

**COUNCIL ACTION FORM**

**SUBJECT: CANCELLATION OF AN INVALID “LICENSE AGREEMENT” BETWEEN THE CITY OF AMES AND THE CHICAGO & NORTHWESTERN RAILWAY COMPANY (CURRENTLY THE UNION PACIFIC RAILROAD)**

**BACKGROUND:**

In 1948, a license agreement between the City of Ames, Iowa, and the Chicago & Northwestern Railway Company was established to allow the City’s power plant “diesel” building to encroach or exist in close proximity to a spur track of Chicago & Northwestern (C&NW) Railway Company (currently d/b/a the Union Pacific Railroad (UPRR)). This spur track, which was to the north of the mainline tracks, served a coal unloading hopper for the City’s power plant. This spur track and the coal unloading hopper were removed from service circa 1979, so the encroachment of the building’s foundation wall on the spur track was relieved at that time.

This spring, in preparation for the demolition and the rebuilding of the cooling towers later this year, staff researched the license agreements that exist between the City and the railroad in the vicinity of the power plant, especially those that could affect the cooling tower work to be performed. This “diesel” building needs to be demolished to allow for demolition and construction access to Unit 8 cooling tower.

On April 23, 2015, staff requested the UPRR consider cancelling several invalid license agreements, including and most importantly, the aforementioned agreement. After several email exchanges between the City and the UPRR to clarify issues, on June 1, 2015, the City received an email from the UPRR stating that they had already cancelled this license agreement in their system back on October 31, 2012.

**ALTERNATIVES:**

1. The City Council should take action to officially cancel the license agreement (COA No. AGR 691 or UPRR Audit No. NWX1609) with Union Pacific Railroad.
2. Take no action.

**MANAGER'S RECOMMENDED ACTION:**

Maintaining a license agreement between the City and UPRR will require unnecessary coordination between the City and the railroad during the demolition of the diesel building. The original need for the license ceased to exist when the spur track was removed. Therefore, it is the recommendation of the City Manager that the

City Council approve Alternative #1, thereby cancelling the license agreement with Union Pacific Railroad.

**CHICAGO AND NORTH WESTERN**

**RAILWAY COMPANY**

(hereinafter called "Railway Company") hereby licenses **CITY OF ANNE, IOWA,**

(hereinafter called "Licensee") to construct, maintain and use, **a concrete building footing**

(hereinafter called "facility") upon the property of the Railway Company **at ANNE, IOWA,**

in the location and position, and in accordance with the specifications shown on the blue print dated

**APRIL 16, 1948,**..... hereto attached marked Exhibit **22**.....

and, by this reference, made a part hereof.

The foregoing license is given upon such express terms and conditions as are inserted below, as well as those contained upon the subsequent printed page, and should the Licensee at any time violate any of said terms or conditions, or use or attempt to use said facility for any other or different purpose than that above specified, then the Railway Company may, at its option, immediately revoke this license.

The foregoing license is subject to the following conditions:

First. The work of construction and maintenance shall be done and completed in good and workmanlike manner, at the sole expense of the said Licensee, and under the direction and supervision of the Chief Engineer of the Railway Company and to his satisfaction. Said work shall be done in such manner as in no way to interfere with the use of the property or tracks of the Railway Company, or the operation thereon of any engines, cars or trains, or to endanger the same.

Second. The said Licensee shall bear the cost of all protection which the Railway Company may require for its tracks or property during construction and maintenance hereby authorized and of all repairs, changes, additions or betterments to said Railway Company's tracks or property made necessary on account of same. If in the judgement of the Railway Company it shall be necessary to provide support for its tracks during the work of construction or maintenance the Railway Company will provide such support, and the entire cost thereof will be paid by the said Licensee promptly upon receipt of bill therefor.

Third. The said Licensee will give to the Chief Engineer of the Railway Company at least ten days' notice in writing before entering upon the right of way of the Railway Company for construction purposes, or for the purpose of making necessary repairs. The Railway Company reserves the right to judge of the necessity of repairs to said facility, and to require the Licensee to make such repairs upon ten days' notice in writing. In such case, said Licensee may enter upon said right of way without the ten days' notice above referred to, and shall proceed forthwith to make such repairs, and upon failure to do so within ten days, the Railway Company shall have the right to make said repairs and collect the entire cost thereof from the Licensee. The Railway Company reserves the right, in case in its opinion the safety of its tracks or property demands it, to make emergency repairs without notice to the Licensee and to collect the cost thereof from Licensee as herein provided.

Fourth. The Licensee assumes and agrees to pay for all loss or damage to property and injury to or death of persons, including costs and expenses incident thereto, arising, wholly or in part, from or in connection with the existence, construction, maintenance, repair, renewal, reconstruction, operation, use or removal of said facility or any defect therein or failure thereof, causing same or contributing thereto; and the Licensee shall forever indemnify the Railway Company against and save it harmless from all liability for any such loss, damage, injury and death, including all costs and expenses incident thereto.

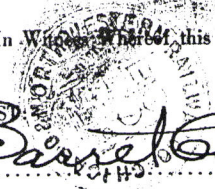
Fifth. The Railway Company reserves the right to use, occupy and enjoy its tracks, property and right of way, for such purpose, in such manner, and at such time as it shall desire, the same as if this instrument had not been executed by it. If any such use shall necessitate any change in the location or construction of said facility, or any part thereof, such change shall be made by the Licensee, at the expense of the Licensee, upon demand of the Railway Company, and the said Railway Company shall not be liable to the said Licensee on account thereof, or on account of any damage growing out of any use which the Railway Company may make of its said tracks, property and right of way.

Sixth. The Railway Company shall have the right at any time to revoke this license by giving thirty days' notice in writing to the Licensee and at the expiration of the time limited by said notice, or upon any other revocation of this license, the Licensee shall promptly, and in the manner directed by said Chief Engineer, remove all construction hereby authorized from the premises of the Railway Company and leave said premises in the same condition in which they were before the installation of the same. Upon default of the Licensee so to do, the Railway Company may remove the same and restore its premises, and the Licensee will promptly pay to the Railway Company the cost of so doing.

Seventh. The waiver of a breach of any of the terms or conditions hereof shall be limited to the act or acts constituting such breach, and shall never be construed as being a continuing or permanent waiver of any such terms or conditions, all of which shall be and remain in full force and effect as to future acts or happenings, notwithstanding any such waiver.

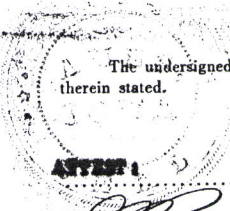
Eighth. This license is personal to said Licensee and is not assignable or transferable, without the written consent of the Railway Company being first obtained.

In Witness Whereof this instrument is executed this 5 day of June, 1948

ATTEST:  Barrett Conway Secretary By [Signature] Assistant to the President

Pursuant to authority granted by resolution of the City Council of the City of Ames, Iowa, adopted May 24, 1948

The undersigned, the Licensee mentioned in the foregoing license, hereby accepts the same subject to the terms and conditions therein stated.

ATTEST:  [Signature] City Clerk. By W.D. Allen Mayor (Title)

Lease Audit #NWX1609 was cancelled in our system on October 31, 2012.

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This correspondence is not intended as, and does not constitute, a binding agreement by any party, or an agreement by any party to enter into a binding agreement. A contract will not exist unless and until Union Pacific Railroad Company Management approval has been obtained and the parties have executed a formal Agreement, approved by their respective counsel, regarding the subject matter of the correspondence and containing all other essential terms of an agreed upon transaction which terms shall be subject to future negotiations by the parties at their sole discretion.

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Date: 05/22/2015 04:02 PM  
Subject: Re: Proposal to Vacate (3) License Agreements Between the Chicago and North Western Railway Company and the City of Ames

Justin or Alissa:

Can I get a status of the progress to vacate the Building Encroachment agreement (covered by Audit # NWX1609)? The other two agreements (discussed in the email threads below) from the City's point of view are not time sensitive, but the one referencing this building is, because we need to demolish the building referenced in the agreement starting the last half of June (2015).

Please let me know.

Thank you.

Brian Trower

{In Archive} Re: Proposal to Vacate (3) License Agreements Between the Chicago and North Western Railway Company and the City of Ames