

No. WL1029
PIPELINE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 19____, by and between the State of South Dakota, acting by and through the Division of Railroads, hereinafter referred to as the "STATE", and the **City of Rapid City, South Dakota**, whose post office address is 300 Sixth Street, Rapid City, South Dakota 57701, hereinafter referred to as the "LICENSEE", (if more than one licensee, said term and all language herein referring thereto shall be interpreted in the plural and refers jointly and severally to such licensees).

WITNESSETH

That WHEREAS, the LICENSEE desires the right to install, maintain and operate a certain pipe upon, along and under the STATE's premises at or near **Rapid City, SD, Milepost 658.66+ to Milepost 658.11+, Railroad Survey Station 70+40 to Railroad Survey Station 99.50, Pennington County**, to be used for the purpose hereinafter set forth.

NOW, THEREFORE, the parties mutually agree as follows:

1. The STATE, for and in consideration of the payments and covenants hereinafter mentioned to be made, kept and performed by the LICENSEE, does hereby license and permit said LICENSEE to construct, install, and thereafter during the term hereof to maintain and operate under, along and across the STATE's property in the manner and subject to the terms and conditions herein provided, a certain pipes to be used only for the purpose of **Sanitary sewer**, the location or locations shown by the yellow line between points lettered **"A"- "B", "C"- "D", "E"- "F", "G"- "H"**, as more particularly described on the map(s) attached hereto, marked **Exhibit "X"**, and dated **October 13, 2004** and made a part hereof. The boundaries of the railroad right-of-way are located as shown by the heavy dash and two dot lines.

2. The said pipe for this longitudinal occupation shall be **8.4" PVC/ .24" wall thickness**. Maximum working pressure in said pipe shall be **0 psi**. 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. Said pipe

shall be installed as close as possible to the Railroad right-of-way line with the minimum distance from the center line of the closest track to the said pipe, as measured perpendicular to the centerline of the track, being 15+ feet.

At all points where said pipe passes beneath the roadbed or tracks. Said pipe shall be encased for a minimum distance of **30 feet**. The casing shall be of **steel** construction with **.750** inch minimum wall thickness, shall have a diameter of **16** inches, the same shall be installed and maintained at such depth that the top of said pipe, or any casing which may contain it, shall be not less than **66 inches**, measured vertically, below the base of the rails of any such track or top of ballast section if track has been removed. Minimum depth of cover of **6** feet below the flow line of a ditch or ground surface is required.

The specifications for materials and construction procedures shall be as outlined on said "Exhibit X", and shall be in accordance with the standard specifications for pipelines

Licensee shall remove at its sole cost and expense, and to the satisfaction of the STATE's inspection personnel, the rail, ties, tie plates, anchors, spikes, track bolts, angle bars, ballast and subgrade materials as required for the construction of the project.

State shall notify the Licensee in advance of the scheduled reactivation of 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.

3. The word "pipe" wherever used herein, not otherwise herein modified, shall be construed to mean all of the pipes above described and the casings and other casings and other coverings and all appurtenances thereof.

4. This Agreement shall be effective as of the _____ day of _____, 20____. The LICENSEE shall have paid to the STATE at the time of the execution of this Agreement the sum of **\$175.00** to cover the cost of preparation thereof. The LICENSEE shall also pay the STATE, on or before (beginning at) the effective date hereof, for the privilege and license hereby granted a one-time fee of **\$500.00**. LICENSEE shall pay all taxes and assessments which may be assessed or levied against or on account of said pipe(s) or use thereof, and shall indemnify and save harmless the STATE and the STATE's property from and against any and all liens and claims on account of any such assessment or taxes.

5. The LICENSEE shall bear the entire cost and expense incurred in connection with the construction, maintenance, renewal and removal of said pipe, including all cost and expense incurred by the STATE in connection therewith for all work performed and materials used, and for supervision and inspection. All work of installation, alteration, maintenance and removal of said pipe within the limits of the right-of-way of the STATE shall be done by the LICENSEE under the supervision, and to the satisfaction of, the STATE, and no work shall be done by the LICENSEE upon the premises of the STATE without first notifying the STATE and STATE's Operator of LICENSEE's desire to do so, provided that the STATE may perform any work by it deemed necessary to support any of its tracks while such work is being done and any work necessary to restore the track and roadbed to their former condition, or any other work by it deemed necessary to be done upon its right-of-way by reason of the installation, alteration, maintenance or removal of said pipe, and the LICENSEE agrees to repay to the STATE promptly upon the rendition of bills therefore the cost of all such work so done by it. "Cost" as used in this agreement shall mean all assignable costs, plus 10% on all labor items to cover elements of expense not capable of exact ascertainment, and shall include charges for transportation of men and material at tariff rate and store expense on material.

6. The pipe, and all parts thereof, whether within or without the limits of the premises of the STATE, shall be constructed and at all times maintained, repaired, renewed and operated in such a manner as to cause no

interference whatsoever with the constant, continuous, and uninterrupted use of the tracks, facilities, property and premises of the STATE, both as regards operation, maintenance, repairs and renewals, or new construction by the STATE. Nothing shall be done, or suffered to be done, by the LICENSEE at any time that will in any manner interfere with or impair the usefulness of any tracks, improvements, or other facilities, now or hereafter maintained upon said State-owned railroad premises, or in any way interfere with, obstruct or endanger, railroad operation thereon; and if at any time the STATE shall be of the opinion that the presence, condition or use of said pipe in any way interferes with the operation of the railroad, or any use which the STATE desires to make of its property, it may on ten days notice, require the LICENSEE to remove, alter or repair said pipe, or may remove, alter or repair the same at the cost of the LICENSEE.

7. The STATE shall have the right at any and all times to raise or lower its grade, to make such changes in its existing track or tracks, roadbeds, structures and facilities or in the present standards thereof and to construct, maintain and operate such additional roadbeds, tracks, structures and facilities on said right-of-way and over and across said pipe as from time to time it may elect and may do whatever is necessary to enable it to use said railroad premises for all lawful purposes; and the LICENSEE agrees, at LICENSEE's sole cost, and within ten days after written notice from the STATE to do so, to remove said pipe or make such changes in or additions to said pipe or changes in the location thereof, as may in the judgment of the STATE be necessary to conform to the changes, alterations or new construction by the STATE or its Operator. If the LICENSEE shall fail to do so, the STATE may, if it so elects, in addition to any other remedy which it may have, remove said pipe or make such changes in or additions to said pipe or changes in the location thereof as are necessary for said purposes and the LICENSEE agrees to pay promptly upon rendition of bill the cost thereof. Provided, that the STATE may in any event at its election do any of such work required to be done upon its right-of-way without notice and for all such work the LICENSEE likewise agrees to pay promptly upon rendition of bill the cost thereof. All the terms, conditions and stipulations herein expressed with reference to the construction, maintenance, repair, renewal or removal of said pipe in the location above described shall apply to the same as

relocated, changed or modified within the contemplation of this section.

8. As a material consideration to the STATE for entering into this Agreement, and without which the STATE would not enter into same, the LICENSEE agrees to, and hereby does, release, indemnify and save harmless the STATE, its officers, agents, employees and its Operator while within the scope of their employment, from and against any and all liability, loss, cost, damage, expense, actions and claims for personal injuries, including death, regardless of cause, suffered by any person whomsoever while upon the STATE's premises in connection with the construction, operation, maintenance, repair, renewal or removal of said pipe, or for personal injuries, including death, suffered by any person whomsoever or for or arising out of damage to or destruction of property of any party whomsoever, including the parties hereto, in any manner arising out of or caused or contributed to by the existence, presence, construction, maintenance, condition, operation, repair, renewal, use or removal of said pipe.

9. This Agreement may be terminated by the STATE for any breach of any of the covenants or agreements herein contained to be performed by the LICENSEE, and this right is in addition to any other rights at law or in equity arising by reason of such breach. Failure to terminate for any such breach shall not constitute a waiver of any future breach. The rights of the LICENSEE shall also terminate in case LICENSEE shall abandon the use of said pipe or fail to use the same for a period of one year. Should said pipe be permitted to be in bad order or condition in the judgment of the STATE, for any continuous period of twenty-four hours, the STATE may likewise revoke this Agreement without notice. Within ten days after any termination of this Agreement, the LICENSEE shall remove all property of the LICENSEE from that portion of the right-of-way of the STATE not occupied by the roadbed or tracks, and shall restore to the satisfaction of the STATE the said right-of-way to as good a condition as it was in at the time of construction of said pipe, and if the LICENSEE fails to do so, the STATE may do such work of removal and restoration at the cost and expense of the LICENSEE. The STATE may at its option upon any termination, at the cost and expense of the LICENSEE, remove the portion of said pipe located under said roadbed, track or tracks, and restore said roadbed to as good a

condition as it was in at the time of the construction of said pipe, or it may permit the LICENSEE to do such work of removal and restoration under the supervision of the STATE. In case of termination in any manner herein provided, the LICENSEE shall have no claim or redress of any character against the STATE by reason of such termination, removal of said pipe or restoration of the premises, nor shall such termination release the LICENSEE from any obligation or liability of the LICENSEE hereunder with respect to any matter or thing occurring prior to such termination.

10. The terms and conditions of this Agreement shall be binding upon and the benefits thereof shall accrue to the heirs, executors, administrators, successors and assigns of the respective parties hereto, however the LICENSEE shall not assign the same or any rights thereunder without the written consent of the STATE having been first obtained. In the event the STATE shall permit any railroad company or companies to use its said right-of-way facilities or premises, such user or users shall have the benefit of the provisions of indemnity and release from liability inuring to the STATE hereunder, with the same effect as if such other user or users were parties hereto.

11. The license hereby granted is subject to the superior title of the STATE to its said property and to all other outstanding and superior rights and mortgage liens, and the LICENSEE shall not by reason of the license hereby granted acquire or assert any title or claim of title to any of said property adverse to the title of the STATE or its successors or such superior rights and mortgage liens; and upon any abandonment of the use hereby authorized or upon any termination of the license hereby granted, such title shall remain in the STATE, its successors and assigns, free and clear of all rights or claims of the LICENSEE.

12. All references herein to indemnification include but are not limited to attorneys' fees and court costs.

13. This Agreement shall be governed by the applicable laws of the State of South Dakota.

14. LICENSEE shall give to the STATE and its Operator not less than five (5) working day's notice prior to the commencement of any construction or entry upon STATE's property.

15. LICENSEE shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority controlling environmental standards and conditions on the premises. If, as a result of LICENSEE's operations hereunder, any such ordinance, rule, regulation, requirement or law is violated, LICENSEE shall protect, save harmless, defend and indemnify STATE and its Operator from and against any penalties, fines, costs and expenses, including legal fees and court costs imposed upon or incurred by STATE or its Operator caused by, resulting from or connected with such violation or violations.

16. This Agreement is subject to the approval of the State's Operator.

17. This Agreement is binding upon the STATE and not upon the signator as an individual.

18. Insurance shall be provided the STATE as prescribed in "Exhibit C" attached hereto and made a part hereof.

19. If the STATE or STATE's OPERATOR determines that flagging protection is required at any time during the excavation and installation of said pipe, LICENSEE agrees to reimburse the STATE's OPERATOR said flagging expenses to be performed by STATE's OPERATOR.

The parties hereto have executed this Agreement the day and year first above written.

THE STATE OF SOUTH DAKOTA

By _____
Lynn Kennison
OFFICE of Railroads

City of Rapid City

EXHIBIT C

INSURANCE REQUIREMENTS

The LICENSEE, or the LICENSEE's contractor, shall carry regular Contractor's Liability and Property Damage Insurance as specified in the Federal-Aid Highway Program Manual Volume 6, Chapter 6, Section 2, Subsection 2 providing for a limit of not less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of the bodily injuries to or death of one person, and, subject to that limit for each person, a total limit of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of two or more persons in any one accident, and providing for a limit of not less than Five Hundred Thousand Dollars (\$500,000) for all damages to or destruction of property in any one accident and subject to that limit an aggregate limit of not less than One Million Dollars (\$1,000,000) for all damages to or destruction of property during the policy period. A certified copy of the policy providing said Contractor's Public Liability and Property Damage Insurance, executed by a corporation qualified to write the same in the state in which the work is to be performed, shall be in form and substance satisfactory to the STATE and proof of such insurance shall be delivered by the LICENSEE to and approved by the STATE prior to the entry upon or use of STATE property by the LICENSEE or LICENSEE's contractor.