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SIDEWALK CROSSING LICENSE AGREEMENT

THIS SIDEWALK CROSSING LICENSE AGREEMENT is made and entered into this 11th day of April, 2022, by and between **IOWA NORTHERN RAILWAY COMPANY**, an Iowa corporation (the "**Company**" or the "**Railroad**"), and the **CITY OF OELWEIN, IOWA**, a municipality of Iowa, to be addressed at 20 2nd Ave SW, Oelwein, IA, 50662 (the "**Licensee**" or the "**City**").

WHEREAS, the Licensee desires to construct a sidewalk and recreational trail (the "**Facility**") upon the Company's real estate in the City of Oelwein, Fayette County, Iowa, at the location shown on the attached **Exhibit A**;

WHEREAS, the parties agree that the Facility will be in close proximity to an active railroad right-of-way over which the Company conducts regular railroad operations which potentially occur at all hours of the day and night; and

WHEREAS, the Company is willing that the Facility be installed and thereafter maintained and used upon the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the parties' mutual covenants and other good, valuable consideration the sufficiency of which is acknowledged, the parties agree as follows:

1. License Fee. In consideration of a preparation and handling fee of Five Hundred Dollars (\$500) and a one-time license fee of Two Thousand Dollars (\$2,000) in hand paid by the Licensee to the Railroad, the receipt of which is acknowledged, and the faithful performance by the Licensee of the covenants herein contained, Licensee may construct, maintain, use and remove a sidewalk and recreational trail upon and across the property of the Railroad at the location described in the attached Exhibit A.

2. Insurance.

(a) The City shall purchase and maintain, at its sole expense, General Liability Insurance, Automobile Liability Insurance, Workers' Compensation Insurance and Excess or Umbrella Insurance with a company having at least an "A" Rating as listed by the A.M Best Guide and which shall contain broad form contractual liability with a single limit of at least \$5,000,000 each occurrence or claim and an aggregate limit of at least \$10,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
- Products and completed operations
- Contractor's statutory liability and Employers' Liability (Part B) under the workers' compensation laws of the State of Iowa.

City agrees to provide Railroad with a certificate of insurance evidencing the above described coverage. Such certificates of insurance shall provide that the applicable insurance policies have endorsement to provide a minimum of 30 days advance notice to the Lessor in the event of cancellation or non-renewal.

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All Liability policies except the workers' compensation shall name the Railroad as an Additional Insured. The City shall require its contractor(s), as part of all contracts relating to the construction, maintenance, repair, reconstruction or replacement of the Project Improvements, when engaged in upon the Railroad's right-of-way, to indemnify and save harmless the Railroad against all loss, liability, and damages that arise from the activities of the City or the City's contractor(s) or any agents in the performance of the construction, maintenance, repair, or reconstruction work on said property. Notwithstanding the foregoing, nothing herein contained is to be deemed or construed as indemnification against the negligence of the Railroad, or its officers, employees, or agents.

(b) The City will require its contractor(s) to provide, for and on behalf of the Railroad, Railroad Protective Insurance as stated in the Code of Federal Regulations, Title 23, part 646, and any revisions thereto issued by the Federal Highway Administration for damages because of bodily injury to or death of persons and injury to or destruction of property resulting from the operations of the contractor(s), subcontractors, or their employees on the Project, such insurance (written in the limits as shown below) to be approved by and acceptable to the Railroad. Approval and acceptance shall not be unreasonably withheld. The form of insurance to be furnished shall be in accordance with the Railroad Protective Liability form, and shall be executed by an insurance company qualified in the State of Iowa. Limits of such insurance shall be as follows:

Coverage A (Bodily Injury Liability); Coverage B (Property Damage Liability); and Coverage C (Physical Damage to Property) combined single limit of \$5,000,000 per occurrence with \$10,000,000 aggregate for the term of the policy.

3. Subordination. This License and the permission issued to Licensee are subject and subordinate to the rights of Railroad, its successors and assigns, its grantees, lessees and licensees to construct, reconstruct, operate, use, maintain, repair and renew on, beneath or above the property covered hereby, and structures, improvements or facilities of similar or different character as are now or in the future may be located on, beneath or above said properties.

4. Preconstruction Notice. Licensee shall, except in emergencies, give not less than seventy-two (72) hours written notice to Railroad of the day, hour and location that it proposes to undertake any construction or maintenance work concerning the Facility and in the event of an emergency shall notify Railroad as soon as possible. Licensee shall require each of its contractors and subcontractors to observe and conform to the conditions and requirements specified herein; and for the purposes of the safety, protective and indemnification provisions hereof, such contractors and subcontractors, their agents, servants and employees, and other persons on the Railroad property at the invitation of the Licensee, its contractors or subcontractors, shall be deemed the agents or employees of the Licensee.

5. Permits. Licensee shall at no expense to Railroad obtain all permits and approvals required to exercise this License and Licensee shall install, maintain and operate its facilities in accordance with all requirements of lawful public authority. Licensee shall be responsible for any taxes, assessments and changes made against the Facilities on Railroad's property or the operation of any of them.

6. Licensee Costs. The initial cost and expense of installation of the Facility shall be borne by the Licensee and the cost and expense of maintenance and renewal of the Facility shall be borne by the Licensee.

7. Railroad Changes; Flagging. If, in the opinion of the authorized representative of Railroad, the work to be done by the Licensee pursuant to this Agreement will make necessary or desirable any change in the Railroad's facilities, or those of the Railroad's tenants or licensees, on the Railroad's property, the Railroad shall have the right, but not the duty, to make such changes, the expense thereof to be borne by the Licensee.

(a) No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s),

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vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. All expenses connected with the furnishing of said flagman shall be at the sole cost and expense of the City, who shall promptly pay to Railroad all charges connected therewith, within 30 days after presentation of a bill therefore.

(b) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays.

(c) Wage rates are subject to change, at any time, by law or by agreement between the Railroad and its employees, and may be retroactive as a result of a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the City shall pay on the basis of the new rates and charges.

(d) Reimbursement to Railroad will be required covering the full eight hour day during which any flagman is furnished.

(e) Arrangements for flagging are to be made at least ten (10) days in advance of commencing work upon the Licensed Property.

8. Requirements Applicable to City and Its Contractors during Initial Construction of Project Improvements; Project Completion Penalty.

(a) The City will require its Project engineers to contact the Railroad's authorized representative, Chief Engineer, located at 1330 Sheffield Avenue, Waterloo, IA. 50702 (Telephone No. 319-233-3640), in writing, at least ten (10) days prior to commencing any initial construction work on the Project on Railroad's property. The City will require its contractor(s) to use all reasonable care to avoid accident, damage or delay to the Railroad's operations, and to leave the Railroad's right-of-way in a clean and orderly condition. All work herein provided to be done by the City's contractor(s) on the Railroad's right-of-way shall be done under the supervision, inspection, and direction of the City's personnel.

(b) City shall ensure all of its contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when City entered thereon.

9. **Weed Removal.** Licensee shall remove and keep removed as a result of the roadway Facility all brush, weeds, trees and other plant growth which interfere with view of approaching trains and rail vehicles on the tracks of the Company.

10. **Non-interference.** Licensee shall not do or permit to be done in the use of the Facility any act that will in any manner interfere with, interrupt or endanger the operation of the trains, engines, rail cars or other railroad equipment.

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11. Term. The term of this Agreement shall be for a period of five years beginning May 1, 2022 (the "Effective Date") and ending May 31, 2027 (the "Initial Term"). This Initial Term shall automatically be extended for three additional five year term(s) unless either party serves written notice on the other party of its intent to cancel this Agreement, which notice must be received at least thirty (30) days prior to the expiration of the Initial Term or any extended term.

12. Law Compliance. Licensee and other persons authorized to use the Facility shall at all times use of the Facility, it will comply with all applicable laws, including, but not limited to, any laws, standards, regulations, or permit requirements relating to environmental pollution or contamination or to occupational health and safety; and Licensee agrees to indemnify and hold harmless the Company and the Railroad from any and all claims, demands, lawsuit, or liability for loss, fines, damage, injury, and death and all expenses and costs, including attorneys' fees, resulting from or arising out of the construction, maintenance, or use of the Facility, including any discharge or emission therefrom or for the violation of any law, standard, regulation, or permit requirement relating to environmental pollution or contamination or to occupational health and safety.

13. Indemnification. IT IS UNDERSTOOD BY THE LICENSEE THAT THE FACILITY IS SUBJECT TO AND MAY INCREASE THE DANGERS AND HAZARDS OF THE OPERATION OF THE RAILROAD OF THE COMPANY. Therefore, the Licensee accepts the privilege granted with full recognition of the risk of loss of life, personal injury and property loss or damage which may be caused by rail operations at or in the vicinity of the Facility and by the construction, use, maintenance or removal of the Facility by the Licensee or others. Therefore, the Licensee assumes and agrees to pay for all loss of or damage to any property whatsoever, and injury to or death of any person or persons whomsoever, including all costs and expenses incident thereto, however arising from or in connection with the existence, construction, maintenance, repair, renewal, reconstruction, use or removal of said Facility, or any defect therein or failure thereof, or the failure of the Licensee, its agents, employees, lessees or invitees to abide by or comply with any of the terms and conditions of this Agreement, required to be kept or performed by them or any of them; and the Licensee forever indemnifies the Company against and agrees to save the Company harmless from any and all claims, demands, lawsuits or liability for any such loss, damage, injury and death and costs and expenses including attorneys' fees incident thereto, even though the operations of the railroad may have caused or contributed thereto. Notice to or knowledge by the" Company of any act or omission by the Licensee, and the acquiescence by the Company in or to such act or omission, shall neither be considered to relieve the Licensee of any obligation assumed by it under this paragraph nor be considered to be a waiver or release by the Company of any rights granted to it under this paragraph.

14. Termination Right. The Company shall have the right to use, occupy and enjoy its tracks, property and right-of-way for such purposes, in such manner and at such time as it shall desire, the same as if this Agreement had not been executed by it. The Company shall have the right, without any liability for damages to the Licensee therefore, to terminate this Agreement at any time by giving the Licensee not less than thirty (30) days written notice of such termination. Upon expiration of the time provided by such notice, Company, without further notice, act or demand, may remove the Facility and approaches.

15. Facility Changes. Licensee agrees at any time, or from time to time, at its own risk and expense, upon request of the authorized representative of the Railroad, to make such change or changes as may be necessary and reasonable in the opinion of said representative to accommodate any change or improvement which Railroad may desire to make in or upon its property. In case Licensee shall fail within thirty (30) days after notice from Railroad to make such change or changes, Railroad shall have the right, but not the duty, to make such change or changes, or remove Licensee's facilities from said property at the risk and expense of the Licensee.

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16. Railway Changes. In the event Railroad elects to renew, replace, repair or alter any tracks or other facilities or to construct new facilities or to make other use of the property covered by this License, and in connection therewith requires the removal of the Facility placed by Licensee on Railroad's property or should the need renewal or repair, the Licensee shall, within thirty (30) days of receipt of notice, arrange for such removal, renewal or repair at Licensee's risk and expense. In the event removal is required, the Facility shall be relocated to such location on Railroad's property as is designated by Railroad, provided that Railroad's authorized representative determines that a location is reasonably available. Renewal or repair, if requested, shall be to such condition as is designated by Railroad's authorized representative. If Licensee fails to comply with the foregoing, Railroad shall have the right, but not the duty, to remove, renew or repair the Facility at the sole risk and expense of Licensee.

17. Facility Expense. Cost and expense for work, if any, performed by the Railroad pursuant to this Agreement shall consist of the direct costs of labor and material plus Railroad's standard additives in effect at the time the work is performed. All payments required of Licensee under this Agreement shall be made promptly upon presentation of a bill, and in no event later than twenty (20) days after bills are submitted by the Company to Licensee. For all bills unpaid after twenty (20) days, interest shall accrue at an annualized rate of 10% per annum.

18. No Title Warranty. It is expressly understood Railroad does not warrant title to the premises and Licensee accepts the issuance of privileges contained subject to all lawful outstanding existing liens and superior rights. Licensee agrees it shall not have nor make any claims against Railroad for damages on account of any deficiency of such title and the sole remedy of Licensee shall be the right to return of the consideration paid in advance, provided for herein, or a proportionate part thereof in the event of a partial deficiency or insufficiency of title. Licensee further agrees to indemnify and hold harmless the Railroad and to assume all risk, responsibility and liability including any expense, reasonable attorneys' fees and costs incurred or sustained by Railroad arising from, growing out of, or in any manner or degree directly or indirectly attributable to or resulting from any deficiency or insufficiency of its title affecting the right of the Railroad to issue this License.

19. Other Usage. The permission granted by the Company shall neither be, or be deemed or construed to be, a grant of land, nor shall it constitute ownership by Licensee of the Facility or that portion of the Company's right-of-way upon which said crossing is located. It is also specifically understood by Licensee that cables and other electric and/or fiber optic transmission lines, may, now or in the future, be on, about, above, along, or under the Company's property and Licensee agrees and warrants that under no circumstances will Licensee dig in or disturb the surface of the Company's property, without prior approval from the Company.

20. Construction Quality. Nothing in this Agreement shall be construed to place any responsibility on Railroad for the quality of the construction, maintenance or other work performed on behalf of Licensee or for the condition of any of Licensee's facilities. Any approval given or supervision exercised by Railroad hereunder, or failure of Railroad to object to any work done, material used or method of construction, reconstruction or maintenance, shall not be construed to relieve Licensee of its obligations under this Agreement.

21. Abandonment of Facility. It is expressly made a condition of this License that if Licensee or its successors or assigns shall abandon the Facility, or any portion of thereof, then and in that event all the rights granted shall cease and terminate with respect to that portion of the Facility so abandoned, and title to such abandoned portion shall no longer be burdened by this License; it being agreed between the Company and Licensee that nonuse of the Facility for any period equal to or greater than one (1) year shall be deemed an abandonment of thereof, or such portion thereof as is not so used. In the event of the abandonment of all or a portion of the Facility, either by nonuse or otherwise, Licensee shall upon the

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request of the Company deliver to the Company a recordable instrument evidencing that the title to the Facility property so abandoned is free and clear of the burden of this License and is free and clear of liens, encumbrances, clouds upon or defects in the title to said Facility Property created or permitted to be created by Licensee.

22. Nullification. It is expressly understood and agreed by the parties that in the event this License would be contrary to any law, regulation or order of governmental authority, or contrary to any mortgage or indenture to which Railroad is a party, that this Agreement shall be cancelled and annulled and neither party shall have any claim whatsoever against the other by reason thereof.

23. Binding Effect; Nonassignable. This Agreement shall be binding on the successors and assigns of the parties hereto, but no assignment by the Licensee, its successors, legal representatives or assigns, shall be binding upon the Railroad without its written consent in each instance.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, as of the date first above written.

IOWA NORTHERN RAILWAY COMPANY

By: _____
Daniel R. Sabin, Its President

CITY OF OELWEIN, IOWA ("LICENSEE")

By: _____
Brett DeVore, Its Mayor