

PUBLIC ROADWAY AT-GRADE CROSSING AGREEMENT

THIS PUBLIC ROADWAY AT-GRADE CROSSING AGREEMENT ("Agreement") is made and entered into as of the 5th day of August, 2023 ("Effective Date"), by and between **Fort Worth & Western Railroad Company**, a Texas Corporation, located at 6300 Ridglea Place, Suite 1200, Fort Worth, Texas 76116 ("Licensor") and **City of Stephenville**, located at 298 West Washington Street, Stephenville, TX 76401 ("Licensee") (collectively the "Parties").

RECITALS:

WHEREAS, Licensee utilizes the Licensor's property for an existing at-grade public road crossing over South Lockhart Road, DOT Number 020958D at Licensor's Milepost 74.7, Dublin Subdivision, Stephenville, Erath County, Texas (the "Premises") as shown on **Exhibit A**, attached hereto and hereby made a part hereof; and

WHEREAS, Licensor and Licensee are unable to locate the agreement (the "Original Agreement") granting Licensee the right to cross the property and tracks of Licensor at the Premises; and

WHEREAS, Licensor and Licensee now wish to amend and restate the Original Agreement in its entirety on the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the terms and conditions of this Agreement, the sufficiency of which being hereby acknowledged, it is agreed by and between the Parties hereto as follows:

AGREEMENT:

1. **Grant of License**. In consideration of the License Fee to be paid by Licensee and in further consideration of the terms, covenants and agreements herein contained to be kept, observed and performed by Licensee, Licensor hereby grants to Licensee a license for an at-grade public roadway crossing upon a portion of Licensor's right-of-way and railroad facilities located at the Premises, as described above and shown on Exhibit A (the "Crossing"), consisting of roadway approaches, a crossing surface and all appurtenances thereto including, but not limited thereto, any gates or chains, stop signs, warning signs, guardrails, barriers, safety and warning devices or drainage facilities that Licensor deems necessary from time to time, to be constructed by Licensee thereon in strict accordance with the terms hereof. The Crossing with its rights and privileges, shall be used only for the purpose of constructing, operating, upgrading, widening, using, repairing, maintaining, and replacing of a publicly dedicated South Lockhart Road upon the Crossing on the Premises. Under no circumstances shall Licensee modify the use of the Premises for a purpose other than the purpose stated in Section 1 of this Agreement and the Premises shall not be used for any other use during the term of this Agreement

Licensee's right to use the Premises is nonexclusive, and Licensor and its nominees shall have the right to enter and use the Premises for any purposes that will not unreasonably interfere with the rights granted to Licensee hereunder.

Licensee agrees that Licensor shall not be estopped to revoke this License, notwithstanding any expenditure, regardless of the amount which may be incurred by Licensee with respect to the Premises. Licensee further agrees that Licensee shall not contest Licensor's right to revoke this License.

2. **License Fee.** Upon execution of this Agreement, Licensee shall pay Licensor in advance a fee of Ten Dollars 00/100 (\$10.00) for the Term as hereinafter defined.

3. **Term.** This Agreement may be continued in effect for so long as the Crossing is used for the purpose as stated in Section 1 unless and until cancelled or terminated as provided in this Agreement.

4. **Limitation and Subordination of Rights Granted.**

(a) The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of Licensor to use and maintain its entire property including the right and power of Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wire lines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Licensor without liability to Licensee or to any other party for compensation or damages.

(b) The foregoing grant is also subject to those restrictions, covenants, conditions, reservations, easements and purchase options of what-so-ever nature relating to the Premises and to all zoning laws, regulations, statutes, restrictions, ordinances being municipal and/or other governmental authorities, but only to the extent they are in effect and enforceable against the Premises. In addition, Licensor shall have the right to renew, amend, modify and extend any instrument or agreement with respect to any restrictions, covenants, conditions, reservations, easements and options.

5. **Construction, Maintenance and Operation.**

(a) Licensee, at its sole cost and expense, shall (i) construct the Crossing and all appurtenances in strict compliance with **Exhibit B**, attached hereto and incorporated herein, including the placement of railroad advance warning signs on the right side from each direction located off Licensors' right-of-way and (ii) maintain, repair, renew, modify and reconstruct the Crossing, as deemed necessary in the judgment of Licensor, such that the Crossing shall at all times be in a good and safe working order and in compliance with Licensor's standards.

(b) All work performed on the Premises in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Crossing shall be done in a manner to the satisfaction of Licensor and by a reputable licensed track contractor approved in advance by Licensor.

(c) Except in the case of an emergency as set forth in Section 6 below, prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Crossing where it passes over the roadbed and track or tracks of Licensor, Licensee shall submit to Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect Licensor and shall not proceed with the work until such plans have been approved by Licensor's Chief Engineer and then the work shall be done to the satisfaction of the Chief Engineer or his authorized representative. Licensor shall have the right, if it so elects, to provide such support (whether in the form of personnel, engineers, subcontractors and/or materials) as Licensor may deem necessary for the safety of their track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Premises, and, in the event Licensor provides such support, Licensee shall pay to Licensor, fifteen (15) days after invoice, all expense incurred by Licensor in connection therewith, which expense shall include all assignable costs.

6. **Notice of Commencement of Work.** If an emergency should arise requiring immediate attention, Licensor shall provide as much notice as practicable to Licensee before commencing any work. In all other situations, Licensor shall notify the Licensee at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Premises. All such work shall be prosecuted diligently to completion.

7. **Licensee to Bear Expense.** Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Crossing, including any expense which may be incurred by Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

8. **Reinforcement, Relocation or Removal of Premises.**

(a) The license herein granted is subject to the needs and requirements of Licensor in the operation of its railroad and in the improvement and use of its property. Licensee shall, at the sole cost and expense of Licensee, reinforce the Crossing, or move all or any portion of the Crossing to such new location as Licensor may designate, whenever, in the furtherance of its needs and requirements, Licensor shall find such action necessary or desirable.

(b) All the terms, conditions and stipulations herein expressed with reference to the Crossing on property of Licensor in the location hereinbefore described shall, so far as the Crossing remains on the property, apply to the Crossing as modified, changed or relocated within the contemplation of this section.

(c) Prior to expiration or upon termination of this Agreement, Licensee shall, unless notified otherwise by the Licensor, remove at the Licensee's own expense, the Crossing and all appurtenances thereto and restore Licensor's right of way to a condition satisfactory to the Licensor. If Licensee falls to do so within ten (10) days after such termination, Licensor may perform said work at the expense of the Licensee, and Licensee will reimburse the Licensor for such expense, on demand.

9. **No Interference with Licensor and/or FWR's Operation.**

(a) The Crossing and all parts thereof within and outside of the limits of the property of Licensor shall be constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of Licensor, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

(b) Licensee shall keep all equipment, tools and materials stored at least 25 feet from the centerline of any operable track. Explosives or other highly inflammable substances or any hazardous materials regulated pursuant to federal or state regulation will not be stored on the Premises without the prior approval of Licensor.

10. **Protection of Fiber Optic Cable Systems.**

(a) Fiber optic cable systems may be buried on Licensor'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. Licensee shall contact Licensor Chief Engineer to determine if fiber optic cable is buried anywhere on Licensor Premises to be used by Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Premises until all such protection or relocation has been accomplished.

(b) LICENSEE SHALL DEFEND LICENSOR AGAINST ANY AND ALL CLAIMS, LAWSUITS, INVESTIGATIONS AND DEMANDS, AND SHALL INDEMNIFY AND HOLD LICENSOR HARMLESS FROM ANY AND ALL LOSSES, LIABILITIES, SETTLEMENTS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) WHICH MAY RESULT FROM (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON THE PREMISES, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON THE PREMISES, ARISING OUT OF THE WORK OR SERVICES THAT ARE THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF WHO MAY BE AT FAULT OR OTHERWISE RESPONSIBLE, AND EVEN THOUGH THE

DAMAGE, DESTRUCTION, INJURY OR DEATH ARISES OUT OF OR IS ATTRIBUTABLE TO THE SOLE OR CONCURRENT NEGLIGENCE OF LICENSOR, BUT EXCLUDING DAMAGE, DESTRUCTION, INJURY OR DEATH CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR 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 THE PREMISES OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON THE PREMISES. NOTHING IN THE PARAGRAPH 10(a) SHALL BE CONSTRUED TO LIMIT LICENSEE'S OBLIGATIONS OF DEFENSE AND INDEMNITY AS SET FORTH IN PARAGRAPH 13 BELOW.

11. **Claims and Liens for Material and Labor; Taxes.**

(a) Licensee shall fully pay for all materials joined or affixed to and labor performed upon the Premises in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Crossing, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of Licensee. To the extent Licensee furnishes any material or labor on the Premises, Licensee shall indemnify and hold harmless Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

(b) Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Crossing, to prevent the same from becoming a charge or lien upon property of Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Crossing or any improvement, appliance or fixture connected therewith placed upon such property, or on account of Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to Licensee but shall be included in the assessment of Licensor's property, then Licensee shall pay to Licensor an equitable proportion of such taxes determined by the value of Licensee's property upon property of Licensor as compared with the entire value of such property.

12. **Restoration of Licensor and FWWR's Property.** In the event Licensor authorizes Licensee to take down any fence of Licensor or in any manner move or disturb any of the other property of Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Crossing, then in that event Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same was in before such fence was taken down or such other property was moved or disturbed. LICENSEE SHALL DEFEND LICENSOR AND ITS OFFICERS, AGENTS AND EMPLOYEES AGAINST ANY AND ALL CLAIMS, LAWSUITS, INVESTIGATIONS, AND DEMANDS AND SHALL INDEMNIFY

LICENSOR AND ITS OFFICERS, OFFICERS, AGENTS AND EMPLOYEES FROM ANY AND ALL LIABILITIES, LOSSES, DAMAGES, SETTLEMENTS, COSTS, JUDGMENTS AND EXPENSES, INCLUDING COURT COSTS AND ATTORNEYS' FEES, WHICH MAY RESULT FROM INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OR DESTRUCTION OF ANY PROPERTY, ARISING OUT OF THE TAKING DOWN OF ANY FENCE OR THE MOVING OR DISTURBANCE OF ANY OTHER PROPERTY OF LICENSOR, AND EVEN IF SUCH INJURY, DEATH, DAMAGE, LOSS OR DESTRUCTION MAY HAVE BEEN CAUSED BY, DIRECTLY OR INDIRECTLY, THE SOLE OR CONCURRENT NEGLIGENCE OF LICENSOR. NOTHING IN PARAGRAPH 12 SHALL BE CONSTRUED TO LIMIT LICENSEE'S OBLIGATIONS OF DEFENSE AND INDEMNITY AS SET FORTH IN PARAGRAPH 13 BELOW.

13. **RISK ALLOCATION AND INDEMNITY.**

(a) FOR PURPOSES OF ITEM 13, THE "COMPANY GROUP" SHALL BE COMPRISED OF:

(i) FORT WORTH & WESTERN RAILROAD COMPANY, ITS PARENT COMPANY, THEIR SUBSIDIARY COMPANIES, THEIR AFFILIATE COMPANIES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS, AGENTS, REPRESENTATIVES, OTHER RAILROAD COMPANIES, AND INVITEES; AND

(ii) CONTRACTORS HIRED BY LICENSOR AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS, AGENTS, REPRESENTATIVES AND INVITEES.

(b) FOR PURPOSES OF THIS ITEM 13, THE "LICENSEE GROUP" SHALL BE COMPRISED OF:

(i) LICENSEE, ITS AFFILIATE COMPANIES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS, AGENTS, REPRESENTATIVES, TENANTS AND INVITEES; AND

(ii) ANY CONTRACTOR HIRED BY LICENSEE (WITH THE CONSENT OF LICENSOR) AND ITS DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS, AGENTS, REPRESENTATIVES AND INVITEES OF SUCH CONTRACTOR.

(c) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE AGREES TO DEFEND COMPANY GROUP AGAINST ANY AND ALL CLAIMS, LAWSUITS, INVESTIGATIONS AND DEMANDS, AND TO INDEMNIFY AND HOLD HARMLESS COMPANY GROUP FROM ANY AND ALL LOSSES, LIABILITIES, SETTLEMENTS, COSTS, JUDGMENTS AND DAMAGES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, COURT COSTS, AND EXPENSES), WHICH MAY RESULT FROM THE PERSONAL OR BODILY INJURY, ILLNESS, OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF ANY PROPERTY, ARISING OUT OF RELATING TO, OR RESULTING FROM, IN ANY MANNER, THE USE OF THE CROSSING BY THE LICENSEE**

GROUP, THE PERFORMANCE OF THIS AGREEMENT, THE BREACH BY THE LICENSEE OR THE LICENSE GROUP OF ANY PROVISION OF THIS AGREEMENT, ANY ACT OR OMISSION OF THE LICENSEE GROUP, AND/OR THE WORK OR SERVICES THAT ARE THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF WHO MAY BE AT FAULT OR OTHERWISE RESPONSIBLE UNDER ANY CONTRACT, STATUTE, RULE OR THEORY OF LAW, AND EVEN THOUGH THE SUBJECT PERSONAL OR BODILY INJURY, ILLNESS, DEATH, DAMAGE OR LOSS MAY HAVE BEEN CAUSED BY OR ATTRIBUTABLE TO, DIRECTLY OR INDIRECTLY, (a) THE SOLE, CONCURRENT, ACTIVE, PASSIVE, PRIMARY OR SECONDARY NEGLIGENCE OF ANY PARTY, INCLUDING WITHOUT LIMITATION THE COMPANY GROUP OR THE LICENSEE GROUP, (b) THE STRICT LIABILITY, STRICT PRODUCTS LIABILITY, BREACHES OF EXPRESS OR IMPLIED WARRANTIES, AND/OR THE LEGAL FAULT OF ANY PARTY, INCLUDING WITHOUT LIMITATION THE COMPANY GROUP OR THE LICENSEE GROUP, AND (c) ANY DEFECT OF ANY PROPERTY OR EQUIPMENT OF ANY PARTY, INCLUDING, WITHOUT LIMITATION COMPANY GROUP OR THE LICENSEE GROUP AND INCLUDING ANY DEFECTS PREEXISTING THE DATE OF THIS AGREEMENT.

(d) IN ADDITION, LICENSEE AGREES TO BE RESPONSIBLE FOR AND PROMPTLY REIMBURSE THE COMPANY GROUP FOR ANY AND ALL DAMAGES, LOSSES OR LIABILITIES, INCLUDING, BUT NOT BY WAY OF LIMITATION THE COSTS OF BUSINESS INTERRUPTION AND RE-ROUTING AND DETOURS OF TRAINS AS A RESULT OF, OR RELATING TO, REPAIRS TO THE CROSSING AND/OR ANY EXPLOSION OR OTHER CASUALTY WITH RESPECT TO THE CROSSING AND/OR PREMISES REGARDLESS OF THE CAUSE.

(e) LICENSEE HEREBY ACKNOWLEDGES AND AGREES THAT IT HAS READ THIS AGREEMENT IN ITS ENTIRETY, THAT IT IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF ALL TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT, THAT IT HAS HAD AN OPPORTUNITY TO CONSULT OR HAS BEEN REPRESENTED BY LEGAL COUNSEL OF ITS CHOICE PRECEDING THE EXECUTION OF THIS AGREEMENT, AND THAT IT RECOGNIZES THAT CERTAIN OF THE TERMS OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE TERMS OF ITEMS 13.(A) AND 13.(C), RESULT IN LICENSEE GROUP ASSUMING CERTAIN LIABILITIES WITH RESPECT TO CERTAIN WORK OR SERVICES AND RELIEVING COMPANY GROUP OF ITS RESPONSIBILITY FOR SUCH LIABILITY. LICENSEE AGREES THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEABILITY OF ANY INDEMNITY OR EXCULPATORY PROVISION OF THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, ON THE BASIS THAT LICENSEE HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION WAS NOT "CONSPICUOUS". IN THE EVENT THAT ALL OR ANY PORTION OF THIS PARAGRAPH 13 SHALL BE DEEMED TO BE UNENFORCEABLE FOR ANY REASON, INCLUDING WITHOUT LIMITATION AS A RESULT OF A DECISION OF ANY APPLICABLE COURT, LEGISLATIVE ENACTMENT OR REGULATORY ORDER, THE PARTIES AGREE THAT THIS PARAGRAPH 13 SHALL BE REFORMED TO MAKE IT ENFORCEABLE AND TO

REFLECT THE INTENT OF THE PARTIES, WHICH IS THAT LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS LICENSOR TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

(f) LICENSOR WILL PROMPTLY NOTIFY LICENSEE OF ANY CLAIM, DEMAND OR SUIT THAT MAY BE PRESENTED TO OR SERVED UPON IT BY ANY PERSON ARISING OUT OF OR RESULTING FROM, IN ANY MANNER, THE PERFORMANCE OF THIS AGREEMENT, BREACH BY LICENSEE GROUP OF ANY PROVISION OF THIS AGREEMENT AND/OR THE WORK OR SERVICES THAT ARE SUBJECT MATTER OF THIS AGREEMENT, AFFORDING LICENSEE AN OPPORTUNITY TO ASSUME THE DEFENSE OF SUCH CLAIM WITH LEGAL COUNSEL SATISFACTORY TO LICENSOR. LICENSEE SHALL NOT SETTLE ANY CLAIM, DEMAND OR SUIT IN ANY MANNER THAT WOULD IMPOSE ANY EXPENSE, PENALTY, OBLIGATION OR LIMITATION ON LICENSOR WITHOUT THEIR PRIOR WRITTEN CONSENT.

14. **Insurance.** Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage. Insurance requirements may be met by a combination of self-insurance, primary and excess coverage. Licensee will also provide to the Licensor a Certificate of Insurance issued by its insurance carrier confirming the existence of such insurance.

All insurance correspondence shall be directed to:

Fort Worth & Western Railroad Company
6300 Ridglea Place, Suite 1200
Fort Worth, Texas 76116

(a) **Commercial General Liability Insurance** This insurance shall be written on an occurrence basis, issued on an ISO policy CG 00 01 12 04 or equivalent form, with a single limit of at least \$2,000,000 per occurrence and at least \$4,000,000 in the aggregate per project, with coverage for bodily injury including death, personal and advertising injury, property damage, fire legal liability (coverage not to be subject to a limit less than the replacement value of the portion of the premises occupied), products and completed operations, contractual liability coverage (including the indemnity obligations assumed herein), **and meeting the following specifications:**

- This insurance is to be endorsed to provide coverage to Licensor as an additional insured. No language excluding coverage for the acts or omissions of the additional insured shall be contained in the endorsement.
- This insurance shall be endorsed with an ISO CG 20 01 04 13 Primary and Noncontributory – Other Insurance Condition endorsement or equivalent for this insurance to provide primary and non-contributory liability coverage as to Licensor. It is the specific intent of the parties to this Agreement that all insurance held by Licensor shall be excess, secondary and non-contributory.
- The exception to the Employer’s Liability Exclusion shall not be modified or deleted.

- Any exclusion for railroads (within fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be deleted and this insurance is to be endorsed with an ISO CG 24 17 10 01 Contractual Liability – Railroads endorsement.
- The policy should be endorsed with an ISO CG 29 88 10 93 Waiver of Transfer of Rights of Recovery Against Others providing for a waiver of subrogation.
- The policy should be endorsement to require 30 days' prior written notice by the insurance carrier to Licensor for cancellation or material change.
- Contractual liability coverage shall include but not be limited to liability assumed by Licensee in this Agreement and no endorsements amending the definition of "insured contract" that would exclude coverage of obligations assumed in this Agreement are permitted
- The policy shall not contain an Insured vs. Insured exclusion, any type of punitive or exemplary damages exclusion, or any exclusion related to the "explosion hazard," "collapse hazard," or "underground hazard."
- No exclusions for subcontractors.

(b) **Business Automobile Coverage Insurance** This insurance shall be issued on an occurrence basis on the current edition of the ISO CA 00 01 form with a minimum combined single limit of at least \$1,000,000 per Accident, covering all damages because of bodily injury or property damages caused by an accident and resulting from the ownership, maintenance or use of any auto, whether owned, hired and non-owned, and meeting the following specifications:

- This insurance is to be endorsed with an ISO CA 20 48 10 13, Designated Insured for Covered Autos Liability Coverage endorsement, naming Licensor as an additional insured. No language excluding coverage for the acts or omissions of Licensor shall be contained in the endorsement.
- This insurance shall be endorsed to provide primary and non-contributory liability coverage. It is the specific intent of the parties to this Agreement that all insurance held by Licensor shall be excess, secondary and non-contributory.
- This insurance is to include a waiver of subrogation by insurer as to Licensor.
- This insurance is to contain a provision requiring 30 days' prior written notice by the insurance carrier to the Licensor for cancellation or material change.
- The policy will include the Motor Carrier Act Endorsement for Motor Carrier Policies of Insurance for Public Liability (MCS-90) (interstate) or a Form F Endorsement (intrastate) if required by law.

(c) **Workers Compensation and Employers Liability Insurance** Licensee shall maintain workers' compensation insurance in accordance with the workers' compensation laws of the state(s) affected by this Agreement and Employers' Liability (Part B) insurance with limits of at least \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 each employee and meeting at least the following specifications:

- This insurance shall contain a waiver of subrogation.
- This insurance is to contain a provision for 30 days' prior written notice by the insurance carrier to the Licensor required for cancellation or material change.

If Workers Compensation insurance will not cover the liability of Licensee in states that require participation in state workers' compensation fund, Licensee shall comply with the laws of such states. If Licensee is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the Federal Employers Liability Act, if applicable.

(d) **Umbrella or Excess Liability Insurance** issued on an occurrence basis which shall follow the form of the insurance coverage required in Items A, B and C above, with limits of \$10,000,000, and meeting at least the following specifications:

- This insurance shall be endorsed to provide primary and non-contributory coverage. It is the express intent of the parties to this Agreement that all insured held by Licensor be excess, secondary and non-contributory.
- This insurance is to list Licensor as an additional insured and is to include a duty to defend.
- This insurance shall contain a waiver of subrogation.

(e) **Railroad Protective Liability Insurance** Prior to commencing any activities hereunder of the nature of those in Paragraph 5 and 8 hereof, Railroad Protective Liability Insurance ("RPLI"), if applicable, naming Licensor as the insured must be provided by the Licensee, or its contractor, prior to commencing, and at all times when, Licensee, or its contractors are performing any work on the Premises

RPLI shall provide coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 12 07 (or a substitute form providing equivalent coverage).

The policy shall also contain the following endorsements:

- Policy shall not include a Deductible or Self-Insured Retention
- Pollution Exclusion Amendment
- Limited Seepage and Pollution and Contamination Endorsement
- Evacuation Expense Coverage Endorsement

No other endorsements restricting coverage may be added.

Other Requirements

(f) Licensee agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Licensor. Licensee further waives its right of recovery, and its insurers also waive

their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody and control.

(g) Prior to commencing the Work, Licensee shall furnish to Licensor original certificate(s) of insurance evidencing the required coverage, accompanied by a Schedule of Insurance listing all coverage forms with copies of all endorsements. **Upon request from Licensor, a certified duplicate original of any required policy shall be furnished.**

(h) Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance 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.

(i) Licensee **WARRANTS** that this Agreement has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement and acknowledges that Licensee's insurance coverage will be primary.

(j) The fact that insurance is obtained by Licensee or Licensor on behalf of Licensee shall not be deemed to release or diminish any liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

(k) Upon sixty (60) days' notice to User, Railroad may increase limits or otherwise change the coverage required by this Agreement, consistent with Railroad's risk management policy, no more frequently than once in any twelve (12) month period.

15. **Compliance with Governmental Regulations.** Licensee hereby agrees, in the conduct of its operations hereunder, to abide by and comply with all applicable laws, statutes, rules and regulations of any federal, state or municipal authority, or any other public body having jurisdiction, including, without limitation, laws, ordinances and governmental regulations controlling air, water, noise, solid wastes and other pollution, and environmental damages, and to file all reports or statements required in connection with the conduct of its business.

16. **Environmental.**

(a) 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 referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

(b) Licensee shall give immediate notice to Licensor at (817) 763-8297 and to Licensor Operations Center at (817) 821-6092 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 their 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.

(c) In the event that Licensor receives notice from Licensee of a release or violation of Environmental Laws arising in any way with respect to Licensee's activities on 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.

(d) 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.

17. **Waiver of Breach.** The waiver by Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by Licensee shall in no way impair the right of Licensor to avail itself of any remedy for any subsequent breach thereof.

18. **Termination.**

(a) If Licensee does not use the right herein granted or the Crossing for one hundred eighty (180) days, or if Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from Licensor to Licensee specifying such default and providing an opportunity to cure, Licensor may, at its option, forthwith immediately terminate this Agreement by written notice. Notwithstanding the forgoing to the contrary, Licensor may immediately suspend Licensee's right to use the Crossing and the Premises for failure to maintain insurance as provided herein or for safety reasons as determined by Licensor in its sole discretion.

(b) It is agreed that should the property licensed hereunder or any portion thereof cease to be used for public road purposes or is used for any other purpose than the purpose stated in Section 1 during the term of this Agreement this license shall immediately cease and terminate.

(c) Notice of default and notice of termination may be served personally upon Licensee or by mailing to the last known address of Licensee at the address

provided herein for Notice. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

19. **Removal of Crossing Upon Termination** Prior to the termination of this Agreement howsoever, Licensee shall, at Licensee's sole expense, remove the Crossing from those portions of the right of way not occupied by the roadbed and track or tracks of Licensor and shall restore, to the satisfaction of Licensor, such portions of such right of way to as good a condition as they were in at the time of the construction of the Crossing. If Licensee fails to do the foregoing, Licensor may do such work of removal and restoration at the cost and expense of Licensee. In the event of the removal by Licensor of the property of Licensee and of the restoration of the roadbed and right of way as herein provided, Licensor shall in no manner be liable to Licensee for any damage sustained by Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that Licensor may have against Licensee.

20. **Agreement not to be Assigned.** Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the prior written consent of Licensor which Licensor may withhold in its sole discretion, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of Licensor, shall terminate this Agreement. Notwithstanding any such assignment or transfer for which Licensor gives its consent as provided for hereunder, such assignment or transfer hereunder, such assignment or transfer shall not be effective unless and until the assignee or transferee has assumed in writing all of the obligations and liabilities of Licensee hereunder. In addition, Licensee shall remain liable to Licensor for any failure to perform hereunder by Licensee prior to the date of the assignment or transfer. Grantee will provide Licensor with the name of the proposed assignee or transferee and its principals, and commercially reasonable financial information regarding the proposed assignee.

21. **Successors and Assigns.** Subject to the provisions of Section 20. hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

22. **Notices.**

The address of Licensee for sending notices under this Agreement is:

City of Stephenville
298 West Washington Street
Stephenville, TX 76401

The address of Licensor for sending notices under this Agreement is:

Fort Worth & Western Railroad Company

6300 Ridglea Place, Suite 1200
Fort Worth, TX 76116
(Fax) 817-738-9657

All notices or other communications provided for in this Agreement shall be in writing and shall be deemed given when delivered personally, by certified mail or by telefax, to the addresses stated above (or such other address as may be provided from time to time by one party to the other party in writing).

23. **Joint Efforts of the Parties.** All parties to this Agreement have had access to counsel and have had an opportunity to read, review, or revise this Agreement. This Agreement is the result of the joint efforts of the parties and their counsel. Therefore, the parties agree that this Agreement, or any provision of it, shall not be construed against the drafter.

24. **Miscellaneous.**

(a) In the event that two or more parties execute this instrument as Licensee, all the covenants and agreements of Licensee in this Agreement shall be the joint and several covenants and agreements of such parties.

(b) In the event of litigation on this instrument and should one or more clauses be found invalid, all other provisions of the Agreement are to stand as written.

(c) The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Texas.

(d) This Agreement shall not be modified except by written agreement of the parties. In the event of any conflict between the provisions of this Agreement and the provisions of any other written document or agreement between the parties, the provisions of this Agreement shall control.

(e) This Agreement replaces and restates in whole all of the terms of any existing easement or license of the Licensee, written or otherwise, with respect to the South Lockhart Road and Crossing.

25. **If Work is to be Performed by a Contractor.** If a contractor is to do any work within or upon Licensor's property, then Licensee shall require its contractor to execute Licensor's form Temporary Right of Entry Agreement ("TROEA"). Licensee (i) acknowledges receipt of a copy of the TROEA, (ii) understands its terms, provisions, and requirements, and (iii) will inform its contractor of the need to execute the TROEA. Under no circumstance will Licensee's contractor be allowed onto Licensor's Premises without first executing the TROEA and Licensor retains the right to remove any contractor who has not executed and/or complied with the TROEA. In addition to any other right, remedy of Licensor hereunder, Licensee agrees to pay to Licensor within thirty (30) days of demand an administrative fee in the amount of Three Thousand Five Hundred Dollars (\$3,500.00) to cover Licensor's internal administrative costs incurred for each occurrence when one of Licensee's contractors comes on or about Licensor's

property hereunder without having first executed and delivered to Licensor a TROEA.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

LICENSOR

FORT WORTH & WESTERN RAILROAD COMPANY

Kevin Erasmus, President & CEO

LICENSEE

CITY OF STEPHENVILLE

By: _____

Printed Name: Doug Svien

Title: Mayor

Exhibit A

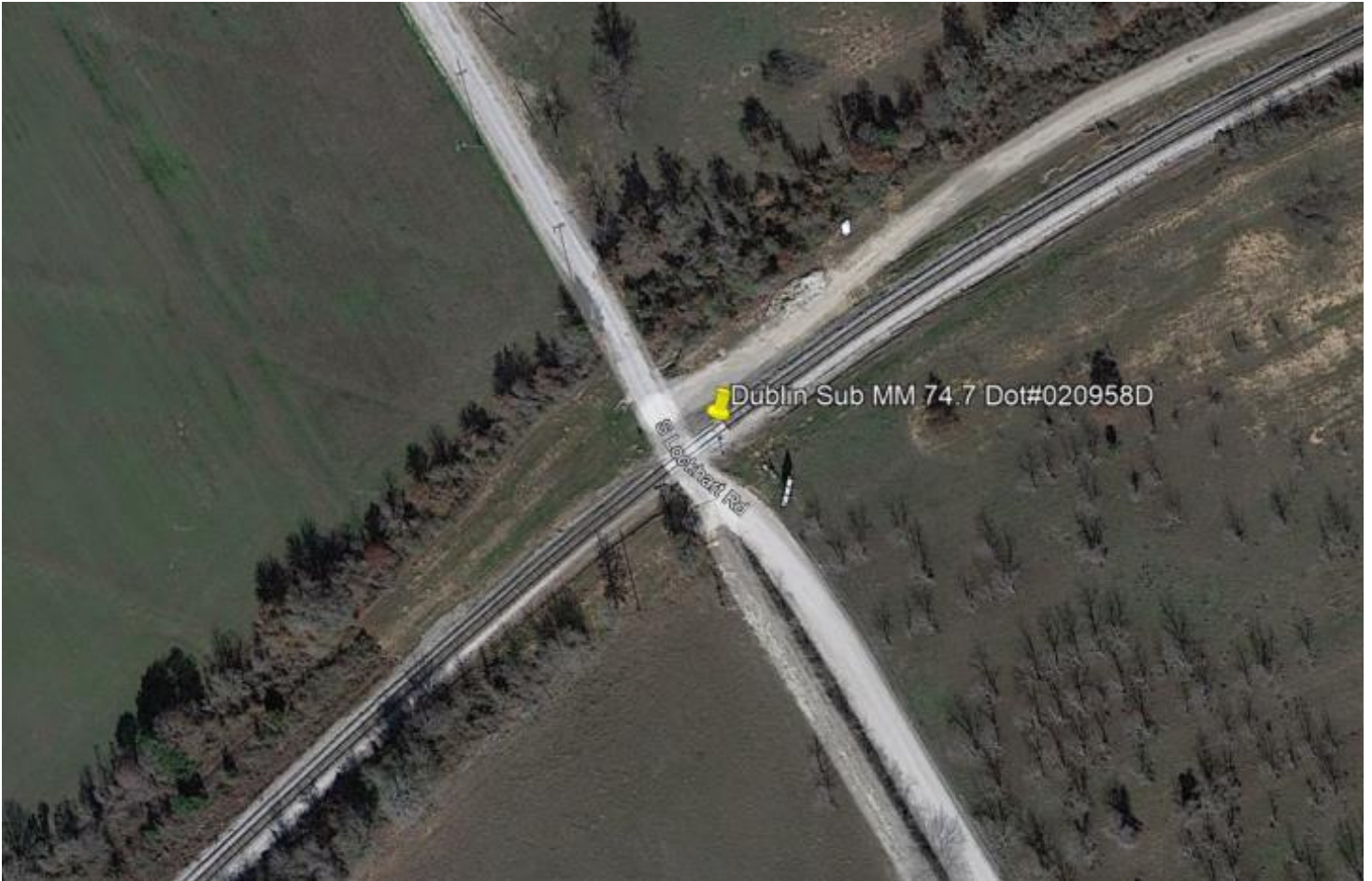


Exhibit B

