

LICENSE AGREEMENT #91404

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, hereinafter referred to as "Company", hereby licenses CITY OF RAPID CITY, hereinafter referred to as "Licensee", subject to the terms and conditions hereinafter set forth, to construct, install, maintain and use a 16" water line, hereinafter referred to as "Facility", upon and across the right-of-way and property and under or over the tracks of the Company near MP 645.34, Elk Vale Road, Rapid City, SD, pursuant to request of the Licensee and in accordance with the plan and in the location shown in yellow on map dated June 19, 2003, attached hereto, made a part hereof, for the sole purpose of supplying water.

The Company may, at its option and without liability to the Licensee, revoke this license at any time by giving written notice thereof to the Licensee if the Licensee shall violate or breach any of the following terms and conditions:

1. The Licensee will procure all necessary public authority for the construction, installation, maintenance and use of said Facility and use said Facility in conformity with all requirements of public authority.
2. The Licensee will pay all taxes and assessments that may be levied or assessed against said Facility.
- 3(a). Said Facility shall be constructed, installed and maintained by and at the expense of the Licensee, in a manner satisfactory to the Company.
- 3(b). The Company shall have the right at any time to judge the necessity of repairs to said Facility. The Licensee will, within ten (10) days after written notice, make all necessary repairs at its expense.
- 3(c). If, at any time the Company judges it necessary to change the location, elevation or method of construction or installation of said Facility, the Licensee will do so at its sole expense.
4. Right of entry will be granted by the Company's representative upon request from the Licensee or its contractor after the Company has received a copy of the Railroad Protective Liability Insurance Certificate from the Licensee or its contractor and has notified the Licensee or its contractor of approval for said insurance. Said insurance limits shall be \$6,000,000.00 aggregate limit and \$2,000,000.00 each occurrence.
5. The Licensee agrees to pay the Company \$15.00 per protective train order, per day, issued by Company, for each train passing through or affected by said construction area when work performed by Licensee or its contractor is within scope stated herewith:
 - A. Men, equipment, material, structures or any other obstructions are placed within 25 feet laterally of the centerline of track;
 - B. Men, equipment, material, structures or any other obstructions working or placed at any distance vertically from top of rail of said track, within 50 feet laterally of the centerline of said track;
 - C. Protective train orders shall be issued until completion of construction to the satisfaction of Company's Engineering Department.
 - D. Work outside of 25 feet from track centerline will be covered by protective train order.
6. The Licensee or its contractor agrees to pay the Company the actual costs of flagging services

work performed by the Company in manner stated herewith:

- A. Flagging services performed per day - \$300.00 or actual expenses, incurred by Licensee;
 - B. ~~Flagging services required~~ when men, equipment, material, structures or any other obstructions are placed within 25 feet laterally of the centerline of track;
 - C. ~~Flagging services required~~ when men, equipment, material, structures or any other obstructions are working or placed at any distance vertically from top of rail of said track within 50 feet laterally of the centerline of said track; and
 - D. Flagging services are required on days of active construction by Industry or others at said location.
7. The Licensee or its contractor agrees to notify the Engineering Department of the Company (605-782-1551) 48 hours prior to commencing any work on Company right-of-way.
 8. In case of an emergency call 1-800-658-3551. A copy of this agreement must be in the contractor's possession while performing work on job site and the contractor must be prepared to produce it upon proper demand. No work will be permitted if a copy is not available upon demand.
 9. The Licensee assumes and agrees to protect, indemnify and hold harmless the Company, its officers, agents, employees, invitees and other licensees, from and against any and all claims, demands, suits, liability and expense by reason of loss or damage to any property whatsoever or injury to or death of any person whomsoever, from any cause whatsoever, arising or growing direct or indirectly out of said Facility.
 10. This License is personal to the Licensee and is not assignable or transferable without the written consent of the Company.
 11. For the privileges herein permitted, the Licensee shall pay to the Company a fee of Zero Dollars and no/100 (\$0.00). This facility will be installed within public right of way.

IN WITNESS WHEREOF, this instrument is executed at Sioux Falls, South Dakota this _____ day of _____, 2003.

ATTEST:

**DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION**

By: _____
Chief Engineer

The undersigned, the Licensee mentioned in the foregoing License, ACCEPTS the same subject to the terms and conditions therein stated.

ATTEST:

CITY OF RAPID CITY

By: _____

Title: _____