

PO 702792
RD106600

Pipe Line Crossing Permit No. 4030401

THIS AGREEMENT made and entered into as of the 17th day of September, 2010, by and between DAKOTA, MINNESOTA, & EASTERN RAILROAD CORPORATION, doing business as Canadian Pacific Railway, hereinafter called "Railroad Company," and CITY OF RAPID CITY, hereinafter called "Licensee,"

WITNESSETH:

1. The Railroad Company grants to the Licensee permission to install and maintain a pipe line meeting the specifications and at the location as follows:

A. Specifications:

Type/Material	RCP
Diameter	42 inches
Contents/Purpose	Storm Sewer
Depth below top of rail	4'2" feet

B. Location:

Section, Township & Range	NW1/4 NE1/4 Section 1, Township 1N North, Range 7E East
City, County & State	Rapid City, Pennington County, South Dakota
Railroad Milepost	2640 feet East of Milepost 99, Black Hills Subdivision

hereinafter called "pipe line" and shown in the location indicated as NW1/4 NE1/4 Section 1, Township 1N North, Range 7E East and 32 Feet West of the centerline of Sixth Street in Rapid City, SD.

2. The Licensee shall pay the Railroad Company the sum of \$1,740.00 in advance as rental for the permission herein granted, and shall assume and pay all taxes and assessments that may be levied or assessed against the pipe line, or against the Railroad Company's property by reason of the location of said pipe line thereon. Except as provided in paragraph 9 below, this agreement shall continue in effect until terminated by either party hereto upon thirty (30) days' written notice to the other. The Licensee shall not, by reason of termination of this agreement, be entitled to refund or reimbursement of any payment, or portion thereof, made by the Licensee under this agreement.

3. The Licensee, after first securing all necessary public authority, shall at the Licensee's sole expense install and thereafter maintain the pipe line upon and across the Railroad Company's property and underneath any railroad tracks located thereon at the above described location, in a manner satisfactory to the Railroad Company's Chief Engineer, and in strict conformity with the requirements of all laws, ordinances and orders of competent public authority now existing, and future modifications thereof, so as not to endanger the safety of railroad or other operations upon said property and so as not to endanger the safety of the persons or property near or adjacent to the Railroad Company's property.

4. The Licensee shall be responsible for determining the location and existence of any pipes, wires, conduits, sewers, piling or other obstructions to the construction of Licensee's pipe line and shall indemnify, hold harmless and defend the Railroad Company from and against any and all liability for damage to the foregoing pipes, wires, conduits, sewers, piling or other obstructions, if any, caused by the construction or maintenance of Licensee's pipe line. The Railroad Company makes no representation by the granting of this license that its property is free of any such pipes, wires, conduits, sewers, pilings or other obstructions. The Licensee's obligations hereunder shall survive the termination or expiration of this agreement.

0135-4269

ST10-1817
OT Improve 6th St

5. The Licensee shall not carry on any work in connection with the installation, maintenance, repair, changing or renewal of the pipe line underneath or in close proximity to any railroad track at the above described location before giving the Chief Engineer at least five (5) days' written notice at his headquarters located at Minneapolis, Minnesota, and not until an authorized representative of the Railroad Company shall be present to supervise same. Upon bills being rendered therefor, the Licensee shall promptly reimburse the Railroad Company for all expenses incurred by it in connection with such supervision, including all labor costs for flagmen supplied by the Railroad Company to protect railroad operations, and for the entire cost of the furnishing, installation and later removal of any temporary supports for said tracks, which said Chief Engineer or his authorized representative may consider necessary while such work is in progress.

6. The Licensee, at the Licensee's sole expense, whenever notified to do so, shall promptly make such repairs to or changes in the pipe line, including change in location, as said Chief Engineer or his authorized representative shall for any reason consider necessary and require. The Railroad Company shall have the right, at its election, to make emergency repairs to the pipe line, and in such event the Licensee, upon bills being rendered therefor, will promptly reimburse the Railroad Company for all expenses incurred in connection therewith.

7. Maintenance and use of the pipe line upon and across the Railroad Company's property at the above described location, however long continued, shall not vest in the Licensee any rights adverse to those of the Railroad Company.

8. As one of the material considerations of this agreement, without which the license granted hereunder would not be granted, the Licensee expressly assumes any and all risk of damage to or destruction of the pipe line through any cause whatsoever while located upon or across the Railroad Company's property, and hereby releases and agrees to indemnify, hold harmless and defend the Railroad Company and its directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, or anyone acting on its behalf or their behalf, from and against any and all Claims (including without limitation any Claims arising under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) of every kind, past, present and future, existing and contingent, known and unknown, arising from any injury to persons, firms or corporations whomsoever (including the parties hereto and their employees, agents and invitees), including injuries resulting in death, and damage to property whatsoever (including property of the parties hereto), wherever such persons or property are located, caused by or attributable to, in whole or in part, the presence of the pipe line upon the Railroad Company's property, or any act or omission of the Licensee (or the Licensee's employees, agents, contractors, representatives, or invitees), including without limitation the Use or Release of Hazardous Substances by the Licensee and the breach by the Licensee of any of its warranties, representations or covenants. The Licensee's obligations hereunder shall survive the termination or expiration of this agreement.

9. If the Licensee shall default on its obligation to make any payment required under this agreement, the Railroad Company may immediately declare this agreement and the permission herein granted terminated without advance notice to the Licensee. The waiver by the Railroad Company of a breach by the Licensee of any provision hereof, shall be limited to the act or omission constituting such breach, and shall not constitute a continuing or permanent waiver.

10. This agreement shall not be assigned or in any manner transferred by the Licensee, voluntarily or involuntarily, by operation of law or otherwise, without the advance written consent of the Railroad Company. Any attempted or purported assignment or transfer by the Licensee without such consent shall be void. Subject thereto, this agreement shall inure to the benefit of, and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties.

11. Any notice given by the Railroad Company hereunder shall be good if served personally upon the Licensee or if deposited in a United States post office, certified mail, addressed to the Licensee at the Licensee's last known address.

12. The Licensee, at the Licensee's sole expense, within thirty (30) days from the date of service of notice of termination as above provided, shall take up and remove said pipe line from the Railroad Company's property at the above described location and restore said property to a condition satisfactory to said Chief Engineer. Failure on the part of the Licensee to do so shall constitute an abandonment of the pipe line by the Licensee, and the Railroad Company shall have the right to remove the whole or any part of the pipe line from said property and perform said work of restoration, and in either event the Licensee, upon a bill being rendered therefor, shall promptly reimburse the Railroad Company for all expenses incurred in connection therewith, plus fifteen percent (15%).

13. The Railroad Company shall not be required to assume any portion of the cost of the construction of said pipe line or future maintenance thereof.

14. The Railroad Company does not warrant title to the above-described property, and the Licensee shall have no recourse against the Railroad Company in the event the Licensee shall be required, through the action of any third party, to either remove the pipe line from the Railroad Company's property or to make any payment to avoid such removal.

15. Each provision, paragraph, sentence, clause, phrase, and word of this agreement shall apply to the extent permitted by applicable law and is intended to be severable. If any provision, paragraph, sentence, clause, phrase or word of this agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of the agreement.

16. (A) "Claim" or "Claims" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultants' fees, response costs, remedial action costs, cleanup costs and expenses which may be related to any Claims);

(B) "Environmental Law" or "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted;

(C) "Hazardous Substance" or "Hazardous Substances" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law;

(D) "Release" or "Released" means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or spreading of any Hazardous Substance into the environment, as "environment" is defined in CERCLA;

(E) "Use" means to manage, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon a Hazardous Substance.

THE PARTIES HERETO have caused this agreement to be duly executed as of the day and year first above written.

**DAKOTA, MINNESOTA, & EASTERN
RAILROAD CORPORATION**
doing business as Canadian Pacific Railway

By _____
Director, Real Estate Marketing, U.S.

CITY OF RAPID CITY

By _____
Its _____

Not Assignable Without Consent

NOT TO BE RECORDED IN PUBLIC RECORDS

EXHIBIT "A"

PW091410-13

SCALE 1" = 300'



**DOWNTOWN STREET IMPROVEMENTS-PHASE 2
OMAHA STREET TO KANSAS CITY STREET
PROJECT NO. ST10-1817**

CIP NO. 50138