

EASEMENT AGREEMENT

June 5, 2006

Between

V&S RAILWAY LLC ("Railway")

And

TOWN OF EADS COLORADO ("Eads")

WHEREAS the Railway operates an active rail corridor for the movement of rail traffic; and

WHEREAS Eads desires to construct, use, maintain, inspect, repair and renew, as the case may be, the Crossing under the Right of Way, tracks or other property owned or controlled by the Railway; and

WHEREAS the Railway has agreed to grant to Eads a non-exclusive easement/right of way, as more particularly described in this Agreement, for the Crossing underneath the Railway Lands at such location as more particularly described in the Agreement solely for the purposes permitted in this Agreement;

Therefore, the parties covenant and agree as follows:

1. DEFINITIONS

In this Agreement:

- (a) "Construction" means the construction, replacement or removal of the Crossing as determined in accordance with American Railroad Engineering Association ("AREA") industry standards and specifications issued from time to time.
- (b) "Crossing" means the conduit of Eads which crosses, under the Right-of-Way of the Railway, as set out on the plan approved by the Railway and attached to this Agreement as Schedule "A".
- (c) "Easement Area" means the portion of the Railway Lands shown on Schedule A.
- (d) "Easement Rights" means the easement rights under the Easement Area granted by the Railway to Eads pursuant to this Agreement;
- (e) "Maintenance", including repairing, means any work on the Crossing;
- (f) "Conduit" means 4 each 36" steel pipes and 1 each 36" reinforced concrete pipe storm sewer conduit of Eads, comprised of five (5) crossings under the tracks;

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- (g) "Railway Lands" means the Right-of-Way, tracks or other property owned or controlled by the Railway and described on Schedule "B" attached to this Agreement;
- (h) "Removal" means the physical removal or abandonment of the Crossing; and
- (i) "Right-of-Way" means the lands of the Railway now or formerly used as corridors for the movement of trains. For the purposes of this Agreement, Right-of-Way shall not exceed one hundred (100) feet in width unless otherwise determined at the discretion of the Railway.

2. GRANT

- (a) The Railway hereby grants and transfers to Eads a non-exclusive easement/ right of way, underneath the Easement Area, solely to construct, use, maintain, remove, repair and renew the Crossing on and subject to the terms and conditions contained in this Agreement.
- (b) The easement shall be granted by the Railway to Eads in perpetuity or so long as the Crossing is used by Eads for a steel or reinforced concrete pipe storm sewer crossing.
- (c) For greater certainty, Eads acknowledges, covenants and agrees that the Easement Rights are restricted to an interest underneath the surface of the Easement Area, as Eads has no right, implied or express, to cross over, make use of or enter upon for any reason or purpose, the surface of the Railway Lands, including that portion of the Railway Lands above or below the Easement Area, other than as expressly provided herein. Furthermore, Eads acknowledges and agrees that, without limiting the rights of the Railway, the Railway expressly reserves the right to support through the Easement Area of the Railway Lands and the improvements upon the Railway Lands above the Easement Area.
- (d) If Eads wishes to have access to the surface of the Railway Lands above or below the Easement Area at any time, Eads shall deliver written notice to the Railway not less than ten (10) days prior (or such longer period as the Railway may reasonably determine from time to time, provided that the Railway has provided notice of such longer period to Eads) to the date upon which Eads seeks to enter upon the surface of the Railway Lands above or below the Easement Area, advising the Railway of the purpose and duration of such proposed entry, together with such other information as the Railway may reasonably require. In the event that the Railway consents to such entry, Eads covenants and agrees as follows:
 - (i) Eads shall execute such covenants, guarantees, indemnities, assurances and/or releases as the Railway may, in its sole discretion, reasonably request;

- (ii) Eads shall deliver such policies of insurance and bonds from such companies, on such terms, in such amounts and for such risks as the Railway may, in its sole discretion, reasonably consider appropriate, which policies of insurance shall name the Railway as named insured;
- (iii) Eads shall, at its sole cost, adhere to such stipulations and rules governing such entry as the Railway may, in its discretion, reasonably consider appropriate and shall pay to the Railway its costs associated with such entry by Eads on the basis of cost plus labour overheads as may be currently applicable and as set by the American Association of Railroads, and material handling cost as may be currently applicable;
- (iv) Eads, its contractors, agents, consultants and employees, together with anyone else Eads permits or invites upon the surface of the Railway Lands above or below the Easement Area, shall adhere to the directions of any supervisory personnel (including flagmen) the Railway may require to supervise such entry and any work that Eads undertakes, and Eads shall pay to the Railway such amounts as the Railway determines is owing to it in this regard immediately, on demand; and
- (v) such other reasonable conditions as may be stipulated by the Railway.

The Railway agrees that, provided that Eads complies with all of terms and conditions referred to above to the satisfaction of the Railway, the Railway will not unreasonably withhold its consent to such entry.

Notwithstanding the foregoing, should an emergency situation arise, Eads shall contact the person to whose attention notices addressed to the Railway must be sent in accordance with the Notice provisions of this Agreement to make special arrangements to enter the Railway Lands. The Railway agrees to act reasonably in these situations.

3. CONSIDERATION

The consideration paid to the Railway by Eads for the granting of the Easement Rights is the sum of \$5,000.00 U.S. and other good and valuable consideration, plus all applicable taxes payable thereon, the receipt and sufficiency of which is hereby acknowledged by the Railway.

As additional consideration, Eads, at its expense, agrees to mow and spray, or arrange for the mowing and spraying of, the Railway right of way and station grounds within the Eads town limits, including the areas between tracks, during the calendar year 2006. Mowing shall be scheduled during the months of June, August and October. Eads shall submit a spraying proposal to Railway with a list of the chemicals to be used and the cost of such chemicals. Upon review and acceptance of the Eads proposal, Railway agrees to reimburse Eads for the chemicals used to spray the property. Eads shall provide all labor and equipment for spraying, at its expense. Spraying shall be completed by July 15,

2006. Eads shall notify the Railway Manager of Operations (719) 336-0790 when its representatives enter upon and exit from the Railway property to ensure safety for the operations of the Railway.

The Railway agrees that in exchange for this consideration, Eads shall be entitled to the exercise and enjoyment of the Easement Rights, as and from the date of this Agreement, upon and subject to the terms, covenants and conditions set out in this Agreement.

During the Construction period and any subsequent Maintenance and Repair activities, which require entrance by Eads onto Railway property, Railway shall provide a flagman, if necessary, to provide communication with Railway trains and operating personnel and protection to Eads employees, contractors and representatives. The flagman will be provided by the Railway, at Eads expense, at the rate of \$100 per day or portion thereof.

4. PARAMOUNTCY OF RAILWAY USES ON RAILWAY LANDS

Eads acknowledges, covenants and agrees with the Railway that:

- (a) the Railway Lands (including the Easement Area) are used by the Railway for the primary purpose of operating a railway thereon and that the Easement Rights herein granted shall in no way preclude the full, free and complete use of the Easement Area and the Railway Lands for the installation and maintenance of railroad tracks thereon and the operation of locomotives, trains and cars thereover and for any other purpose or use by the Railway that is not inconsistent with Eads's ability to install, operate and maintain the Crossing, and that the Railway shall at all times have the full, free and unobstructed use of the Railway Lands (including the Easement Area);
- (b) Eads's right to use the Easement Area, being part of the Railway Lands, is non-exclusive and acknowledges that the Railway, in its sole discretion and on terms set out by the Railway, has in the past granted and may in the future grant rights to other persons (the "Third Parties") to enter upon and use the Railway Lands for various purposes including, without limitation, for railway purposes, for communication purposes, for the installation of utilities, for landscaping and for vehicular use and driveways and that such rights may be to occupy portions of the Railway Land which are parallel to or which cross over or under the Easement Area.
- (c) the Railway and such Third Parties shall at all times have unrestricted access to and use of the Railway Lands (including the Easement Area) for the purposes described in Section (b) above;
- (d) Eads shall ensure the Construction, operation, Maintenance, repair, relocation or Removal of the Crossing shall at no times obstruct or interfere with the railway operations or with the operations of Third Parties permitted by the Railway on the Railway Lands (including the Easement Area). Railway operations shall include, without limitation, railway vehicles and equipment of every nature, trackage,

switches, signals, electric service lines, radio repeater stations and all other improvements and facilities now or hereafter erected or placed on the Railway Lands for the purpose of such operations. Eads also agrees to not otherwise impede the efficient and safe operation of the rail corridor by the Railway.

5. COMPLIANCE WITH LAWS

Eads covenants and agrees with the Railway to comply, at its sole risk and expense, with the general orders, regulations, plans and/or specifications adopted or approved by the Federal Railroad Administration, the Surface Transportation Board (or any successor organization) or any authority having jurisdiction in respect of pipe or wire or other type of crossings over or under railways in force from time to time, together with all applicable statutes, regulations, codes, by-laws, ordinances, orders, directions and other relevant law (including, without limitation, all environmental laws applicable to the lands and premises pertaining to the Crossing as well as those respecting the storing and handling of flammable liquids and gases) (collectively "Relevant Laws"). Eads covenants and agrees to obtain, at its sole cost, all requisite approvals, consents and/or permits required in connection with the Crossing and the granting of and Eads's exercise of the Easement Rights.

6. CONSTRUCTION AND MAINTENANCE

- (a) Notwithstanding any other provision of this Agreement, under no circumstances may Eads undertake any Construction, Maintenance and/or, Removal of the Crossing, without the prior written consent of the Railway obtained in each instance in accordance with the terms of Section 2 (d), including Eads delivering written notice to the Railway not less than 10 days prior (or such longer period as the Railway may reasonably determine from time to time provided that the Railway has provided notice of such longer notice period to Eads) to the commencement date of such Construction, maintenance and/or Removal of the Crossing. Such consent shall not be unreasonably withheld or delayed by the Railway, having regard to the requirement that any such work not interfere with or impede in any way the operation of an active rail corridor for the movement of rail traffic upon the Railway Lands. Eads shall ensure that such work is performed in a good and workmanlike manner, at its sole cost and risk, strictly in accordance with any conditions specified by the Railway (acting reasonably having regard to the requirement that any such work not interfere with or impede in any way the operation of an active rail corridor for the movement of rail traffic upon the Railway Lands) at the time any such consent may be granted. Eads shall warranty the work during the term of the Agreement
- (b) Eads shall use and maintain the Crossing in good order and condition at its sole risk and cost, to the satisfaction of the Railway and in accordance with all Relevant Laws. In the event that Eads fails to do so, then the provisions of Section 15 (Remedies) shall apply.

7. RELOCATION

- (a) Eads agrees that, if at any time the Railway is required by the Surface Transportation Board, Federal Railroad Administration, or other authority having jurisdiction, to make changes to its track, structure or facilities which would in its opinion necessitate the relocation or modification of all or any part of the Crossing, the Railway shall give written notice thereof to Eads in accordance with Section 7(b) below. At the expiry of such notice period Eads shall forthwith commence and thereafter diligently proceed to modify or relocate the Crossing at its sole cost and in completing such modification or relocation Eads covenants and agrees to comply with the terms set out by the Railway including those set out in Section 2(d)(i) through (v) inclusive of this Agreement.
- (b) The Railway shall give Eads at least ninety (90) days prior written notice of any such modification or relocation unless a shorter period is required by the Surface Transportation Board, Federal Railroad Administration or other authority having jurisdiction. In case of emergency, the Railway may give such shorter notice, as it deems expedient.
- (c) Where modification or relocation is required by the Surface Transportation Board, Federal Railroad Administration or other authority having jurisdiction, nothing herein contained shall preclude Eads from recovering its costs for such modification or relocation from such authorities and the Railway shall not take any action which will prejudice Eads's right of recovery from such third parties.
- (d) Upon Eads's failure to comply to relocate or modify the Crossing as required above, the provisions of Section 15 (Remedies) shall apply.
- (e) All the provisions of this Agreement shall apply to the Crossing while being moved, altered or protected and upon completion of the relocation, Eads will execute and deliver such quit claims, releases and discharges as reasonably required by the Railway and the parties shall execute an agreement on the same terms and conditions as this Agreement with respect to the relocated Crossing.

8. DISCONTINUANCE

- (a) If at any time Eads shall determine to permanently discontinue the use of the Crossing, Eads shall give the Railway at least sixty (60) days notice of such discontinuance. In the event of such discontinuance this Agreement shall be terminated upon the expiration of such notice period. In that event, Eads shall forthwith at its own risk and expense diligently pursue the removal of the Crossing from the Railway Lands and in doing so leave the Railway Lands in good order and condition, free of any environmental contamination resulting from Eads's occupation or use thereof. Such Removal may be subject to the supervision of the Railway and shall be in accordance with the terms set out by the Railway pursuant to Section 2 (d) of this Agreement.

- (b) Eads may request the Railway's written permission to abandon the Crossing in place, in which case the Railway shall consider but shall not be obliged to approve such request, on conditions satisfactory to the Railway. If approved, the Crossing will become the Railway's unencumbered exclusive property but Eads shall remain fully responsible for any damage whatsoever that may be caused to the Railway by the Crossing continuing in place and Eads shall indemnify and hold harmless the Railway from and against any damage, claim, action of any nature resulting from the abandonment of the Crossing including any damage, claim or action related to any environmental contamination resulting from Eads's occupation or use thereof.
- (c) If Eads determines to discontinue its use of the Crossing, it shall not be entitled to any refund of the compensation paid pursuant to Section 3 hereof.

9. INDEMNITY

- (a) Eads shall indemnify and save harmless the Railway, its employees, officers, directors, agents and/or others for whom it may be responsible for at law, from and against all actions, causes of action, proceedings, claims and demands (hereinafter referred to as "Liability") for any losses, costs, damages or expenses suffered or incurred by the Railway, by reason of any damage to property including Railway Lands or injury, including injury resulting in death, to persons, including the employees, officers, agents, licensees or invitees of the Railway caused by, resulting from or attributable to the existence, Construction, operation, Maintenance, relocation, modification or Removal of the Crossing and shall assume all risks of any damage to the property of Eads or injury, including injury resulting in death, to the employees, officers, agents licensees or invitees of Eads while on Railway Lands.
- (b) Without limiting the generality of Section 9(a) and notwithstanding the submission by Eads of any plan pursuant to the terms of this Agreement or the subsequent approval thereof by the Railway, or the failure, if any, of the Railway to properly verify that said plan conforms to all applicable rules, requirements and specifications established from time to time by the Federal Railroad Administration, and notwithstanding the Railway's supervision, if any, provided for herein, Eads shall indemnify and save harmless the Railway from and against any Liability which the Railway may suffer, resulting from the inadequate or faulty Construction, operation, Maintenance, relocation, modification or Removal by Eads of the Crossing.
- (c) Eads agrees to indemnify and save harmless the Railway against all taxes (except income taxes), rates and assessments at any time levied or assessed by any government authority against the Crossing, or against the Railway or Railway Lands by reason of and with respect to the Crossing.
- (d) Eads acknowledges that installing the Crossing on the Right-of-Way provides some risk that the Crossing may be damaged in the course of train operations.

Therefore, notwithstanding any other language in this Agreement to the contrary, Eads releases the Railway from any loss, damage and/or claim Eads may have against the Railway resulting from derailments or other accidents of a similar catastrophic nature, from vibration or other activities of the Railway in the ordinary course of its operations.

10. CONDITION OF EASEMENT AREA

Eads hereby accepts the Easement Area in its existing condition, on an "as is" basis and hereby waives against the Railway, all rights and recourses of any nature whatsoever in respect of any defects within the Easement Area, including any adverse soil conditions. The Railway makes no representation or warranty with respect to the condition, nature, composition, use (past, present or future) of the Easement Area, in respect of which Eads acknowledges that it has satisfied itself.

11. ENVIRONMENTAL OBLIGATIONS

- (a) Eads shall immediately, at its sole cost and risk and in accordance with any terms and conditions set by the Railway,
 - (i) carry out all measures the Railway may consider appropriate to keep the Railway Lands free and clear of all environmental contaminants, hazardous substances, and/or residue (hereafter referred to as "environmental contamination") resulting from and/or in connection with the Crossing and/or Eads's occupation and/or use of the Easement Area and/or Eads's exercise of the Easement Rights;
 - (ii) carry out all work required to correct any environmental contamination which occurs within the Easement Area, or which occurs on other lands (including the Railway Lands) as a result of and/or in connection with the Crossing and/or Eads's occupation and/or use of the Easement Area and/or Eads's exercise of the Easement Rights;
 - (iii) notify the Railway promptly once Eads becomes aware of, or has reason to believe, that any environmental contamination is present upon the Easement Area or the Railway Lands. Eads shall be liable to remediate any environmental contamination caused by Eads or by those for whom Eads is in law responsible, which could have been prevented and/or ameliorated had Eads complied with this obligation to give notice to the Railway once Eads becomes aware of or has reason to believe that any such source of contamination exists.
- (b) The Railway may undertake such testing of the Railway Lands (including the Easement Area) as the Railway may consider appropriate. In the event that such testing discloses the presence of contaminants, which Eads is liable to remediate, then without limiting the liability of Eads in this regard, Eads shall also be responsible for the cost of such testing.

- (c) Upon the termination of this Agreement, Eads shall leave the Easement Area free of any environmental contamination resulting from or in connection with the Crossing and/or Eads's occupation and/or use of the Easement Area and/or exercise of the Easement Rights. Eads shall have the burden of proving that any environmental contamination has not resulted from its occupation or use of the Easement Area and/or exercise of the Easement Rights.
- (d) The responsibility of Eads to the Railway with respect to the environmental obligations contained in this Agreement shall continue to be enforceable by the Railway, notwithstanding the termination or assignment of this Agreement.

12. OWNERSHIP AND RESPONSIBILITY

The title to the Crossing placed under the Railway Lands shall remain vested in Eads, subject to the provisions of Section 8 (Discontinuance) and Section 16 (Termination).

13. DISCHARGE OF LIENS

Eads covenants and agrees that it shall not create or permit to remain, but will remove and discharge or cause to be removed and discharged promptly at its cost and expense any lien, encumbrance, charge or claim for lien upon the Railway Lands which arises out of the use thereof hereunder by Eads or by reason of labour or material furnished or claimed to have been furnished for Eads. Eads shall not be required to pay any such lien, encumbrance, charge or claim of lien so long as it shall, in a timely manner, contest or cause to be contested at its cost and expense the amount or validity thereof and shall take all appropriate proceedings necessary to prevent the collection of or other realization upon such lien, encumbrance, charge or claim of lien and the sale or forfeiture of the Railway Lands or any part thereof or any interest therein to satisfy the same. Any such contest shall be promptly prosecuted to a final conclusion and Eads shall pay and save harmless the Railway from and against all losses, judgements, decrees and costs (including lawyers' reasonable fees and expenses on a solicitor and own client basis) in connection therewith and shall promptly after final determination of such contest pay or discharge any amount levied, assessed, charged, imposed or determined to be payable therein together with all penalties, fines, interests, costs and reasonable expenses.

14. INSURANCE

- (a) Eads will procure and maintain throughout the term of this Agreement, commercial general liability insurance with insurance companies acceptable to the Railway, protecting both the Railway and Eads against liability for bodily injury and death and for damage to or destruction of property by Eads, as well as the exposures contemplated by Section 11 (Environmental Obligations) of this Agreement, with liability coverage in an amount of not less than \$2,000,000 per occurrence, and such higher limits as the Railway may reasonably require from time to time. It is understood that the employees of Eads shall not be considered employees of the Railway. The insurance provided herein shall apply to the

Railway and Eads (the "Insureds") in the same manner and to the same extent as if a separate policy had been issued to each and shall contain a cross liability clause.

- (b) Other than as specifically provided for in this Agreement, Eads shall have no claim against the Railway or the Railway's insurance for any damage Eads may suffer, and Eads shall require the insurers under the insurance in Section 14(a) above to waive any right of subrogation by the insurer against the Railway.
- (c) Upon the written request of the Railway, Eads shall provide to the Railway evidence of such insurance having been obtained and maintained in the form of a certificate of insurance, and such insurance shall not be subject to cancellation and/or alteration except after at least ninety (90) days' prior written notice to the Railway. If Eads fails to comply with the requirements hereof to obtain insurance, the Railway may, but need not, obtain such insurance and keep the same in effect and Eads shall pay to the Railway the premium cost thereof upon demand.
- (d) The Railway shall not be responsible for the payment of any premiums with respect to such insurance, and shall not be responsible for notifying the insurers of any occurrence or accident in or around the land occupied by Eads.
- (e) Eads agrees that the insurance provided herein does in no way limit Eads's liability pursuant to the Indemnity provisions of this Agreement.

15. REMEDIES

If Eads fails to or neglects to perform any act, pay any money and/or if Eads is otherwise in default of its obligations under this Agreement including but not limited to its environmental obligations pursuant to Section 11 of this Agreement, then the Railway shall be entitled to, but under no obligation to, undertake such measures as the Railway may consider appropriate at the sole cost and risk of Eads, who shall be liable to pay such amounts incurred by the Railway to the Railway, on demand. Without limiting the generality of the foregoing, if the Railway carries out work as an agent for Eads pursuant to this Section, Eads shall pay to the Railway the reasonable costs of all such work on the basis of all reasonable costs and reasonable expenses incurred plus reasonable labor overheads as may be currently applicable and set out by the Association of American Railroads (AAR), and reasonable material handling costs as may be currently applicable to the Railway.

16. TERMINATION

- (a) Notwithstanding any other provision of this Agreement, in the event that Eads fails to comply with any of the terms and conditions of this Agreement, the Railway shall have the right to terminate this Agreement, together with any right, title and interest of Eads in the Easement Rights and the Easement Area, on notification to Eads in accordance with the following. The Railway shall give to

Eads written notice pursuant to Section 18 (Notice) setting out the details of such breach and the Railway's intent to cancel the Agreement. At the expiration of thirty (30) days from the date of receipt of such notice, if Eads has failed to rectify the breach or to commence rectification of such breach in a reasonable and diligent manner, the Railway may cancel the Agreement effective at least thirty (30) days from a further written notice to Eads. Upon such termination, the provisions of Sections 6 (Construction and Maintenance) and 8 (Discontinuance) relating to the Removal of the Crossing shall apply.

- (b) Notwithstanding such termination, all provisions of this Agreement, including payment provisions, shall remain applicable to the Crossing until such time as the Crossing will have been physically removed from Railway Lands unless such Removal has been dispensed with pursuant to Section 8 (Discontinuance) of this Agreement.

17. FURTHER ASSURANCES

Eads and the Railway covenant and agree that they shall execute and deliver all such further assurances and/or do or perform or cause to be done and perform all such acts and things as may be required to perform this Agreement and each and every one of the terms of this Agreement, at the sole cost of expense of Eads. Without limiting the obligations of the parties under this Agreement, Eads hereby specifically covenants and agrees that in the event that this Agreement and easement are terminated in accordance with Section 8 (Discontinuance) and Section 16 (Termination) of this Agreement or the Crossing is relocated in accordance with Section 7 (Relocation), Eads shall execute and deliver, on or before the date such termination is effective, a good and valid quit claim and release of any right, title or interest it may have in the Railway Lands, including the Easement Area, and registrable discharges of any instrument registered on title to the Railway Lands relating to the Agreement in registrable form, and containing such terms as are satisfactory to the Railway, acting reasonably and Eads shall be responsible for all costs associated with the registration of such quit claims, releases and discharges.

18. NOTICE

- (a) Except as otherwise provided herein, notices shall be in writing and shall be delivered to the party entitled to receive the same by personal delivery, or by registered or certified mail. Notices may also be communicated by any electronic means which can produce a written copy provided that written acknowledgement of the receipt of the electronic communication notice is obtained.
- (b) Any notice given under this Agreement shall be effective as of the date of delivery in the case of personal delivery, as of the date of mailing in the case of notices sent by registered or certified mail and as of the date of electronic transmission in the case of notices given by electronic communication where receipt of the communication has been acknowledged in writing.

- (c) All notices and correspondence exchanged between the Railway and Eads as required to fulfill the obligations of this Agreement shall be sent by either of the following methods: by registered or certified mail, by facsimile, by personal delivery or by courier to:

The Railway: V&S Railway LLC
P.O. Box 26421
Salt Lake City, UT 84126
Facsimile: (801) 977-9387

Eads: Town of Eads, CO
110 W 13th, P.O. Box 8
Eads, CO 81036-0008
Phone: 719-438-5590
Attention: ~~Donna~~ Pack, Clerk
Dawna

or to such other person or address as either party may designate by notice given in accordance with this Agreement.

- (d) Any communication relating to any matter of an emergency nature, may be given by any reasonable means. If given verbally or by telephone, such communication shall be confirmed in writing or by electronic communication, which can produce a written copy.

19. INTERPRETATION

- (a) If any provision of this Agreement is invalid under any applicable status or is declared invalid by a court of competent jurisdiction, then it shall be deemed severed herefrom, but the remainder of this Agreement shall continue in full force and effect. This provision shall not apply to the grant of the Easement Rights under this Agreement and the provision shall not apply to the payment of consideration for the grant of the Easement Rights under this Agreement, which provisions may not be severed from this Agreement.
- (b) Whenever the singular or masculine is used, it shall be construed as if the plural or the feminine or the neuter, as the case may be, had been used, where the context or the party or parties hereto so require, and this Agreement shall be construed as if the grammatical and terminological changes thereby rendered necessary has been made.
- (c) This Agreement shall be governed by and construed in accordance with the laws of the State in which the Crossing is located and the Federal laws applicable thereto.

20. ENUREMENT

- (a) In the event of any sale, transfer or other disposition of the Crossing (the "Disposition") by Eads, Eads covenants and agrees to provide the Railway with prior written notice of the Disposition including the name and address for service of the person, corporation or other entity receiving the benefit of the Disposition (the "Purchaser"). The parties to the Disposition agreement shall, as a condition precedent to the Disposition, sign an assumption agreement with the Railway, in a form and containing such terms as may be acceptable to the Railway, whereby the Purchaser agrees to assume or undertake to comply with and perform Eads's rights and responsibilities under the Agreement and the Purchaser shall not be entitled to exercise the Easement Rights granted pursuant to this Agreement until such time as the assumption agreement has been executed by Eads and the Purchaser and delivered to the Railway. The Railway is not obligated to release Eads from its obligations under this Agreement.
- (b) This Agreement shall extend to, be binding upon and enure to the benefit of the successors in title, successors and assigns of the parties to this Agreement.
- (c) Where Eads is comprised of more than one corporation, each Board acknowledges and agrees that it is jointly and severally liable for the performance of all of the terms and conditions of this Agreement.

21. TIME OF THE ESSENCE

Time shall be of the essence of this Agreement.

22. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement between the parties with respect to the easement granted hereunder, and the Railway and Eads agree that there are no representations or warranties relating to their respective rights and obligations hereunder except as expressly set forth herein. There are not and shall not be any verbal statements, representations, warranties, undertakings or agreements between the parties purporting to vary the terms of this Agreement and this Agreement may not be amended or modified in any respect, except by written instrument signed by the parties hereto or by their successors or permitted assigns.

23. NON-WAIVER

No condoning, excusing or overlooking by either party, or by any person acting on its behalf, on previous occasions, of breaches or defaults similar to that for which any action is taken, or power exercised, or forfeiture is claimed or enforced against either party, shall be taken to operate as a waiver of any provision of this agreement, nor to defeat, affect or prejudice in any particular way the rights of the parties hereunder.

24. GENERAL PROVISIONS

- (a) The titles and heading used in this Agreement are provided solely to facilitate reference to its various provisions and shall not be used in its interpretation.
- (b) All dollar amounts referred to in this Agreement are in U.S. funds.

IN WITNESS WHEREOF the Railway and Town of Eads, CO have executed this Agreement as of the date set out above.

Jana Abbott

Witness

V&S RAILWAY LLC

Steven J. Van Wagenen
Name: Steven J. Van Wagenen

Title: Vice President & General Manager

I/We have authority to bind the Town of Eads.

TOWN OF EADS, CO

Larry D. Michael
Name:

Title: Mayor

Dawna Peck
Name:

Title: Town Clerk



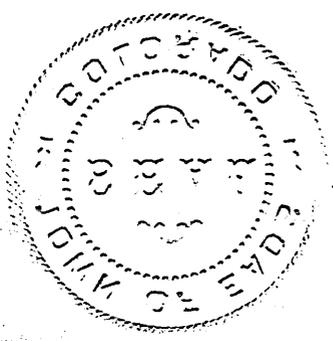
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SCHEDULE "A" – PLAN OF THE CROSSING

Attached Railway Crossing Drawing Prepared by GMS, Inc.
February 2006

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SCHEDULE "B"

Railway Lands

That land located in Eads, CO described on attached documentation.

AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY

State of Utah)
) §
County of Salt Lake)

I, Steven J. Van Wagenen, of Salt Lake City, in the State of Utah, MAKE OATH AND SAY:

- 1. I am an officer of the V&S RAILWAY LLC., named in the within or annexed instrument.
- 2. I am authorized by the corporation to execute the instrument without affixing a corporate seal.



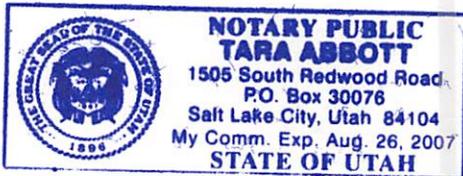
Steven J. Van Wagenen, Vice President

AFFIDAVIT OF EXECUTION

On this 17th day of June, 2006, before me Tara Abbott, a notary public, personally appeared Steven J. Van Wagenen, personally known to me to be the person whose name is subscribed to on this instrument, and acknowledged that he executed the same.



Notary Signature and Seal



STATE OF ILL.
My Comm. Exp. Aug. 28, 2011
2411 Lake City Drive, 84102
P.O. Box 30078
1505 South Redwood Road
TARA ABBOTT
NOTARY PUBLIC



May 16, 2006

Steven Van Wageningen
David Albert
V & S Railway, Inc.
115 W. Beech St.
Lamar, CO 81052

Gentlemen:

The Town of Eads has reviewed the Easement Agreement dated April 30, 2006 between V & S Railway LLC and Town of Eads Colorado. The Town of Eads agrees to the agreement with the exception of paragraph two in section 3. The Town offers the following wording for the paragraph: "As additional consideration, Eads agrees to mow and spray the Railway right of way and station grounds within the Eads town limits for the summer of 2006 only. V & S Railway agrees to pay for the chemicals used to spray the property. Eads shall notify the Railway Manager of Operations (719) 336-0790 when its representatives enter upon and exit from the Railway property to ensure safety for the operations of the Railway."

The Town of Eads is very excited to start working on our drainage project and hope that the work we do will also benefit V & S Railway. If you agree with the re-wording of Section 3, please change the Easement Agreement and send us a new copy. We will get it approved and signed by the board. Thank you for your cooperation in this matter. If you have any questions please let me know.

Sincerely,

Larry D. Michael
Mayor

A&K0021