

OFFICE OF THE
Appanoose County Auditor
KELLY HOWARD
COURTHOUSE
201 N. 12th St., Rm 11
CENTERVILLE, IOWA 52544

Phone (641) 856-6191
Fax (641) 856-8023
khoward@appanoosccounty.net

Meeting Agenda
April 18, 2022

The Appanoose County Board of Supervisors will meet Monday, April 18, 2022 at 9:00 A.M. in the Boardroom of the Courthouse. Items on the agenda include:

1. Pledge
2. Declaration of items to be added to the agenda
3. Approve minutes of the April 4, 2022 meeting
4. Approve reports (4/15 payroll, Auditor, Recorder & VA Quarterly Report)
5. Approve bills
6. Mike Lamb: Grant Application
7. Gary Anderson: Approve RFP E911 tower & Set Public Hearing for Bid Opening
8. Tammy Wheeler: Farmer's Mutual Telephone Coop ARPA Funds request
9. Approve liquor licenses: Elliott's General Store
10. Approve Bond to Insure Against Double Payment: Davis Co ISU Ext
11. Discuss & Approve Courthouse Boiler Bid
12. Approve 2021 Business Property Tax Credit Applications
13. John Hansen: Appanoose County Law Center (project progress update, review and approve change orders, review and approve pay request, discussions, and any necessary action)
14. County Engineer Report
 - a. Approve Damon Hoffman resignation
 - b. Canadian Pacific Right of Entry Agreement for Boyer Ridge Road bridge repairs
 - c. Funding Agreement with Iowa DOT for project BROS-SWAP-C004(120)SE-04, 135th Street Bridge
 - d. County Engineer Employment Contract
15. CDC Coordinator
16. Public Comments
17. Adjourn

Posted 4/13/2022

April 4, 2022

Appanoose County Board of Supervisors met in regular session April 4, 2022 at 9:00 A.M. in the Boardroom of the Courthouse. Present: Linda Demry, Chairperson, Mark McGill, Jeff Kulmatycki, Boardmembers. Absent: none.

The meeting started with the pledge.

McGill motioned to approve the agenda. Seconded by Kulmatycki. All voted aye.

McGill motioned to approve the minutes from the March 21, 2022 meeting. Seconded by Kulmatycki. All voted aye.

McGill motioned to approve 4/1 payroll, Sheriff Quarterly Report, and February Prisoner Room and Board Transfer. Seconded by Kulmatycki. All voted aye.

McGill questioned County Engineer Brad Skinner about a Hamilton Produce invoice. Skinner stated the supply in the county had been extinguished. Kulmatycki motioned to approve the bills. Seconded by McGill. All voted aye.

ADLM EM	Contrib. & Purchase Serv	15079.25
Alliant	Engineering Services	533.12
Sec Rds	Custodial Supplies	148.30
Bailey Off	Off. Supplies & Forms	819.38
Baker's	Engineering Services	34.50
Barco	Engineering Services	12965.40
BKE LLC	Engineering Services	205.00
C-D Supply	Engineering Services	310.83
Cantera Aggregates	Engineering Services	6890.29
Capital One	Law Enf. Equip & Weapons	28.48
Capital Sanitary Supply	Off. Equip Repair & Maint	401.11
Card Services	Engineering Services	43.98
Caudill Portable Welding	Engineering Services	127.10
Cville Wtrwks	Engineering Services	384.58
Central IA Det	Juvenile Detention & Shel	1752.00
Charm-Tex, Inc	Jail Equip. & Furniture	68.64
City Cville	Salary-Regular Employees	5392.70
City of Ottumwa/SIRG	Construction & Maint.	8783.74
Ted Clark Plumbing	Jail Equip. & Furniture	120.00
CR Environmental	Engineering Services	2460.20
S Dittmer	Legal Serv. Dep-Subp-Tran	229.50
Fogle TV	Engineering Services	265.58
Forbes Office Solns	Off. Supplies & Forms	875.00
GreatAmerica	Off. Supplies & Forms	198.75
Hamilton Produce	Engineering Services	113.61
Hills San	Engineering Services	315.00
J Hinojosa	Building Repair & Maintce	270.00
Housby Mack	Engineering Services	195.35
IA Pub Health Assoc	Educational & Train.Serv.	345.00
ISACA	Educational & Train.Serv.	225.00
ISCTA	Educational & Train.Serv.	220.00
Kimball	Engineering Services	192.25
R Lamb	Mileage & Transp. Expense	300.54
Mainstay Sys	Law Enf. Equip & Weapons	315.00
B Matkovich	Rent Payments	300.00
Mercy Med Ctr	Engineering Services	35.00
Metal Culverts	Bridge & Culvert Maint.	13473.00
MHC Kenworth	Engineering Services	3410.42
Midwest Wheel	Engineering Services	1086.18

Monroe Sheriff	Legal Serv. Dep-Subp-Tran	60.00
O'Halloran Int'l	Engineering Services	54.34
Quick Shop	Transportation	295.00
Quill	Off. Supplies & Forms	90.98
G Roefer	Medical & Health Services	100.00
SEAT	Educational & Train.Serv.	150.00
Simmons Bldg Materials	Engineering Services	129.00
SNAP-ON TOOLS BRANDON WARNER	Engineering Services	184.00
UnityPoint	Engineering Services	168.00
US Bank	Educational & Train.Serv.	1001.78
US Cellular	Off. Supplies & Forms	904.65
Verizon	Engineering Supplies	200.04
Wapello Co Aud	Legal & Ct-Related Serv.	579.66
Watson & Ryan	Legal & Ct-Related Serv.	437.50
Windstream	Telephone & Telegr.Serv.	196.24
Zero9 Holsters	Law Enf. Equip & Weapons	84.35
Grand Total		83549.32

Nichole Moore from CVPD provided a packet to the board regarding the CP/KCS Railway merger.

VA Commissioner, Annette Harvey requested that their state allocation funds be used to supplement the shortage in budgeted funds for VA Director David Gee's salary certification. Kulmatycki motioned to approve the overage on the salary certification line this fiscal year only. Seconded by McGill. All voted aye.

McGill motioned to open the public hearing for ZOMA 0700-05 at 9:26 A.M. Seconded by Kulmatycki. All voted aye. Zoning Administrator, Beth Burgin stated the zoning board recommended the change. There were no other public comments. Kulmatycki motioned to close the public hearing for ZOMA 0700-05 at 9:27 A.M. Seconded by McGill. All voted aye. ZOMA 0700-05 was read. Kulmatycki motioned to approve the first reading of ZOMA 0700-05. Seconded by McGill. All voted aye. McGill motioned to approve waiving the second and third readings. Seconded by Kulmatycki. All voted aye.

McGill motioned to open the public hearing for the Sunset Ridge Subdivision Final Plat at 9:30 A.M. Seconded by Kulmatycki. All voted aye. Jason Kok spoke in favor of the subdivision. There were no other public comments. McGill motioned to close the public hearing for the final plat for Sunset Ridge at 9:31 A.M. Seconded by Kulmatycki. All voted aye. Kulmatycki motioned to approve Resolution #2022-09. Seconded by McGill. All voted aye.

RESOLUTION No 2022-09

RESOLUTION APPROVING FINAL PLAT OF SUNSET RIDGE SUBDIVISION

WHEREAS, the final plat and accompanying materials for Sunset Ridge Subdivision have been filed with the Appanoose County Auditor; and

WHEREAS, the plat of Sunset Ridge Subdivision as filed is found to be correct and complies in all respects with the requirements of the Appanoose County and the laws of the State of Iowa;

WHEREAS, Jason Kok, as owner and proprietor, seeks final approval of the Plat.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF APPANOOSE COUNTY, IOWA, that the plat of Sunset Ridge Subdivision is hereby approved and accepted by the Board of Supervisors of Appanoose County, Iowa.

BE IT FURTHER RESOLVED THAT THE Appanoose County Auditor is authorized and directed to file the final plat of Sunset Ridge Subdivision, as well as any other documents related thereto, with the Appanoose County Recorder.

Passed and approved this 4th day of April, 2022.

/s/Linda Demry, Chairman of the Board of Supervisors

Attest:/s/Kelly Howard, Appanoose County Auditor

McGill motioned to approve the liquor license for Louies Lakeside Bistro BBQ. Seconded by Kulmatycki. All voted aye.

McGill motioned to approve Resolution # 2022-08. Seconded by Kulmatycki. All voted aye.

RESOLUTION NO. 2022-08

RESOLUTION ALLOCATING AMERICAN RESCUE PLAN ACT FUNDS

WHEREAS, in March 2021, the federal government established the American Rescue Plan Act of 2021 (ARPA) which included the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) to provide state, local and Tribal governments with the resources needed to respond to the pandemic and its economic effects; and

WHEREAS, the U.S. Department of the Treasury issued an Interim Final Rule implementing the SLFRF program on May 10, 2021, which included replacing lost revenue to County governments, and

WHEREAS, on January 6, 2022, the Treasury issued final rules for the SLFRF program, including authorization for counties to allocate up to \$10,000,000 of their total SLFRF allocation as lost revenue to spend on government services.

NOW, THEREFORE, BE IT RESOLVED, that the Appanoose County Board of Supervisors approves allocating its total SLFRF allocation in the expected amount of \$2,413,605 as lost revenue to spend on government services.

Resolution adopted by the Appanoose County Board of Supervisors this 4th day of April, 2022.

/s/: Linda Demry, Chairperson, Mark McGill, Vice-Chair, Jeff Kulmatycki, Boardmember

Attest/s/: Kelly Howard, Auditor

John Hansen provided an update on the jail project to the board. Metal studs are being installed in the admin section. Foam insulation is done. Roofing is done except for trim and gutters. Floor slabs in the correctional portion will be next. September 28th has been scheduled with the state as the transfer date. A corrected pay application for March 1, 2022 was presented (sales tax deduction). Change Order #1-2 for SG Construction was presented (server room changes & heaters). Kulmatycki motioned to approve Change Order 1-2 for \$19,094.81. Seconded by McGill. All voted aye. Change Order #2-2 for Noah Detention was presented. McGill motioned to approve Change Order 2-2 for \$4,591.69. Seconded by Kulmatycki. All voted aye. A pay application for 4/1/2022 was presented. Kulmatycki motioned to approve the 4/1/2022 pay application for \$586,709.45. Seconded by McGill. All voted aye. A Request for Proposal for additional concrete was presented. Kulmatycki motioned to approve the bid from SG Construction for \$77,321.20. Seconded by McGill. All voted aye. A Request for Proposal for shelving, lockers and cabinets was presented. McGill motioned to approve the proposal to Midwest Storage Solutions, Inc. for a cost not to exceed \$85,000. Seconded by Kulmatycki. All voted aye.

Kulmatycki motioned to approve the FY23 DOT Budget for Secondary Roads. Seconded by McGill. All voted aye.

McGill motioned to approve the Secondary Roads Five Year Program. Seconded by Kulmatycki. All voted aye.

Skinner provided an update to the board. Damon Hoffman (sign specialist) has resigned. They are letting bridge materials (due April 13th) and will present at the next meeting. The rock haul started this morning. A budget amendment to add funds to the rock budget will be requested. Demry has received complaints from Wind and Waves and will be forwarding them. Pre-construction on T30 should begin next week. The road will be open to traffic. The department replaced a pipe in Leah Bradley Park and need to work on the county's portion of the road. A draft contract for the engineer was presented. The board will review and make a decision at the next meeting. The crews will move to their 10 hour days on Monday.

Public Comments: Tammy Wheeler from Farmer's Mutual provided an update on their fiber project. She received the bids back and the contractor's bid was \$1 million over the original estimate. She requested to be put on the next agenda to request ARPA funds.

McGill motioned to adjourn. Seconded by Kulmatycki. All voted aye.

The Board adjourned to meet at the call of the Auditor at 11:08 A.M.

Appanoose County Board of Supervisors

Attest:

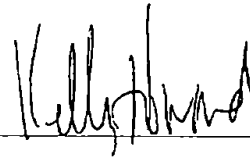
Kelly Howard, Appanoose County Auditor

STATE OF IOWA, APPANOOSE COUNTY
TO THE BOARD OF SUPERVISORS OF APPANOOSE COUNTY, IOWA

I, Kelly Howard, Auditor of the above-named County and State do hereby certify that the following is a true and correct statement of the fees collected by me in my office for the quarter ended March 31, 2021, and the same has been paid to the proper authorities as per duplicate voucher as attached:

Plat Books	75.00
Copy Work	\$11.00
Misc.	<u>\$0.00</u>
Total	<u><u>86.00</u></u>

RESPECTFULLY SUBMITTED, _____



County Auditor

4/05/22 9:53:22

Miscellaneous Receipt
Appanoose County Treasurer

04/05/2022

Receipt# 20794

Received from Customer R 200 Appanoose County Auditor

<u>Payment Method</u>	<u>Amount</u>	<u>Check#</u>	<u>Paid by</u>
2 Check	86.00	1027	Appanoose County Auditor

#	Fund	Function	Rev	Dept	Prj	Sub	Post	Earned	Amount
1	01000	3	09000	5500	02		1	03/31/2022	86.00
			Photocopy/FAX Fees						
			K86 - Qtrly Report - SB						

Total Amount 86.00

County Recorder's Report of Fees Collected

(See Chapter 842, Code)

STATE OF IOWA,

APPANOOSE } ss.
County,

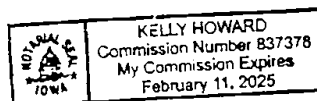
TO THE BOARD OF SUPERVISORS OF APPANOOSE COUNTY:

I, Teddy Walker, Recorder of the
 above named County and State, do hereby certify that the following is a true and correct statement of the fees collected
 by me in my office for the quarter ending, March 31, 2022, and the same
 has been paid to the County Treasurer, as per duplicate voucher No. 20674, 20675, 20728 hereto attached:
20729, 20796, 20797

For Recording Deeds	2720	00
For Real Estate Mortgages	9325	00
For Releases and Assignments	1065	00
For Hunting and Fishing Licenses Writing Fees	35	00
For Furnishing Certified Copies of Records - Xerox Copies	491	90
Motor Boat Registration Writing Fees	296	25
Miscellaneous	2857	00
Snowmobile & ATV Writing Fees	102	50
R. E. Transfer Tax - 17.25%	6733	99
Vital Records -	1336	00
County Conservation - 50% Boat Titles	85	00
TOTAL	25047	64

All of which is respectfully submitted.

Teddy Walker
 County Recorder.

Subscribed and sworn to before me by Teddy WalkerCounty Recorder, this 6 day of April, 2022

Kelly Howard
 Auditor APPANOOSE County.

Report of Director of Veterans Affairs
Jan.1-March 31 2022

[illegible]



State of Iowa

Alcoholic Beverages Division

Applicant

NAME OF LEGAL ENTITY	NAME OF BUSINESS(DBA)	BUSINESS	
ELLIOTT'S GENERAL STORE INC.	ELLIOTT'S GENERAL STORE INC.	(641) 724-3711	
ADDRESS OF PREMISES	CITY	COUNTY	ZIP
23828 Hwy J18	Moravia	Appanoose	52571
MAILING ADDRESS	CITY	STATE	ZIP
23828 HWY J18	Moravia	Iowa	52571

Contact Person

NAME	PHONE	EMAIL
DAVID ELLIOTT	(641) 895-3100	delliot303@aol.com

License Information

LICENSE NUMBER	LICENSE/PERMIT TYPE	TERM	STATUS
LE0001673	Class E Liquor License	12 Month	Submitted to Local Authority
TENTATIVE EFFECTIVE DATE	TENTATIVE EXPIRATION DATE	LAST DAY OF BUSINESS	
June 8, 2022	June 7, 2023		
SUB-PERMITS			
Class E Liquor License			



State of Iowa

Alcoholic Beverages Division

PRIVILEGES

Sunday Service

Status of Business

BUSINESS TYPE

Privately Held Corporation

Ownership

• Individual Owners

NAME	CITY	STATE	ZIP	POSITION	% OF OWNERSHIP	U.S. CITIZEN
David Elliott	CENTERVILLE	Iowa	52544	PRESIDENT	50.00	Yes
Peggy Elliott	CENTERVILLE	Iowa	52544	OWNER	50.00	Yes

Insurance Company Information

INSURANCE COMPANY

POLICY EFFECTIVE DATE

POLICY EXPIRATION DATE

DRAM CANCEL DATE

OUTDOOR SERVICE EFFECTIVE
DATE

OUTDOOR SERVICE EXPIRATION
DATE

BOND EFFECTIVE DATE

TEMP TRANSFER EFFECTIVE
DATE

TEMP TRANSFER EXPIRATION
DATE

BOND TO INSURE AGAINST DOUBLE PAYMENT

Date: April 11, 2022

Office of Auditor, Appanoose County, Centerville, Iowa

WHEREAS, on or about the 22nd day of February, 2022
there was issued from the above named office

CHECK # 45806 FUND # 60800

AMOUNT 164.02 ACCOUNT # 60800 03000 396 66 710

PAYABLE TO Davis Co. ISU Extension
402 E. North St.
Gloomfield, IA 52537

WHEREAS, the said CHECK has been lost and cannot be found, and

WHEREAS, Davis Co. ISU Extension has requested that a duplicate be issued
therefore, and which the officer in charge of said office is about to do;

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS:

That Davis Co. ISU Extension is held and firmly bound unto Appanoose County
and the Auditor in the sum of One Hundred Sixty-Four and 02/100 (\$164.02)
Dollars to make good and save to Appanoose County and the Auditor harmless from all costs
and expenses of any nature whatsoever on account of the issue and payment of said duplicate
CHECK and shall protect Appanoose County and the Auditor from any and all obligations on the
original CHECK as aforesaid issued, then this obligation shall be void and of no effect, otherwise
to remain in full force and virtue.

Signed this 12th day of April, A.D. 2022

Carolyn Scott
Payee or Authorized Signer
Carolyn Scott, Treasurer, Davis Co. ISU Extension

STATE OF IOWA, COUNTY OF DAVIS

This instrument was acknowledged before me on April 12, 2022

(Date)

by Carolyn Scott
Payee or Authorized Signer

Signature of Notary Public

Notary

Title



My Commission Expires 3-12-2023

Dear Appanoose Co. Secondary Rds.,

I Damon Hoffman hereby resign from my position
of Sign Foreman on 04-01-2022 from Appanoose County.

- Damon Hoffman 4-1-22

I would like to thank you at appanoose Co. for a great
opportunity & a great past 2.5 yrs. I hope nothing but the
best for everyone down here, Thank ya all !

~~Don~~ ~~Don~~.

REC'D APP CO AUDITOR
APR 11 '22 AM 9:08

RIGHT OF ENTRY LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is made by and between **DAKOTA, MINNESOTA & EASTERN RAILROAD COMPANY** doing business as Canadian Pacific and **APPANOOSE COUNTY, IOWA**.

1. PARTIES

DAKOTA, MINNESOTA & EASTERN RAILROAD COMPANY, a Minnesota corporation doing business as Canadian Pacific with general offices at:

Address	Contact Info	
Canadian Pacific Plaza 120 South 6th St. – Suite 700 Minneapolis, Minnesota 55402	Name:	Matthew Miller
	Phone:	(612) 330-4556
	Fax:	
	Email:	matthew_miller@cpr.ca

hereinafter called "CP,"

and **APPANOOSE COUNTY, IOWA**, whose address is:

Address	Contact Info	
1200 Hwy 2 West Centerville, IA 52544	Name:	Brad Skinner
	Phone:	641-856-6193
	Fax:	641-437-4665
	Mobile:	941-895-8855
	Email:	bskinner@appanoosecounty.net

hereinafter called "Licensee."

2. PROPERTY; SCHEDULE; GRANT OF LICENSE

2.1 Property

CP hereby grants Licensee a license to enter in and upon certain property owned or controlled by CP in **Appanoose County, IA near railroad mile post 375703N** +/- on the **Boyer Ridge Road**, as shown upon the map labeled **Exhibit A** that is attached hereto and made a part hereof (the "Property")

2.2 Work Schedule

For the sole for the purpose of performing, generally, the following activities: Temporary repair of Boyer Ridge Road Bridge (Crossing # 375703N) (Appanoose County Bridge No. 073012), consisting of (the "Work"), as detailed in Licensee's plans, specifications and special provisions:

- Removal of approximately ten feet (10') of decking over the southern-most pier (Plan referral "Bent #7")
- Driving of eight total H-Pile – four on either side of said Bent #7
- Installation of two Steel Beam Caps on the driven pile to support the existing wooden stringers
- Replacement of the removed decking – original materials if reusable
- Restore approaches and guardrail affected by the repair
- Performing a preliminary survey of the site for a proposed future bridge replacement.

The Work is subject to approval by CP's authorized representative.

2.3 Grant of License

This license is granted subject to all the terms and conditions set forth below and applies to all Work and activities upon the Property that may be performed by Licensee through its employees, agents, and contractors. For the purposes of this Agreement, the actions and omissions of such employees, agents, and contractors shall be deemed the actions and omissions of Licensee.

2.4 Agreement to be Available at Work Site

Licensee shall keep a copy of this Agreement at the Work site and shall make it available upon demand by any employee or agent of CP.

3. TERM, EFFECTIVE DATE, EXPIRATION & TERMINATION

3.1 Term

The term of this Agreement shall

Commence at 12:01 am on **March 26, 2022** (the "**Commencement Date**"); and

Expire at 11:59 pm on **April 29, 2022** (the "**Expiration Date**")

the "**Term**." Upon agreement between CP and Licensee, the Term may be lengthened or shortened without affecting any other provisions of this Agreement.

3.2 Effective Date

This Agreement shall be effective upon the date that it has been signed by both parties.

3.3 Expiration

This Agreement will expire at the Expiration Date, or when the Work is completed, whichever occurs first. Notwithstanding any other provision of this Agreement, the preceding sentence shall not terminate or limit any claim by CP against Licensee arising prior to the Expiration Date. If the Work includes monitoring wells, and if such wells remain on the Property after the Expiration Date, this Agreement shall remain in effect for those wells until the earlier of the following:

- (i) the date they are properly closed (*i.e.*, sealed and abandoned in accordance with applicable legal requirements) by Licensee or
- (ii) the date CP assumes ownership of such wells pursuant to section 10.8.

3.4 TERMINATION; EXCLUSION

Notwithstanding anything to the contrary contained herein, this Agreement is terminable by CP prior to the Expiration Date in the event Licensee breaches any of its obligations under this Agreement. If CP elects to terminate this Agreement, it shall give Licensee notice of termination, which notice shall specify the obligation or obligations breached by Licensee; and this Agreement shall terminate 30 days after such notice is given (provided, however, that this Agreement shall not terminate if the breach is cured within said 30 day period). The early termination of this Agreement shall not terminate or limit any claim by CP against Licensee arising prior to such termination. If Licensee is in breach of any of its obligations under this Agreement, any employee or agent of CP may order Licensee off the Property, in which case Licensee shall immediately leave the Property; moreover, Licensee shall leave the property immediately upon receipt of a notice given pursuant to this section 3.4; and in either case, Licensee shall not re-enter the Property until such time as the breach is cured.

4. PAYMENTS

4.1 License Fee

In consideration of the permissions herein granted, Licensee shall with its execution hereof pay to CP the sum of **One Thousand Five Hundred Dollars (\$1,500.00)**.

4.2 Utilities

Licensee shall assume and timely pay for any gas, electrical, telephone, computer, sewer, water, storm water, waste or trash removal or any other service or commodity connected with the Work, collectively "**Utility Service**." If any Utility Service fee is in common with CP or other parties, Licensee shall be liable for its proportionate share of any such Utility Service Fee and upon receipt of a bill therefor, promptly pay CP or such other party for its share. It shall be a default of the terms of this license if it can be shown that Licensee has not made such payments within 30 days if due to CP, or within 60 days if payable to any other party.

4.3 Mechanics' And Materialmen's Liens

If any mechanics' or materialmen's lien, or similar lien, is asserted against the Property, or any other property of CP, as a consequence of the Work, Licensee shall immediately satisfy, defend, or obtain the release of such lien, all at Licensee's expense, and Licensee shall indemnify and defend CP against any Claims arising out of or connected with such lien.

4.4 Additional Charges

Licensee shall within 30 days of receipt of a bill therefor, track changes or damage, or other such charges as may be provided by this Agreement or that CP may reasonably impose in connection with Licensee's Work.

4.5 Due Dates; Penalties; Other Charges

4.3.1 Due Dates

Any item, submission or payment required to be made shall be deemed timely made if received by the other party on or before the specified due date, or prior to expiration of the applicable period for compliance, submission or payment.

4.3.2 Late Fees

In addition to any amounts payable by Licensee to CP, Licensee shall pay CP a late fee for any payment not timely made by Licensee. The late fee shall be at the rate for overdue accounts set by CP's Accounting Department that is in effect at the time that that any such payment is due. Said late fee shall initially be an amount equal to 1% of the invoice amount per month.

4.3.3 Fines and Service Fees

In addition to any other amounts payable by Licensee to CP, Licensee shall pay CP for any bank fines or service incurred by it in connection with the handling, non-payment, return or currency conversion incurred by CP in connection with processing of any payment made by Licensee to CP.

4.6 Work At No Cost To CP

The Work completed by Licensee shall be reimbursed to the Licensee at the rate of 50% of total costs, up to a maximum of \$13,000.

5. CONTACT, NOTICES, ETC.

5.1 Contact Persons; Communications

Communications pursuant to this Agreement shall be directed to the contact persons designated in Section 1 or their designees. Either party may change its contact person, or the address(es), telephone number, or fax number for the contact person, by notice to the other party.

5.2 Notices

Except as otherwise provided in this Agreement, all notices pursuant to this Agreement shall be in writing and shall be effective upon delivery to the address or fax number of the contact person for the party to whom notice is being given. If notice is given by fax, the notice shall not be deemed effective until received in legible form.

5.3 Notification Prior To Beginning Work

Licensee must notify CP's contact person by telephone at least three working days prior to beginning any separate phase of the Work, and again promptly after such phase of the Work has been completed.

6. PERMITTED & PROHIBITED USES; RIGHTS OF CP

6.1 Permitted Uses

6.1.1 *The Work*

The use of Property by Licensee shall be limited to the completion of the Work set forth in Section 2.2., or such other activities as may be approved by CP in writing.

6.1.2 *Government Authorities*

Licensee may permit governmental authorities other than Licensee with jurisdiction over the Work to enter the Property for the purpose of inspecting or monitoring the Work. Whenever possible, Licensee shall advise CP (by telephone or other means calculated to bring the matter to CP's immediate attention) prior to permitting such governmental authorities to enter the Property for such purposes. The actions and omissions of such governmental authorities while on the Property for such inspections and monitoring shall be deemed the actions and omissions of Licensee. Licensee is not authorized to permit governmental authorities other than Licensee to enter the Property for any other purpose.

6.2 Prohibited Uses and Activities

Licensee shall not use, occupy or permit the Property to be used for any purpose, activity or improvement except as provided in this Agreement or as may be approved of in writing by CP. Specifically, Licensee shall not:

6.2.1 *Advertising*

permit any advertisements or signs upon the Property;

6.2.2 *Use of Hazardous Substances*

without prior written disclosure to and approval by CP, Use or authorize the Use of any Hazardous Substance on the Property, including installation of any above or underground storage tanks; subject thereto, Licensee shall arrange at its own cost for the lawful transportation and off-site disposal of any and all Hazardous Substances that it shall Use or generate;

6.2.3 *Use of Premises for waste treatment or as storage or disposal facility*

cause or allow the Property or any of CP's adjacent property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or to otherwise bring any such property within the ambit of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or any similar state statute or local ordinance; or

6.2.4 *Subleasing is prohibited*

sublease the Property or the permissions or rights herein granted in any manner or form.

6.3 Reservations and Rights of CP

6.3.1 Railroad Activities Take Priority over Work

All Work by Licensee shall always and all times be subordinate to the needs of CP in connection with the operation and movement of railroad trains and equipment, and the repair of railroad track, structures, communications and appurtenances thereto.

6.3.2 Reservation of prior and future uses not inconsistent with Licensee's activities

The rights herein granted to Licensee are subject to the rights granted in all other licenses, permits and easements for tracks, roads, walkways, poles, wires, pipelines, sewers, billboards and other improvements that exist or may be placed upon, across, above or underneath the Property by CP, or its employees, agents, licensees, grantees, representatives or invitees. Further, CP reserves unto itself the right to place (or to give others the right to place) additional tracks, roads, walkways, poles, wires, pipelines, sewers and billboards upon, across, above or underneath the Property in any manner that does not unreasonably interfere with Licensee's Work.

6.3.3 Monitoring

CP may elect to be present during the conduct of the Work and to monitor same.

7. COVENANTS, CONDUCT & RESPONSIBILITIES

7.1 Definitions

7.1.1 "Claim" or "Claims" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultants' fees, response costs, remedial action costs, cleanup costs and expenses which may be related to any Claims);

7.1.2 "Environmental Law" or "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Clean Water Act, 33 U.S.C. §1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law, ordinance, order or decree dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted;

7.1.3 "Hazardous Substance" or "Hazardous Substances" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law;

7.1.4 "Release" or "Released" means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or spreading of any Hazardous Substance into the environment, as "environment" is defined in CERCLA;

7.1.5 "Response" or "Respond" means action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Substance;

7.1.6 "Use" means to manage, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon.

7.2 Investigation; Compliance with Laws; Safety Requirements

7.2.1 *Tenants and Licensees in possession of Property*

Before entering the Property, Licensee shall secure the consent of all persons or entities who are using or occupying any portion of the Property. CP will cooperate with Licensee to obtain consent from any such person or entity who unreasonably withholds consent.

7.2.2 *Underground Utilities and Structures*

- a. Licensee shall be responsible for determining the location of all underground utilities (electric lines, telephone lines, gas lines, steam lines, sewer lines, water lines, fiber optic cables, pipes, wires, and the like) and underground structures.
- b. Licensee shall call **CPCBYD "Canadian Pacific Call before You Dig"** at **1-866-291-0741 for Signal, Fiber Optics, and Power for CP Facilities on Canadian Pacific Right of Way and the STATE "ONE CALL"** a minimum of 5 business prior to commencing any excavation or boring on the Property.
- c. CP will cooperate with Licensee to identify the location of underground utilities and structures known to CP, but such cooperation shall not relieve Licensee from its primary responsibility to determine the locations of such utilities and structures.

7.2.3 *Permits And Licenses; Compliance With Laws*

Licensee shall secure, at no expense to CP, any permits or licenses required in connection with the Work and shall comply with all laws applicable to the Work and the Property, including (but not limited to) any laws, standards, regulations, and permit requirements relating to environmental pollution or contamination or to occupational health and safety. Licensee shall indemnify and defend CP against any and all Claims arising out of or connected with the violation of any law by Licensee while on or about the Property.

7.2.4 *Compliance with CP Safety Requirements; Identification*

- a. While on the Property, Licensee shall comply with the safety requirements of CP, as such requirements may be amended from time to time during the duration of the Work, all at no expense to CP. CP's safety requirements are set forth "**Exhibit B**" titled "**MINIMUM SAFETY REQUIREMENTS FOR CONTRACTORS WORKING ON RAILWAY PROPERTY**" and in CP's current safety handbook. One free copy of the current safety handbook will be provided to Licensee by the CP contact person. Additional copies will be provided at Licensee's expense. Licensee shall be responsible for ensuring that any person performing any of the Work for or on behalf of Licensee shall comply with the CP safety requirements that would apply to a CP employee performing similar work.
- b. Prior to any entry onto the Property, Licensee and every employee, agent or subcontractor who carries out any part of the Work on the Property shall successfully complete the safety training available through the e-railsafe program at www.e-railsafe.com in respect to requirements for Canadian Pacific operations.
<if applicable>
- c. Licensee and every employee, agent or subcontractor who carries out any part of the Work on the Property shall at all times wear and visibly display the identification badge issued to them following successful completion of the e-railsafe safety training together with whatever additional identification materials that CP may reasonable require.

7.3 Work In Close Proximity To Railroad Operations; Drainage

7.3.1 Interference with Railroad Operations

Licensee shall keep CP fully apprised of its proposed activities on the Property so as to prevent any interference with the operations of CP's trains or equipment (or trains or equipment of others) operating on or near the Property.

7.3.2 Clearance

No work shall be done or any equipment or other obstruction placed over or within 50 feet laterally of the centerline of any track without advance notification to CP prior to performing such work or placing such equipment or obstruction.

7.3.3 Flagging

Licensee must make arrangements with CP for such flagging or watchman service as CP deems necessary for the protection of railroad traffic. All such flagging and watchman service shall be provided by CP at Licensee's expense. The fact that CP provides such service shall not relieve Licensee from any liability under this Agreement. CP's labor and material additives are subject to change without notice to Licensee, and CP shall be reimbursed based upon its labor and material additives actually in effect as of the date of such service.

7.3.4 Certain Work Close To Track Not Permitted; Lateral Support

- a. Unless otherwise agreed to in writing by CP, excavations, borings, wells, pits, test holes, probe sites, and the like shall not be located closer than 50 feet from the centerline of the nearest railroad track on or adjacent to the Property nor shall it take or allow any action upon the Property that would materially impair the lateral or subadjacent support of adjacent lands or railroad tracks.;
- b. Unless otherwise agreed to in writing by CP, drilling and excavating equipment and related equipment shall not be located closer than 50 feet from the nearest rail of any such track;
- c. In the event that CP permits excavations, borings, wells, pits, test holes, probe sites, or the like in close proximity to tracks, embankments or other features providing lateral or subadjacent support to land or tracks, then notwithstanding anything to the contrary in this license, Licensee shall be responsible for designing and constructing at no cost to CP any measure that is required to prevent the collapse, erosion or impairment to said land or tracks.

7.3.5 Storm Water

Licensee shall not, without the advance written approval of CP, make any changes to the Property that would either increase the historic flow rate of storm water from the Property or create an impediment to the historic flow of storm water to the Property. Unless otherwise agreed in writing, as between CP and Licensee it is understood and agreed that Licensee shall, at Licensee's cost and expense, be responsible for the construction, maintenance, repair and replacement upon the real property or other land not belonging to CP such storm sewer lines, manholes, mains, rip rap, boulders, wing walls, ditches and related to improvements required for Licensee's compliance with this section.

7.3.6. Fencing <If applicable>

Licensee shall, at no cost to CP, construct and maintain during the term hereof a fence acceptable to CP in the location(s) designated on Exhibit A. Following completion of the

Work, the Licensee shall remove the fencing, remove any post footings or concrete, and fill and tamp any post holes with clean fill material.

7.4 Conduct

7.4.1 *Property clean, safe and free from nuisances*

Licensee shall not permit the existence of any nuisance upon the Property and shall at all times keep the Property in a proper, clean, safe and sanitary condition, and free from accumulations of waste materials, debris or refuse.

7.4.2 *Release of Hazardous Substances*

Licensee shall not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from the Property.

7.4.3 *Response Actions*

Licensee shall promptly take all necessary action in Response to any Release or Use of a Hazardous Substance at the Property caused by, or attributable to, any act or omission of Licensee (or Licensee's employees, agents, representatives or invitees) that could:

- a. give rise to any Claim under any Environmental Law,
- b. cause a public health or workplace hazard, or
- c. create a nuisance.

7.5 Required Notices/Disclosures

7.5.1 *Transportation and Disposal Contracts*

Licensee shall, upon written request by CP, provide CP with copies of transportation and disposal contracts and manifests for Hazardous Waste, any permits issued under any Environmental Laws, and any other documents demonstrating that Licensee has complied with all Environmental Laws relating to the Property

7.5.2 *Releases or Suspected Releases*

Licensee shall promptly notify CP of any actual or suspected Release of any Hazardous Substance on, to, or from the Property, regardless of the cause of the Release.

7.5.3 *Notices, summons citations, etc.*

Licensee shall promptly provide CP with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, claims, causes of action, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or other federal, state or local agency or authority, or any other entity or individual, concerning:

- a. any Release of a Hazardous Substance on, to or from the Property,
- b. the imposition of any lien on the Property, or
- c. any alleged violation of or responsibility under any Environmental Law relating to the Property.

7.5.4 *Other Reports*

Licensee shall, at CP's option, provide CP, at no cost to CP, a copy of any other report, summary or written test results, collectively "**Report**," pertaining to the Work. If any such Report is to be filed or made available to any governmental agency, other than Licensee, acting in a regulatory capacity, other than Licensee, then Licensee shall also give CP a reasonable time (not less than 5 working days) to review and comment on a draft of such Report and when preparing any such final Report pertaining to the Work, Licensee or its

contractor shall give due consideration to CP's comments with respect to the draft of that Report. Licensee will promptly provide CP with a copy of any final Report.

7.6 CP's right to Participate in Response Actions

Following receipt of any notice, order, claim, investigation, information request, letter, summons, citation, directive, or other communication identified in section 7.5.3 in connection with any action taken pursuant to section 7.4.3, Licensee shall notify CP of any and all investigations, telephone conferences, settlement discussions, remediation plans and all other interactions, direct or indirect, with governmental or regulatory officials, and Licensee shall take all action necessary to ensure that any indemnification, release, waiver, covenant not to sue, or hold harmless agreement benefiting Licensee and arising out of such activities, whether from a governmental or regulatory entity or from a private entity, also benefits CP to at least the same extent as Licensee.

7.7 Restoration of Property

Upon completion of the Work or expiration or early termination of this Agreement, whichever occurs first, Licensee shall remove any debris resulting therefrom and shall restore the Property to the condition it was in prior to the commencement of the Work (or such other condition as is satisfactory to CP). All excavations are to be backfilled and tamped. All borings shall be backfilled with grout. Drill cuttings shall not be used as backfill. Licensee shall dispose of all drill cuttings, soil and sediment samples, purge water, dewatering effluent, and water samples and all excess excavation material in a manner acceptable to CP and in accordance with all applicable laws, all at no expense to CP.

8. LIABILITY

8.1 Damage to CP Tracks, Facilities, and Equipment

If any tracks, facilities, or equipment owned, used, or maintained by CP are damaged in connection with the Work, CP shall repair (or arrange for the repair of) such damage and Licensee shall pay the full cost of such repair within 30 days after CP shall tender a bill therefor.

8.2 Assumption of Risk

Licensee is fully aware of the dangers of working on and about railroad property and railroad operations and knowingly and willingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur while on and about the Property. Without in any way limiting the scope of the preceding sentence, Licensee assumes the risk that monitoring wells, elevation bench marks, reference points, and other installations located on the Property may be disturbed, damaged, or destroyed by CP or third persons, and Licensee shall not make any claim against CP on account of same, even if such disturbance, damage, or destruction arises from the negligence of CP or its employees, agents, or invitees. Licensee assumes full responsibility for protecting its installations and personal property from theft and vandalism while such installations and personal property are on the Property.

8.3 Indemnity

To the maximum extent permitted by applicable law, Licensee shall indemnify and defend the Indemnified Parties (as defined below) against all claims, demands, actions, suits, judgments, losses, damages, penalties, fines, and sanctions (collectively, "Claims") arising out of or relating to any destruction of (or damage to) any property or natural resource, any injury to (or death of) any person, or any environmental pollution or contamination whatsoever, where such destruction, damage, injury, death, pollution, or contamination actually arises in whole or in part from the Work, any action or omission of Licensee while on or about the Property pursuant to this Agreement, or the exercise by Licensee of the license granted by this Agreement. As used in this Agreement, Indemnified Parties means the following businesses and their officers,

directors, employees, and agents: Soo Line Corporation, DAKOTA, MINNESOTA & EASTERN RAILROAD COMPANY, Delaware and Hudson Railroad Corporation, Dakota, Minnesota and Eastern Railroad Corporation, Soo Line Corporation, Wyoming, Dakota Railroad Properties, Inc., Central Maine & Quebec Railway, The Milwaukee Motor Transportation Company, Hiawatha Transfer Company, and Canadian and Pacific Railway Company, and their respective parent companies, subsidiaries, and affiliated companies, and any railway company or contractor operating trains or rail equipment upon railway tracks in close proximity to the Property, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing.

9. INSURANCE

Licensee shall, at its own expense, obtain and maintain during the Term and prior to entering the Property, in a form and with an insurance company satisfactory to CP, policies of:

- (a) **Commercial General Liability (C.G.L.)** insurance with a limit of not less than Ten Million Dollars (\$10,000,000) for any one loss or occurrence for personal injury, bodily injury, or damage to property including loss of use thereof. This policy shall by its wording or endorsement include without limitation the following:
 - (i) CP and its associated or affiliated subsidiaries (and the Directors, Officers, employees, agents and trustees of all of the foregoing) as an additional insured with respect to obligations of the Licensee in this Agreement;
 - (ii) "cross liability" or "severability of interest" clause which shall have the effect of insuring each entity named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
 - (iii) blanket contractual liability, including the insurable liabilities assumed by the Licensee in this Agreement;
 - (iv) broad form products and completed operations;
 - (v) sudden and accidental pollution liability, if applicable;
 - (vi) shall not exclude property damage due to explosion, collapse, and underground hazards; and
 - (vii) shall not exclude operations on or in the vicinity of the railway right of way.
- (b) **Automobile Liability** insurance covering bodily injury and property damage in an amount not less than Two Million Dollars (\$2,000,000) per accident, covering the ownership, use and operation of any motor vehicles and trailers which are owned, non-owned, leased or controlled by the Licensee and used in regards to this Agreement.
- (c) **Workers Compensation** insurance which shall be in strict accordance with the requirements of the most current and applicable state Workers Compensation insurance laws, and Employers' Liability insurance including Occupational Disease insurance with limits of not less than One Million Dollars (\$1,000,000) each accident/each employee, and where appropriate coverage under said policies to be extended for liability under the FELA, USL&H Act, and the Jones Act. The Licensee shall, before any services are commenced under this License submit written evidence that it has obtained full Workers Compensation insurance coverage for persons whom it employs or may employ in carrying out the services under this License. CP and its associated or affiliated companies (and the Directors, Officers, employees, agents and trustees of all of the foregoing) shall be waived of any and all subrogation in the event of injury, death, losses, incidents, claims and potential claims.
- (d) **Contractor's Pollution Liability** insurance, including naming CP and its associated or affiliated subsidiaries (and the Directors, Officers, employees, agents and trustees of all the foregoing) as an additional insured, with a limit of not less than Two Million Dollars (\$2,000,000)

for any one loss or pollution event. Coverage shall include, but not be limited to, claims for bodily injury, death, damage to property including the loss of use thereof, clean-up costs and associated legal defense expenses arising from pollution conditions caused by, and/or exacerbated by, services performed by the Licensee on behalf of CP. The policy shall be endorsed to contain a blanket contractual liability endorsement. If this policy is written on a "claims-made" basis it shall remain in effect for no less than twenty-four (24) months after the expiry or termination of this Agreement.

(collectively, the "**Insurance Coverage**").

Licensee agrees that the insurance requirements set out herein shall not limit or restrict its liabilities pursuant to this Agreement.

The Insurance Coverage required to be maintained pursuant to this Agreement shall be primary and not excess of any other insurance that may be available. Unless otherwise provided above, all insurance coverage shall take place in the form of an occurrence basis policy and not a claims made policy.

Licensee shall waive any and all subrogation in the event of injury, death, losses, incidents, claims and potential claims where permissible under the insurance policies required under this Insurance Section.

Licensee shall provide CP with written notice and all reasonable particulars and documents related to any damages, losses, incidents, claims, and potential claims concerning this Agreement as soon as practicable after the damage, loss, incident, or claim has been discovered. Licensee is responsible for any deductible and excluded loss under any insurance policy. The deductible in any insurance policy shall not exceed such maximum amount that a reasonably prudent business person would consider reasonable.

The Insurance Coverage shall be endorsed to provide CP with not less than thirty (30) days written notice in advance of cancellation.

Before Licensee enters the Property, CP must receive and approve certificates of insurance evidencing the Insurance Coverage outlined in this Section. Licensee may be required to annually provide a copy of updated certificate(s) of insurance evidencing the renewal of the above Insurance Coverage. Such certificate(s) of insurance shall be sent via email to matthew_miller@cpr.ca. Upon request, Licensee shall provide CP with certified copies of the insurance policies.

CP shall have no obligation to examine such certificate(s) or to advise Licensee if its Insurance Coverage is not in compliance with this Agreement. Acceptance of any certificate(s) which are not compliant with the requirements set out herein shall in no way whatsoever imply that CP has waived its insurance requirements.

CP reserves the right to require Licensee to obtain additional insurance where, in CP's reasonable opinion, the circumstances so warrant. If the Licensee fails to maintain the Insurance Coverage required in this Agreement, CP may, at its option, terminate this Agreement without notice.

10. ENTIRE AGREEMENT

10.1 Survival of Indemnity Provisions

The indemnification provisions of this Agreement shall survive its expiration or termination.

10.2 Mere License

The permission encompassed by this Agreement is a mere license to use the Property for the specified purpose and does not create any estate or interest in the Property.

10.3 No Warranty of Title

CP does not warrant that it has good title to the Property.

10.4 Assignment; Binding Effect

This Agreement may not be assigned by Licensee without the advance written consent of CP. Subject to the preceding sentence, this Agreement shall be binding upon, and inure to the benefit of, the parties' respective successors and assigns.

10.5 Governing Law

This Agreement shall be construed in accordance with the laws of the state of Minnesota.

10.6 Entire Agreement

This Agreement is the full, complete, and entire Agreement of the parties with respect to the subject hereof, and any and all prior writings, representations, and negotiations with respect to those subjects are superseded by this Agreement.

10.7 Headings

The headings used in this Agreement are provided solely as a convenient means of reference. They are not intended to, and do not, limit or expand the purpose or effect of the paragraphs to which they are appended. The headings shall not be used to construe or interpret this Agreement.

10.8 Singular and Plural

As used in this Agreement, the singular form of a word includes the plural form of that word, and vice versa, and this Agreement shall be deemed to include such changes to the accompanying verbiage as may be necessary to conform to the change from singular to plural, or vice versa.

10.9 Duplicate Copies and Counterparts

This Agreement may be executed in counterparts, which together shall constitute one and the same document. The parties may execute more than one copy of this Agreement, each of which shall constitute an original.

11. SIGNATURES.

THE PARTIES HERETO have executed this Agreement as evidence of their agreement to the terms herein.

APPANOOSE COUNTY, IOWA

**DAKOTA, MINNESOTA & EASTERN RAILROAD
COMPANY**

doing business as Canadian Pacific

By _____
Its Linda Demry,
Chair, Board of Supervisors

Date

By _____
Its Matthew Miller
Supervisor Public Works

Date

EXHIBIT A
Map of the Property

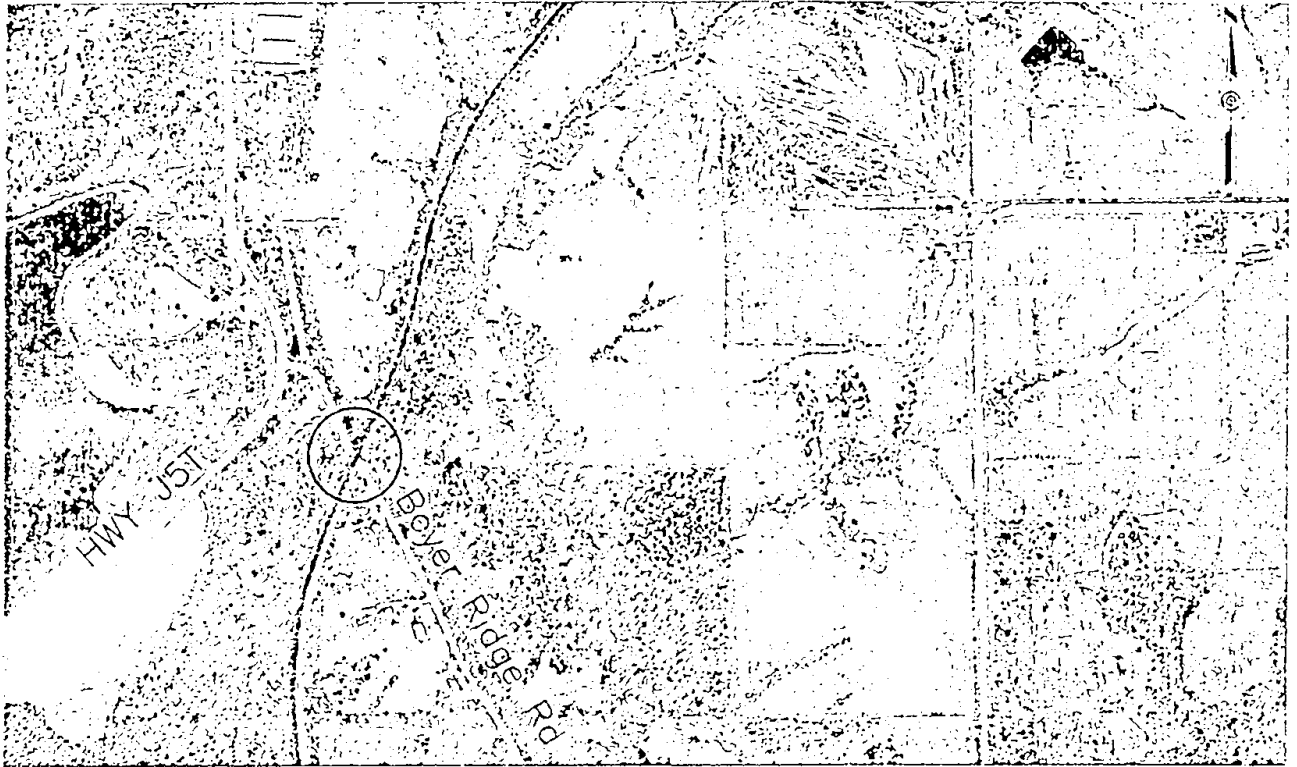


EXHIBIT B
Minimum Safety Rules for Work on Railroad Property

**IOWA DEPARTMENT OF TRANSPORTATION
AGREEMENT FOR COUNTY BRIDGE FEDERAL-AID SWAP FUNDING**

COUNTY: Appanoose

PROJECT NO.: BROS-SWAP-C004(120)—SE-04

AGREEMENT NO.: 5-22-HBP-SWAP-005

This is an agreement between the County of Appanoose County, Iowa (hereinafter referred to as the Recipient) and the Iowa Department of Transportation (hereinafter referred to as the Department), for funding through the Federal-aid Swap County Highway Bridge Program (HBP) under 761 Iowa Administrative Code (IAC) Chapter 161.

The parties agree as follows:

1. The Recipient shall be the lead local governmental agency for carrying out this agreement.
2. All notices required under this agreement shall be in writing to the Department and the Recipient's contact person. The Department's contact persons shall be the Local Systems Project Development Engineer, Christy VanBuskirk, and Central Region Local Systems Field Engineer, Brian J. Catus. The Recipient's contact person shall be the County Engineer.
3. The Recipient shall be responsible for the development and completion of the following bridge project:
 - A. FHWA Structure Number: 064810
 - B. Location: On 135th Avenue over Coal Creek, from 524th Street South .9 miles to Bridge S10
 - C. Preliminary Estimated Total Eligible Costs: \$750,000
4. The eligible project construction limits shall include the bridge plus grading and paving to reach a "touchdown point" determined by the Department. Eligible project costs include only costs associated with construction within the eligible project construction limits.
5. Costs associated with work outside the eligible project construction limits, routine maintenance activities, operations, and monitoring expenses are not eligible. In addition, administrative costs, engineering, inspection, legal, right of way, utility relocations, activities necessary to comply with Federal and State environment or permit requirements, and fees or interest associated with bonds or loans are not eligible.
6. 100% of the eligible construction project costs incurred after the effective date of this agreement shall be paid from Federal-aid Swap County HBP funds. The Recipient shall pay 100% of the non-eligible project costs. Reimbursed costs will be limited to Federal-aid Swap County HBP funds that are made available to counties through the HBP Funds outlined in 761 Iowa Administrative Code, Chapter 161 and Local Systems Instructional Memorandum (I.M.) 1.100.
7. The Recipient shall conduct project development and implementation in compliance with applicable laws, ordinances, and administrative rules. For projects which also include Farm-to-Market funds, the Recipient shall follow all administrative and contracting procedures required for Farm-to-Market projects.
8. The project shall be let to contract within 3 years of the date this agreement is approved by the Department. If not, the Recipient may be in default, for which the Department may revoke funding commitments. This agreement may be extended for a period of 6 months upon receipt of a written request from the Recipient at least 30 days prior to the 3-year deadline.
9. The Recipient shall pay for all project costs not reimbursed with Federal-aid Swap County HBP funds.
10. If any part of this agreement is found to be void and unenforceable then the remaining provisions of this agreement shall remain in effect.
11. This agreement is not assignable without the prior written consent of the Department.

12. It is the intent of both parties that no third party beneficiary be created by this agreement.
13. This agreement and the attached Exhibit 1 constitute the entire agreement between the Department and the Recipient. No representations, promises, or warranties have been made by either party that are not fully expressed in this agreement. Any change or alteration to the terms of this agreement must be made in the form of an addendum to this agreement which shall be effective only upon written acceptance of the Department and the Recipient.

IN WITNESS WHEREOF, each of the parties hereto has executed this agreement as of the date shown opposite its signature below.

County Signature Block

This agreement was approved by official action of the Allamakee County Board of Supervisors in official session on the _____ day of _____, 20____.

County Auditor

Chair, County Board of Supervisors

IOWA DEPARTMENT OF TRANSPORTATION
Highway Administration

By _____ Date _____, 20____
Brian J. Catus, P.E.
Local Systems Field Engineer
Central Region

EXHIBIT 1

General Agreement Provisions for use of Federal-aid Swap Funds on Non-primary Projects

Unless otherwise specified in this agreement, the Recipient shall be responsible for the following:

1. General Requirements.

- a. The Recipient shall take the necessary actions to comply with applicable State and Federal laws and regulations. To assist the Recipient, the Department has provided guidance in the Instructional Memorandums to Local Public Agencies (I.M.s), available on-line at: https://iowadot.gov/local_systems/publications/im/lpa_ims. The Recipient shall follow the applicable procedures and guidelines contained in the I.M.s in effect at the time project activities are conducted.
- b. In accordance with Iowa Code Chapter 216 and associated subsequent nondiscrimination laws and regulations, the Recipient shall not discriminate against any person on the basis of race, color, creed, age, sex, sexual orientation, gender identity, national origin, religion, pregnancy, or disability.
- c. The Recipient shall comply with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), the associated Code of Federal Regulations (CFR) that implement these laws, and the guidance provided in I.M. 1.080, ADA Requirements. When pedestrian facilities are constructed, reconstructed, or altered, the Recipient shall make such facilities compliant with the ADA and Section 504.
- d. The Recipient agrees to indemnify, defend, and hold the Department harmless from any action or liability arising out of the design, construction, maintenance, placement of traffic control devices, inspection, or use of this project. This agreement to indemnify, defend, and hold harmless applies to all aspects of the Department's application review and acceptance process, plan and construction reviews, and funding participation.
- e. Termination of funds. Notwithstanding anything in this agreement to the contrary, and subject to the limitations set forth below, the Department shall have the right to terminate this agreement without penalty and without any advance notice as a result of any of the following: 1) The Federal government, legislature or governor fail in the sole opinion of the Department to appropriate funds sufficient to allow the Department to either meet its obligations under this agreement or to operate as required and to fulfill its obligations under this agreement; or 2) If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Department to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Department in its sole discretion; or 3) If the Department's authorization to conduct its business or engage in activities or operations related to the subject matter of this agreement is withdrawn or materially altered or modified. The Department shall provide the Recipient with written notice of termination pursuant to this section.

2. Programming

- a. The Recipient shall be responsible for including the project in the appropriate Regional Planning Affiliation (RPA) or Metropolitan Planning Organization (MPO) Transportation Improvement Program (TIP). The Recipient shall also ensure that the appropriate RPA or MPO, through their TIP submittal to the Department, includes the project in the Statewide Transportation Improvement Program (STIP). If the project is not included in the appropriate fiscal year of the STIP, funds cannot be obligated.
- b. Before beginning any work for which funding reimbursement will be requested, the Recipient shall submit a written request for acceptance to the Department. The Department will notify the Recipient when acceptance is granted. The cost of work performed prior to acceptance will not be reimbursed. The turning in of plans for letting by the Department's administering bureau shall be considered acceptance for construction. The Department will notify the Recipient when acceptance is granted.

3. Design and Consultant Services

- a. The Recipient shall be responsible for the design of the project, including all necessary plans, specifications, and estimates (PS&E). The project shall be designed in accordance with the design guidelines provided or referenced by the Department in the Guide and applicable I.M.s.

4. Environmental Requirements and other Agreements or Permits.

- a. The Recipient shall obtain project permits and approvals, when necessary, from the Iowa Department of Cultural Affairs (State Historical Society of Iowa; State Historic Preservation Officer), Iowa Department of Natural Resources, U.S. Coast Guard, U.S. Army Corps of Engineers, the Department, or other agencies as required. The Recipient shall follow the applicable procedures in the Instructional Memorandums to Local Public Agencies Table of Contents, Chapter 4 – Environmental Regulations.

5. Right-of-Way, Railroads, and Utilities.

- a. The Recipient shall acquire the project right-of-way, whether by lease, easement, or fee title, and shall provide relocation assistance benefits and payments in accordance with the procedures set forth in I.M. 3.600, Right-of-Way Acquisition, and the Department's Right of Way Bureau Local Public Agency Manual. The Recipient shall contact the Department for assistance, as necessary, to ensure compliance with the required procedures.
- b. If a railroad crossing or railroad tracks are within or adjacent to the project limits, the Recipient shall obtain agreements, easements, or permits as needed from the railroad. The Recipient shall follow the procedures in I.M. 3.670, Work on Railroad Right-of-Way.
- c. The Recipient shall obtain agreements from utility companies as needed. The Recipient shall comply with the "Policy for Accommodating Utilities on the County and City a Non-Primary Federal-aid Road System" for projects on non-primary Federal-aid highways. For projects connecting to or involving some work inside the right-of-way for a primary highway, the Recipient shall follow the Department's "Policy for Accommodating and Adjustment of Utilities on the Primary Road System" The Recipient should also use the procedures outlined in I.M. 3.640, Utility Accommodation and Coordination, as a guide to coordinating with utilities.

6. Contract Procurement.

- a. The following provisions apply only to projects involving physical construction or improvements to transportation facilities:
- b. The project plans, specifications, and cost estimate (PS&E) shall be prepared and certified by a professional engineer or architect, as applicable, licensed in the State of Iowa.
- c. The Recipient shall be responsible for the following:
 - i. Prepare and submit the PS&E and other contract documents to the Department for review and acceptance in accordance with I.M. 3.700, Check and Final Plans and I.M. 3.500, Bridge or Culvert Plans, as applicable.
 - ii. The contract documents shall use the Department's Standard Specifications for Highway and Bridge Construction. Prior to their use in the PS&E, specifications developed by the Recipient for individual construction items shall be approved by the Department.
 - iii. Follow the procedures in I.M. 5.030, Iowa DOT Letting Process, to analyze the bids received; make a decision to either award a contract to the lowest responsive bidder or reject all bids; and if a contract is awarded, execute the contract documents and return to Department.

Note: The Department may not be able to allow a project to be let in the scheduled letting due to possible issues with cash flow availability.

- d. The Recipient shall forward a completed Project Development Certification (Form 730002) to the Department in accordance with I.M. 5.050, Project Development Certification Instructions. The project will not be turned in for bid letting until the Department has reviewed and accepted the Project Development Certification.
- e. If the Recipient is a city, the Recipient shall comply with the public hearing requirements of the Iowa Code section 26.12.

- f. The Recipient shall not provide the contractor with notice to proceed until after receiving written notice that the Department has concurred in the contract award.

7. Construction.

- a. The Recipient shall follow the procedures in I.M. 6.000, Construction Inspection, and the Department's Construction Manual, as applicable, for conducting construction inspection activities. The Recipient's engineer shall at all times be responsible for inspection of the project.
- b. A full-time employee of the Recipient shall serve as the person in responsible charge of the project. For cities that do not have any full time employees, the mayor or city clerk will serve as the person in responsible charge, with assistance from the Department.
- c. Traffic control devices, signing, or pavement markings installed within the limits of this project shall conform to the "Manual on Uniform Traffic Control Devices for Streets and Highways" per 761 IAC Chapter 130. Proper protective measures and devices such as fences, barricades, signs, flood lighting, and warning lights as needed.
- d. The project shall be constructed under the Department's Standard Specifications for Highway and Bridge Construction and the Recipient shall comply with the procedures and responsibilities for materials testing according to the Department's Materials I.M.s. Available on-line at: <https://www.iowadot.gov/erl/index.html>.
- e. If the Department provides any materials testing services to the Recipient, the Department will bill the Recipient for such testing services according to its normal policy as per Materials I.M. 103.

8. Reimbursements.

- a. The Recipient will be initially responsible for all project costs. After costs have been incurred, the Recipient shall submit to the Department periodic itemized claims for reimbursement for eligible project costs. Requests for reimbursement shall be made at least semi-annually but not more than bi-weekly.
- b. To ensure proper accounting of costs, reimbursement requests for costs incurred prior to June 30 shall be submitted to the Department by August 1, if possible, but no later than August 15.
- c. Reimbursement claims shall include a certification that all eligible project costs, for which reimbursement is requested, have been reviewed by an official or governing board of the Recipient, are reasonable and proper, have been paid in full, and were completed in substantial compliance with the terms of this agreement.
- d. The Department will reimburse the Recipient for properly documented and certified claims for eligible project costs. The Department may withhold up to 5% of the total funds available for the project. Reimbursement will be made either by State warrant or by crediting other accounts from which payment was initially made. If, upon final review or audit selected by the Administering Bureau, the Department determines the Recipient has been overpaid, the Recipient shall reimburse the overpaid amount to the Department. After the final review is complete and after the Recipient has provided all required paperwork, the Department will release the funds withheld.
- e. The total funds collected by the Recipient for this project shall not exceed the total project costs. The total funds collected shall include any funds received; for example, Federal funds not received through FHWA, any special assessments made by the Recipient (exclusive of any associated interest or penalties) pursuant to Iowa Code Chapter 384 (cities) or Chapter 311 (counties), proceeds from the sale of excess right-of-way, and any other revenues generated by the project. The total project costs shall include all costs that can be directly attributed to the project. In the event that the total funds collected by the Recipient do exceed the total project costs, the Recipient shall either:
 - i. in the case of special assessments, refund to the assessed property owners the excess special assessments collected (including interest and penalties associated with the amount of the excess), or
 - ii. refund to the Department all funds collected in excess of the total project costs (including interest and penalties associated with the amount of the excess) within 60 days of the receipt of any excess funds.

9. Project Close-out.

- a. Acceptance of the completed construction shall be with the concurrence of the Department. Within 30 days of completion of construction or other activities authorized by this agreement, the Recipient shall provide written notification to the Department. The Recipient shall follow and request a final review, in accordance with the procedures in I.M. 6.110, Final Review, Audit, and Close-out Procedures for Federal-aid, Federal-aid Swap, and Farm-to-Market Projects. Failure to comply with the procedures may result in loss of funds and the ability to let future projects through the Department; reimbursed funds shall be returned and a possible suspension may be placed on the Recipient from receiving funds from the Department on future projects until the Recipient has demonstrated responsible management of funds on roadway projects.
- b. For construction projects, the Recipient shall provide a certification by a professional engineer, architect, or landscape architect as applicable, licensed in the State of Iowa, indicating the construction was completed in substantial compliance with the project plans and specifications.
- c. Final reimbursement of funds shall be made only after the Department accepts the project as complete.
- d. The Recipient shall maintain all books, documents, papers, accounting records, reports, and other evidence pertaining to costs incurred for the project. The Recipient shall also make this documentation available at all reasonable times for review by the Department. Copies of this documentation shall be furnished by the Recipient if requested. Such documentation shall be retained for at least 3 years from the date of the Department's signature of the Department's Final Payment Form (Form 830436) or the bottom part of the Certificate of Completion and Final Acceptance of Agreement Work (Form 640003).
- e. The Recipient shall maintain, or cause to be maintained, the completed improvement in a manner acceptable to the Department.