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CITY ADMINISTRATOR'S OFFICE MEMO

cityadmin@hiawatha-iowa.com
319-393-1515 ext.523

To: Mayor and City Council

From: City Administrator, Kim Downs

Date: May 12, 2016

RE: CN Railroad Multi-Use Pathway/Sidewalk Agreement

The multi-use pathway agreement is finally complete and ready for council's approval. This agreement allows the city to retain the sidewalk, benches, and landscaping along 4th Avenue on railroad right-of-way. The agreement also allows us to extend the sidewalk down to Blairs Ferry Road on railroad property. CN Railroad will be responsible for removing adjacent property owners' personal belongings that are currently located on CN property prior to us installing a sidewalk. The CN Railroad may need our assistance in delivering notices if adjacent property owners do not comply with the request to remove their personal belongings in a timely manner.

This agreement exempts the railroad from any liability along this area (see map at the back of the agreement). The City is required to carrying a $10M liability policy which we already carry because of the other railroad crossing agreements we have in place today.

The City will be installing a painted chain link fence in the near future at the top of the section with the large riprap embankment to prevent anyone from playing around the area and rolling down the riprap.

The licensure has a one time fee of $10.00.

City of Hiawatha

Engineering Department

101 Emmons St., Hiawatha Iowa, 52233-1697
PHONE (319) 393-1515 ext. 511 FAX (319) 393-1516

To: **Mayor and City Council** **Date:** **May 12, 2016**

From: **John Bender PE, City Engineer**

Re: **Chicago Central and Pacific Railroad Agreement**

Description: **Multi-Use Pathway/Sidewalk License**

Report:

The Chicago Central and Pacific Railroad has provide us with a draft copy of their standard license agreement for existing railroad property between Emmons Street and Blair's Ferry Road. This is after we entered into an agreement for the drainage way repair project last year.

During development of that project, we discovered a portion of the existing sidewalk, trees, benches, and trash receptacles along 4th Avenue are actually encroaching a small distance into the railroad property. Although this distance is generally less than one foot, the railroad requested we enter into this agreement to allow these improvements to stay. We feel this is a good idea, plus we expanded the area to Blair's Ferry in the event we want to extend the sidewalk from where it stops at Willman Street today, all the way to Blair's Ferry Road. We hope to have the final agreement for you by the Wednesday meeting.

Engineering recommends approval of this agreement payment at this time.

If you need any further information, please let me know.

LICENSE FOR

MULTI-USE PATHWAY/SIDEWALK

THIS LICENSE for Multi-Use Pathway(s)/Sidewalk(s) ("Agreement"), made and entered into as of the 17th day of May, 2016, by and between the CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY (hereinafter referred to as "Railroad Company") whose mailing address is 17641 S. Ashland Avenue, Homewood, Illinois, 60430-1345 and the CITY OF HIAWATHA, Iowa (hereinafter referred to as "Licensee") whose mailing address is City of Hiawatha, 101 Emmons Street, Hiawatha, Iowa, 52233;

W I T N E S S E T H:

IN CONSIDERATION of the sum of **TEN Dollars ($10.00)** and other good and valuable consideration to Railroad Company by Licensee, the receipt of which is hereby acknowledged, for the preparation of this Agreement, and of the mutual covenants and agreements herein set forth, Railroad Company, insofar as it lawfully may, does hereby grant unto Licensee license and permission to construct, maintain, operate and use new five foot (5') multi-use pathway/sidewalk (hereinafter collectively referred to as "Pathway") upon, over and across the easterly side of Railroad Company's property or right-of-way between Railroad Company's Milepost 37.73 (Emmons Street) and Milepost 38.04 (Blairsferry Road) on its Cedar Rapids Subdivision, as shown in **magenta** on the print marked Exhibit A, attached hereto and made a part hereof. The aforesaid sum is not refundable in the event Licensee elects not to enter upon Railroad Company's property or in the event Railroad Company elects to terminate this Agreement.

Licensee shall at all times conduct its work in accordance with any and all "Special Provisions" which may be appended hereto which, by reference hereto, are hereby made a part hereof.

UPON AND SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. DEFINITIONS.

   (a) Railroad Company's Property. "Railroad Company's Property" shall mean the property shown on the attached print, to the extent owned by Railroad Company, whether owned in full ownership or as a servitude, easement, or right-of-way, including Railroad Company's track, the land on which the track is situated, and any adjacent land of Railroad Company on either side of the track.

   (b) Licensee's Property. "Licensee's Property" shall mean the new five foot (5') multi-use pathway/sidewalk right-of-way outside of the Railroad Company's Property.

(c) License. "License" shall mean the right granted by Railroad Company to Licensee to construct, maintain and use the Pathway, under the terms and conditions set forth hereinafter.

(d) License Area. "License Area" shall mean that portion of Railroad Company's Property over and across which the license is granted. The License Area is of a 25' width between Emmons Street and Blairsferry Road bounded by the easterly edge of the Railroad Company's Property and a line parallel with and 25' east of the center line of Railroad Company's main track, all as more fully shown on the attached print.

(e) Pathway. "Pathway" shall mean the new five (5') multi-use pathway/sidewalk, benches, trees, landscaping, and retaining wall/back slope rip-rap as shown on the print attached hereto and made a part hereof that is contained within the License Area on the Railroad Company's Property.

(f) Cost. "Cost" shall mean the actual cost of labor, outside services, equipment and materials plus Railroad Company's then current customary additives for overhead and other indirect costs.

2. USE.

(a) The Licensee shall only affect and burden the License Area and no other portion of Railroad Company's Property, and the Pathway shall be constructed, located, and maintained entirely along and against the easterly boundary of the said License Area. Licensee shall have no right to use or cross any other portion of Railroad Company's Property with said Pathway or to use same for any purposes other than as expressly permitted herein. Unless otherwise provided in this Agreement, Licensee shall comply with all terms and conditions of the said grant of License to Licensee.

(b) Licensee shall not do or permit to be done any act which will in any manner interfere with, limit, restrict, obstruct, damage, interrupt, or endanger Railroad Company's operations or facilities. Licensee shall not use any other property of Railroad Company other than that which is occupied by the Pathway and License Area without first obtaining Railroad Company's prior written consent (which may be denied for any reason) and complying with all of Railroad Company's requirements applicable thereto.

(c) The Pathway shall not be used by motorized vehicles of any size or type, other than Licensee's maintenance vehicles or equipment, (including, but not limited to, ATV's, snowmobiles, motorcycles, etc.). The Pathway shall only be used by pedestrians and/or people riding bicycles.

(d) It shall be Licensee's responsibility and duty to prevent all unauthorized persons from using the Pathway and License Area and nothing herein shall be construed to relieve Licensee of this responsibility and duty.

(e) Licensee shall not permit any hazardous material to be deposited on the lands of Railroad Company. Notwithstanding the foregoing, if hazardous material is so deposited by Licensee, Licensee shall indemnify, save harmless and defend Railroad Company from and against any claims made against Railroad Company arising therefrom. For the purposes of this Agreement, "Hazardous Material" shall mean any substance (i) defined as "hazardous substance" under Section 1.01(14) of CERCLA, 42 U.S.C. 9601 (14) or any successor regulation; (ii) containing petroleum, including any fraction thereof; or (iii) determined to be deleterious to human health or the environment by any federal, state or local environmental, occupational health, or public health agency or authority. Licensee expressly agrees to be responsible for any such contamination of the lands of Railroad Company or any adjacent premises, and if any contamination occurs on such premises, Licensee shall be responsible to clean-up, remediate and restore said premises to their original condition or to a condition that is in compliance with the applicable state and federal laws and regulations and all local ordinances. For the purposes of this Section the term Railroad Company shall include not only Railroad Company named herein but also any parent company(ies), subsidiary(ies) or affiliates(s) of Railroad Company, or its or their agents, servants, employees, directors, officers, contractors, subcontractors or suppliers.

(f) Railroad Company does not undertake to provide a means of ingress and egress for the Pathway and License Area, except under lands of Railroad Company as herein specified, and in a manner approved by the Chief Engineer of Railroad Company, or his duly authorized representative.

(g) Railroad Company reserves the right to grant licenses to others, but such licenses shall not interfere with Licensee's use and enjoyment of the rights granted through this Agreement.

(h) Licensee will identify to Railroad Company not more than 120 days from the date of this agreement areas of unauthorized use and/or improvement to licensed area that it determines to detrimentally affect and/or impair Licensee's intended use of license area. Railroad Company will employ commercially reasonable efforts to clear such unauthorized use and/or improvement from within the licensed area 120 days from the date of when Licensee identifies such areas to Railroad Company. Licensee will cooperate and assist Railroad Company in efforts to clear license areas.

3. TERM.

(a) This Agreement shall become effective as of the date first written above and shall continue for a period of twenty five (25) years. This Agreement shall automatically renew for a period of successive ten (10) year periods thereafter unless terminated in one of the manners set forth below:

(i) Railroad Company shall have the right to terminate this Agreement upon thirty (30) day advance written notice to Licensee if Licensee at any time breaches or fails to perform any of the terms and conditions hereof. Should Licensee fail to cure such breach in that thirty (30) day period, termination shall be effective at that period's conclusion; or

(ii) This Agreement shall terminate through non-use or in any other manner provided by law. Any written notice of such termination shall be delivered at least one hundred twenty (120) days in advance of the proposed date of termination.

(b) Unless the parties mutually agree in writing to leave the Pathway in place after termination, the termination of this Agreement may not be effective, which determination shall be made in Railroad Company's sole discretion, until all removal and restoration is complete. Termination of this Agreement shall not release Licensee from any liability or responsibility and duty which accrued prior to such termination, removal and restoration.

(c) If Licensee shall fail to make the required restoration, Railroad Company shall have the further option to elect and notify Licensee that all right, title and interest of Licensee in any of its property shall be forfeited and shall vest absolutely in Railroad Company as of the date of notice of such election.

(d) Should Railroad Company exercise its right of termination, Licensee will support termination of this Agreement and cessation of the Pathway at any necessary hearings, proceedings or dockets before any regulatory body with jurisdiction over the Pathway.

4. CONSTRUCTION.

(a) The Pathway shall be constructed and maintained in accordance with Licensee's plans and specifications subject to review and approval by Railroad Company, whose review and approval shall not be unreasonably withheld. Licensee will construct and maintain all asphalt, pavement markings and warning signs, within and outside Railroad Company's License Area. All initial construction, work, all future construction, and maintenance by either party will be at Licensee's sole cost and expense and in a manner that is to the satisfaction of Railroad Company's Chief Engineer.

(b) Licensee shall be responsible for determining the location, elevation and extent of all utilities, underground structures and/or obstructions in the vicinity of the installation whether shown on the plans or not.

(c) Licensee's use, as herein defined, shall be such that it shall cause a minimum of interference with the natural drainage of Railroad Company's lands. Any drainage facilities required by the installation or use of the Pathway shall be constructed, maintained, repaired and removed by Licensee, at Licensee's sole cost and expense, and all work associated herewith shall be subject to the approval of the Chief Engineer of Railroad Company, or his duly authorized representative.

(d) Licensee shall be responsible for all additional costs incurred as determined by Railroad Company to accommodate railroad maintenance (i.e. mechanized surfacing operations, tie and rail replacements, etc.) of Railroad Company's track and facilities. The Pathway and any appurtenances thereto shall be constructed such that vehicular traffic visibility will not be adversely affected.

5. RELOCATION CHANGES AND ALTERATIONS.

(a) When and as often as Railroad Company shall require to have the location and/or elevation of the Pathway, or any portion thereof changed for the purposes of making improvements to the facilities of Railroad Company, including the installation of an additional track(s), minimizing any unreasonable hazards presented by the Pathway, or the contents thereof, Licensee shall, at its own cost and expense with due diligence but in any event not later than one hundred twenty (120) days after receipt of written notice from Railroad Company, change the location and/or elevation of the Pathway, or any portion thereof, to such a location and/or elevation as shall be designated by the Chief Engineer of Railroad Company, or his duly authorized representative.

(b) In the event Licensee submits in writing a request to Railroad Company to extend the one hundred twenty (120) day relocation period, Railroad Company shall respond within one hundred twenty (120) days. Such extension request shall not be unreasonably withheld.

(c) Licensee agrees that upon reasonable request from Railroad Company, it will, at its own cost and expense, make changes or alterations to the Pathway when Railroad Company's operations require modification to Railroad Company's facilities, or to minimize hazards presented by the Pathway or to the contents thereof.

(d) In the event Licensee shall fail to change the location or elevation of, renew or repair, alter, or make any changes reasonably requested by Railroad Company to the Pathway or any portion thereof, or to correct any defective conditions

after receipt of written notice from Railroad Company as hereinbefore provided and within the time stipulated, then Railroad Company may, without further notice to Licensee, perform said work. The total cost of such work performed by Railroad Company hereunder shall be at the sole cost and expense of Licensee and Licensee shall reimburse Railroad Company for said costs and expenses upon receipt of same from Railroad Company.

6. NOTIFICATIONS.

(a) At least fifteen (15) days prior to Licensee's desire to enter upon Railroad Company's Property for the purpose of performing any construction or maintenance work hereunder, Licensee shall provide advance notification to Railroad Company's Engineering Manager in writing of the type of work to be performed and the date such work will commence and shall coordinate all work with Railroad Company's Engineering Manager. Licensee shall not be permitted to enter upon Railroad Company's premises, unless and until Railroad Company's Engineering Manager has reviewed Licensee's request and approved same. If Railroad Company approves Licensee's request to enter upon Railroad Company's Property upon the condition of certain safety precautions, including but not limited to, flaggers, Licensee shall not be permitted to enter upon Railroad Company's Property until all of said safety precautions are actively in place. The Licensee's request notice shall be sent to the following address:

Engineering Manager
Chicago, Central & Pacific Railroad Company
1006 East Fourth Street
Waterloo, IA 50703

(b) Any notice, other than the advance notification described herein above, required or permitted to be given under this Agreement shall be in writing and deemed to have been given when deposited in a United States Post Office, registered or certified mail, postage prepaid, return receipt requested and addressed as follows:

If to Railroad Company:

Engineering Manager
Chicago, Central & Pacific Railroad Company
1006 East Fourth Street
Waterloo, IA 50703

If to Licensee:

City of Hiawatha/City Clerk
City of Hiawatha
101 Emmons Street
Hiawatha, Iowa, 52233

7. SIGHTING AT PATHWAY.

Licensee shall arrange to keep the Pathway free of bushes, trees, weeds, vegetation, and all other obstructions of any kind that could interfere with a motor vehicle operator sighting an approaching train. If Licensee requires access to Railroad Company's property outside the License Area and Pathway to satisfy this requirement, Licensee shall obtain written permission from Railroad Company's authorized representative, which will not be unreasonably withheld.

If it should be necessary to raise any wires on Railroad Company's property not belonging to Railroad Company to provide safe clearance for Pathway users, Licensee shall make all arrangements therefor at its own sole risk and expense.

8. MAINTENANCE.

Licensee shall, at its own risk and expense, maintain said Pathway and License Area in good and safe condition commensurate with its intended use. Railroad Company shall have the right, but not the duty, to perform at Licensee's sole risk and expense, any repair or maintenance on the License Area and Pathway that Railroad Company considers reasonably necessary or unless otherwise agreed upon. Railroad Company shall not commence any repair or maintenance of the License Area and Pathway before giving Licensee at least thirty (30) days written notice of the Railroad Company's intent to commence any repair or maintenance on the License Area and Pathway to allow the Licensee the opportunity to make repairs or to maintain the License Area and Pathway. Licensee shall pay the cost thereof upon receipt of a bill whether made at Licensee's request or otherwise. Notwithstanding any other provisions of this Agreement, nothing contained herein shall relieve Licensee from its obligation to inspect and at all times maintain in good condition and repair the License Area and Pathway, and its facilities located under, upon or over the land of Railroad Company, or impose any obligation upon Railroad Company in respect to such inspection and maintenance.

9. FLAGGING.

Licensee shall, at its own risk and expense, provide whatever protective services Railroad Company shall indicate is necessary. Railroad Company shall have the right, but not the duty, to provide any such protection at Licensee's sole risk and expense and Licensee shall prepay the cost thereof. It is further understood and acknowledged by

Licensee that Railroad Company has no obligation or duty to determine the need for any protective services.

10. SIGNS, SIGNALS, FENCING AND WARNING DEVICES.

Licensee acknowledges that Railroad Company has no obligation or duty to reduce the speed of its trains, nor alter its operations in any manner, owing to the presence or existence of the Pathway, License Area, or other use or exercise of the License or permission granted herein. Licensee assumes, at its own risk and expense, sole responsibility for determining, in conjunction with any governing state regulatory agency, if any signs, signals, fencing, or other warning devices are necessary or appropriate for the safety of persons using the Pathway in the vicinity of Railroad Company's track(s) and specifically acknowledges that Railroad Company has no obligation or duty whatever to make any such determination. If the installation of any signs, signals, fencing or warning devices on the License Area and/or Pathway is presently or hereafter required by law or by competent public authority, or is otherwise requested by Licensee and agreed to by Railroad Company, same shall conform to any then currently applicable practices of Railroad Company for such devices as to design, material and workmanship and all costs incurred by Railroad Company related to the installation, operation, maintenance, renewal, alteration and upgrading thereof shall be solely borne by Licensee.

11. INDEMNITY.

AS A FURTHER CONSIDERATION FOR THE LICENSE HEREIN GRANTED, AND AS A CONDITION WITHOUT WHICH THE LICENSE WOULD NOT HAVE BEEN GRANTED, LICENSEE TO THE FULLEST EXTENT ALLOWED BY LAW AGREES, REGARDLESS OF ANY NEGLIGENCE OR OTHER LEGAL FAULT BY OR ON THE PART OF RAILROAD COMPANY OR ITS OFFICERS, EMPLOYEES OR AGENTS,TO FULLY DEFEND, INDEMNIFY AND SAVE HARMLESS RAILROAD COMPANY AND ITS OFFICERS, EMPLOYEES AND AGENTS, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION, AND TO ASSUME ALL RISK, RESPONSIBILITY AND LIABILITY (INCLUDING ALL LIABILITY FOR EXPENSES, ATTORNEY'S FEES AND COSTS INCURRED OR SUSTAINED BY RAILROAD COMPANY, WHETHER IN DEFENSE OF ANY SUCH CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION OR IN THE ENFORCEMENT OF THE INDEMNIFICATION RIGHTS HEREBY CONFERRED),

(A) FOR DEATH OF OR INJURY TO ANY AND ALL PERSONS, INCLUDING BUT NOT LIMITED TO THE OFFICERS, EMPLOYEES, AGENTS, PATRONS, INVITEES AND LICENSEES OF THE PARTIES HERETO, AND FOR ANY AND ALL LOSS, DAMAGE OR INJURY TO ANY PROPERTY WHATSOEVER, INCLUDING BUT NOT LIMITED TO THAT BELONGING TO OR IN THE CUSTODY AND CONTROL OF THE PARTIES HERETO, IN

WHOLE OR IN PART ARISING FROM, GROWING OUT OF, OR IN ANY MANNER OR DEGREE DIRECTLY OR INDIRECTLY CAUSED BY, ATTRIBUTABLE TO OR RESULTING FROM THE GRANT OR EXERCISE OF THIS LICENSE, THE FAILURE OF LICENSEE TO CONFORM TO THE CONDITIONS OF THIS AGREEMENT, WORK PERFORMED BY RAILROAD COMPANY FOR LICENSEE UNDER THE TERMS OF THIS AGREEMENT, WORK PERFORMED BY LICENSEE UNDER THE TERMS OF THIS AGREEMENT, OR FROM THE CONSTRUCTION, INSTALLATION, MAINTENANCE, REPAIR, RENEWAL, ALTERATION, CHANGE, RELOCATION, EXISTENCE, PRESENCE, USE, OPERATION OR REMOVAL OF ANY STRUCTURE INCIDENT THERETO, AND

(B) FOR DEATH OF OR INJURY TO THE OFFICERS, EMPLOYEES, AGENTS, PATRONS, INVITEES AND LICENSEES OF LICENSEE AND FOR ANY AND ALL LOSS, DAMAGE OR INJURY TO THEIR PROPERTY, AND TO ANY PROPERTY BELONGING TO OR IN THE CARE, CUSTODY OR CONTROL OF LICENSEE, IN WHOLE OR IN PART ARISING FROM, GROWING OUT OF, OR IN ANY MANNER OR DEGREE DIRECTLY OR INDIRECTLY CAUSED BY, ATTRIBUTABLE TO OR RESULTING FROM THE CONDUCT OF ANY RAILROAD OPERATIONS AT OR NEAR THE AREA IN WHICH THE HEREIN CONFERRED LICENSE IS GRANTED OR EXERCISED.

IT IS THE INTENTION OF THE PARTIES HERETO THAT LICENSEE SHALL BY SOLELY RESPONSIBLE FOR ALL SUCH DESTRUCTION OR DAMAGE TO PROPERTY OR FOR PERSONAL INJURY TO OR DEATH OF ANY PERSONS WHICH WOULD NOT HAVE OCCURRED IF SUCH PATHWAY HAD NEVER BEEN CONSTRUCTED OR USED.

LICENSEE SHALL AT ITS SOLE EXPENSE JOIN IN OR ASSUME, AT THE ELECTION AND ON DEMAND OF RAILROAD COMPANY, THE DEFENSE OF ANY CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION HEREUNDER ARISING. THE WORD "RAILROAD COMPANY" AS USED IN THIS SECTION SHALL INCLUDE THE ASSIGNS OF RAILROAD COMPANY AND ANY OTHER RAILROAD COMPANY THAT MAY BE OPERATING UPON AND OVER THE TRACKS CROSSING THE LICENSE AREA.

12. INSURANCE.

Licensee shall procure and maintain during the life of this Agreement COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form) which will insure the indemnity undertaking hereinabove set forth. Such insurance shall have a minimum combined single limit of $5,000,000 per occurrence with an aggregate limit of $10,000,000 per annual policy period and said insurance shall be deemed primary as it relates to this Agreement. Licensee shall furnish the Railroad Company at the address shown below in this Section with a certificate evidencing that such insurance is in full

force and effect and that the same will not be cancelled, terminated, or not renewed without at least thirty (30) days advance written notice by the insurance carrier to the Railroad Company. Such insurance shall include a complete waiver of subrogation by the insurer, a removal of any railroad exclusion through issuance of endorsement CG 24 17, and inclusion of the Railroad Company as an additional insured. In addition to other information, the certificate shall contain the following language:

> Notwithstanding anything contained therein to the contrary, the Commercial Liability Insurance hereinabove referred to is extended to specifically insure the indemnity obligations assumed by the City of Hiawatha Iowa under Section 11 of an Agreement dated May 17, 2016 with Chicago, Central & Pacific Railroad Company covering use of Railroad Company's Property for a Multi-Use Pathway/Sidewalk. Insurer shall not cancel, terminate, or allow to lapse by reason of nonrenewal the policy without providing Chicago, Central & Pacific Railroad Company at least thirty (30) days' advance written notice, said notice to be sent via certified mail to:
>
> Regional Chief Engineer
> Chicago, Central & Pacific Railroad Company
> 17641 Ashland Avenue
> Homewood, Illinois 60430-1345

13. REMOVAL OF PATHWAY.

Prior to termination of this Agreement, Licensee shall remove the Pathway from Railroad Company's Property and restore the Railroad Company's Property, as reasonably near as may be to its former condition, insofar as such restoration may in the opinion of Railroad Company's duly authorized representative be practical, all at Licensee's sole risk and expense. If Licensee fails to so remove and restore, Railroad Company shall have the right, but not the obligation, to do so at Licensee's sole risk and expense. Upon termination, Railroad Company shall have the right, but not the duty, to remove both the Pathway and to restore the Railroad Company's Property, all at Licensee's sole risk and expense. Licensee shall promptly pay the cost of any work performed by Railroad Company upon presentation of a bill. Railroad Company shall have the right to require Licensee to deposit the estimated cost of any or all removal or restoration work involving the Pathway or to furnish an acceptable performance bond in such amount upon execution of this Agreement or at any time thereafter to assure complete performance under this Section.

14. ORDINANCES, REGULATIONS, ETC.

(a) Licensee, at Licensee's sole cost and expense, shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority, federal, state or local, having jurisdiction over Licensee's use and

occupations, including but not limited to zoning, health, safety, building or environmental matters.

(B) LICENSEE SHALL FURTHER DEFEND, INDEMNIFY AND HOLD RAILROAD COMPANY HARMLESS FROM ANY VIOLATIONS THEREOF, ANY PENALTY, LEVY, FINE OR ASSESSMENTS THEREFROM, AND ALL COST OF DEFENSE OF OR COMPLIANCE WITH ANY CITATION, ORDER OR VIOLATION NOTICE(S), INCLUDING ANY SUCH PENALTIES, LEVIES, FINES, ASSESSMENTS, COMPLIANCE OR REMEDIAL CHARGE(S) CAUSED BY OR ARISING FROM THIS AGREEMENT OR TERMINATION THEREOF, INCLUDING ANY VIOLATIONS, FINES OR PENALTIES ARISING AFTER TERM OF THIS AGREEMENT. FOR THE PURPOSES OF THIS SECTION 14, THE TERM RAILROAD COMPANY SHALL INCLUDE NOT ONLY RAILROAD COMPANY NAMED HEREIN BUT ALSO ANY PARENT COMPANY(IES), SUBSIDIARY(IES) OR AFFILIATE(S) OF RAILROAD COMPANY, OR ITS OR THEIR AGENTS, SERVANTS, EMPLOYEES, DIRECTORS, OFFICERS, CONTRACTORS, SUBCONTRACTORS OR SUPPLIERS.

(c) Licensee shall determine whether a permit, license or other type of documentation is required by applicable law for the construction, maintenance, operation, use or removal of the Pathway.

15. CLAIM OF TITLE.

Licensee shall not at any time own or claim any right, title or interest in or to the lands of Railroad Company, nor shall the exercise of this License for any length of time give rise to any right, title or interest in or to the lands of Railroad Company, other than the License herein created. Railroad Company makes no warranty or guarantee of title to the premises, suitability of the premises for Licensee's purposes or any purposes, whether the premises may or might have been contaminated with Hazardous Materials as defined in paragraph 2(e). This License is extended subject to all of the limitations, reservations and restrictions upon the title of Railroad Company. Licensee accepts the premises "as is, where is" with all faults. Licensee shall be solely responsible, at its sole cost and expense, to secure any other or additional license, permit, permission or right necessary to construct, maintain, operate, use or remove the Pathway.

16. RECORDING.

Licensee shall not record this Agreement without the written consent of Railroad Company, such consent not to be unreasonably withheld. However, upon the request of either party hereto the other party shall join in the execution of a memorandum or so-called "short form" of this Agreement for the purpose of recordation, provided Railroad Company has consented as required above. Said memorandum or short form of this

Agreement shall describe the parties, the termination provision of this Agreement and shall incorporate this Agreement by reference. The party requesting the recording shall pay the recording costs.

17. ASSIGNMENT.

Licensee shall not have the right to assign this Agreement or any rights hereunder without first obtaining the consent in writing of the Railroad Company, which consent may be withheld for any reason or no reason.

18. HEADINGS.

Headings used herein are placed for reading convenience and shall not have any other meaning, implication or purpose, legal or otherwise.

19. NON-WAIVER OF COVENANTS.

The failure of either party to enforce any of the provisions of this Agreement at any time shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this Agreement, or any part thereof, nor the right of any party thereafter to enforce each and every such provision.

20. TAXES.

The Licensee shall pay all taxes, general and special, license fees or other charges which may become due or which may be assessed against the premises of the Railroad Company because of the construction, existence, operation or use of said Pathway, or the business conducted in connection with said facility, and shall reimburse the Railroad Company for any such taxes, license fees or other charges which may be paid by the Railroad Company upon the presentation of bills therefore.

21. BILLS.

All bills submitted by the Railroad Company to Licensee pursuant to the terms of this Agreement shall be paid by Licensee within thirty (30) days of receipt thereof. All invoices received by the city are processed upon council's approval the first and third Wednesday's of each month.

22. ENFORCEABILITY.

In the event that any parts, sections or other portions of this Agreement are found unenforceable under the applicable law of any courts having jurisdiction over this Agreement, the remaining parts, sections or other portions thereof and the enforcement of same shall not be affected and shall otherwise remain in full effect and enforceable.

23. RELATIONSHIP OF THE PARTIES.

The relationship of the parties is that of independent contractors and in no way establishes an agency relationship.

24. SURVIVAL CLAUSE.

Notwithstanding any other section of this Agreement, the rights and obligations of the parties expressed in this Agreement, including but not limited to, any provisions concerning Indemnity and Liability, shall remain in effect for any legal proceeding brought against Railroad Company, its officers or employees, which was commenced after the termination, for whatever reason, of this Agreement but was caused by, alleged to be caused by, or grew out of any accident or occurrence which but for this Agreement or the presence of Licensee's employees, agents, contractors, subcontractors, or suppliers pursuant to this Agreement, would not have been incurred, except when such proceeding is attributable to the sole fault, failure or negligence of Railroad Company, its officers or employees, contractors, subcontractors, or suppliers.

25. ENTIRE AGREEMENT.

This Agreement and exhibits, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Railroad Company and Licensee concerning the premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon Railroad Company or Licensee unless reduced to writing and signed by them.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the date first above written.

CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY

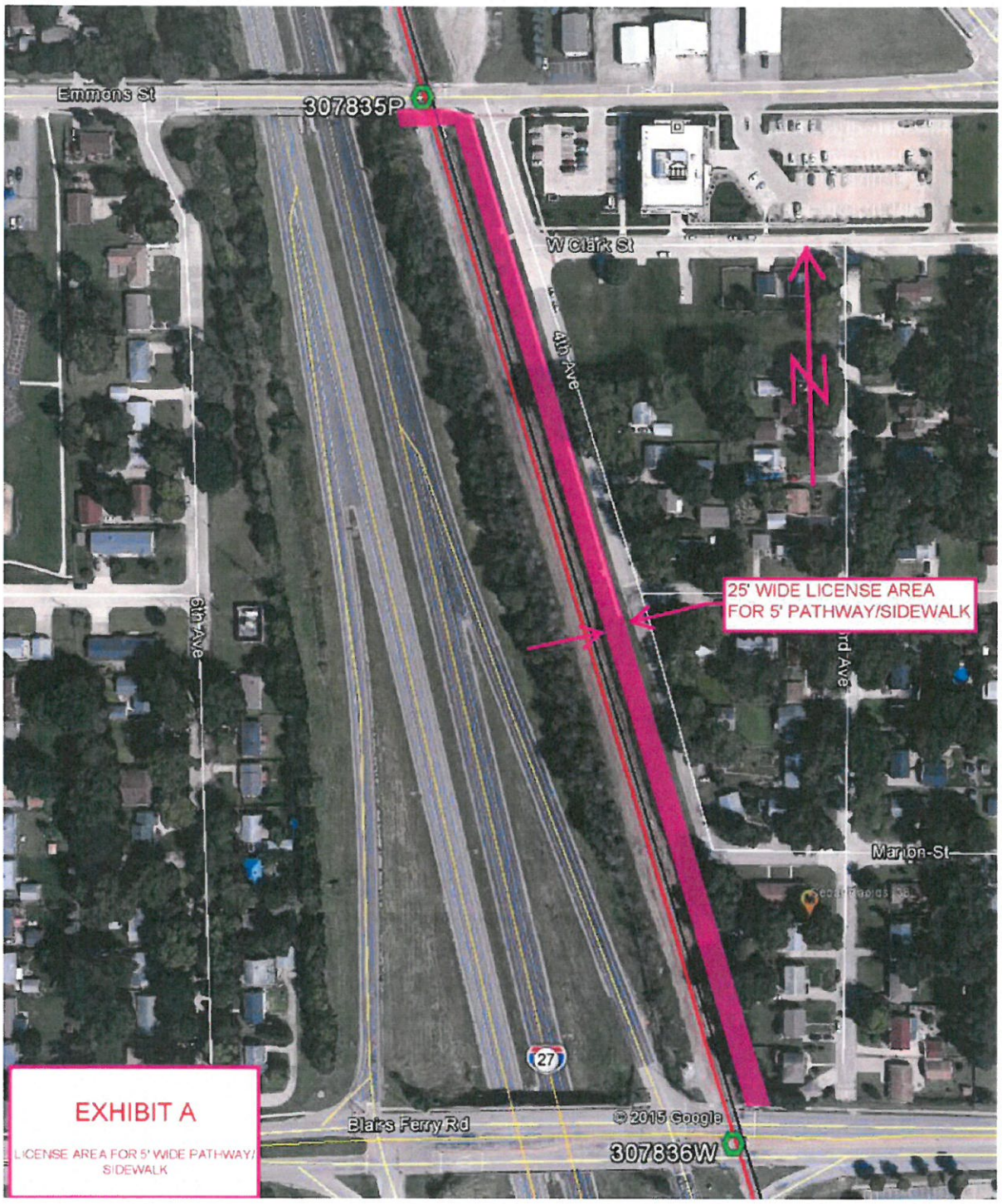
By _____

Printed & Title Tom L. Bourgonje, Regional Chief Engineer

CITY OF HIAWATHA

By _____

Printed & Title Bill Bennett, Mayor


Emmons St
307835P
W Clark St
4th Ave
N
25' WIDE LICENSE AREA
FOR 5' PATHWAY/SIDEWALK
6th Ave
Marion St
27
Blairs Ferry Rd
© 2015 Google
307836W
EXHIBIT A
LICENSE AREA FOR 5' WIDE PATHWAY/
SIDEWALK

DRAFT

RESOLUTION NO. 16-
City Council

RESOLUTION APPROVING LICENSE FOR MULTI-USE PATHWAY/SIDEWALK AGREEMENT BETWEEN THE CITY OF HIAWATHA AND CHICAGO, CENTRAL AND PACIFIC RAILROAD COMPANY
Pathway/Sidewalk along 4th Avenue

BE IT RESOLVED by the City Council of the City of Hiawatha, Iowa, to approve the License for Multi-Use Pathway/Sidewalk Agreement between the City of Hiawatha and Chicago, Central and Pacific Railroad Company for the purpose of retaining sidewalk, benches, and landscaping along 4th Avenue on the railroad right-of-way and extending the sidewalk along 4th Avenue down to Blairs Ferry Road on railroad property, with a one-time fee of $10.00.

BE IT FURTHER RESOLVED that the Mayor is hereby directed to sign said License Agreement.

AYES:
NAYS:
ABSENT:

PASSED AND APPROVED this 18th day of May, 2016.

_____
Bill Bennett, Mayor

ATTEST:

_____
Kari Graber, Deputy Clerk