

# **COAL CITY VILLAGE BOARD MEETING**

**WEDNESDAY**

**MAY 9, 2018**

**7:00 p.m.**

**COAL CITY VILLAGE HALL  
515 S. BROADWAY, COAL CITY, ILLINOIS**

## **AGENDA**

1. Call meeting to order
2. Pledge of Allegiance
3. Approval of Minutes                      April 25, 2018
4. Approval of Warrant List
5. Public Comment
6. Swearing-in of new Officer              Kevin McGrath
7. Ordinance 18-09                      Granting an Extension of Preliminary Planned  
Unit Development approval to Hoffman Property  
Holdings
8. Resolution 18-11                      Disposal of Surplus Property

9. Resolution 18-12            Water Main Crossing Agreement with Union Pacific Railroad
10. Resolution 18-13            Water Main Indemnification Agreement with Hoffman Property Holdings
11. Resolution 18-14            Authorizing release/retention of Executive Session Minutes
12. Resolution 18-15            Security Requirement for Meadow Estates
13. Approval and Awarding of Demolition Bid for 95 E. Oak Street
14. Report of Mayor
15. Report of Trustees:            Beach  
    T. Bradley  
    Spesia  
    Greggain  
    R. Bradley  
    Nelson
16. Report of Village Clerk
17. Report of Village Attorney
18. Report of Village Engineer
19. Report of Chief of Police
20. Report of Village Administrator
21. Executive session of discuss Collective Negotiations per ILCE 5 120 2(c)(2)  
      And Acquisition of Property per ILCS 5 120 2(c)(21)
22. Adjourn

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**THE VILLAGE OF COAL CITY**

GRUNDY & WILL COUNTIES, ILLINOIS

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ORDINANCE  
NUMBER 18 - \_\_\_\_

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**AN ORDINANCE CONDITIONALLY AUTHORIZING AN EXTENSION OF  
PRELIMINARY PLANNED UNIT DEVELOPMENT APPROVAL FOR A RAIL-  
SERVED TRANSLOADING FACILITY, TRUCKING AND WAREHOUSE  
DEVELOPMENT LOCATED ALONG AND NORTH OF REED ROAD BETWEEN  
BROADWAY AND BERTA ROADS**

**(HOFFMAN TRANSPORT INDUSTRIAL DEVELOPMENT)**

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TERRY HALLIDAY, Village President  
PAMELA M. NOFFSINGER, Village Clerk

SARAH BEACH  
ROSS BRADLEY  
TIMOTHY BRADLEY  
DANIEL GREGGAIN  
NEAL NELSON  
DAVID SPESIA  
Village Trustees

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Published in pamphlet form by authority of the President and Board of Trustees of the Village of  
Coal City

on \_\_\_\_\_, 2018

ORDINANCE NUMBER 18 - \_\_

**AN ORDINANCE CONDITIONALLY AUTHORIZING AN EXTENSION OF  
PRELIMINARY PLANNED UNIT DEVELOPMENT APPROVAL FOR A RAIL-  
SERVED TRANSLOADING FACILITY, TRUCKING AND WAREHOUSE  
DEVELOPMENT LOCATED ALONG AND NORTH OF REED ROAD BETWEEN  
BROADWAY AND BERTA ROADS**

**(HOFFMAN TRANSPORT INDUSTRIAL DEVELOPMENT)**

**WHEREAS**, the Village of Coal City (“Village”) is an Illinois non-home rule municipal corporation, organized and operating pursuant to the Constitution and laws of the State of Illinois; and

**WHEREAS**, on May 10, 2017, the Village previously approved Ordinance No. 17-13 entitled “AN ORDINANCE GRANTING A CONDITIONAL USE FOR A PRELIMINARY PLANNED UNIT DEVELOPMENT, PROVIDING FOR INDUSTRIAL REZONING, SUBDIVISION APPROVALS UPON SUBSTANTIAL CONFORMANCE WITH APPROVED PRELIMINARY PUD PLAT, AND APPROVAL OF A CONDITIONAL USE PERMIT AUTHORIZING RAIL AND ACCESSORY USES THERETO TO THE OWNER AND CONTRACT PURCHASER OF APPROXIMATELY 142 ACRES OF REAL PROPERTY LOCATED ON REED ROAD BETWEEN BROADWAY AND BERTA ROADS IN COAL CITY FOR THE DEVELOPMENT AND USE OF A RAIL-SERVED TRANSLOADING FACILITY, TRUCKING AND WAREHOUSE OPERATION” (the “Zoning Approval Ordinance”); and

**WHEREAS**, the Zoning Approval Ordinance, *inter alia*, granted approval to a preliminary plat for a planned unit development (“Preliminary PUD”), which approval is set to expire on May 10, 2018 (the “Expiration Date”) pursuant to the terms of Subsection 2(E)(7) of the Zoning Approval Ordinance and Section 156-191(A) of the Village Code of Ordinances, unless the Village Board grants an extension of the Expiration Date or Hoffman Property

Holdings, LLC, an Illinois limited liability company (“Developer”) submits a final PUD plat substantially in conformance with the Preliminary PUD prior to the Expiration Date; and

**WHEREAS**, pursuant to Section 156-191(A)(1) of the Village Code, the Village Board is authorized to extend the Preliminary PUD approval to allow additional time for Developer to secure approval of a final plan for a planned unit development (“Final PUD”);

**WHEREAS**, Developer has made a request for a 90-day extension of the Preliminary PUD authorized by the Zoning Approval Ordinance to allow additional time for Developer to refine its plans for the location of a 66’ wide ingress/egress easement for the use and benefit of the public and to provide improved through-access to properties north of the subject property, and further explore measures and alternatives designed to mitigate, minimize or eliminate the rail crossings of Spring Road, and (iii) finalize its plans; and

**WHEREAS**, the Village Board has considered such request and has determined that it is in the best interest of the Village to extend the Preliminary PUD approval by re-setting the Expiration Date to August 8, 2018 as requested, subject to and contingent upon the conditions set forth herein.

**NOW, THEREFORE**, be it ordained by the President and Board of Trustees of the Village of Coal City, Grundy and Will Counties, Illinois, as follows:

**SECTION 1. Recitals.** The foregoing recitals shall be and are hereby incorporated into and made a part of this Ordinance as if fully set forth in this Section 1. The findings and recitals herein are declared to be prima facie evidence of the law of the Village and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

**SECTION 2. Conditional Extension Preliminary PUD Approval.**

- A. Subject to and contingent upon fulfillment of the conditions set forth in Subsection 2(C), the Preliminary PUD approval as set forth in the Zoning Approval Ordinance is hereby extended to August 8, 2018 (the “Extended Deadline”).
- B. The extended Preliminary PUD approval herein granted shall become null and void without further notice or action by the Village upon the passing of the Extended Deadline without:
- i. Developer securing approval of a Final PUD in substantial conformance with the Preliminary PUD and applicable Village Code provisions, subject to any minor deviations as the Village may approve; or
  - ii. Developer applying for approval of an amended preliminary and final PUD for the subject property; or
  - iii. the Village Board granting a further extension of the Extended Deadline.
- C. In the event Developer fails to comply with and at all times maintain compliance with the conditions set forth herein, the extension granted herein may be revoked prior to the Extended Deadline at the sole discretion of the Corporate Authorities by ordinance duly adopted, following written notice to Developer and the opportunity to be heard at a regular or special meeting of the Village Board. The extended Preliminary PUD approval is premised on full compliance by Developer with the following conditions:
- i. That Developer reimburse the Village within three (3) business days of enactment of the Ordinance in full for any and all third-party professional fees incurred by the Village and presented to Developer prior to the date of adoption of this Ordinance in connection with the review, negotiation, and processing of Developer’s zoning, construction, building applications and plans connected to Developer’s project for which the extension is

granted, including, without limitation, attorneys' fees, engineering fees, professional and technical consultant services rendered by other retained consultants, as well as costs, fees, and charges incurred by the Village such as court reporting services, mailing and copying, publishing required notices, document preparation, negotiation and review, and document recordation and filing.

- ii. That Developer enter into and execute an addendum to the Recoverable Cost Agreement in substantially the form attached hereto as Exhibit A, providing for increased funding of the recoverable cost escrow account to maintain a balance of no less than \$40,000.00 ("New Escrow Balance").
- iii. That Developer deposit such additional funds with the Village as may be necessary to establish the New Escrow Balance within three (3) business days of the enactment of the Ordinance; and
- iv. That Developer shall, no less than monthly, meet with, make presentations to, or submit a written report to the Corporate Authorities or their designee(s), Village Administrator, and other Village staff from the date of enactment of the Ordinance *sub judice* through the Extended Deadline or such earlier date as Final PUD approval is granted by the Village or the extended approval of the Preliminary PUD is terminated as provided herein in order to keep the Village apprised of the progress of Developer's project, the status of planning and negotiations.

**SECTION 3. Effective Date.** This Ordinance shall be in full force and effect on and after its passage, approval, and publication in pamphlet form in the manner provided by law.

**SECTION 4. Repealer.** All ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION 5. Saving Clause.** If any section, paragraph, clause, or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance, which are hereby declared to be separable.

SO ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, at Coal City, Grundy and Will Counties, Illinois.

AYES:

ABSENT:

NAYS:

ABSTAIN:

**VILLAGE OF COAL CITY**

\_\_\_\_\_  
Terry Halliday, President

Attest:

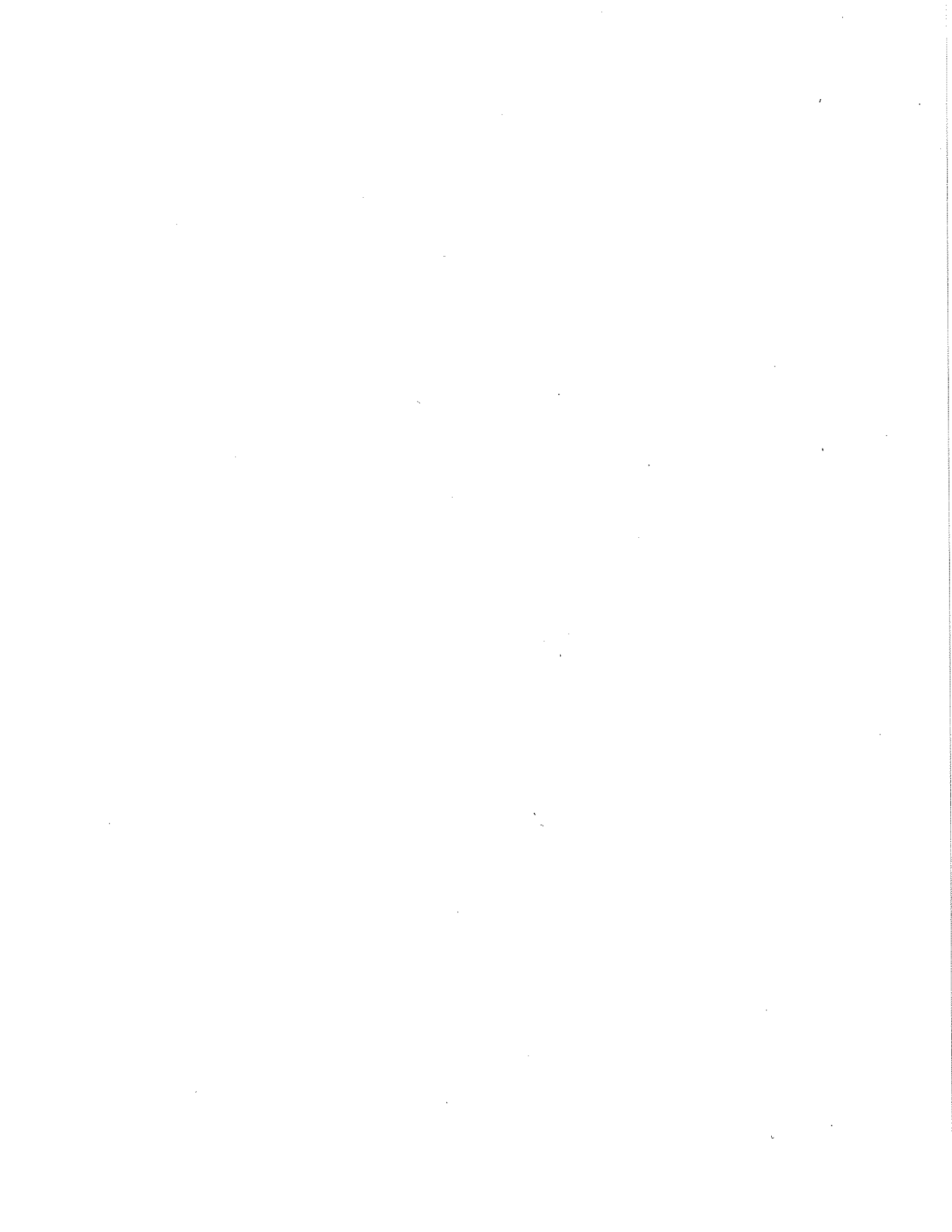
\_\_\_\_\_  
Pamela M. Noffsinger, Clerk



**EXHIBIT A**

**ADDENDUM TO THE RECOVERABLE COSTS AGREEMENT**

ATTACHED ON FOLLOWING PAGES.



**MEMO**

**TO:** Mayor Halliday and the Board of Trustees

**FROM:** Matthew T. Fritz  
Village Administrator

**MEETING**

**DATE:** May 9, 2018

**RE: HOFFMAN PRELIMINARY PUD APPROVAL EXTENSION**

The Village has been working with a large industrial developer, Hoffman Transportation, on a manifest-rail serviced warehouse and freight terminal to be located along the east side of the Union Pacific Railroad (UP) on the north side of Reed Road. Hoffman originally secured its Preliminary Planned Unit Development (PUD) on May 10, 2017. Within one year's time, the developer is to apply for and gain Final PUD Approval from the Village Board. Due to a number of issues that have surfaced within the time period since gaining the Preliminary PUD, Hoffman must delay the Board's final consideration a bit longer and has requested a 90-day extension for this consideration.

The Village Code allows for such an extension, but does not speak to the methodology to be employed upon receiving a request for such an extension. Based upon recent conversations of the Village Board, Mark Heinle has created an Ordinance that is narrow in its scope for the extension and requires the submission of an escrow of \$40,000 for the payment of professional fees related to any fees incurred by the Village or its required professional consultants to carry out proper review. Modifications expected to the Final PUD submission include the final approved location by Grundy County Highway for the entrance onto Reed Road as well as amendments to the offsite utility installation to include the final offsite water main improvement and the offsite Sanitary Improvement that extends service from the East Side Lift Station to a point it may be extended on the west side of the UP tracks.

**Recommendation:**

Adopt Ordinance No. 18-09: Granting an Extension of the PUD for the Hoffman Transportation Industrial Development.

**ADDENDUM TO RECOVERABLE COSTS AGREEMENT  
BETWEEN VILLAGE OF COAL CITY AND HOFFMAN TRANSPORTATION, LLC**

This Addendum (“**Addendum**”) made and entered into this \_\_\_\_\_ day of May, 2018 (the “**Addendum Effective Date**”) by and between the **VILLAGE OF COAL CITY**, an Illinois municipal corporation, (“**Village**”) and Hoffman Transportation, LLC, an Illinois limited liability company (“**Hoffman**”) amends the Recoverable Costs Agreement dated \_\_\_\_\_, 2017 (the “**Agreement**”). Village and Hoffman shall be collectively known as the “**Parties.**” Any capitalized term not defined in this Addendum shall have the meaning given such term in the Agreement.

**WITNESSETH:**

**WHEREAS**, the Parties are mutually desirous of modifying the Agreement to provide for an increased escrow deposit for the payment by the Village of Recoverable Costs as provided herein;

**WHEREAS**, the amendments set forth herein modify the Agreement and where a portion of the Agreement is modified by the amendments set forth herein, the terms of this Addendum shall control, while any and all unaltered portions of the Agreement shall remain in effect; and

**WHEREAS**, to the extent there is a conflict between the provisions of this Addendum and the Agreement, then the provisions of this Addendum shall take precedence and prevail.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements contained herein, and for such other and further consideration the sufficiency of which is hereby acknowledged by both Parties, the Parties hereto do promise and agree, as follows:

**1. Village Security.**

Section 3 of the Agreement is amended to provide that the security amount shall be FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00).

**2. Terms and Conditions.**

All other terms and conditions of the Lease not expressly modified by this Addendum shall remain in effect as stated in the Lease.

IN WITNESS WHEREOF, Village and Hoffman have caused this Addendum to be executed on the day and year first above written at Coal City, Illinois.

**Village:**

**VILLAGE OF COAL CITY,**

An Illinois Municipal Corporation

By: \_\_\_\_\_

Name: Terry Halliday

Its: Village President

Dated: \_\_\_\_\_

*Attest:*

By: \_\_\_\_\_

Name: Pamela M. Noffsinger

Its: Village Clerk

Dated: \_\_\_\_\_

**Hoffman:**

**HOFFMAN PROPERTY HOLDINGS, LLC**

An Illinois limited liability company

By: \_\_\_\_\_

Name: Kevin Hoffman

Its: Manager

Dated: \_\_\_\_\_

**MEMO**

**TO:** Mayor Halliday and the Board of Trustees

**FROM:** Matthew T. Fritz  
Village Administrator

**MEETING**

**DATE:** May 9, 2018

**RE: DISPOSAL OF SURPLUS PROPERTY – ESDA VEHICLE**

George Hanson, the Village's ESDA/EMA Coordinator worked with IEMA to grant a sizable contribution towards annual Coal City EMA operations in FY18. Due to Mr. Hanson's work, a grant which exceeded the cost of a new vehicle was received allowing the purchase of a new EMA Vehicle. Outfitting the vehicle was reserved for this current fiscal year, but upon its completion there is no need to keep and maintain the old vehicle, which is a 2004 Ford Explorer.

The attached Resolution will recognize the old vehicle as surplus so it may disposed of by staff. Jim Dunning, a volunteer of many years with the Coal City EMA/Auxiliary Police wears multiple hats. Besides working for the Diamond Public Works staff, he is also the new Verona/Kinsman Fire Chief and has requested Coal City to consider passing on the former vehicle to their department as a Command Vehicle for its fleet. He is aware the vehicle requires substantial front end alignment improvements and would receive the vehicle as-is.

The current estimated value of the vehicle is \$800-\$1,000. Unless staff is directed otherwise, the vehicle will be transferred following the declaration of the vehicle as surplus property (rather than being sold at auction).

**Recommendation:**

Adopt Resolution No. 18-11: Declaring the ESDA Explorer as Surplus Personal Property.

VILLAGE OF COAL CITY

RESOLUTION NO. \_\_\_\_\_

AUTHORIZATION TO DISPOSE OF  
CERTAIN PERSONAL PROPERTY, THE ESDA VEHICLE

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**WHEREAS**, the corporate authorities of each municipality may make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper; and

**WHEREAS**, the Illinois Municipal Code, 65 ILCS 5/11-76-4, grants municipalities, with a population less than 500,000, the authority to dispose of personal property if determines by a simple majority of the corporate authorities to be no longer useful and necessary; and

**WHEREAS**, the President and Board of Trustees of the Village of Coal City find that continued Village ownership of the ESDA Vehicle, which has outlived it useful life and is a 2004 Ford Explorer, VIN #1FMZU73W84UC23174, is no longer useful or necessary.

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Trustees of the Village of Coal City, Grundy & Will Counties, Illinois, as follows:

**Section 1. Recitals.** The above recitals are incorporated herein by this reference as if specifically stated in full.

**Section 2. Disposition of Property.** That the Village Administrator for the Village of Coal City is hereby authorized to dispose of the aforementioned personal property.

RESOLVED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, at Coal City, Grundy and Will Counties, Illinois.

AYES:  
NAYS:  
ABSTAIN:

VILLAGE OF COAL CITY

\_\_\_\_\_  
Terry Halliday, President

Attest:

\_\_\_\_\_  
Pamela Noffsinger, Clerk

**MEMO**

**TO:** Mayor Halliday and the Board of Trustees

**FROM:** Matthew T. Fritz  
Village Administrator

**MEETING**

**DATE:** May 9, 2018

**RE: UP RAILROAD CROSSING AGREEMENTS**

The Village of Coal City and Hoffman Transportation have agreed upon a future offsite water main improvement path along with its location, which will result in 16" water main being extended from the South Water Tower to the new warehouse along S. Broadway & Reed Road. This will require crossing beneath the Union Pacific Railroad Tracks (UP). Hoffman shall install the water main within the agreed upon path and it shall become the property of and maintenance responsibility of the Village of Coal City. Crossing the UP was considered and successfully completed during the installation of an offsite sanitary improvements.

In order to do so, the UP must receive a Crossing Agreement as well as proper indemnifications to disallow the UP being held liable should something go wrong due to the utility being located beneath the rail bed. Attached are the materials for two Resolutions. The first is the Crossing Agreement, which states both parties agree to the location of the Village improvement within the UP right-of-way (ROW). The second agreement is concerning the indemnification of the UP limiting the railroad's company liability for entering into the Crossing Agreement with the Village and hosting this water utility from this point forward.

These agreements are the last matters to be considered to allow the offsite water main improvement to be fully installed.

**Recommendation:**

- 1.) Adopt Resolution No. 18-12: Entering into an Agreement with the UP to Allow the Village to Place and Maintain its Water Utility within the UP ROW.
- 2.) Adopt Resolution No. 18-13: Indemnifying the Installer – Hoffman Property Holdings, LLC, Responsible for Proper Installation of the Necessary Improvements.



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**THE VILLAGE OF COAL CITY**  
GRUNDY & WILL COUNTIES, ILLINOIS

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RESOLUTION  
NUMBER \_\_\_\_\_

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**A RESOLUTION AUTHORIZING ENTRY INTO A PIPELINE CROSSING  
AGREEMENT WITH UNION PACIFIC RAILROAD COMPANY  
PROVIDING FOR EXTENSION OF POTABLE WATER FACILITIES ACROSS AND  
BENEATH UNION PACIFIC RAILROAD TRACKS AND RIGHT-OF-WAY**

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TERRY HALLIDAY, Village President  
PAMELA M. NOFFSINGER, Village Clerk

SARAH BEACH  
ROSS BRADLEY  
TIMOTHY BRADLEY  
DANIEL GREGGAIN  
NEAL NELSON  
DAVID SPESIA  
Village Trustees

---

Published in pamphlet form by authority of the President and Board of Trustees of the Village of  
Coal City  
on \_\_\_\_\_, 2018

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING ENTRY INTO A PIPELINE CROSSING AGREEMENT WITH UNION PACIFIC RAILROAD COMPANY PROVIDING FOR EXTENSION OF POTABLE WATER FACILITIES ACROSS AND BENEATH UNION PACIFIC RAILROAD TRACKS AND RIGHT-OF-WAY**

**WHEREAS**, the Village of Coal City (“Village”) is an Illinois non-home rule municipal corporation, organized and operating pursuant to the Constitution and laws of the State of Illinois; and

**WHEREAS**, Union Pacific Railroad Company is a Delaware corporation (“UP”);

**WHEREAS**, the Village is desirous of extending potable water service to a new industrial development by extending watermain across and beneath railroad right-of-way and tracks owned by the UP; and

**WHEREAS**, the UP will grant the Village a license to cross UP property in accordance with the terms and conditions of that certain Pipeline Crossing Agreement attached hereto as Exhibit A (the “Agreement”); and

**WHEREAS**, the Village is authorized under the provisions of Article VII, Section 10 of the State of Illinois Constitution of 1970, to contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law; and

**WHEREAS**, the President and Trustees (cumulatively, the “Corporate Authorities”) hereby find that it is in the best interests of the Village to enter into the Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Trustees of the Village of Coal City, Counties of Will and Grundy, Illinois, as follows:

**SECTION 1. RECITALS.**

That the foregoing recitals shall be and are hereby incorporated into and made a part of this Resolution as if fully set forth in this Section 1.

**SECTION 2. ENACTMENT.**

The Corporate Authorities shall and do hereby authorize, approve and direct the Village President to execute and deliver the Pipeline Crossing Agreement (“Agreement”) in substantially the form attached hereto as Exhibit A, and the Village Clerk to affix the Village seal thereto and to attest the executed Agreement following the Village President’s signature as may be required. The Village Administrator and Attorney, and such other agents as may be reasonably necessary to carry out the intent of the Agreement, are hereby authorized and directed to take such other and further action as may be reasonably necessary to carry out and give effect to the purpose and intent of this Resolution. All acts and doings of the officials of the Village, past, present and future which are in conformity with the purpose and intent of this Resolution are hereby, in all respects, ratified, approved, authorized and confirmed.

**SECTION 3. RESOLUTION OF CONFLICTS.**

All enactments in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION 4. SAVING CLAUSE.**

If any section, paragraph, clause, or provision of this Resolution shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Resolution, which are hereby declared to be separable.

**SECTION 5. EFFECTIVENESS.**

This Resolution shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

SO RESOLVED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, at Coal City,  
Grundy and Will Counties, Illinois.

AYES:

ABSENT:

NAYS:

ABSTAIN:

**VILLAGE OF COAL CITY**

\_\_\_\_\_  
Terry Halliday, President

Attest:

\_\_\_\_\_  
Pamela M. Noffsinger, Clerk

**EXHIBIT A**

**PIPELINE CROSSING AGREEMENT**

[Attached on following pages]

4838-4811-1461, v. 1

## PIPELINE CROSSING AGREEMENT

Mile Post: 59.72, Pequot Ind Ld Subdivision/Branch  
Location: Coal City, Grundy County, Illinois

**THIS AGREEMENT** ("Agreement") is made and entered into as of April 22, 2018, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **VILLAGE OF COAL CITY**, to be addressed at 515 S Broadway St, Coal City, Illinois 60416 ("Licensee").

**IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

### **Article 1. LICENSOR GRANTS RIGHT.**

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one sixteen (16) inch pvc pipeline encased in a thirty (30) inch steel pipeline for transporting and conveying water only

across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated April 20, 2018 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

For the purposes of Exhibit A, Licensee acknowledges that if it or its contractor provides to Railroad digital imagery depicting the Pipeline crossing, Licensee authorizes Railroad to use the Digital Imagery in preparing the print attached as an exhibit hereto. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Railroad to use the Digital Imagery in said manner.

### **Article 2. CONSTRUCTION, MAINTENANCE AND OPERATION.**

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

### **Article 3. DEFINITION OF LICENSEE.**

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including

initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

**Article 4. INSURANCE.**

A. During the life of the License, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this license, those statutes shall apply.

D. Licensee hereby acknowledges that is has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

**Article 5. SPECIAL PROVISION – ONSITE OBSERVATION/INSPECTION.**

Licensor requires licensee to provide monitoring of tracks and on-site observation and/or inspection through Licensor approved inspector named below during all construction and installation work. Licensee is to directly coordinate services with the named inspector.

**Railpros Field Services**  
RPUtility@railprofs.com  
682-223-5271

**Article 6. TERM.**

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first herein written.

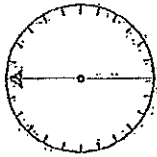
**UNION PACIFIC RAILROAD COMPANY**

**VILLAGE OF COAL CITY**

By: \_\_\_\_\_  
Jason Murray  
RE - Utilities

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

PLACE ARROW INDICATING NORTH  
DIRECTION RELATIVE TO CROSSING

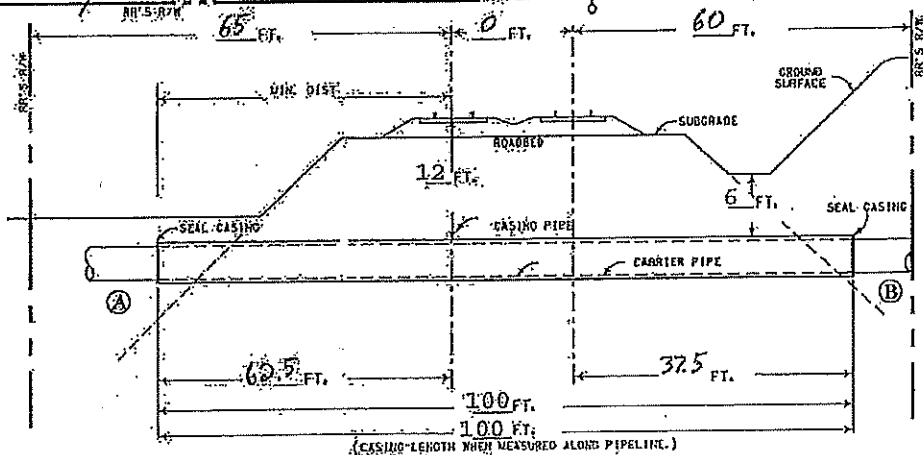
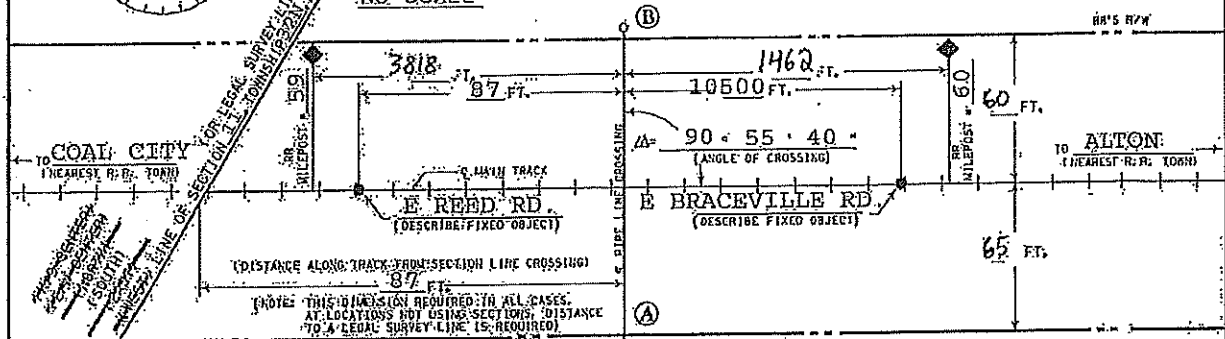


# ENCASED NON-FLAMMABLE PIPELINE CROSSING

NOTE: ALL AVAILABLE DIMENSIONS MUST BE  
FILLED IN TO PROCESS THIS APPLICATION.

FORM DR-0404-B  
REV. 10-9-2012  
WWW.UPTI.COM

NO SCALE



NOTE:  
REFER TO ARENA VOLUME I PART 5 FOR REQUIREMENT RELATING TO PIPELINE CROSSINGS.

- A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? YES;  NO;
- B) IF YES, NAME OF STREET: \_\_\_\_\_
- D) DISTRIBUTION LINE  OR TRANSMISSION LINE \_\_\_\_\_
- C) CARRIER PIPE?  
COMMODITY TO BE CONVEYED: WATER  
OPERATING PRESSURE: 52 PSI  
WALL THICKNESS: 1" DIAMETER: 16" MATERIAL: C900 PVC
- E) CASING PIPE?  
WALL THICKNESS: 0.375" DIAMETER: 30" MATERIAL: STEEL  
NOTE: CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.
- F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):  
 DRY BORE AND JACK (WET BORE NOT PERMITTED);  
 TUNNEL; OTHER \_\_\_\_\_
- G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR?  YES;  NO;
- H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK: 35' (30' MIN.)
- I) APPLICANT HAS CONTACTED 1-800-336-9193;  
U. P. COMMUNICATIONS DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE DOES;  DOES NOT;  EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. 20180322024

## EXHIBIT "A"

(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

Pegnot Ind. Ltd.

M. P. 59.72 E. S. 3140+54

ENCASED CROSSING AT

Coal City Grundy IL

VILLAGE OF COAL CITY

RR FILE NO. 3085-02 DATE 4-20-2018

### WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS  
DEPARTMENT MUST BE CONTACTED IN ADVANCE  
OF ANY WORK TO DETERMINE EXISTENCE AND  
LOCATION OF FIBER OPTIC CABLE.  
PHONE 1-800-336-9193



## **EXHIBIT B**

### **Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.**

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

### **Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.**

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering - Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall

include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

**Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.**

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work by calling the Response Management Communication Center (RMCC) at 888-877-7267. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

Greg Patten  
Ast Mgr Singal Mntce  
573-330-6109  
[gepatten@up.com](mailto:gepatten@up.com)

Railpros Flagging  
[Upflag@railprofs.com](mailto:Upflag@railprofs.com)  
877-315-0513 x 116

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensee whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other

special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.
- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

**Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.**

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

**Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.**

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

**Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.**

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensee or its contractors without the prior written permission of Licensor.
- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

**Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

- A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- B. **IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.**

**Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.**

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

**Section 9. RESTORATION OF LICENSOR'S PROPERTY.**

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

**Section 10. INDEMNITY.**

- A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).
- B. **AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM**

ANY LOSS OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;

3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;

4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;

5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR

6. LICENSEE'S BREACH OF THIS AGREEMENT,

EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

**Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.**

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

**Section 12. WAIVER OF BREACH.**

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

**Section 13. TERMINATION.**

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

**Section 14. AGREEMENT NOT TO BE ASSIGNED.**

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

**Section 15. SUCCESSORS AND ASSIGNS.**

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

**Section 16. SEVERABILITY.**

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.



Approved: Insurance Group  
Created: 9/23/05  
Last Modified: 03/29/10  
Form Approved, AVP-Law

**EXHIBIT C**  
**Union Pacific Railroad Company**  
**Contract Insurance Requirements**

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

**A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

**B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less than \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

**C. Workers Compensation and Employers Liability insurance.** Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

**D. Railroad Protective Liability insurance.** Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.

The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement

**E. Umbrella or Excess insurance.** If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

**Other Requirements**

**F.** All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

**G.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

**H.** Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law. This waiver must be stated on the certificate of insurance.

**I.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

**J.** The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

**EXHIBIT D**  
**SAFETY STANDARDS**

**MINIMUM SAFETY REQUIREMENTS**

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

**I. Clothing**

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
  - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
  - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

**II. Personal Protective Equipment**

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 -- latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 -- latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools
  - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

### III. On Track Safety

Licensee and its contractor are responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

### IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
  - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
  - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. **General Safety Requirements**

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
  - (v) Before stepping over or crossing tracks, look in both directions first.
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

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**THE VILLAGE OF COAL CITY**  
GRUNDY & WILL COUNTIES, ILLINOIS

---

RESOLUTION  
NUMBER \_\_\_\_\_

---

**A RESOLUTION AUTHORIZING ENTRY INTO AN INDEMNIFICATION  
AGREEMENT WITH HOFFMAN PROPERTY HOLDINGS, LLC, PROTECTING THE  
VILLAGE FROM INCURRING LIABILITY TO UNION PACIFIC RAILROAD  
COMPANY ARISING OUT OF THE CONSTRUCTION AND INSTALLATION OF  
POTABLE WATER FACILITIES ACROSS UNION PACIFIC RAILROAD RIGHT OF  
WAY**

---

TERRY HALLIDAY, Village President  
PAMELA M. NOFFSINGER, Village Clerk

SARAH BEACH  
ROSS BRADLEY  
TIMOTHY BRADLEY  
DANIEL GREGGAIN  
NEAL NELSON  
DAVID SPESIA  
Village Trustees

---

Published in pamphlet form by authority of the President and Board of Trustees of the Village of  
Coal City

on \_\_\_\_\_, 2018

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING ENTRY INTO AN INDEMNIFICATION AGREEMENT WITH HOFFMAN PROPERTY HOLDINGS, LLC, PROTECTING THE VILLAGE FROM INCURRING LIABILITY TO UNION PACIFIC RAILROAD COMPANY ARISING OUT OF THE CONSTRUCTION AND INSTALLATION OF POTABLE WATER FACILITIES ACROSS UNION PACIFIC RAILROAD RIGHT OF WAY**

**WHEREAS**, the Village of Coal City (“Village”) is an Illinois non-home rule municipal corporation, organized and operating pursuant to the Constitution and laws of the State of Illinois; and

**WHEREAS**, Hoffman Property Holdings, LLC, is an Illinois limited liability company organized and existing under the laws of the State of Illinois (“Hoffman”);

**WHEREAS**, Hoffman is developing a rail-served transloading distribution facility park within the Village (the “Development”); and

**WHEREAS**, in connection with the Development, Hoffman is extending potable water service to the Development by constructing a portion of the watermain across and beneath railroad right-of-way and tracks owned by the Union Pacific Railroad Company (the “UP”); and

**WHEREAS**, Hoffman is responsible for the installation of the watermain and the Village and Hoffman are mutually desirous of allocating responsibility for any liability that may arise out of the construction and installation of the watermain; and

**WHEREAS**, the Village is authorized under the provisions of Article VII, Section 10 of the State of Illinois Constitution of 1970, to contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law; and

**WHEREAS**, the President and Trustees (cumulatively, the “Corporate Authorities”) hereby find that it is in the best interests of the Village to enter into the agreement incorporated herein by reference.

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Trustees of the Village of Coal City, Counties of Will and Grundy, Illinois, as follows:

**SECTION 1. RECITALS.**

That the foregoing recitals shall be and are hereby incorporated into and made a part of this Resolution as if fully set forth in this Section 1.

**SECTION 2. ENACTMENT.**

The Corporate Authorities shall and do hereby authorize, approve and direct the Village President to execute and deliver the Pipeline Crossing Indemnification Agreement (“Agreement”) and the Village Clerk to affix the Village seal thereto and to attest the executed Agreement following the Village President’s signature as may be required. The Village Administrator and Attorney, and such other agents as may be reasonably necessary to carry out the intent of the Agreement, are hereby authorized and directed to take such other and further action as may be reasonably necessary to carry out and give effect to the purpose and intent of this Resolution. All acts and doings of the officials of the Village, past, present and future which are in conformity with the purpose and intent of this Resolution are hereby, in all respects, ratified, approved, authorized and confirmed.

**SECTION 3. RESOLUTION OF CONFLICTS.**

All enactments in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION 4. SAVING CLAUSE.**

If any section, paragraph, clause, or provision of this Resolution shall be held invalid, the



invalidity thereof shall not affect any of the other provisions of this Resolution, which are hereby declared to be separable.

**SECTION 5. EFFECTIVENESS.**

This Resolution shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

SO RESOLVED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, at Coal City, Grundy and Will Counties, Illinois.

AYES:

ABSENT:

NAYS:

ABSTAIN:

**VILLAGE OF COAL CITY**

\_\_\_\_\_  
Terry Halliday, President

Attest:

\_\_\_\_\_  
Pamela M. Noffsinger, Clerk

**EXHIBIT A**

**PIPELINE CROSSING INDEMNITY AGREEMENT**

[Attached on following pages]

4840-5138-3908, v. 1

***AFTER RECORDING  
RETURN TO:***

Mark R. Heinle, Esq.  
ANCEL, GLINK, DIAMOND,  
BUSH, DICIANNI &  
KRAFTHEFER, P.C.  
1979 N. Mill St., Suite 207  
Naperville, IL 60563

*This space for Recorder's use only*

**PIPELINE CROSSING INDEMNIFICATION AGREEMENT**

**By and Between**

**THE VILLAGE OF COAL CITY, ILLINOIS**

**AND**

**HOFFMAN PROPERTY HOLDINGS, LLC**

kc

**PIPELINE CROSSING INDEMNIFICATION AGREEMENT**

**THIS PIPELINE CROSSING INDEMNIFICATION AGREEMENT** (the “**Agreement**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018 by and among HOFFMAN PROPERTY HOLDINGS, LLC, an Illinois limited liability company organized and existing under the laws of the State of Illinois (“**Hoffman**”), and the Village of Coal City, an Illinois non-home rule municipal corporation duly organized and validly existing legal entity organized and operated pursuant to the Constitution and laws of the State of Illinois (the “**Village**”). Collectively, Hoffman and the Village shall be referred to herein as the “**Parties**”.

**WHEREAS**, Hoffman is developing a rail-served transloading distribution facility park within the Village (the “**Development**”); and

**WHEREAS**, in connection with its development of the Development, Hoffman is providing for the installation of a watermain in order to extend potable water service to the Development;

**WHEREAS**, the Parties intend that the watermain shall be conveyed to and owned by the Village upon completion and acceptance; and

**WHEREAS**, the watermain will be installed in part across certain real property owned by the Union Pacific Railroad Company, a Delaware corporation (the “**Railroad**”) and running underneath railroad tracks owned and operated by Railroad;

**WHEREAS**, Railroad will authorize the aforesaid rail crossing pursuant to the terms and conditions of that certain Pipeline Crossing Agreement by and between the Village of Coal City and Union Pacific Railroad Company dated \_\_\_\_\_, and appended hereto as Exhibit A and incorporated by reference as though fully set forth herein (the “**Pipeline Crossing Agreement**”) which provides, *inter alia*, for the Village to obtain and maintain railroad protective liability insurance during the period of initial construction and indemnify Railroad for any injuries, damages, and losses that may be incurred or sustained by the Railroad during or resulting from the installation, construction, maintenance of the watermain; and

**WHEREAS**, Hoffman is responsible for the installation of the watermain and the Parties are therefore mutually desirous of allocating responsibility for any liability to the Railroad that may accrue to the Village resulting from or arising out of the construction of the watermain;

**WHEREAS**, the Village is authorized under the provisions of Article VII, Section 10 of the State of Illinois Constitution of 1970, to contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law; and

**WHEREAS**, the Corporate Authorities hereby find and determine that the Project is in furtherance of a proper public purpose for the reasons set forth hereinabove and that it is advisable, necessary and in the best interests of the Village’s public health, safety and welfare to enter into this Agreement and the obligations provided herein in support of the Park; and

**NOW, THEREFORE**, in consideration of the foregoing, and the mutual covenants and agreements of the Parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Village and Hoffman agree as follows:

1. **Recitals.** The Recitals to this Agreement are incorporated herein as if they had been set forth in the text of this Agreement, as the agreement and understanding of the Parties.
2. **Parties.** This Agreement is entered into by and between the Village and Hoffman.
3. **Effective Date.** This Agreement becomes effective on the date that both the Village and Hoffman have executed this Agreement ("Effective Date").
4. **Term of Agreement.** The Agreement shall take effect as of the Effective Date and shall continue in full force and effect until terminated as herein provided.
5. **Village Responsibility.** The Village shall enter into the Pipeline Crossing Agreement with the Railroad and provide a fully executed copy thereof to Hoffman.
6. **Hoffman Responsibilities.**
  - A. **Install Pipeline.** Hoffman shall construct and install, or cause the same to be performed with respect to a sixteen inch (16") pvc pipeline encased in a thirty inch (30") steel pipeline for transporting and conveying water across Union Pacific Railroad Company's railroad tracks and property (the "**Pipeline**") as described more particularly in and in accordance with the Pipeline Crossing Agreement.
  - B. **Procure Railroad Protective Liability Insurance.** Hoffman shall obtain and maintain or cause its contractor(s) to obtain and maintain railroad protective liability insurance in the amount and subject to the terms and conditions set forth in Exhibit C, Paragraph D of the Pipeline Crossing Agreement and evidence the same to the satisfaction of the Village and Railroad prior to commencing or causing the commencement of any work or activities on real property owned by Railroad.
  - C. **Coordinate Construction with Railroad.** Hoffman shall provide a copy of the Pipeline Crossing Agreement to any contractor(s) it retains to perform any work related to the construction and installation of the Pipeline (the "**Work**") and require contractor(s) to perform all Work in strict conformance with the terms and conditions of said Pipeline Crossing Agreement.
  - D. **Indemnification and Hold Harmless.** To the fullest extent permitted by law, Hoffman agrees to waive any and all rights of contribution against Village and to defend, indemnify and hold harmless Village and its former, current and future officers, elected and appointed officials, employees, volunteers, attorneys, insurers and agents from and against any and all claims, actions, omissions, losses, injuries,

lawsuits, counterclaims, debts, dues, obligations, judgments, awards, demands, liens, expenses, attorneys' and paralegal's fees, costs and expenses, costs of litigation, expert witness fees and consultant fees, and liability for damages of any kind and causes of action of any kind and nature, whether known or unknown at this time, whether present or future or contingent, that are brought or filed against the Village of Coal City or any of its former, current and future officers, elected and appointed officials, employees, volunteers, attorneys, insurers and agents and/or successors in interest of any kind, by any person or entity arising out of, relating to, connected with, or in any way associated directly or indirectly with this Agreement, or the construction and installation of the Pipeline. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right to indemnity which Village would otherwise have. Hoffman shall similarly, defend, protect, indemnify and hold and save harmless, Village and its former, current and future officers, elected and appointed officials, employees, volunteers, attorneys, insurers and agents against and from any and all claims, costs, causes, actions and expenses, including, but not limited to, legal fees, incurred by reason of Hoffman's breach of any of its obligations hereunder. The rights and obligations of this Paragraph shall survive the termination of this Agreement. In case any action or proceeding is brought against Village, by reason of any such claim described in this Paragraph, the Village and its former, current and future officers, elected and appointed officials, employees, volunteers, attorneys, insurers and agents sued thereunder shall have the right to determine the attorney(s) of its, his, her or their choice to represent and defend their interests in any legal or administrative action, all at Hoffman's expense pursuant to this Agreement.

7. **Events of Default.** Failure on the part of either party to comply with any material term, representation, warranty, covenant, agreement, or condition of this Agreement within thirty (30) days after written notice thereof shall constitute an "Event of Default." Except as otherwise expressly provided herein, no default by either Party shall be actionable or be of other consequence unless and until it shall constitute an Event of Default. In the Event of Default by the defaulting Party in the performance of any of its obligations under this Agreement, the non-defaulting Party shall have the power to proceed with any right or remedy granted by the Constitution and laws of the State of Illinois as it may deem most effectual to protect its rights, including any suit, action or special proceeding in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any proper legal or equitable remedy, insofar as such may be authorized by law, including but not limited to entitlement to specific performance, damages, indemnification for any monetary damages owed by the non-defaulting Party to any third party as a result of such Event of Default. No remedy by the terms of this Agreement conferred upon or reserved to the Village is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Village. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto. Neither party shall be liable to the other for consequential damages or lost profits.

## 8. General Provisions.

- A. Compliance with Laws. The Parties shall comply, and shall cause their respective agents, employees, contractors and subcontractors to comply, with the requirements of the Agreement and the Pipeline Crossing Agreement, and any and all applicable governmental statutes, ordinances, codes, rules, regulations, written guidelines or policy statements, regulations, permits, orders, writs, injunctions, decrees, judgments, decisions, principles of common law, rulings that have the force of law of any court, federal, state, county or local government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority.
- B. FOIA Compliance. Hoffman agrees to maintain, without charge to the Village, all records and documents related to the Development in compliance with the Freedom of Information Act, 5 ILCS 140/1 *et seq.* In addition, Hoffman shall produce records which are responsive to a request received by Village under the Freedom of Information Act so that the Village may provide records to those requesting them within the time frames required. If additional time is necessary to compile records in response to a request, then Hoffman shall so notify the Village and if possible, the Village shall request an extension so as to comply with the Act. In the event that the Village is found to have not complied with the Freedom of Information Act due to Hoffman's failure to produce documents or otherwise appropriately respond to a request under the Act, then Hoffman shall indemnify and hold Village harmless, and pay all amounts determined to be due including but not limited to fines, costs, attorneys' fees and penalties.
- C. Non-Assignment. Hoffman shall not assign, transfer, convey, sublet, or otherwise dispose of any of its obligations hereunder or any or all of its rights, title, or interest in the Agreement, without the prior written consent of the Village.
- D. Enforcement of Agreement. In the event that either party hereto institutes legal proceedings against the other party for violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment against the losing party all expenses of such legal proceedings incurred by the prevailing party, including, but not limited to, court costs and attorneys' fees, and witnesses' fees incurred by the prevailing party in connection therewith.
- E. Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, or (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) the date that is three (3) business days after deposit in the U.S. mail, as evidenced by a return receipt. By

notice complying with the requirements of this Section, each party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village of Coal City  
515 S. Broadway  
Coal City, IL 60416  
ATTN: Village Administrator

With a copy to: Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer  
1979 Mill Street, Suite 207  
Naperville, IL 60563  
Attn: Mark R. Heinle, Esq.

Notices and communications to Hoffman shall be addressed to, and delivered at, the following address:

Hoffman Property Holdings, LLC  
Attn: Kevin Hoffman  
PO Box 810  
Channahon, IL 60410

With a copy to: Kenneth Carlson  
Tracy, Johnson & Wilson  
2801 Black Road, Second Floor  
Joliet, IL 60435

- F. **Governing Law.** This Agreement shall be governed by, and enforced in accordance with, the laws of the State of Illinois, which are incorporated herein. Any suit brought to enforce the provisions of this Agreement shall be filed in the Thirteenth Judicial Circuit, Grundy County, Illinois.
- G. **Severability.** It is hereby expressed to be the intent of the Parties that should any provision, covenant, agreement, or portion of this Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.
- H. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement.



- I. Amendments & Modifications. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by both parties to this Agreement.
- J. Interpretation. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all Parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.
- K. Authority to Execute. The parties each hereby warrant and represent to one another that the persons executing this Lease on their respective behalves have been properly authorized to do so, and further that each has the full and complete right, power, and authority to enter into this Lease and to agree to the terms, provisions, and conditions set forth in this Agreement.
- L. Counterparts. This Agreement may be executed in counterpart, each of which shall constitute an original document, which together shall constitute one and the same instrument.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, Hoffman and Village have caused this Agreement to be executed in their respective names and Village has caused its seal to be affixed thereto, and attested as of the Effective Date.

**Village:**

**VILLAGE OF COAL CITY,**

An Illinois Municipal Corporation

By: \_\_\_\_\_

Name: Terry Halliday

Its: Village President

Dated: \_\_\_\_\_

*Attest:*

By: \_\_\_\_\_

Name: Pamela M. Noffsinger

Its: Village Clerk

Dated: \_\_\_\_\_

**Owner:**

**HOFFMAN PROPERTY HOLDINGS, LLC**

An Illinois limited liability company

By: \_\_\_\_\_

Name: Kevin Hoffman

Its: Manager

Dated: \_\_\_\_\_

---

**THE VILLAGE OF COAL CITY**  
GRUNDY & WILL COUNTIES, ILLINOIS

---

RESOLUTION NUMBER \_\_\_\_\_

---

**A RESOLUTION AUTHORIZING THE RELEASE AND CONTINUED RETENTION,  
RESPECTIVELY, OF CERTAIN EXECUTIVE SESSION MINUTES**

---

TERRY HALLIDAY, Village President  
PAMELA M. NOFFSINGER, Village Clerk

SARAH BEACH  
ROSS BRADLEY  
TIMOTHY BRADLEY  
DANIEL GREGGAIN  
NEAL NELSON  
DAVID SPESIA  
Village Trustees

---

Published in pamphlet form by authority of the President and Board of Trustees of the Village of  
Coal City

on \_\_\_\_\_, 2018

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE RELEASE AND CONTINUED RETENTION,  
RESPECTIVELY, OF CERTAIN EXECUTIVE SESSION MINUTES**

**WHEREAS**, the Village of Coal City (“Village”) is a non-home rule municipality; and

**WHEREAS**, the Corporate Authorities of the Village have met from time to time in executive session for purposes authorized by, and in conformity with, the Illinois Open Meetings Act, 5 ILCS 120/1.01, *et seq.*; and

**WHEREAS**, the Village Clerk has kept written minutes and audiotapes of all such executive sessions; and

**WHEREAS**, pursuant to 5 ILCS 120/2.06, the Corporate Authorities have met in closed session to review previously-unreleased executive session minutes and determine whether a need for confidentiality still exists with respect to such minutes; and

**WHEREAS**, the Corporate Authorities have found and determined that the minutes of the closed session meetings listed in Exhibit A, attached hereto, made a part hereof and fully integrated herein, no longer require confidential treatment because such confidentiality is no longer necessary to protect the public interest or the privacy of any individuals, and should therefore be made available for public inspection; and

**WHEREAS**, the Corporate Authorities have found and determined that a need for confidentiality still exists in order to protect the public interest or the privacy of individuals with respect to the executive session minutes from all other closed session meetings not set forth in Exhibit A;

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Trustees of the Village of Coal City, Counties of Will and Grundy, Illinois, as follows:

**SECTION 1. RECITALS.**

That the foregoing recitals shall be and are hereby incorporated into and made a part of this Resolution as if fully set forth in this Section 1.

**SECTION 2. ENACTMENT.**

- A. The Village Clerk is hereby authorized and directed to make the minutes from those executive session meetings set forth in **Exhibit A** available for public inspection and copying in accordance with the standing procedures of the Clerk's Office and the governing regulations of the Illinois Open Meetings Act.
- B. Further, that the Village Clerk is hereby authorized and directed to maintain the minutes from all other executive session meetings for which release has not yet been approved in a confidential matter in order to protect the public interest and the privacy of individuals.

**SECTION 3. RESOLUTION OF CONFLICTS.**

All resolutions or ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**SECTION 4. SAVING CLAUSE.**

If any section, paragraph, clause, or provision of this Resolution shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Resolution, which are hereby declared to be separable.

**SECTION 5. EFFECTIVE DATE.**

This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

SO RESOLVED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, at Coal City,  
Grundy and Will Counties, Illinois.

AYES:

NAYS:

ABSENT:

ABSTAIN:

**VILLAGE OF COAL CITY**

\_\_\_\_\_  
Terry Halliday, President

Attest:

\_\_\_\_\_  
Pamela M. Noffsinger, Clerk

**EXHIBIT A**

**Executive Session Minutes Approved for Release**

July 12, 2017

October 11, 2017

November 8, 2017

4841-4367-8821, v. 1

**MEMO**

**TO:** Mayor Halliday and the Board of Trustees

**FROM:** Matthew T. Fritz  
Village Administrator

**MEETING**

**DATE:** May 9, 2018

**RE: 95 E OAK STREET DEMOLITION**

After completing proper posting and notice requirements, the demolition of 95 E. Oak Street is in order. Having completed these steps, no interested parties have moved forward to rectify and properly maintain the property. The Building Department requested bids from demolition companies to complete the demolition at this address. Three bids were received as provided below:

J.K. Trotter Enterprises Inc.	\$8,734.50
Troutman Excavating	13,750.00
Stott Contracting, LLC	24,328.00

The lowest responsive bidder, J.K. Trotter Enterprises Inc., is being recommended due to their pricing. J.K. Trotter completed additional demolition work in relation to the 6-22 Tornado to the satisfaction of the Village.

**Recommendation:**

Authorize the Demolition of 95 E. Oak Street by J.K. Trotter Enterprises Inc. at a cost not-to-exceed \$8,734.50.



J.K. TROTTER ENTERPRISES INC

1085 S. Mazon St.  
Coal City, IL 60416

# Estimate

Date	Estimate #
4/15/2018	166

Name / Address
VILLAGE OF COAL CITY 515 S. Broadway Coal City, IL 60416

			Project
Description	Qty	Cost	Total
Removal of house at 95 E. Oak. House and garage will be torn down and taken to landfill, Foundation will be recycled. Water and Sewer will be disconnected and capped. Ground will be returned to natural contours. Black dirt will be brought in and seeded one time. Price includes iepa permit, Coal City permit, and all labor, machinery and dump fees. Seeding done by others.		8,734.50	8,734.50
Estimate is good for 30 days		<b>Total</b>	\$8,734.50

Customer Signature \_\_\_\_\_



1383 Bungalow Road  
Morris, IL 60450  
Office (815)-941-0759  
Fax: (815) 941-1805  
[www.troutmanexc.com](http://www.troutmanexc.com)

April 22, 2018

Village of Coal City  
Bob Malone

RE: 95 E Oak Street, Coal City

Dear Bob:

We are pleased to present the following proposal for Demolition at the above work site.

1. Demolition of Home & Garage at above work site
2. All concrete slabs, footings, walls and sidewalks will be removed and hauled away
3. All Debris to be disposed of in legal landfill
4. Cap water line from B-box and cap sewer hub with in easement of property
5. Backfill existing foundation with material
6. Black dirt yard, seed, and grade out over disturbed areas
7. Escalation costs (ie labor, landfills) may be incurred should the project not begin within 30 days of proposal date
8. All salvage to become property of Troutman Excavating after structures are released for Demolition

**EXCLUSIONS:**

1. All required permits
2. Asbestos inspection required for IEPA notification
4. Removal beyond property limits
5. Dust/Weather protection
6. Fencing, tree protection, erosion control
7. No cost or application is included for IDOT for curb and approach permits
8. All utility disconnections and digging around utilities
9. Owner to provide plat of survey for permit process
10. All layout and engineering
11. All work to be performed in one move
12. All removal of Asbestos
13. Not responsible for broken sidewalks or concrete driveways

**TOTAL:**

**\$13,750.00**



April 22, 2018

Village of Coal City

RE: 95 E. Oak Street, Coal City

Troutman Proposal

Page 2

**UNLESS PREVIOUS ARRANGEMENTS HAVE BEEN MADE, Troutman Excavating, Inc. RESERVES THE RIGHT TO ADD A ONE AND ONE HALF PERCENT (1.5%) INTEREST RATE FOR EVERY 30 DAYS THAT PAYMENT IS DELAYED.**

**All Prices Valid for 30 Days.**  
Terms & Conditions Accepted

**Troutman Excavating**

Signature \_\_\_\_\_  
Owner or Authorized Agent

Signature \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Gratefully,

**Troutman Excavating**



Steve Troutman  
Vice President

Stott Contracting, LLC

6630 Ashton Road  
Morris, Illinois 60450

# Estimate

Date	Estimate #
4/20/2018	584

Name / Address
Village of Coal City 515 South Broadway Coal City, IL 60416

Project

Description	Qty	Rate	Total
Demolition of Residential Property & Garage located @ 95 East Oak Str. Coal City, IL			
Lump Sum Bid for the above described:	1	24,328.00	24,328.00
Inclusions: -Demolition/Removal of construction debris to a certified landfill -Demolition/Removal of foundation/floor debris -Sewer/Water cap @ property side of sidewalk -Backfill of existing foundation with clay material -Black dirt respread over disturbed areas -Seeding/Restoration Exclusions: -No asbestos abatement -No special permits/bonds -No utility disconnect -No erosion control measures/blanket -Contractor not responsible for any unforeseen soil conditions -No special waste disposal			
<b>Total</b>			\$24,328.00

Coal City Police Department  
Weekly Summary of Activities  
Thursday 04-19-18 – Wednesday 04-25-18

During this period, there were 47 calls for service, 32 verbal warnings and 0 assist Grundy County Sheriff's Dept.

**Significant Incidents**

04-19-18 at 7:40 PM, police responded to a S. Vermillion St. residence for a disturbance call. The complainant stated he was at the residence to retrieve items inside of the residence but was not allowed inside. The property owners advised police they had no items of the complainants and wanted him removed from the property. Both parties were advised not to contact each other in the future.

04-20-18 at 1:39 PM, police responded to the police department for a criminal damage to property report. The complainant stated she drives a vehicle owned by her daughter and observed someone scratched profanities on the back of the vehicle. The complainant suspects her neighbor's daughter did it but only knew her first name. The report was forwarded to investigations.

04-25-18 at 4:55 PM, police responded to a W. Division St. apartment for a domestic disturbance call between the resident and her adult daughter. When police arrived they could clearly hear two women yelling at each other. Police were able to resolve this incident when the daughter agreed to leave the residence.

**Arrest Incidents**

Expired Registration	5
Operating an Uninsured Motor Vehicle	2
Failure to Yield	1
Speeding	1
Obstruction of Identification	1
Disobeying a Traffic Control Device	1
Failure to Reduce Speed to avoid an Accident	1
Domestic Battery	1
Seatbelt Violation	1
No Safety Sticker	1
Revoked D.L.	1
Unlawful Frame / Floor height	1



















