

PIPELINE LICENSE #WL1083

THIS PIPELINE LICENSE AGREEMENT, made and entered into this ____ day of _____, 20__, by and between **THE STATE OF SOUTH DAKOTA**, acting by and through its Department of Transportation, Office of Local Transportation Programs, hereinafter referred to as "State," and the City of Rapid City, South Dakota, hereinafter referred to as "Licensee."

RECITALS

- A. The State of South Dakota owns a system of rail tracks (**Track(s)**) and various real properties associated therewith within the State of South Dakota (as described below, and hereinafter referred to as **Premises**), including the rail corridor at or near the town of Rapid City County of Pennington, State of South Dakota, Mile Post 654.68 \pm , Railroad Survey Station 280+88 as shown on the attached map dated 11-13-2008, attached hereto as **Exhibit "X"** and made a part hereof.
- B. State has agreed to grant Licensee certain non-exclusive license rights in and to the Premises, subject to the terms, conditions, and limitations provided herein.

AGREEMENTS

In consideration of the mutual covenants herein, State and Licensee hereby agree as follows:

GENERAL

- 1. State hereby grants Licensee a non-exclusive license, across or along the Premises, 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, maintain, and use in strict accordance with the specifications approved by State as part of Licensee's application process, one (1) Pipeline, 14 inches in diameter, inside a 24 inch steel casing.
- 2. Licensee shall not disturb any improvements of State, of any designated Regional Railroad Authority's Operator, or of State's existing lessees, licensees, easement beneficiaries, or lien holders, if any, or interfere with the use of such improvements.
- 3. Licensee shall use the Premises solely for construction and maintenance of a Pipeline to be used only for the purpose of handling or transporting Potable Water. The specification for materials and construction procedures, as outlined on said **Exhibit "X,"** shall be in accordance with the standard specifications for pipelines. Licensee shall not use the Pipeline to carry any other commodity or use the Premises for any other purpose.
- 4. Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body, through the Pipeline on State's property. On demand, Licensee agrees to furnish State with proof satisfactory to State that Licensee is in compliance with this provision. Notwithstanding anything contained in any other provision of this License, should Licensee not comply fully with the obligations of this Section, State may, at its option, terminate this License by serving five (5) days' notice of termination on Licensee. Upon termination, Licensee shall remove the Pipeline and restore State's property to the condition which existed as of the Effective Date of this License.
- 5. In case of the eviction of Licensee by any third party owning or claiming title to or any interest in the Premises, or by the abandonment by State of the affected rail corridor, neither State nor any Regional Railroad Authority's Operator shall be liable to refund Licensee any compensation paid hereunder, or any damage Licensee sustains in connection therewith, except for the pro-rata portion of any recurring charge paid in advance.

6. 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.

TERM

7. This License shall commence on the Effective Date first mentioned above, and shall be effective until terminated by operation of law or pursuant to any provision of this License.

COMPENSATION

8. (a) Licensee shall pay State, prior to the Effective Date: (i) the sum of Zero and No/100 Dollars (\$0.00) as compensation for the use of the Premises and (ii) the sum of One Hundred Seventy-Five Dollars (\$175.00) to cover the cost of the preparation of this License.
- (b) In addition to, and not in limitation to the compensation paid by Licensee to State for the use of the Premises under **Section 8 (a)** above, Licensee further agrees to reimburse Regional Railroad Authority's Operator for all costs and expenses incurred by Regional Railroad Authority's Operator in connection with Licensee's use of the Premises, or the presence, construction, maintenance, and use of the Pipeline, including but not limited to the furnishing of flaggers and any vehicle rental costs incurred. At any time flagging is deemed necessary by Regional Railroad Authority's Operator, the actual cost of flagging services, calculated at the actual flagging rate in effect at the time such services are provided, will be borne by Licensee.
- (c) Payment on any invoice shall be due not more than thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to State or Regional Railroad Authority's Operator within thirty (30) days after the invoice date, Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate of 12%. In addition, an administrative charge of 35% will be assessed on all such accounts turned over to the State for collection.

COMPLIANCE WITH LAWS

9. (a) Licensee shall observe and comply with any and all federal, state, and local 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.
- (b) Prior to entering the Premises, Licensee shall comply, and shall cause its contractor, if any, to comply, with all State's and Regional Railroad Authority's Operator's applicable safety rules and regulations. In addition to, and not in limitation of the foregoing, prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete Regional Railroad Authority's Operator's safety-training program, if any. This training must be completed no more than one (1) year in advance of Licensee's entry on the Premises.

DEFINITION OF COST AND EXPENSE

10. For the purpose of this License, "cost" or "costs," "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.

RIGHT OF STATE TO USE

11. State excepts and reserves the right, to be exercised by State and any other party who may obtain written permission or authority from State,:

- (a) to maintain, renew, use, operate, change, modify, or relocate any existing pipe, power, communication lines and appurtenances, or other facilities or structures of like character upon, over, under, or across the Premises;
- (b) to construct, maintain, renew, use, operate, change, modify, or relocate any Tracks or additional facilities or structures upon, over, under, or across the Premises; or
- (c) to use the Premises in any manner as the State in its sole discretion deems appropriate, provided State uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 3** above.

LICENSEE'S OPERATIONS

- 12. (a) Licensee shall notify (i) State's designated representative (State's Representative), **Lynn Kennison** at 700 E. Broadway Ave. Pierre, SD 57501, telephone 605-773-3046, and (ii) Regional Railroad Authority's Operator, N/A at N/A, telephone N/A, not less than five (5) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon.
- (b) In performing the work described in **Section 3**, Licensee shall use only public roadways to cross from one side of State's Tracks to the other.
- 13. (a) Under no condition shall Licensee be permitted to conduct any test, investigation, 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 Tracks on the Premises unless Licensee has obtained prior written approval from State and Regional Railroad Authority's Operator. Licensee shall, at its sole cost and expense, perform all activities on or about the Premises in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future Tracks, roadbed or property of State, or the safe operation and activities of State, Regional Railroad Authority's Operator, or any person or entity having received permission from State or Regional Railroad Authority's Operator to use the Tracks, roadbed or property of State (Permitted User). If ordered to cease using the Premises at any time by State's personnel or Regional Railroad Authority's Operator's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing rights of State and Regional Railroad Authority's Operator, the parties agree that State, Regional Railroad Authority's Operator, and any Permitted User have 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 State or Regional Railroad Authority's Operator to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- (b) Licensee shall, at its sole cost and expense and subject to the supervision of State's Representative and Regional Railroad Authority's Operator, locate, construct, and maintain the Pipeline in such a manner and of such material that it will not at any time be a source of danger to or interference with the present or future Tracks, roadbed or property of State, the safe operation of Regional Railroad Authority's Operator's railroad or the activities of any Permitted User. Further, the Pipeline shall be constructed, installed, and maintained in conformity with the specifications shown on the print attached hereto as **Exhibit "X"** and made a part hereof. State and Regional Railroad Authority's Operator may each direct one of their respective field representatives to observe or inspect the construction and maintenance of the Pipeline at any time for compliance with the Specifications. If ordered at any time to halt construction or maintenance of the Pipeline by State's personnel or Regional Railroad Authority's Operator's personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing rights of State and Regional Railroad Authority's Operator, the parties agree that State, Regional Railroad Authority's Operator, and any Permitted User have 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 in strict accordance with the Specifications and in a safe and

workmanlike manner in compliance with all terms hereof. Neither the exercise nor the failure by State or Regional Railroad Authority's Operator 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 judgment of State or Regional Railroad Authority's Operator fail to properly perform its obligations under this Section, State or Regional Railroad Authority's Operator may, at such party's option, perform or cause to be performed such work as such party deems necessary for safe operations and activities, and in such event Licensee agrees to pay, within fifteen (15) days after bill shall have been rendered therefore, the cost so incurred by State or Regional Railroad Authority's Operator, but failure on the part of State or Regional Railroad Authority's Operator to perform the obligations of Licensee shall not release Licensee from liability hereunder for loss or damage occasioned thereby.

14. During the construction and any subsequent maintenance performed on the Pipeline, Licensee shall perform such work in a manner to preclude damage to the property of State, Regional Railroad Authority's Operator, and any Permitted User, and preclude interference with the operation of Regional Railroad Authority's Operator's railroad and the activities of any Permitted User. The construction of the Pipeline shall be completed within one (1) year of the Effective Date of this License. Upon completion of the construction of the Pipeline, and after performing any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore State's Premises to its former state as of the Effective Date of this License.
15. If at any time during the term of this License State shall desire the use of its rail corridor in such a manner as would, in State's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from State to such effect, make such changes in the Pipeline as in State's sole discretion may be necessary to avoid interference with the proposed use of State's rail corridor, including, without limitation, the relocation of the existing or the construction of a new Pipeline(s).
16.
 - (a) Prior to Licensee conducting any trenching 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 South Dakota One Call) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment
 - (b) For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by Licensee and reviewed by State and Regional Railroad Authority's Operator 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 State's or Regional Railroad Authority's Operator's reasonable opinion that granular material is present, State or Regional Railroad Authority's Operator may select a new location for Licensee's use, or may require Licensee to furnish for State's and Regional Railroad Authority's Operator review and approval, in State's and Regional Railroad Authority's Operator sole discretion, a remedial plan to deal with the granular material. Once State and Regional Railroad Authority's Operator have approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
17. 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:
 - (a) filled in to surrounding ground level with compacted bentonite grout; or
 - (b) otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on State's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

18. Upon termination of this License, Licensee shall, at its sole cost and expense:
- (a) remove all of its equipment from the Premises;
 - (b) remove the Pipeline and all appurtenances thereto, or, at State's sole discretion, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to State;
 - (c) report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
 - (d) remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
 - (e) leave the Premises in the condition which existed as of the Effective Date of this License.
19. Licensee's on-site supervision shall retain/maintain a fully executed copy of this License at all times while on the Premises.

LIABILITY

20. (a) To the fullest extent permitted by law, Licensee shall, and shall cause its Contractor to, release, indemnify, defend, and hold harmless State, Regional Railroad Authority's Operator, any permitted users, and each of the aforementioned parties' affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents (collectively, "indemnitees") for, from, and against any and all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, attorneys' fees, and costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise (collectively, "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):
- (i) this License, including, without limitation, its environmental provisions,
 - (ii) any rights or interests granted pursuant to this License,
 - (iii) Licensee's occupation and use of the Premises,
 - (iv) the environmental condition and status of the Premises caused by or contributed by Licensee; or,
 - (v) any act or omission of Licensee or Licensee's officers, agents, invitees, employees, or contractors, or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over,
- even if such liabilities arise from or are attributed to, in whole or in part, any negligence of any indemnitee. The only liabilities with respect to which Licensee's obligation to indemnify the indemnitees does not apply are liabilities to the extent proximately caused by the gross negligence or willful misconduct of an indemnitee.
- (b) Further, to the fullest extent permitted by law, notwithstanding the limitation in Section 20 (a), Licensee shall, and shall cause its Contractor to, now and forever waive any and all claims, regardless whether based on the strict liability, negligence, or otherwise, that an indemnitee is an "owner", "operator", "arranger", or "transporter" with respect to the Pipeline for the purposes of CERCLA or other environmental laws. Licensee will indemnify, defend, and hold the indemnitees harmless from any and all such claims regardless of the negligence of the indemnitees. Licensee further agrees that the use of the Premises as contemplated by this License, shall not in any way subject State to claims that State is other

than a common carrier for purposes of environmental laws and expressly agrees to indemnify, defend, and hold the indemnitees harmless for any and all such claims. In no event shall State be responsible for the environmental condition of the Premises.

- (c) To the fullest extent permitted by law, Licensee further agrees, and shall cause its Contractor to agree, regardless of any negligence or alleged negligence of any indemnitee, to indemnify and hold harmless the indemnitees against and assume the defense of any liabilities asserted against or suffered by any indemnitee under or related to the Federal Employers' Liability Act (FELA) whenever employees of Licensee or any of Licensee's agents, invitees, or contractors claim or allege that they are employees of any indemnitee or otherwise. This indemnity shall also extend on the same basis to FELA claims based on actual or alleged violations of any federal, state, or local laws or regulations, including but not limited to the Safety Appliance Act, the Boiler Inspection Act, the Occupational Health and Safety Act, the Resource Conservation and Recovery Act, or any similar state or federal statute.
- (d) Upon written notice from State, 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 incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

PERSONAL PROPERTY WAIVER

- 21. 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.

INSURANCE

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

- (a) 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. Coverage must be purchased on a post 1998 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, which shall be indicated on the certificate of insurance:

- ◆ The employee and workers' compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- ◆ 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.
- ◆ Any exclusions related to the explosion, collapse, and underground hazards shall be removed.

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

(b) 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

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 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ 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 the State prior to performing any work or services under this License.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Licensee agrees to waive its right of recovery against State and Regional Railroad Authority's Operator for all claims and suits against State or Regional Railroad Authority's Operator. In addition, Licensee's insurers, through policy endorsement, shall waive their right of subrogation against State and Regional Railroad Authority's Operator for all claims and suits. The certificate of insurance must reflect these waivers of subrogation endorsement. Licensee further waives its right of recovery, and its insurers shall also waive their right of subrogation against State for loss of owned or leased property or property under its care, custody or control.

Licensee's insurance policies through policy endorsement must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by State and Regional Railroad Authority's Operator. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers' Compensation and, if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name State and Regional Railroad Authority's Operator as additional insureds with respect to work performed under this License. Severability of interest and naming State and Regional Railroad Authority's Operator as additional insureds shall be indicated on the certificate of insurance.

Licensee is not allowed to self-insure without the prior written consent of State and Regional Railroad Authority's Operator. If granted by State and Regional Railroad Authority's Operator, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all State or Regional Railroad Authority's Operator 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 deductible, self-insured retention, or other financial responsibility for claims.

Prior to commencing the work, or otherwise occupying any of State's property, Licensee shall furnish to State an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify State in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a

claim or lawsuit involving State or Regional Railroad Authority's Operator arising out of this License, Licensee will make available to State and Regional Railroad Authority's Operator any required policy covering such claim or lawsuit. Upon request from State, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to State or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the State of South Dakota.

Licensee WARRANTS 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 coverage referenced above.

If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverage as set forth herein, naming State and Regional Railroad Authority's Operator as additional insureds, and shall require that the subcontractor shall release, defend and indemnify State and Regional Railroad Authority's Operator to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify State and Regional Railroad Authority's Operator herein.

Failure to provide evidence as required by this Section shall entitle, but not require, State 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.

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 State and Regional Railroad Authority's Operator shall not be limited by the amount of the required insurance coverage.

ENVIRONMENTAL

23. Licensee shall strictly comply with all federal, state, and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (**CERCLA**) (collectively referred to as the **Environmental Laws**). 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 use, store, release or suffer the release of petroleum or oil or hazardous substances, as defined by Environmental Laws, on or about the Premises.

ALTERATIONS

24. 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 State's prior written consent.

NO WARRANTIES

25. State'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 State 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.

QUIET ENJOYMENT

26. State 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.

DEFAULT

27. If default shall be made in any of the covenants or agreements of Licensee contained in this document, or in case of any assignment or transfer of this License by operation of law, State may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Any waiver by State 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 State's ability to enforce any Section of this License. The remedy set forth in this **Section 27** shall be in addition to, and not in limitation of, any other remedies that State may have at law or in equity.

LIENS AND CHARGES

28. 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. State is hereby authorized to post any notice 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 State to take any such action shall not relieve Licensee of any obligation or liability under this **Section 28** or any other Section of this License. Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against State or the Premises that are attributable to the Improvements.

TERMINATION

29. This License may be terminated by either party, at any time by serving thirty (30) days' written notice of termination upon the other. Upon expiration of the time specified in such notice, this License and all rights of Licensee shall absolutely cease.
30. If Licensee fails to surrender the Premises to State upon any termination of this License, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

ASSIGNMENT

31. Neither Licensee, nor the heirs, legal representatives, successors, or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this License or any interest herein, without the prior written consent and approval of State and Regional Railroad Authority's Operator, which consent and approval may be withheld in State's and Regional Railroad Authority's Operator's sole discretion.

NOTICES

32. Any notice 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 State:

Program Manager, Office of Local Transportation Programs
Department of Transportation
State of South Dakota
700 E. Broadway Avenue
Pierre, South Dakota 57501

If to Regional Railroad Authority's Operator, if any:

N/A
N/A
N/A
Attn: N/A

If to Licensee:

City of Rapid City
300 Sixth Street
Rapid City, South Dakota 57701
Attn: Keith Johnson

SURVIVAL

33. Neither termination nor expiration will 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 expiration, or, if later, the date when the Pipeline and improvements are removed and the Premises are restored to its condition as of the Effective Date of this License.

RECORDATION

34. It is understood and agreed that this License shall not be placed on public record.

APPLICABLE LAW

35. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of South Dakota without regard to conflicts of law provisions. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

SEVERABILITY

36. 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.

INTEGRATION

37. This License is the full and complete agreement between State 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 State harmless in any prior written agreement between the parties.

MISCELLANEOUS

38. In the event that 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.
39. The waiver by State or Regional Railroad Authority's Operator of the breach of any provision herein by Licensee shall in no way impair the right of State or Regional Railroad Authority's Operator to enforce that provision for any subsequent breach thereof
40. State shall notify the Licensee in advance of the scheduled reactivation or the STATE's railroad. Licensee shall utilize their best efforts for the replacement and restoration of the track structure components.
- Licensee shall at the direction of the STATE, at Licensee's sole cost and expense. Replace and restore those track structure components which were removed to facilitate the construction of said project. Said track structure components shall be replaced and restored in accordance with the STATE's current operating and construction standards to the satisfaction of the STATE's inspection personnel.
41. Said pipe may be installed by open cut with backfill and compaction density according to the South Dakota Department of Transportation's standard specifications for roads and bridges.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective and duly authorized officers.

City of Rapid City, South Dakota

By: _____
Its: Mayor

Date: _____

Attest:

By: _____
Its: Finance Officer

[City Corporate Seal]

**State of South Dakota
Department of Transportation**

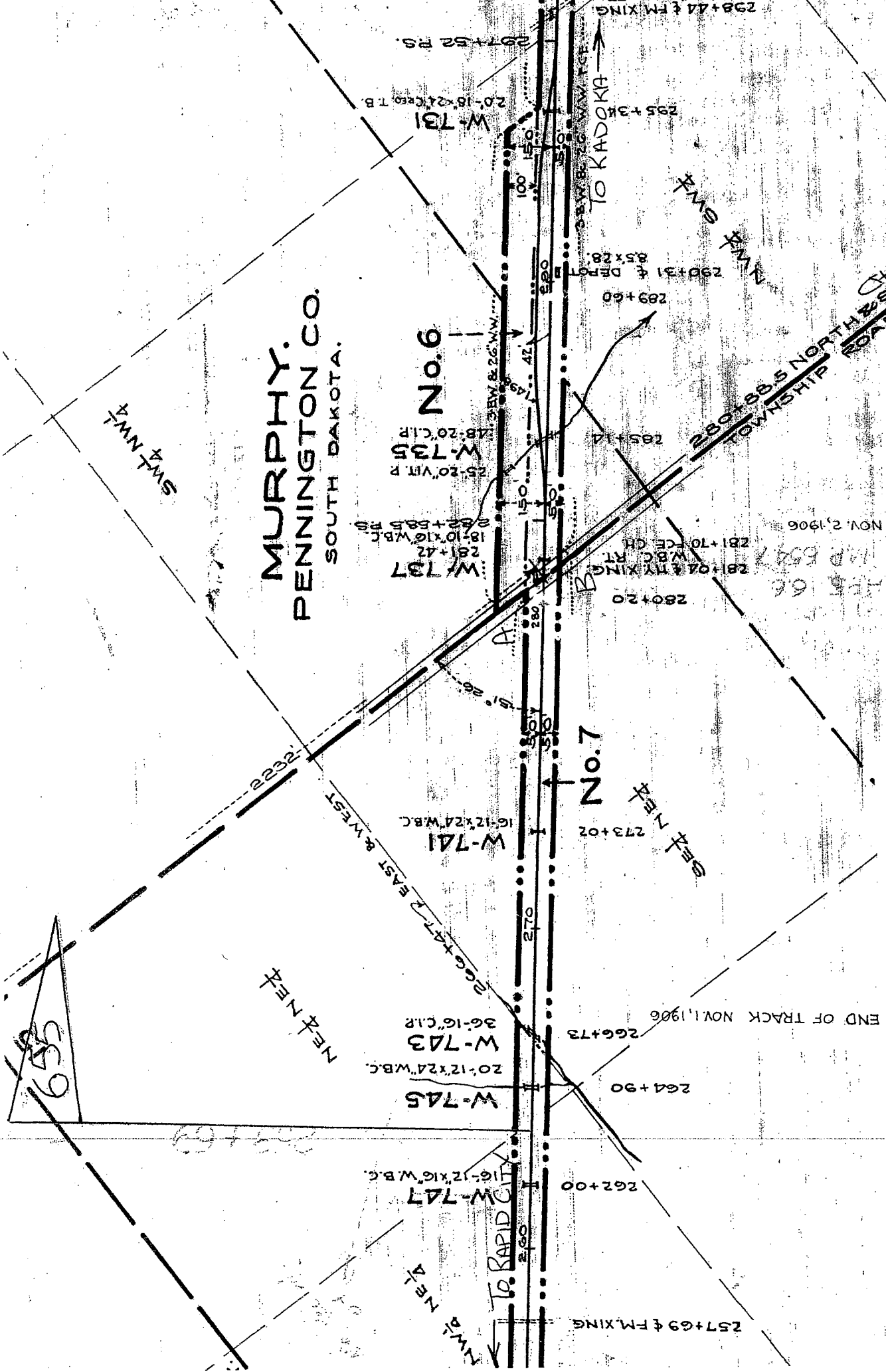
By: _____

Its: _____

Date: _____

Approved as to Form


Assistant Attorney General



**MURPHY.
PENNINGTON CO.**
SOUTH DAKOTA.

EXHIBIT "X"

A-B PROPOSED PIPELINE CROSSING
Number WL 1083

STATE OF SOUTH DAKOTA

OFFICE OF LOCAL TRANSPORTATION PROGRAMS
PRINT SHOWING PROPOSED PIPELINE OCCUPANCY NO. WL 1083

IN FAVOR OF THE CITY OF RAPID CITY

PIPE
CASING
MATERIAL
BURY DEPTH
INSTALLATION

14 INCH STEEL 50 FEET
23 INCH Dia. 50 feet UNDER RAILBED
COATED STEEL 0.50 INCHES MINIMUM WALL THICKNESS
90.0 INCHES MINIMUM FROM BASE OF RAIL
Open Cut and Fill

Rapid City
City

Pennington
County

SOUTH DAKOTA
State

SCALE: 1 to 400

November 14, 2008

SOUTH DAKOTA OFFICE OF RAILROADS

APPLICATION FOR PIPE AND UNDERGROUND UTILITY PERMIT

\$175.00 Application and processing fee required.

Crossing fee located within public highway right-of-way: \$0.00

Crossing fee of RR property not located within public highway right-of-way: \$75.00 per year.

TO: SD Office of Railroads, 700 East Broadway Ave. Pierre, SD 57501

1. At what City or Town is permit desired? Rapid City

2. Section 14 Township 1N Range R8E

Full name and address of Applicant OS Development, Inc., P.O. Box 295, Black Hawk, SD 57718

4. Telephone Number-include Area Code 605-787-9263 Contact Person Phil Olsen

5. If Applicant is a corporation, in what state incorporated? South Dakota

6. a. Product to be handled in pipe line Potable Drinking Water for City of Rapid City

b. Will other products be placed in casing pipe? Y ☐ N ☒ If yes-List _____

7. Pipe Data:	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
a. Outside diameter	<u>15.3"</u>	<u>24"</u>	g. Actual working pressure	<u>120 PSI</u>	<u>0 PSI</u>
b. Inside diameter	<u>14"</u>	<u>23"</u>	h. Type of joint	<u>Bell & Spigot, ASTM F-477</u>	<u>Welded</u>
c. Pipe material	<u>PVC</u>	<u>Steel</u>	i. Coating	<u>PVC</u>	<u>None</u>
d. Specifications and grade	<u>C-905</u> <u>DR-25</u>	<u>Y=35,000 PSI</u>	j. Method of installation	<u>Pull through casing</u>	<u>Open Cut</u>
e. Wall thickness	<u>0.612"</u>	<u>0.5"</u>	k. Will cathodic protection be provided?	<u>Y</u> <input checked="" type="radio"/> <u>N</u> <input type="radio"/>	<input type="radio"/>
f. Length	<u>50 feet</u>	<u>50 feet</u>	l. Will casing ends be sealed?	<u>Y</u> <input checked="" type="radio"/> <u>N</u> <input type="radio"/>	<input type="radio"/>

8. a. Depth of pipe under track (top of tie to top of casing) 7.5 feet

b. Angle of crossing 50° per Drawing

c. Is the crossing to be in a City Street? Y ☒ N ☐

d. Give distance from fixed point (c/l of road or Milepost) as measured along rail to proposed installation
Crossing is located 110 feet south of Highway 44 / Reservoir Road pavement.

9. If pipe is to be placed longitudinally with track, give

a. location of pipe in relation to centerline of nearest track N/A

b. depth of coverage (ground line to top of pipe) 6 feet minimum

10. If installation is to be by jacking or boring method, give location of jacking and receiving pits

a. Depth N/A

b. Distance facing wall of pit to centerline of nearest track (measured normal) _____

Note: Minimum distance from centerline of nearest track and face of boring pit will be 25ft.

11. If Reference plans (to be forwarded with original application)

a. Drawing Number 14-15 b. Prepared by CETEC Engineering Services, Inc.

c. Your Project, ID, or Reference Number 06164.01 Off-Site Water

12. Applicant understands that execution of a contract will be required before installation can proceed. Applicant agrees that if installation requires any or all of the following work: removal and replacement of track bridging, protection of track or other railway facilities by work or flagging, engineering and/or supervision; such work is to be performed by railway employees and the cost borne by Applicant. Applicant will be required to furnish liability and property damage insurance in form and amounts satisfactory to Railway Company and Office of railroads.

By [Signature] (Applicant) Title VP Date 8/7/08

APPLICATION APPROVED

[Signature] 11/14/2008
SD Office of Railroads