

EXHIBIT UU

Form of Crossing Agreement

AGREEMENT FOR PRIVATE CROSSING

THIS AGREEMENT FOR PRIVATE CROSSING ("**Agreement**") is made to be effective the _____ day of _____, 20____, ("**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and the **CITY OF LINCOLN, NEBRASKA**, a Nebraska municipal corporation ("**Licensee**").

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

1. GENERAL.

[*THE APPROPRIATE CROSSING DIMENSIONS WILL BE INSERTED INTO AGREEMENT BY BNSF, AND THE ALTERNATIVE PROVISION WILL BE DELETED***]**

1.1 Licensor hereby grants Licensee a temporary non-exclusive license, subject to all rights interests, and estates of third parties, including, without limitation, any leases, licenses, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct, maintain, and use in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**") an at-grade crossing, [thirty-two (32) feet long and twenty (20) feet wide] [_____ (__) feet long and _____ (__) feet wide] ("**Crossing**"), across the rail corridor of Licensor at or near Licensor's station of Lincoln, County of Lancaster, State of Nebraska, Line Segment 2, Mile Post 59.17 to 60.0, at the location and in the manner shown upon **Exhibit A**, attached hereto and incorporated herein by reference ("**Premises**") solely for the purposes of vehicular crossings of Licensor's tracks at the Crossing. For convenience, the "Crossing" shall collectively include crossing surface and all appurtenances thereto between the ends of railroad ties, cattle guards, farm gates or barriers, drainage facilities, traffic signs or devices, identification signs approved by Licensor, whistling posts, or other appurtenances.

1.2 In the event the Permitted Uses (defined below) will affect any improvements or facilities of Licensor or Licensor's existing lessees, licensees, easement beneficiaries, or lien holders (collectively "**Other Improvements**"), if any, or interfere with the use of the Other Improvements, Licensee will be responsible at Licensee's sole risk to locate and make any adjustments necessary to such Other Improvements. Licensee must contact the owner(s) of the Other Improvements notifying them of any work that may damage and/or interfere with the Other Improvements and obtain the owner's written approval prior to initiating any of the Permitted Uses.

1.3 It is expressly stipulated that the Crossing is to be a strictly private one, to be solely used for the purpose set forth in Licensee's Application for Crossing attached hereto as **Exhibit B** (the "**Permitted Uses**") and is not intended for and shall not be for public use. Licensee, without expense to Licensor, will take any and all necessary action to preserve the private character of the Crossing and prevent its use as a public road. In the event Licensor determines that:

- 1.3.1 the Crossing is being used for a purpose or in a manner not set forth in **Exhibit B**;
- 1.3.2 there is a significant change in the volume or nature of traffic at the Crossing; or
- 1.3.3 the Licensee has in any way breached the terms or conditions of this Agreement, Licensor shall have the right to terminate this Agreement in accordance with

Section 13.1.

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

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

1.6 Any contractors or subcontractors performing work on the Premises or the Crossing, or entering the Premises on behalf of Licensee, shall be deemed agents of Licensee for purposes of this Agreement.

2. TERM. This Agreement shall commence on the Effective Date and, subject to prior termination as hereinafter described, shall continue until completion of the Permitted Uses, but in no event later than the date that is the earliest to occur of: (i) the end of the Development Period (as defined in the Master Agreement [defined below]), or (ii) December 31, 2014.

3. COMPENSATION.

3.1 Licensee shall pay Licensor, prior to the Effective Date, the sum of No Dollars (\$0) as compensation for the use of the Premises.

3.2 Licensee agrees to pay to Licensor the entire cost of constructing, installing, performing, maintaining, repairing, renewing, and replacing any cattle guards, farm gates or barriers, track drainage facilities, traffic signs or devices, whistle posts, stop signs or other appurtenances shown on **Exhibit A**, or any such appurtenances or warning signs and devices that may subsequently be required to be upgraded by Licensor, by law, by change of volume and nature of vehicular traffic, or by any public authority having jurisdiction. Licensee is also responsible for notifying Licensor in writing of any need for upgrading the vehicular traffic control devices or signs at or near the Crossing, since Licensee is most knowledgeable concerning the volume and nature of the vehicular traffic. In addition, Licensee shall notify Licensor if any significant change in volume or nature of traffic at the crossing.

3.3 Subject to the provisions of the C&M Agreement (as defined below) concerning Licensee's reimbursement of costs and expenses, including without limitation flagging costs, incurred by Licensor in connection with Licensee's use of the Premises, Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all other costs and expenses incurred by Licensor in connection with Licensee's use of the Premises. All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

4. COMPLIANCE WITH LEGAL REQUIREMENTS AND LICENSOR REQUIREMENTS.

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

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

4.3 Licensee shall, at all times, comply with all provisions contained in that certain Construction and Maintenance Agreement between Licensor and Licensee dated _____, 2010 (the "**C&M Agreement**"), and all such provisions contained in the C&M Agreement are hereby incorporated herein by reference. In the event of conflicts between the terms of this Agreement and the C&M Agreement, the most restrictive provisions shall apply to Licensee.

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

6. RIGHT OF LICENSOR TO USE. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

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

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

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

7. LICENSEE'S OPERATIONS.

7.1 Licensee, at its own expense, shall keep the rail flange ways of the Crossing clear of all snow, dirt, or any other obstructions whatsoever, which may accumulate by virtue of vehicles, equipment, or from machinery crossing thereover or otherwise, and shall remove and keep removed any vegetation along the rail corridor on each side of the crossing so that the motorists' line of sight to approaching trains is not impaired or obstructed by vegetation.

7.2 It is specifically understood that cables, pipelines, and other electric and/or fiber optic transmission lines may be on, about, along, or under the Premises and Licensee agrees that under no circumstances will Licensee dig in or disturb the surface of the Premises without the express written consent of Licensor.

7.3 Licensee shall construct and maintain, at its own expense, a roadway (to end of railroad ties) and related roadway drainage in a manner acceptable to Licensor, and safe for use by any vehicles or equipment. Prior to such construction or maintenance, ten (10) days advance notice must be given to Licensor's Project Engineer, Gerald Maczuga, at 201 N. 7th Street, Lincoln,

NE 68508, telephone (402) 458-7537.

7.4 Licensee agrees to keep any Crossing gates, farm gates or barriers (consisting of a bar, cable gate or chain between posts on both sides of Licensor's rail corridor and straddling the roadway), closed and securely fastened, except when being opened to allow access upon said rail corridor.

7.5 While this Agreement is personal to Licensee, it is recognized that there is a possibility of the Crossing being used by unauthorized persons, and Licensee agrees that for the purposes of this Agreement all persons using the Crossing shall be deemed the agents or invitees of Licensee.

7.6 Licensee shall, at its sole cost and expense, perform all activities on and about the Crossing in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. If ordered to stop using the Crossing at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Crossing to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Crossing. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.

7.7 Upon termination of this Agreement, Licensor may remove the Crossing and restore the rail corridor to the condition as of the Effective Date above at Licensee's sole cost and expense and without incurring any liability to Licensee. Licensee shall within twenty (20) days after bill is rendered therefor, reimburse Licensor for all costs and expenses, which Licensor may incur in connection therewith.

8. **LIABILITY.** During the term of this Agreement, Licensee shall comply with all provisions contained in Sections 3.6 and 3.7 of the C&M Agreement, and all such provisions contained in Sections 3.6 and 3.7 of the C&M Agreement are hereby incorporated herein by reference.

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

10. **INSURANCE.** During the term of this Agreement, Licensee shall comply with all provisions contained in Section 3.8 of the C&M Agreement, and all such provisions contained in Section 3.8 of the C&M Agreement are hereby incorporated herein by reference.

11. **ENVIRONMENTAL.**

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

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

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

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

12. DEFAULT. If default shall be made in any of the covenants or agreements of Licensee contained in this Agreement, Licensor may pursue any and all remedies set forth in Section 24 of that certain Master Development Agreement between Licensor and Licensee dated _____, 20__ (the "**Master Agreement**"). The remedy set forth in this **Section 12** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

13. TERMINATION. If Licensee fails to surrender to Licensor the Premises, upon any termination of this Agreement, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

14. ASSIGNMENT. Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall assign, transfer, sell, or hypothecate this Agreement or any interest herein (either voluntarily or by operation of law), without the prior written consent and approval of Licensor, which may be withheld in Licensor's sole discretion. Notwithstanding any contrary provision herein; Licensee shall have the right to assign this Agreement to the West Haymarket Joint Public Agency, a Nebraska joint public agency ("**JPA**") without further consent of Licensor provided (i) Licensee delivers prior written notification to Licensor of the assignment, (ii) Licensee and JPA enters into Licensor's then-standard Consent to Assignment form, pursuant to which Licensee will remain jointly and severally liable for all of Licensee's obligations hereunder, including without limitation Licensee's liability and indemnification obligations; provided that Licensor agrees it will first send any claim or notice of default to JPA and will not pursue any action against Licensee until thirty (30) days after the date of such claim or notice to JPA, unless failure to pursue action against Licensee during such time would otherwise prejudice Licensor's rights, and (iii) Licensee's entire interest under the Master Agreement, the Exchange Agreement (as defined in the Master Agreement), the C&M Agreement, and all Rights of Entry agreements (as defined in the Master Agreement) are assigned at the same time to JPA.

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

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

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

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

16. SURVIVAL. Neither termination nor expiration 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, or, if later, the date when the Premises are restored to its condition as of the Effective Date.

17. RECORDATION. It is understood and agreed that this Agreement shall not be filed of record with the Lancaster County, Nebraska Register of Deeds Office or otherwise recorded in the official records of Lancaster County, Nebraska.

18. APPLICABLE LAW. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the substantive laws of the State of Nebraska without regard to conflicts of law provisions.

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

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

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

22. MISCELLANEOUS

22.1 In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

22.2 The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

22.3 In the event Licensee conveys, transfers, leases or otherwise grants a right of access and/or use of any interest in all or a portion of Licensee's property which is accessed by the Crossing, Licensee shall notify Licensor in writing of the same within thirty (30) days prior to the date of such conveyance, transfer, lease or grant of access and/or use, and Licensee shall cause any receiver or subsequent holder(s) of such an interest or right ("**Holder**") to: (i) file an application with Licensor's outside contractor, Jones Lang LaSalle Global Services, for use of the Crossing, which application may be granted or denied in Licensor's sole discretion; and (ii) upon Licensor's approval of Holder's application, Licensee shall cause Holder to execute Licensor's standard License Agreement then in effect for the use of the Crossing. Licensee may not assign or otherwise transfer, or permit the use of this Agreement or the Crossing by Holder without Licensor's prior written approval for the same and any attempt to do so is a material breach of this Agreement and shall render it null and void.

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

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

[Signature Page Follows]

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

LICENSOR:

BNSF Railway Company

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

By: _____

Name: _____

Title: _____

Date: _____

LICENSEE:

City of Lincoln, Nebraska

By: _____

Name: _____

Title: _____

Date: _____

Sample

EXHIBIT A

Premises

[See attached]

EXHIBIT B

Completed Application for Crossing

[See attached]