



**LICENSE FOR ELECTRIC SUPPLY LINE
ACROSS OR ALONG RAILWAY PROPERTY**

(Electric Light, Power Supply, Irrespective of Voltage, Overhead or Underground)

THIS LICENSE ("License"), made as of the 26th day of October, 2005, ("Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **PUBLIC SERVICE COMPANY OF COLORADO**, a Colorado corporation ("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, and 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 electric supply line containing a maximum of four (4) conductors, together with its supporting or containing structures ("Electric Supply Line") across or along the premises of Licensor at or near the station of Denver, County of Denver, State of Colorado, Line Segments 0477 & 0483, Mile Posts 1.81 – 4.63, shown by bold line upon the print Numbers 3-34083A – 3-34083M, dated July 20, 2004, revised February 21, 2005, revised February 23, 2005, marked "Exhibit A", attached hereto and made a part hereof ("Premises").
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. Licensee shall use the Premises solely for construction, maintenance, and use of an Electric Supply Line in accordance with the Drawings and Specifications. Licensee shall not use the Premises for any other purpose. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") or petroleum or oil as defined by applicable Environmental Laws on the Premises.
4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, 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 Electric Supply Line or entering the Premises on behalf of Licensee, shall be deemed servants and agents of Licensee for purposes of this License.

TERM

6. This License shall be a perpetual license, commencing on the Effective Date subject to termination as hereinafter described.

COMPENSATION

7. (a) Licensee shall pay Licensor, prior to the Effective Date, the sum of Two Million and No/100 Dollars (\$2,000,000.00) and second payment of Two Million and No/100 Dollars (\$2,000,000.00) on or before July 31, 2006 a combined one-time consideration fee in the amount of Four Million and No/100 Dollars (\$4,000,000.00) as compensation for the use of the Premises in conjunction with tracking numbers 04-27148, 04-27149.
- (b) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefore) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction, maintenance, and use of the Electric Supply Line, including but not limited to the furnishing of Licensor's Flagman (\$600.00 per eight hour day, \$95.00 per hour thereafter) and any vehicle rental costs incurred. Licensee acknowledges that a twelve-hour day is often required to support an eight-hour work day due to travel, placement, and removal of advance protection signage, safety briefings, and other duties as required.
- (c) 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.

COMPLIANCE WITH LAWS

8. (a) Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants or restrictions ("Legal Requirements") relating to the construction, maintenance and use of the Electric Supply Line 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 following Internet Website "http://www.contractororientation.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

- 9. For the purpose of this License, "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.

RIGHT OF LICENSOR TO USE

- 10. 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, except that this right may not be exercised with respect to any of Licensee's facilities, nor may the exercise of this right materially and adversely interfere with Licensee's use of 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, provided that such activities may not materially and adversely interfere with Licensee's use of the Premise; 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

- 11. (a) Licensee shall notify Licensor's Roadmaster at 711 West 31st Avenue, Denver, CO, telephone 303/480-6251, at least five (5) business days prior to construction of the Electric Supply Line and prior to entering the Premises for any subsequent maintenance thereon.
- (b) In performing the work described in Section 3, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

12. (a) Licensee shall, at its sole cost and expense, construct and at all times maintain the Electric Supply Line in accordance with the National Electric Code.
- (b) If the operation or maintenance of said Electric Supply Line shall at any time cause interference, including but not limited to physical interference from electromagnetic induction, electrostatic induction, or from stray or other currents, with the facilities of the Licensor or of any lessee or licensee of the Licensor, or in any manner interfere with the operation, maintenance, or use by the Licensor of its right-of-way, tracks, structures, pole lines, signal and communication lines, radio, or other equipment, devices, other property or appurtenances thereto, Licensee agrees within a reasonable period of time and without delay, to make such changes in its Electric Supply Line and furnish such protective devices and/or replacement equipment to Licensor and its lessees or licensees as shall be necessary, in the judgment of the Licensor's representative, to eliminate such interference. The cost of such protective devices and their installations shall be borne solely by Licensee. If any of the interference covered by this paragraph shall be, in the judgment of the Licensor and Licensee, of such importance to the safety of the Licensor's operations as to require immediate corrective action, Licensee, upon notice from the Licensor, shall either cease using said Electric Supply Line for any purpose whatsoever and remove same, or reduce the voltage or load on said Electric Supply Line, or take such other protective measures as the Licensor and Licensee may together deem advisable, until the protective devices and/or replacement equipment required by this paragraph have been installed, put in operation, tested, and found to be satisfactory to correct the interference.
13. (a) Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises 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 Premises 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 Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises 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 License.

- (b) Licensee shall, at its sole cost and expense, and subject to the supervision of Licensor's Roadmaster, locate, construct and maintain the Electric Supply Line in such a manner and of such material that it will not at any time 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 its railroad. Further, the Electric Supply Line shall be constructed, installed and maintained in conformity with the plans and specifications shown on the print attached hereto as Exhibit A and made a part hereof (which, if present, are to be deemed part of the Drawings and Specifications). Licensor may direct one of its field engineers to observe or inspect the construction and/or maintenance of the Electric Supply Line at any time for compliance with the Drawings and Specifications. If ordered at any time to halt construction or maintenance of the Electric Supply Line by Licensor's personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Electric Supply Line, it being solely Licensee's responsibility to ensure that the Electric Supply Line is constructed in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise nor the failure by Licensor to exercise any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this Section, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, upon receipt of an invoice for the same. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.
14. Licensee shall, at its sole cost and expense, remove all combustible material from around wooden poles and will at all times keep the space around such poles free of such material, and if removal of such combustible material shall not be attended to within fifteen (15) days after having been requested by Licensor to do so, Licensor shall have the right itself to perform the work and Licensee hereby agrees to reimburse Licensor for the expense so incurred.
15. During the construction and any subsequent maintenance performed on Electric Supply Line, Licensee shall perform such work in a manner to preclude damage to the property of Licensor, and preclude interference with the operation of its railroad. The construction of the Electric Supply Line shall be completed within one (1) year of the Effective Date. Upon completion of the construction of the Electric Supply Line and after performing any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore Licensor's premises, as much as reasonably possible, to their former state as of the Effective Date of this License.

16. If at any time during the term of this License, 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 Electric Supply Line, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Electric Supply Line as in the reasonable discretion of Licensor 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 a new Electric Supply Line. In the case of changes that cannot reasonably be completed within a period of thirty (30) days. Licensee shall complete the same within the time reasonably required in the exercise of due diligence to complete the changes.
17. (a) Prior to Licensee conducting any boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, the Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Upon Licensee's written request, which shall be made thirty (30) business days in advance of Licensee's requested construction of the Electric Supply Line, Licensor will provide Licensee any information that Licensor's Engineering Department has in its possession concerning the existence and approximate location of Licensor's underground utilities and pipelines at or near the vicinity of the proposed Electric Supply Line. Prior to conducting any such boring work, the Licensee will review all such material. Licensor does not warrant the accuracy of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.
- (b) For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by the Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
18. Any open hole, boring or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:

- (a) filled in to surrounding ground level with compacted bentonite grout; or
 - (b) otherwise secured or retired in accordance with any applicable Legal Requirement. All excavated materials shall not remain on Licensor's property for more than ten (10) days and shall be properly disposed of by Licensee in accordance with applicable Legal Requirements.
19. Upon termination of this License, Licensee shall, at its sole cost and expense:
- (a) remove all of its equipment from the Premises;
 - (b) remove the Electric Supply Line at Licensor's sole discretion;
 - (c) report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
 - (d) remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
 - (e) leave the Premises in the condition which existed as of the Effective Date of this License.
20. Licensee's on-site supervision shall retain/maintain a fully-executed copy of this License at all times while on the Premises.

LIABILITY

21. (a) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL 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 LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
 - (ii) **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**

- (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 ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES WHOLLY CAUSED BY THE SOLE 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 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 ELECTRIC SUPPLY LINE 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, EXCEPT FOR SUCH CLAIMS AS ARE WHOLLY CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE 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 TO LICENSOR.
- (c) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, 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, CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE, PROVIDED THAT ACTUAL EMPLOYEES OF LICENSOR ARE NOT CONSIDERED "AGENTS," "INVITEES" OR "CONTRACTORS" OF LICENSEE. 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 BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY 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 License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all reasonable 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 OF LICENSEE, 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 EXCEPT TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

- (a) Licensee agrees to install, maintain, and replace/renew as necessary all mitigation conductors and Dairyland neutral isolator devices recommended by CorrComp Co. Compatibility Study Project under Work Order 00190771 as summarized in CorrComp's Technical memo dated August 25, 2004 marked "Exhibit C".
- (b) Licensee agrees to provide, and mount a Licensor specified Remote Terminal Unit to automatically transmit indications of line fault events to Licensor's signal trouble desk/network operations center. Licensee further agrees to provide a suitable secured area adjacent to the Licensee's substation with Licensor's access in order to allow Licensor to maintain the Remote Terminal Unit(s).
- (c) Licensee agrees that all mitigation equipment will be maintained and the transmission line operated in such a manner that induced rail voltages do not exceed the thresholds defined in CorrComp's Detailed Mitigation Investigation dated March 31, 2004 marked "Exhibit B", Technical Memorandum dated June 7, 2004 marked "Exhibit D", and Technical Memorandum dated August 25, 2004 marked "Exhibit C", representing safe touch potential and railroad equipment reliability limits during both transmission line faults and steady state operation. If for any reason the levels cannot be maintained below these thresholds, Licensee agrees to return the circuits to the status existing prior to the installation until further mitigation techniques can be designed and installed to achieve the threshold levels.

- (d) Licensee agrees to install test points in the underground mitigation conductors near Licensor's signal locations for easy access by Licensor's maintenance forces. Licensee agrees to provide Licensor with any specialized test equipment (equipment not typically purchased and used by Licensor's Signal Maintenance Personnel) and written test procedures necessary to measure and prove effectiveness of the mitigation measures.
- (e) Licensee agrees to perform tests and measurements to validate the accuracy of the predictive modeling and confirm the effectiveness of all mitigation measures after mitigation measures are installed but before proposed operational changes of the transmission line are permanently implemented.
- (f) Licensee agrees to provide the Licensor with current telephone numbers so Licensee operations personnel can be contacted to determine corresponding loading levels of the line on an as needed basis 24 hours a day, 7 days a week. It is expected that such calls will be made periodically (at least monthly) to correlate railroad test measurements with loading of the line to ensure all mitigation is effective. Such calls can also be expected on an unplanned basis at any time to aide in troubleshooting of Licensor's Signal problems.
- (g) Licensee will reimburse Licensor for all actual costs associated with installation, maintenance, replacement, renewal of any of the other mitigation devices and equipment required as identified in the estimate attached hereto ("Actual Costs") marked "Exhibit E". It is further agreed that Licensee will pay Licensor the sum of One Hundred Seventy Three Thousand Two Hundred Five and No/100 Dollars (\$173,205.00) ("Initial Costs") within 10 days of execution of this Agreement. The payment for "initial costs" should be mailed to BNSF Railway Company, Attn: Dennis Eaton, estimate RFA # 4343905 (printed by Poor), 5170 Collection Center Drive, Chicago, IL. 60693. If actual construction costs exceed this estimate by more than one hundred dollars (\$100.00), the excess costs (over \$100) shall be paid by Licensee within thirty (30) days of the date billed from BNSF if the bill is accompanied with suitable supporting documentation sufficient to advise Licensee of the work performed and costs incurred and that the Actual Costs are reasonable. Licensee requests that any such bills will be sent to "Public Service Company of Colorado", 550 15th Street, Suite 700, Denver, CO 80202, Attn: Manager, Siting and Land Rights.

INSURANCE

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

A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 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, which shall be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to Licensor's payments related to the Federal Employers Liability Act or a Licensor Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ 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.
- ◆ Any exclusions related to the explosion, collapse and underground hazards shall be removed.
- ◆ For purposes of this insurance, RR payments to its employees related to the Federal Employers Liability Act or a BNSF Wage Continuation Program for its employees or similar BNSF programs are deemed not to be obligations of the Insured under a Workers Compensation, disability benefits or unemployment compensation or any similar law.

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

B. 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

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

- ◆ Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, 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.

D. Railroad Protective Liability Insurance. This insurance shall name only the Licensor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Electric Supply Line. **THE CONSTRUCTION OF THE ELECTRIC SUPPLY LINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Electric Supply Line 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 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ 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 the Licensor prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$2,972.00.

I elect to participate in Licensor's Blanket Policy;

I elect not to participate in Licensor's Blanket Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, its insurers, through policy endorsement, waive their right of subrogation against Licensor for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement.

Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody or control.

Licensee's insurance policies through policy endorsement, must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Licensor. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Licensor and Staubach Global Services – RR, Inc. as an additional insured with respect to work performed under this agreement. **Severability of interest and naming Licensor and Staubach Global Services - RR, Inc, as additional insureds shall be indicated on the certificate of insurance.**

Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any deductible, 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 Agreement, be covered by Licensee's insurance will be covered as if Licensee elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

Prior to commencing the Work, 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 and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing at least 30 days prior to any cancellation of Licensee's Commercial Liability or Business Automobile Insurance. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Licensor, a certified duplicate original of any required policy shall be furnished.

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.

Licensee WARRANTS 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 Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

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.

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.

Failure to provide evidence as required by this section 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.

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.

For purposes of this section, Licensor shall mean "Burlington Northern Santa Fe Corporation", "The Burlington Northern and Santa Fe 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 Electric supply Line which occurred or may occur during the term of this License, 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 License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

ALTERATIONS

25. Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

NO WARRANTIES

26. **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

QUIET ENJOYMENT

27. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

DEFAULT

28. 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 License by operation of law, (except as permitted by paragraph 32 hereof) Licensor may, at its option, terminate this License in the event such default continues for a period of ten (10) days after written notice thereof from Licensor to Licensee; provided, however, that if the nature of the default is such that more than ten (10) days are reasonably required for its cure, then Licensee shall not be deemed to be in default if Licensee commences such cure within said ten (10) day period and thereafter diligently prosecutes such cure to completion. Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this Section 28 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

LIENS

29. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this Section 29 or any other Section of this License.

TERMINATION

30. If Licensee fails to surrender to Licensor the Premises, upon any termination of this License, 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

31. Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this License or any interest herein, without the prior written consent and approval of Licensor, which may be withheld in Licensor's sole discretion; provided, however, that Licensor's consent and approval will not be unreasonably withheld in connection with a proposed transfer of this License to any entity that acquires all or substantially all of the assets of Licensee by merger or otherwise and assumes in writing all of the obligations of Licensee under this License from the effective date of the transfer forward. Any consent or approval by Licensor of an assignment or transfer of this License shall be subject to and expressly conditioned on Licensor's receipt of all amounts owed and due to Licensor by Licensee under this License prior to the date of such assignment or transfer.

NOTICES

32. 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: Staubach Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Ft. Worth, TX 76131-2800
Attn: Licenses/Permits

with a copy to: BNSF Railway Company
2500 Lou Menk Dr. – AOB3
Ft. Worth, TX 76131
Attn: Sr. Manager Real Estate

If to Licensee: Public Service Company of Colorado
550 15th Street, Suite 700
Denver, CO 80202
Attn: Manager, Siting and Land Rights

SURVIVAL

33. Neither termination nor expiration will release either party from any liability or obligation under this License, 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 Electric Supply Line and improvements are removed and the Premises are restored to its condition as of the Effective Date. The rights and obligations set forth herein are binding on the successors and assigns of Licensee and Licensor, and sale or transfer of the Premises by Licensor will not affect or diminish Licensee's right to use the Premises as described herein and Licensee will not be required to pay additional compensation for such continued use following sale or transfer so long as such continued use is in accordance with the terms of this License.

RECORDATION

34. It is understood and agreed that this License shall not be placed on public record.

APPLICABLE LAW

35. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the state of Colorado without regard to conflicts of law provisions.

SEVERABILITY

36. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License 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 License.

INTEGRATION

37. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises. 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

- 38. 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.
- 39. 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.

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
 P.O. Box 961050
 Fort Worth, TX 76161-0050

By: 
 Title: Thomas N. Hund
 Executive Vice President and
 Chief Financial Officer

PUBLIC SERVICE COMPANY OF COLORADO
 550 15th Street, Suite 700
 Denver, CO 80202

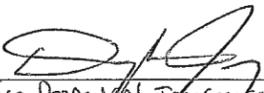
By: 
 Title: Vice President, Transmission
Xcel Energy Services, Inc.
Authorized Agent for Public Service Company of Colorado

EXHIBIT "A"

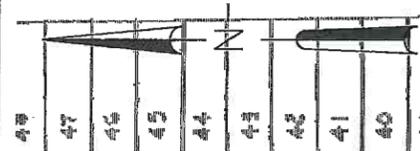
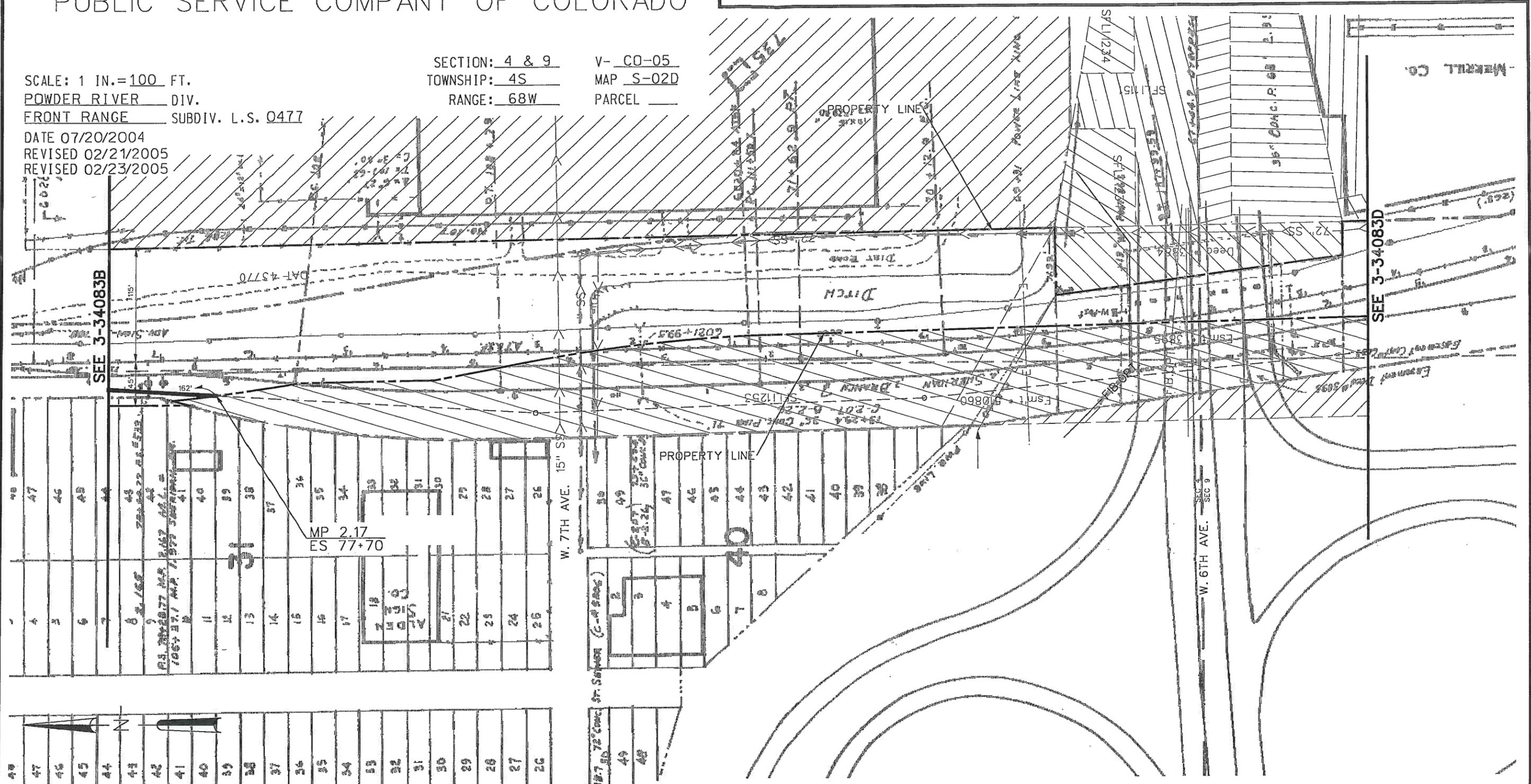
ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND

PUBLIC SERVICE COMPANY OF COLORADO

SCALE: 1 IN. = 100 FT.
POWDER RIVER DIV.
FRONT RANGE SUBDIV. L.S. 0477
DATE 07/20/2004
REVISED 02/21/2005
REVISED 02/23/2005

SECTION: 4 & 9
TOWNSHIP: 4S
RANGE: 68W
V- CO-05
MAP S-02D
PARCEL

TRIM LINE



AT DENVER
COUNTY OF DENVER

STATE OF CO

BCC

SEE 3-34083D

SEE 3-34083B

MERRILL CO.

MAP REF. S53157

EXHIBIT "A"

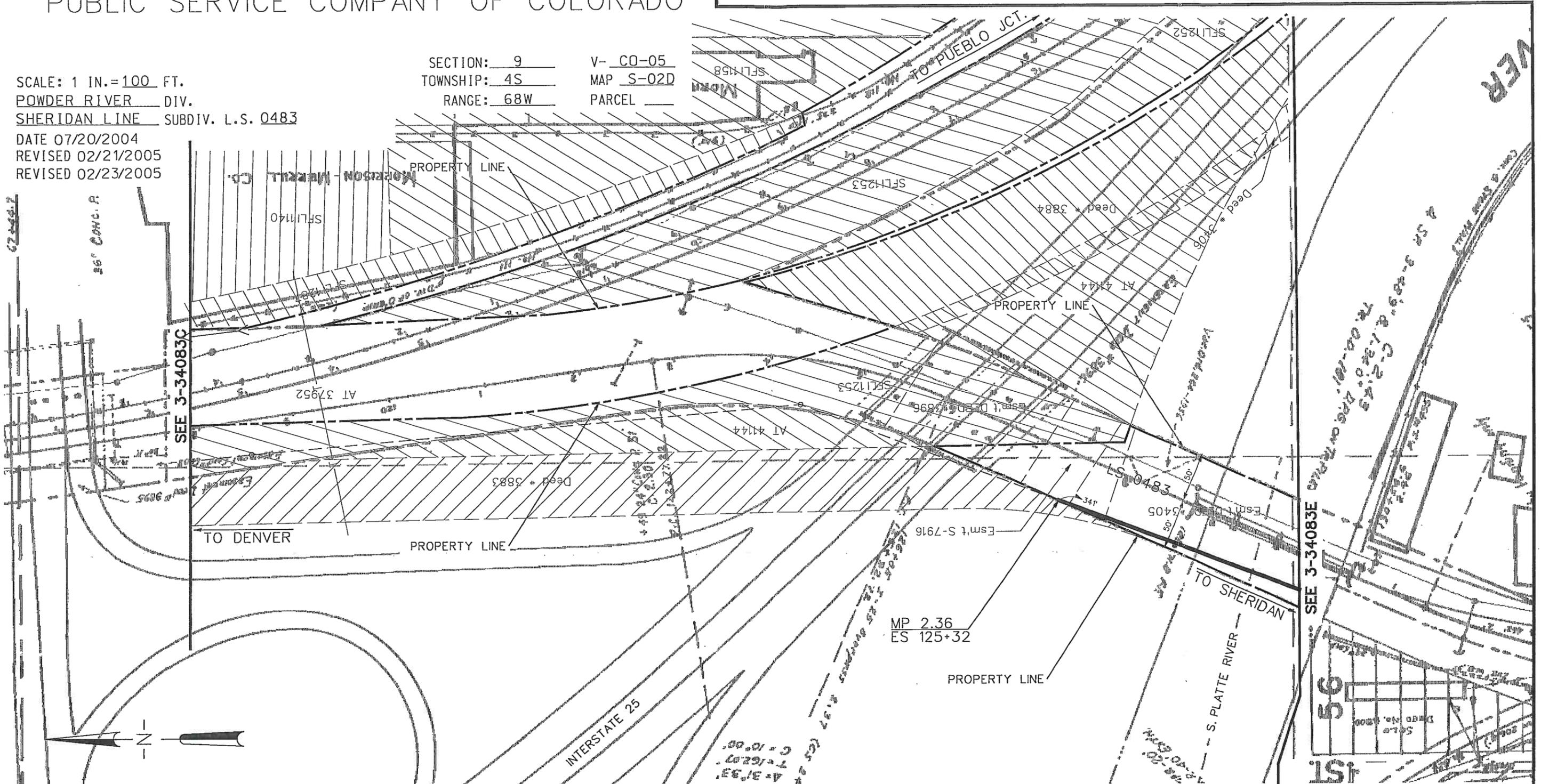
ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND

PUBLIC SERVICE COMPANY OF COLORADO

SCALE: 1 IN. = 100 FT.
POWDER RIVER DIV.
SHERIDAN LINE SUBDIV. L.S. 0483
DATE 07/20/2004
REVISED 02/21/2005
REVISED 02/23/2005

SECTION: 9 V- CO-05
TOWNSHIP: 4S MAP S-02D
RANGE: 68W PARCEL

TRIM LINE



AT DENVER
COUNTY OF DENVER

STATE OF CO

BCC

56
1ST

SEE 3-34083E

SEE 3-34083C

MAP REF. S53157