** In addition to switching fees, LICENSOR reserves the right to charge PERMITTED USERS rail access and rail maintenance fees in adherence to the fee schedule provided in Exhibit "B." The same provisions regarding delinquent switching fees in Section 8 of the Agreement apply to rail access and rail maintenance fees as well.
10. **Monthly Accounting by Permitted Users:** LICENSOR reserves the right to require PERMITTED USERS to provide LICENSOR with a monthly accounting of all inbound and outbound rail traffic. In the event that such accounting is not received by LICENSOR within thirty (30) days of the monthly deadline set by LICENSOR for providing accountings, LICENSOR shall be relieved of its switching obligations under the Agreement pertaining to the switching of cars owned or leased by that specific PERMITTED USER. The delinquency in monthly accounting reports of one PERMITTED USER shall not justify any refusal by LICENSOR to switch cars owned or leased by other, non-delinquent PERMITTED USERS.
11. **Resolution of Third Party Conflicts:** LICENSOR shall make reasonable efforts to resolve any conflicts between itself and BNSF Railway Company which could impede the transportation of rail cars between City Spur and BNSF Track pursuant to the Agreement.
12. **Licensee Controls Access to City Spur:** The permission of LICENSEE shall be required for any and all rail cars to use City Spur. LICENSEE shall not be required to permit a minimum number of rail cars to use City Spur.
13. **Indemnification:** LICENSOR shall indemnify, defend, and hold harmless LICENSEE from any suits or claims in law or equity arising from the use of NETA Track by LICENSOR or any third party. LICENSEE shall indemnify, defend, and hold harmless LICENSOR from any suits or claims in law or equity arising from the authorized use of City Spur by LICENSEE, LICENSOR, or any third party. LICENSEE shall indemnify, defend, and hold harmless LICENSOR from any suits or claims in law or equity arising from construction work undertaken by LICENSEE and its contractors described in Section 2 of the Agreement.

14. **Renewal:** The Agreement shall renew automatically for another five (5) year term on January 31, 2030, and January 31<sup>st</sup> of every subsequent calendar year ending in "zero" or "five" (e.g. 2035, 2040, 2045), unless otherwise terminated pursuant to the terms of the Agreement. Either party may unilaterally opt out of renewal of the Agreement by serving written notice on the other party at least ninety (90) days prior to the January 31<sup>st</sup> renewal date.
15. **Purchase of NETA Track by Third Party:** Any contract for the sale of NETA Track to a third party entered into by LICENSOR while the Agreement is in effect shall contain a provision transferring the obligations of LICENSOR under the Agreement to the new owner of NETA Track.
16. **Agreement Not in Breach of Other Contracts:** By executing the Agreement, both LICENSOR and LICENSEE represent respectively that the terms of the Agreement do not contradict or breach any existing contract between itself and any third party.
17. **Further Instruments, Agreements, and Documents:** The parties agree to cooperate with each other in the future to complete and execute such documents, agreements, and instruments that may be needed in order to effectuate the mutual promises contained in the Agreement.
18. **Governing Law and Jurisdiction:** The Agreement shall be interpreted and enforced in accordance with Montana law, and the Montana Ninth Judicial District Court, in and for Toole County, shall have exclusive jurisdiction over the subject matter of the Agreement and personal jurisdiction over the parties hereto.
19. **Remedies for Breach:** In the event of breach of the Agreement by either party, the non-breaching party may pursue any and all remedies it is entitled to under Montana law. In the event of a suit for breach of the Agreement brought by one of the parties against the other, the prevailing party shall be awarded reasonable attorney fees, costs, and expenses of such suit.
20. **Headings:** The bolded captions preceding each Section of the Agreement are for convenience only and shall not be considered in the construction or interpretation of any provisions hereof.
21. **Authority to Enter into Agreement:** The individuals signing their names to the Agreement represent that they have the authority of their respective entities to enter into the Agreement and bind their respective entities to the terms, obligations, and covenants contained herein.

Executed on this \_\_\_\_ day of \_\_\_\_\_, 2025.

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Larry Bonderud

Representative of LICENSOR

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Byron Kluth

Representative of LICENSOR

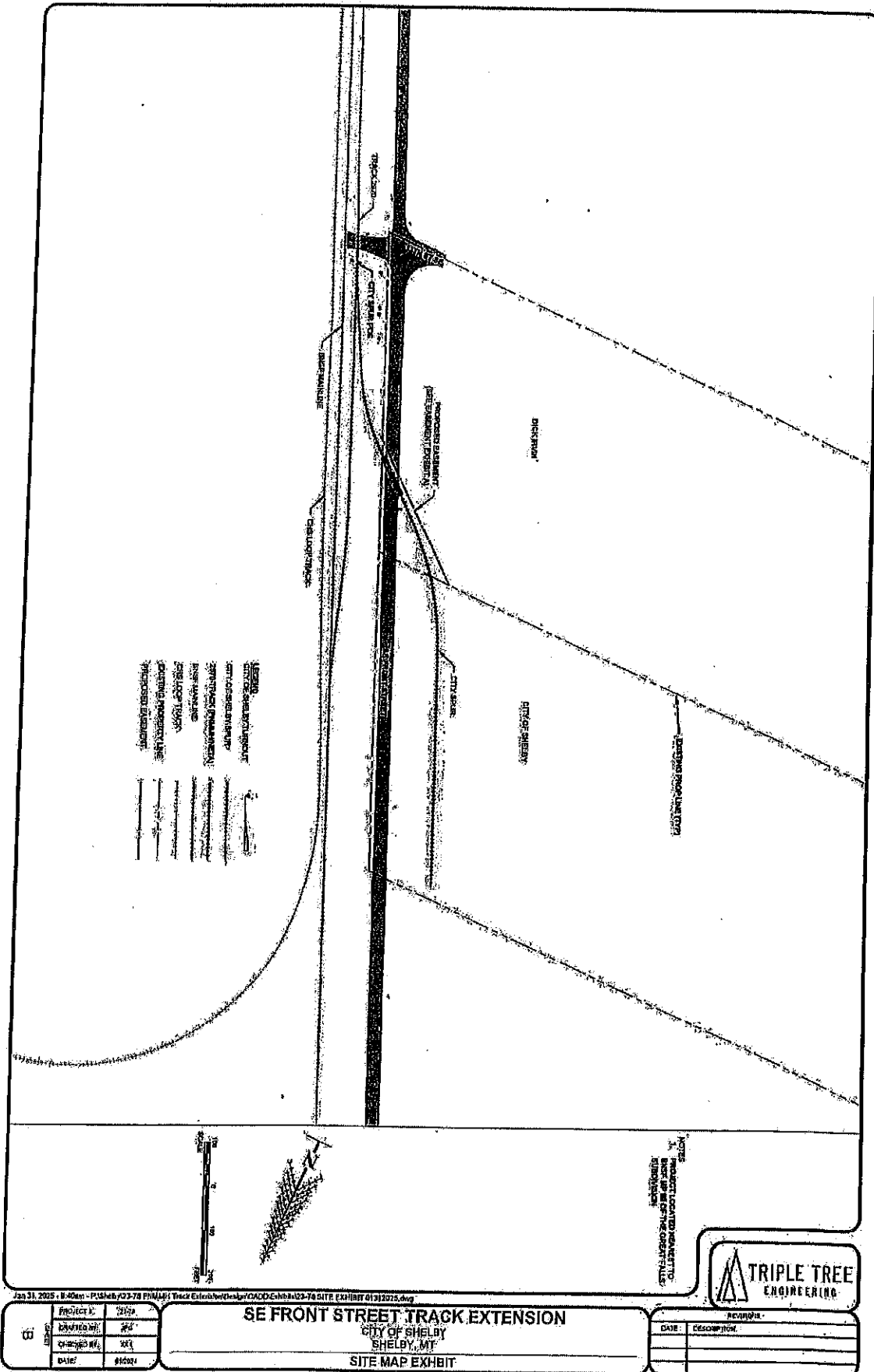
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Gary McDermott

Representative of LICENSEE



Exhibit "A"





**BNSF RAILWAY COMPANY**  
**LEASE OF LAND FOR CONSTRUCTION/REHABILITATION OF TRACK**

THIS LEASE OF LAND FOR CONSTRUCTION/REHABILITATION OF TRACK ("**Lease**") is made to be effective as of the date of the last signature hereto ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Railroad**"), and **CITY OF SHELBY**, a Montana incorporated municipality ("**Industry**").

**RECITALS**

**A.** Railroad owns or controls certain land situated at or near the City of Shelby, railway station of SHELBY, County of Toole, State of Montana, as described or shown on Drawing No. 92173-0, dated 09/18/2024, marked **Exhibit "A"**, attached and incorporated herein ("**Premises**").

**B.** Railroad and Industry have also entered into that certain Industry Track Agreement dated on or about the Effective Date of this Agreement at or near the City of Shelby, railway station of SHELBY, County of Toole, State of Montana ("**Track Agreement**") relating to the operation and maintenance of that certain Third Party Track (as defined in the Track Agreement) and that certain Industry Track (as defined in the Track Agreement) located on or near the Premises to serve the Plant (as defined in the Track Agreement). The Third Party Track and Industry Track are collectively referred to herein as the "**Track**".

**C.** The parties desire to enter into this Lease to allow Industry to occupy the Premises in connection with its maintenance and operation of the Track and for the construction of a portion of the Track on the Premises.

**AGREEMENTS**

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

**Section 1. LEASE OF PREMISES.**

1.1 Railroad hereby leases to Industry, subject to all rights, interests and estates of third parties and upon the terms and conditions set forth below, the Premises for the Permitted Uses (defined below).

1.2 If Industry requires access to and from the Premises by use of Railroad's property adjacent to the Premises, Railroad hereby grants Industry a non-exclusive license and permission to enter upon Railroad's property for such purpose. Railroad shall, at its sole discretion, designate the location or route to be used by Industry. For the purposes of this Lease, the designated access, whether specifically defined or not, is included in the definition of Premises.

**Section 2. PERMITTED USES.** Industry shall use the Premises exclusively as a site for: (i) the performance of Routine Activities (defined below) and (ii) Major Construction (defined below) related to the Track and for no other purposes (collectively, the "**Permitted Uses**"). Industry shall not use or store: (i) Hazardous Materials (as defined below) or (ii) petroleum or oil as defined by applicable Environmental Laws (defined below), on the Track or any part of the Premises. Industry shall provide all relevant information in response to Railroad's inquiries regarding the use or condition of the Premises. For purposes of this Lease:

2.1 "**Routine Activities**" shall include those normal maintenance and operating activities described in the Track Agreement, so long as such normal maintenance and operating activities described in the Track Agreement do not involve Major Construction.

2.2 "**Major Construction**" shall mean activities conducted on the Premises or Track that (a) require the excavation of soil that would alter or disturb the Premises; (b) require the use of heavy machinery; (c) involve Fouling (defined below) or a significant risk of Fouling; or (d) require the sheltering of the Facilities (defined below) or Equipment (defined below) in shelters located closer than twenty-five (25) feet from the nearest portion of the Track or other track owned or operated by Railroad. In addition, the parties agree that all activities on the Premises prior to the first date that initial construction of the Track on the Premises is complete to the point that railroad cars can operate over such Track shall be deemed to be "Major Construction", even if such activities do not include activities described in (a), (b), (c) or (d) above.

2.3 **"Fouling"** shall mean the existence, movement or placement of material, equipment and/or personnel on the Track or within twenty-five (25) feet vertically or laterally of the centerline of the Track, or any other activity which in Railroad's sole opinion may interfere with any operations of Railroad.

2.4 **"Facilities"** shall collectively mean all structures and improvements affecting the Track, including without limitation track scales, gates and fencing, unloading pits, loading or unloading devices, adjustable loading docks, and warehouse doors.

2.5 **"Equipment"** shall collectively mean all of Industry's equipment touching, used in conjunction with or affecting the Track.

**Section 3. TERM.** Unless earlier terminated as provided herein, this Lease will be in force for a term commencing on the Effective Date and shall automatically continue thereafter until terminated by either party giving the other ninety (90) days' written notice of its desire to terminate the Lease (the **"Term"**); provided that such Term is included herein for the sole purpose of establishing the duration of the parties' rights and obligations under this Lease (unless such rights and obligations expressly survive this Lease), and nothing herein shall constitute any commitment or agreement regarding the commercial terms and conditions by which Railroad may, from time to time, provide rail service to, from or on the Track or any other part of the Premises, or a modification or amendment to any other arrangement or agreement regarding such service.

**Section 4. RENTAL.**

4.1 Beginning on the Effective Date and continuing on each anniversary thereof during the Term, Industry shall pay to Railroad in advance an annual rental payment of Five Hundred and No/100 Dollars (\$500.00) (**"Base Rent"**) for the lease of the Premises. Such Base Rent shall be subject to a minimum annual escalation of three percent (3%) on each anniversary date of the Effective Date of this Lease. Said Base Rent shall be subject to revision by Railroad upon thirty (30) days written notice to Industry prior to each anniversary of the Effective Date. Either party hereto may assign any receivables due it under this Lease; provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this Lease. All rent and other monetary payments under this Lease from Industry to Railroad shall be delivered solely to the following address:

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

Railroad shall have the right to designate at any time and from time to time a different address for delivery of such payments by written notice to Industry pursuant to the notice provisions of **Section 25** below. No rent or other payment sent to any other address shall be deemed received by Railroad unless and until Railroad has actually posted such payment as received on the account of Industry, and Industry shall be subject to all default provisions hereunder, late fees and other consequences as a result thereof in the same manner as if Industry had failed or delayed in making any payment.

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

4.3 Industry shall pay the Base Rent and all additional amounts (such Base Rent and all additional amounts being sometimes referred to hereinafter collectively as "rent" or "rental") due pursuant to this Lease as and when the same become due and payable, without demand, set-off, or deduction. Industry's obligation to pay Base Rent and all amounts due under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach under this Lease by Railroad, shall release Industry of its obligation to pay Base Rent and all amounts due as required by this Lease.

4.4 If any Base Rent or any payment under this Lease or any other payment due by Industry hereunder

is not paid within five (5) days after the date the same is due, Railroad may assess Industry a late fee ("Late Fee") in an amount equal to five percent (5%) of the amount which was not paid when due to compensate Railroad for Railroad's administrative burden in connection with such late payment. In addition to said Late Fee, Industry shall pay interest on the unpaid sum from the due date thereof to the date of payment by Industry at an annual rate equal to twelve percent (12%), or the maximum rate permitted by law, whichever is less.

4.5 If Industry fails to surrender the Premises to Railroad upon the expiration or termination of this Lease, and Railroad does not consent in writing to Industry's holding over, then such holding over will be deemed a month-to-month tenancy. Industry's holdover will be subject to all provisions of this Lease, provided that Industry shall pay to Railroad in advance a total monthly rental of One Hundred Fifty Percent (150%) of one-twelfth (1/12<sup>th</sup>) of the prior invoiced annual rental charge during such holdover period. In no event shall such holding over renew or extend the Term except as provided for in this **Section 4**.

## **Section 5. MAINTENANCE AND REPAIRS.**

5.1 Industry shall at all times, and at its sole risk and expense, maintain (or cause to be maintained), repair (or cause to be repaired), the Premises in a safe and satisfactory condition, and in strict compliance with all applicable Legal Requirements (defined below), and in accordance with other Railroad requirements relating to the use, maintenance, and operation of the Premises and construction of the Track. Industry shall promptly make all necessary or desirable repairs and maintenance to the Premises. Maintenance, for purposes of this Lease, means keeping the Premises in good working order and condition, including without limitation: (a) providing proper drainage on the Premises; (b) keeping the Premises free and clear of snow, ice, vegetation, structures, and other obstacles; and (c) maintaining adequate grade crossing warning devices, passive warning signs, gates, fences, barriers, roadways, track drainage facilities, lighting and track and other signals, all as determined by Railroad in Railroad's sole discretion. The Track shall be maintained in accordance with the terms and conditions of the Track Agreement.

5.2 Industry shall keep and maintain any paved areas, sidewalks, curbs, landscaping and lawn parts of the Premises in a clean and orderly condition, and free of accumulation of dirt and rubbish. Industry shall not cause or permit, commit, or maintain any waste or nuisance in, on or about the Premises.

5.3 Railroad shall not have any liability or obligation to furnish or pay for any water, light, power, or any other services or facilities of whatsoever nature or to make any repairs or alterations of whatsoever nature in or to the Premises, including but not limited to structural repairs, or to maintain the Premises in any manner. Industry acknowledges that Railroad shall have no responsibility for management of the Premises.

5.4 Industry shall notify Railroad's representative, Roadmaster William Stubbs, at 198 ½ Right of Way, Shelby, MT 59474, telephone (406) 265-0318, five (5) days prior to commencing any Major Construction.

5.5 Notwithstanding anything contained herein to the contrary, in the event of any conflict between the terms of this Lease and the Track Agreement with regard to the use and maintenance of the Premises, the most stringent provision or requirement applicable to Industry will control.

## **Section 6. COMPLIANCE WITH LAWS.**

6.1 Industry shall be responsible for obtaining, without expense to Railroad, all necessary real property rights and public authority and permission, including without limitation applicable licenses and permits, for the maintenance and operation of the Premises and the construction of the Track (to the extent such rights, permissions, licenses and permits have not been previously obtained by Industry pursuant to its obligations under the Track Agreement), provided Industry obtains prior written consent from Railroad. Industry, at Industry's expense, shall at all times comply with the requirements of each such license and permit.

6.2 Industry shall comply with all Railroad requirements related to the use of the Premises. Industry further agrees to comply with all Legal Requirements applicable to Industry and the Premises, this Lease and Industry's activities and obligations hereunder, and shall have the sole responsibility for costs, fees, or expenses associated with such compliance. As used herein, the term "**Legal Requirements**" shall mean all applicable laws, statutes, regulations, ordinances, orders, covenants, restrictions, codes, rules or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over Industry, the Track, all other parts of the Premises, this Lease, and/or Industry's obligations under this Lease, and shall include all Environmental Laws.



6.3 Prior to entering the Premises, Industry shall and shall cause its contractor(s) to comply with all of Railroad's applicable safety rules and regulations. Industry shall provide safety orientation to its employees, contractors, agents and invitees entering upon the Premises for any purpose, which orientation shall include prohibitions against stopping and parking on any railroad tracks or otherwise Fouling any railroad tracks. In addition to and not in limitation of the foregoing:

- 6.3.1 Industry must ensure that each of its employees, contractors, agents and invitees entering upon the Premises to perform any Major Construction or other activity that involves taking the Track or any tracks of Railroad out of service completes the safety training program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Industry must ensure that each and every employee of Industry, its contractors, agents and invitees entering upon the Premises to perform any Major Construction or other activity that involves taking the Track or any tracks of Railroad out of service possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. The Safety Orientation must be renewed annually.
- 6.3.2 Prior to any contractor of Industry entering the Premises to perform any Major Construction or other activity that involves taking the Track or any tracks of Railroad out of service, Industry shall cause each such contractor to enter into and comply with Railroad's then-current standard Contractor's Right of Entry Agreement ("**Right of Entry Agreement**"). Railroad's standard Right of Entry Agreement at the Effective Date is in the form attached hereto as **Exhibit "D"** and incorporated herein by this reference.

## **Section 7. OPERATION AND USE OF PREMISES.**

7.1 If the Premises are used for receiving, forwarding, or storing Hazardous Materials, Industry agrees to comply with all applicable Legal Requirements and with Railroad's further requirements concerning the same.

7.2 If Industry desires to install any Facilities, Industry shall first submit in writing to Railroad the plans and specifications for such Facilities, and secure written approval from Railroad, which may be withheld in Railroad's sole discretion, before construction of any Facilities is undertaken by Industry.

7.3 Industry shall be responsible for the safe condition of the Facilities and shall construct, install, use, maintain, and repair any Facilities approved in advance by Railroad at Industry's sole risk and expense, in a manner and of materials satisfactory to Railroad. Industry, during the installation, construction, use, operation, renewal, relocation, modification, maintenance and repair of these Facilities, shall exercise utmost and extraordinary diligence to prevent damage to the property of Railroad or injury to its agents, employees, invitees and contractors.

7.4 If Industry installs any Facilities, Industry shall be solely responsible for assuring the safe and satisfactory condition of the same and shall not allow any Facilities to be a source of danger or environmental harm to the Premises, or interfere with the safe operations of the Track or any other part of the Premises. Industry shall also be solely responsible for assuring the safe and satisfactory condition of all of the Equipment and shall not allow any Equipment to be a source of danger to the safe operation of the Track. Before utilizing or unloading any Equipment spotted onto the Industry Track, Industry shall inspect the same and all other Equipment and Facilities for the safety of persons working on or about these items to assure compliance with the foregoing. Industry shall utilize all Facilities and Equipment so as not to negatively affect safe and efficient operation over the Track. In furtherance of the foregoing obligations of Industry but not in limitation of the same, Industry shall do, among others, the following things: (a) keep any gates across the Industry Track located on the Premises or any other part of the Premises open whenever necessary, in Railroad's sole judgment, to enable Railroad to safely and efficiently operate over the Track or any other part of the Premises; (b) keep unloading pits securely covered when not in actual use and at all times when the Track is being switched by Railroad; (c) keep all doors firmly secured, and adjustable loading docks at warehouses shall likewise be securely fastened in an upright position when not in actual use and at all times when the Track is being switched by Railroad; and (d) operate and maintain all other Facilities so as not to negatively affect the safe and efficient operation of Railroad over the Industry Track located on the Premises or any other part of the Premises.

7.5 Without relieving Industry from any of its obligations under this Lease, Railroad may refuse to enter

the Premises or use or enter the Facilities or contact the Equipment whenever Railroad, in its sole discretion, determines that the same is unsatisfactory for Railroad's operation, entry or contact. If and when Industry has remedied such condition to Railroad's sole satisfaction, Railroad may resume entry into the Premises or use of or entry into the Facilities or contact with the Equipment. Railroad's entry into the Premises or use of or entry into any Facility or contact with any Equipment with knowledge of an unsatisfactory condition is not a waiver of Industry's obligations contained herein or of Railroad's right to recover for or be indemnified and defended against damages to property or the environment, or injury to or death of persons, that may result therefrom.

7.6 It is understood by Industry that the Premises may be in dangerous proximity to railroad tracks, including the Track, and that persons and property, whether real or personal, on the Premises will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including sight clearance or vision obstruction problems at grade crossings on or adjacent to the Premises), and Industry enters into this Lease subject to such dangers.

- 7.7 Industry shall pay all taxes, assessments, levies, utilities, and other charges of every kind and character, whether foreseen or unforeseen, ordinary or extraordinary, which are attributable to the Term and may become due or levied against the Industry Track, any other part of the Premises, against Industry, against the business conducted on the Industry Track, or any other part of the Premises during the Term, even though such taxes, utilities or other charges may not become due and payable until after termination of this Lease. Industry waives all rights pursuant to all Legal Requirements to protest appraised values or receive notice of reappraisal regarding the Premises or the Track (including Railroad's personality), irrespective of whether Railroad contests the same.

7.8 Railroad may require Industry to use flaggers and otherwise implement all safety measures that Railroad deems appropriate in connection with the use of the Track by or for Industry. Without limitation to the foregoing, the following provisions shall apply to Industry and Industry's contractors:

7.8.1 In connection with any track or other property owned or controlled by Railroad outside of the Premises, Railroad may require for safety purposes that Industry, at its sole cost and expense, use Railroad's flaggers and provide lights, traffic control devices, automatic warning devices, or any such safety measure that Railroad deems appropriate in connection with the use of the Track by or for Industry. Industry shall reimburse Railroad within thirty (30) days of receipt of bills rendered therefor for all of Railroad's costs, including but not limited to the furnishing of Railroad's flaggers and any vehicle rental costs incurred. The cost of flagger services and other safety measures provided by Railroad, when deemed necessary by Railroad's representative, will be the sole responsibility of Industry. Flagger 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); Railroad and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for Railroad 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 7.8.1**.

7.8.2 In connection with (i) the Industry Track located on the Premises or any other part of the Premises; or (ii) any other track located on Industry-owned or -controlled property, or other property not owned or controlled by Railroad, Railroad may require for safety purposes that Industry, at its sole cost and expense, furnish qualified flaggers and provide lights, traffic control devices, automatic warning devices, or any such safety measure that Railroad deems appropriate in connection with the use of the Track by or for Industry.

7.9 Industry shall, at its sole expense, pay all costs for changes, repairs, relocations or alterations to the Industry Track located on the Premises if such changes, repairs, relocations or alterations: (i) are required to comply with any Legal Requirements, (ii) are requested by any governmental agency, or (iii) are made for any other reason beyond Railroad's reasonable control. Without limiting the generality of the foregoing, if the public authority having jurisdiction thereover orders the separation of the grade of the Industry Track located on the Premises and any street, road, highway, other rail line, or the like, Industry hereby consents to the removal and/or relocation of the Industry Track located on the Premises and shall reimburse Railroad all expenses in connection with the removal and/or relocation of said Industry Track.



7.10 Industry shall be solely responsible for the security of the Premises during the Term, including without limitation excluding third parties from the Premises.

## **Section 8. CONDITION OF PREMISES.**

8.1 Industry represents that the Premises, including without limitation the title thereto, the improvements and structures located on the Premises or adjoining the same, the environmental condition of the Premises, any subsurface conditions underlying the Premises, and the present uses of the Premises have been examined by Industry. Industry accepts the Premises in the condition in which they now are, without representation or warranty, expressed or implied, in fact or by law, by Railroad, and without recourse to Railroad as to the title thereto, the nature, condition or usability thereof, or the uses to which the Premises may be put. By taking possession or commencing use of the Premises, Industry: (i) acknowledges that it is relying on its own inspections of the Premises and not on any representations from Railroad regarding the Premises; (ii) establishes conclusively that the Premises are at such time in satisfactory condition and in conformity with this Lease and all zoning or other governmental requirements in all respects; and (iii) accepts the Premises in its condition as of the Effective Date on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, subject to all faults and infirmities and the environmental condition of the Premises, whether now or hereafter existing. Industry expressly waives any and all claims that Railroad has any duty or obligation to inform or warn Industry of patent or latent hazards, defects or environmental conditions, if any, or to make the Premises free of same, and Industry expressly assumes these obligations, whether or not applicable law imposes such requirements on Railroad. Nothing contained in this **Section 8** affects the commencement of the Term or the obligation of Industry to pay rent as provided above.

8.2 Industry represents and warrants to Railroad as follows: (a) Industry does not intend to, and will not, use the Premises for any purposes other than the Permitted Uses set forth in **Section 2**; (b) Industry has previously disclosed in writing to Railroad all special requirements (but Railroad shall have no responsibility relative to any such special requirement), if any, which Industry may have in connection with its intended uses of the Premises; and (c) Industry has undertaken and has reasonably and diligently completed all appropriate investigations regarding the suitability of the Premises for Industry's intended uses. Industry shall comply with any covenants, conditions or restrictions now or hereafter affecting the Premises, and acknowledges that Railroad may place any covenants, conditions or restrictions of record affecting the Premises prior to or during the Term. In such event, this Lease will be subject and subordinate to all of the same without further action by either party, including, without limitation, the execution of any further instruments. Industry acknowledges that Railroad has given material concessions for the acknowledgments and provisions contained in this **Section 8**, and that Railroad is relying on these acknowledgments and agreements and would not have entered into this Lease without such acknowledgments and agreements by Industry.

8.3 Except as may be expressly provided elsewhere in this Lease or as otherwise approved by Railroad in writing in advance:

- (a) Industry 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 Railroad's prior written consent; and
- (b) All alterations, additions, or betterments to the Premises, other than the rails and the ties, shall upon completion of construction become the sole property of Railroad.

Upon completion of the construction of the Track on the Premises pursuant to this Lease, such track shall be considered "Third Party Track" or "Industry Track", as applicable, for purposes of the Track Agreement and this Lease.

**Section 9. WATER RIGHTS AND USE OF WELLS.** This Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by Railroad which may be appurtenant to the Premises. All right, title, and interest in and to such water is expressly reserved unto Railroad, and the right to use same or any part thereof may be obtained only by the prior written consent of Railroad. Industry shall not use, install or permit to be installed or used any wells on the Premises without the prior written consent of Railroad, which consent is in Railroad's sole and absolute discretion.

**Section 10. DEFINITION OF COST AND EXPENSE.**

10.1 For the purpose of this Lease, "cost" or "costs", "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

10.2 All invoices are due thirty (30) days after the date of invoice. If Industry shall fail to pay any monies due to Railroad within thirty (30) days after the invoice date, then Industry shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Industry at an annual rate equal to twelve percent (12%), or the maximum rate permitted by law, whichever is less.

**Section 11. RIGHT OF RAILROAD TO USE; ACCESS TO PREMISES BY RAILROAD.**

11.1 All rights granted to Industry hereunder are subject and subordinate to the prior and continuing right of Railroad, without liability to Industry or any other party for compensation or damages thereto: (a) to use the Premises in any manner whatsoever; (b) to construct, maintain, renew, use, operate, change, modify or relocate any existing fences, pipelines, communication facilities, fiber optic lines, wireless towers, telephone, power or other transmission lines, or appurtenances and other facilities or structures of like character upon, over, under or across the Premises, without payment of any sum for any damage, including damage to growing crops; (c) to allow to be constructed upon the Premises or its right-of-way any other facilities and to use its right-of-way in any manner as Railroad in its sole discretion deems appropriate; (d) to take all required materials and equipment onto the Premises, and perform all required work therein, for the purpose of making alterations, repairs, or additions to the Premises as Railroad may elect if Industry defaults in its obligation to do so; (e) to enter the Premises to show the Premises to holders of encumbrances on the interest of Railroad in the Premises, or to prospective purchasers or mortgagees of the Premises; (f) to exhibit the Premises to prospective lessees; (g) to enter the Premises and place signage thereon to advertise that the same is available for lease or sale; and (h) to enter the Premises at any time to inspect the Premises. All such entries and activities described in (a) - (h) above shall be without any rebate of rent to Industry for any loss of occupancy of the Premises, or damage, injury or inconvenience thereby caused; provided that Railroad agrees to use commercially reasonable efforts to avoid material interference with Industry's use of the Track and all other parts of the Premises as described herein.

11.2 For purposes stated in this **Section 11**, Railroad will at all times have keys with which to unlock all of the doors and gates on the Premises, and Industry will not change or alter any lock thereon without Railroad's permission.

11.3 In an emergency, Railroad will be entitled to use any and all means that Railroad may deem proper to open doors, gates, and other entrances to obtain entry to the Premises. Any entry to the Premises by Railroad as described in this **Section 11** shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or any eviction of Industry from the Premises, and any damages caused on account thereof will be paid by Industry.

**Section 12. CLEARANCES.** Industry shall not: (a) place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, container, storage vessel, above-ground or underground tank, or other obstruction (i) within eight and one-half (8-1/2) feet laterally from the center (nine and one-half (9-1/2) feet on either side of the centerline of curved track) or (ii) within twenty-three and one-half (23-1/2) feet vertically from the top of the rail of any track, or (b) place or allow to be placed any freight cars, materials, machinery, or other equipment on the Premises within two hundred fifty (250) feet of either side of any at-grade crossings when there is also an adjacent track of any type belonging to any party (collectively, "**Minimal Clearances**"), provided that if any Legal Requirement requires greater clearances than those provided for in this **Section 12**, then Industry shall strictly comply with such Legal Requirement. However, vertical or lateral clearances that are less than the Minimal Clearances but are in compliance with applicable Legal Requirements will not be a violation of this **Section 12**, so long as Industry strictly complies with the terms of any such Legal Requirement and posts a sign on the Premises in a location approved by Railroad clearly noting the existence of such reduced clearance. Any such sign shall be painted with black and white reflective paint. Railroad or Industry's operation over the Track or Premises with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Industry contained in this **Section 12** or of Railroad's right to recover for and be indemnified and defended against such damages to property or the environment, or injury to or death of persons, that may result therefrom.



**Section 13. INDEMNIFICATION.**

13.1 The provisions of this **Section 13** shall apply to Industry throughout the Term; provided, however, the provisions of **Exhibit "B"**, attached hereto and incorporated herein by this reference, shall also apply to Industry during: (i) all periods of Major Construction, to the extent Industry self-performs all or any portion of such Major Construction, and (ii) all periods during which Industry's contractor(s) are on the Premises and Industry has failed to cause its contractor(s) to timely enter into and fully comply with Railroad's Right of Entry Agreement.

13.2 For purposes of this Lease: (a) **"Indemnitees"** means Railroad and Railroad'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, taxes, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation and governmental oversight costs) environmental or otherwise; and (c) **"Industry Parties"** means Industry and Industry'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.

**13.3**

**13.3.1 SUBJECT TO THE PROVISIONS OF SECTIONS 16.6 AND 16.7 BELOW REGARDING PRE-EXISTING CONDITIONS (AS HEREINAFTER DEFINED), BUT OTHERWISE TO THE FULLEST EXTENT PERMITTED BY LAW, INDUSTRY SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, FOREVER WAIVE ANY AND ALL CLAIMS IT MAY HAVE OR WHICH MAY ARISE OUT OF THE ENVIRONMENTAL CONDITION OF THE PREMISES. THIS WAIVER IS APPLICABLE REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER STANDARD; AND IS APPLICABLE REGARDLESS OF WHETHER SUCH CLAIMS ARISE OUT OF COMMON LAW OR OUT OF CERCLA (AS DEFINED BELOW) OR ANY OTHER ENVIRONMENTAL LAW. IN NO EVENT WILL RAILROAD BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES AS BETWEEN THE TWO PARTIES.**

**13.3.2 FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, INDUSTRY IS CONSIDERED FOR PURPOSES OF APPLYING ENVIRONMENTAL LAWS TO BE THE OWNER AND OPERATOR OF THE PREMISES FOR THE ENTIRE PERIOD INDUSTRY OCCUPIES OR OTHERWISE USES THE PREMISES. INDUSTRY INDEMNIFIES, HOLDS HARMLESS, AND SHALL DEFEND INDEMNITEES FOR ANY LIABILITIES (AS DEFINED IN SECTION 13.2 ABOVE) THAT ARISE OUT OF INDEMNITEES' STATUS AS AN OWNER OR OPERATOR OF THE PREMISES FOR THE ENTIRE PERIOD INDUSTRY OCCUPIES OR OTHERWISE USES THE PREMISES. FURTHER, INDUSTRY INDEMNIFIES, HOLDS HARMLESS, AND SHALL DEFEND INDEMNITEES AGAINST ANY CLAIMS THAT ANY INDEMNITEE IS A GENERATOR, ARRANGER OR TRANSPORTER BY VIRTUE OF ITS ENTERING INTO THIS LEASE. NOTHING IN THIS LEASE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON-CARRIER DEFENSES AND THE LEASE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THE LEASE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON-CARRIER DEFENSES, SUBJECT TO THE PROVISIONS OF SECTIONS 16.6 AND 16.7 BELOW REGARDING PRE-EXISTING CONDITIONS, INDUSTRY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LEASE.**

**13.4 IF ANY EMPLOYEE OF AN INDUSTRY PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, INDUSTRY SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES (AS DEFINED IN SECTION 13.2 ABOVE) ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, LIABILITIES UNDER 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. INDUSTRY'S OBLIGATIONS UNDER THIS SECTION 13.4 ARE REGARDLESS OF ANY ACTUAL OR ALLEGED NEGLIGENCE, FAULT, OR COMPARATIVE FAULT OF ANY INDEMNITEE RELATED TO SUCH CAUSES OF ACTION.**



13.5 Upon written notice from Railroad, Industry agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this Lease for which Industry has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Industry 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.

**Section 14. PERSONAL PROPERTY WAIVER. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE TRACK OR PREMISES WILL BE AT THE RISK OF INDUSTRY ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

**Section 15. INSURANCE.**

15.1 The provisions of this **Section 15** shall apply to Industry throughout the Term; provided, however, the provisions of **Exhibit "C"**, attached hereto and incorporated herein by this reference, shall also apply to Industry during: (i) all periods of Major Construction, to the extent Industry self-performs all or any portion of such Major Construction, and (ii) all periods during which Industry's contractor(s) are on the Premises and Industry has failed to cause its contractor(s) to timely enter into and fully comply with Railroad's Right of Entry Agreement. Throughout the Term, Industry shall, at its sole cost and expense, procure and maintain the following insurance coverage:

**15.2 Commercial General Liability ("CGL") Insurance.**

- (a) The policy will provide a minimum coverage of \$1,000,000 each occurrence and an aggregate limit of at least \$2,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Industry. 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.
  - Products and completed operations.
- (b) The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
  - Additional insured endorsement in favor of and acceptable to BNSF.
  - Waiver of subrogation in favor of and acceptable to BNSF.
- (c) The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(ies) are intended to apply to employees of the policy holder and will not apply to BNSF employees.
- (d) No other endorsements that limit coverage with respect to Industry's obligations under this Lease may be included on the policy.

**15.3 Workers' Compensation and Employers' Liability Insurance.**

- (a) This insurance shall include coverage for, but not limited to:
  - Industry's statutory liability under the workers' compensation laws of the state(s) in which the work is to be performed. The policy will cover all of Industry'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 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 BNSF.

**15.4 Other Requirements.**

- (a) Any insurance policy shall be written by a reputable insurance company 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. If Industry subcontracts any portion of the operation, Industry shall require that the subcontractor provide and maintain insurance coverage as set forth herein.
- (b) Prior to commencing operations, Industry shall furnish to BNSF an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- (c) Industry agrees to provide evidence to BNSF that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage.
- (d) In the event of a claim or lawsuit involving BNSF arising out of this Lease, Industry will make the policy covering such claim or lawsuit available to BNSF.
- (e) Failure to provide evidence of insurance as required by this **Section 15** shall entitle, but not require, BNSF to terminate this Lease immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Industry's obligations hereunder. The fact that Industry obtains insurance (including, without limitation, self-insurance) shall not release or diminish Industry's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of this Lease. Damages recoverable by BNSF shall not be limited by the amount of the required insurance coverage.

15.5 For purposes of this **Section 15**, BNSF shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns, and affiliates of each. These insurance provisions are intended to be a separate and distinct obligation on the part of the Industry. Therefore, these provisions shall be enforceable and Industry shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

## **Section 16. ENVIRONMENTAL.**

16.1 Industry shall strictly comply with all Environmental Laws (defined below). Industry shall not (i) maintain any treatment, storage, transfer or disposal facility, or underground storage tank (or any ancillary equipment and piping related thereto), as defined by Environmental Laws, on the Premises or (ii) install any wells on the Premises. Industry shall not release or suffer the release of oil or Hazardous Materials on, about or affecting the Premises. Industry shall immediately report to all governing and regulatory agencies, as appropriate, any spill or release as required by applicable Environmental Laws and Legal Requirements.

16.2 Industry shall give Railroad immediate notice to Railroad's Resource Operations Center at (800) 832-5452 of any release of Hazardous Materials on, from, or affecting the Premises. Any violation or alleged violation of Environmental Laws with respect to Industry's use of the Premises must be promptly reported to Railroad's Manager Environmental Leases at EnvironmentalLeases@BNSF.com. Industry also shall give prompt notice to EnvironmentalLeases@BNSF.com of all measures undertaken by or on behalf of Industry to investigate, remediate, respond to or otherwise cure such release or violation and shall provide copies of all reports and/or data regarding any investigations or remediations of the Premises. If Railroad has notice from Industry or otherwise of a release or violation of Environmental Laws on, from, or otherwise affecting the Premises which occurred or may occur during Industry's occupancy of the Premises, Railroad may require Industry, at Industry's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure each such release or violation on, from, or otherwise affecting the Plant, Premises, or Railroad's adjoining property or Railroad's right-of-way.

16.3 Industry shall promptly report to Railroad's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Plant or Premises which create a risk of harm to persons, property or the environment, including but not limited to releases or violations of Environmental Laws, and shall take all reasonable or required actions to mitigate injury or damage to persons, property or the environment arising out of such conditions or activities; provided, however, that Industry's reporting to Railroad shall not relieve Industry of any obligation whatsoever imposed on it by this Lease or by any Legal Requirement. Industry shall promptly respond to Railroad's request for information regarding said conditions or activities.

16.4 Hazardous Materials are not permitted on the Premises except as otherwise specifically described in this Lease.

16.4.1 Industry expects to use on the Premises the Hazardous Materials listed in the chart below entitled "Permitted Substances", and to store on the Premises the Hazardous Materials listed in the chart below entitled "Permitted Substances for Storage" (such permitted materials being collectively referred to herein as the "**Permitted Substances**"); provided, however, that Industry may only use and store the listed Permitted Substances in such amounts as are reasonable and necessary for the Permitted Uses. All such Permitted Substances shall be placed, used, and stored in strict accordance with all Environmental Laws.

Permitted Substances
None

Permitted Substances for Storage
None

16.4.2 Use or storage on the Premises of any Hazardous Materials not disclosed is a breach of this Lease. Notwithstanding the foregoing provisions or anything else contained herein to the contrary, the following materials and substances are strictly prohibited from the Premises at all times: chlorinated solvents (including, but not limited to, tetrachloroethene, trichloroethene, methylene chloride, vinyl chloride, carbon tetrachloride, and other such compounds), recalcitrant industrial-organic solvents (such as 1,4-dioxane), Poison by Inhalation or Toxic by Inhalation (PIH, TIH) materials, anhydrous ammonia, and perfluorinated ("**PFAS**") chemicals (including perfluorooctane sulfonate ("**PFOS**") and perfluorooctanoic acid ("**PFOA**").

16.5 In addition to the rights set forth in **Section 11** above, Railroad and its agents and representatives shall have a right of entry and access to the Premises: (i) at any time an actual or suspected emergency exists and (ii) at any reasonable time, upon prior written notice, and, at Industry's election, with a representative of Industry present, for the purposes of (a) inspecting the use, storage, and documentation relating to Hazardous Materials or environmental matters maintained by Industry or any occupant of the Premises and (b) ascertaining whether Industry is in compliance with its obligations under this **Section 16**.

16.6 Within forty-five (45) days after the Effective Date, Industry has the right, at its option, to conduct an environmental audit of the Premises for use as a baseline ("**Baseline Audit**"). If Industry elects to perform a Baseline Audit, the following requirements shall apply: (i) the cost of the Baseline Audit shall be borne by Industry; (ii) Industry agrees to use a third-party environmental professional acceptable to Railroad to perform such Baseline Audit; (iii) prior to commencement of the Baseline Audit, Industry shall provide to Railroad at Env-Lease-Term@bnsf.com, and receive Railroad's written approval of, a work plan to conduct such Baseline Audit, which shall include an inspection and sampling of soil and/or groundwater from all areas of the Premises with an emphasis on operational areas; (iv) the Baseline Audit shall be conducted to Railroad's satisfaction; and (v) Industry agrees to promptly provide a copy of the final environmental Baseline Audit report to Railroad. If such Baseline Audit reveals an environmental condition(s) in existence at the date of the Baseline Audit ("**Pre-Existing Condition**") that is not satisfactory to either party, either party has the right, which must be exercised by written notice to the other party on or before ninety (90) days after the Effective Date, to terminate this Lease. Such termination shall be effective thirty (30) days from receipt of the written notice by the other party. Upon such termination, the parties shall have no further obligations hereunder except for those that have accrued prior to such termination. Except to the extent caused, aggravated, or contributed to by an Industry Party, Industry shall not be responsible for any Pre-Existing Condition on the Premises as shown in the Baseline Audit report.

16.7 Regardless of whether Industry elects to have a Baseline Audit performed, prior to termination of this Lease, Industry shall conduct an environmental audit of the Premises to determine if any noncompliance or environmental damage to the Premises has occurred during Industry's occupancy thereof ("**Exit Audit**"), unless otherwise notified by Railroad in writing. The following requirements shall apply to the Exit Audit: (i) the cost of the Exit Audit shall be borne by Industry; (ii) Industry agrees to use a third-party environmental professional acceptable to Railroad to perform such Exit Audit; (iii) prior to commencement of the Exit Audit, Industry shall provide to Railroad at Env-Lease-Term@bnsf.com, and receive Railroad's written approval of, a work plan to conduct such Exit Audit, which shall include an inspection and sampling of soil and/or groundwater from all areas of the Premises with an emphasis on operational areas; (iv) the Exit Audit shall be conducted to Railroad's satisfaction; and (v) Industry agrees to promptly provide a copy of the final environmental Exit Audit report to Railroad. Industry shall pay all



expenses that may be required to correct: (a) any noncompliance or environmental condition on the Premises shown in the Exit Audit but not shown on the Baseline Audit as a Pre-Existing Condition; and/or (b) any aggravation of or contribution to a Pre-Existing Condition. Notwithstanding the foregoing, however, if Industry did not elect to perform a Baseline Audit, then Industry shall pay all expenses that may be required to correct any noncompliance or environmental conditions on the Premises shown on the Exit Audit. Industry acknowledges that it remains responsible for any noncompliance or environmental damage during Industry's use and occupancy of the Premises that was not discovered during the Exit Audit or that was not completely investigated or remediated by Industry (including, without limitation, any noncompliance with Environmental Laws and any release of oil or any other Hazardous Material on the Premises during Industry's use and occupancy of the Premises), and that this **Section 16.7** does not relieve Industry of that responsibility.

16.8 If during construction or maintenance of any Improvements, or as a result of any other soil-disturbing work on or about the Premises, soils, materials, groundwater, or other waste are generated and/or removed, Industry, at Industry's sole cost and expense, must ensure that all such soils, materials, groundwater, and waste are properly characterized, managed, transported, and disposed at an appropriately-licensed facility in accordance with all applicable Environmental Laws. Industry shall be the "Generator," as defined in Environmental Laws, of any such soils, materials, groundwater, or waste. All fill materials to be imported to Railroad's property shall be certified clean fill or from a Railroad-approved source, and supporting documentation shall be provided to Railroad upon request.

16.9 Notwithstanding anything to the contrary in this **Section 16** or elsewhere in the Lease, the parties agree that Railroad has no duty or obligation to monitor Industry's use of the Premises to determine Industry's compliance with Environmental Laws or otherwise, it being solely Industry's responsibility to ensure that Industry's use of the Premises is compliant. Neither the exercise nor the failure by Railroad to exercise any rights granted in this Section will alter the liability or obligations of Industry as provided in this Lease.

16.10 All of Industry's obligations under this **Section 16** shall survive termination of this Lease.

16.11 "**Environmental Law(s)**" shall mean any federal, state, or local law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq. ("**CERCLA**"); the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, or local environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

16.12 "**Hazardous Material(s)**" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, or local governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

**Section 17. NO WARRANTIES. RAILROAD'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LEASE, IF ANY, AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY RAILROAD OTHER THAN THOSE CONTAINED IN THIS LEASE. INDUSTRY HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE TRACK OR PREMISES WHICH MAY**

**EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**Section 18. QUIET ENJOYMENT.** RAILROAD DOES NOT WARRANT ITS TITLE TO THE TRACK OR PREMISES NOR UNDERTAKE TO DEFEND INDUSTRY IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. This Lease is made subject to all outstanding rights or interests of others. If the Premises and/or Track are subsequently found to be subject to prior claim, this Lease shall terminate immediately on notice to that effect from Railroad. Industry accepts this Lease subject to that possibility and its effect on Industry's rights and ownership of any Facilities or any other improvements constructed or installed on the Premises by or for Industry, including without limitation the Industry Track (collectively, "**Industry Improvements**"). In case of eviction of Industry by anyone other than Railroad, or anyone owning or claiming title to or any interest in the Premises, Railroad shall not be liable to Industry for damage of any kind (including any loss of ownership rights to the Industry Improvements) or to refund any rent paid hereunder, except to return the unearned portion of any rent paid in advance.

**Section 19. LIENS.** Industry shall promptly, and in any case no later than ten (10) days after notice of the filing thereof, pay and discharge any and all liens arising out of any Major Construction, Routine Activities or any other activities done, suffered or permitted to be done by Industry on the Track or Premises, and shall indemnify, defend and hold harmless Railroad from any such liens. Railroad is hereby authorized to post any notices or take any other action upon or with respect to the Track or Premises that is or may be permitted by law to prevent the attachment of any such liens to the Track or Premises; provided, however, that failure of Railroad to take any such action shall not relieve Industry of any obligation or liability under this **Section 19** or any other section of this Lease.

**Section 20. DAMAGE OR DESTRUCTION.** If at any time during the Term, the Track or Premises are damaged or destroyed by fire or other casualty, then Railroad, at its sole option, has the right to either: (i) terminate this Lease or (ii) repair and reconstruct the Premises to substantially the same condition in which the Premises existed immediately prior to the damage or destruction, except that Railroad is not required to: (a) repair, reconstruct or otherwise restore any Industry Improvements, or (b) repair, replace or restore any personal property, furniture, trade fixtures, or office equipment located on the Premises and removable by Industry under the provisions of this Lease.

**Section 21. EMINENT DOMAIN.** If any part of the Premises is taken by eminent domain, then Railroad, at its sole option, has the right to either: (i) terminate this Lease or (ii) continue the Lease in effect. If Railroad elects to continue the Lease, rent will be reduced in proportion to the area of the Premises taken by eminent domain, and Railroad shall repair any damage to the Premises resulting from the taking. All sums awarded or agreed upon between Railroad and the condemning authority for the taking of the interest of Railroad or Industry, whether as damages or as compensation, will be the property of Railroad; without prejudice, however, to claims of Industry against the condemning authority for moving costs and the unamortized cost of Industry Improvements paid for by Industry and taken by the condemning authority. If this Lease is terminated under this **Section 21**, rent will be payable up to the date that possession is taken by the condemning authority, and Railroad shall refund to Industry any prepaid unaccrued rent less any sum then owing by Industry to Railroad.

**Section 22. DEFAULT.** The following events shall constitute defaults hereunder:

- (a) creating or allowing to remain any condition, including without limitation, any environmental condition other than a Pre-Existing Condition, on, about or affecting the Track or Premises, which in Railroad's sole judgment interferes with or endangers Railroad's operations;
- (b) assignment or transfer by operation of law of Industry's rights or obligations under this Lease in violation of **Section 24** below;
- (c) any default on any of the covenants or agreements of Industry contained in this Lease; or
- (d) any default on any of the covenants or agreements of Industry contained in the Track Agreement that persists beyond all applicable grace or cure periods.

**Section 23. REMEDIES; TERMINATION.**

23.1 In addition to the parties' termination rights set forth elsewhere in this Lease, and in addition to all other remedies available at law or in equity, Railroad may, without incurring any liability to Industry, terminate this Lease and discontinue operation over the Track effective immediately by written notice to Industry, if any of the following events occurs:



- (i) Any default as described in **Section 22**, other than a default under **Section 22(a)** or **Section 22(c)** occurs.
- (ii) Any default as described in **Section 22(a)** occurs and Industry does not commence to immediately cure such default and pursue such cure to completion within two (2) calendar days after the date that is the earlier of: (1) the date that Industry becomes actually aware of such default or (2) the date that Industry receives written notice from Railroad of such default (all provided that, in accordance with **Section 7.5** above, Railroad shall have the right to immediately suspend rail service and remove its equipment and employees from the Track, regardless of whether Industry has had notice and/or opportunity to cure such default as set forth above).
- (iii) Any default as described in **Section 22(c)** occurs and persists for thirty (30) days following written notice from Railroad.
- (iv) Industry fails to utilize rail service from Railroad to or from the Plant for eight (8) months in any twelve (12) month period.
- (v) Industry abandons or vacates the Premises.
- (vi) Railroad is authorized by the Surface Transportation Board to abandon its line to which the Track is connected.
- (vii) Railroad is dispossessed of the right to operate over the Track or its connecting track or any part thereof.
- (viii) the Third Party Track Agreement expires, is terminated or is materially modified.
- (ix) Industry fails to provide evidence of insurance as required by **Section 15**.
- (x) Any default in the Track Agreement that persists beyond all applicable grace or cure periods, or any expiration or termination of the Track Agreement.

23.2 Upon the expiration or earlier termination of this Lease as provided herein, Railroad at its sole discretion shall have the right to: (a) require Industry to transfer title to that portion of the Industry Track located upon the Premises, and any Facilities or other Industry Improvements located upon, over, or under the Premises, to Railroad, and upon such transfer Railroad shall pay Industry the salvage value of the same, and Industry, at Railroad's request and Industry's sole cost and expense, shall convey to Railroad by bill of sale all such Facilities and Industry Improvements required by Railroad to be transferred; or (b) require Industry to remove, at its sole cost and expense, that portion of the Industry Track located upon the Premises and any Facilities, Equipment or other Industry Improvements upon, over, or under the Premises, and to restore the Premises to substantially the state in which they were on the Effective Date of this Lease or otherwise to Railroad's reasonable sole satisfaction. If Railroad elects option (b) and Industry fails within thirty (30) days after the date of such expiration or termination to make the removal and restoration, then Railroad may do so itself. In such event Industry shall, within thirty (30) days after receipt of a bill therefor, reimburse Railroad for all costs incurred by Railroad in connection therewith. Industry's obligations under this **Section 23.2** shall expressly survive termination of this Lease.

23.3 Industry hereby agrees to waive and release all claims, rights, and causes of action that Industry has, may have, or may assert against Railroad because of the discontinuance of operation and/or removal of the Track as provided in this **Section 23**.

23.4 Upon expiration of the time specified in any notice of termination, this Lease and all rights of Industry shall absolutely cease (except for any rights and obligations that expressly survive this Lease).

## **Section 24. ASSIGNMENT/SUBLETTING.**

24.1 This Lease will inure to the benefit of and be binding upon the successors and approved assigns of the parties hereto; provided, however, that Industry may not sell, assign, transfer, or hypothecate this Lease or sublet all or any part of the Premises or any interest herein (either voluntarily or by operation of law) without the prior written consent of Railroad, which consent shall not be unreasonably withheld. Any attempted assignment by Industry in violation of this **Section 24** shall be absolutely void. For purposes of this **Section 24**, the word "assign" shall include without limitation (a) any sale of the equity interests of Industry following which the equity interest holders of Industry immediately prior to such sale own, directly or indirectly, less than fifty percent (50%) of the combined voting power of the outstanding voting equity interests of Industry, (b) any sale of all or substantially all of the assets of (i) Industry and (ii) Industry's parent and subsidiaries (to the extent such entities exist), taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Industry, except for a reorganization, recapitalization, merger or consolidation following which the equity interest holders of Industry immediately prior to

such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least fifty percent (50%) of the combined voting power of the outstanding voting equity interests of Industry or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation. Either party hereto may assign any receivables due to them under this Lease; provided, however, that such assignments will not relieve the assignor of any of its rights or obligations under this Lease. This Lease cannot be assigned or transferred independently from the Track Agreement.

24.2 Notwithstanding the foregoing, Railroad consents in advance to an assignment by Industry of this Lease to any entity who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Industry, where the term "controls" (including, with correlative meaning, the terms "controlled by" and "under common control with") means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise; provided that (i) Industry gives Railroad thirty (30) days' prior written notice of such assignment and (ii) Industry and such assignee execute Railroad's then-standard Consent to Assignment form, which shall include, without limitation, an express assumption by such assignee of all of Industry's covenants, duties, and obligations hereunder and any updates which have been made to Railroad's then-standard form of Lease of Land.

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

**Section 25. NOTICES.** Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Railroad: BNSF Railway Company  
2650 Lou Menk Drive  
Fort Worth, TX 76131-2380  
Attn.: CRE-D - Track Agreements

with a copy to: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive  
Fort Worth, TX 76131-2380  
Attn.: Track Agreements

If to Industry: City of Shelby  
112 1st St. S.  
Shelby, MT 59474-1954  
Attn.: Jade Goroski

**Section 26. SUBORDINATION; ATTORNMENT; ESTOPPEL CERTIFICATES.**

26.1 Upon written request of Railroad, or Railroad's mortgagee, or the beneficiary of a deed of trust of Railroad, or lessor of Railroad, Industry will subordinate its rights pursuant to this Lease in writing to the lien of any mortgage, deed of trust, declaration of covenants, conditions and restrictions or the interest of any lease in which Railroad is the lessee (or, if so requested, cause the lien of said mortgage, deed of trust, declaration of covenants, conditions and restrictions or the interest of any lease in which Railroad is the lessee to be subordinated to this Lease), and upon any building hereafter placed upon the land of which the Premises are a part, and to all advances made or thereafter to be made upon the security thereof.

26.2 If any proceedings are brought for foreclosure (or a conveyance in lieu of foreclosure), or in the event of the exercise of the power of sale under any mortgage or deed of trust made by Railroad covering the Premises, Industry shall attorn to the purchaser or lessor under this Lease upon such foreclosure, sale or lease termination and



recognize the purchaser or lessor as Railroad under this Lease, provided that the purchaser or lessor shall acquire and accept the Premises subject to this Lease.

26.3 Industry, within ten (10) days from receipt of Railroad's written request, shall execute, acknowledge and deliver to Railroad a written statement certifying (a) that this Lease is in full force and effect, without modification (except as identified in the estoppel certificate), (b) that there are no uncured defaults in Railroad's performance (or stating with specificity the nature of any alleged default) and that Industry has no right of offset, counterclaim or deduction against rental and any other amount owed hereunder, (c) the date to which rent and other charges have been paid, and (d) any other matters reasonably requested by Railroad. Failure of Industry to execute and deliver this statement within said ten (10) days shall constitute Industry's acknowledgement that: (i) the Lease is in full force and effect, without modification except as represented by Railroad, (ii) no rent has been paid more than thirty (30) days in advance, and (iii) no defaults exist with respect to the Lease.

## **Section 27. MISCELLANEOUS.**

27.1 It is understood and agreed that this Lease shall not be recorded in the real property records in the county or counties in which the Premises are located or otherwise placed of public record.

27.2 All questions concerning the interpretation or application of provisions of this Lease shall be decided according to the laws of the State of Texas.

27.3 To the maximum extent possible, each provision of this Lease shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Lease 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 Lease.

27.4 This Lease, together with the Track Agreement, is the full and complete agreement between Railroad and Industry with respect to all matters relating to the lease of the Premises and the construction, maintenance and operation of the Track located thereon, and supersedes any and all other agreements between the parties hereto relating to lease of the Premises. However, nothing herein is intended to terminate any surviving obligation of Industry or Industry's obligation to defend and hold Railroad harmless in any prior written agreement between the parties, including, but not limited to, the Track Agreement.

27.5 Neither termination nor expiration of this Lease will release either party from any liability or obligation under this Lease, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration of this Lease, or, if later, the date when the Premises are restored in accordance with the applicable provisions of this Lease, the Track Agreement or any other written agreement between the parties.

27.6 One or more waivers of any covenant, term, or condition of this Lease by Railroad shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by Railroad to or of any act by Industry requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act. The remedies set forth hereunder shall be in addition to, and not in limitation of, any other remedies that Railroad may have at law or in equity.

27.7 If Industry consists of two or more parties, all covenants and agreements of Industry herein contained shall be the joint and several covenants and agreements of such parties.

27.8 The parties acknowledge that each party and their counsel have reviewed and revised this Lease and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any amendments or exhibits hereto.

27.9 In this Lease, the use of one gender shall include the other gender; and the singular shall mean the plural, and vice versa, all as the context may require.

27.10 This Lease 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 Lease 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.

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

27.12 The parties acknowledge that Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

27.13 Except as may be elsewhere specifically provided in this Lease, if either party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation ("**Force Majeure**"), such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay. The party claiming Force Majeure shall take commercially reasonable steps to remove the Force Majeure event, and shall promptly notify the other party within a period of five (5) days, excluding weekends and holidays, when it learns of the existence of a Force Majeure condition and will similarly notify the other party within a period of five (5) days, excluding weekends and holidays, when a Force Majeure is terminated.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this Lease to be effective as of the Effective Date.

**RAILROAD:** BNSF Railway Company, a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INDUSTRY:** City of Shelby, a Montana incorporated municipality

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT "A"**

Description/Depiction of the Premises

*[attach prior to execution]*



**EXHIBIT "B"****Indemnification Provisions Applicable During Major Construction**

In addition to the provisions of **Section 13** above, the provisions of this **Exhibit "B"** shall apply to Industry during: (i) all periods of Major Construction, to the extent Industry self-performs all or any portion of such Major Construction, and (ii) all periods during which Industry's contractor(s) are on the Premises and Industry has failed to cause its contractor(s) to timely enter into and fully comply with Railroad's Right of Entry Agreement.

**1. TO THE FULLEST EXTENT PERMITTED BY LAW, INDUSTRY 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 OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**

- 1.1 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LEASE, INCLUDING WITHOUT LIMITATION ANY INDUSTRY PARTY'S OCCUPATION AND/OR USE OF THE PREMISES OR OTHER PROPERTY OF ANY INDEMNITEE, AND/OR ANY USE OF AND/OR OPERATION BY ANY INDEMNITEE UPON INDUSTRY'S PROPERTY,**
- 1.2 SUBJECT TO THE PROVISIONS OF SECTIONS 16.6 AND 16.7 OF THE LEASE REGARDING PRE-EXISTING CONDITIONS, THE ENVIRONMENTAL CONDITION AND STATUS OF THE TRACK, ANY OTHER PART OF THE PREMISES, OR OTHER PROPERTY OF ANY INDEMNITEE CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, BY ANY INDUSTRY PARTY, INCLUDING ANY OFF-SITE MIGRATION,**
- 1.3 THE ENVIRONMENTAL CONDITION AND STATUS OF INDUSTRY'S PLANT, INCLUDING ANY OFF-SITE MIGRATION, OR**
- 1.4 ANY ACT OR OMISSION OF ANY INDUSTRY PARTY.**

**2. THE FOREGOING OBLIGATIONS OF INDUSTRY SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, OR TO LIABILITIES WHOLLY CAUSED BY THE SOLE NEGLIGENCE OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER NEGLIGENCE OF ANY INDEMNITEE.**

**EXHIBIT "C"****Insurance Provisions Applicable During Major Construction**

In addition to the provisions of **Section 15** above, the provisions of this **Exhibit "C"** shall apply to Industry during: (i) all periods of Major Construction, to the extent Industry self-performs all or any portion of such Major Construction, and (ii) all periods during which Industry's contractor(s) are on the Premises and Industry has failed to cause its contractor(s) to timely enter into and fully comply with BNSF's Right of Entry Agreement.

Industry must, at its sole cost and expense, procure and maintain the following insurance coverages:

1. **Commercial General Liability ("CGL") Insurance.**

- (a) This policy will provide a minimum coverage of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Industry. 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) This policy must also contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
  - The definition of "Insured Contract" must be amended to remove any exclusion or other limitation for any work being done within fifty (50) feet of BNSF property.
  - Waiver of subrogation in favor of and acceptable to BNSF.
  - Additional insured endorsement in favor of and acceptable to BNSF and Jones Lang LaSalle Brokerage, Inc.
  - Separation of insureds.
  - The policy shall be primary and non-contributing with respect to any insurance carried by BNSF.
- (c) The parties agree that workers' compensation and employers' liability related exclusions in the CGL policy(ies) are intended to apply to employees of the policy holder and will not apply to BNSF employees.
- (d) No other endorsements limiting coverage with respect to Industry's obligations under this Lease or services may be included on the policy.

2. **Business Automobile Insurance.**

- (a) This 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 shall also 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 BNSF.
  - Additional Insured endorsement in favor of and acceptable to BNSF.
  - Separation of insureds.
  - The policy shall be primary and non-contributing with respect to any insurance carried by BNSF.

3. **Workers' Compensation and Employers' Liability Insurance.**

- (a) This policy will provide coverage of all employees performing any part of the services or work including coverage for, but not limited to:
  - Industry's statutory liability under the workers' compensation laws of the state(s) in which the work or services will be performed. The policy will cover all of Industry'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) This policy will include 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 BNSF.

4. **Railroad Protective Liability Insurance ("RPLI").**

This insurance shall name only BNSF as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. 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 include Evacuation Expense Coverage Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to BNSF and Industry shall not perform any services or work of any kind under this Lease until BNSF 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 RPLI policy, Industry may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to Industry or its contractor. The limits of coverage are the same as above. The cost is \$ \_\_\_\_\_.

☐ Industry **elects** to participate in BNSF's Blanket Policy for activities commencing as of the Effective Date (if any);

☐ Industry **declines** to participate in BNSF's Blanket Policy for activities commencing as of the Effective Date (if any).

5. **Other Requirements.**

- (a) Where allowable by law, no exclusions for punitive damages may be included in any policy.
- (b) Industry agrees to waive its right of recovery against BNSF for all claims and suits against BNSF. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against BNSF for all claims and suits. Industry further waives its right of recovery, and its insurers also waive their right of subrogation against BNSF for loss of its owned or leased property or property under Industry's care, custody or control.
- (c) Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverages under the insurance requirements.
- (d) Industry is not allowed to self-insure without the prior written consent of BNSF. If BNSF allows Industry to self-insure, Industry shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all BNSF liabilities that would otherwise be covered by Industry's insurance in accordance with the provisions of this Lease, will be covered as if Industry elected not to include a deductible, self-insured retention or other financial responsibility for claims.
- (e) Prior to commencing any services or other work under this agreement, Industry shall furnish to BNSF an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- (f) Contractor shall notify Railroad in writing at least thirty (30) days prior to any cancellation, non-renewal, substitution or material alteration.



- (g) Any insurance policy shall be written by a reputable insurance company acceptable to BNSF 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.
- (h) If the coverage provided by any of the insurance policies required by this Lease is purchased on a "claims made" basis, Industry hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Lease.
- (i) Contractor agrees to provide evidence to BNSF that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage.
- (j) Industry represents that this Lease has been thoroughly reviewed by Industry's insurance agent(s)/broker(s), and that Industry has instructed them to procure the insurance coverage required by this Lease.
- (k) Not more frequently than once every five years, BNSF may, at its discretion, reasonably modify the insurance requirements herein to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- (l) If Industry will subcontract any portion of the services or work, Industry shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming BNSF as an additional insured. In addition, Industry shall require that the subcontractor release, defend and indemnify BNSF to the same extent and under the same terms and conditions as Industry is required to release, defend and indemnify BNSF under this Lease.
- (m) Failure to provide evidence of insurance as required by this Exhibit "C" shall entitle, but not require, BNSF to terminate this Lease immediately. Acceptance of a certificate that does not comply with this Exhibit "C" shall not operate as a waiver of Industry's obligations hereunder.
- (n) The fact that Industry obtains insurance (including, without limitation, self-insurance) shall not release or diminish Industry's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of this Lease. Damages recoverable by BNSF shall not be limited by the amount of the required insurance coverage.
- (o) In the event of a claim or lawsuit involving BNSF arising out of this Lease, Industry will make the policy covering such claim or lawsuit available to BNSF.
- (p) If Industry maintains broader coverage and/or higher limits than the minimum requirements in this Lease, BNSF 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 BNSF.
- (q) These insurance provisions are intended to be a separate and distinct obligation on the part of Industry. Therefore, these provisions shall be enforceable and Industry shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the services or other work performed under this Lease is performed.
- (r) For purposes of this Exhibit "C", BNSF shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

**EXHIBIT "D"****CONTRACTOR'S RIGHT OF ENTRY AGREEMENT  
FOR CONSTRUCTION PROJECTS ON OR ADJACENT TO PROPERTY OF  
BNSF RAILWAY COMPANY**

This Right of Entry Agreement ("**Agreement**") is made to be effective as of the date of the last signature hereto ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY** ("**Railroad**"), a Delaware corporation, and \_\_\_\_\_, a(n) \_\_\_\_\_ ("**Contractor**").

WHEREAS, Railroad operates a freight transportation system by rail with operations throughout the United States and Canada; and

WHEREAS, \_\_\_\_\_ [*insert Industry's name here*] ("**Industry**") has leased the Premises under that certain Lease dated on or about the Effective Date of this Agreement at or near the City of \_\_\_\_\_, railway station of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_ ("**Lease**"). Industry desires Contractor to perform certain construction services upon the Premises (defined herein), and Contractor is willing to perform such services.

NOW, THEREFORE, in consideration of Railroad entering this Agreement with Contractor and granting Contractor permission to enter upon the Premises, Contractor agrees with Railroad as follows:

**SECTION 1. SCOPE OF SERVICES**

[ Contractor / Industry / Contractor and Industry ] will perform the following services, hereinafter described \_\_\_\_\_ as "**Work**": \_\_\_\_\_ at \_\_\_\_\_ [city] \_\_\_\_\_ [state].

Performance of the Work will necessarily require Contractor to enter Railroad's right of way and property as shown on Drawing No. \_\_\_\_\_, dated \_\_\_\_\_ marked Exhibit "A" attached hereto and incorporated herein ("**Premises**"). Contractor agrees that no work will be commenced on the Premises until (i) this Agreement is executed by both Contractor and Railroad, and (ii) Contractor provides Railroad with the insurance contemplated herein. Contractor further agrees that if this Agreement is not executed by the owner, general partner, president or vice-president of Contractor, Contractor will furnish Railroad with evidence certifying that the signatory is empowered to execute this Agreement.

**SECTION 2. TERM; PAYMENT OF FEES**

This Agreement is effective from the date of the mutual execution until the earlier to occur of (i) the completion of the Work; or (ii) termination or earlier expiration of the Lease; provided that if the Work is not complete by twelve (12) months after the Effective Date; Railroad shall have the right to terminate this Agreement upon written notice to Contractor. Contractor acknowledges and agrees that Industry will be solely responsible for paying Contractor for the Work. Contractor will be solely responsible for paying its subcontractors and materialmen (if any). Contractor shall promptly, and in any case no later than ten (10) days after notice of the filing thereof, pay and discharge any and all liens arising out of any portion of the Work performed by Contractor's subcontractors or materialmen, or any other activities done, suffered or permitted to be done on behalf of Contractor on the Premises, and shall indemnify, defend and hold harmless Railroad from any such liens. Railroad 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 Railroad to take any such action shall not relieve Industry or Contractor of any obligation or liability under this **Section 2** or any other section of this Agreement.

**SECTION 3. RELEASE OF LIABILITY AND INDEMNITY**

(a) Contractor hereby waives, releases, indemnifies, defends and holds harmless Railroad for, from and against all judgments, awards, claims, demands, and expenses (including reasonable attorneys'

fees), for injury or death to all persons, including Railroad's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about the Premises or Railroad's other property or right of way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILROAD, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILROAD.**

(b) **THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILROAD UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.**

(c) Contractor further agrees, at its expense, in the name and on behalf of Railroad, that it will adjust and settle all claims made against Railroad, and will, at Railroad's discretion, appear and defend any suits or actions of law or in equity brought against Railroad on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railroad is liable or is alleged to be liable. Railroad will give notice to Contractor, in writing, of the receipt or pendency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a claim brought against Railroad, Railroad may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railroad's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railroad from and against all damages, judgments, decrees, reasonable attorneys' fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

(d) It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement will survive any termination of this Agreement.

#### **SECTION 4. ENVIRONMENTAL**

(a) Contractor shall strictly comply with all federal, state and local environmental Legal Requirements (as defined in the Lease) 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 the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq. (collectively referred to as the "Environmental Laws"). Contractor shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Premises. Contractor shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

(b) Contractor 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 across or along Railroad's property. Contractor agrees to periodically furnish Railroad with proof, satisfactory to Railroad, that Contractor is in compliance with the provisions of this **Section 4**.

(c) Contractor shall give Railroad immediate notice to Railroad'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 Contractor's use of the Premises. Contractor shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Contractor also shall give Railroad immediate notice of all measures undertaken on behalf of Contractor to investigate, remediate, respond to or otherwise cure such release or violation.



(d) Contractor recognizes and assumes all responsibility for all present and future environmental obligations imposed under applicable Environmental Laws, regulations or other such requirements relating to contamination of the Premises or groundwater thereunder arising from, caused by, contributed to, or in any way growing out of Contractor's operations. Contractor further agrees to undertake at its sole cost and expense any cleanup of any contamination of the Premises and groundwater thereunder arising from, caused by, contributed to, or in any way growing out of Contractor's operations as required by applicable laws and regulations.

(e) If Railroad has notice from Contractor or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Work which occurred or may occur during the term of this Agreement, Railroad may require Contractor, at Contractor's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Railroad's right-of-way.

(f) Contractor shall promptly report to Railroad in writing any conditions or activities upon the Premises known to Contractor 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 Contractor's reporting to Railroad shall not relieve Contractor of any obligation whatsoever imposed on it by this Agreement. Contractor shall promptly respond to Railroad's request for information regarding said conditions or activities.

(g) Contractor will promptly transmit to Railroad copies of all environmental reports, data boring logs, well completion and other information obtained from Contractor's Work on the Premises. Railroad shall have the option to obtain split samples and otherwise have reasonable access to groundwater monitoring well(s), if any, subject to this Agreement for the purpose of obtaining samples or other information from the monitoring well(s). Contractor shall also advise Railroad of any applicable health and safety plans or other similar programs in effect with respect to the Work on the Premises.

(h) Unless otherwise required by applicable law, Contractor shall keep confidential and shall not disclose any environmental reports, data boring logs, well completion and any other information obtained in connection with this Agreement to third parties with the exception of Industry without the prior written consent of Railroad.

## SECTION 5. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the term of this Agreement the following insurance coverages:

### 5.1 Commercial General Liability ("CGL") Insurance.

(a) This policy will provide a minimum coverage of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- (i) Bodily Injury and Property Damage.
- (ii) Personal Injury and Advertising Injury.
- (iii) Fire legal liability.
- (iv) Products and completed operations.
- (v) Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.

(b) This policy must also contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

- (i) The definition of "Insured Contract" must be amended to remove any exclusion or other limitation for any work being done within fifty (50) feet of BNSF's property.

- (ii) Waiver of subrogation in favor of and acceptable to BNSF.
- (iii) Additional insured endorsement in favor of and acceptable to BNSF and Jones Lang LaSalle Brokerage, Inc.
- (iv) Separation of insureds.
- (v) The policy shall be primary and non-contributing with respect to any insurance carried by BNSF.

(c) The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(ies) are intended to apply to employees of the policy holder and will not apply to BNSF employees.

(d) No other endorsements limiting coverage with respect to Contractor's obligations under this Agreement or the Work hereunder may be included on the policy.

#### 5.2 **Business Automobile Insurance.**

(a) This 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:

- (i) Bodily injury and property damage.
- (ii) Any and all vehicles owned, used or hired.

(b) The policy shall also contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

- (i) Waiver of subrogation in favor of and acceptable to BNSF.
- (ii) Additional insured endorsement in favor of and acceptable to BNSF.
- (iii) Separation of insureds.
- (iv) The policy shall be primary and non-contributing with respect to any insurance carried by BNSF.

#### 5.3 **Workers' Compensation and Employers' Liability Insurance.**

(a) This policy will provide coverage of all employees performing any part of the Work or any other services including coverage for, but not limited to:

- (i) Contractor's statutory liability under the workers' compensation laws of the state(s) in which the work or services will be performed. The policy will cover all of Contractor's employees, regardless of whether such coverage is optional under the law of that state(s).
- (ii) 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) This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

- (i) Waiver of subrogation in favor of and acceptable to BNSF.

#### 5.4 **Railroad Protective Liability Insurance ("RPLI").**

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

- (i) Endorsed to include the Pollution Exclusion Amendment.
- (ii) Endorsed to include the Limited Seepage and Pollution Endorsement.
- (iii) Endorsed to include Evacuation Expense Coverage Endorsement.
- (iv) Endorsed to remove any exclusion for punitive damages.
- (v) No other endorsements restricting coverage may be added.
- (vi) The original policy must be provided to BNSF and Contractor shall not perform the Work or any other services or work of any kind under this Agreement until BNSF has reviewed and approved the policy.

- (vii) 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 RPLI policy, Contractor may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy available to Contractor or its contractor. The limits of coverage are the same as above. The cost is \$\_\_\_\_\_.

- ☐ Contractor **elects** to participate in BNSF's Blanket Policy for activities commencing as of the Effective Date (if any);
- ☐ Contractor **declines** to participate in BNSF's Blanket Policy for activities commencing as of the Effective Date (if any).

#### 5.5 Other Requirements.

- (a) Where allowable by law, no exclusions for punitive damages may be included in any policy.
- (b) Contractor agrees to waive its right of recovery against BNSF for all claims and suits against BNSF. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against BNSF for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against BNSF for loss of its owned or leased property or property under Contractor's care, custody or control.
- (c) Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverages under the insurance requirements.
- (d) Contractor is not allowed to self-insure without the prior written consent of BNSF. If BNSF allows Contractor to self-insure, Contractor shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all BNSF liabilities that would otherwise be covered by Contractor's insurance in accordance with the provisions of this Agreement, will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.
- (e) Prior to commencing any services or other Work under this Agreement, Contractor shall furnish to BNSF an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- (f) Contractor shall notify Railroad in writing at least thirty (30) days prior to any cancellation, non-renewal, substitution or material alteration.
- (g) Any insurance policy shall be written by a reputable insurance company acceptable to BNSF 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.
- (h) If the coverage provided by any of the insurance policies required by this Agreement is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three (3) years after expiration, cancellation or termination of this Agreement.



(i) Contractor agrees to provide evidence to BNSF that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage.

(j) Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), and that Contractor has instructed them to procure the insurance coverage required by this Agreement.

(k) Not more frequently than once every five years, BNSF may, at its discretion, reasonably modify the insurance requirements herein to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

(l) If Contractor will subcontract any portion of the services or Work, Contractor shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming BNSF as an additional insured. In addition, Contractor shall require that the subcontractor release, defend and indemnify BNSF to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify BNSF under this Agreement.

(m) Failure to provide evidence of insurance as required by this Agreement shall entitle, but not require, BNSF to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this Agreement shall not operate as a waiver of Contractor's obligations hereunder.

(n) The fact that Contractor obtains insurance (including, without limitation, self-insurance) shall not release or diminish Contractor's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of this Agreement. Damages recoverable by BNSF shall not be limited by the amount of the required insurance coverage.

(o) In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Contractor will make the policy covering such claim or lawsuit available to BNSF.

(p) If Contractor maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF 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 BNSF.

(q) These insurance provisions are intended to be a separate and distinct obligation on the part of Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the services or other work performed under this Agreement is performed.

(r) For purposes of this **Section 5**, "BNSF" shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

## **SECTION 6. CONTRACTOR REQUIREMENTS**

(a) While on or about the Premises, Contractor must fully comply with Railroad's "Contractor Requirements", including (but not limited to) clearance requirements and personal protective equipment requirements. Contractor will be solely responsible for fully informing itself as to Railroad's "Contractor Requirements".

(b) Contractor must ensure that each of its employees, subcontractors, agents or invitees entering upon the Premises completes the safety training program at the following Internet Website: "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Contractor must ensure that each and every employee of Contractor, its subcontractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering the Premises. The Safety Orientation must be renewed annually.



(c) Prior to entering the Premises, Contractor must prepare and implement a safety action plan acceptable to Railroad. Contractor must audit compliance with that plan during the course of Contractor's work. A copy of the plan and audit results must be kept at the Premises and will be available for inspection by Railroad at all reasonable times.

(d) When not in use, Contractor's machinery and materials must be kept at least fifty (50) feet from the centerline of Railroad's nearest track. Contractor must not cross Railroad's tracks except at existing open public crossings.

## **SECTION 7. PROTECTION OF RAILROAD FACILITIES / FLAGGER SERVICES**

(a) Railroad flagger and protective services and devices will be required and furnished when Railroad determines, in Railroad's sole discretion, that such services and devices are necessary for safety purposes, including but not limited to the following events:

- (i) when Work is located over, under or within twenty-five (25) feet from the center line of the nearest track
- (ii) when cranes or similar equipment are positioned outside of 25-foot horizontally from track center line but could foul the track in the event of tip-over or other catastrophic occurrence
- (iii) when any excavation is performed below the bottom of tie elevation, if, in Railroad's sole opinion, track or other Railroad facilities may be subject to movement or settlement
- (iv) when Work in any way interferes, or is likely to interfere, with the safe operation of trains at timetable speeds
- (v) when persons, material, equipment, blasting or other hazardous activities in the vicinity present any actual or potential threat to Railroad's personnel, track, communications, signal, electrical, or other facilities.

Special permission must be obtained from Railroad before moving heavy or cumbersome objects or equipment which might result in damage, injury or making the track impassable.

(b) Contractor must give Railroad's Roadmaster (telephone \_\_\_\_\_) a minimum of thirty (30) working days' advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by Contractor and the parties hereto subsequently determine that such services are no longer necessary, Contractor must give the Roadmaster five (5) working days' advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

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

- (i) A flagging crew generally consists of one employee. However, additional personnel may be required to protect the Premises and operations, if deemed necessary by Railroad's representative.
- (ii) The cost of flagger services provided by Railroad, when deemed necessary by Railroad's representative, will be borne by [ Industry / Contractor ].

## **SECTION 8. INDEPENDENT CONTRACTOR**

Contractor is considered an independent contractor under this Agreement and neither Contractor nor any of its employees, subcontractors, agents or servants are considered employees of Railroad in any respect. Contractor has the exclusive right and duty to control the work of its employees. All persons employed by Contractor or any of its subcontractors under this Agreement are the sole employees of Contractor or its subcontractors. Contractor will be given general directions and instructions regarding the

Work; however, direct supervision of Contractor's employees will be Contractor's responsibility and obligation.

#### **SECTION 9. TRAIN DELAYS**

Work performed by Contractor must not cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of Railroad, its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in writing in advance by Railroad's representative. Additionally, Contractor must not, at any time, impair the safety of Railroad operations or the operations of Railroad's lessees, licensees or other Railroad invitees. Delays to freight or passenger trains affect Railroad's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be responsible to Railroad, including its subsidiaries, affiliated companies, partners, successors and assigns, for all economic losses resulting from unscheduled delays to freight or passenger trains in accordance with the following:

(a) Contractor will be billed for the economic losses arising from loss of use of equipment and train service employees, contractual incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, its subcontractors or by Railroad performing Work.

(b) The parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts with Railroad. Under such arrangements, if Railroad does not meet its contract service commitments, Railroad may (i) suffer loss of performance or incentive pay, or (ii) be subject to a penalty payment. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railroad which are attributable to a train delay caused by Contractor or its subcontractors.

(c) The contractual relationship between Railroad and its passenger customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railroad will share information relevant to any train delay to the maximum extent consistent with Railroad confidentiality obligations.

#### **SECTION 10. ASSIGNMENT**

This Agreement will inure to the benefit of and be binding upon the successors and approved assigns of the parties hereto; provided, however, that Contractor may not sell, assign, transfer, or hypothecate this Agreement without the prior written consent of Railroad, which consent shall not be unreasonably withheld.

#### **SECTION 11. NOTICES**

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

If to Railroad: BNSF Railway Company  
2650 Lou Menk Drive  
Fort Worth, TX 76131  
Attn.: CRE-D - Track Agreements

with a copy to: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive  
Fort Worth, TX 76131  
Attn.: Track Agreements

If to Contractor: \_\_\_\_\_  
\_\_\_\_\_

Attn.: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective as of the Effective Date.

**RAILROAD:**    **BNSF Railway Company**, a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CONTRACTOR:**    \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BNSF RAILWAY COMPANY  
INDUSTRY TRACK AGREEMENT**

THIS INDUSTRY TRACK AGREEMENT ("**Agreement**") is made to be effective as of the date of the last signature hereto (the "**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Railroad**" or "**BNSF**"), and **CITY OF SHELBY**, a Montana incorporated municipality ("**Industry**").

**RECITALS**

A. Railroad owns or controls certain land situated at or near the City of Shelby, railway station of SHELBY, County of Toole, State of Montana. Pursuant to that certain Lease of Land for Construction/Rehabilitation of Track between Railroad and Northern Express Transportation Authority DBA Port of Northern Montana, a port authority established under Montana law ("**Third Party Track Owner**"), dated September 21, 2007 (as amended from time to time, the "**Third Party Track Agreement**"), Railroad leased certain Railroad-owned or -controlled land to Third Party Track Owner upon which Third Party Track Owner owns, operates, maintains and repairs certain rails, ties, ballast, and appurtenances thereto (collectively, the "**Third Party Track**"). The Third Party Track is shown as heavy dashed on Drawing No. 92172, Revision 1, dated 09/18/2024, marked **Exhibit "A"**, attached hereto and incorporated herein by reference. Railroad's rights and obligations under this Agreement are subject to the terms and conditions of the Third Party Track Agreement.

B. Industry owns or controls certain additional rail, ties, ballast, and appurtenances thereto shown as heavy hatched on **Exhibit "A"** attached hereto (the "**Industry Track**"). The Third Party Track and Industry Track, together with all appurtenances, may be hereinafter collectively called the "**Track**". The Track depicted on **Exhibit "A"** has not yet been fully constructed as of the Effective Date. The parties shall amend this Agreement to attach an updated exhibit as necessary to depict the Track following completion of construction.

C. Industry desires that Railroad operate over the Third Party Track and the Industry Track, located at or near the City of Shelby, railway station of SHELBY, County of Toole, State of MT.

D. Railroad desires to provide such service, subject to the terms of this Agreement.

E. In connection with this Agreement, Railroad and Industry have also entered into that certain Lease of Land for Construction/Rehabilitation of Track dated on or about the Effective Date of this Agreement at or near the City of Shelby, railway station of SHELBY, County of Toole, State of MT (the "**Construction Lease**") for the portion of the Industry Track located on Railroad's right-of-way.

**AGREEMENTS**

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

**Section 1. OWNERSHIP; ACCESS BY RAILROAD.**

1.1 Railroad has the right to use the Third Party Track pursuant to the Third Party Track Agreement.

1.2 Industry shall own or control the Industry Track. Industry represents and warrants that: (a) it owns or controls the land underlying the Industry Track; (b) there are no existing easements or encumbrances affecting such land or the Industry Track that would interfere with Railroad's rights under this Agreement; (c) it has rights to use the Third Party Track per an agreement with Third Party Track



Owner, which rights include a license from Third Party Track Owner for connections to the Third Party Track; (d) it has the right under its agreement with Third Party Track Owner to enter into this Agreement without any additional consent or approval from Third Party Track Owner or any other third party; and (e) there are no existing easements or encumbrances affecting the Third Party Track that would interfere with Railroad's rights under this Agreement. Industry shall not cause or allow the Industry Track to be blocked, obstructed, or used in any manner that would impair or diminish Railroad's ability to use the Industry Track for the purposes set forth in this Agreement.

1.3 Industry hereby grants Railroad a license to enter upon Industry's property and the Industry Track so that Railroad may operate over the Industry Track. This Agreement does not grant or convey to Railroad any real property interest in any property of Industry.

1.4 Industry shall have no right under this Agreement to enter upon the Third Party Track or any other Railroad property or Third Party Track Owner property.

## **Section 2. MAINTENANCE AND OPERATION.**

2.1 Industry shall be responsible for obtaining, without expense to Railroad, all necessary real property rights and public authority and permission, including without limitation applicable licenses and permits, for the maintenance and operation of the Industry Track, provided Industry obtains prior written consent from Railroad for any real property rights or public authority or permission that restricts, impairs or otherwise affects Railroad's operations. Industry, at Industry's expense, shall at all times comply with the requirements of each such permit and license. Industry shall further comply with (a) all applicable laws, statutes, regulations, ordinances, orders, covenants, restrictions, codes, rules or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over Industry, the Industry Track, this Agreement, and/or Industry's obligations under this Agreement, and including all Environmental Laws (defined below) (collectively, "**Legal Requirements**") and (b) other Railroad requirements made available to Industry relating to the construction, use, maintenance and operation of the Industry Track, Facilities (defined below) or Equipment (defined below) by or for Industry. Industry shall use the Track solely for receiving railcars for Industry's own account (i.e., private carriage) or for specific individual shippers pursuant to written agreements (i.e., contract carriage) and for no other purpose. All railcar movement operations shall be performed by Railroad, subject, however, to Industry's right to use Switching Equipment (as hereinafter defined) on the Industry Track in accordance with the provisions of **Section 15** below. Industry shall not permit any use of the Industry Track in such a manner that would endanger or interfere with BNSF's operation over the Track. Industry shall not admit or permit any third party to use all or any portion of the Track, nor have the right to detour trains of any other party over or upon the Track, as a common carrier.

2.2 The Third Party Track shall be maintained pursuant to the terms and conditions of the Third Party Track Agreement; provided that, without any limitation to **Section 2.5** below, Railroad shall have no obligation to operate over the Third Party Track to serve Industry until Industry has built the Industry Track and made all necessary payments to Railroad, including without limitation payment for any switch required to connect the Third Party Track to the Industry Track. Following installation of any switch connection that may be necessary to connect Railroad's mainline track to the Third Party Track, such switch connection shall be considered part of the Third Party Track for purposes of this Agreement.

2.3 Industry shall at all times, and at its sole risk and expense, maintain, or cause to be maintained, the Industry Track and all Facilities and Equipment (defined below) (if any) in a safe and satisfactory condition and in compliance with all applicable Legal Requirements. Any entry onto and work upon Railroad's property shall be performed in accordance with this Agreement and pursuant to the terms and conditions of the Construction Lease.

2.4 Maintenance, for purposes of this Agreement, means keeping the Industry Track in good working order and condition, including without limitation: (a) providing proper drainage along the Industry Track; (b) keeping the Industry Track free and clear of snow, ice, vegetation, structures, and other



obstacles; and (c) maintaining adequate grade crossing warning devices, passive warning signs, gates, fences, barriers, roadways, track drainage facilities, lighting and track and other signals (collectively, "**Safety Devices**") in good working order and condition, all as determined solely by Railroad in accordance with Railroad's customary industry practices. Notwithstanding the foregoing or anything else contained herein to the contrary, construction and installation of any new Safety Devices with respect to the Industry Track after the Effective Date, whether required by Railroad in Railroad's sole discretion or by any governmental agency or Legal Requirement, shall be at Industry's sole cost and expense.

2.5 Without relieving Industry from any of its obligations under this Agreement, Railroad may refuse to operate over the Industry Track or use or enter the Facilities or contact the Equipment whenever Railroad, in its sole discretion, determines that the same is unsatisfactory for Railroad's operation, entry or contact. Railroad agrees to use commercially reasonable efforts to provide notice to Industry, as soon as reasonably practicable, upon discovering any unsatisfactory condition relating to Industry Track, the Facilities or Equipment that would permit Railroad to suspend operations over the Industry Track or refuse to use or enter the Facilities or contact the Equipment; provided, however, that Railroad shall not be responsible to Industry or any third party for any failure to notify Industry of such condition. If and when Industry has remedied such condition to Railroad's sole satisfaction, Railroad may resume operation over the Industry Track or use of or entry into the Facilities or contact with the Equipment. Railroad's operation over the Track or use of or entry into any Facility or contact with any Equipment with knowledge of an unsatisfactory condition is not a waiver of Industry's obligations contained herein or of any right of Railroad to recover for or be indemnified and defended against damages to property or injury to or death of persons that may result therefrom.

2.6 Industry shall, at its sole expense, pay all costs for changes, repairs, relocations or alterations to the Industry Track that may be necessary to conform to any changes of grade or relocation of the Third Party Track at the point of connection with the Industry Track, if such change of grade or relocation (i) is required to comply with any Legal Requirement, (ii) is requested by any governmental agency, or (iii) is made for any other reason beyond Railroad's reasonable control. Without limiting the generality of the foregoing, if the public authority having jurisdiction thereover orders the separation of the grade of the Track and any street, road, highway, other rail line or the like, Industry hereby consents to the removal and/or relocation of the Track and shall reimburse Railroad for all expenses incurred in connection with or related to the removal and/or relocation of the Track. Notwithstanding the foregoing, in the event any such changes, repairs, relocations, or alterations to the Track are required in accordance with this **Section 2.6**, Industry shall have the right to terminate this Agreement upon written notice to Railroad; provided that Industry shall have no right to terminate under this **Section 2.6** for so long as it desires to receive rail service from Railroad over the Track.

2.7 If Industry installs any gates or fencing across the Industry Track, or a track scale, unloading pit, loading or unloading device, adjustable loading dock, warehouse door, or any other structure (collectively, "**Facilities**") affecting the Track, Industry shall be solely responsible for assuring the safe and satisfactory condition of the same and shall not allow any Facilities to be a source of danger to the safe operation of the Track, or a source of environmental harm, or interfere with the safe operations of Railroad over the Track. Any entry onto and work upon Railroad's property shall be performed in accordance with this Agreement and pursuant to the terms and conditions of the Construction Lease. Industry shall also be solely responsible for assuring the safe and satisfactory condition of all of Industry's equipment touching, used in conjunction with, or otherwise affecting the Track (collectively, "**Equipment**"), and shall not allow any Equipment to be a source of danger to the safe operation of the Track. Before utilizing or unloading any Equipment spotted onto the Industry Track, Industry shall inspect the same and all other Equipment and Facilities for the safety of persons working on or about these items to assure compliance with the foregoing. Industry shall utilize all Facilities and Equipment so as not to negatively affect safe and efficient operation over the Track. In furtherance of the foregoing obligations of Industry but not in limitation of the same, Industry shall do, among others, the following things: (a) keep any gates across the Industry Track open whenever necessary, in Railroad's sole judgment, to enable Railroad to safely and efficiently operate over the Track; (b) keep unloading pits securely covered when not in actual use and at all times when the Track is being switched by Railroad; (c) keep all doors firmly secured, and adjustable loading docks at

warehouses and the facility operated by Industry ("**Plant**") shall likewise be securely fastened in an upright position when not in actual use and at all times when the Track is being switched by Railroad; and (d) operate and maintain all other Facilities so as not to negatively affect the safe and efficient operation of Railroad over the Track.

2.8 Railroad may require Industry to use flaggers and otherwise implement all safety measures that Railroad deems appropriate in connection with the use of the Industry Track by or for Industry. Without limiting the generality of the foregoing, Railroad may require for safety purposes that Industry, at its sole cost and expense, furnish qualified flaggers and provide lights, traffic control devices, automatic warning devices, or any such safety measure that Railroad deems appropriate in connection with the use of the Industry Track by or for Industry.

2.9 Industry shall not: (a) place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, container, storage vessel, above-ground or underground tank, or other obstruction (i) within eight and one-half (8-1/2) feet laterally from the centerline of straight track (or nine and one-half (9-1/2) feet on either side of the centerline of curved track) or (ii) within twenty-three and one-half (23-1/2) feet vertically from the top of the rail of any track, or (b) place or allow to be placed any freight cars, materials, machinery, or other equipment on the Track within 250 feet of either side of any at-grade crossings when there is also an adjacent track of any type belonging to any party (collectively, "**Minimal Clearances**"), provided that if any Legal Requirement requires greater clearances than those provided for in this **Section 2.9**, then Industry shall strictly comply with such Legal Requirement. However, vertical or lateral clearances that are less than the Minimal Clearances but are in compliance with applicable Legal Requirements will not be a violation of this **Section 2.9**, so long as Industry strictly complies with the terms of any such Legal Requirement and posts a sign in a location approved by Railroad clearly noting the existence of such reduced clearance. Any such sign shall be painted with black and white reflective paint. Railroad or Industry's operation with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Industry contained in this **Section 2.9** or of any right of Railroad to recover for and be indemnified and defended against such damages to property or the environment, or injury to or death of persons, that may result therefrom.

**Section 3. TERM.** Unless earlier terminated as provided herein, this Agreement will be in force for a term commencing on the Effective Date and shall automatically continue thereafter until terminated by either party giving the other ninety (90) days' written notice of its desire to terminate this Agreement (the "**Term**"); provided that such Term is included herein for the sole purpose of establishing the duration of the parties' rights and obligations under this Agreement (unless such rights and obligations expressly survive this Agreement), and nothing herein shall constitute any commitment or agreement regarding the commercial terms and conditions by which Railroad may, from time to time, provide rail service to, from or on the Track, or a modification or amendment to any other arrangement or agreement regarding such service. Notwithstanding the foregoing, Industry agrees that Railroad shall have no obligation to operate over the Industry Track unless Industry is in compliance with the provisions of this Agreement and this Agreement is otherwise in full force and effect.

**Section 4. INDEMNITY.**

4.1 For purposes of this Agreement: (a) "**Indemnitees**" means Railroad and Railroad'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, taxes, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation and governmental oversight costs) environmental or otherwise; and (c) "**Industry Parties**" means Industry and Industry's officers, agents, invitees, licensees, employees, and contractors, and any party directly or indirectly employed by any of them, and any party they control or exercise control over.

**4.2 INDUSTRY SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY ENVIRONMENTAL LIABILITIES UNDER ANY**

**ENVIRONMENTAL LAWS (AS DEFINED BELOW) ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART):**

4.2.1 ANY AND ALL RELEASES ON OR FROM INDUSTRY'S PLANT OR ANY ADJACENT INDUSTRY PROPERTY, OR CAUSED BY ANY INDUSTRY PARTY, ALL TO THE EXTENT RELATED TO INDUSTRY TRACK; AND

4.2.2 ANY CLAIMS AGAINST RAILROAD BASED ON RAILROAD'S USE OF THE INDUSTRY TRACK UNDER THIS AGREEMENT, REGARDLESS OF ANY ALLEGED NEGLIGENCE OR STRICT LIABILITY OF ANY INDEMNITEE.

4.3 THE PARTIES AGREE THAT FOR PURPOSES OF THIS AGREEMENT, RAILROAD IS A COMMON CARRIER. IF ANY AGENCY OR COURT CONSTRUES THIS AGREEMENT SO AS TO CAUSE RAILROAD TO BE OTHER THAN A COMMON CARRIER OF THE INDUSTRY TRACK OR PLANT, INDUSTRY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND RAILROAD FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS AGREEMENT.

4.4 IF ANY EMPLOYEE OF AN INDUSTRY PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, INDUSTRY SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES (AS DEFINED IN SECTION 4.1 ABOVE) ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, LIABILITIES UNDER 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. INDUSTRY'S OBLIGATIONS UNDER THIS SECTION 4.4 ARE REGARDLESS OF ANY ACTUAL OR ALLEGED NEGLIGENCE, FAULT, OR COMPARATIVE FAULT OF ANY INDEMNITEE RELATED TO SUCH CAUSES OF ACTION.

4.5 Upon written notice from Railroad, Industry agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter for which Industry has an obligation under this Agreement to assume liability for and/or save and hold harmless any Indemnatee. Industry 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.

**Section 5. INSURANCE.** Industry shall, at its sole cost and expense, procure and maintain during the Term of this Agreement the following insurance coverage:

5.1 **Commercial General Liability ("CGL") Insurance.**

5.1.1 The policy will provide a minimum coverage of \$1,000,000 each occurrence and an aggregate limit of at least \$2,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Industry. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to:

- Bodily Injury and Property Damage.
- Products and completed operations.

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

- Additional insured endorsement in favor of and acceptable to BNSF.
- Waiver of subrogation in favor of and acceptable to BNSF.

5.1.3 The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(ies) are intended to apply to employees of the policy holder and will not apply to BNSF employees.



5.1.4 No other endorsements that limit coverage with respect to Industry's obligations under this Agreement may be included on the policy.

**5.2 Workers' Compensation and Employers' Liability Insurance.**

5.2.1 This insurance shall include coverage for, but not limited to:

- Industry's statutory liability under the workers' compensation laws of the state(s) in which the work is to be performed. The policy will cover all of Industry'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.

5.2.2 The policy will include 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 BNSF.

**5.3 Other Requirements.**

5.3.1 Any insurance policy shall be written by a reputable insurance company 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. If Industry subcontracts any portion of the operation, Industry shall require that the subcontractor provide and maintain insurance coverage as set forth herein.

5.3.2 Prior to commencing operations, Industry shall furnish to BNSF an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.

5.3.3 Industry agrees to provide evidence to BNSF that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage.

5.3.4 In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Industry will make the policy covering such claim or lawsuit available to BNSF.

5.3.5 Failure to provide evidence as required by this **Section 5** shall entitle, but not require, BNSF to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this **Section 5** shall not operate as a waiver of Industry's obligations hereunder. The fact that Industry obtains insurance (including, without limitation, self-insurance) shall not release or diminish Industry's liabilities and obligations under the indemnity provisions of this Agreement. Damages recoverable by BNSF shall not be limited by the amount of the required insurance coverage.

**Section 6. DEFINITION OF COST AND EXPENSE.**

6.1 For the purpose of this Agreement, "cost" or "costs", "expense" or "expenses" includes, but is not limited to, actual labor and material costs and applicable overhead costs, and material and supply costs at current value where used.

6.2 All invoices are due thirty (30) days after the date of invoice. If Industry fails to pay any monies due to Railroad within thirty (30) days after the invoice date, then Industry shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Industry at an annual rate equal to twelve percent (12%), or the maximum rate permitted by law, whichever is less.



**Section 7. RIGHT OF RAILROAD TO CONSTRUCT FUTURE FACILITIES.** Railroad retains the right, without liability to Industry or any other party, to construct or allow to be constructed upon Railroad's property other facilities, and to use Railroad's property in any manner, provided Railroad uses all commercially reasonable efforts to avoid material interference with the use of the Track for Industry as described herein.

**Section 8. PUBLIC ASSESSMENTS; LIENS.** Industry shall timely pay all compensation, assessments and levies required at any time by any public authority, entity, or person for the privilege of maintaining and operating the Industry Track. Industry shall not cause or permit any liens to be filed against the Third Party Track or any Railroad property or Third Party Track Owner property. If any such liens are filed, Industry shall cause such liens to be released or bonded around in a manner satisfactory to Railroad within thirty (30) days (or in any case prior to any loss by Railroad).

**Section 9. NOTIFICATION REQUIREMENTS.**

9.1 Industry shall give Railroad immediate notice to Railroad's Resource Operations Center at (800) 832-5452 of any release of Hazardous Materials (as hereinafter defined) on, from, or affecting the Track or any violation or alleged violation of Environmental Laws (as hereinafter defined) with respect to the use of the Track for Industry. Industry also shall give Railroad prompt notice of all measures undertaken by or on behalf of Industry to investigate, remediate, respond to or otherwise cure each such release or violation.

9.2 Industry shall promptly report to Railroad's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Plant or Track which create a risk of harm to persons, property or the environment, including but not limited to releases or violations of Environmental Laws, and shall take all reasonable or required actions to mitigate injury or damage to persons, property or the environment arising out of such conditions or activities; provided, however, that Industry's reporting to Railroad shall not relieve Industry of any obligation whatsoever imposed on it by this Agreement or by any Legal Requirement. Industry shall promptly respond to Railroad's request for information regarding such conditions or activities. To the extent such conditions or activities with respect to the Track are attributable to Industry, Railroad may require Industry, at Industry's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such conditions or activities on, from, or otherwise affecting the Track.

9.3 For purposes of this Agreement, "**Environmental Laws**" means any federal, state, or local law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 *et seq.* ("**CERCLA**"); the Hazardous Materials Transportation Act, 49 U.S.C. §5101 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*; the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*; all as have been amended from time to time, and any other federal, state, or local environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

9.4 For purposes of this Agreement, "**Hazardous Material(s)**" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, or local governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated

biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances", "hazardous materials", "toxic substances," or "hazardous wastes" in any Environmental Law.

**Section 10. DEFAULT.** The following events shall constitute defaults under this Agreement:

- (a) creating or allowing to remain any condition, including without limitation, any environmental condition, on, about or affecting the Track, which in Railroad's sole judgment interferes with or endangers Railroad's operations;
- (b) assignment or transfer by operation of law of Industry's rights or obligations under this Agreement in violation of **Section 12** below;
- (c) any default on any of the covenants or agreements of Industry contained in this Agreement; or
- (d) any default on any of the covenants or agreements of Industry contained in the Construction Lease that persists beyond all applicable grace or cure periods.

**Section 11. REMEDIES; TERMINATION.**

11.1 In addition to the parties' termination rights set forth elsewhere in this Agreement, and in addition to all other remedies available at law or in equity, Railroad may, without incurring any liability to Industry, terminate this Agreement and discontinue the operation of the Track, effective immediately by written notice to Industry, if any of the following events occurs:

- (i) any default as described in **Section 10**, other than a default under **Section 10(a)** or **Section 10(c)** occurs;
- (ii) any default as described in **Section 10(a)** occurs and Industry does not commence to immediately cure such default and pursue such cure to completion within two (2) calendar days after the date that is the earlier of: (1) the date that Industry becomes actually aware of such default or (2) the date that Industry receives written notice from Railroad of such default (all provided that, in accordance with **Section 2.5** above, Railroad shall have the right to immediately suspend rail service and remove its equipment and employees from the Track, regardless of whether Industry has had notice and/or opportunity to cure such default as set forth above);
- (iii) any default as described in **Section 10(c)** occurs and persists for thirty (30) days following written notice from Railroad;
- (iv) Industry fails to utilize rail service from Railroad to or from the Plant for a period of twelve (12) consecutive months;
- (v) Railroad is authorized by the Surface Transportation Board to abandon its line to which the Track is connected;
- (vi) Railroad is dispossessed of the right to operate over the Track or its connecting track or any part thereof;
- (vii) the Third Party Track Agreement expires, is terminated or is materially modified;
- (viii) Industry fails to provide evidence of insurance as required by **Section 5**; or
- (ix) Any default in the Construction Lease that persists beyond all applicable grace or cure periods, or any expiration or termination of the Construction Lease.

11.2 Upon expiration of the time specified in any notice of termination, this Agreement and all rights of Industry shall absolutely cease (except for any rights and obligations that expressly survive this Agreement).

11.3 Industry hereby agrees to waive and release all claims, rights, and causes of action that Industry has, may have, or may assert against Railroad because of the discontinuance of operation of the Track or any other remedies exercised by Railroad as provided in this **Section 11**.

**Section 12. ASSIGNMENT.**

12.1 This Agreement will inure to the benefit of and be binding upon the approved successors and assigns of the parties hereto; provided, however, subject to **Section 12.2** below, Industry may not sell, assign, transfer, or hypothecate this Agreement or any interest herein (either voluntarily or by operation of law) without the prior written consent of Railroad, which shall not be unreasonably withheld. Any attempted assignment by Industry in violation of this **Section 12** shall be absolutely void. If Industry desires to assign or transfer this Agreement (other than pursuant to **Section 12.2** below), then at least sixty (60) days prior to the effective date of the proposed assignment or transfer, Industry shall submit to Railroad in writing its request for such assignment or transfer and any documentation reasonably requested by Railroad in connection therewith. For purposes of this **Section 12**, the word "assign" shall include without limitation (a) any sale of the equity interests of Industry which results in the equity interest holders of Industry immediately prior to such sale owning, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Industry, (b) any sale of all or substantially all of the assets of (i) Industry and (ii) Industry's parent and subsidiaries (to the extent such entities exist), taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Industry, except for a reorganization, recapitalization, merger or consolidation which results in the equity interest holders of Industry immediately prior to such reorganization, recapitalization, merger or consolidation owning, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Industry or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation. Either party hereto may assign any receivables due to them under this Agreement; provided, however, that such assignments will not relieve the assignor of any of its rights or obligations under this Agreement. This Agreement cannot be assigned or transferred independently from the Construction Lease. **NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, THIS AGREEMENT SHALL NOT RUN WITH THE LAND WITHOUT RAILROAD'S WRITTEN CONSENT.**

12.2 Notwithstanding the foregoing, Railroad consents in advance to an assignment by Industry of this Agreement to any entity who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Industry, where the term "controls" (including, with correlative meaning, the terms "controlled by" and "under common control with") means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise; provided that (i) Industry gives Railroad thirty (30) days' prior written notice of such assignment and (ii) Industry and such assignee execute Railroad's then-standard Consent to Assignment form, which shall include, without limitation, an express assumption by such assignee of all of Industry's covenants, duties, and obligations hereunder and any updates which have been made to Railroad's then-standard form of Industry Track Agreement.

12.3 Railroad shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Agreement, provided that the assignee accepts and assumes such rights and obligations in writing. Upon such transfer, Railroad shall be released from any further obligations hereunder, and Industry agrees to look solely to the successor in interest of Railroad for the performance of such obligations.

**Section 13. NOTICES.** Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change of address.

If to Railroad: BNSF Railway Company  
2650 Lou Menk Drive  
Fort Worth, TX 76131-2380  
Attn.: CRE-D - Track Agreements



with a copy to: Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive  
Fort Worth, TX 76131-2380  
Attn.: Track Agreements

If to Industry: City of Shelby  
112 1<sup>st</sup> St. S.  
Shelby, MT 59474-1954  
Attn.: Jade Goroski

**Section 14. MISCELLANEOUS.**

14.1 It is understood and agreed that this Agreement shall not be recorded in the real property records in the county or counties in which the Track is located or otherwise placed of public record.

14.2 All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State of Texas.

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

14.4 This Agreement, together with the Construction Lease, is the full and complete agreement between Railroad and Industry with respect to all matters relating to the maintenance and operation of the Track and supersedes all other agreements between the parties hereto relating to the maintenance and operation of the Track. However, nothing herein is intended to terminate any surviving obligation of Industry or Industry's obligation to defend and hold Railroad harmless in any prior written agreement between the parties, including, but not limited to, the Construction Lease.

14.5 Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration of this Agreement, or if later, the date when Railroad's property is restored in accordance with the applicable provisions of this Agreement or any other written agreement between the parties.

14.6 One or more waivers of any covenant, term, or condition of this Agreement by Railroad or Industry shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by Railroad or Industry to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act. The remedies set forth hereunder shall be in addition to, and not in limitation of, any other remedies that Railroad or Industry may have at law or in equity.

14.7 If Industry consists of two or more parties, all covenants and agreements of Industry herein contained shall be the joint and several covenants and agreements of such parties.

14.8 The parties acknowledge that each party and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

14.9 In this Agreement, the use of one gender shall include the other gender; and the singular shall mean the plural, and vice versa, all as the context may require.



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

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

14.12 Except as may be elsewhere specifically provided in this Agreement, if either party is delayed or hindered in, or prevented from the performance required under this Agreement (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation ("**Force Majeure**"), such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay. The party claiming Force Majeure shall take commercially reasonable steps to remove the Force Majeure event, and shall promptly notify the other party within a period of five (5) days, excluding weekends and holidays, when it learns of the existence of a Force Majeure condition and will similarly notify the other party within a period of five (5) days, excluding weekends and holidays, when a Force Majeure is terminated.

14.13 The parties acknowledge that Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

**Section 15. SELF SWITCHING.** The following shall apply to Industry's use of the Industry Track for the purpose of intraplant switching of railroad cars:

15.1 Industry's use of the Industry Track for the purpose of intraplant switching of railroad cars with an on-track unit, engine, or locomotive, or other car-moving device approved by Railroad (collectively, whether one or more, called "**Switching Equipment**"), or any other use of the Switching Equipment, shall be subject to the following terms and conditions set forth below. Should Industry cause or permit the Switching Equipment to be used or operated by its contractor: (i) Industry agrees that BNSF shall not be responsible for any switching charges, and (ii) Industry shall cause its contractor to also comply at all times with the terms and conditions set forth below.

15.1.1 Movement of railcars on the Industry Track with other than Switching Equipment is strictly prohibited.

15.1.2 Use of the Track shall only be for contract carriage or private carriage operations. Railcar movement operations shall be coordinated with Railroad. Industry shall not perform or allow its contractor to perform any common carrier services or transportation by rail carrier on, along or from the Track. Without limiting the generality of the foregoing, Industry acknowledges and agrees that it shall not be allowed to perform, or have a third party perform on Industry's behalf, the following: (i) provide switching services or any other rail service to any industry, shipper, receiver, team or house track, transload or other facility now existing or hereafter located along the Track; (ii) interchange with any other railroad or other party on or along the Track; or (iii) provide any passenger service of any kind or handle or operate passenger trains on or along the Track. In no event shall Industry or its contractor or agent seek approval of the Surface Transportation Board to operate all or any part of the Track as a common carrier. Industry shall have the right to perform contract carriage and/or private carriage transloading services upon and along the Track as long as such services are controlled by Industry and contracted, billed, and paid for directly between Industry and its customers (and not by or through Railroad).

15.1.3 The Switching Equipment shall be equipped, maintained, and operated in strict accordance with the statutes of the United States and all valid orders of the National Transportation

Safety Board, Federal Railroad Administration ("FRA") (including, without limitation, additional FRA regulations that may be applicable depending on whether or not the applicable track is deemed to be part of Industry's "plant railroad"), Surface Transportation Board, and/or other public authority which may have jurisdiction.

15.1.4 The Switching Equipment shall be operated in strict accordance with Railroad rules and procedures made available to Industry, and in such a manner as not to interfere with the usual and necessary operations of Railroad. Industry and/or its contractor will not handle cars on any trackage occupied by Railroad crews. The Switching Equipment shall be operated so as not to permit any part of it or any cars which it may be handling to foul other tracks of Railroad.

15.1.5 Industry's intraplant switching activities shall be limited to that that is located on the Industry property footprint/Plant, and not on any portion of the Industry Track that may be located on Railroad property.

15.1.6 **IN ADDITION TO AND NOT IN LIMITATION OF THE INDEMNIFICATION REQUIREMENTS IN SECTION 4 ABOVE OR ELSEWHERE IN THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW, INDUSTRY SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS ALL INDEMNITEES FOR, FROM AND AGAINST ANY AND 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):**

- (i) **FAILURE TO STRICTLY COMPLY WITH THE COVENANTS IN SECTIONS 15.1.1 THROUGH 15.1.5 ABOVE;**
- (ii) **THE SWITCHING EQUIPMENT OR OPERATION THEREOF; OR**
- (iii) **ANY AND ALL LOSS, DAMAGE, INJURY OR DEATH ALLEGED TO HAVE BEEN CAUSED OR CONTRIBUTED TO BY REASON OF MOVEMENT OVER ROAD CROSSINGS OR THE MERE PRESENCE OF FREIGHT CARS OR SWITCHING EQUIPMENT AT OR NEAR ROAD CROSSINGS OF THE TRACK.**

**THE FOREGOING OBLIGATIONS OF INDUSTRY SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, OR TO LIABILITIES WHOLLY CAUSED BY THE SOLE NEGLIGENCE OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER NEGLIGENCE OF ANY INDEMNITEE.**

15.2 In addition to the remedies described under **Sections 10 and 11**, should Railroad determine that Industry or its contractor is performing such intraplant switching in a manner that interferes with or endangers the operations of Railroad, Railroad may verbally suspend Industry's right to perform intraplant switching and cause all BNSF crews and/or equipment to be withdrawn from the Industry Track, and may cancel Industry's right to self-switch, with or without terminating this Agreement, by written notice to Industry.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

**RAILROAD:**

**BNSF Railway Company**, a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**INDUSTRY:**

**City of Shelby**, a Montana incorporated municipality

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_