

WIRE CROSSING PERMIT

License No. 4030901

PO 702797
RD106605

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, maintain and operate an Underground fiber optic cable(s), with the necessary poles, wires, cables, conduits and appurtenances, hereinafter called "electric line" when referred to collectively, extending upon or across the Railroad Company's right of way

approximately **2640 feet West** of Railroad Mile Post **99**,
in the Railroad Company's **Black Hills** Subdivision,
Rapid City, Pennington County, South Dakota

in the location indicated as Section 1 NW, Township 1N, Range 7E, and 40 Feet East of the centerline of 6th Street in Rapid City, for the transmission of communication signals, subject to the conditions hereinafter set forth.

2. The Licensee, after first securing all necessary public authority, shall at its sole expense, install, maintain and operate the electric line upon or across the Railroad Company's right of way, and under its track or tracks located thereon, at the above described location, in a manner satisfactory to the Railroad Company's Chief Engineer and in strict conformity with all requirements of the laws of South Dakota and orders promulgated by competent public authority, and with Public Utilities Commission of the State of South Dakota rules and regulations, now or hereafter in effect, and so as not to endanger the safety of railroad or other operations upon said right of way, or to interfere in any way with the construction, maintenance, operation or use of any telegraph, telephone or signal lines or circuits of the Railroad Company, or its assigns, now or hereafter located upon said right of way. Whenever the electric line as located upon said right of way shall interfere in any way with the construction, maintenance, operation, use or rearrangement of railroad tracks or any other facilities, or with any use which the Railroad Company may desire to make of its said right of way, the Licensee at its sole expense, upon being notified to do so, shall promptly move the electric line to such new location upon said right of way as may be designated by the Railroad Company, or make such changes in the electric line as the Railroad Company's Chief Engineer may consider necessary and require.

3. The Licensee shall pay the Railroad Company the sum of \$2,318.00 in advance as consideration for the permission herein granted, and shall assume and pay all taxes and assessments that may be levied or assessed against the electric line, or against the Railroad Company's property by reason of the location of said electric line thereon. Except as provided in paragraph 6 below, this agreement shall continue in effect until terminated by either party hereto upon ninety (90) 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.

4. Maintenance and operation of the electric line upon or 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.

5. 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 electric 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 electric 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.

6. If the Licensee shall at any time fail to perform or comply with any provision of this agreement, and such default continues for a period of thirty (30) days after written notice thereof by the Railroad Company to the Licensee, this agreement and the permission herein granted shall forthwith wholly terminate. Notwithstanding the foregoing, 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.

7. 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.

8. 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.

9. The Licensee, upon termination of this agreement or upon permanent abandonment of the electric line, shall at its sole expense promptly remove the electric line from the Railroad Company's property, and restore said property to the condition it was in prior to the execution of this agreement. If the Licensee shall fail to do so, the Railroad Company shall then have the right to effect such removal and restoration, in which event the Licensee shall promptly reimburse the Railroad Company for all costs incurred in connection with such removal and restoration, plus fifteen percent (15%).

10. 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 electric line from the Railroad Company's property or to make any payment to avoid such removal.

11. 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.

12. (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.

IN WITNESS WHEREOF, 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

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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 electric 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.

6. If the Licensee shall at any time fail to perform or comply with any provision of this agreement, and such default continues for a period of thirty (30) days after written notice thereof by the Railroad Company to the Licensee, this agreement and the permission herein granted shall forthwith wholly terminate. Notwithstanding the foregoing, 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.

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(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.

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**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"

PW091410-18

SCALE 1" = 300'



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

CIP NO. 50138