

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION AUTHORIZING CHAIR TO SIGN RENEWAL RIDER AGREEMENT
FOR LEASE OF UNION PACIFIC RIGHT-OF-WAY AT 25TH STREET

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the county necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, pursuant to Neb. Rev. Stat. 39-1402(Reissue 2008) the County Board has the power and authority of improvement, and maintenance of public roads of the County; and,

WHEREAS, Sarpy County had previously entered into an agreement with the Union Pacific Railroad Company for license to cross its right of way at the intersection of 25th Street and the Union Pacific line; and,

WHEREAS, said previous agreement has expired, and a Renewal Rider Agreement has been proposed for a period of 25 years.

NOW, THEREFORE, BE IT RESOLVED BY THIS BOARD OF COUNTY COMMISSIONERS THAT THE COUNTY OF SARPY, STATE OF NEBRASKA, that the Renewal Rider Agreement with the Union Pacific Railroad, as shown on the attached Exhibit "A", is hereby authorized and approved, and the Chairman is hereby authorized to sign agreement and such other documents as may be necessary to consummate the terms as described therein.

Dated this 7th day of July, 2009.

Moved by Rich Jansen, seconded by Rusty Hike, that the above

Deb Houghtaling

Sarpy County Clerk

1210 Golden Gate Drive, Suite 1118
Papillion, Nebraska 68046-2895

Phone: (402) 593-2105
Fax: (402) 593-4360

Fred Uhe
Chief Deputy

July 9, 2009

Union Pacific Railroad Company
1400 Douglas Street STOP 1690
Omaha NE 68179
Attn: Manager - Leases
Folder No. 00024-36

RE: Sarpy County Renewal Rider Agreement

Please find enclosed three (3) originals of the subject agreement which have been approved and signed by the Chairman of the Board on July 7, 2009. Upon completion please provide one original for Sarpy County records.

Mail to: Sarpy County Clerk
Attn: Chris Vance
1210 Golden Gate Dr.
Papillion NE 68046-2895

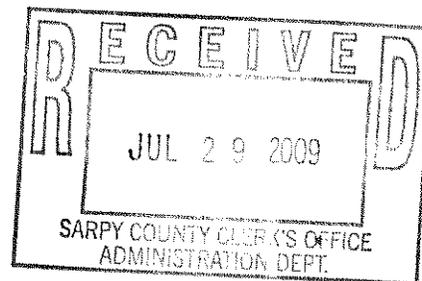
Sincerely,



Debra J. Houghtaling
Sarpy County Clerk

Enclosures (3)

DJH/cv



July 13, 2009
Folder: 00024-36

SARPY COUNTY CLERK
ATTN: CHRIS VANCE
1210 GOLDEN GATE DRIVE
PAPILLION NE 68046-2895

Gentlemen:

RE: Renewal Rider covering lease of premises for highway purposes between Railroad Mile Post 12 on the Gilmore Industrial Spur at or near Gilmore, Sarpy County, Nebraska

Attached is your copy of the fully-executed original of the above-referenced Renewal Rider.

The Railroad Company has authorized the installation of fiber optic cable facilities on its property in certain areas. **Prior to digging on the Railroad's property you must contact the Railroad Company at 1-800-336-9193 to determine if this property contains fiber optic cable.** In any event, you should thoroughly review the terms and conditions of this Lease.

In compliance with the Internal Revenue Service's policy regarding its Form 1099, this is to advise you that 94-6001323 is Union Pacific Railroad Company's Federal Taxpayer Identification Number and we are doing business as a corporation.

Sincerely,

A handwritten signature in cursive script that reads "Paul Nahas".

Paul Nahas
Assistant Manager - Real Estate
plnahas@up.com
(402) 544-8624

AUDIT A101950

Folder No. 00024-36

RENEWAL RIDER AGREEMENT

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, and its predecessors in interest, (hereinafter the "Lessor") and **COUNTY OF SARPY**, (hereinafter the "Lessee"), or their predecessors in interest, have heretofore entered into an agreement dated December 30, 1976, bearing Railroad Company Audit No. A101950 (hereinafter "Basic Agreement") covering lease of premises for highway purposes at Mile Post 12 on the Gilmore Industrial Spur at or near Gilmore, Sarpy County, Nebraska.

The parties hereto now mutually agree that the Basic Agreement, including any supplement or amendment thereto (if any), is hereby adopted by the parties hereto as their agreement for a term beginning December 30, 2001, and extending to December 29, 2026.

Lessee shall pay Lessor a one-time payment in the amount of Five Hundred Dollars (\$500.00) for the extended term.

All the terms and conditions of the Basic Agreement, as heretofore or herein supplemented and/or amended (if applicable), shall have the same force and effect and be as binding upon the parties hereto during said term as if the same were repeated herein.

The following Special Provision for 'Protection of Fiber Optic Cable Systems' is hereby made a part hereof.

Fiber optic cable systems may be buried on the Lessor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Lessee shall telephone the Lessor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Lessor's premises to be used by the Lessee. If it is, Lessee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Lessor's premises.

In addition to other indemnity provisions in this Agreement, the Lessee shall indemnify and hold the Lessor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Lessee, its contractor, agents and/or employees, that causes or contributes to (i) any damage to or destruction of any telecommunications system on Lessor's property, and (ii) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents or employees, on Lessor's property. Lessee shall not have or seek recourse against Lessor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Lessor's property or a customer or user of services of the fiber optic cable on Lessor's property.

Article 1. AMENDMENT OF SECTION 13 OF THE BASIC AGREEMENT.

Effective as of the date of this Supplemental Agreement, Section 13 of the Basic Agreement shall be replaced in its entirety with the following:

Section 13. CERTIFICATE OF INSURANCE.

A. If the Lessee uses a contractor to perform any work on the Premises, the contractor will, before commencing any work, provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in Exhibit B of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company
1400 Douglas Street, STOP 1690
Omaha NE 68179
Attn: Manager - Leases
Folder No. 00024-36

Executed this 7 day of July, 2009.

UNION PACIFIC RAILROAD COMPANY

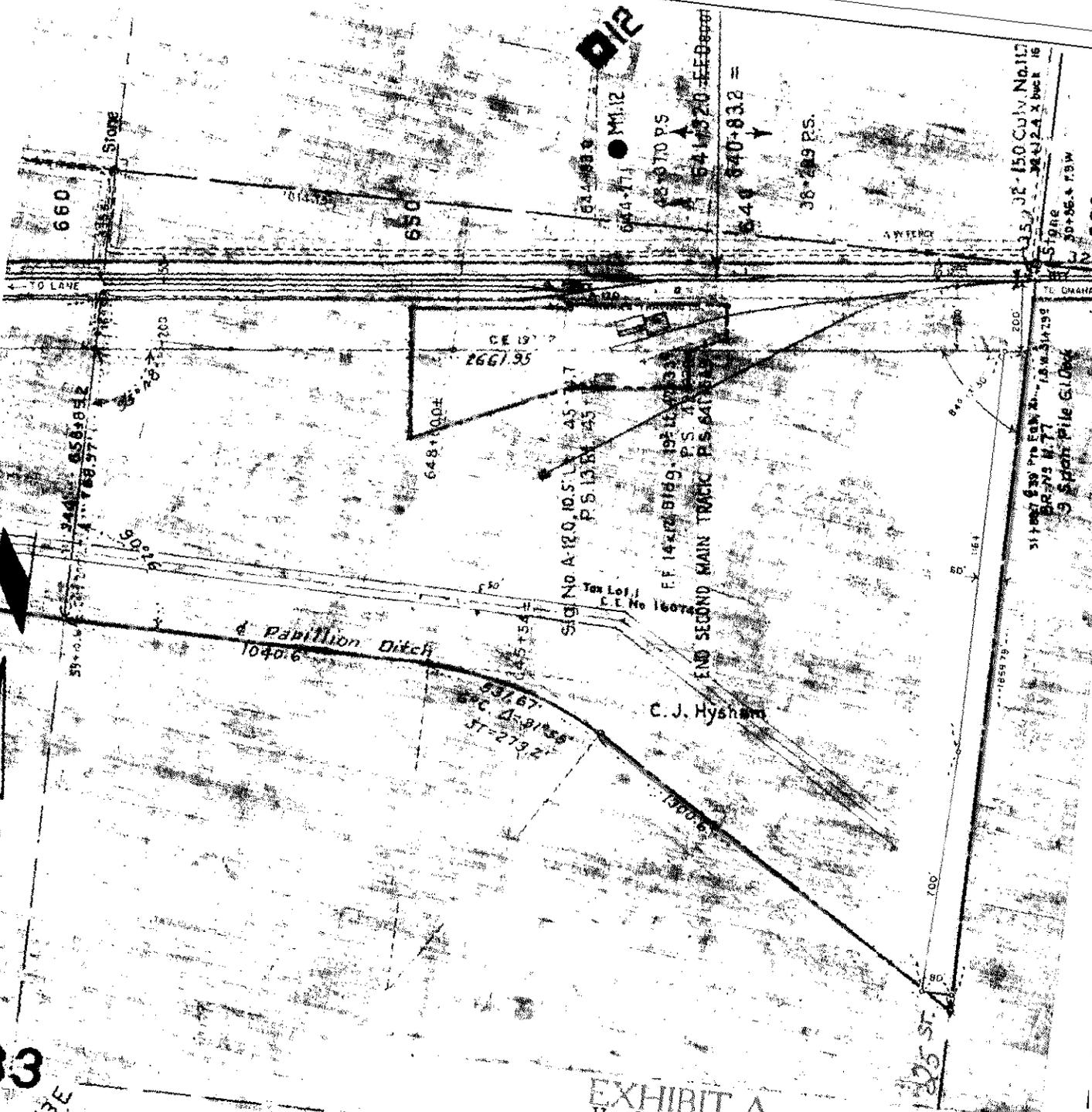
COUNTY OF SARPY

By: *Tom Love*
Title: Assistant Vice President - Real Estate

By: *Gene Jones* 7/7/09
Title: Chairman

Approved as to form: *Nicole O'Keefe*
County Attorney

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TIAN R. 13E

EXHIBIT A
U. P. R. R. CO.
GILMORE, NEBRASKA

Lease to Sarpy County Highway
Department

Scale: 1" = 400'
Office of Chief Engineer
Omaha, Nebraska - March 30, 1976

* L E G E N D *

Leased area shown.....Outlined Yellow
R.R. Co. property shown.....Outlined Red

10/31/20

Approved: Insurance Group
Created: 2/10/06
Last Modified: 7/2/07

EXHIBIT B

Union Pacific Railroad Contract Insurance Requirements

25 Year Highway Lease Renewals

Lessee shall, cause its Contractors and Subcontractor, as the case may be, to maintain, during the life of this Agreement to which this is an Exhibit (except as otherwise provided in this Agreement), the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage). The policy must also contain the following endorsement, which must be stated on the certificate of insurance: Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Premises Union Pacific Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

- Contractor and Subcontractor statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor and Subcontractor are self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

In any and all Claims against Lessor Railroad by any employee of Contractor and Subcontractor, Contractor and Subcontractor indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any workers compensation acts, disability benefits acts or other employee benefits acts.

D. Pollution Liability insurance. Pollution Liability coverage must be provided if the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$1,000,000 per claim and an aggregate limit of \$2,000,000 with a deductible not to exceed \$25,000.

If required Contractor and Subcontractor warrants that any retroactive date applicable to the coverage under the policy is the same as or precedes the effective date of this Agreement; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 5 years beginning from the time the work under this Agreement is completed or if coverage is cancelled for any reason the extended discovery period will be exercised for the maximum time allowed by the policy.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor and Subcontractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

E. Umbrella or Excess insurance. If Contractor and Subcontractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above must include Lessor Railroad as "Additional Insured" using ISO Additional Insured Endorsement CG 20 11 01 96 (or a substitute form providing equivalent coverage). The coverage provided to Lessor as additional insured shall not be limited by Contractor's and Subcontractor's liability under the indemnity provisions of this Lease.

G. Contractor and Subcontractor waives all rights against Lessor and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers' liability or commercial umbrella or excess liability insurance obtained by Contractor and Subcontractor required by this agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Lease, or (b) all punitive damages are prohibited by all states in which these Premises(s) are located.

I. Prior to execution of this Lease, Contractor and Subcontractor shall furnish Lessor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Lease.

J. All insurance policies must be written by a reputable insurance company acceptable to Lessor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the Premises Land are located.

K. The fact that insurance is obtained by Contractor and Subcontractor, or by Lessor on behalf of Contractor and Subcontractor, will not be deemed to release or diminish the liability of Contractor and Subcontractor, including, without limitation, liability under the indemnity provisions of this Lease Agreement. Damages recoverable by Lessor from Contractor and Subcontractor or any third party will not be limited by the amount of the required insurance coverage.