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September 30, 2013

234942

VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

ENTERED
Office of Proceedings
October 17, 2013
Part of
Public Record



Re: **Finance Docket No. 35751**
Iowa Interstate Railroad, Ltd. -- Acquisition
Exemption -- Line of BNSF Railway Company

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Supplement to Petition for Exemption of Iowa Interstate Railroad, Ltd.**, dated September 30, 2013. Please note that this filing includes several oversized color map exhibits.

An extra copy of the Supplement and of this transmittal letter are included as well. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'TJL', written over the text 'Respectfully submitted,'.

Thomas J. Litwiler
Attorney for Iowa Interstate Railroad, Ltd.

TJL:tl

Enclosures

cc: Parties on Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35751

IOWA INTERSTATE RAILROAD, LTD.
-- ACQUISITION EXEMPTION --
LINE OF BNSF RAILWAY COMPANY

**SUPPLEMENT TO PETITION FOR EXEMPTION OF
IOWA INTERSTATE RAILROAD, LTD.**

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**ATTORNEY FOR IOWA INTERSTATE
RAILROAD, LTD.**

Dated: September 30, 2013

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35751

IOWA INTERSTATE RAILROAD, LTD.
-- ACQUISITION EXEMPTION --
LINE OF BNSF RAILWAY COMPANY

**SUPPLEMENT TO PETITION FOR EXEMPTION OF
IOWA INTERSTATE RAILROAD, LTD.**

Iowa Interstate Railroad, Ltd. ("IAIS") hereby submits this supplement to its Petition for Exemption filed in this proceeding on August 7, 2013 seeking an exemption from the Surface Transportation Board (the "Board") pursuant to 49 U.S.C. §§ 10502 and 10902 for IAIS's acquisition of an approximately 0.75-mile rail line in Council Bluffs, Iowa (the "Bartlett Line") owned by BNSF Railway Company ("BNSF"). This supplement provides additional information sought by Bartlett Grain Company, L.P. ("Bartlett"), the primary shipper on the Bartlett Line, in Bartlett's August 27, 2013 Reply to IAIS's petition for exemption. It also addresses certain other contentions or questions raised by Bartlett and separately by The Kansas City Southern Railway Company ("KCS") in an August 27, 2013 letter filing ("KCS Letter"). Bartlett does not currently "support or oppose" the proposed Bartlett Line transaction, Bartlett Reply at 1, n.1, and the information and representations provided by IAIS here re-confirm that Bartlett faces no competitive harm, market power abuse or degradation of service arising from IAIS's assumption of service from BNSF on the Bartlett Line.

IAIS's acquisition of the Bartlett Line is one relatively small element of a significant public works project undertaken by the Iowa Department of Transportation ("IDOT") to reconstruct and reconfigure the interchange of Interstates 29 and 80 in Council Bluffs. Known

as the Council Bluffs Interstate System ("CBIS") Improvements Project,¹ the project has been in the planning stages for many years, including continuing consultations with Bartlett and a thorough environmental review that included a segment-specific Environmental Assessment issued in March, 2011 by the U.S. Department of Transportation/Federal Highway Administration and the Iowa Department of Transportation in which the Board was a formal Cooperating Agency. The CBIS project involves other rail-related changes in addition to the transfer of the Bartlett Line from BNSF to IAIS, and concurrently with IAIS's filing of this supplement, BNSF, CBEC Railway Inc. ("CEC"), Union Pacific Railroad Company and IAIS are submitting a joint relocation project notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(5) that covers such other rail constructions, abandonments and trackage rights grants associated with the CBIS project. See Finance Docket No. 35755, BNSF Railway Company, CBEC Railway Inc., Union Pacific Railroad Company and Iowa Interstate Railroad, Ltd. -- Joint Relocation Project Exemption -- In Council Bluffs, IA, notice of exemption filed September 30, 2013.

Taken together, the joint relocation project notice in Finance Docket No. 35755 and IAIS's petition for exemption in this proceeding, as supplemented, provide a complete picture of the rail-related elements of the CBIS project and demonstrate that the interests of rail carriers and shippers, including Bartlett, have been considered and accommodated as Iowa DOT moves forward with an important infrastructure reconstruction and improvement project in Council Bluffs. Most relevantly, Bartlett will retain access to common carrier rail service, over a regulated line of railroad, by an experienced and locally-oriented rail carrier that will expand

¹ IAIS did not use the CBIS acronym in its petition for exemption, but that is the fairly universal way of referring to this major public works project. Bartlett Reply at 1, n.1.

competitive opportunities at the Bartlett facility and meet all reasonable service standards for traffic moving from that facility.

With the additional information and assurances provided in this supplement, the Board should proceed to consider and grant the exemption sought by IAIS to acquire the Bartlett Line from BNSF. As explained in IAIS's petition for exemption, a carefully-crafted and widely-adopted timeline for the CBIS project anticipates the initiation of certain rail-related real property transactions by November 30, 2013, and depends on all required regulatory authorizations being in place by that time. IAIS thus reiterates its request that any exemption granted hereunder be effective by November 30, 2013.

A. Bartlett Grain

Bartlett operates a large grain elevator facility in Council Bluffs adjacent to BNSF's current Council Bluffs Subdivision main line and immediately north of where Interstate 29/80, on an elevated east-west alignment, crosses over the BNSF line. See IAIS Petition, Exhibit A. The extensive reconstruction and reconfiguration of Interstate 29/80 requires that BNSF's line be removed at this location, and thus Iowa DOT has comprehensively provided (mostly at Iowa DOT's expense) for the relocation of BNSF's main line to an alignment further east, as well as the retention of the Bartlett Line north of Interstate 29/80 to serve the two shippers on that segment (Bartlett and Western Engineering). IAIS, whose Council Bluffs Yard is immediately adjacent to the north end of the Bartlett Line, would acquire and assume responsibility for providing service on the Bartlett Line.

Bartlett, in particular, has been integrally involved in the planning and preparation for these changes. Correspondence between BNSF and Bartlett from mid- and late 2012 demonstrate Bartlett's participation in CBIS meetings hosted by Iowa DOT, as well as the

discussion and consideration of various issues and concerns between the parties. See Exhibit 1 hereto (BNSF December 20, 2012 letter to Bartlett counsel, Bartlett counsel December 13, 2012 letter to BNSF). The extensive negotiation of a myriad of agreements between a myriad of parties to effectuate various rail-related elements of the CBIS project included necessary amendments to the existing Industry Track Agreement between BNSF and Bartlett. Bartlett has agreed to the assignment of that agreement from BNSF to IAIS upon IAIS's acquisition of the Bartlett Line, and to amendments to that agreement that reflect and accommodate expected operational changes. See Second Amendment to Industrial Track Agreement between BNSF and Bartlett, dated May 6, 2013, attached hereto as Exhibit 2, and specifically Section 8 thereof. IAIS and Bartlett have substantially negotiated a Third Amendment to the Industry Track Agreement, the stated purpose of which is "to address the new conditions and circumstances for the new rail service and operations resulting from the transfer of property and to address the maintenance and operation of the tracks to serve" Bartlett.

More recently, IAIS has written Bartlett to outline IAIS's service intentions once the Bartlett Line transaction is consummated. See IAIS August 23, 2013 letter to Bartlett, attached hereto as Exhibit 3. For its part, Bartlett acknowledges these efforts and their success in largely addressing Bartlett's concerns. Bartlett Reply at 3 ("Bartlett Grain has attempted, with some success, to be actively involved in discussions with IDOT and the affected railroads in order to ensure Bartlett Grain's interests and existing rights are protected and that the CB South facility continues to remain a viable facility into the future."); Bartlett Reply at 5 ("Bartlett Grain has attempted to work closely with BNSF, IAIS and IDOT to ensure that the CBIS project and the associated rail projects and land transfers will not adversely affect or disrupt the current level

of rail service to Bartlett Grain's CB South facility. . . . To some extent, Bartlett Grain's prior efforts to achieve this goal have been successful.").

Other assertions by Bartlett that the CBIS project would "fundamentally change the way rail service is currently provided to the [Bartlett] facility," Bartlett Reply at 4, are less substantial than they seem. Bartlett accurately indicates that IAIS will approach the Bartlett facility from the north, and will back inbound trains into the Bartlett industry tracks. Bartlett Reply at 4. But while BNSF trains currently approach the Bartlett facility from the south, many railcars "are pulled north of the facility over the BNSF main line track that includes the 'Bartlett Line' described in the Petition, and cars are shoved [back] into five industry tracks utilized by the [Bartlett] facility" Bartlett Reply at 3. Bartlett indicates no problems with this current practice, which largely approximates how IAIS will access the facility after IAIS acquires the Bartlett Line.

Ultimately, the major remaining question on which Bartlett seeks additional information relates to track configuration at the north end of the Bartlett Line, at the connection with the rail line of CBEC. Attached as Exhibit 4 are four detailed engineering map sheets, prepared by Iowa DOT in connection with the CBIS project, which show the proposed trackage in this area. IAIS also offers the following supplemental information regarding that trackage.

As IAIS indicated in its petition for exemption, IAIS will acquire BNSF's existing line of railroad as far north as "the crossing of the rail line of CBEC Railway, Inc. ("CBEC") at approximately BNSF milepost 491.75" IAIS Petition at 3. That location is shown in the middle of Sheet B-14, included with Exhibit 4 hereto. At that location, there are existing connecting tracks between the Bartlett Line and the CBEC line, situated in the southwest quadrant of the crossing. As part of the CBIS project, a relocated connecting track, in a

"jughandle" pattern, will be constructed that will bend slightly east from the Bartlett Line before curving west and joining the CBEC line just west of the current BNSF-CBEC crossing. This track appears in blue on Sheet B-14, and also in blue on the far right hand side of Sheet B-22. A segment of this reconfigured connecting track, which will be constructed by Iowa DOT and owned and maintained by IAIS, extends slightly off of the Bartlett Line right-of-way onto property already owned by IAIS. It will have the same functionality as the existing connecting track in the southwest quadrant, while avoiding a street crossing on the existing connection and removing rail operations from the property in the southwest quadrant.²

Bartlett is apparently concerned that this reconfigured connector track will somehow not be a part of the Bartlett Line, will not be part of a regulated line of railroad, and will in turn isolate Bartlett from the common carrier rail network. IAIS confirms that none of these concerns is the case. Specifically, IAIS represents and confirms that, upon completion of the connector track reconfiguration and consummation of the Bartlett Line transaction in 2015: 1) the Bartlett Line will extend from a connection with CBEC in the vicinity of BNSF MP 491.75 past the Bartlett facility to the end of track at approximately BNSF milepost 491.00; 2) the entire Bartlett Line will be a regulated line of railroad; and 3) IAIS will be the rail common carrier on the Bartlett Line. The proposed transaction will result in Bartlett's "industry

² Given that an existing connecting track is simply being reconfigured and, essentially, moved from one quadrant of a crossing to another, this element of the CBIS project does not involve a new "line of railroad" that would require construction authority from the Board under 49 U.S.C. § 10901. See Bartlett Reply at 8. IAIS also rejects Bartlett's claim that IAIS did "not mention, let alone describe, the CBIS project plans for the construction of a new and different track over which IAIS would operate to serve Bartlett Grain after 2015" Bartlett Reply at 7. See IAIS Petition at 4 ("An existing connection between the BNSF and CBEC lines at milepost 491.75 will be realigned in connection with the IDOT project."); IAIS Petition at 5-6 (Bartlett Line transaction "is expected to be completed sometime in 2015, pending completion, as part of the overall DOT Interstate 29/80 project, of the connecting track reconfigurations between the Bartlett Line and the CBEC line at milepost 491.75.").

tracks continuing to be directly connected to a common carrier line of rail, as they are today." Bartlett Reply at 8.

Bartlett also seeks to assure that "the rail service Bartlett Grain receives today from BNSF and KCS pursuant to [those] railroads' haulage agreements is not materially changed by the contemplated transactions," explaining that "[a] necessary prerequisite to achieving this goal is that complete unit trains of KCS railcars are delivered and picked up at the [Bartlett] facility by IAIS." Bartlett Reply at 9. As Bartlett acknowledges elsewhere in its filing, it has received apparently satisfactory assurances from IAIS regarding the delivery of unit trains that BNSF interchanges to IAIS. Bartlett Reply at 5; see Exhibit 3 hereto. IAIS confirms and represents that Bartlett will remain an open industry for BNSF traffic, including KCS traffic handled by BNSF under those carriers' haulage arrangement.

At some points in its reply Bartlett raises vague notions of "economic issues" that, while never saying so explicitly, imply that IAIS should be required to guarantee or freeze future switching rates on the Bartlett Line. E.g., Bartlett Reply at 5. That is not an appropriate subject or motivation for an STB acquisition exemption proceeding. IAIS is not privy to the private transportation contract or contracts between Bartlett, KCS and BNSF. Its initial intention is to utilize switching rates that are comparable to the current BNSF switching rate "allocation" under the relevant contracts. Future rates will depend, as they must, on traffic and market conditions.

What is clear, however, is that IAIS will plainly have no more market power over Bartlett's traffic than BNSF has today, and in fact the proposed transaction should improve the competitive posture of that traffic. Bartlett is today a closed industry on BNSF; after IAIS acquires the Bartlett Line the shippers on the line will be open to BNSF as well as to IAIS points, and could potentially be open to switching via Union Pacific and Canadian National as well.

Bartlett has several other major grain facilities, including another facility on BNSF in Council Bluffs that, unlike the facility on the Bartlett Line today, is open to reciprocal switching. IAIS does not serve Bartlett's other facilities, and has no competitive reason to disadvantage the Bartlett Line facility in a way that would degrade the economic feasibility of operations at the facility and thus threaten IAIS's own traffic volumes and revenues from the facility.

While occurring against the backdrop of the CBIS project, BNSF's sale of the Bartlett Line to IAIS is not conceptually distinct from the hundreds if not thousands of Class I line spin-offs that have occurred over the last thirty years. A hallmark of such transactions is improvement in the responsiveness of service; they virtually never present competitive or market power concerns or issues. No such concerns are present here,³ and regulation of the proposed transaction is necessary neither to carry out the rail transportation policy of 49 U.S.C. § 10101 or to protect Bartlett from an abuse of market power. Particularly with the additional information that IAIS has provided in this Supplement, an exemption for IAIS's acquisition of the Bartlett Line from BNSF is warranted under the criteria of 49 U.S.C. § 10502.

Finally, Bartlett raises the prospect that the change in the serving rail carrier on the Bartlett Line from BNSF to IAIS somehow means that the joint relocation project notice of exemption that is today being filed in Finance Docket No. 35755 for the remainder of the rail-

³ Bartlett questions IAIS's statement that the relevant agreements for the Bartlett Line transaction do not include interchange commitments or paper barrier restrictions, raising the prospect that additional operational agreements to be entered into by IAIS and BNSF could include such provisions. Bartlett Reply at 10, n.5. Obviously parties could not avoid the Board's paper barrier disclosure rules by waiting until after a Board decision to agree to such provisions; any such action would require further filings and actions by the Board. The agreement under which IAIS would operate over a very short segment of CBEC track to reach the Bartlett Line was submitted to the Interstate Commerce Commission for approval by IAIS's predecessor-in-interest and does not contain what are today considered interchange commitments. See Great Western Railway Company of Iowa, LLC – Trackage Rights Exemption – CBEC Railway, Inc., Finance Docket No. 32572 (ICC served September 19, 1994).

related aspects of the CBIS project "may not be appropriate in these circumstances." Bartlett Reply at 8, n.4. That argument makes little sense. Bartlett is not even arguably affected by the relocation of the BNSF and CBEC main lines to parallel routes further east, and it does not have a cognizable interest in the abandonment of BNSF's line south of the Bartlett facility. While certain trains to and from Bartlett's facility may operate via the south today, their routing is a matter of BNSF management discretion. BNSF could elect to move all Bartlett trains via the north without Board authorization or Bartlett's permission.

Bartlett certainly can claim to have an interest in the transfer of common carrier service on the Bartlett Line itself from BNSF to IAIS, and that was precisely why IAIS elected to file an individual petition for exemption for the Bartlett Line transaction rather than including it within the joint relocation project notice. IAIS Petition at 4-5 & n.2. Bartlett's implication that the rail-related aspects of large public works projects must qualify for the joint relocation project class exemption in their entirety or not at all has no support in precedent or logic. Bartlett has had full opportunity to participate in an individual exemption proceeding on the transaction that actually involves it – the sale of the Bartlett Line from BNSF to IAIS.

B. Kansas City Southern

KCS has submitted a strange and scattershot letter pleading that obviously seeks to support its customer Bartlett, but also goes on to make a number of arguments that Bartlett (perhaps wisely) does not. KCS accuses IAIS of a "piecemeal" approach that "lacks transparency" and reveals "murky" intentions because IAIS's petition for exemption was filed before the joint relocation project notice of exemption in Finance Docket No. 35755. KCS Letter at 1, 3. IAIS, of course, specifically discussed in its petition both the larger IDOT project and the reason why the Bartlett Line petition was being filed first. IAIS Petition at 10 ("IAIS is

filing this petition before the joint relocation notice in order to accommodate the additional time necessary for considering an individual exemption request."). In any event, the joint relocation project notice of exemption in Finance Docket No. 35755 is being filed concurrently with this Supplement, so that KCS's "piecemeal" worries are presumably relieved.

KCS also displays an odd fixation with seeing that the Board undertakes a "comprehensive environmental analysis" of the CBIS-related transactions. KCS Letter at 1; see also KCS Letter at 3 & n.2. KCS does not explain how an environmental review would address the adequacy and competitiveness of IAIS rail service to Bartlett, or what compelling interest KCS has in overseeing enforcement of the nation's environmental laws. KCS will presumably be satisfied to know that not only was a comprehensive environmental review of the entire CBIS project undertaken, but that the Board was a Cooperating Agency in the preparation of a segment-specific environmental assessment that encompassed the railroad-related aspects of the project. See supra at 2 and Exhibit 5 hereto (Iowa DOT and STB correspondence regarding STB participation in environmental review as cooperating agency, and first page of Environmental Assessment dated March 14, 2011 for Council Bluffs Interstate System Improvements Project, Tier 2, Segment 3).⁴

KCS claims that IAIS failed to "indicate whether Council Bluff's ownership of the land underlying the main line and adjoining tracks will lead to removal of those rail facilities." KCS Letter at 2. KCS needs to read IAIS's petition. IAIS explained that, while the City of Council Bluffs would own the land under the Bartlett Line, IAIS would hold "a permanent easement over the real estate for rail freight purposes." IAIS Petition at 5. IAIS provided a long-winded explanation of why so-called "State of Maine" considerations were not implicated by the

⁴ A complete copy of the Tier 2, Segment 3 Environmental Assessment is available at <http://www.iowadot.gov/ole/nepaprojects/councilbluffsinterstatesystem.aspx>.

arrangement. IAIS Petition at 5, n.3. And IAIS attached the quitclaim deed form that includes the protective language of the permanent easement assuring that the easement could not terminate until and unless rail operations ceased and the Board had approved abandonment. IAIS Petition, Exhibit B.

KCS faults IAIS for failing to provide a "commitment to keep affected facilities open to reciprocal switching." KCS Letter at 2. Undeniably implicit in that argument is the assumption that industries on the Bartlett Line are open to reciprocal switching today. They are not. See Exhibit 6 hereto (BNSF listing showing Bartlett facility at Council Bluffs as "Closed").⁵ As IAIS has indicated above, IAIS will keep Bartlett open to BNSF and to KCS haulage traffic handled through BNSF. Together with the access that Bartlett will gain to points on IAIS's lines and to IAIS interchange partners, Bartlett will be in a better competitive position than it is today.

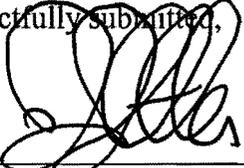
Finally, KCS suggests that, "if the Board were to grant the Petition as IAIS would like, it appears that IAIS potentially could close on the subject BNSF line acquisition ahead of the other parts of the Project, thereby altering service to Bartlett and its neighboring shippers sooner than 2015." KCS Reply at 3. A measured response to this kind of ungrounded hypothesizing can be difficult. In reality, the Bartlett Line transaction will not close until the connector track reconfigurations discussed above and many other elements of the CBIS project are completed. In reality, the various parties working with Iowa DOT have developed a schedule that anticipates that the various rail-related aspects of the CBIS project will be completed in 2015. And in reality, the exact future timing of a line sale transaction that will benefit rather than harm shippers on the Bartlett Line seems of little relevance to the matters before the Board in any event. KCS's letter filing invents issues seemingly at will, and is entitled to little weight.

⁵ Available at www.bnsf.com/customers/prices-and-tools/serving-carrier-reciprocal-switch.

WHEREFORE, IAIS respectfully requests that the Board accept this supplement to its previously-filed petition, and grant an exemption from the provisions of 49 U.S.C. § 10902 for IAIS's acquisition of BNSF's 0.75-mile Bartlett Line in Council Bluffs, Iowa, to be effective no later than November 30, 2013.

Respectfully submitted,

By:



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**ATTORNEY FOR IOWA INTERSTATE
RAILROAD, LTD.**

Dated: September 30, 2013

EXHIBIT 1



Roger Nober
Executive Vice President
Law & Secretary

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Via U.S. Mail and Electronic Mail to twilcox@gkglaw.com

December 20, 2012

Mr. Tom Wilcox
GKG Law
Canal Square
1054 Thirty-First Street, NW
Washington, D.C. 20007

RE: Iowa Department of Transportation Council Bluffs Project

Dear Tom:

I write in response to your letter dated December 13, 2012 regarding the meeting hosted by the Iowa Department of Transportation ("IDOT") on November 27, 2012. BNSF remains committed to continuing to work with IDOT to complete the proposed relocation project, and we are pleased to hear that Bartlett agrees in principle that the open issues can be resolved by moving forward with finalizing amendments to the Industrial Track Agreement (BN34154) (the "ITA") and the Indefinite Term Lease Land (BF23849) (the "Lease"). Our responses to the conditions outlined in your letter are set forth below.

The first two conditions identified in your letter reference your proposed modifications to the Lease and ITA, including specific changes, and other items that you had flagged for further review to ensure conformity to Iowa law. Richard Chamberlain in our office will be sending you revised versions of the amendments in the near future responding to your proposed changes, and we look forward to hearing from you when you have completed your review of Iowa law.

With regard to those amendments, I note that BNSF has no obligation to amend either the Lease or ITA as part of the IDOT project, but in order to help facilitate that project BNSF has been willing to accommodate Bartlett's request to modify the agreements in ways that will greatly improve Bartlett's current position. As described in more detail below, BNSF believes that the amendments under discussion would benefit Bartlett in terms of term duration, the size of the leased premises, and the amount of rent paid.

The Lease is currently terminable by either party for any reason on 30 days notice. As set forth in more detail in the amendments, BNSF is generally willing to give Bartlett the comfort it has requested by extending the term of that Lease indefinitely, for as long as Bartlett operates the elevator. Moreover, the existing lease only covers a portion of the property that Bartlett currently uses. The remaining portion of BNSF's property used by Bartlett is subject to a revocable license. The proposed amendment would expand the area covered by the lease to include that additional property, giving Bartlett further assurance as to its continuing use.

Finally, Bartlett currently pays rent that is well below fair market value for the leased property. The expansion of the leased premises and the term extension provided for in the proposed amendments would ordinarily call for a substantial increase in the annual rental payment, but to this point BNSF has been willing to allow the rent to remain unchanged. In sum, BNSF is willing to allow Bartlett to use more of BNSF's property, for a longer period of time, for the same below-market rental rate, and BNSF is receiving nothing from Bartlett in return. Please keep these facts in mind as you review the revised amendments and as the project progresses.

The third condition in your letter requests additional documentation from BNSF. The only documents that BNSF agreed in the meeting to provide were the existing Lease and ITA, the proposed amendments to those agreements, and the proposed forms of conveyance deeds to the City and IDOT. All of those documents have previously been provided to Bartlett, as noted in your letter.

With regard to the conveyance deeds, your letter notes that the forms provided do not reference a reserved freight easement. As was discussed in the meeting and noted again when those documents were sent to Bartlett, the forms of amendments and conveyance deeds are under negotiation and are not yet in final form. We anticipate revisions will be made to these deed forms to reference the reserved freight easement, particularly if the City and IDOT elect to pursue "State of Maine" filings with the STB as noted in your letter, and we will provide you with updated versions of the proposed deeds as they become available. However, as we also discussed in the meeting, we do not intend to provide Bartlett with the other ancillary documentation related to those easements governing the relationship between the landowner and easement holder.

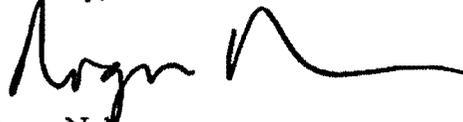
Further to the question of filings with the STB, your letter also requested a description of filings BNSF intends to make and the anticipated timing for those filings. As discussed at the meeting, the majority of the project qualifies as a joint line relocation, and BNSF intends to work with IAIS and CBEC to file a Joint Notice of Exemption pursuant to 49 CFR 1180.2(d)(5) in the first quarter of 2013. BNSF anticipates that additional filings may be needed by IAIS for its acquisition of a freight operating easement and lease, and by IDOT and/or the City of Council Bluffs related to their acquisitions of property, however, BNSF cannot opine as to the anticipated timing or appropriateness of any such filings.

The fourth condition in your letter seeks confirmation of certain assurances that Bartlett had understood BNSF to have made at that meeting. In general, BNSF does not believe that the representations you made in your letter regarding BNSF's commitments at the meeting are fully accurate, and I will clarify them here.

First, with respect to your request for access assurances related to the elevator, BNSF can state that nothing in this transaction restricts the ability of the elevator to access KCS. IAIS will replace BNSF as the local carrier switching the elevator, and IAIS will deliver the cars to BNSF for its haulage on behalf of KCS to Kansas City. Under this transaction, the elevator's ability to access other roads will in fact be enhanced as Bartlett will continue to have its continued access to BNSF and will gain direct access to IAIS's franchise and other interchange connections. Second, with respect to your request for economic assurances on rates into the future, as BNSF indicated in the meeting, we do not anticipate an immediate change to the switching charge as a result of the IDOT project. However, as we also indicated, since BNSF will no longer be Bartlett's serving carrier we cannot make any commitments as to future rates or costs that may be charged by IAIS.

We look forward to continuing to work with you to complete the amendments to the Lease and ITA, and to help facilitate IDOT's ability to move forward with its project to benefit the people of Iowa.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Nober". The signature is fluid and cursive, with a long horizontal stroke at the end.

Roger Nober
Executive Vice President, Law & Secretary

cc: Director Paul Trombino, IDOT
Dean Wise
Kevin Kaufman
Richard Chamberlain
Courtney Estes



REC'D LAW DEPT.

JAN 10 2013

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December 13, 2012

By E-Mail and Regular Mail

Roger Nober, Esquire
Executive Vice President Law & Secretary
BNSF Railway
2500 Lou Menk Drive
Fort Worth, Texas 76131

Re: Follow Up by Bartlett Grain Company to Meeting with Iowa Department
of Transportation on November 27, 2012

Dear Roger:

This letter addresses, on behalf of Bartlett Grain Company, several issues discussed during the meeting hosted by the Iowa Department of Transportation in Ames, Iowa, on November 27, 2012. As a general overview, Bartlett has considered the group's discussion of Bartlett's concerns about land ownership and usage at its Council Bluffs grain elevator ("Elevator"), and Bartlett agrees in principle that these issues can be resolved by moving forward with finalizing the amendments to the Industrial Track Agreement (BN34154) and the Indefinite Term Lease Land (BF23849) proposed by BNSF. This agreement in principle is subject to (1) BNSF's approval of the modifications noted on the attached drafts; (2) ensuring the final documents comport with Iowa real estate law (specific questions noted in the drafts); (3) our review of related materials BNSF and IDOT agreed to provide Bartlett at the meeting; and (4) confirmation by BNSF of certain assurances it made at the meeting, as described below.

Overall, Bartlett concurs with BNSF's philosophy of "do no harm" when reviewing the CBIS project and how the rail projects and transactions associated with the CBIS might affect Bartlett's operations in the future. As we have previously emphasized - and Mr. Kevin Kaufman agreed to in a letter to Bartlett, dated August 31, 2012 - Bartlett must have assurances that the current access the Elevator has to the Kansas City Southern Railway will be unaffected by the rail projects associated with the CBIS, and that the costs to KCS and Bartlett associated with

Roger Nober, Esquire
December 13, 2012
Page 2

inserting the Iowa Interstate into the rail operations at the Elevator as a switching railroad will not exceed the current costs KCS and Bartlett incur for BNSF to provide this service. At the meeting, Mr. Dean Wise of BNSF stated that BNSF could commit to putting BNSF's assurances to Bartlett in writing. Bartlett's understanding of BNSF's commitments is as follows:

Assurance of Access to KCS Service: BNSF commits to Bartlett that no transfer of BNSF title to land in the vicinity of the Elevator, deed, lease, assignment of lease rights, transfer of BNSF's federal common carrier obligation, operating agreement between BNSF and another railroad (such as the IAIS and CBEC), or any changes in rail track location or operations as part of the CBIS will alter, amend, or interfere with: (1) the right of KCS to serve the Elevator in the same manner it does currently under the agreements between KCS and BNSF, or for the Elevator to receive rail service from the KCS; and (2) the Elevator's right to future access to other railroads as discussed in the meeting in Ames, Iowa.

Economic Assurances: BNSF commits to Bartlett that the substitution of another entity for BNSF as the railroad providing service between and BNSF and KCS and the Elevator or the fact that BNSF does not directly provide service at the Elevator will not result in:

- (1) switching or other charges assessed to KCS or Bartlett that would individually or collectively exceed the charges KCS is required to pay to BNSF under the current KCS/BNSF agreement providing KCS access to the Elevator with BNSF as the serving carrier; and
- (2) any diminution or change in the ability of KCS to provide service to the Elevator under the KCS/BNSF agreement in the same manner as if BNSF was the carrier serving the Elevator.

We ask that BNSF follow up with Mr. Wise's representation and confirm in writing to Bartlett that its assessment of BNSF's commitments is accurate.

In addition, Bartlett is awaiting receipt from IDOT and BNSF of several documents each committed to provide to Bartlett in the meeting in Ames. These include, from IDOT: the latest drafts of the Master Agreement, C&M Agreement, Real-Estate Transfer Agreements, and Exhibits B and C; and from BNSF: a description of the Surface Transportation Board filings it intends to make and the anticipated timing for those filings. Bartlett pledges to review this material as quickly as possible to determine their influence on the above topics or other concerns that might arise.

Roger Nober, Esquire
December 13, 2012
Page 3

We also received a draft quitclaim deed from BNSF to the City of Council Bluffs from Mr. Chamberlain via email on December 4. However, it appears to be incomplete. Specifically, at the meeting you stated that BNSF's intention is to convey the BNSF right-of-way and the segment of its common carrier track east of the Elevator to the City of Council Bluffs via a "*State of Maine*" transaction under STB rules. As you know, the criteria for such transactions include a requirement that the conveying railroad retain a "permanent exclusive easement" to continue to fulfill the common carrier obligation attached to the line. Under STB rules, the terms of this reserved easement must be contained in the deed to the City as well as the associated purchase and sale agreement. The draft deed forwarded to us does not contain any language reserving the required easement to provide common carrier freight service.

Moreover, several questions concerning BNSF's intentions *vis-à-vis* the IAIS arose out of the discussion at the meeting which Bartlett would appreciate receiving some additional clarification on. First, we understand that BNSF intends to convey its common carrier obligation on this line to the IAIS. However, we also understood Mr. Wise to say that BNSF would not completely divest itself of the common carrier obligation, but instead would keep a residual right to serve the Elevator directly. Is this an accurate summary of BNSF's intentions? If so, then will IAIS, in fact, be a third-party switch carrier pursuant to contract with BNSF, as opposed to the railroad with sole possession of the common carrier obligation attached to this track?

Second, Mr. Wise stated, without revealing the actual terms of BNSF's confidential agreement with IAIS, that this agreement provides the basis for BNSF's commitment that the initial IAIS switch charge level will not exceed the current level paid by KCS described above in (1). If this is the case, and again without revealing the confidential terms of the agreement, are increases of the switch charge for KCS service also covered by the BNSF/IAIS contract, as opposed to being solely the determination of the IAIS?

In similar "*State of Maine*" transactions where BNSF was the seller of the physical assets of the line but the common carrier service was sold or transferred to a third-party operator as part of the overall transaction, BNSF accomplished this by quitclaiming the reserved freight easement to the third-party operator pursuant to a "freight easement sale agreement," and the third-party operator sought appropriate STB regulatory authority to acquire that freight easement.¹ However, no documentation transferring the reserved freight easement to IAIS was included in the materials from Mr. Chamberlain. Finally, STB rules in "*State of Maine*" proceedings require that copies of the deeds and associated purchase and sale and operating agreements and

¹ For example, STB Finance Docket No. 35128, *The Port of Seattle – Acquisition Exemption – Certain Assets of BNSF Railway Company*, served October 27, 2008.

Roger Nober, Esquire

December 13, 2012

Page 4

corresponding related regulatory filings are to be filed with the STB when "*State of Maine*" status is sought. Bartlett suggests that since these documents must eventually be submitted to the STB, it would aid the current negotiations and discussions if BNSF would supply copies of them to Bartlett now. Bartlett does not object to BNSF or other parties to these agreements redacting commercially sensitive information from the drafts. We believe the foregoing information will help Bartlett to further understand the multiple railroad transactions contemplated by the CBIS at this location and how they will affect the Elevator going forward.

In conclusion, barring any major concerns with the documents Bartlett anticipates receiving, Bartlett agrees in principle to moving forward with resolving its land usage issues by finalizing the lease and industrial track agreements amendments as attached, subject to BNSF's promised written assurances to keep Bartlett's access unchanged and the current economics of rail service unaltered as related to the CBIS project, as summarized above.

Please do not hesitate to call me if you have any questions.

Sincerely,



Thomas W. Wilcox

cc: Mr. Dean Wise
Mr. Kevin Kaufman
Mr. Bill Fellows
Mr. Joe Griffith
Richard Chamberlain, Esquire
(all via email, w/attachments)

EXHIBIT 2

SECOND AMENDMENT TO INDUSTRIAL TRACK AGREEMENT BN34154

THIS SECOND AMENDMENT TO INDUSTRIAL TRACK AGREEMENT BN34154 ("Second Amendment") is made to be effective the 6 day of May, 2013, (the "Effective Date"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Railroad") and BARTLETT GRAIN COMPANY, L.P., a Missouri limited partnership ("Industry").

RECITALS:

A. Conagra, Inc. d/b/a Peavey Company (predecessor-in-interest to Industry) and Burlington Northern Railroad Company (predecessor-in-interest to Railroad) entered into that certain Industrial Track Agreement dated November 19, 1992 (the "Original ITA"), as amended by that certain Supplement to Industry Track Agreement dated December 9, 2003 ("First Amendment") regarding the maintenance and operation of certain track located at Council Bluffs, County of Pottawattamie, State of Iowa, ("Track") as more particularly described in the Original ITA. The Original ITA as modified by the First Amendment and this Second Amendment shall be referred to herein collectively as the "ITA".

B. Railroad, as Lessor, and Industry, as Lessee, are also parties to that certain Indefinite Term Lease - Land BF 23849 dated December 12, 2001 (the "Original Lease") regarding the lease, maintenance and operation of certain track and improvements located at Council Bluffs, County of Pottawattamie, State of Iowa, ("Premises"). As of even date herewith, Railroad and Industry are amending the Original Lease to, among other things: (i) terminate the Original Lease as to the portion of the Premises lying within the area described as "STATE PLAT A-2" (referred to hereinafter as "Parcel A-2") and (ii) memorialize the conveyance of the portion of Industry Track owned by Industry on such Parcel A-2 (the "Parcel A-2 Industry Track") from Industry to Railroad via bill of sale. The Original Lease, as amended from time to time, is referred to herein collectively as the "Lease".

C. Railroad and Industry desire to amend the terms of the Original ITA as described below.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual covenants, premises, and agreements and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. NAME CHANGES.

(a) Bartlett Grain Company, L.P., a Missouri limited partnership, represents and warrants that it has succeeded to all of the rights and obligations of "Conagra, Inc., d/b/a Peavey Company, a Delaware corporation" as "Industry" under the Original ITA, as amended.

(b) Effective immediately, all references in the Original ITA to "Burlington Northern Railroad Company" are hereby changed to "BNSF Railway Company", and all references to "Burlington" are hereby changed to "Railroad".

(c) Effective immediately, the address in the Original ITA for Industry is hereby changed to:

Bartlett Grain Company, L.P.
4900 Main Street, Suite 1200
Kansas City, MO 64112
Attn: Joe Griffith

(d) In addition, all references in the Original ITA to "Staubach Global Services" are hereby changed to "Jones Lang LaSalle Brokerage, Inc.". The address in the Original ITA and the First Amendment for Staubach Global Services is hereby changed to:

Jones Lang LaSalle Brokerage, Inc.
4300 Amon Carter Blvd., Suite 100
Fort Worth, Texas 76155-2670
Attn: Track Agreements

2. **PRINT SUBSTITUTION.** Effective immediately, the drawing dated October 30, 1992, revised November 18, 1992, originally identified as Exhibit "A" to the Original ITA, is hereby replaced and superseded by Drawing Nos. 3-56161A and 3-56161B, dated April 2, 2013 (Revision 3), marked **Exhibit "A"**, attached hereto and incorporated herein by this reference. The Leased Track (defined below) shown dashed on **Exhibit "A"** is owned by Railroad and leased to Industry pursuant to the Lease (defined below), while the Industry Track (defined below) shown hatched on **Exhibit "A"** is owned by Industry. The Railroad Track (defined below) shown heavy solid on **Exhibit "A"** is owned by Railroad.

3. **TRACK REFERENCES.**

(a) Effective immediately, all references in the Original ITA to "Track" shall collectively refer to: (i) the Industry-owned portion of the tracks labeled Clics 3501, 3502, 3503 and 3504, respectively, labeled as "Industry Track" and being shown as hatched on **Exhibit "A"** attached hereto, and (ii) the Railroad-owned portion of the tracks labeled Clics 3503, 3504 and 3505, respectively, labeled as "Leased Track" and being shown as dashed on **Exhibit "A"** attached hereto.

(b) The parties acknowledge and agree that, concurrently with the conveyance of the Parcel A-2 Industry Track from Industry to Railroad via bill of sale, the Parcel A-2 Industry Track shall thereafter be considered "Railroad Track" owned by Railroad, as shown heavy solid on **Exhibit "A"**. References in the Original ITA to "Track shown heavy solid" or words of similar import shall be deemed to refer to the Railroad Track.

(c) In addition, all references in the Original ITA to "Tracks 1, 2, 3 or 4" shall mean the portions of Industry Track labeled as Clics 3501, 3502, 3503 and 3504, respectively, shown hatched on **Exhibit "A"** attached hereto. References in the Original ITA to "that portion of Track owned by Industry" or words of similar import shall be deemed to refer to the Industry Track.

4. **MAINTENANCE, OPERATION AND OWNERSHIP.**

(a) Effective immediately, the first two sentences of Section 2(a) are hereby deleted in their entirety and the following provisions substituted in lieu thereof:

"Section 2. (a) Railroad will maintain the Railroad Track at Railroad's expense. Industry will, at its own expense, maintain the Industry Track and the Leased Track."

(b) Effective immediately, the first sentence of Section 2(b) is hereby deleted in its entirety and the following provision substituted in lieu thereof:

"(b) Railroad will own the Railroad Track and the Leased Track. Industry will own the Industry Track."

5. **LAND LEASE.** Effective immediately, Section 12 of the Original ITA is deleted in its entirety.

6. **TERM.** Effective immediately, the following provision is added as new Section 14 to the Original ITA:

"TERM

Section 14. This Agreement shall commence on the Effective Date and shall continue for so long as Industry (a) maintains and operates a grain elevator on the land covered by the Lease (defined below) and (b) desires rail service to this facility, subject to termination by Railroad or Industry should Industry permanently cease to maintain and operate a grain elevator on the land covered by the Lease or determines that it no longer desires rail service to this facility, or by either party if the other party defaults on its obligations under this Agreement, or by mutual agreement of the parties. The term "permanently cease" shall mean that, for a period of one calendar year, the grain elevator has no trucks or railcars unload grain, and no trucks or railcars are loaded with grain for outbound transportation. If Industry determines that it no longer desires rail service to its facility, Industry has the right to terminate this Agreement any time after the Effective Date upon thirty (30) days' written notice to BNSF as set forth above. If Industry elects to terminate this Agreement, Industry agrees to waive and release any and all claims for common carrier service from Railroad after such termination. Industry acknowledges and agrees that such term is included herein for the sole purpose of establishing the duration of the parties' rights and obligations under this Agreement (unless such rights and obligations expressly survive this Agreement), and nothing herein shall constitute any commitment or agreement regarding the commercial terms and conditions by which Railroad may, from time to time, provide rail service to, from or on the Track, or a modification or amendment to any other arrangement or agreement regarding such service."

7. **LEASE.** Railroad and Industry acknowledge and agree that the Lease also includes certain maintenance, safety and operating requirements applicable to trackage, including without limitation the Industry Track, the Leased Track and Lessor's Tracks (as defined in the Lease). In the event of a conflict between the provisions of the ITA and the Lease regarding trackage, the most stringent provision applicable to Industry shall govern and control. Upon the execution of the IAIS Assignment described below in Section 8, this provision shall be deemed deleted from the ITA and shall no longer be of any force and effect.

8. **ASSIGNMENT TO IAIS.**

(a) Industry acknowledges and agrees that Railroad intends, at a future date, to assign the ITA (the "IAIS Assignment") to Iowa Interstate Railroad, Ltd., a Delaware corporation ("IAIS"), such assignment to be in writing signed by Railroad and IAIS. Industry hereby consents to such assignment.

(b) In addition to and not in limitation of the foregoing, the following provision will be added to the ITA to become effective as of the effective date of the IAIS Assignment:

"INSURANCE

During the duration of this Agreement, Industry shall procure at its own expense and maintain general liability insurance with the per-occurrence and aggregate limits of \$5,000,000 with Railroad named as an additional insured with no railroad exclusions for all the responsibilities and obligations under this Agreement. In addition, when the insurance policy/ies are renewed or changed, Industry will provide Railroad (or other insurance policy language confirming coverage to the Railroad and additional insured status) with certificates of liability insurance and endorsements/riders verifying its compliance with this Agreement. Railroad will have the sole discretion to choose between any available insurance policies covering an event or occurrence and will have the sole discretion to tender to the party and insurer for available coverage. Railroad will not be governed by any statement or declaration in any above described insurance policy claiming/exerting/stating status as a secondary or excess to some other insurance policy and Railroad has the sole discretion to determine

primary insurer/s and secondary/excess insurer/s for any occurrence or event. Industry will instruct its insurer to provide the Railroad with 30-day notice of cancellation of any insurance policy required by this Agreement."

9. MISCELLANEOUS.

(a) Unless otherwise provided herein, all capitalized and/or defined terms herein shall have the same meaning given to such capitalized and/or defined terms in the Original ITA.

(b) Except as amended hereby, all of the terms and provisions of the Original ITA are hereby reaffirmed and remain in full force and effect. In the event there is a conflict between the terms and provisions of the Original ITA, the First Amendment and the terms and provisions of this Second Amendment, the terms and provisions of this Second Amendment shall control.

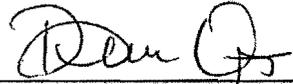
(c) This Second Amendment (i) shall be binding upon and inure to the benefit of Railroad and Industry and their respective legal representatives, successors and assigns; (ii) may be modified or amended only by a writing signed by each party hereto; and (iii) may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Second Amendment may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the date below each party's signature; to be effective, however, as of the Effective Date above.

RAILROAD

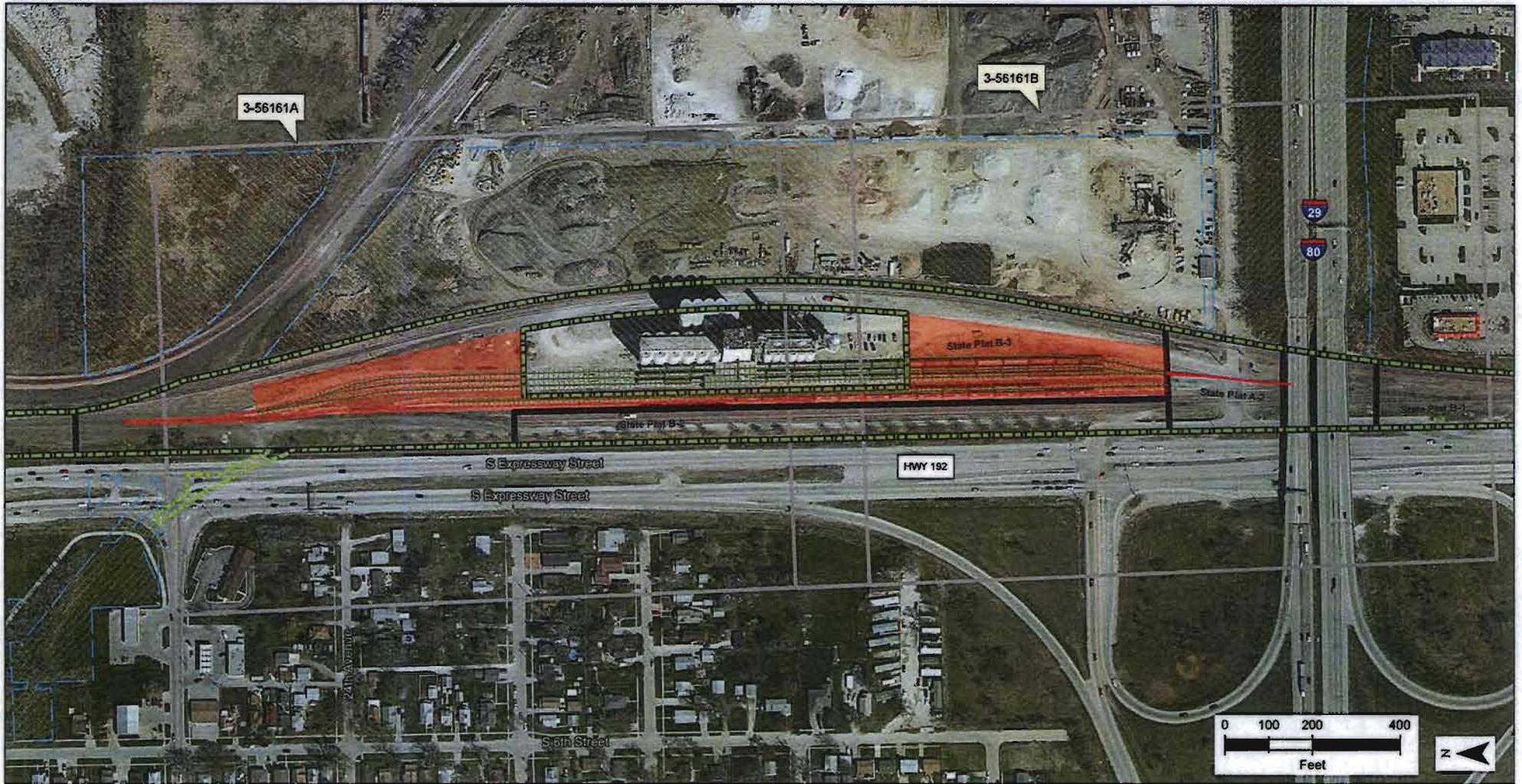
BNSF Railway Company

By: 
Name: Rebecca Ortiz
Title: W. Mgr. Corp. Real Estate
Date: 5/9/13

INDUSTRY

Bartlett Grain Company, L.P.

By: 
Name: Rebecca Ortiz
Title: General Director of Transportation
Date: 5-6-13



- LEASE AREA
- RAILROAD TRACK
- RIGHT-OF-WAY LINE
- INDUSTRY TRACK
- STATE PLATS
- LEASE TRACK

ATTACHED TO CONTRACT BETWEEN
 BNSF RAILWAY COMPANY
 AND
BARTLETT GRAIN COMPANY, L.P.
 COUNCIL BLUFFS, IOWA



TRACKING NO. _____

EXHIBIT "A"

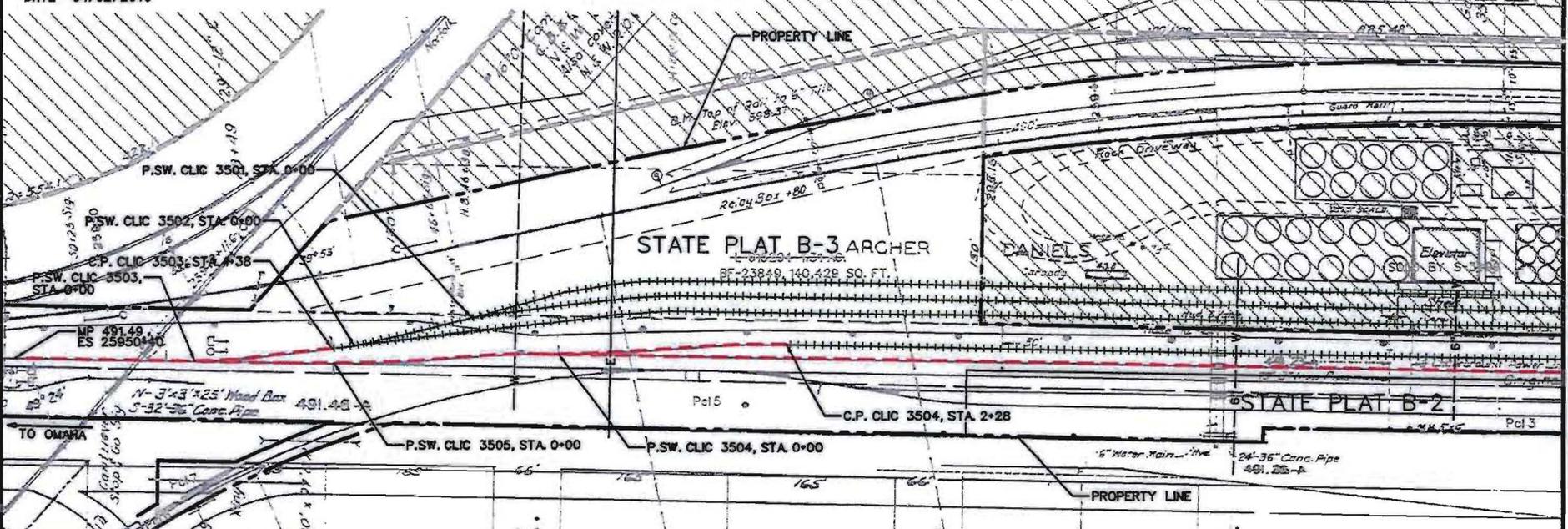
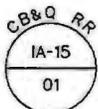
ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND

BARTLETT GRAIN COMPANY, L.P.

TRIM LINE

SCALE: 1 IN. = 100 FT.
NEBRASKA DIV.
COUNCIL BLUFFS SUBDIV. L.S. 0136
DATE 04/02/2013

SECTION: 01.12
TOWNSHIP: 74N
RANGE: 44W
MERIDIAN: 5PM



LEGEND:

- P. SW. POINT OF SWITCH
- C.P. CLEARANCE POINT
- R/W RIGHT-OF-WAY LINE
- E.T. END OF TRACK
- ++++ INDUSTRY TRACK
- LEASED TRACK

DESCRIPTION:

2,089 FT. OF CLIC 3501 CONSISTING OF 2,011 FT. FROM P.S.W. TO STA 20+11 SHOWN HATCHED AND 78 FT. FROM STA 20+11 TO P.S.W. SHOWN BOLD.
 2,085 FT. OF CLIC 3502 FROM P.S.W. TO P.S.W. SHOWN HATCHED.
 2,521 FT. OF CLIC 3503 CONSISTING OF 138 FT. FROM P.S.W. TO C.P. SHOWN DASHED, 2,146 FT. FROM C.P. TO STA 22+84 SHOWN HATCHED AND 237 FT. FROM STA 22+84 TO STA 25+21 SHOWN BOLD.
 1,917 FT. OF CLIC 3504 CONSISTING OF 228 FT. FROM P.S.W. TO C.P. SHOWN DASHED AND 1,689 FT. FROM C.P. TO STA 19+17 SHOWN HATCHED.
 2,141 FT. OF CLIC 3505 FROM P.S.W. TO STA 21+41 SHOWN DASHED.

AT COUNCIL BLUFFS
COUNTY OF POTTAWATTAMIE

STATE OF IA

JWD

MATCH MARK 3-56161B

MAP REF. S53657/S64037

TRACKING NO. _____

EXHIBIT "A"

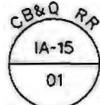
ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND

BARTLETT GRAIN COMPANY, L.P.

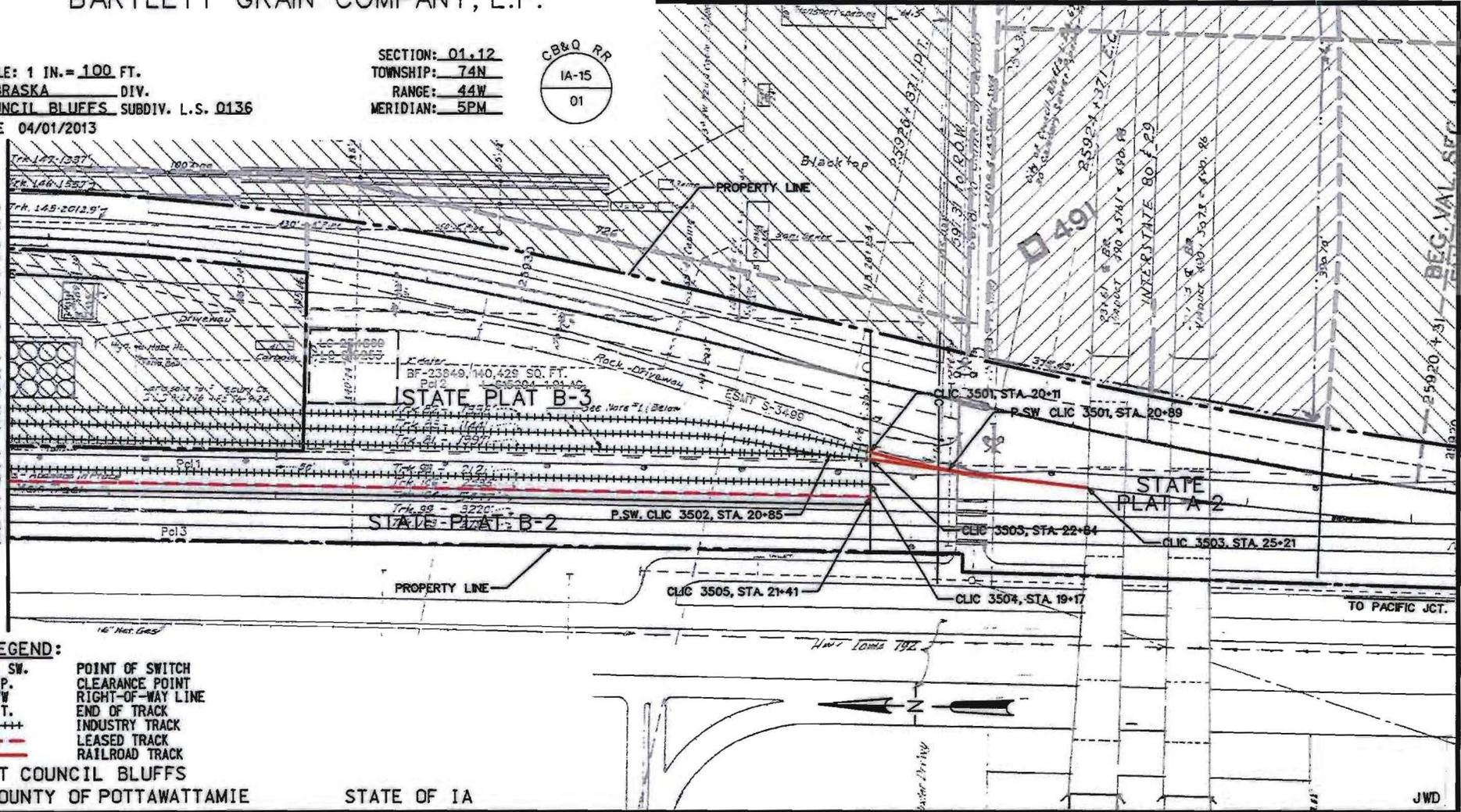
TRIM LINE

SCALE: 1 IN. = 100 FT.
NEBRASKA DIV.
COUNCIL BLUFFS SUBDIV. L.S. 0136
DATE 04/01/2013

SECTION: 01.12
TOWNSHIP: 74N
RANGE: 44W
MERIDIAN: 5PM



MATCH MARK 3-56161A



LEGEND:

- P. SW. POINT OF SWITCH
- C.P. CLEARANCE POINT
- R/W RIGHT-OF-WAY LINE
- E.T. END OF TRACK
- ++++ INDUSTRY TRACK
- == LEASED TRACK
- == RAILROAD TRACK

AT COUNCIL BLUFFS
COUNTY OF POTTAWATTAMIE

STATE OF IA

JWD

REVISION 2

DRAWING NO. 3-56161B

MAP REF. S53657/S64037

EXHIBIT 3



Iowa Interstate Railroad, LTD.
5900 6th Street Southwest
Cedar Rapids, Iowa 52404
(319) 298-5433 – Office (319) 298-5457 - Fax

Mick Burkart
Vice President-Chief Operating Officer

August 23, 2013

Joe Griffith
Bartlett Grain

Dear Joe:

Iowa Interstate Railroad Service to Bartlett Grain Co., LP in Council Bluffs, Iowa

Pursuant to the Council Bluffs Interstate System Improvement Project (CBISIP) in Council Bluffs, Iowa, the facility of the Bartlett Grain Co., LP (Bartlett) that is currently served by BNSF will in the future be served by Iowa Interstate Railroad Ltd. (IAIS). Bartlett has concerns on how service to their facility will be performed. This letter outlines procedures that IAIS expects to use to provide service to Bartlett.

Bartlett currently receives eighty (80) car trains from BNSF for loading and desires IAIS to deliver these trains in one block. BNSF will interchange with IAIS in the IAIS West Yard on track or tracks to be constructed to accommodate such interchange. IAIS cannot commit to delivering more cars than IAIS receives in interchange from BNSF, i.e. if IAIS receives 76 cars it can only spot 76 cars to Bartlett. IAIS will handle cars to Bartlett in the same manner as it does for other customers. Upon a reasonable time after receipt, IAIS will spot cars received from BNSF to Bartlett where requested by Bartlett. At the time service transitions from BNSF to IAIS, IAIS local management will meet with Bartlett local management to determine where Bartlett will want inbound cars spotted. IAIS will continue to communicate with Bartlett and, if issues or problems arise, will work with Bartlett for a solution. Should Bartlett desire at some future point to increase the size of trains for loading, IAIS will work with Bartlett to accommodate to the extent that IAIS track configurations and business permit. Bartlett may have the desire to load or unload trains that require more capacity than current tracks hold. IAIS will work with Bartlett to accommodate in the same manner that IAIS does for other customers.

At present, Bartlett is limited to service by BNSF for either BNSF or KCS destinations. BNSF has verbally informed IAIS that after the CBISIP and transaction, Bartlett will become an IAIS customer. As such, IAIS can offer service to Union Pacific (UP), Canadian National (CN) and (IAIS) as well as to BNSF and KCS. IAIS connects with all major Class I railroads through its connections in Council Bluffs, Des Moines and Davenport, Iowa, Rock Island, Peoria, Utica and Chicago, Illinois.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. C. Burkart", written over a light blue horizontal line.

M. C. Burkart

Vice President & Chief Operating Officer

EXHIBIT 4

CONSTRUCTION / OWNERSHIP AND MAINTENANCE

-  BNSF RAILROAD - CONSTRUCTED BY BNSF RR AT IOWA DOT EXPENSE / BNSF RR OWNERSHIP AND MAINTENANCE
-  CBEC RAILROAD - CONSTRUCTED BY IOWA DOT CONTRACTOR AT IOWA DOT EXPENSE / CBEC RR OWNERSHIP AND MAINTENANCE
-  CBEC RAILROAD (FUTURE) - CONSTRUCTED BY CBEC RR AT CBEC RR EXPENSE / CBEC RR OWNERSHIP AND MAINTENANCE
-  IOWA INTERSTATE RAILROAD - CONSTRUCTED BY IOWA DOT CONTRACTOR AT IOWA DOT EXPENSE / IOWA INTERSTATE RR OWNERSHIP AND MAINTENANCE
-  IOWA INTERSTATE RAILROAD - CONSTRUCTED BY IOWA INTERSTATE RR AT IOWA INTERSTATE RR EXPENSE / IOWA INTERSTATE RR OWNERSHIP AND MAINTENANCE
-  INDUSTRIAL TRACK - CONSTRUCTED BY IOWA DOT CONTRACTOR AT IOWA DOT EXPENSE / INDUSTRIAL TRACK OWNERSHIP AND MAINTENANCE

SYMBOLS (COLORS COORESPOND TO CONSTRUCTION / OWNERSHIP AND MAINTENANCE)

-  EXISTING TRACK
-  PROPOSED TRACK
-  TRACK REMOVAL
-  TURNOUT
-  CROSSING PANELS
-  CROSSING PANELS (FUTURE)
-  END OF TRACK DEVICE
-  CROSSING DIAMOND
-  CROSSING DIAMOND (FUTURE)

OTHER SYMBOLS (NOT COLOR COORESPONDING)

-  PROPOSED FENCE
-  ACCESS ROAD
-  TRAIL
-  LIMITS OF GRADING & DRAINAGE - CONSTRUCTOR AS NOTED

EXISTING RAILROAD PROPERTY

-  BNSF RR.
-  CBEC RR.
-  IOWA INTERSTATE RR.
-  BNSF RR. PERMANENT EASEMENT

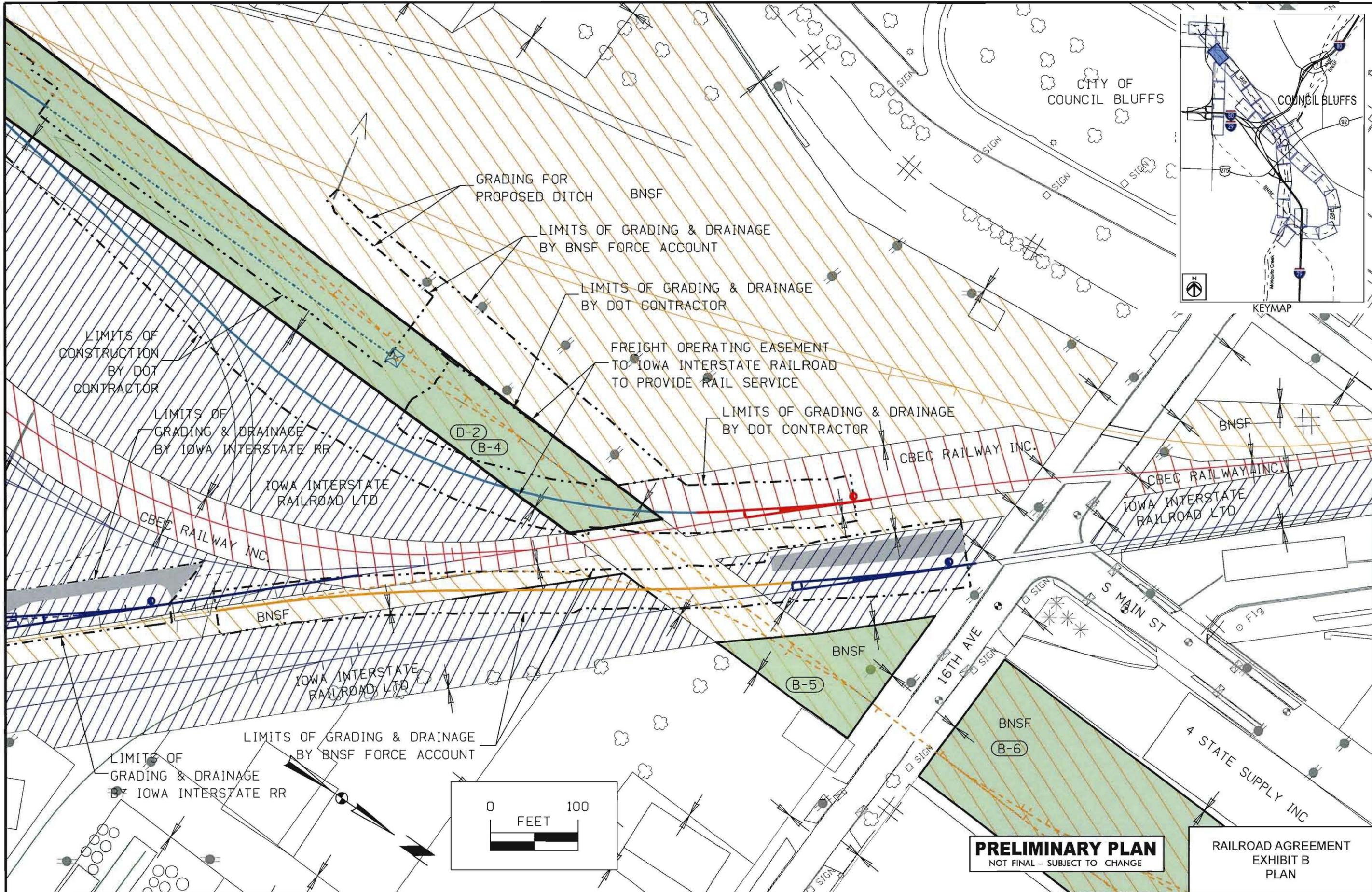
PROPOSED PERMANENT CONVEYENCE

-  STATE OF IOWA OR CITY TO BNSF RR.
-  STATE OF IOWA OR CITY TO CBEC RR.
-  STATE OF IOWA OR CITY TO IOWA INTERSTATE RR.
-  STATE OF IOWA TO CITY OF COUNCIL BLUFFS
-  BNSF RR. TO CBEC RR.
-  BNSF RR. TO IOWA INTERSTATE RR.
-  BNSF RR. TO STATE OF IOWA
-  BNSF RR. TO CITY OF COUNCIL BLUFFS
-  CBEC RR. TO BNSF RR.
-  CBEC RR. TO STATE OF IOWA
-  CBEC RR. TO CITY OF COUNCIL BLUFFS
-  IOWA INTERSTATE RR. TO BNSF RR.
-  IOWA INTERSTATE RR. TO STATE OF IOWA
-  IOWA INTERSTATE RR. TO CITY OF COUNCIL BLUFFS
-  BNSF RR. PERMANENT EASEMENT TO CITY OF COUNCIL BLUFFS
-  EXHIBIT D ATTACHMENT NUMBER CROSS REFERENCE

DATE: 4/1/2013

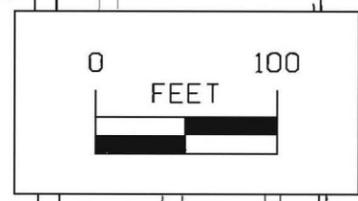
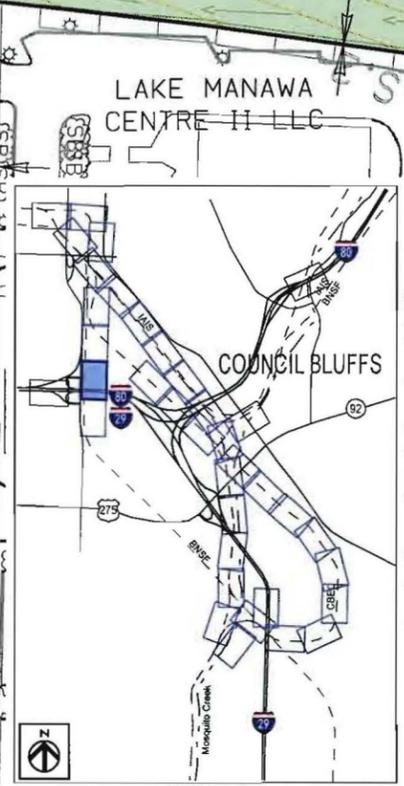
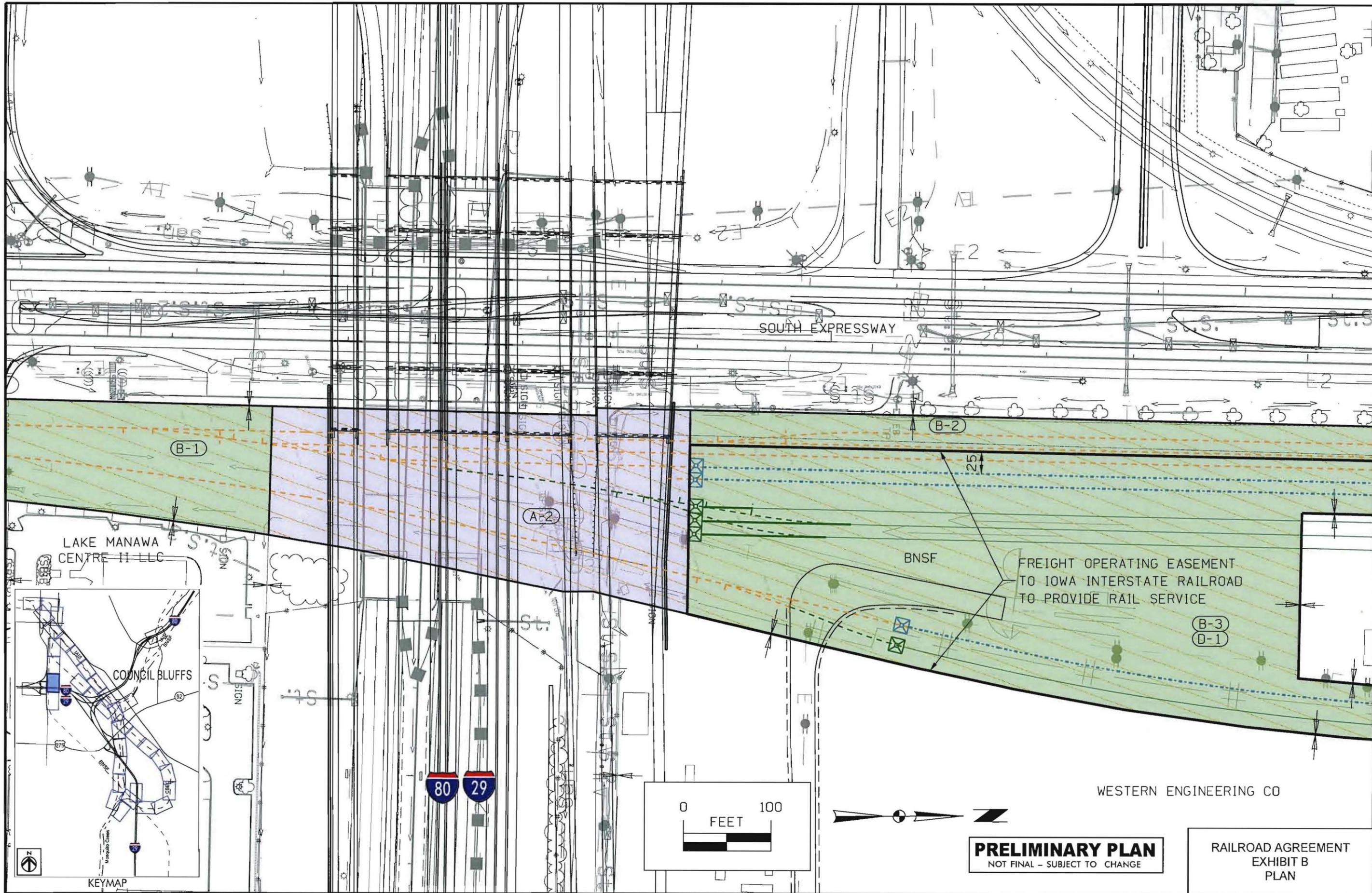
PRELIMINARY PLAN
NOT FINAL - SUBJECT TO CHANGE

RAILROAD AGREEMENT
EXHIBIT B
LEGEND



PRELIMINARY PLAN
NOT FINAL - SUBJECT TO CHANGE

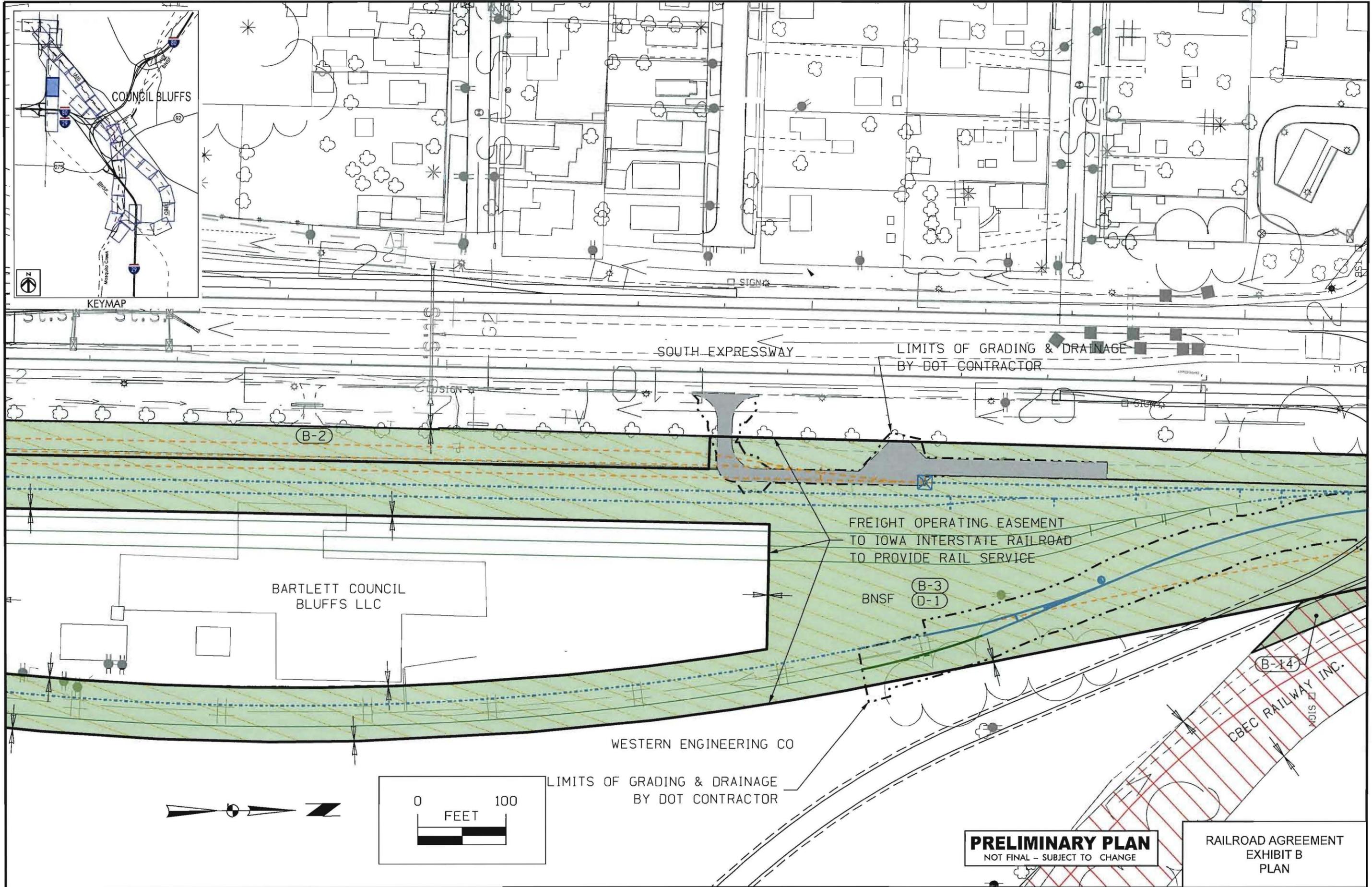
RAILROAD AGREEMENT
EXHIBIT B
PLAN

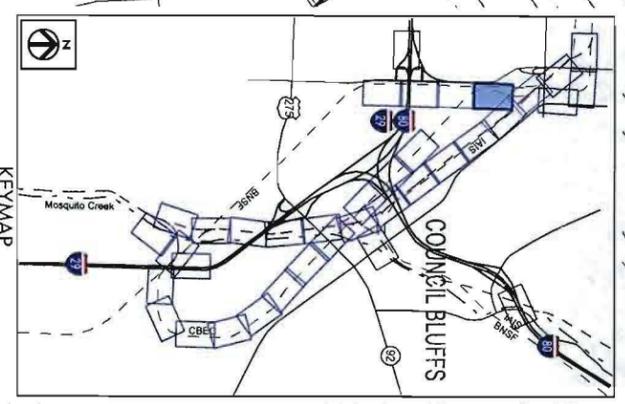
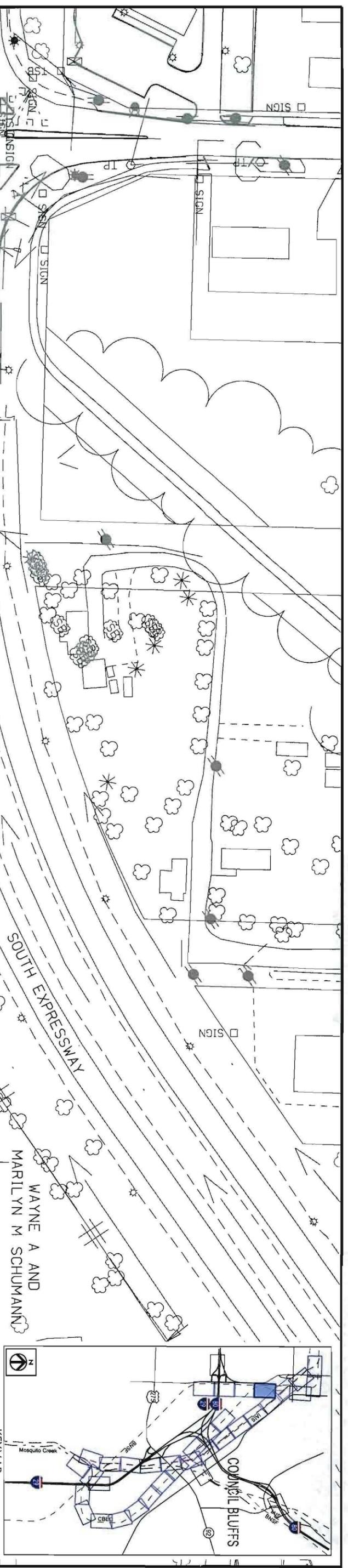


PRELIMINARY PLAN
NOT FINAL - SUBJECT TO CHANGE

WESTERN ENGINEERING CO

RAILROAD AGREEMENT
EXHIBIT B
PLAN





FREIGHT OPERATING EASEMENT
TO IOWA INTERSTATE RAILROAD
TO PROVIDE RAIL SERVICE

IOWA INTERSTATE RAILROAD LTD

CB&C RAILWAY INC.

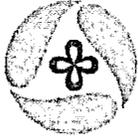
IOWA INTERSTATE RAILROAD LTD

VIRGIL D
ANDERSON

PRELIMINARY PLAN
NOT FINAL - SUBJECT TO CHANGE

RAILROAD AGREEMENT
EXHIBIT B
PLAN

EXHIBIT 5



Iowa Department of Transportation

December 13, 2010

Victoria J. Rutson
Director, Office of Environmental Analysis
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: Invitation to Become a Cooperating Agency and Participating Agency
Council Bluffs Interstate System Improvement Project, Segment 3
Council Bluffs, Iowa

Dear Ms. Rutson:

For the purpose of complying with the National Environmental Policy Act (NEPA), the Federal Highway Administration (FHWA), in cooperation with the Iowa Department of Transportation (Iowa DOT), is preparing an Environmental Assessment (EA) for Segment 3 of the Council Bluffs Interstate System (CBIS) Improvement Project in Pottawattamic County, Iowa.

Because your agency has jurisdiction by law and/or has special expertise with respect to an environmental issue, we are inviting your agency to be a cooperating agency with FHWA in the preparation of the EA for this project. This is in accordance with the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA (40 CFR 1501.6). As a result of your involvement as a cooperating agency in the preparation of the EA, and after an independent review of the EA to ensure that your comments and suggestions have been addressed, you can expect that this EA will satisfy your NEPA obligations and that you can adopt the document without the need to re-circulate it.

Pursuant to Section 6002 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (23 USC §139), we are also inviting your agency to be a participating agency in the NEPA process. Participating agencies are responsible to identify, as early as practicable, any issues of concern regarding the potential environmental or socioeconomic impacts of a project that could substantially delay or prevent an agency from granting a permit or other approval that is needed for a project. We suggest that the role of your agency in the development of this project should include the following as they relate to your area of expertise:

- 1) Review the project purpose and need, the methodologies and level of detail required in the EA analysis.
- 2) Participate in coordination meetings as needed.

- 3) Provide timely review and comment on the EA to reflect your agency's views and concerns on the adequacy of the document, alternatives considered, and the anticipated impacts and mitigation.

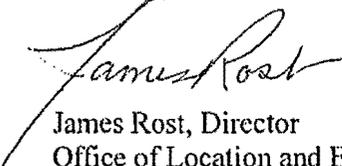
To either accept or decline this invitation, please respond to FHWA in writing prior to January 3, 2011. If your agency chooses to decline the invitation, your response should state your reasons for declining. Pursuant to Sec. 6002 of SAFETEA-LU, any federal agency that chooses to decline the invitation must specifically state in its response that it:

- o Has no jurisdiction or authority with respect to the project;
- o Has no expertise or information relevant to the project; and
- o Does not intend to submit comments on the project.

Enclosed with this letter is a copy of the EA for your review and comment. We would appreciate receiving your comments by January 7, 2011. If you have any questions or would like to discuss the project in more detail, please contact Janet Vine at 515.239.1467 or janet.vine@dot.iowa.gov.

Thank you for your cooperation and interest in this project.

Sincerely,



James Rost, Director
Office of Location and Environment
Iowa DOT

Enclosures:

EA

cc:

John Carns, Iowa DOT
Janet Vine, Iowa DOT
Mike LaPietra, FHWA
Andy Wilson, FHWA

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

December 21, 2010

Michael LaPietra
Realty and Environmental Manager
Federal Highway Administration
Iowa Division
105 6th Street
Ames, Iowa 50010

RE: Council Bluffs Interstate System Improvements Project, Tier 2, Segment 3, Pottawattamie County, Iowa, Environmental Assessment; Acceptance of Invitation to be a Cooperating Agency and a Participating Agency

Dear Mr. LaPietra:

Thank you very much for your letter of December 13, 2010 inviting the Surface Transportation Board (Board) to act as a cooperating agency and a participating agency in the preparation of an Environmental Assessment for the proposed Council Bluffs Interstate System Improvements Project in Pottawattamie County, Iowa. The proposal calls for a number of infrastructure improvements that would enhance the safety and efficiency of both roadway and railroad networks. In particular, the proposal would require the construction and operation of new rail line, as well as the abandonment of some existing rail line.

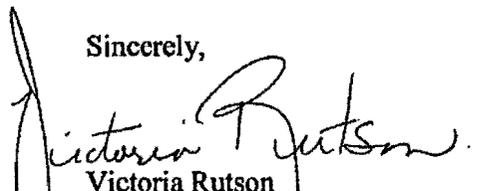
As you know from our meeting on November 30, 2010, the Board is authorized by Congress to license new rail line construction and abandonments.¹ Both actions are considered to be "major federal actions" requiring environmental analysis under the National Environmental Policy Act (NEPA). The Board's Office of Environmental Analysis (OEA) is the office responsible for conducting the environmental review process to ensure the Board's compliance with NEPA and related environmental laws. Based on the information provided, and pursuant to 40 C.F.R. § 1501.6, we are very pleased to accept the invitation to be a cooperating agency with the Federal Highway Administration and the Iowa Department of Transportation. In addition, we accept your invitation to act as a participating agency, pursuant to 23 U.S.C. § 139 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users. In

¹ The Board's regulatory authority extends to intrastate transportation that uses the interstate rail network. See 49 U.S.C. § 10501(a)(2)(A).

this role, we agree, among other things, to identify issues of concern early in the process in order to prevent substantial delay of the project.

We look forward to working with you and the project team to complete this analysis. If you have any questions or would like to discuss this matter further, please contact Diana Wood of my staff at (202) 245-0302 or email at woodd@stb.dot.gov.

Sincerely,



Victoria Rutson
Director
Office of Environmental Analysis

cc: James Rost, Iowa Department of Transportation

Council Bluffs Interstate System Improvements Project
Tier 2, Segment 3
Pottawattamie County, Iowa
IMN-029-2(55)49--13-78

ENVIRONMENTAL ASSESSMENT

And Section 4(f) De Minimis Impact Finding

Submitted Pursuant to 42 USC 4332(2)(c)

by the

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
and
IOWA DEPARTMENT OF TRANSPORTATION
OFFICE OF LOCATION AND ENVIRONMENT

Cooperating Agency
Surface Transportation Board

The signatures are considered acceptance of the general project location and concepts described in the environmental document unless otherwise specified by the approving officials. However, such approval does not commit to approve any future grant requests to fund the preferred alternative.



For the Iowa Division Administrator
Federal Highway Administration



For the Office of Location and
Environment
Iowa Department of Transportation

March 14, 2011

Date of Approval for Public Availability

The following persons may be contacted for additional information:

Mr. Lubin Quinones, P.E.
Iowa Division Administrator
Federal Highway
Administration
105 6th Street
Ames, Iowa 50010
Telephone: 515-233-7300

Mr. Jim Rost
Office of Location and Environment
Iowa Department of Transportation
800 Lincoln Way
Ames, Iowa 50010
Telephone: 515-239-1225

EXHIBIT 6

SCRS Search Results

Records Returned for Current Search Criteria:

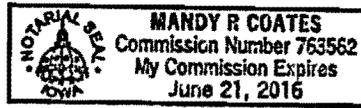
Customer Name: City:COUNCIL BLUFFS State:IA-IOWA Street Address: Serving Carrier: Status:Closed CIF:

Date/Time Stamp:09/27/2013 12:05 PM CDT

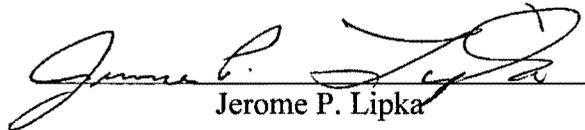
Customer Name	CIF #	Street Address	City	State	Zip	Station Name	Station State	Serving Carrier	Switching Status	Open to	Restrictions
BARTLETT & CO	129966538-0000	2600 S 4TH ST	COUNCIL BLUFFS	IA	51501	COUNCIL BLUFFS	IA	BNSF	Closed		
WESTERN ENGINEERING	961721313-0000	330 29TH AVE	COUNCIL BLUFFS	IA	51501	COUNCIL BLUFFS	IA	BNSF	Closed		

VERIFICATION

State of Iowa)
)
County of Linn) SS:



Jerome P. Lipka, being duly sworn, deposes and says that he is President and Chief Executive Officer of Iowa Interstate Railroad, Ltd., that he has read the foregoing Supplement to Petition for Exemption and knows the facts asserted therein, and that the same are true as stated.


Jerome P. Lipka

SUBSCRIBED AND SWORN TO
before me this 27 day
of September, 2013.



Notary Public

My Commission expires: 6/21/2016

CERTIFICATE OF SERVICE

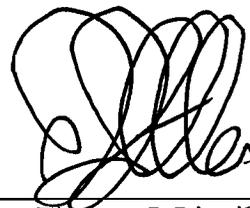
I hereby certify that on this 30th day of September, 2013, a copy of the foregoing **Supplement to Petition for Exemption of Iowa Interstate Railroad, Ltd.** was served by overnight delivery upon:

Thomas W. Wilcox, Esq.
GKG Law, P.C.
1054 Thirty-First Street, N.W.
Suite 200
Washington, DC 20007

William A. Mullins, Esq.
Baker & Miller PLLC
2401 Pennsylvania Avenue, N.W.
Suite 300
Washington, DC 20037

and by first class mail, postage prepaid, upon:

Mr. J. William Lemons
Chairman and Chief Executive Officer
Western Engineering Company
1149 West Highway 44
P.O. Box 350
Harlan, IA 51537



Thomas J. Litwiler