

July 27, 2017

Mr. Riley Neumann  
Wisconsin Department of Natural Resources  
2300 North Dr. Martin Luther King, Jr. Drive  
Milwaukee, Wisconsin 53212-3128

**Re: *Site Investigation Status Report***  
***BRRTS #: 02-41-576336***  
***BRRTS #: 02-41-579429***  
***FID #: 241828620***  
***Sunrise Shopping Center***  
***2410-2424 10<sup>th</sup> Avenue & 1009 Marquette Avenue***  
***South Milwaukee, Wisconsin 53172***

Mr. Neumann:

A *Site Investigation Report Work Plan* (SIWP) dated May 12, 2017, for the Sunrise Shopping Center (Site), has been approved by the Wisconsin Department of Natural Resources (WDNR). The SIWP proposed additional soil, groundwater, and vapor sampling as requested in WDNR's March 27, 2017, letter in order to meet the requirements of a complete Site Investigation per NR 716.

Most of the Site Investigation activities proposed in the SIWP have been completed. However, included in the proposed sampling was the installation of sampling points off-site to the south and to the west, pending permission for access. To date, access has not been obtained from either neighboring property owner. This *Site Investigation Status Report* is being submitted to the WDNR for concurrence that all Site Investigations are sufficiently complete and compliant with the requirements of NR 716.

### **Southern Property**

To obtain permission to install the three (3) proposed off-site soil borings to the south of the Site, a request for access letter dated May 16, 2017, was sent to Servproperties of Southeast Wisconsin, LLC, the owner of the property to the south of the Site. Tracking information obtained from FedEx documents the delivery of the letter on May 18, 2017. To date, no response has been received. In addition to the request for access letter, phone calls were also made to Servproperties requesting access. No one in a position to grant access ever returned our calls. Further, while performing on-site sampling activities in May, someone from Servproperties approached the DAI field personnel and stated that any access to the Servproperties property was denied.

Although the off-site sampling would have been preferable, it is DAI's opinion that further sampling to the south is not necessary to meet compliance with NR 716. Soil contamination within the southern extent of the Site includes Benzene and Polynuclear Aromatic Hydrocarbons (PAHs). The Benzene contaminant extent has been fully delineated (see Figure B.2.a.2.a of the May 2017 SIWP), and the extent of PAH soil contamination is effectively complete (see Figure B.2.a.1.a of the May 2017 SIWP). Off-site contamination is estimated to extend approximately 20-ft to the south, and the entire impacted area is covered by an asphalt parking lot which serves as an engineered barrier. The engineered barrier includes the portion of the contaminant plume that extends off-site to the south; therefore there is no threat of exposure from Direct Contact. The paving helps to reduce the infiltration rate, thereby limiting the migration of contamination from soil in the underlying groundwater. Further, groundwater is not used for potable purposes and the extent of soil contamination has been sufficiently defined to determine the best option to protect human health and the environment. DAI, on behalf of the Responsible Party, requests the WDNR's concurrence that Site Investigations along the southern portion of the Site are complete.

### **Western Property**

The SIWP proposed installation of three (3) off-site soil borings and one (1) monitoring well located to the west of the Site, on railroad right-of-way (ROW). The purpose of the soil borings and monitoring well were to complete the delineation of Tetrachloroethene (Perc) to the west.

The railroad ROW is owned by Union Pacific (UP). As required when seeking access to UP ROW, an *Application Form for Union Pacific Railroad Company Environmental Right of Entry Agreement* and formal work plan were submitted to UP in June 2017, along with a \$550 permit application fee. In an email dated July 17, 2017, UP issued a *Right of Entry Agreement and Contractor's Endorsement* for signature by the Responsible Party prior to issuing final approval to access the ROW. In addition to signatures on the forms, additional fees and requirements are placed upon the Responsible Party and DAI, as the Responsible Party's contractor. The fees and requirements are so extensive as to be unreasonable, especially in light of the relatively minimal value of the outstanding delineation data. (See UP Entry Agreement in Attachment 1.)

First, Article 10 of the *Right of Entry Agreement* requires that a \$4,000 fee be paid to UP. This fee is solely a license fee and does not apply towards the costs to be incurred for hiring a UP flagman, as required for this project. Article 9 of the *Right of Entry Agreement* requires that a \$300 per year rental fee be paid to UP, which also does not apply towards a UP flagman. Article 12 indicates that costs for a flagger will be for a full, 8-hr day, and that coordination with UP to obtain a flagger requires 30-days' notice. In addition to the \$4,300 fee plus flagman costs, a \$500 fee must be submitted along with the *Contractor's Endorsement*, and the Responsible Party, DAI, and the driller are required to maintain commercial general liability insurance with \$5,000,000 limit, business automobile coverage with \$2,000,000 limit, railroad insurance with \$2,000,000 limit, and workers compensation insurance with \$500,000 limits for accident, disease, and each employee. The railroad insurance would be an additional cost of \$2,700 to cover each of the parties, and increasing existing insurance policies for general liability and business automobile coverage to the required levels would cost several thousand dollars to each party.

Beyond the access fees and insurance costs, there are additional costs associated with physically accessing the ROW land which is heavily wooded and has overhead power lines. (See photographs below.) Insulating the power lines and then tree cutting and clearing will require additional costs, plus additional time (and assumingly fees) for UP to review and agree to these activities. As an estimate, the tree clearing and power line insulating, together with project management time, plus the UP review fees and time could be \$5,000 and take another two (2) or 3-months to obtain. All told, the costs and additional time for access are on the order of \$25,000 and another four (4) or more months, all of which are in addition to the cost of installing and sampling a single monitoring well when installed as a single well event.



Most importantly, the data obtained from the proposed off-site soil and groundwater sampling is not anticipated to be particularly useful or necessary for completing the Perc contaminant delineation, and certainly not in line with anticipated costs. Perc concentrations within the upper 4-ft below grade are observed between 0.108-mg/kg and 0.53-mg/kg in soil borings installed within 6-ft (GP-520) to 10-ft (GP-308 and GP-309) of property boundary. As observed in Figure B.2.a.2.b.1 (see Attachment 2), Perc contamination in the soil is near certain to extend off-site. However, no contamination within this far western extent exceeds the Soil Direct Contact Residual Contaminant Level (RCL), only the groundwater protection (GW) RCL. Direct Contact RCL exceedances are fully defined and limited to the front of the 2410 and 2412 tenant spaces. Even if the Direct Contact RCLs were exceeded, the threat of potential exposure is minimal based upon the area being heavily wooded railroad ROW. As observed in Figure B.2.a.2.b.2, the extent of Perc contamination in excess of 4-ft is reasonably well defined along the western boundary. Groundwater contamination for Perc is already known to be present on-site within the western property extent for which remedial actions are required, and based upon the most recently observed groundwater sampling results, contamination in the groundwater is assumed to extend off-site below the UP ROW. Therefore, the installation of the three (3) soil borings is really only useful in attempting to verify that contamination does, in fact, exceed the GW RCL within the upper 4-ft below grade and that the deeper contamination is firmly delineated on-site (or within a few feet of the property boundary off-site).

The additional off-site data is not necessary and certainly not cost-effective to simply verify what is already known. The financial and physical difficulties, together with the time delays created by performing the ROW sampling, is not consistent with the value of the additional information. Therefore, DAI, on behalf of the Responsible Party, is requesting that WDNR concur with DAI's

opinion that Site Investigations are complete. With WDNR's concurrence, a Site Investigation Report Amendment and Remedial Actions Options Report will be prepared, and the process of cleaning up the Site and obtaining Site Closure can move forward again.

**Schedule**

With WDNR's agreement, Site Investigations will be considered complete and the SIR Amendment will be submitted within 60-days after completion, as required per NR 716.15(1). A Remedial Actions Options Report, summarizing the various remedial options evaluated and proposing the best remedial method to address the observed soil, groundwater, and vapor contamination, will also be submitted.

If you have any questions or require additional information, please contact me at 847-573-8900 extension 580. Thank you for your time and assistance.

Sincerely,

**DAI Environmental, Inc.**

A handwritten signature in blue ink that reads "Christopher Cailles".

Christopher Cailles, P.E.  
Project Engineer

Attachments

cc: Steven Dukatt – Carol Investment Corporation (w/attachments)

**ATTACHMENT 1**  
**UP ACCESS AGREEMENT**

# CONTRACTOR'S ENDORSEMENT

Folder No. 03048-84

A. As a condition to entering upon Licensor's right-of-way to perform work pursuant to this Agreement, Licensee's contractor (*Fill in*):

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(hereinafter "Contractor") agrees to comply with all the terms and provisions of this Agreement relating to the work to be performed and the insurance requirements set forth in Exhibit C.

B. Before the Contractor commences any work, the Contractor will pay the Licensor a nonrefundable payment of \$500 upon execution and return of this Contractor's Endorsement, and will provide the Licensor with a certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit C in a policy which contains the following type endorsement:

UNION PACIFIC RAILROAD COMPANY is named as an additional insured with respect to all liabilities arising out of Insured's performance of work on behalf of the Licensee.

All insurance correspondence shall be directed to: Adam Engelkamp - Folder No. 03048-84, Union Pacific Railroad Company, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690.

\_\_\_\_\_  
**(Please print Contractor's Name above)**

X \_\_\_\_\_  
Title: \_\_\_\_\_

## **RIGHT OF ENTRY AGREEMENT**

**THIS AGREEMENT** is made and entered into as of July 13, 2017, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter the "Railroad"), and **CAROL INVESTMENT CORPORATION**, to be addressed at 1410 South Clinton Street, , , Chicago, IL 60607 (hereinafter the "Licensee").

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

#### **Article 1. DEFINITION OF LICENSEE.**

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

#### **Article 2. RIGHT GRANTED; PURPOSE.**

The Railroad hereby grants to the Licensee the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the portion of Railroad's property in the vicinity of Mile Post 74.51 to Mile Post 74.53, Kenosha Subdivision, at or near South Milwaukee, Wisconsin, for the purpose of One (1) permanent monitoring well, three (3) boring drills with soil samples and seven (7) subsurface soil samples. The right herein granted to Licensee is limited to those portions of the Railroad's property specifically described herein in the location shown on the print marked Exhibit A, attached hereto and hereby made a part hereof, or designated by the Railroad Representative named in Article 4.

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

#### **Article 3. TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND C.**

The terms and conditions contained in Exhibits B and C, hereto attached, are hereby made a part of this Agreement.

#### **Article 4. ALL EXPENSES TO BE BORNE BY LICENSEE; RAILROAD REPRESENTATIVE.**

The Licensee shall bear any and all costs and expenses associated with any work performed by the Licensee, or any costs or expenses incurred by the Railroad relating to this Agreement. All work performed by Licensee on Railroad's property shall be performed in a manner satisfactory to the representative local Manager of Track Maintenance of the Railroad or his authorized representative (hereinafter the Railroad Representative):

**SCHROCK, John M.**  
MANAGER OF TRACK MAINTENANCE  
612-246-6381  
jmschroc@up.com  
600 N 6th st  
DeKalb, IL 60115

**TEMPLETON, Jonathon W.**  
MANAGER OF SIGNAL MAINTENANCE  
402-290-7910  
jwtemple@up.com  
4823 N 119TH ST  
MILWAUKEE, WI 53225

**Article 5. TERM; TERMINATION.**

A. The grant of right herein made to Licensee shall commence on the date of this Agreement, and continue until terminated as herein provided, or at such time as Licensee has completed its work on Railroad's property, whichever is earlier. Licensee agrees to notify the Railroad Representative in writing when it has completed its work on Railroad property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

**Article 6. CERTIFICATE OF INSURANCE.**

A. Before commencing any work, the Licensee will provide the Railroad with a Certificate issued by its insurance carrier providing the insurance coverage required pursuant to Exhibit C of this Agreement.

B. Union Pacific should be listed as certificate holder and all insurance correspondence shall be directed to: Union Pacific Railroad Company, Director (Attn.: Adam Engelkamp - Folder No.03048-84), 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690.

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

Fiber optic cable systems may be buried on Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Prior to beginning any work, the Licensee shall telephone the Railroad at **1-800-336-9193** (a 24-hour number) to determine if fiber optic cable is buried anywhere on the property set forth herein. If it is, the Licensee shall also comply with and be subject to the provisions contained in Section 6 of Exhibit B.

**Article 8. ENFORCEABILITY; CHOICE OF LAW; CHOICE OF FORUM.**

This Agreement shall be governed, construed, and enforced in accordance with the laws of the state of Nebraska. Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the state of Nebraska and only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

**Article 9. RENT.**

A. Licensee shall pay to Railroad, in advance, rent of Three Hundred Dollars (\$300.00) annually

B. Flagging charges are not included in the sum recited in the preceding paragraph, and will be billed separately, if incurred.



**Article 10.     LICENSE FEE.**

Licensee shall pay, and Railroad shall accept, upon the execution and return of this instrument, the nonrefundable sum of **Four Thousand Dollars (\$4,000.00)** to cover Railroad's cost to prepare and administer this Agreement.

Flagging charges are not included in the sum recited in the preceding paragraph, and will be billed separately, if incurred.

**Article 11.     CONFIDENTIALITY.**

A.     The Parties acknowledge that any data, samples, test results, laboratory analyses, or other information obtained or derived from any environmental investigation or other related work performed on Railroad's Property, and all documents, reports or other information that are developed which pertain to environmental conditions on Railroad's Property (hereinafter "the Environmental Report") are confidential in nature. The Parties agree that all such information, including the Environmental Report, shall be distributed only to those officers, directors and employees of Railroad and Licensee who are authorized by the Railroad to receive such information.

B.     Government agencies that are authorized by law to obtain the Environmental Report, including any data, samples, laboratory analyses, and/or other information relied upon to develop the Environmental Report, are authorized by the Railroad to receive the Environmental Report when requested pursuant to legally applicable federal, state or local mandate. Licensee agrees that the Railroad shall be notified of any request by a federal, state or local government agency for copies of the Environmental Report and/or related information.

C.     The Licensee agrees to take all reasonable measures to assure continuous confidentiality and protection of the Environmental Report, including keeping copies to a minimum and maintaining a log that identifies each and every individual that has had access to the Environmental Report or has otherwise taken possession of the Environmental Report.

D.     Adequate instructions shall be issued by the Licensee to all affected officers, directors, employees and consultants of the Licensee as necessary to satisfy the confidentiality provisions of this Agreement.

E.     The Licensee's contractors, subcontractors, consultants, lenders, counsel and advisors, including legal counsel, that are hired to assist, conduct, prepare and/or review the Environmental Report, shall not be provided a copy of the Environmental Report and/or related information until they agree in writing to adhere to all the provisions of this Agreement.

F.     Licensee agrees that the Environmental Report, and all associated data, samples, analyses, and other information, are and shall remain the personal property of the Railroad. Upon completion of its work, Licensee agrees to turn the Environmental Report and all associated data and other information, including all copies thereof, over to the Railroad.

G.     In addition to any other remedy at law, the Parties agree that either Party shall have the right to enjoin the other Party, including the other Party's contractors, subcontractors, consultants, lenders,

counsel, and/or advisors, in any court of competent jurisdiction for breach of the confidentiality provisions of this Agreement.

H. All the terms contained in this Agreement shall survive completion of any work authorized by this Agreement, as well as any related discussions and/or negotiations. The Licensee and Railroad agree to be bound by the confidentiality provisions of this Agreement in perpetuity.

**Article 12. SPECIAL PROVISION – RAILROAD FLAGMAN; WHEN REQUIRED; FLAGGING CHARGES.**

A. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains, pursuant to the terms of the attached Exhibit 'B'. All expenses connected with the furnishing of said flagman shall be at the sole cost and expense of the Licensee, who shall promptly pay to Railroad all charges connected therewith, within 30 days after presentation of a bill therefore.

B. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays.

C. Wage rates are subject to change, at any time, by law or by agreement between the Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Licensee shall pay on the basis of the new rates and charges.

D. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the Licensee may not be working during such time.

E. Arrangements for flagging are to be made at least Thirty (30) days in advance of commencing work, with the Railroad Manager of Track Maintenance

**Article 13. LICENSEE SHALL FURNISH INFORMATION TO THE RAILROAD.**

Prior to entering Railroad's property, the Licensee shall also furnish to Railroad a copy of all correspondence (which shall remain a continuing obligation that includes all past and any future correspondence) with any regulatory agencies, or others, that may be involved in this project; a copy of a work plan and a location plan. Prior to the conclusion of this Agreement, the Licensee shall also furnish to the Railroad a copy of all boring logs, and all analytical results obtained hereunder; and advise the Railroad of any and all clean-up activities undertaken with respect to this project and the results and conclusion of same. All required information shall be directed to Union Pacific Railroad Company, c/o Mr. Joel Strafelda, 1400 Douglas Street, STOP 1030, Omaha, NE 68179-1030.

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

**UNION PACIFIC RAILROAD COMPANY**  
*Federal Taxpayer I.D. #94-6001323*

**CAROL INVESTMENT CORPORATION**

By: \_\_\_\_\_  
Jason Murray  
Manager - Contracts

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

*(Pursuant to ordinance, resolution, or other evidence of proper authority to execute this instrument, a copy of which shall be attached to the Railroad's original counterpart of this document.)*



**LEGEND:**

- SOIL BORING ..... ●
- SOIL BORING/MONITORING WELL ..... ■
- UPRRCO. R/W OUTLINED ..... - - - - -

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A" Page 1 of 3

**UNION PACIFIC RAILROAD COMPANY**

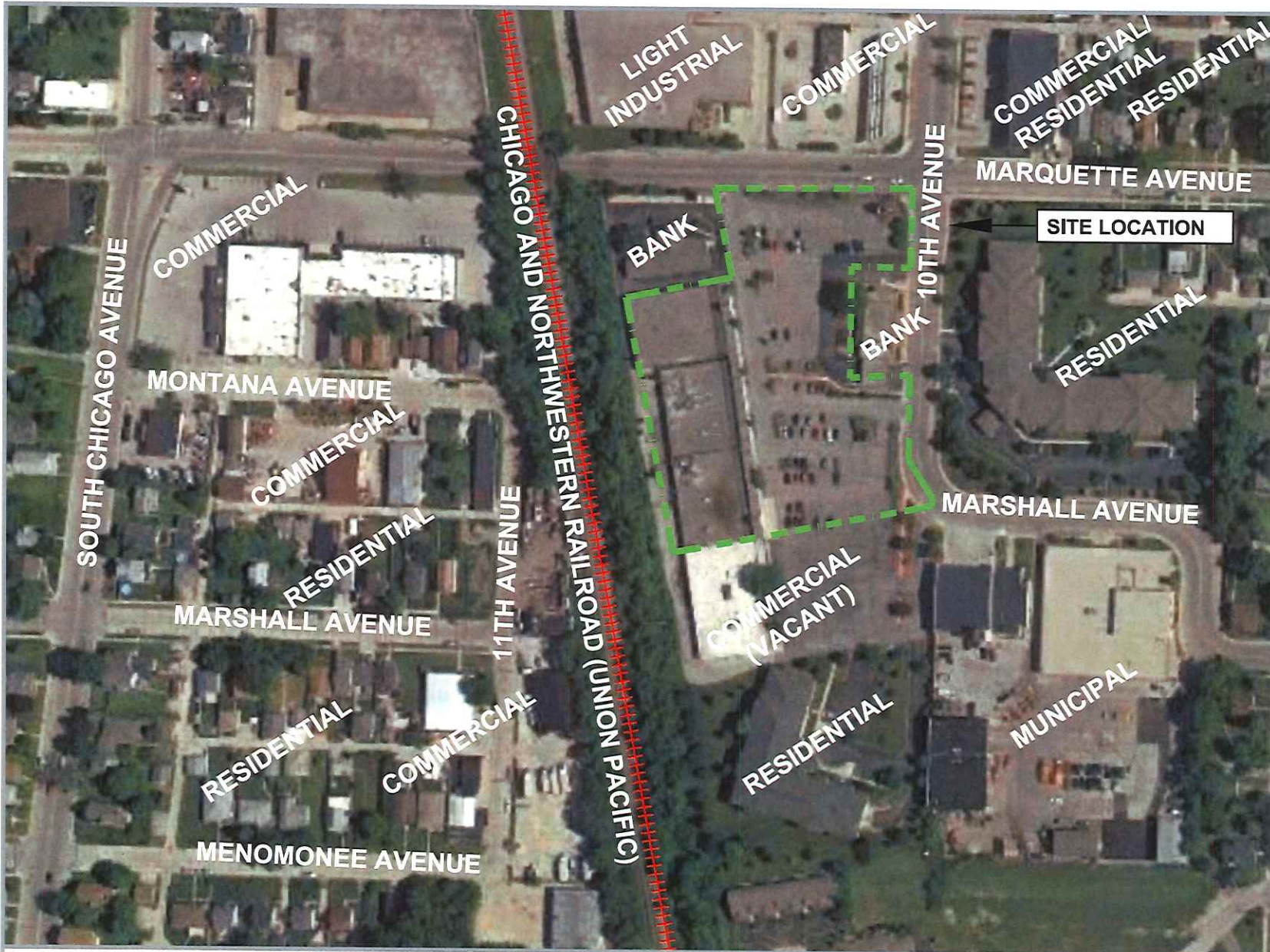
SOUTH MILWAUKEE, MILWAUKEE COUNTY, WI  
M.P. 74.51 TO M.P. 74.53 - KENOSHA SUB

TO ACCOMPANY AGREEMENT WITH  
CAROL INVESTMENT CORPORATION  
CNW WI V-2 / S 8-B  
SCALE: 1" = 100'

OFFICE OF REAL ESTATE  
OMAHA, NEBRASKA DATE: 7/6/2017

AJM FILE: 3048-84

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**LEGEND**

--- APPROXIMATE PROPERTY BOUNDARY

++++ RAILROAD TRACKS

Contact in advance to determine  
 Existence of Fiber Optic Cable  
 1(800)336-9193  
 EXHIBIT "A" Page 2 of 3  
 UNION PACIFIC RAILROAD  
 COMPANY  
 Kenosha Subdivision  
 Licensee: South Milwaukee, City of  
 RAILROAD MILE POST 74.6  
 South Milwaukee, WI  
 Folder No. 3048-84

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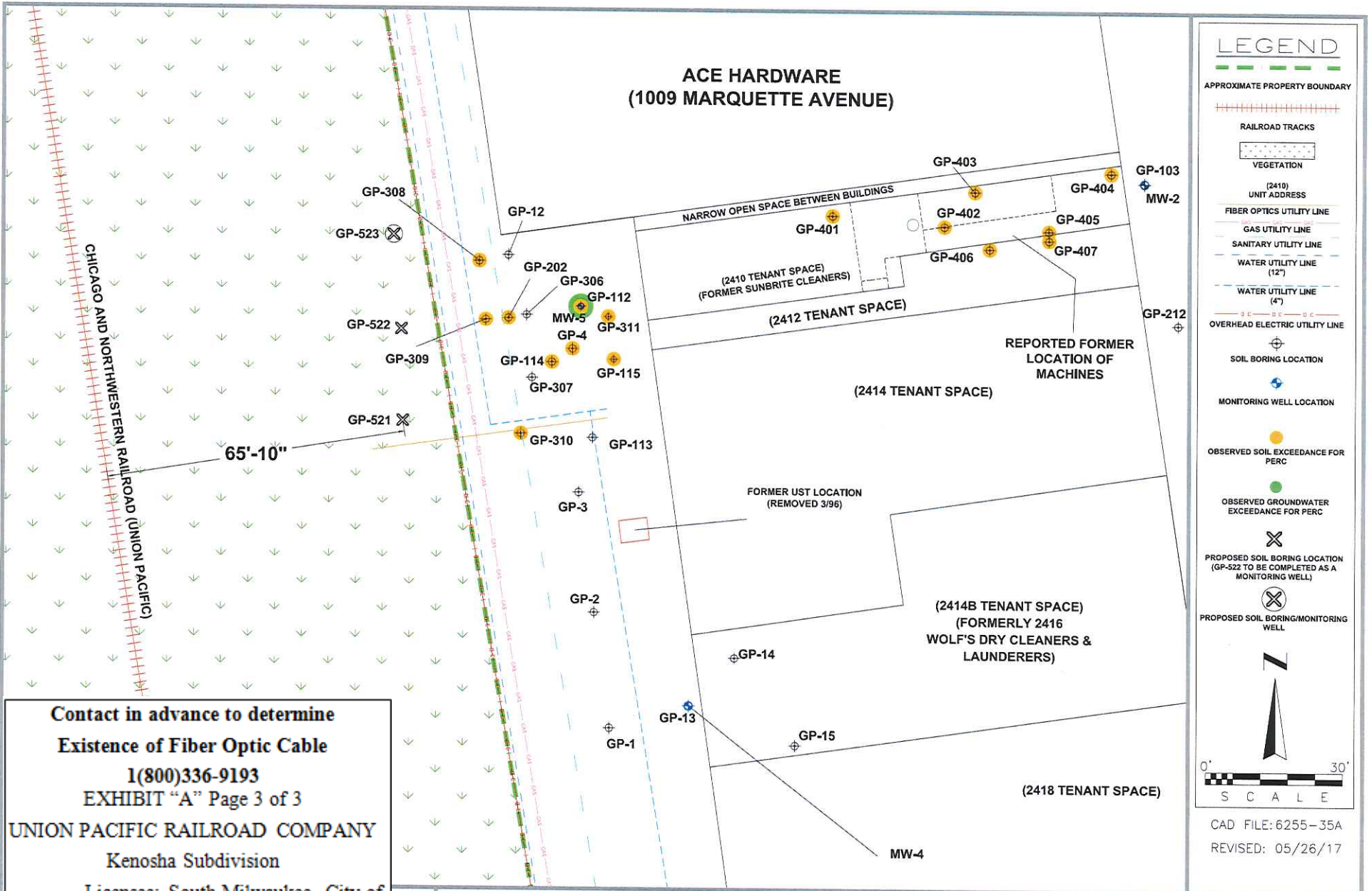
S C A L E

CAD FILE: 6255-22A  
 REVISED: 05/16/17



SUNRISE SHOPPING CENTER  
 2410-2424 10TH AVENUE  
 1009 MARQUETTE AVENUE  
 SOUTH MILWAUKEE, WISCONSIN

**FIGURE 2**  
**AERIAL VIEW OF SITE AND**  
**SURROUNDING PROPERTY USAGE**  
 (2015 AERIAL TAKEN FROM GOOGLE EARTH)



**Contact in advance to determine  
Existence of Fiber Optic Cable**  
1(800)336-9193  
EXHIBIT "A" Page 3 of 3  
UNION PACIFIC RAILROAD COMPANY  
Kenosha Subdivision  
Licensee: South Milwaukee, City of  
RAILROAD MILE POST 74.6  
South Milwaukee, WI  
Folder No. 3048-84

**SUNRISE SHOPPING CENTER  
2410-2424 10TH AVENUE  
1009 MARQUETTE AVENUE  
SOUTH MILWAUKEE, WISCONSIN**

**FIGURE 3  
SUNRISE SHOPPING CENTER SITE DETAIL  
WITH LOCATIONS OF PROPOSED  
OFF-SITE SAMPLING LOCATIONS**

## **EXHIBIT B**

### **Section 1 - NOTICE OF COMMENCEMENT OF WORK – FLAGGING.**

The Licensee agrees to notify the Railroad Representative at least Ten (10) days in advance of Licensee commencing its work and at least 24 hours in advance of proposed performance of any work by the Licensee in which any person or equipment will be within 25 feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 25 feet of any track. Upon receipt of such notice, the Railroad Representative will determine and inform the Licensee whether a flagman need be present and whether the Licensee need implement any special protective or safety measures. If any flagmen or other special protective or safety measures are performed by the Railroad, such services will be provided at Licensee's expense with the understanding that if the Railroad provides any flagging or other services, the Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein.

### **Section 2 - LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.**

a. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of the Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Railroad without liability to the Licensee or to any other party for compensation or damages.

b. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Railroad's property, and others) and the right of the Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

### **Section 3 - NO INTERFERENCE WITH RAILROAD'S OPERATION.**

No work performed by Licensee shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad, its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof. When not in use, Licensee's machinery and materials shall be kept at least 50 feet from the centerline of Railroad's nearest track, and there shall be no crossings of Railroad's tracks except at existing open public crossings.

### **Section 4 - PERMITS.**

Prior to beginning any work, the Licensee, at its sole expense, shall obtain all necessary permits to perform any work contemplated by this Agreement.

### **Section 5 - MECHANIC'S LIENS.**

The Licensee shall pay in full all persons who perform labor or provide materials for the work to be performed by Licensee. The Licensee shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be enforced against any property of the Railroad for any such

work performed. The Licensee shall indemnify and hold harmless the Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

**Section 6 - FIBER OPTIC CABLE SYSTEMS.**

In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Licensee, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Licensee shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

**Section 7 - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, the Licensee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Licensee shall use only such methods as are consistent with safety, both as concerns the Licensee, the Licensee's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Licensee (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's property. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Licensee shall reimburse and indemnify the Railroad for any such fine, penalty, cost or charge, including without limitation attorneys' fees, court costs and expenses. The Licensee further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

**Section 8 - SAFETY INSTRUCTIONS.**

Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work pursuant to this Agreement. As reinforcement and in furtherance of overall safety measures to be observed by the Licensee (and not by way of limitation), the following special safety rules shall be followed:

a. The Licensee shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job. The Licensee shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. The Licensee shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The Licensee shall have a non-delegable duty to control its employees, while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage or illegally obtained drug, narcotic or other substance that may inhibit the safe performance of work by an employee.



b. The employees of the Licensee shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective footwear. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes or other shoes that have thin soles or heels that are higher than normal. In addition, the Licensee shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations or Railroad officials overlooking the work at the job site. In particular, the protective equipment to be worn shall be:

(1) Protective head gear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with Licensee's or subcontractor's company logo or name.

(2) Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and

(3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

c. All heavy equipment provided or leased by the Licensee shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Licensee's or any of its subcontractors' equipment is unsafe for use on the Railroad's right-of-way, the Licensee, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

#### **Section 9 - INDEMNITY.**

a. As used in this Section, "Railroad" includes other railroad companies using the Railroad's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (i) injury to or death of persons whomsoever (including the Railroad's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and (ii) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Railroad, or property in its care or custody).

b. As a major inducement and in consideration of the license and permission herein granted, the Licensee agrees to indemnify and hold harmless the Railroad from any Loss which is due to or arises from any cause and is associated in whole or in part with the work performed under this Agreement, a breach of the Agreement or the failure to observe the health and safety provisions herein, or any activity or omission arising out of performance or nonperformance of this Agreement; regardless of whether caused solely or contributed to in part by the negligence or fault of the Railroad.

c. Any liability of either party hereunder to one of its employees under any Workers' Compensation Act or the Federal Employers' Liability Act shall not be questioned or in any way challenged by the other party, nor shall any jury or court findings, resulting from any employee's suit against either party pursuant to any such Act(s), be relied upon or used by either party in any attempt to assert common law liability against the other.

#### **Section 10 - RESTORATION OF PROPERTY.**

In the event the Railroad authorizes the Licensee to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Licensee, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Railroad, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, arising from the taking down of any fence or the moving or disturbance of any other property of the Railroad.

**Section 11 - WAIVER OF BREACH.**

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

**Section 12 - ASSIGNMENT – SUBCONTRACTING.**

The Licensee shall not assign, sublet or subcontract this Agreement, or any interest therein, without the written consent of the Railroad and any attempt to so assign, sublet or subcontract without the written consent of the Railroad shall be void. If the Railroad gives the Licensee permission to subcontract all or any portion of the work herein described, the Licensee is and shall remain responsible for all work of subcontractors and all work of subcontractors shall be governed by the terms of this Agreement.

## **EXHIBIT C**

### **Union Pacific Railroad Contract Insurance Requirements**

#### Right of Entry Agreement

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

**A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing “Union Pacific Railroad Company Property” as the Designated Job Site.

**B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing “Union Pacific Railroad Company Property” as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

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

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

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

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

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

and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

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

**F. Pollution Liability insurance.** Pollution Liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any “hazardous” material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Licensee must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

#### **Other Requirements**

**G.** All policy(ies) required above (except business automobile, worker’s compensation and employers liability) must include Railroad as “Additional Insured” using ISO Additional Insured Endorsement CG 20 26, (or substitute form(s) providing equivalent coverage). The coverage provided to Railroad as additional insured shall not be limited by Licensee’s liability under the indemnity provisions of this Agreement. **BOTH LICENSEE AND RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORM CG 20 26.**

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

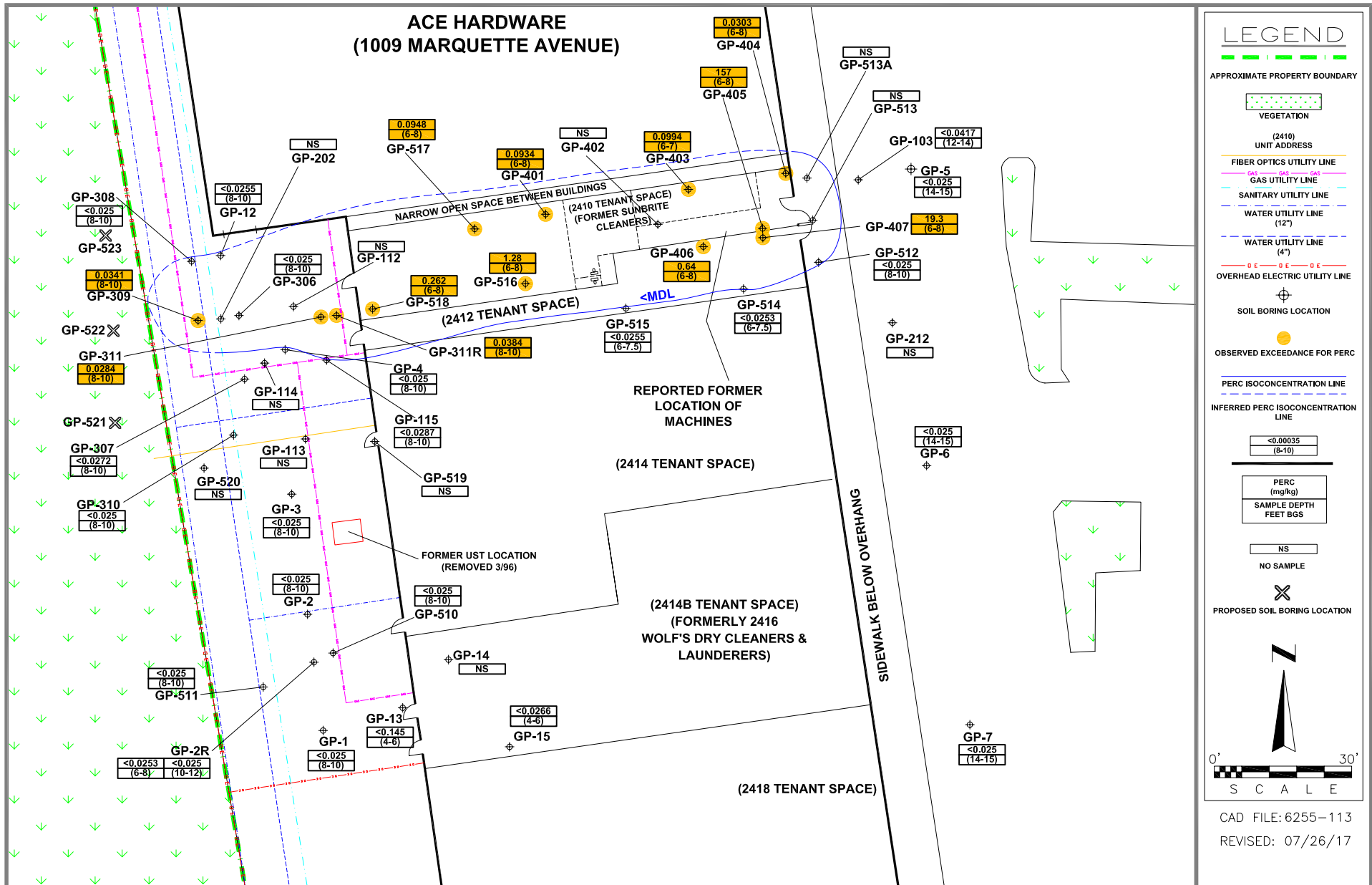
**I.** Licensee waives all rights against Railroad and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability or commercial umbrella or excess liability insurance obtained by Licensee required by this agreement.

**J.** Prior to commencing the work, Licensee shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

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

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

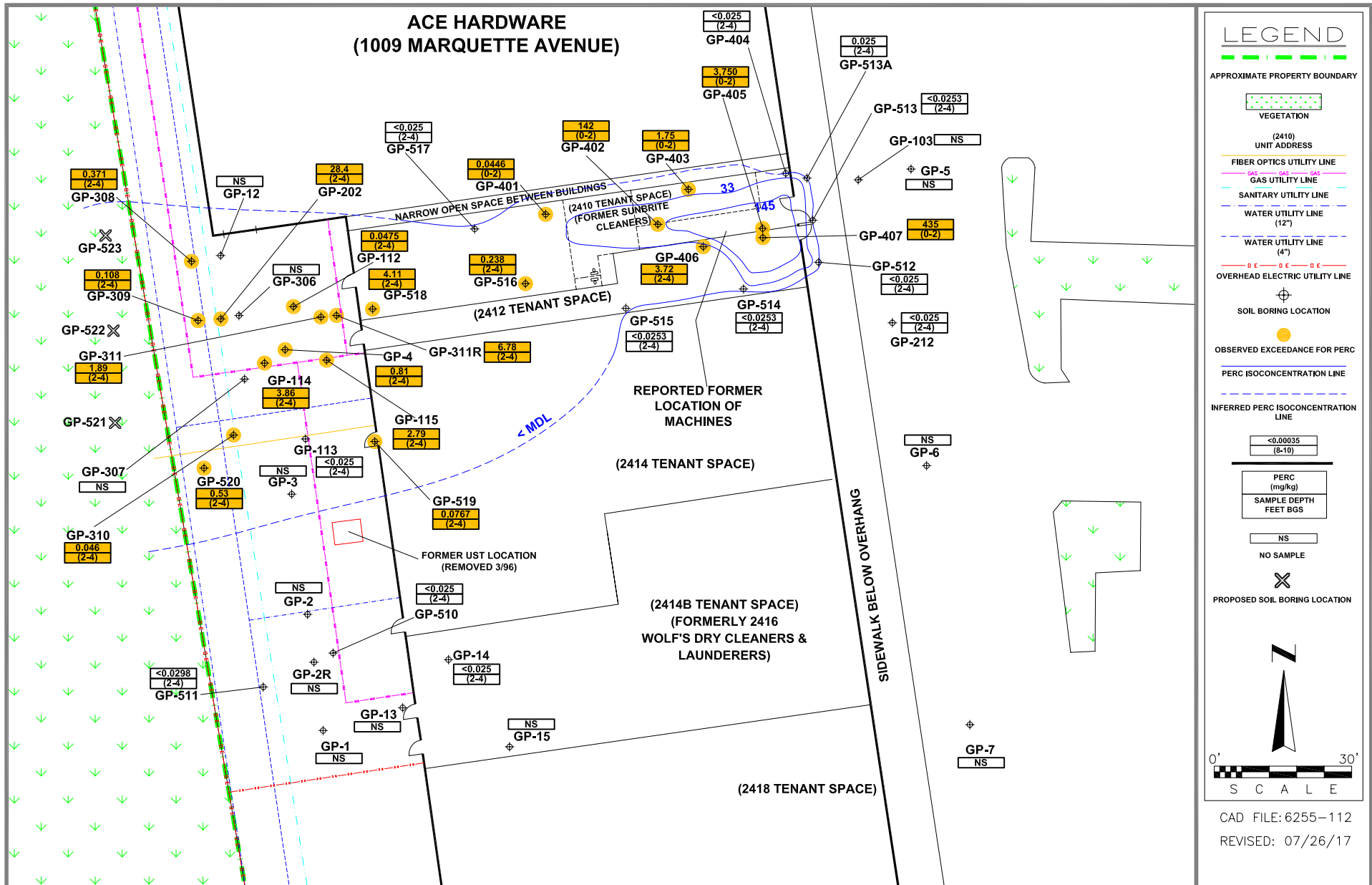
**ATTACHMENT 2**  
**FIGURES**



**DAM**  
ENVIRONMENTAL

**SUNRISE SHOPPING CENTER  
2410-2424 10TH AVENUE  
1009 MARQUETTE AVENUE  
SOUTH MILWAUKEE, WISCONSIN**

**FIGURE B.2.a.2.b.2  
EXTENT OF PERC SOIL CONTAMINATION  
(> 4-FT BGS)**



**DAM**  
ENVIRONMENTAL

**SUNRISE SHOPPING CENTER  
2410-2424 10TH AVENUE  
1009 MARQUETTE AVENUE  
SOUTH MILWAUKEE, WISCONSIN**

**FIGURE B.2.a.2.b.1  
EXTENT OF PERC SOIL CONTAMINATION  
(0-FT TO 4-FT DC ZONE)**