PIPELINE LICENSE #WL1120

THIS PIPELINE LICENSE AGREEMENT is 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 Air, Rail, and Transit, referred to in this License as the “State,” and the City of Rapid City, 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 (as described below, and referred to in this License as “Premises”), including the rail corridor at or near the city of Rapid City, Pennington County, South Dakota, Mile Post 852.38 + Railroad Survey Station 402+10 as shown on the map dated May 11, 2016, 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(s), 12.0 inch in diameter PVC inside a 24.0 inch steel casing.

2. The Licensee will not disturb or interfere with the use of any improvements of the State, of any designated Regional Railroad Authority’s Operator, or of the State’s existing lessees, licensees, easement beneficiaries, or lien holders, if any.

3. 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,” 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.

4. 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.

5. 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, neither the State nor any Regional Railroad Authority’s Operator will 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.

6. 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

7. 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

8. (a) The Licensee will pay the State, prior to the Effective Date the sum of Zero ($000.00), as compensation for the use of the Premises, for any installation outside a public right-of-way.

(b) In addition to the payment required above, the Licensee will reimburse the State and any Regional Railroad Authority's Operator for all costs and expenses incurred by the State or any Regional Railroad Authority's Operator 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 or any Regional Railroad Authority's Operator 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 or Regional Railroad Authority's Operator 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

9. (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 State's and any Regional Railroad Authority's Operator'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 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. 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 3 above.

LICENSEE'S OPERATIONS

12. (a) The Licensee will notify the State's designated representative, Lynn Kennison at 700 East Broadway Avenue, Pierre, South Dakota 57501, telephone 605-773-3222, and the Regional Railroad Authority's Operator, if any, or such other person the State or Regional Railroad Authority 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 3, the Licensee will use only public roadways to cross from one side of State's Tracks to the other.
13. (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 and the Regional Railroad Authority's Operator, if any. The Licensee will, at the Licensee's sole expense, perform all activities on or about the Premises in such a manner as 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, any Regional Railroad Authority's Operator, or any person or entity having received permission from the State or any Regional Railroad Authority's Operator 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 or any Regional Railroad Authority's Operator's personnel due to any hazardous condition, the Licensee will immediately do so. The State, the Regional Railroad Authority's Operator, if any, and any Permitted User have no duty to monitor Licensee's use of the Premises to determine the safe nature thereof; it being solely the Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by the State or any Regional Railroad Authority's Operator 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 and subject to the supervision of the State's representative and any 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 endanger or interfere with the present or future Tracks, roadbed, or property of the State, the safe operation of any Regional Railroad Authority'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 and any Regional Railroad Authority's Operator may each direct one of their 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 or any Regional Railroad Authority's Operator's personnel due to non-compliance with the same or any other hazardous condition, the Licensee will immediately do so. The State, any Regional Railroad Authority's Operator, 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 or any 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 the Licensee will, in the judgment of the State or any Regional Railroad Authority's Operator, fail to properly perform the Licensee's obligations under this Section, the State and any 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 the Licensee will pay the cost incurred by the State or any Regional Railroad Authority's Operator within fifteen (15) days after bill has been rendered. However, failure on the part of the State or any Regional Railroad Authority's Operator to perform the obligations of the Licensee will not release the Licensee from liability under this License for any loss or damage.

14. The Licensee will perform the construction and any subsequent maintenance of the Pipeline in a manner to preclude damage to the property of the State, any Regional Railroad Authority's Operator, and any Permitted User, and to not interfere with the operation of the State, any Regional Railroad Authority's Operator'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.

15. 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.

16. (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 State (for example, consulting with South Dakota One Call) to determine the existence and location of any underground facility.
(b) For any bore greater than twenty-six inch (26") 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 and any Regional Railroad Authority's Operator. 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 or any Regional Railroad Authority significant granular material is present, the State or any Regional Railroad Authority's Operator 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.

17. 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.

18. 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.

19. 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

20. (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, any Regional Railroad Authority's Operator, 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 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 20 (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.

**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 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**

22. 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 $1,000,000 each occurrence and an aggregate limit of at least $2,000,000. 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 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) The Railroad Protective Liability Insurance requirement for this installation has been waived by the State of South Dakota, Office of Air, Rail and Transit.

(d) **THE CONSTRUCTION OF THE PIPELINE WILL 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 may be required. The policy will be issued on a standard ISO form CG 00 35 10 93 and include the following:

(i) Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
(ii) Endorsed to include the Limited Seepage and Pollution Endorsement.
(iii) Endorsed to include Evacuation Expense Coverage Endorsement.
(iv) No other endorsements restricting coverage may be added.
(v) The original policy must be provided to the State prior to performing any work or services under this License.

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

(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 and any Regional Railroad Authority's Operator. 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 and Regional Railroad Authority's Operator as additional insureds with respect to work performed under this License. Severability of interest and naming the State and any Regional Railroad Authority's Operator as additional insureds 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 and any Regional Railroad Authority's Operator. If the right to self-insure is granted by the State and any Regional Railroad Authority's Operator, 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 of the State's and any Regional Railroad Authority's Operator's liabilities 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 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 or Regional Railroad Authority's Operator arising out of this License, Licensee will make available to State and any Regional Railroad Authority's Operator any required policy covering such claim or lawsuit. Upon request from the State, the Licensee will furnish a certified duplicate original of any required policy.

(vii) Any insurance policy will be written by a reputable insurance company acceptable to the 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.

(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. Allocated Loss Expense will be in addition to all policy limits for coverage referenced above.

(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 and any Regional Railroad Authority's Operator as additional insureds, and will require that the subcontractor will release, defend, and indemnify the State and any Regional Railroad Authority's Operator to the same extent and under the same terms and conditions as the Licensee is required to release, defend, and indemnify the State and any Regional Railroad Authority's Operator under this License.

(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 Section 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 will 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 and any Regional Railroad Authority's Operator will not be limited by the amount of the required insurance coverage.

ENVIRONMENTAL

23. The Licensee will strictly 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

24. 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

25. 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

26. 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

27. 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 27 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

28. 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 28 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

29. This License may be terminated by either party, at any time by serving thirty (30) days’ written notice of termination on the other.

30. 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. Termination will not release the 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 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 and any Regional Railroad Authority’s Operator, which approval may be withheld in the State’s and any Regional Railroad Authority’s Operator’s sole discretion.

NOTICES

32. 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
300 Sixth Street
Rapid City, South Dakota 57701
Att. Dale Tech

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

N/A

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

33. 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.

RECORDATION

34. The parties understand and agree this License will not be placed on public record.

APPLICABLE LAW

35. 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

36. 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

37. 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

38. 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.

39. The forbearance by the State or any Regional Railroad Authority's Operator 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 or Regional Railroad Authority's Operator to enforce that provision for any subsequent breach.
40. 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 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
By: ________________________________
Its Mayor: ________________________________
Date: ________________________________

State of South Dakota
Department of Transportation
By: ________________________________
Its: Program Manager,
Office of Air, Rail, and Transit
Date: ________________________________

(CORPORATE SEAL)
EXHIBIT "X"
A-B PROPOSED PIPELINE CROSSING NUMBER WL 1120
IN FAVOR OF CITY OF RAPID CITY

PIPE
12.0" inch PVC 255 Feet

Casing
24.0" inch Dia. 195 feet Under Rail bed

Material
Steel 0.400", Minimum Wall Thickness

Bury Depth
90 inches, Minimum From Base of Rail

Installation
Jack and Bore

STATE OF SOUTH DAKOTA OFFICE OF AIR, RAIL AND TRANSIT
PRINT SHOWING PROPOSED UNDERGROUND PIPE LINE OCCUPANCY
NO. WL 1120 IN FAVOR OF THE CITY OF RAPID CITY

Rapid City
City
Pennington
County
South Dakota
State

SCALE: Not to Scale
May 11, 2016
SOUTH DAKOTA OFFICE OF AIR, RAIL AND TRANSIT RAILROADS

PIPE LINE LICENSE APPLICATION

Crossing fee - located within public right-of-way - $0.00
Crossing fee - not located within public right-of-way - 1-time $750.00 fee to accompany application.
MUST BE SENT CERTIFIED MAIL RETURN RECEIPT TO: SD Office of Air, Rail and Transit-Railroads, 700 East Broadway Ave., Pierre, SD 57501 phone: 605-773-3222
Application must be accompanied with certificate or proof of insurance, Commercial General Liability insurance with limits provided by law. Along with Railroad Protective Liability Insurance as required by Railroad Companies.

1. City or Town (closest) permit desired? Rapid City, SD

2. Section 24 & 25: 19 Township: 1N Range: 2S: 9E

3. Full name and address of Applicant: City of Rapid City
   300 Sixth Street, Rapid City, SD 57701 is applicant licensed to do business in SD: Yes

4. Telephone Number (605) 394-4165 Contact Person: Dale Tech

5. a. Product to be handled in Carrier pipe line: Yes
b. Will multiple carriers be placed in casing pipe? No
   If Yes list:

6. Pipe Data: CARRIER PIPE CASING PIPE
   a. Outside diameter: 12.3" 24.8"
   b. Inside diameter: 12" 24"
   c. Pipe material: PVC Steel
   d. Specifications: CE-500 Min. CWP 35ksi
   e. Wall thickness: 0.73" 0.406" f. Length of installation: 255' 190'
   g. Actual working pressure: 130 psi N/A
   h. Type of joint: Restrained Joint Welded
   i. Coating: No No
   j. Method of Installation: Jack & Bore Jack & Bore
   k. Will cathodic protection be provided: Yes
      If Yes list:

7. a. Depth of pipe under track (top of tie to top of casing-5.5 ft min): 7.5'
   b. Angle of crossing to tracks: 87 Degrees
   c. Is the crossing to be in public right of way? Yes
   d. Give distance from fixed point (C/L of road or RR Milepost) as measured along rail to proposed installation:
      Approx. 50' East of CL of Radar Hill Road

8. If pipe is to be placed longitudinally with track, give:
   a. Location of pipe in relation to centerline of nearest track
   b. Depth of coverage (ground line to top of pipe)

9. If installation is to be by jacking or boring method give location of jacking and receiving pits
   a. Depth & S. Side of E. Hwy 44; 10' N. Side of E. Hwy 44
   b. Distance from face of pit to centerline of nearest track (measured normal): 33'
      Note: Minimum distance from centerline of nearest track and face of boring pit will be 30 ft.

10. If Reference plans (to be forwarded with original application)
    a. Drawing Number: 7.11
    c. Your Project ID: 21892.00.32

11. 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 as required by law and Railroad Protective Liability Insurance in from and amounts satisfactory to Railroad Company and Office of Air, Rail and Transit-Railroads

   By: [Signature]
   (Aplicant)

   City Engineer: [Signature]
   (Title)

   4-21-16
   (Date)

APPLICATION APPROVED

By: [Signature]

Office of Railroad

pipe-app.doc