RAILROAD PIPELINE LICENSE #WL1130

THIS PIPELINE LICENSE AGREEMENT is effective this __________________day of __________________, 20__, by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this License as the "State," and the city of Rapid City, South Dakota, referred to in this License as the "Licensee."

BACKGROUND

A. The State owns a system of rail tracks (Track(s)) and various real properties within the State of South Dakota, including the rail corridor, referred to in this License as the "Premises," located at or near the city of Rapid, Pennington County, South Dakota, Mile Post 656.85 to Mile Post 656.95, Railroad Survey Station 171+62 to Railroad Survey Station 166+01, as shown on the map dated January 22, 2020, attached to this License as Exhibit "X."

B. The State has agreed to grant the Licensee certain non-exclusive license rights in and to the Premises, subject to the terms, conditions, and limitations of this License.

AGREEMENT

The State and the Licensee agree as follows:

GENERAL

1. The State grants the 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 the State as part of the Licensee’s application process, one (1) pipeline, 17.40 inches in diameter inside a 1.242 inch PVC casing, referred to in this License as the “Pipeline.” The Pipeline will be no more than five hundred sixty-one feet (561’) long, will be built within the south ten feet (10’) of the railroad right of way and will be no closer than forty feet (40’) from the centerline of the railroad right of way.

2. The Licensee will not disturb or interfere with the use of any improvements of the State or of the State’s existing lessees, licensees, easement beneficiaries, or lien holders including the recreational use path located in the railroad bed of the Tracks. The Licensee acknowledges and agrees that its use is subordinate to all other pre-existing uses, including the recreational use path. The Licensee will not place any equipment, materials or other obstructions on the recreational use path and will not disrupt the public’s peaceful enjoyment of the path.

3. The Licensee will perform all work in a good and workman-like manner and will keep the area clean and free from debris. The Licensee will reseed any disturbed areas caused by the Licensee’s construction and maintenance of the Pipeline.

4. The Licensee will place temporary fencing around the construction site to ensure the safety of the public.

5. The Licensee will 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 specifications for materials and construction procedures, are outlined on said Exhibit “X,” and are in accordance with the standard specifications for pipelines. The Licensee will not use the Pipeline to carry any other commodity or use the Premises for any other purpose.

6. The Licensee will not handle or transport “hazardous waste” or “hazardous substances” through the Pipeline, as “hazardous waste” and “hazardous substances” may now or in the future be defined by any federal, state, or local governmental agency or body. On demand, the Licensee will furnish the State with proof satisfactory to the State that the Licensee is in compliance with this provision. Notwithstanding anything contained in any other provision of this License, should the Licensee not comply fully with the obligations of this section, the State may, at the State's option, terminate this License by serving five (5) days' notice of termination on the Licensee. Upon termination, the Licensee will remove the Pipeline and restore the State’s property to the condition which existed as of the effective date of this License.

7. In case of the eviction of the Licensee by any third party owning or claiming title to or any interest in the Premises, or by the abandonment by the State of the affected rail corridor, the State will not be liable to refund the Licensee any
compensation paid under this License, or reimburse any damage the Licensee sustains in connection therewith, except for the pro-rata portion of any recurring charge paid in advance.

8. Any contractor or subcontractor performing work on the Pipeline or entering the Premises on behalf of the Licensee will be deemed a servant and agent of the Licensee for purposes of this License.

TERM

9. This License will commence on the effective date first mentioned above and will be effective until terminated by operation of law or pursuant to any provision of this License.

COMPENSATION

10. (a) The Licensee will pay the State the sum of Two Hundred Eighty Dollars and Fifty Cents ($280.50), for the initial year of this License upon full execution of this License. On or before April 1, of each subsequent year, the Licensee will pay an annual payment each in the amount of Two Hundred Eighty Dollars and Fifty Cents ($280.50). The State reserves the right to adjust the amount of the annual fee at any time pursuant law and State Railroad Property Management Guidelines.

(b) In addition to the payment required above, the Licensee will reimburse the State for all costs and expenses incurred by the State in connection with the Licensee's use of the Premises, and the presence, construction, maintenance, and use of the Pipeline, including but not limited to the furnishing of flaggers and any vehicle rental costs incurred. If and when the State deems flagging is necessary, the Licensee will be responsible for the actual cost of flagging services, calculated at the actual flagging rate in effect at the time such services are provided.

(c) The Licensee's payment under this section will be due thirty (30) days after the date of any invoice. If the Licensee does not pay any amount due the State by, on, or before the due date, interest will accrue on any unpaid amount at an annual rate of 12% from the invoice date to the date of payment.

COMPLIANCE WITH LAWS

11. (a) The Licensee will comply with all federal, state, and local laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction relating to the construction, maintenance, and use of the Pipeline and the Licensee's use of the Premises.

(b) Prior to entering the Premises, the Licensee will comply, and will cause its contractor, if any, to comply, with all the State's applicable safety rules and regulations. In addition, before commencing any work on the Premises, the Licensee will complete and will require the Licensee's contractor to complete the State'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

12. 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

13. The State reserves the following rights, to be exercised by the State and any other party who may obtain written permission or authority from the 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 on, over, under, or across the Premises; and

(c) to use the Premises in any manner as the State in its sole discretion deems appropriate, provided the State uses all commercially reasonable efforts to avoid material interference with the use of the Premises by the Licensee for the purpose specified in Section 5 above.
LICENSEE’S OPERATIONS

14. (a) The Licensee will notify the State’s designated representative, Perry Griffith at 700 East Broadway Avenue, Pierre, South Dakota 57501, telephone 605-773-3222, or such other person the State may designate, not less than five (5) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance.

(b) In performing the work described in Section 5, the Licensee will use only public roadways to cross from one side of the State’s Tracks to the other.

15. (a) The Licensee will not conduct any test, investigation, or any other activity using mechanized equipment or machinery, or place or store any mechanized equipment, tools, or other materials, within twenty-five feet (25’) of the centerline of any Tracks on the Premises unless the Licensee has obtained prior written approval from the State. The Licensee will, at the Licensee’s sole expense, perform all activities on or about the Premises in such a manner as to not at any time endanger or interfere with the existence or use of present or future Tracks, roadbed, or property of the State, or the safe operation and activities of the State, or any person or entity having received permission from the State to use the Tracks, roadbed, or property of the State (Permitted User). If ordered to cease using the Premises at any time by the State’s personnel due to any hazardous condition, the Licensee will immediately do so. The State and any Permitted User have no duty to monitor the Licensee’s use of the Premises to determine the safe nature thereof, it being solely the Licensee’s responsibility to ensure that the Licensee’s use of the Premises is safe. Neither the exercise nor the failure by the State to exercise any rights granted in this Section will alter the liability allocation provided by this License.

(b) The Licensee will, at the Licensee’s sole expense locate, construct, and maintain the Pipeline in such a manner and of such material that it will not at any time endanger or interfere with the present or future Tracks, roadbed, or property of the State, the safe operation of the State’s railroad or the activities of any Permitted User. Further, the Pipeline will be constructed, installed, and maintained in conformity with the specifications shown on the attached Exhibit “X.” The State may direct one of its respective field representatives to observe and 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 the State’s personnel due to non-compliance with the same or any other hazardous condition, the Licensee will immediately do so. The State and any Permitted User have no duty to observe or inspect, or to halt work on, the Pipeline, it being solely the Licensee’s responsibility to ensure the Pipeline is constructed in strict accordance with the Specifications and in a safe and workmanlike manner. Neither the exercise nor the failure by the State to exercise any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time the Licensee will, in the judgment of the State, fail to properly perform the Licensee’s obligations under this Section, theState may, at the State’s option, perform or cause to be performed such work as such party deems necessary for safe operations and activities, and in such event the Licensee will pay the cost incurred by the State within fifteen (15) days after a bill has been tendered. However, failure on the part of the State to perform the obligations of the Licensee will not release the Licensee from liability under this License for any loss or damage.

16. The Licensee will perform the construction and any subsequent maintenance of the Pipeline in a manner so as to preclude damage to the property of the State and any Permitted User, and to not interfere with the operation of the State’s railroad, or the activities of any Permitted User. The Licensee will complete the construction of the Pipeline within one (1) year of the effective date of this License. After completion of the construction of the Pipeline, and after performing any subsequent maintenance on this Pipeline, the Licensee will, at the Licensee’s own expense, restore the State’s Premises to its former condition as of the effective date of this License.

17. If at any time during the term of this License the State determines the Pipeline will interfere with the use of its rail corridor, the Licensee will, at the Licensee’s sole expense, and within thirty (30) days after receiving written notice from the State to such effect, make such change, including without limitation, the relocation of the existing Pipeline or the construction of a new Pipeline(s), which change, in the sole opinion of the State, is necessary to avoid interference with use of the State’s rail corridor.

18. (a) Prior to the Licensee conducting any boring, drilling, or excavating on or about any portion of the Premises, the Licensee will 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 the presence of underground facilities. In the alternative, the Licensee may use suitable detection equipment or other generally accepted industry practice agreed to by the
(b) For any bore greater than twenty-six inches (26") in diameter and at a depth less than ten feet (10') below bottom of rail, the Licensee must obtain a soil investigation and provide the results of the soil investigation for review by the State. This soil investigation must be completed and reviewed before beginning any construction activities in order to determine whether granular material is present and to prevent subsidence during the installation process. If in the opinion of the State significant granular material is present, the State may select a new location for the Licensee’s use or may require the Licensee to furnish a remedial plan, in writing. The Licensee will, at the Licensee’s sole expense, carry out the approved plan in accordance to its terms.

19. The Licensee will keep safely covered and secured any open hole, boring, or well constructed on the Premises at all times when the Licensee is not working in the actual vicinity. Following completion of that portion of the work, any hole or boring constructed on the Premises by the Licensee will be:

(a) filled in to surrounding ground level with compacted bentonite grout; or

(b) otherwise secured or retired in accordance with any applicable legal requirements. The Licensee must remove and properly dispose of all excess excavated materials from the State’s property within ten (10) days, in accordance with applicable legal requirements.

20. Upon termination of this License, the Licensee will, at the Licensee’s sole expense:

(a) remove all of the Licensee’s equipment from the Premises;

(b) remove the Pipeline and all appurtenances, or, at the State’s sole discretion, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to the State;

(c) report and restore any damage to the Premises caused directly or indirectly by the Licensee’s use of the Premises;

(d) remedy any unsafe conditions on the Premises caused directly or indirectly by the Licensee’s use of the Premises; and

(e) leave the Premises in the condition which existed as of the effective date of this License.

21. The Licensee’s on-site supervisor must be in possession of a true and correct copy of the fully executed original of this License at all times while on the Premises.

**LIABILITY**

22. (a) To the fullest extent permitted by law, the Licensee will, and will cause the Licensee’s contractor to release, indemnify, and defend the State and any permitted users, and each of the parties’ successors and assigns (collectively, “indemnitees”) against any and all claims of any nature arising directly or indirectly out of (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) the Licensee’s occupation and use of the Premises;

(iv) the environmental condition and status of the Premises caused by or contributed to by the Licensee; and,

(v) any act or omission of the Licensee or the 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 the 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 22 (a), the Licensee will, and will cause the Licensee’s 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. The Licensee will indemnify the indemnitees against any claim regardless of the negligence of the indemnitees. The Licensee further agrees that the Licensee’s use of the Premises as contemplated by this License will not in any way subject the State to claims that the State is other than a common carrier for purposes of environmental laws and expressly agrees to indemnify the indemnitees against any such claim. In no event will the State be responsible for the environmental condition of the Premises.

(c) To the fullest extent permitted by law, the Licensee further agrees, and will cause the Licensee’s Contractor to agree, regardless of any negligence or alleged negligence of any indemnitee, to indemnify 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 the Licensee or any of the Licensee’s agents, invitees, or contractors claim or allege that they are employees of any indemnitee or otherwise. This indemnity will 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 the State, the Licensee will 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 the Licensee has an obligation to assume liability for and save and hold harmless any indemnitee. The Licensee will 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. Licensee’s obligation to indemnify the indemnitees survives the termination of this License.

PERSONAL PROPERTY WAIVER

23. All personal property, including, but not limited to, fixtures, equipment, or related materials upon the Premises will be at the risk of the Licensee only, and no indemnitee will be liable for any damage to or theft of this personal property, whether or not due in whole or in part to the negligence of any indemnitee.

INSURANCE

24. The Licensee will, at the Licensee’s sole expense, procure and maintain during the life of this License the following insurance coverage:

(a) Commercial General Liability Insurance. This insurance will contain broad form contractual liability with a combined single limit of a minimum of Two Million Dollars ($2,000,000.00) each occurrence and an aggregate limit of at least Four Million Dollars ($4,000,000.00). Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

(i) Bodily Injury and Property Damage
(ii) Personal Injury and Advertising Injury
(iii) Fire legal liability
(iv) Products and completed operations

This policy will also contain the following endorsements, which will be indicated on the certificate of insurance:

(i) The employee and workers’ compensation related exclusions in the above policy will not apply with respect to claims related to railroad employees.
(ii) The definition of insured contract will be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
(iii) Any exclusions related to the explosion, collapse, and underground hazards will be removed.

No other endorsements limiting coverage may be included on the policy.
(b) Business Automobile Insurance. This insurance will contain a combined single limit of at least $1,000,000.00 per occurrence, and include coverage for but not limited to the following:

(i) Bodily injury and property damage
(ii) Any and all vehicles owned, used or hired

(c) In the event this line is reactivated, the Licensee, or the Licensee's contractor, will furnish a Railroad Protective Liability Insurance Policy if further work is to be done in the railroad right-of-way. This policy will name the State and any other railroads which are Permitted Users, as the insured. The limits of this policy will not be less than a combined amount of Six Million Dollars ($6,000,000.00) per occurrence for bodily injury, death, property damage, and physical damage to property. Should this policy contain an aggregate limit, that aggregate limit will not be less than Ten Million Dollars ($10,000,000.00) per policy period. This policy will contain a description sufficient to identify the project for which the policy is issued. This policy will be executed by a corporation qualified to write such policies in the state in which the work is to be performed. Proof of insurance will be delivered by the Licensee to the State prior to entry upon or use of the State's property by the Licensee or the Licensee's contractor. The coverage obtained under this policy will only be in effect during the initial installation and construction of the pipeline.

(d) THE LICENSEE WILL COMPLETE THE CONSTRUCTION OF THE PIPELINE WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.

(e) Other Requirements:

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

(ii) The Licensee agrees to waive the Licensee's right of recovery against the State for all claims and suits against the State. In addition, the Licensee's insurers, through policy endorsement, will waive their right of subrogation against the State for all claims and suits. The certificate of insurance must reflect these waivers of subrogation endorsement.

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

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

(v) The Licensee is not allowed to self-insure without the prior written consent of the State. Should the State grant such permission to self-insure, any deductible, self-insured retention or other financial responsibility for claims will be covered directly by the Licensee in lieu of insurance. Any and all liabilities of the State that would otherwise, in accordance with the provisions of this License, be covered by the Licensee's insurance, will be covered as if the Licensee elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

(vi) Prior to commencing the work, or otherwise occupying any of the State's property, the Licensee will furnish to the 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) will contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify the State in writing at least thirty (30) days prior to any cancellation, non-renewal, substitution, or material alteration. This cancellation provision will be indicated on the certificate of insurance. In the event of a claim or lawsuit involving the State arising out of this License, the Licensee will make available to State any required policy covering such claim or lawsuit. The Licensee will furnish a certified duplicate original of any required policy on request from the State.

(vii) Any insurance policy will be written by a reputable insurance company authorized to do business in the state where the Premises is located, and acceptable to the State or with a current Best's Guide Rating of A- and Class VII or better.
(viii) The Licensee warrants that this License has been thoroughly reviewed by the Licensee's insurance agent(s)/broker(s), who have been instructed by the Licensee to procure the insurance coverage required by this License.

(ix) If any portion of the operation is to be subcontracted by the Licensee, the Licensee will require that the subcontractor will provide and maintain insurance coverage as set forth in this License, naming the State as an additional insured required of the Licensee, and will require that the subcontractor will release, defend, and indemnify the State to the same extent and under the same terms and conditions as the Licensee is required to release, defend, and indemnify the State.

(x) Failure to provide evidence as required by this Section will entitle, but not require, the State to terminate this License immediately. Acceptance of a certificate that does not comply with this License will not operate as a waiver of the Licensee's obligations under this License.

(xi) The fact that insurance (including, without limitation, self-insurance) is obtained by the Licensee shall not be deemed to release or diminish the liability of the Licensee including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by the State will not be limited by the amount of the required insurance coverage.

ENVIRONMENTAL

25. The Licensee will comply with all federal, state, and local environmental laws and regulations in the Licensee's 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). The Licensee will not maintain a treatment, storage, transfer, or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. The Licensee will 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

26. The 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 the State's prior written consent.

NO WARRANTIES

27. The State's duties and warranties are limited to those expressly stated in this License and will not include any implied duties or implied warranties, now or in the future. No representations or warranties have been made by the State other than those contained in this License. The Licensee 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

28. The State does not warrant its title to the Premises nor undertake to defend the Licensee in its peaceable possession or use. The State makes no covenant of quiet enjoyment.

DEFAULT

29. Should the Licensee default in any of the covenants or agreements of the Licensee contained in this License, or in case of any assignment or transfer of this License by operation of law, the State may, at the State's option, terminate this License by serving five (5) days' notice in writing upon Licensee. Any waiver by the State of any default or defaults will not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor will any such waiver in any way affect the State's ability to enforce any Section of this License. The remedy set forth in this Section 29 will be in addition to, and not in limitation of, any other remedies that the State may have at law or in equity.
LIENS AND CHARGES

30. The Licensee will promptly pay and discharge any and all liens arising out of any construction, alterations, or repairs done, suffered or permitted to be done by the Licensee on Premises. The State is 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 the State to take any such action will not relieve the Licensee of any obligation or liability under this Section 30 or any other Section of this License. The Licensee will 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 the State or the Premises that are attributable to the improvements.

TERMINATION

31. In addition to the State's rights to terminate this License for fault pursuant to Section 6 and Section 29, this License may be terminated by either party, for any reason or no reason by serving thirty (30) days' written notice of termination on the other.

32. If the Licensee fails to surrender the Premises to the State upon any termination of this License, all liabilities and obligations of the Licensee under this License will continue in effect until the Premises are surrendered.

ASSIGNMENT

33. Neither the Licensee, nor the Licensee's heirs, legal representatives, successors, or assigns, nor any subsequent assignee may assign or transfer this License or any interest in this License, without the prior written approval of the State, which approval may be withheld in the State's sole discretion.

NOTICES

34. Any notice required or permitted to be given under this License by one party to the other must be in writing and directed 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 the State:

Program Manager, Office of Air, Rail, and Transit  
Department of Transportation  
State of South Dakota  
700 E. Broadway Avenue  
Pierre, South Dakota 57501

If to the Licensee:

City of Rapid City, South Dakota  
300 6th Street  
Rapid City, South Dakota 57501  
Attn: Mike Stetson

Notice will be deemed to have been served when (i) placed in the United States mail, certified, return receipt requested, (ii) deposited into the custody of a nationally recognized overnight delivery service, or (iii) if personally delivered, when received by such party.

SURVIVAL

35. Neither termination nor expiration of this License will release the Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any act, omission, or event 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 such Premises' condition as of the effective date of this License.
36. The parties understand and agree this License will not be placed on public record.

APPLICABLE LAW

37. All questions concerning the interpretation or application of provisions of this License will 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 will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

SEVERABILITY

38. If any court of competent jurisdiction holds any provision of this License unenforceable or invalid, such holding will not invalidate or render unenforceable any other provision of this License.

INTEGRATION

39. All other prior discussion, communications, and representations concerning the subject matter of this License are superseded by the terms of this License, and, except as specifically provided in this License, this License constitutes the entire agreement with respect to the subject matter of this License.

MISCELLANEOUS

40. If the Licensee consists of two or more parties, all the covenants and agreements of the Licensee contained in this License will be the joint and several covenants and agreements of such parties.

41. The forbearance by the State of the breach of any provision of this License by the Licensee will in no way act as a waiver or impair the right of the State to enforce that provision for any subsequent breach.

42. The Licensee has designated its Mayor as the Licensee's authorized representative and has empowered the Mayor with the authority to sign this License on behalf of the Licensee. A copy of the Licensee's City Commission or Council minutes or resolution authorizing the execution of this License by the Mayor as the Licensee's authorized representative is attached to this License as Exhibit A.

The parties have caused this License to be signed by their respective and duly authorized officers.

City of Rapid City, South Dakota  
By: ____________________________  
Title: Mayor  
Date: ____________________________  
Attest: ____________________________  
City Auditor/Clerk  
(City Seal)

State of South Dakota  
Department of Transportation  
By: ____________________________  
Title: Secretary  
Date: ____________________________  
Approved as to Form:  
Special Assistant Attorney General