

AGREEMENT
FOR THE USE OF THE COUNTY FIREARMS RANGE
BNSF Railway Police Department

THIS AGREEMENT, is made and entered into by and between **BNSF Railway Company, a Delaware Corporation, on behalf of its Railway Police Department**, hereinafter referred to as “the Contractor”, and Lancaster County, Nebraska, a political subdivision of the State of Nebraska, hereinafter referred to as “the County”. Collectively the County and the Contractor may be referred to as the “Parties,” and individually each may be referred to as a “Party.”

WHEREAS, the County owns and operates the Lancaster County Firearms Range, hereinafter referred to as “County Firearms Range,” for firearms training and qualification testing for Lancaster County Sheriff’s Deputies;

WHEREAS, the Contractor desires to use the County Firearms Range for training and qualifications testing of its personnel;

WHEREAS, the Lancaster County Sheriff has recommended approval of the Contractor’s use of the County Firearms Range and has requested the County to enter into this Agreement on behalf of the Lancaster County Sheriff’s Office; and

WHEREAS, the Contractor shall be allowed to use the County Firearms Range upon entering into a written agreement with the County setting forth the terms and conditions of the use as described below;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. The Contractor and its agents and employees shall be permitted to use the County Firearms Range for the purpose of firearms training and qualifications testing provided that the following conditions have been met:
 - A. Contractor and its agents and employees shall abide by all applicable Nebraska statutes, federal laws, and Lancaster County Sheriff’s Office SOP 1360 and other department policies for use of the County Firearms Range.
 - B. Contractor shall provide the County with a contact person who will be supervising Contractor’s employees and agents at the Firearms Range.
 - C. Said supervisor shall be a certified Federal Firearms Instructor.
 - D. Contractor shall be responsible for the costs of repairing the

County Firearms Range should the Contractor or its employees or agents cause any damage to the County Firearms Range beyond reasonable wear and tear.

- E. Contractor shall permit only its employees and agents to use the County Firearms Range.
 - F. No civilian guests will be allowed to enter upon the premises of the County Firearms Range.
 - G. At the conclusion of each instance of Contractor usage of the County Firing Range, the Contractor shall collect and remove all shell casings from the County Firing Range that arise out of the Contractor's usage. The Contractor shall be responsible for supplying the necessary containers and equipment to facilitate the removal of the shell casings, and shall be responsible for disposing of the shell casings at Contractor's own cost.
 - H. Each Contractor usage of the County Firing Range is subject to the prior express approval of the County Firing Range's Range Master. Contractor shall schedule each usage with the Range Master by email or telephone. The dates and times of Contractor's usage shall be scheduled at the sole discretion of the Range Master.
 - I. Each Contractor usage of the County Firing Range is subject to the prior express approval of the County Firing Range's Range Master. Contractor shall schedule each usage with the Range Master by email or telephone. The dates and times of Contractor's usage shall be scheduled at the sole discretion of the Range Master.
2. The Initial Term of this Agreement shall begin on the day of execution by both Parties and shall continue for a period of five years, unless terminated as provided hereinafter. At the conclusion of the Initial Term and any Renewal Term, the Agreement shall automatically renew for a Renewal Term of one year, unless terminated as provided hereinafter. Collectively, the Initial Term and any Renewal Term(s) shall constitute the Term of this Agreement.
3. The Contractor shall indemnify and hold harmless the County, its agents, employees, officials, and representatives from all claims, demands, suits, actions, payments, liability, judgments, and expenses (including court-ordered attorney's fees), arising out of or resulting from the performance of this Agreement that results in bodily injury, sickness, diseases, death, civil rights liability, or injury to or destruction of tangible property, including the loss of use resulting therefrom, and is caused in whole or in part by the Contractor, its employees, agents, or representatives, either directly or indirectly employed by the them. This section

will not require Contractor to indemnify or hold harmless the the County for any losses, claims, damages, or expenses arising out of or resulting from the negligence of the County.

4. The Contractor shall, prior to using the County Firing Range, provide proof of insurance coverage in a form satisfactory to the County, which shall not withhold approval unreasonably. The coverages and minimum levels required by this Agreement are set forth below and shall be in effect throughout the Term of the Agreement. No work pursuant to this Agreement shall begin until all insurance obligations herein are met to the satisfaction of the County, which shall not unreasonably withhold approval. Self-insurance shall not be permitted unless consent is given by the County prior to execution of the Agreement and may require submission of financial information for analysis. Deductible levels shall be provided in writing from the Contractor's insurer and will be no more than \$25,000.00 per occurrence. Said insurance shall be written on an **OCCURRENCE** basis, and shall be **PRIMARY, with any insurance coverage maintained by the County being secondary or excess.**
 - A. **Certificates.** The Contractor shall provide certificates of insurance and endorsements evidencing compliance with these requirements. The Contractor shall provide a Certificate of Insurance demonstrating the coverage required herein and the necessary endorsements and waivers described herein and below before being permitted to begin the work or project. All certificates, endorsements and endorsement forms (where required) must be acceptable to the County Attorney. Certificates shall include an endorsement to provide for at least thirty (30) days' firm written notice in the event of cancellation. During the term of the Agreement and during the period of any required continuing coverages, the Contractor shall provide, prior to expiration of the policies, certificates and endorsement forms evidencing renewal insurance coverages. The parties agree that the failure of County to object to the form of a certificate and/or additional insured endorsement or endorsement forms provided shall not constitute a waiver of this requirement.
 - B. **Commercial General Liability.** The Contractor shall provide proof of Commercial General Liability Insurance with a minimum limit of not less than \$1,000,000.00 each occurrence and \$2,000,000.00 aggregate. These minimum limits can be met by primary and umbrella liability policies. Coverage shall include: Premises-Operations, Products/ Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury. Such coverage shall be endorsed for the general aggregate to be on a **PER PROJECT** basis, and the Contractor shall provide an

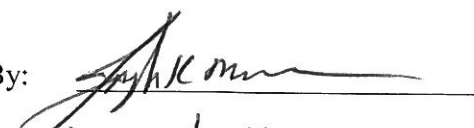
additional insured endorsement acceptable to the County. The required insurance must include coverage for all projects and operations of Contractor or similar language that meets the approval of the County, which approval shall not be unreasonably withheld.

- C. **Additional Insured (Requires an Endorsement Form)**. An Additional Insured Endorsement Form showing the County as additional Insured under the commercial general liability policy.
 - D. **Automobile Liability**. The Contractor shall provide proof of Automobile Liability coverage, which shall include: Owned, Hired and Non-Owned. Bodily Injury and Property Damage Combined Single Limit shall be at least \$1,000,000 Per Accident.
 - E. **Workers' Compensation; Employers' Liability**. The Contractor shall provide proof of workers' compensation insurance of not less than minimum statutory requirements under the laws of the State of Nebraska and any other applicable State. Employers' Liability coverage with limits of not less than \$500,000.00 each accident or injury shall be included. The Contractor shall provide the County with an endorsement for waiver of subrogation. The Contractor shall also be responsible for ensuring that all subcontractors have workers' compensation insurance for their employees before and during the time any work is done pursuant to this Agreement.
 - F. All Liability Insurance policies shall be written on an "Occurrence" basis only. All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted otherwise.
 - G. **Sovereign Immunity**. Nothing contained in this clause or other clauses of this Agreement shall be construed to waive the Sovereign Immunity of the County.
5. In consideration for the County's providing the Contractor access to the County Firearms Range, the Contractor hereby agrees to waive all claims, suits, actions, proceedings, losses, damages, liabilities, awards and costs of every kind and description, including reasonable attorney's fees and expenses at trial (collectively "claims") which the Contractor has or may have a right to bring against the County, or its officials, agents, and employees, arising out of or related to the Contractor's use of the County Firearms Range, including but not limited to claims for any personal injury, death, or property damage caused by any alleged

act, omission, error, fault, mistake, or negligence of the County, or its officials, agents, and employees.

6. The Contractor assumes all the risks of using the County Firearms Range, including, but not limited to, any lead dust inhalation, noise, airborne materials or objects, and the actions of other users of the County Firearms Range.
7. This Agreement shall be governed and interpreted by the law of the State of Nebraska without reference to the principles of conflicts of law.
8. This Agreement may be terminated at any time by either Party giving thirty (30) days written notice to the other Party.
9. If any portion of this Agreement is held invalid, the remainder hereof shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.
10. Contractor shall not assign its rights, duties, and responsibilities under this Agreement without the express written permission of the County. Any assignment without the express written permission of the County shall be absolutely void.
11. Any amendments to this Agreement shall be made in writing and signed by both Parties.
12. The Parties hereby agree that this Agreement constitutes the entire understanding of the Parties on the subject matter of this Agreement and supersedes all prior contracts, agreements and negotiations between the Parties on the subject matter of this Agreement, whether verbal or written.
13. The undersigned on behalf of the Contractor hereby agrees and represents that he or she is legally capable to sign this application and to lawfully bind the Contractor to the terms and conditions of this Agreement.

EXECUTED this 8 day of August 2017, by the Contractor.

By: 

Name: Joseph K. Mace

Title: Special Agent in Charge

EXECUTED this ____ day of _____ 2017, by the County.

BY THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

APPROVED AS TO FORM
this _____ day of _____ 2017.

Deputy County Attorney
For JOE KELLY
Lancaster County Attorney



Joseph K. Marr
Special Agent in Charge

BNSF Railway Company
201 N 7th Street
Lincoln, NE. 68508
Phone: 402-458-7771
Fax. 402-458-4349
Email joe.marr@bnsf.com

August 8, 2017

Sgt. Brent Moore
Lancaster County Sheriff's Office
575 S. 10th Street
Lincoln, NE. 68508

RE: Status of Self Insurance—Shooting Range Access and Use

Dear Sgt. Moore,

The BNSF Railway Company is insured under Burlington Northern Santa Fe. LLC's Excess Property and Liability Policies. Our self-insured retention is in keeping with our net worth and cash flow and is consistent with that of other corporations of similar operations and size. Adequate reserves are maintained for claims within our retention.

In lieu of a Certificate of Insurance, please accept this letter to you that the BNSF Railway Company has the financial resources to respond to liabilities arising from its contractual obligations. This covers the BSNSF Railway Company's operations anywhere in North America.

If you have any question, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph K. Marr". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Joseph K. Marr