

EXHIBIT A



Jones Lang LaSalle Brokerage, Inc
2650 Lou Menk Drive, MOB2
Fort Worth, TX 76131
Telephone 817-230-2600
Fax 817 306-8265

Mr. Robert Healy
Port of Tacoma
One Sitcum Plaza
Tacoma, WA 98421

Re: Tacoma, Washington; Tracking #24W-21596

Dear Mr. Healy:

Enclosed please find one (1) fully executed Agreement for your file. **A copy of the executed Agreement must be available upon request at the job site allowing authorization.** Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the premises completes the safety orientation program at the website www.BNSFcontractor.com prior to entering upon the premises. The certification is good for one year, and each person entering the premises must possess the card certifying completion. If you need additional information please contact me at (817) 230-1009.

Sincerely,

Blake Jung

Blake Jung
Manager - Permits

Enclosure

cc: Marshall Flores - BNSF Roadmaster - Marshall Flores@bnsf.com
Kyle Leatham – BNSF Public Proejcts - Kyle.Leatham@bnsf.com

AGREEMENT FOR PRIVATE CROSSING

THIS AGREEMENT ("Agreement"), made this 5th day of August, 2024, ("Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation (hereinafter called "Licensor") and **PORT OF TACOMA** (hereinafter whether one or more persons or corporations called the "Licensee").

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

GENERAL

1. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, 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 (existing) at-grade crossing, twenty-four (24') feet wide ("Crossing"), across the rail corridor of Licensor at or near Licensor's station of Tacoma, County of Pierce, State of Washington, Line Segment 0608, Mile Post 39.85, at the location and in the manner shown upon the print No. 91701 dated August 1, 2024, marked "Exhibit A," attached hereto made a part hereof ("Premises") for the purposes specified in Section 3. For convenience, said Crossing, including 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, if any, are hereinafter collectively referred to as the "Crossing".
2. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
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 and is not intended for and shall not be for public use. The 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:
 - (a) the Crossing is being used for a purpose or in a manner not set forth in Exhibit B;
 - (b) there is a significant change in the volume or nature of traffic at the Crossing; or
 - (c) 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 26.
4. 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.
5. 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.

TERM

6. This Agreement shall commence on the Effective Date and shall continue for a period of one (1) year, subject to prior termination as hereinafter described.

COMPENSATION

7. Licensee agrees to pay to Licensor in advance:
 - (a) Consideration payment in the amount of **Three Thousand and No/100 Dollars (\$3,000)**.
8. Licensee agrees to pay to Licensor from time to time within thirty (30) days after bills are rendered therefor the entire cost of maintaining the Crossing, including, but not limited to the expense incurred by Licensor resulting from the necessity to remove and replace the Crossing in connection with resurfacing or maintaining Licensor's right of way and tracks including but not limited to the furnishing of Licensor's Flagman and any vehicle rental costs incurred. The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the Licensee. Flagging costs shall include, but not be limited to, the following: pay for at least an eight

(8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.

9. 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. The 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 the 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.

COMPLIANCE WITH LAWS

10. (a) 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 construction, maintenance, and use of the Crossing and the use of the Premises.
- (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all 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 Licensor's Internet Website "www.BNSFcontractor.com". This training must be completed no more than one year in advance of Licensee's entry on the Premises.

DEFINITION OF COST AND EXPENSE

11. (a) 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.
- (b) 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.

RIGHT OF LICENSOR TO USE

12. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- (a) 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;
- (b) 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
- (c) to use the Premises in any manner as the 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 purpose specified in Section 3 above.

LICENSEE'S OPERATIONS

13. Licensee, at its own expense, shall keep the rail flange ways of said 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.
14. 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.
15. 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 Roadmaster, Marshall Flores, at 605 Puyallup Avenue, Tacoma, WA 98421, telephone (253) 405-5837 (cell) or Marshall.Flores@BNSF.com.
16. 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 the Railroad rail corridor and straddling the roadway), closed and securely fastened, except when being opened to allow access upon said rail corridor.
17. While this Agreement is personal to Licensee, it is recognized that there is a possibility of the Crossing being used by unauthorized persons, and said Licensee agrees that for the purposes of this agreement all persons using the Crossing shall be deemed the agents or invitees of the Licensee.
18. 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 cease 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 is safe. 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.
19. If at any time during the term of this Agreement, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Crossing, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect or such other period as mutually agreed to by the parties, make such changes in the Crossing as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the existing or the construction of new a Crossing.
20. Upon termination of this Agreement, Licensor may remove the Crossing and restore the rail corridor to the condition as of the Effective Date of this Agreement at Licensee's sole cost and expense and without incurring any liability to the 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.

LIABILITY

21. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**

- (i) **THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
 - (ii) **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS AGREEMENT,**
 - (iii) **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
 - (iv) **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR**
 - (v) **ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.**
- (b) **FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 21(a), LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON THE STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE PREMISES FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS AGREEMENT SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- (c) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, AND SHALL CAUSE ITS CONTRACTOR TO AGREE, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- (d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Agreement for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

PERSONAL PROPERTY WAIVER

22. **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 NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

INSURANCE

23. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

23.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

23.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

23.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

23.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction. If further maintenance is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

Other Requirements:

- 23.4.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- 23.4.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.
- 23.4.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 23.4.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.
- 23.4.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 23.4.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.
- 23.4.7 Licensee represents that this License 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 License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- 23.4.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 23.4.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

- 23.4.10 Failure to provide evidence as required by this **Section 23** shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.
- 23.4.11 The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 23.4.12 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable.
- 23.4.13 For purposes of this **Section 23**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

ENVIRONMENTAL

24. (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 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.
- (c) 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.
- (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.

DEFAULT

25. If default shall be made in any of the covenants or agreements of Licensee contained in this document, or in case of any assignment or transfer of this Agreement by operation of law, Licensor may, at its option, terminate this Agreement by serving five (5) days' notice in writing upon Licensee. Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this Agreement. The remedy set forth in this Section 25 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

TERMINATION

26. This License may be terminated by Licensor, at any time, by serving thirty (30) days' written notice of termination upon Licensee. This License may be terminated by Licensee upon execution of Licensor's Mutual Termination Letter Agreement then in effect. Upon expiration of the time specified in such notice, this License and all rights of Licensee shall absolutely cease.

Law Department Approved

Tracking No. 24W-21596

27. 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.

ASSIGNMENT

28. Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this Agreement or any interest herein, without the prior written consent and approval of Licensor, which may be withheld in Licensor's sole discretion.

NOTICES

29. 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 Brokerage, Inc.,
2650 Lou Menk Drive, MOB2
Fort Worth, TX 76131
Attn: Licenses/Permits

with a copy to: BNSF Railway Company
2650 Lou Menk Dr.
Fort Worth, TX 76131

If to Licensee: Port of Tacoma
One Sitcum Plaza
Tacoma, WA 98421

SURVIVAL

30. 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.

RECORDATION

31. It is understood and agreed that this Agreement shall not be placed on public record.

APPLICABLE LAW

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

SEVERABILITY

33. 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.

INTEGRATION

34. 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.

MISCELLANEOUS

35. 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.

36. 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.

37. 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: (1) file an application with Licensor’s outside contractor, Jones Lang LaSalle Brokerage, Inc., for use of the Crossing, which application may be granted or denied in Licensor’s sole discretion; and (2) 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.

38. Scope and Limitation of Agreement. The parties acknowledge that entering into this Agreement does not of itself obligate either Licensor or Licensee to participate in the construction of any future project. Nothing in this Agreement shall obligate BNSF to enter into any subsequent agreement or otherwise permit any future projects by the Licensee

39. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

IN WITNESS WHEREOF, this License has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

BNSF RAILWAY COMPANY

Jones Lang LaSalle Brokerage, Inc.,
its Attorney in Fact
2650 Lou Menk Drive, MOB2
Fort Worth, TX 76131

By: 
495C9951EFCEB45A...
Patricia Villegas
Title: Vice President – Permits

PORT OF TACOMA

One Sitcum Plaza
Tacoma, WA 98421


By: 
Eric Johnson
Title: Executive Director

EXHIBIT "A"

SCALE: 1 IN = 100 FT
NORTHWEST DIV.
SEATTLE SUBDIV. L.S. 0608
DATE: 8/1/2024




SECTION: 4
TOWNSHIP & RANGE:
20N 3E
MERIDIAN: WILLM

MAP REF. s62041



Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

LEGEND:

-  PREMISES
-  RIGHT OF WAY LINE
-  TRACK

DESCRIPTION:

AN EXISTING 24' WIDE PRIVATE CROSSING SHOWN HATCHED.
DOT # -

TACOMA
COUNTY OF PIERCE

STATE OF WA

JNC

EXHIBIT "B"

Id: 24W-21596

Application for Private Crossing

Most recent submittal date: 07/09/2024 00:22 UTC

Application Changes:

RailPermitting.com Applicant

Name: Mark Larsen

Title: Principal Scientist, Shareholder

Company: Anchor QEA, Inc.

Phone: 2069033359

Email: mlarsen@anchorqea.com

Project Description: The purpose of the temporary rail crossing is to support the planned soils cleanup at the Port's Parcel 94 site and planned ground improvements for a related project. The work and proposed crossing locations are described in the Port's cover letter uploaded with the application.

Applicant Details

Legal name of company / municipality who will occupy the property: Port of Tacoma

State in which incorporated: Washington

Name of owners or partners if not incorporated:

Name of contact for ownership entity: Robert (Rob) Healy Phone Number: 253-428-8643 Ext:

Email: rhealy@portoftacoma.com

Mailing address: One Sitcum Plaza Tacoma, Washington 98421

Application Details

Construction Start Date: 07/08/2024 Construction End Date: 07/08/2024

Is this applicant a condemning authority? No

Is this project within public right of way? No

Is this applicant a railroad shipper? No

Is this project requested by railroad? No

Is this project in conjunction with a track or track expansion Project? No

Is this project associated with a public road crossing/widening or a grade separation project? No

Application for Private Crossing

Location Details

Name of nearest town on RR: Tacoma County: Pierce County State: Washington

Name of nearest roadway crossing RR: E 15TH ST DOT Number: 085819N

PLSS:

RR milepost: _____ Latitude: 47.25265 Longitude: -122.4291

Railroad: BNSF

Private Crossing

Does crossing already exist? Yes

Type of crossing: Other

Description: Asphalt Paving (Alternate 1 = Rubber Mat; Alternate 2 = Concrete)

Width of crossing: 24'

Time period crossing will be required: <1 years

The crossing is being used for: Construction

Number of vehicle crossing a day: 20+

Type of user vehicle: Industrial

Description: Construction Equipment (Grader, Backhoe, Water Truck, Crane, Etc.)

Are there other private crossing in the vicinity? Yes

Distance/Direction from Crossing: Existing asphalt driveway crossing (for property located at 1200 East D Street) is located 420 feet to the northwest of proposed temporary crossing but won't accommodate the planned work

Distance to nearest public crossing: Public crossing exists at East 15th Street (approximately 1125 feet southeast of proposed temporary crossing), but that does not accommodate the required construction work.

Do you own or lease the land on either side of the track? Own