



Jones Lang LaSalle Brokerage, Inc
4200 Buckingham Rd, Ste 110
Fort Worth, Texas 76155
tel +1 817-230-2600, fax +1 817 306-8265

July 12, 2018

Tracking no. 18-59415

Cenex Pipeline, LLC
Attention: Mr Mike Stahly
P.O. Box 909
Laurel, Montana 59044

Dear Mr Sanford

Enclosed please find one (1) fully executed Pipeline License Agreement. A copy of the executed agreement must be available upon request at the job site as authorization to do the work.

Please contact BNSF's Scheduling Agent at wilsoncompany.utility.ic@wilsonco.com or (817) 907-8792 at least fifteen (15) days in advance of entry and BEFORE YOU DIG, CALL (800) 533-2891 (option 7). If you need additional information please contact me at (817) 230-2634.

Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the premises completes the safety orientation program at the website www.BNSFcontractor.com prior to entering upon the premises. The certification is good for one year, and each person entering the premises must possess the card certifying completion.

No encroachment above, below or on BNSF Right-of-Way will be allowed without the presence of an Inspector Coordinator and Flagman. You must contact BNSF's Scheduling Agent to arrange for those services. The scheduling agent may be contacted at wilsoncompany.utility.ic@wilsonco.com or (817) 907-8792. The installation contractor must comply with all applicable sections of this agreement, including the requirements of section 16 regarding safety requirements prior to encroaching on BNSF Right-of-Way. The installation contractor must present and maintain a copy of the executed agreement on site for the duration of the installation activities.

Sincerely,

A handwritten signature in blue ink that reads "Camille Barbosa".

Camille Barbosa
Associate Manager Permits

Enclosure

cc: wilsoncompany.utility.ic@wilsonco.com
Paul Prohaska, Roadmaster – Paul.Prohaska@bnsf.com

PIPELINE LICENSE

THIS PIPELINE LICENSE ("License") is made to be effective July 12, 2018 (the "Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **CENEX PIPELINE, LLC**, a Minnesota limited liability company ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one steel (1) pipeline, 10 inches in diameter (the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Minot, County of Ward, State of North Dakota, Line Segment 003015, Mile Post 98.15 as shown on the attached Drawing No. 71696, dated January 29, 2018, attached hereto as Exhibit "A" and incorporated herein by reference (the "**Premises**").
2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry refined petroleum products (gasoline and distillates), and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose.
5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. License Fee. Licensee shall pay Licensor, as compensation for this license, the sum of Four Thousand One Hundred Twelve and No/100 Dollars (\$4,112.00) for the first year this License is in effect, and the annual sum of Two Thousand One Hundred and No/100 Dollars (\$2,100.00) beginning with the second year this License is in effect, payable annually and in advance. Licensor reserves the right to implement a reasonable increase as conditions warrant. Billing or acceptance by Licensor of any licensing fee shall not imply a definite term or otherwise restrict either party from canceling this License as provided herein
7. Costs and Expenses.
 - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
 - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence,

construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

7.3 Licensor, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;

9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or

9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.

10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

LICENSEE'S OPERATIONS

11. **Construction and Maintenance of the Pipeline.**

11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's Roadmaster at 6400 4th Ave NE, Minot, ND 58702, telephone (701) 837-6759, at least ten (10) business days

prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.

- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to

properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

- 11.8 For Horizontal Directional Drilling (HDD) the cutting head must travel at 0.0% grade (or downward) beginning 25' (minimum) from centerline of track until it reaches a point 25' (minimum) from the centerline of track. Minimum pressure must be applied to pumping the slurry to the cutting head during drilling. This will deter the bentonite slurry used for lubrication from seeping up and fouling the track roadbed. A BNSF Flagman must be present during installation and will monitor the ballast and roadbed.

12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.
- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 Any open hole, boring, or well, constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- 12.3.1 filled in to surrounding ground level with compacted bentonite grout; or
- 12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE13. Liability and Indemnification.

13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**

13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**

13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**

13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**

13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**

13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**

13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE**

FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**

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

14. Personal Property Risk of Loss. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

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

15.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

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

- 15.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:
- Bodily injury and property damage.
 - Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

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

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

- 15.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is **\$1,266.00**.

I elect to participate in Licensor's Blanket Policy;

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

- 15.5 Pollution Legal Liability (PLL) Insurance. This insurance shall be in an amount of at least FIVE MILLION DOLLARS (\$5,000,000) per claim including but not limited to the following:
- Coverage for bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death.
 - Coverage for property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed.
 - Coverage for defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
 - Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in BODILY INJURY, PROPERTY DAMAGE, or Remediation Expense.
 - If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually Licensee agrees to provide evidence of such coverage as required hereunder.
 - Amend the Contractual Liability exclusions and employers' liability exclusion to provide coverage for liability assumed under contract.
 - Amend the definition of Property Damage to provide coverage for natural resource damage.
- 15.6 Other Requirements:
- 15.6.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- 15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.
- 15.6.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.
- 15.6.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

- 15.6.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.
- 15.6.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- 15.6.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.
- 15.6.10 Failure to provide evidence as required by this Section 15 shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.11 The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.6.12 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable.
- 15.6.13 For purposes of this Section 15, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

- 16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety

Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.

- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. ENVIRONMENTAL.

- 17.1 Licensee shall strictly comply with all Environmental Laws (as defined below). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or Hazardous Materials (as defined below) on or about the Premises.
- 17.2 Except as specifically set forth in this License, including any exhibits hereto, Licensee covenants that it will not handle or transport Hazardous Materials through the Pipeline on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of Hazardous Materials on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use its best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not

relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

- 17.6 **"Environmental Law(s)"** shall mean any federal, state, or local law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, or local environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.
- 17.7 **"Hazardous Material(s)"** shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, or local governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.
- 17.8 Licensee shall, as minimum standards that may be exceeded, design, construct and operate the Pipeline in accordance with all Legal Requirements and with the most current standards set forth by industry groups and/or associations such as the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) and the American Petroleum Institute (API) ("Standards"). In addition to meeting or exceeding the minimum Standards and Legal Requirements referenced in this Section 17.8, the Pipeline shall also be double walled with a system for interstitial monitoring for rupture detection and shall otherwise meet all Legal Requirements for rupture detection. Licensee shall conduct routine and condition-based monitoring consistent with Licensee's Environmental Compliance Plan, as described in Section 17.9.
- 17.9 Licensee shall comply with the Environmental Compliance Plan ("ECP") attached hereto as **Exhibit B**, which ECP was prepared by Licensee. The ECP shall meet or exceed Legal Requirements and Standards for the safe operation of the Pipeline and shall be updated at least annually and more frequently as necessary to ensure and demonstrate ECP compliance with such Legal Requirements and Standards. Each update to the ECP shall be promptly submitted to BNSF and thereby become a part of this License. In addition to the foregoing requirements, the ECP shall (1) identify measures to be implemented by Licensee to identify, prevent and mitigate incidents which may potentially create a risk of harm to persons, property or the environment during construction, operation and removal of the Pipeline, and during restoration of the Premises and any impacted property upon termination of the License; (2) identify routine and condition-based monitoring to be conducted by Licensee which will ensure that the integrity and functionality of the Pipeline is maintained and that

the risk for potential harm to persons, property and the environment is mitigated; (3) identify remedial actions to be undertaken upon the development of such observations, data or results; (4) specify Licensee's plans to remove the Pipeline and all ancillary structures and to restore the Premises upon termination of the License; (5) specify Licensee's plans to make the Pipeline and ancillary structures free of any materials and products and flushed clean; (6) specify Licensee's plans to investigate, confirm, and, if necessary, remediate impacts to surface or subsurface soil associated with Licensee's Pipeline, which investigation and remediation shall be in full compliance with Legal Requirements.

DISCLAIMER OF WARRANTIES

18. No Warranties.

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

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. Disclaimer of Warranty for Quiet Enjoyment. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.

LIENS AND TAXES

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. **Default and Termination.** In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:
- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.
- 23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
- 23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.
24. **Surrender of the Premises.**
- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;
- 24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
- 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
- 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.
- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of

Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor.

MISCELLANEOUS

25. **Successors and Assigns.** All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. **Assignment.**

- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. **THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.**

- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend

and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.

26.4 The provisions of this **Section 26** shall survive the expiration or earlier termination of this License.

27. **Notices.** Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham Rd, Ste 110
Fort Worth, TX 76155
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2301 Lou Menk Drive, GOB-3W
Fort Worth TX 76131
Attn: Senior Manager Real Estate

If to Licensee: Cenex Pipeline, LLC
P.O. Box 909
Laurel, MT 59044

28. **Survival.** Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.
29. **Recordation.** It is understood and agreed that this License shall not be placed or allowed to be placed on public record.
30. **Applicable Law.** All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.
31. **Severability.** To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.
32. **Integration.** This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

END OF PAGE – SIGNATURE PAGE FOLLOWS

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

LICENSOR:

BNSF RAILWAY COMPANY a Delaware corporation

By: 2301 Lou Menk Drive, GOB-3W
Fort Worth TX 76131

By: 
Blaine Bilderback

Title: Director Corporate Real Estate

Date: 7/12/18

LICENSEE:

CENEX PIPELINE, LLC a Minnesota limited liability company

By: P.O. Box 909
Laurel, Montana 59044

By: 

Title: VP, PIPELINES & TERMINALS

Date: 3/22/18

MAP REF. S50758

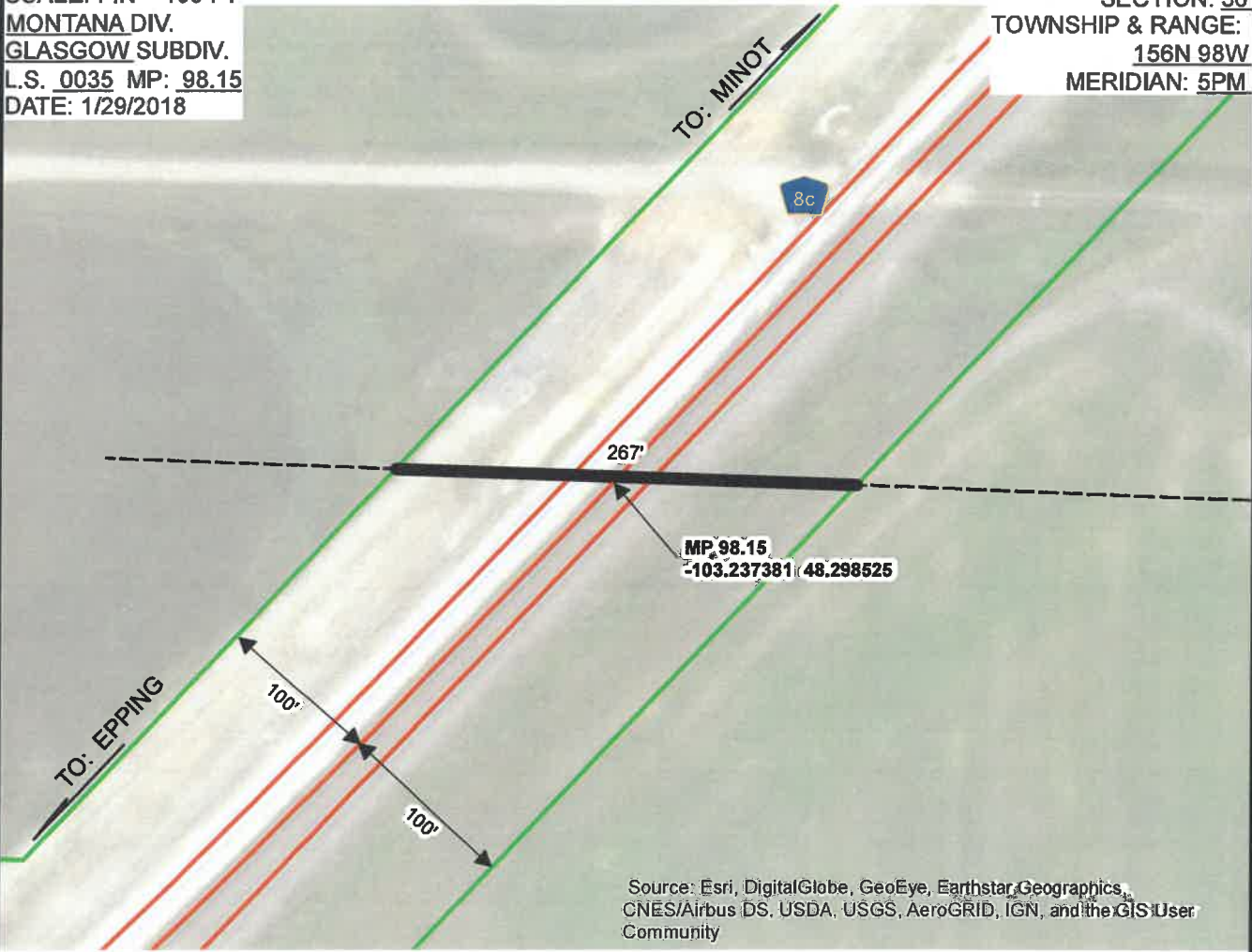
EXHIBIT "A"
 ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
 AND

CENEX PIPELINE, LLC



SCALE: 1 IN = 100 FT
 MONTANA DIV.
 GLASGOW SUBDIV.
 L.S. 0035 MP: 98.15
 DATE: 1/29/2018

SECTION: 36
 TOWNSHIP & RANGE:
156N 98W
 MERIDIAN: 5PM



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

DESCRIPTION OF PIPELINE
 PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	<u>10"</u>	-	LENGTH ON R/W:	<u>267'</u>	-
CONTENTS:	<u>REFINED PETROLEUM PRODUCTS</u>		WORKING PRESSURE:	<u>1440 PSI</u>	
PIPE MATERIAL:	<u>STEEL</u>	-	BURY: BASE/RAIL TO TOP OF CASING	<u>41.98'</u>	
SPECIFICATIONS / GRADE:	<u>API X52 (52,000 PSI)</u>	-	BURY: NATURAL GROUND	<u>24.32'</u>	
WALL THICKNESS:	<u>0.365"</u>	-	BURY: ROADWAY DITCHES	<u>24.32'</u>	
COATING:	<u>FBE & ARO</u>	-	CATHODIC PROTECTION	<u>YES</u>	

VENTS: NUMBER - SIZE - HEIGHT OF VENT ABOVE GROUND -
 NOTE: CASING TO BE INSTALLED BY HORIZONTAL DIRECTIONAL DRILL

WHEELOCK
 COUNTY OF WILLIAMS

STATE OF ND

XLR

**Environmental
Compliance Plan for
BNSF Railway
Crossing**

Cenex Pipeline, LLC.

Refined Fuels Pipeline
Sidney, MT to Minot, ND

Prepared by
KLJ
4585 Coleman St
Bismarck, ND 58503

Prepared for
BNSF Railway Company

04/25/2018

EXHIBIT B

Environmental Compliance Plan for BNSF Railway Crossing

Cenex Pipeline, LLC. Refined Fuels Pipeline Sidney, MT to Minot, ND

TABLE OF CONTENTS

Contents

1.0 Introduction.....	2
1.1 Overview of the Project.....	2
1.2 Objective of the Environmental Compliance Plan.....	4
2.1 Roles and Responsibilities.....	4
3.0 Environmental Compliance Timeline.....	5
3.1 Pre-Construction Compliance.....	5
3.2 Pipeline Construction.....	6
3.3 Post-Construction and Routine Pipeline Operations.....	6
3.4 Abandonment / Removal Process.....	7
4.0 Reporting and Notifications.....	8
4.1 Reporting of Environmental Non-Compliance.....	8
5.0 Environmental Response and Remediation.....	8
5.1 Environmental Emergency Response.....	8

LIST OF FIGURES

Figure 1 - Overall Project and BNSF Crossing Location Map.....	3
--	---

LIST OF EXHIBITS

Appendix A –	BNSF Crossing Location Maps and Engineered BNSF Crossing Drawings
--------------	---

EXHIBIT B

Environmental Compliance Plan for BNSF Railway Crossing

Cenex Pipeline, LLC. Refined Fuels Pipeline Sidney, MT to Minot, ND

1.0 Introduction

1.1 Overview of the Project

Cenex Pipeline, LLC. (Cenex) has prepared this Environmental Compliance Plan (ECP) for the Burlington Northern and Santa Fe Railway (BNSF) in order to comply with the BNSF requirements for crossings of the Cenex Refined Fuels Pipeline shown in the Figures included within this document.

The proposed project is to construct a new ten-inch (10") pipeline from Sidney, MT to Minot, ND for the purpose of replacing a portion of an existing eight-inch (8") pipeline system, while adding throughput capacity for refined petroleum fuels. This project would encompass approximately 181.5 miles of pipeline and is in rural portions of Richland and Roosevelt Counties in MT and Williams, Mountrail, and Ward Counties in ND. The proposed alignment is planned to cross the BNSF ROW four times, two each in Montana and North Dakota. **Figure 1. Overall Project and BNSF Crossing Location Map** below shows the proposed alignment and BNSF crossing locations.

The Project would consist of a 10"-diameter steel pipeline with a wall thickness of 0.365 inches. The pipe would be designed to be cleaned and inspected using ILI tools, such as cleaning PIGs and smart PIGs. The proposed pipeline would have a yield strength of 2,970 pound-force per square-inch gauge (psig), and welding procedures would be performed under the regulations referenced in Transportation of Hazardous Liquids by Pipeline guidance (49 CFR Part 195). The pipeline would have a maximum temperature rating of 100 degrees Fahrenheit and a maximum allowable operating pressure of 1440 psig. The Project would typically operate at approximately 45 degrees Fahrenheit and 1,400 psig. The MLVs would be 10", flanged end, full-port valves manufactured in accordance with American Petroleum Institute (API) Standard 6D (API Specification for Steel, Gate, Plug, Ball, and Check Valves for Pipeline Service) (49 CFR Part 195.3).

EXHIBIT B

Environmental Compliance Plan for BNSF Railway Crossing

Cenex Pipeline, LLC. Refined Fuels Pipeline Sidney, MT to Minot, ND

The Pipeline crosses BNSF property at four locations (two each in ND and MT), which are depicted below. In order to minimize potential impacts to the railways and adhere to BNSF requirements, the crossing locations will be Horizontal Directional Drilled (HDD) to a minimum depth of 25 feet between the base of the rail to the top of the pipe, and will extend past the limits of the BNSF Property with a minimum ground cover of 10 feet on BNSF property. No ground disturbing activities will take place within the BNSF right of way. Engineered drawings and Pipeline Crossing Location Maps are included in Appendix A for reference.

For clarification, the crossing exhibits for crossing number 18-59396 in Section 11, Township 26 North, Range 59 East, incorrectly lists Richland County; whereas the crossing is within Roosevelt County. This correction has not been implemented to prior reviewed/approved documents, but should be noted for future consideration.

1.2 Objective of the Environmental Compliance Plan

The objective of this Environmental Compliance Plan is to demonstrate and ensure commitment to environmental integrity and responsibility with all federal, state and local laws during all phases of the Project. Environmental compliance will be carried out through compliance training, tracking, inspection, and maintenance during the pre-construction, construction and operation phases of the Project.

The purpose of an environmental compliance plan is to:

- Establish clear Project expectations;
- Clearly define the roles and responsibilities of Project personnel;
- Outline, recognize and understand the importance of proper construction and inspection practices to prevent negative environmental impact;
- Affirm environmental commitment to all inspectors, supervisors and managers in order to meet and exceed the requirements and standards for safe operation;
- Permit efficient implementation of legislative requirements and permit conditions
- Enable cooperation between engineering, construction and environmental

2.0 Commitment to Environmental Protection

Cenex is committed to constructing the pipeline and valve sites in compliance with all environmental legislation, applicable permit conditions, regulatory requirements and specifications, while minimizing environmental impact.

2.1 Roles and Responsibilities

The construction and commissioning of the Project is the responsibility of Robb Schwend construction Manager.

Project Manager's responsibilities:

EXHIBIT B

Environmental Compliance Plan for BNSF Railway Crossing

Cenex Pipeline, LLC Refined Fuels Pipeline Sidney, MT to Minot, ND

- Ensure Contractors understands the Environmental Protection Plan during the construction
- Resolve any conflicts between the construction management and environmental considerations
- Review environmental compliance reports and incident reports
- Develop corrective and follow-up actions proceeding incidents

The Construction Contractor's Environmental Compliance Manager is responsible to:

- Report to the Project Manager on anything related to environmental compliance
- Implement the Environmental Compliance Plan
- Ensure Contractor's environmental policies are adopted and practiced
- Conduct site visits to ensure inspection and compliance programs are in effect
- Coordinate and facilitate environmental compliance audits
- Accompany government authority responsibilities on field inspections when required and address environmental issues raised by government authorities
- Report any non-compliance to BNSF

3.0 Environmental Compliance Timeline

3.1 Pre-Construction Compliance

The Construction Contractor will initiate the environmental compliance process prior to construction by working with federal, state, and local agencies to obtain the necessary permits required for Project construction. KLJ has been employed to complete a full environmental analysis for the Project to identify any areas of concern pertaining to cultural resources, threatened and endangered species, wetlands and waterways, FEMA floodplains, and sediment and erosion control methods. The appropriate agencies will be consulted to avoid, minimize, and mitigate impacts for any environmental concerns identified.

Cenex is responsibility for compliance as follows:

- a. Cenex will obtain all governmental permits, approval and other authorizations required by applicable law to construct the pipeline.
- b. The Pipeline will be constructed, operated and maintained in accordance with all applicable federal, state and local requirements primarily including but not limited to:
 - i. 49 CFR 195: Transportation of Hazardous Liquids by Pipeline
 - ii. 49 CFR 194: Pipeline Safety: Response Plans for Onshore Transportation-Related Oil Pipelines

Environmental Compliance Plan for BNSF Railway Crossing

Cenex Pipeline, LLC. Refined Fuels Pipeline Sidney, MT to Minot, ND

3.2 Pipeline Construction

The design, construction and operation of the facilities will be in accordance with PHMSA standards and all project permits. The design, construction and operation of the pipeline will also comply with other federal and state codes and regulations where applicable.

The project will be constructed according to all applicable regulatory publications/standards, including all updated PHMSA requirements, which can be found at <https://www.phmsa.dot.gov/>. The materials and equipment will meet all required applicable standards, specifications and codes for the relevant jurisdiction.

3.3 Post-Construction and Routine Pipeline Operations

The Cenex pipeline system would be controlled by Cenex at their Laurel, MT control center. The control center serves as an emergency reporting center (via publicized toll-free telephone number) and would be available to pipeline employees, the public, and public officials should they need to report unusual conditions or pipeline failures. Cenex uses SCADA systems to provide 24-hour monitoring of pipeline and pump operations (e.g., pressures, temperatures, and flow rates). Cenex would maintain an emergency response program and comprehensive preventative maintenance program for the Project that would meet, and in some cases, exceed minimum federal safety standards administered by PHMSA regulations and other industry standards. This includes oil spill response equipment, personnel, resources and frequent training and exercises. The Project would comply with USDOT regulations, specifically the design, construction, pressure testing, operation, welding, maintenance and emergency response requirements, as outlined in Transportation of Hazardous Liquids by Pipeline regulations (49 CFR Parts 194 and 195). Upon completion of construction and prior to commissioning, the pipeline would be hydrotested for pipeline integrity.

Measures will be taken to ensure that the pipeline Operator will implement the following processes to prevent and mitigate incidents, which may potentially create a risk of harm to people, property and/or the environment during normal operation and maintenance.

- **Damage prevention:** When put into operation, the new pipeline will be operated in accordance with all pipeline safety laws and regulations. This includes manuals, plans, programs, and procedures for compliance with federal, state and local regulations. Cenex currently has Operation and Maintenance Manuals, Emergency Procedures, and Oil Spill Response Plans (EPOSRP) for their existing infrastructure. These Manuals and Plans will be revised to include the operation of the proposed project. In compliance with federal regulation and oversight, Cenex also maintains extensive Integrity Management, Damage Prevention, and Public Awareness programs which will pertain to operation of the pipeline.
- **Leak detection:** The Cenex pipeline system would be controlled by Cenex at their Laurel, MT control center. The control center serves as an emergency

EXHIBIT B

Environmental Compliance Plan for BNSF Railway Crossing

Cenex Pipeline, LLC. Refined Fuels Pipeline Sidney, MT to Minot, ND

reporting center (via publicized toll-free telephone number) and would be available to pipeline employees, the public, and public officials should they need to report unusual conditions or pipeline failures. Cenex uses SCADA systems to provide 24-hour monitoring of pipeline and pump operations (e.g., pressures, temperatures, and flow rates). Cenex would maintain an emergency response program and comprehensive preventative maintenance program for the Project that would meet, and in some cases, exceed minimum federal safety standards administered by PHMSA regulations and other industry standards. This includes oil spill response equipment, personnel, resources and frequent training and exercises.

- Operational monitoring: See above.
- Overpressure protection: Mainline valves would be inspected at least two times per year to ensure proper operation. All overpressure safety devices capable of limiting, regulating, controlling, and relieving operating pressure would be inspected and tested to ensure the device is in good mechanical condition and functioning properly.
- Integrity Management: Operator will implement the following, in accordance with its Pipeline Integrity Management Program:
 - Risk assessment of potential threats – Cenex Pipeline, LLC. (CPL) uses GIS based models to identify High Consequence Areas and pipeline hazards. The GIS also allows CPL to spatially overlay cathodic protection (CP) data, ILI data, historical pipeline damages/excavation near misses, one call volumes, depth of cover, crossing and encroachment data, and material information for use in annual integrity reviews
 - Assessment of the identified potential threats – Cenex Pipeline, LLC maintains CP and tracks the performance of the system by monitoring rectifiers (monthly), performing annual CP surveys, detecting and mitigating AC (where present) and completing close interval surveys to evaluate for potential interference and coating issues (every 5 years). CPL performs weekly aerial overflights of the pipeline system to evaluate for hazards including flooding, subsidence, exposures, landslides, third party excavation, etc.
 - Preventive and mitigation process of the assessment – Cenex Pipeline, LLC reviews Preventative Mitigation Measures Process(PMM) on an annual basis. The PMM review generates action items for consideration by upper management. CHS has implemented a substantial amount of PMM recommendations in the past decade, one of which is this replacement project.

The Operator will also adhere to its Damage Prevention Program and its Public Awareness Program to prevent undesirable incidents which could affect pipeline integrity.

3.4 Abandonment / Removal Process

Upon termination of the License, this portion of the pipeline will be purged, flushed and cleaned of all materials and products, at which point the pipeline will be properly taken

out of service and abandoned in place or removed.

4.0 Reporting and Notifications

The following documents will be used to document and track environmental compliance:

- Construction Communication Plan: Cenex will adhere to the requirements of our permits, programs and procedures, and regulatory requirements.
- Permit Binder: The Permit Binder will on the construction location at all times.

4.1 Reporting of Environmental Non-Compliance

The Construction Contractor and Operation's Environmental Compliance Manger will manage all environmental non-compliances through reporting and follow-up during pre-construction, construction and operation. BNSF will be notified immediately and in accordance with State and Federal Regulations. For applicable incidents, a written incident investigation will be completed and signed by the Construction Project Manager. As appropriate, Cenex will take ownership of the issue and corrective measures will be developed. A follow-up report will state all the corrective actions that were taken.

5.0 Environmental Response and Remediation

5.1 Environmental Emergency Response

The goal is to conduct an efficient and safe emergency response in the event of an incident to help reduce potential environmental impacts. API Recommended Practices (RP) 1174 (Onshore Hazardous Liquid Pipeline Emergency Preparedness & Response) provides the framework for an effective emergency response. It is intended to align industry, government and emergency response organizations' expectation practices and competencies. Responses to emergencies will be in accordance with the Cenex Pipeline Emergency Procedures Manual and Oil Spill Response Plan.

Immediate verbal and follow-up written notice will be given in the following cases:

- Release of hazardous liquids affecting BNSF territory
- Violation of environmental laws
- Any conditions that may potentially cause harm to people, property and/or the environment
- All measures taken to investigate, remediate or respond to a hazardous liquid release and/or an environmental violation as per local, state and federal regulations

EXHIBIT B

Environmental Compliance Plan for BNSF Railway Crossing

Cenex Pipeline, LLC. Refined Fuels Pipeline Sidney, MT to Minot, ND

If a leak occurs, the following steps shall be taken:

- Immediately leave the area and avoid making contact with the escaping liquids or vapors
- Avoid potential ignition sources and abandon all equipment being used in the area
- Do not try to operate any pipeline valves
- Do not use a cell phone in the emergency area
- From a distance, call Cenex Emergency Line listed below or 911
- Call BNSF Service Interruption Desk at 817-352-2832 (North) or 817-352-2833 (South) and report the incident.

Pre-Construction and Construction Contact Information:

Robb Schwend – Cenex Pipeline,
LLC

803 Highway 212 South, Laurel,
MT 59044

406-628-5451

Resource Operations Center Contact Information (Post Construction):

Cenex Pipeline Control Center

753 Bernhardt Road

406-628-5200

EXHIBIT B

**Exhibit A:
BNSF Crossing Location Maps and
Engineered BNSF Crossing Drawings**

PROPOSED PROJECT LOCATION

EXHIBIT B

CENEX
PIPELINE

Railroad Crossing

N





W

E



S

LEGEND

-  Railroad Crossing
-  RailRoads
-  Proposed Centerline
-  Sections

RAILROAD CROSSING: 18-59415 _____ SEC: 36 TWN: 156N RNG: 98W

COUNTY: Williams STATE: North Dakota

Disclaimer

The data shown in this map is not survey grade accuracy and should not be used as a legal survey document. All parcel boundaries within this map have unknown accuracies. This map was produced by the KLJ GIS Division utilizing ESRI's ArcMap 10.4 on Windows 7 Professional workstation. KLJ, Inc. has compiled this map according to conventional cartographic standards, using what is thought to be the most reliable information available. KLJ does not guarantee freedom from errors or inaccuracies and disclaims any legal responsibility or liability for interpretations made from the map, or decisions based thereon.