

UTILITY OCCUPANCY LICENSE No. 4290301

THIS LICENSE is made effective **1st day of April, 2015** by and between

1. PARTIES:

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, doing business as Canadian Pacific with general offices at

900 Canadian Pacific Plaza,
120 South Sixth Street,
Minneapolis, Minnesota, 55402

hereinafter called "**CP**,"

and

CITY OF DUBUQUE, a government agency with offices at:

50 W. 13th St.
Dubuque, IA, 52001

hereinafter called "**Licensee**."

CP hereby grants Licensee a license to install, maintain and operate the following the "**Utility Line**" under its railroad corridor property and tracks per specifications and location Sections 2.1 and 2.2 following:

2.1 Specifications

<i>Utility Type:</i>	Steel Casing for Sanitary Sewer, Fiber Optic Cable, and Electric Cable
<i>Dimensions:</i>	60 inch Steel Casing outside diameter; 36 inch Sanitary Sewer installed via trenchless tunneling at a depth of 22 feet
<i>Installation:</i>	
<i>Ancillary Items</i>	None

2.2 Location

<i>Lat/Lon:</i>	42.513285 / -90.663163
<i>PLSS:</i>	NE 1/4 Sec. 24- Twp. 89N - Rge. 2E, 5th P.M.
<i>City, County & State:</i>	Dubuque, Dubuque County, Iowa
<i>Milepost, Subdivision</i>	Railroad Milepost 44.52 on the Marquette Subdivision (BE# IA04)

as shown upon Exhibit A attached hereto and made a part hereof (the "**Property**")

2.3 Fee:

The fee for the rights granted pursuant to this License is \$11,500.00 together with other expenses as more particularly set forth in Section 4 and its subparts.

2.4. Grant of License:

This license is granted subject to all the terms and conditions set forth below and apply to the existence of the Utility Line on the Property and to all Work and activities upon the Property that may be performed by Licensee through its employees, agents, and contractors. For the purposes of this License, the actions and omissions of such employees, agents, and contractors shall be deemed the actions and omissions of Licensee.

2.5 Inclusion of Appendices, Exhibits, Safety Rules/Procedures

The following items shall be a part of this License agreement:

- Exhibits A.1, A.2, and A.3
- Applications or other materials submitted by the Licensee relative to this Utility Line
- Safety rules and procedures provide by CP to this license, irrespective of whether said items were provided prior or subsequent to the execution of this License.

2.6. Work, License To Be Available At Work Site:

- A.** “**Work**,” shall mean any activity conducted by Licensee relative to the installation, maintenance, repair, replacement, relocation, servicing, or removal of the Utility Line involving entry onto the Property.
- B.** “**Work Site**“ shall mean the general location of License’s activities relative to Work. Licensee shall keep a copy of this License at the Work site and shall make it available upon demand by any employee or agent of CP.

3. EFFECTIVE DATE, TERM, TERMINATION

3.1. Effective Date:

The “**Effective Date**” of this License for documentation purposes shall be **April 1, 2015**.

Notwithstanding the Effective Date, the rights to granted to Licensee pursuant to this License shall be effective at the later of the Effective Date, or the date on that this License has been signed by both parties.

3.2 Term:

This License shall continue in effect until terminated by any of the provisions contained herein.

3.3. Termination

A. By Licensee

This License may be terminated by the Licensee at any time upon Thirty (30) days advance written notice by Licensee to CP and fulfillment of all of Licensee’s applicable obligations to restore the Property, remove the Utility Line and payment of any required amounts.

B. By CP:

This License may be terminated by CP in the following circumstances:

i. Breach by Licensee:

If the Licensee shall at any time fail to perform or comply with any provision or fail to pay, or default on any payment required by this License, and such default or breach continues for a period of thirty (30) days after written notice thereof by CP to the Licensee, then CP may terminate this License upon written notice to Licensee, to be effective no less than 30 days from said to allow time for Licensee to discontinue its use of the Utility Line and to complete its applicable obligations for removal of the Utility and restoration of the Property.

ii. Railroad Maintenance or Safety.

CP may terminate this License to be effective Sixty (60) days after written notice to Licensee in the event that CP determines that the Utility Line poses a safety risk to railroad maintenance or safety or will interfere with railroad needs. In this event, CP shall use reasonable efforts to identify a replacement location for Licensee’s Utility Line but in the event that no such replacement location is decided upon, Licensee shall discontinue use of the Utility Line and complete its applicable obligations for removal of the Utility Line and restoration of the Property prior to expiration of said 60 day period.

C. **Effect of Termination:**

Termination of this License shall mean that the Licensee shall no longer have the right to occupy or use CP's property for the Utility Line and that CP shall have the right to seek the removal of the Utility Line from its Property and pursue any and all remedies available to it pursuant to this License or at law. Termination of this Licensee shall not prejudice the rights of CP. Notice of Termination by either Party shall not terminate Licensee's liabilities or responsibilities under this License for Utility Line, nor payment of rent, fees, costs or damages so long as the Licensee's responsibility and obligations for the Utility Line remain unfulfilled.

4. PAYMENTS

4.1. License Fee.

In consideration of the permissions herein granted, the Licensee shall pay to CP with its execution of this License the sum of **\$4,000.00**, the "License Fee."

4.2. Utilities.

Licensee shall assume and timely pay for any gas, electrical, telephone, computer, sewer, water, storm water, waste or trash removal or any other service or commodity connected with the Work, collectively "Utility Service." If any Utility Service fee is in common with CP or other parties, Licensee shall be liable for its proportionate share of any such Utility Service Fee and upon receipt of a bill therefor, promptly pay CP or such other party for its share. It shall be a default in the terms of this lease if it can be shown that Licensee has not made such payments within 30 days if due to CP, or within 60 days if payable to any other party.

4.3. Mechanics' And Materialmen's Liens:

If any mechanics' or materialmen's lien, or similar lien, is asserted against the Property, or any other property of CP, as a consequence of the Work, Licensee shall immediately satisfy, defend, or obtain the release of such lien, all at Licensee's expense, and Licensee shall indemnify and defend CP against any Claims arising out of or connected with such lien.

4.4. Additional Charges.

Licensee shall within 30 days of receipt of a bill therefor, pay to CP costs for flagging, track changes or damage, or other such charges as may be provided by this License or that CP may reasonably impose in connection with Licensee's Work.

4.5. Due Dates; Penalties; Other Charges

4.5.1. Due Dates

Any item, submission or payment required to be made shall be deemed timely made if received by the other party on or before the specified due date, or prior to expiration of the applicable period for compliance, submission or payment.

4.5.2. Late Fees

In addition to any amounts payable by Licensee to CP, Licensee shall pay CP a late fee for any payment not timely made by Licensee. The late fee shall be at the rate for overdue accounts set by CP's Accounting Department that is in effect at the time that any such payment is due. Said late fee shall initially be an amount equal to 1% of the invoice amount per month.

4.5.3. Fines & Service Fees

In addition to any other amounts payable by Licensee to CP, Licensee shall pay CP for any bank fines or service incurred by it in connection with the handling, non-payment, return or currency conversion incurred by CP in connection with processing of any payment made by Licensee to CP.

4.6. Work At No Cost To CP:

The Work completed by Licensee shall be performed at no cost to CP.

5. CONTACT, NOTICES, ETC.

5.1. Contact Persons; Communications:

Communications pursuant to this License shall be directed to the contact persons designated in Appendix 1 or their designees. Either party may change its contact person, or the address(es), telephone number, or fax number for the contact person, by notice to the other party.

5.2. Notices:

Except as otherwise provided in this License, all notices pursuant to this License shall be in writing and shall be effective upon delivery to the address or fax number of the contact person for the party to whom notice is being given. If notice is given by fax, the notice shall not be deemed effective until received in legible form.

5.3. Notification Prior To Beginning Work:

Licensee must notify CP's Engineering contact person (Stated on Appendix 1) by telephone at least **FIVE (5)** working days prior to beginning any separate phase of the Work, and again promptly after such phase of the Work has been completed, "**Working Days**" do not include Saturdays, Sundays and Holidays observed by CP.

6. PERMITTED & PROHIBITED USES; RIGHTS OF CP

6.1. Permitted Uses:

6.1.1. The Work:

The use of Property by Licensee shall be limited to the completion of the Work set forth in Section 2.6., or such other kind of activities as may be approved by CP in writing.

6.1.2. Government Authorities.

Licensee may permit governmental authorities with jurisdiction over the Work to enter the Property for the purpose of inspecting or monitoring the Work. Whenever possible, Licensee shall advise CP (by telephone or other means calculated to bring the matter to CP's immediate attention) prior to permitting such governmental authorities to enter the Property for such purposes. The actions and omissions of such governmental authorities while on the Property for such inspections and monitoring shall be deemed the actions and omissions of Licensee. Licensee is not authorized to permit governmental authorities to enter the Property for any other purpose.

6.2. Prohibited Uses and Activities.

The Licensee shall not use, occupy or permit the Property to be used for any purpose, activity or improvement except as provided in this License or as may be approved of in writing by CP. Specifically:

6.2.1. Advertising

Licensee shall not permit any advertisements or signs upon the Property;

6.2.2. Use of Hazardous Substances

Licensee shall not, without prior written disclosure to and approval by CP, Use or authorize the Use of any Hazardous Substance on the Property, including installation of any above or underground storage tanks; subject thereto, the Licensee shall arrange at its own cost for the lawful transportation and off-site disposal of any and all Hazardous Substances that it shall Use or generate;

6.2.3. *Use of Premises for waste treatment or as storage or disposal facility*

Licensee shall not cause or allow the Property or any of CP's adjacent property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or to otherwise bring any such property within the ambit of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or any similar state statute or local ordinance; or

6.2.4. *Subleasing is prohibited.*

Licensee shall not sublease the Property or the permissions or rights herein granted in any manner or form.

6.3. Reservations and Rights of CP:

6.3.1. *Railroad Activities Take Priority over Work*

All Work by Licensee shall always and all times be subordinate to the needs of CP in connection with the operation and movement of railroad trains and equipment, and the repair of railroad track, structures, communications and appurtenances thereto.

6.3.2. *Reservation of prior and future uses not inconsistent with Licensee's activities.*

The rights herein granted to Licensee are subject to the rights granted in all other licenses, permits and easements for tracks, roads, walkways, poles, wires, pipelines, sewers, billboards and other improvements that exist or may be placed upon, across, above or underneath the Property by CP, or its employees, agents, licensees, grantees, representatives or invitees. Further, CP reserves unto itself the right to place (or to give others the right to place) additional tracks, roads, walkways, poles, wires, pipelines, sewers and billboards upon, across, above or underneath the Property in any manner that does not unreasonably interfere with Licensee's Utility Line.

6.3.3. *Monitoring*

CP may elect to be present during the conduct of the Work and to monitor same. The cost of such monitoring shall be charged to Licensee.

7. COVENANTS, CONDUCT & RESPONSIBILITIES

7.1 Definitions

7.1.1 "**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);

7.1.2 "**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, ordinance, order or decree dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted;

7.1.3 "**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;

7.1.4 "**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;

7.1.5 "**Response**" or "**Respond**" means action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Substance;

7.1.6 "**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.

7.2 Investigation; Compliance with Laws; Safety Requirements.

7.2.1 *Tenants and Licensees in possession of Property.*

Before entering the Property, Licensee shall secure the consent of all persons or entities who are using or occupying any portion of the Property. CP will cooperate with Licensee to obtain consent from any such person or entity who unreasonably withholds consent.

7.2.2 *Underground Utilities And Structures:*

- a. Licensee shall be responsible for determining the location of all underground utilities (electric lines, telephone lines, gas lines, steam lines, sewer lines, water lines, fiber optic cables, pipes, wires, and the like) and underground structures.
- b. Licensee shall call **CP ONE CALL** at **1-888-625-8702** a minimum of 5 Working Days prior to commencing any excavation or boring on the Property.
- c. CP will cooperate with Licensee to identify the location of underground utilities and structures known to CP, but such cooperation shall not relieve Licensee from its primary responsibility to determine the locations of such utilities and structures.

7.2.3 *Permits And Licenses; Compliance With Laws:*

Licensee shall secure, at no expense to CP, any permits or licenses required in connection with the Work and shall comply with all laws applicable to the Work and the use and operation of the Utility Line, including (but not limited to) any laws, standards, regulations, and permit requirements relating to environmental pollution or contamination or to occupational health and safety. Licensee shall indemnify and defend CP against any and all Claims arising out of or connected with the violation of any law by Licensee while on or about the Property.

7.2.4 *Compliance With CP Safety Requirements; Licensee's obligation to ensure possession of a copy of CP Safety Rules*

- a. While on the Property, Licensee shall comply with the safety requirements of CP, as such requirements may be amended from time to time during the duration of the Work, all at no expense to CP. CP's safety requirements are set forth in a document titled "**MINIMUM SAFETY REQUIREMENTS FOR CONTRACTORS WORKING ON RAILWAY PROPERTY**" and in CP's current safety handbook, "**CP Safety Rules.**" Typically a copy of CP Safety Rules are provided with the Licensee's initial application for the Utility Line. Additional or updated copies of CP Safety Rules can be obtained in electronic form by contacting CP's

Engineering contact set forth in Appendix 1. Licensee agrees that it has a copy of CP Safety Rules and agrees that

IT IS LICENSEE'S RESPONSIBILITY TO OBTAIN THE MOST UP-TO-DATE VERSION OF CP SAFETY RULES

and ensure that any person performing any of the Work for or on behalf of Licensee shall comply with the CP Safety Rules.

7.3 Work In Close Proximity To Railroad Operations; Drainage:

7.3.1 *Interference With Railroad Operations:*

Licensee shall keep CP fully apprised of its proposed activities on the Property so as to prevent any interference with the operations of CP's trains or equipment (or trains or equipment of others) operating on or near the Property.

7.3.2 *Clearance:*

No work shall be done or any equipment or other obstruction placed over or within 25 feet laterally of the centerline of any track without advance notification to CP prior to performing such work or placing such equipment or obstruction.

7.3.3 *Flagging:*

Licensee must make arrangements with CP for such flagging or watchman service as CP deems necessary for the protection of railroad traffic. All such flagging and watchman service shall be provided by CP at Licensee's expense. The fact that CP provides such service shall not relieve Licensee from any liability under this License. CP's labor and material additives are subject to change without notice to Licensee, and CP shall be reimbursed based upon its labor and material additives actually in effect as of the date of such service.

7.3.4 Certain Work Close To Track Not Permitted; Lateral Support:

- a. Unless otherwise agreed to in writing by CP, excavations, borings, wells, pits, test holes, probe sites, and the like shall not be located closer than 25 feet from the centerline of the nearest railroad track on or adjacent to the Property nor shall it take or allow any action upon the Property that would materially impair the lateral or subadjacent support of adjacent lands or railroad tracks.;
- b. Unless otherwise agreed to in writing by CP, drilling and excavating equipment and related equipment shall not be located closer than 25 feet from the nearest rail of any such track;
- c. In the event that CP permits excavations, borings, wells, pits, test holes, probe sites, or the like in close proximity to tracks, embankments or other features providing lateral or subadjacent support to land or tracks, then notwithstanding anything to the contrary in this license, Licensee shall be responsible for designing and constructing at no cost to CP any measure that is required to prevent the collapse, erosion or impairment to said land or tracks.

7.3.5. Storm Water

Licensee shall not, without the advance written approval of CP, make any changes to the Property that would either increase the historic flow rate of storm water from the Property or create an impediment to the historic flow of storm water to the Property. Unless otherwise agreed in writing, Between CP and the Licensee it is understood and agreed that Licensee shall at Licensee's cost and expense be liable to CP for the construction, maintenance, repair and replacement upon the real property or other land not belonging to Grantor such storm sewer lines, manholes, mains, rip rap, boulders, wing walls, ditches and related

7.3.6. Fencing

If deemed necessary and prudent to the safety of railroad operations, employees and the public, the Licensee shall, at no cost to CP, construct and maintain during any Work the fencing of a quality and in the locations that CP may direct. Following completion of the Work, the Licensee shall remove the fencing, remove any post footings or concrete, and fill and tamp any post holes with clean fill material.

7.4 Conduct

7.4.1. *Property clean, safe and free from nuisances*

During any Work the Licensee shall not permit the existence of any nuisance upon the Property and shall at all times keep the Property in a proper, clean, safe and sanitary condition, and free from accumulations of waste materials, debris or refuse.

7.4.2. *Release of Hazardous Substances:*

The Licensee shall not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from the Property.

7.4.3. *Response Actions*

The Licensee shall promptly take all necessary action in Response to any Release or Use of a Hazardous Substance at the Property caused by, or attributable to, any act or omission of the Licensee (or the Licensee's employees, agents, representatives or invitees) that could:

- a. give rise to any Claim under any Environmental Law,
- b. cause a public health or workplace hazard, or
- c. create a nuisance.

7.5. Required Notices/Disclosures

7.5.1 *Transportation and Disposal Contracts*

The Licensee shall, upon written request by CP, provide CP with copies of transportation and disposal contracts and manifests for Hazardous Waste, any permits issued under any Environmental Laws, and any other documents demonstrating that the Licensee has complied with all Environmental Laws relating to the Property

7.5.2 *Releases or Suspected Releases*

The Licensee shall promptly notify CP of any actual or suspected Release of any Hazardous Substance on, to, or from the Property, regardless of the cause of the Release.

7.5.3. *Notices, summons citations, etc.*

The Licensee shall promptly provide CP with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, claims, causes of action, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States

Environmental Protection Agency, the United States Occupational Safety and Health Administration, or other federal, state or local agency or authority, or any other entity or individual, concerning:

- a. any Release of a Hazardous Substance on, to or from the Property,
- b. the imposition of any lien on the Property, or
- c. any alleged violation of or responsibility under any Environmental Law relating to the Property.

7.5.4. Other Reports

Licensee shall, at CP's option, provide CP, at no cost to CP, a copy of any other report, summary or written test results, collectively "**Report**," pertaining to the Work. If any such Report is to be filed or made available to any governmental agency acting in a regulatory capacity, then Licensee shall also give CP a reasonable time (not less than 5 Working Days) to review and comment on a draft of such Report and when preparing any such final Report pertaining to the Work, Licensee or its contractor shall give due consideration to CP's comments with respect to the draft of that Report. Licensee will promptly provide CP with a copy of any final Report.

7.6. CP's right to Participate in Response Actions

Following receipt of any notice, order, claim, investigation, information request, letter, summons, citation, directive, or other communication identified in 7.5.3, Licensee shall notify CP of and permit CP to participate in any and all investigations, telephone conferences, settlement discussions, remediation plans and all other interactions, direct or indirect, with governmental or regulatory officials, and Licensee shall take all action necessary to ensure that any indemnification, release, waiver, covenant not to sue, or hold harmless agreement benefiting Licensee and arising out of such activities, whether from a governmental or regulatory entity or from a private entity, also benefits CP to at least the same extent as Licensee.

7.7. Restoration of Property;

Upon completion of the Work or termination of this License, whichever occurs first, Licensee shall remove any debris resulting therefrom and shall restore the Property to as close as reasonably possible to the condition it was in prior to the commencement of the Work (or such other condition as is satisfactory to CP). All excavations are to be backfilled and tamped. All borings shall be backfilled with grout. Drill cuttings shall not be used as backfill. Licensee shall dispose of all drill cuttings, soil and sediment samples, purge water, dewatering effluent, and water samples and all excess excavation material in a manner acceptable to CP and in accordance with all applicable laws, all at no expense to CP.

8. LIABILITY

8.1. Damage To Tracks, Facilities, And Equipment:

If any tracks, facilities, or equipment owned, used, or maintained by CP are damaged in connection with the Work, CP shall repair (or arrange for the repair of) such damage and Licensee shall pay the full cost of such repair within 30 days after CP shall tender a bill therefor.

8.2. Assumption Of Risk:

Licensee is fully aware of the dangers of working on and about railroad property and railroad operations and knowingly and willingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur while on and about the Property. Without in any way limiting the scope of the preceding sentence, Licensee assumes the risk that the Utility Line and any Work or appurtenances thereto on the Property may be disturbed, damaged, or destroyed by CP or third persons, and except where arising

from the intentional malicious conduct of CP or its employees, agents, or invitees, Licensee shall not make any claim against CP on account of same, even if such disturbance, damage, or destruction arises from the negligence of CP or its employees, agents, or invitees. Licensee assumes full responsibility for protecting its installations and personal property from theft and vandalism while such installations and personal property are on the Property.

8.3. Indemnity:

As used in this License, "**Indemnified Parties**" means the following businesses and their officers, directors, employees, and agents: Soo Line Railroad Company, Delaware and Hudson Railroad Corporation, Inc., Dakota, Minnesota and Eastern Railroad Corporation, Soo Line Corporation, Canadian Pacific Railway Company, Wyoming Dakota Railroad Properties, Inc., any company doing business as Canadian Pacific Railway, and any railway company or contractor operating trains or rail equipment upon railway tracks in close proximity to the Property or the Utility Line, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing.

To the maximum extent permitted by applicable law, Licensee shall indemnify and defend the Indemnified Parties (as defined below) against all claims, demands, actions, suits, judgments, losses, damages (including, but not limited to, lost profits and other actual, compensatory, direct, consequential, punitive, and exemplary damages), expenses, penalties, fines, sanctions, court costs, litigation costs, and attorneys' fees (collectively, **Claims**) arising out of or relating to any destruction of (or damage to) any property or natural resource, any injury to (or death of) any person, or any environmental pollution or contamination whatsoever, where such destruction, damage, injury, death, pollution, or contamination actually or allegedly arises in whole or in part from the presence of the Utility Line on the Property or any Work connected therewith, or any action or omission of Licensee while on or about the Property pursuant to this License, or the exercise by Licensee of the rights and permissions granted by this License.

9. INSURANCE.

Prior to commence of any Work, Licensee shall procure and maintain in effect (or shall cause its contractor to procure and maintain in effect), the insurance coverages set forth in **Appendix 2**. The insurance coverage obtained pursuant to License and its appendices shall in no manner restrict or limit the liabilities assumed by Licensee under this License.

10. ENTIRE LICENSE

10.1. Survival Of Indemnity Provisions:

The indemnification provisions of this License shall survive its expiration or termination.

10.2. Mere License:

The permissions encompassed by this License are a mere license to use the Property for the Utility Line and does not create any estate or interest in Licensee in the Property.

10.3. No Warranty Of Title:

CP does not warrant that it has good title to the Property.

10.4. Assignment; Binding Effect:

This License may not be assigned by Licensee without the advance written consent of CP. Subject to the preceding sentence, this License shall be binding upon, and inure to the benefit of, the parties' respective successors and assigns.

10.5. Governing Law:

This License shall be construed and interpreted in accordance with the laws of the state of Iowa, without reference to the choice of law rules of that state.

10.6. Entire License:

This License is the full, complete, and entire License of the parties with respect to the subjects hereof, and any and all prior writings, representations, and negotiations with respect to those subjects are superseded by this License.

10.7. Headings:

The headings used in this License are provided solely as a convenient means of reference. They are not intended to, and do not, limit or expand the purpose or effect of the paragraphs to which they are appended. The headings shall not be used to construe or interpret this License.

10.8. Ownership Of Installations:

As between CP and Licensee, and unless CP agrees in writing to assume ownership thereof, any Utility Line placed on the Property pursuant to this License shall be and remain the property of Licensee, and Licensee shall be responsible for the proper maintenance and closure thereof;

10.9. Singular And Plural:

As used in this License, the singular form of a word includes the plural form of that word, and vice versa, and this License shall be deemed to include such changes to the accompanying verbiage as may be necessary to conform to the change from singular to plural, or vice versa.

10.10. Duplicate Copies & Counterparts.

This License may be executed in counterparts, which together shall constitute one and the same document. The parties may execute more than one copy of this License, each of which shall constitute an original.

11. SIGNATURES.

THE PARTIES HERETO have executed this License as evidence of their agreement to the terms herein.

CITY OF DUBUQUE

By _____
Its City Manager _____
Date _____

DAKOTA, MINNESOTA & EASTERN

RAILROAD CORPORATION

doing business as Canadian Pacific

By _____
Its Director Real Estate & Facility Mgmt- U.S. _____
Date _____

1. RAILROAD CONTACTS:

A. Real Estate: Processing of Permit, rental payments

Address	Contact Info	
Canadian Pacific	Phone:	(612) 904-6143
Real Estate US – Utility Permits	Fax:	(612) 904-6147
900 Canadian Pacific Plaza	Email:	Real_Estate_US@cpr.ca
120 South Sixth Street		
Minneapolis, Minnesota 55402		

B. Risk Management: Submittal of Insurance Coverage Renewals.

Address
Canadian Pacific Risk Management Department 7550 Ogdendale Road Calgary, Alberta T2C 4X9

C. Engineering: Application, Review of Technical Specifications

Address	Contact Info	
Canadian Pacific	Name:	Curt Whelan
900 Canadian Pacific Plaza	Title	Director - Projects
120 South Sixth Street	Phone:	(612) 904-5904
Minneapolis, MN 55402	Fax:	(612) 904-5917
	Email:	Curt_Whelan@cpr.ca

D. Scheduling of Flagging:

The following must be contact **no less than 5 Working Days** (excludes Saturday, Sunday and holidays observed by CP) prior to date on that Work is to be performed.

Otis Goodman, contact info in Section B.

E. Utility Locates

CP: CP Call-Before-You-Dig 1-866-291-0741: Must be called **no less than 5 Working Days** (excludes Saturday, Sunday and holidays observed by CP) prior to date on that Work is to be performed.

Local: The Licensee must also contact the local **Call-Before-You-Dig** service
The national number for utility locating is **8-1-1**.

In Iowa, the utility locating service is called Iowa One Call and, in addition to dialing 8-1-1, call be reached at 1-800- 292-8989 or at www.iowaonecall.com.

CP does not guarantee the accuracy of the foregoing information. The License is ultimately responsible for contacting and complying with local utility locating requirements and determining the proper contacts or manner of doing so.

2. LICENSEE CONTACTS:**A. Licensee Information****THIS IS THE NAME TO BE SHOWN IN THE LICENSE AGREEMENT.**

Licensee:	City of Dubuque		
Type of Entity:	Municipal Corporation	State of Formation:	Iowa
Mailing Address:	50 W. 13 th Street Dubuque, IA, 52001		
Delivery Address: (if different)			
Billing Address: (if different)			
Telephone No.	563-589-4110	Web Site:	www.cityofdubuque.org

B. Licensee Contact**THIS IS THE INDIVIDUAL TO WHOM CP SHOULD SEND DOCUMENTS AND OTHER CORRESPONDENCE IN CONNECTION WITH THE LICENSE.**

Name:	Michael C. Van Milligen	Address. Write "Same" if same as above
Company:	City of Dubuque	
Title:	City Manager	Same
Office Number:	(563) 589-4110	
Fax Number	563-589-4149	
Mobile Number:		
Email:	ctymgr@cityofdubuque.org	

C Construction Contact**THIS IS THE INDIVIDUAL TO WHOM CP SHOULD INTERACT IN CONNECTION WITH ANY WORK WITH THE UTILITY LINE**

Name:	Deron Muehring	Address.
Company:	City of Dubuque	
Title:	Civil Engineer II	Same
Office Number:	563-589-4276	
Fax Number:	563-589-4205	
Mobile Number:	563-599-3117	
Email:	dmuehrin@dubuque.org	

D. Additional Contact

Optional information if needed.

Contact for:	
Name:	
Company:	
Title:	
Office Number:	
Fax Number:	
Mobile Number:	
Email:	

E. Emergency Contact:

In the event that there is an emergency affecting the Utility Line, is there an additional contact that CP could attempt to reach?

Name:	Steve Sampson-Brown
Office Number:	563-589-4272
Mobile Number:	563-599-9498
mail:	sbrown@cityofdubuque.org

Insurance Requirements

1. General Insurance Requirements.

The following requirements apply to all insurance coverages required by the License.

- 1.1. **Insurance is a prerequisite for the Work: Licensee shall not enter the Property until all of the required policies have been approved in writing by CP.**
- 1.2 **Evidence of Insurance.** **No less than Five (5) Working Days** before Licensee or its contactor enters the Property or commences any Work, CP must receive and approve the certificates of insurance evidencing the insurance coverages set forth in this Appendix 2.
- 1.3 **Thirty Day Notice of Cancellation.** All policies shall be endorsed to require that CP be given not less than 30 days written notice in advance of cancellation or termination of the policy or of any change or amendment to the policy that restricts or reduces coverage. Notices shall be sent to the addresses set forth in Appendix 1 for the Real Estate Department and also the Risk Management Department.
- 1.4 Except for Automobile and Workers Compensation policies, each policy of insurance shall include the following endorsement upon the certificate, or within the binder, policy or other contractual evidence signed by the insurer and in form acceptable to CP:

"It is agreed that the policy or policies of insurance evidenced by this certificate covers the liability assumed by the insured in connection with work pursuant to the License Agr. **4290301** dated 1st day of April, 2015 by and between City of Dubuque and Soo Line Railroad Company encompassing a Sanitary Sewer pipeline crossing at Dubuque, Dubuque County, IA, including work upon railroad property, within railroad right of way and in close proximity operating railroad tracks."
- 1.5 **Cross Liability (severability of interest endorsements)** Except for automobile coverage, all policies, shall be endorsed with a cross liability (severability of interest) endorsement in substantially the following form:

"This policy shall insure each person, firm, or corporation hereunder in the same manner and to the same extent as if a separate policy had been issued to each, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurance company's liabilities."
- 1.6 **Additional Insureds; Waiver of Subrogation.** The policy shall be endorsed to add the following as additional insureds:
Soo Line Railroad Company, Soo Line Corporation and Canadian Pacific Railway Company, (collectively, the Protected Parties). The policy shall also be endorsed to waive subrogation rights against the Protected Parties.
- 1.7 **Coverage amounts subject to increase.** The Parties agree that Utility Lines can have a long useful life and that the insurance coverage limits initially set forth in this License may not be adequate during entire life of the Utility Line. Accordingly, the insurance coverages set forth herein shall be subject to change relative change in CP standards. The License shall not be required to comply with increased coverage limits until CP provides the Licensee with 90 days advance written notice of a change in coverage limits, or following notice by CP in connection with any Work by the Licensee that requires flagging.

- 1.8 **Renewals.** Evidence of renewal of insurance coverage should be sent to the Risk Management contact information set for in Appendix 1.
- 1.9 **Copies of Policies.** CP reserves the right to demand a certified copy of any required policy, and Licensee or its contractor shall provide such copy within 10 Working Days (excludes Saturdays, Sundays and holidays observed by CP) after CP shall give notice to Licensee demanding such copy.
- 1.10 **Insurers to be acceptable to CP.** All of the required policies shall be issued by insurers acceptable to CP and shall be acceptable to CP in both form and substance
- 1.11 **Policies obtained by Contractors and Sub-contractors.** If any comprehensive general liability and automobile policies are procured by Licensee's contractor, Licensee shall be added as an additional insured party under such policies. If the contractor uses a subcontractor, the contractor shall provide the required policies and shall, in addition, either require the subcontractor to provide insurance equivalent to that described herein or obtain endorsements to the contractor's policies naming the subcontractor as an additional insured party. If a subcontractor uses a sub-subcontractor, the sub-subcontractor shall either provide insurance equivalent to that required of the subcontractor or shall be named as an additional insured party on the contractor's or subcontractor's policies.
- 1.12 **Lapse in insurance coverage.** In the event any required policy lapses, CP shall have the option of immediately suspending Work or use of the Utility Line. Additionally, any lapse in required insurance shall be deemed a breach of the License and grounds for termination as provided in the License.
- 1.13 **Insurance does not limit liability.** The insurance coverage obtained pursuant to section 9 and its sub-sections shall in no manner restrict or limit the liabilities assumed by Licensee under this License.

2. Required Insurance Policies and Limits of Coverage.

Licensee shall obtain and maintain in full force and effect the following policies of insurance:

- 2.1. **Comprehensive General Liability Insurance – Normal Operation of Utility Line:**
So long as the Utility remains in place pursuant to this License in the status of normal operation, Licensee shall obtain Comprehensive general liability insurance with a policy limit of not less than \$2,000,000 per occurrence and \$5,000,000 aggregate for bodily injury, death, and damage to or destruction of property (including the loss of use thereof).

The policy will include those policy extensions commonly referred to as broad form completed operations, contractor's protective, collapse, and underground damage. The policy shall by its wording or by endorsement insure those liabilities and obligations which this License contemplates will be assumed by Licensee, including liabilities and obligations to indemnify the Indemnified Parties (defined in Section 8.3).
- 2.2 **Comprehensive General Liability Insurance – Periods of Work:**
Not Applicable.
- 2.3 **Automobile Liability and Property Damage Insurance:**
During any period in that Work is to be performed on the Utility Line, Licensee or its contractor performing the Work, shall obtain Automobile liability and property damage insurance in an amount not less than \$2,000,000, personal injury and property damage combined, covering the ownership, use, and operation of any motor vehicles and trailers

licensed for use on public highways which are owned, leased, or controlled by Licensee or its contractor and used in connection with the Work

2.4 Workers Compensation Insurance:

During any period in that Work is to be performed on the Utility Line, Licensee or its contractor performing the Work, shall obtain Workers compensation insurance that meets the requirements of Iowa state law.

2.5 Railroad Protective Liability Insurance:

During any period in that Work is to be performed on the Utility Line, Licensee or its contractor performing the Work, shall obtain Railroad protective liability insurance (occurrence form), in the name of Soo Line Railroad Company and Canadian Pacific Railway Company, with limits of no less than \$2,000,000 per occurrence and \$6,000,000 aggregate for personal injury and property damage.

2.6 Environmental Pollution Impairment Liability Insurance:

Not Applicable.