

## ENVIRONMENTAL RIGHT OF ENTRY AGREEMENT

**THIS AGREEMENT** is made by and between

### 1. PARTIES:

**DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION**, a Delaware corporation doing business as Canadian Pacific with general offices at:

Address	Contact Info	
Real Estate Department 700 Canadian Pacific Plaza 120 South Sixth Street Minneapolis, Minnesota 55402	Name	Nikol Daniels
	Phone	(612) 904-6142
	Fax:	(612) 904-6147
	Email:	Nikol_Daniels@cpr.ca

hereinafter called "**CPR**,"

and

**CITY OF DUBUQUE, IOWA**, whose address is:

Address	Contact Info	
50 W. 13th Street Dubuque, Iowa 52001	Name	Steve Sampson-Brown
	Phone	(563) 589-4272
	Fax:	(563) 589-4105
	Mobile:	(563) 599-9498
	Email:	sbrown@cityofdubuque.org

hereinafter called "**Licensee**."  
(**Licensee**).

### 2. PROPERTY; SCHEDULE; GRANT OF LICENSE:

#### A. Property

CPR hereby grants Licensee a license to enter in and upon certain property owned or controlled by CPR in

**the City of Dubuque, Iowa, near CPR Station 44+21.54**

shown upon the map labeled Exhibit A that is attached hereto and made a part hereof (the "**Property**")

#### B. Work Schedule:

for the sole for the purpose of performing, generally, the following environmental activities:

**Phase II environmental testing**

within the scope and in the manner described in detail in the schedule labeled Exhibit B that is attached hereto and made a part hereof (the “**Work**”).

**C. Grant of License:**

The license is granted pursuant and subject to all the terms and conditions set forth below and in the Construction Agreement between CPR and Licensee, dated \_\_\_\_\_, 2018 (the “**Construction Agreement**”).

**3. TERM, EFFECTIVE DATE, EXPIRATION & TERMINATION**

**A. Term:** The term of this Agreement shall

*Commence at 12:01 am on \_\_\_\_\_, 20\_\_\_\_\_, the “**Commencement Date**;” and*

*Expire at 11:59 pm on \_\_\_\_\_, 20\_\_\_\_\_, the “**Expiration Date**;”*

the “**Term**.” Upon agreement between CPR and Licensee, the Term may be lengthened or shortened without affecting any other provisions of this Agreement.

**B. Effective Date:**

This Agreement shall be effective upon the date that it has been signed by both parties.

**C. Expiration:**

This agreement will expire at the Expiration Date, or when the Work is completed, whichever occurs first. Notwithstanding any other provision of this agreement, the preceding sentence shall not terminate or limit any claim by CPR against Licensee arising prior to the Expiration Date. If the Work includes monitoring wells, and if such wells remain on the Property after the Expiration Date, this agreement shall remain in effect for those wells until the earlier of the following:

- (i) the date they are properly closed (i.e., sealed and abandoned in accordance with applicable legal requirements) by Licensee or
- (ii) the date CPR assumes ownership of such wells pursuant to paragraph 36.

**D. TERMINATION; EXCLUSION:**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, this agreement is terminable by CPR prior to the Expiration Date in the event Licensee breaches any of its obligations under this agreement. If CPR elects to terminate this agreement, it shall give Licensee notice of termination, which notice shall specify the obligation or obligations breached by Licensee; and this agreement shall terminate 30 days after such notice is given (provided, however, that this agreement shall not terminate if the breach is cured within said 30-day period). This agreement is also subject to early termination pursuant to paragraph 21. The early termination of this agreement shall not terminate or limit any claim by CPR against Licensee arising prior to such termination. If Licensee is in breach of any of its obligations under this agreement, any employee or agent of CPR may order Licensee off the Property, in which case Licensee shall immediately leave the Property; moreover, Licensee shall leave the property immediately upon receipt of a notice given pursuant to this paragraph 3(D); and in either case, Licensee shall not re-enter the Property until such time as the breach is cured.

**4. EMPLOYEES, AGENTS, AND CONTRACTORS:**

The Work may be performed by Licensee through its employees, agents, and contractors. For the purposes of this agreement, the actions and omissions of such employees, agents, and contractors shall be deemed the actions and omissions of Licensee.

**5. GOVERNMENTAL AUTHORITIES; ACCESS TO PROPERTY:**

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 CPR (by telephone or other means calculated to bring the matter to CPR'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. CONTACT PERSONS; COMMUNICATIONS:**

Communications pursuant to this agreement shall be directed to the contact persons designated in Section 1 of this agreement, 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.

**7. NOTICES:**

Except as otherwise provided in this agreement, all notices pursuant to this agreement 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.

**8. NOTIFICATION PRIOR TO BEGINNING WORK:**

Licensee must notify CPR's contact person by telephone at least three working days prior to beginning any separate phase of the Work, and again promptly after such phase of the Work has been completed.

**9. CPR OPTION TO MONITOR WORK:**

CPR may elect to be present during the conduct of the Work and to monitor same.

**10. CONSENT OF USERS AND OCCUPANTS:**

The provisions of Section XIII.B.1 of the Construction Agreement are incorporated herein by this reference.

**11. INTERFERENCE WITH RAILROAD OPERATIONS:**

The provisions of Section XIII.C.1 of the Construction Agreement are incorporated herein by this reference.

**12. CLEARANCE; OBSTRUCTING TRACK; FLAGGING AND WATCHMAN SERVICE:**

The provisions of Section XIII.C.2 of the Construction Agreement are incorporated herein by this reference.

Licensee must make arrangements with CPR for such flagging or watchman service as CPR deems necessary for the protection of railroad traffic. All such flagging and watchman service shall be provided by CPR. The fact that CPR provides such service shall not relieve Licensee from any liability under this agreement. Licensee shall pay or reimburse CPR for all costs associated with CPR's flagging, watchman protection, inspections, and other work, personal and material costs incidental to the Work to protect railroad traffic and operations according to

Section III.A.10 of the Construction Agreement within 30 days after CPR shall tender a bill therefor.

**13. CERTAIN WORK CLOSE TO TRACK NOT PERMITTED:**

The provisions of Sections XIII.C.2 and XIII.C.3 of the Construction Agreement are incorporated herein by this reference.

**14. LOCATIONS OF BORINGS ETC.:**

Borings, wells, pits, test holes, probe locations, and the like shall be located only at the locations specified on Exhibit A. CPR is aware that conditions encountered on the Property may require adjustments in the locations of such installations. Licensee shall advise the CPR contact person of any proposed adjustment in the location of any such installation and shall not proceed with that installation until CPR shall have given written approval of the new location of that installation.

**15. COMPLIANCE WITH CPR SAFETY REQUIREMENTS:**

The provisions of Section XIII.B.4 of the Construction Agreement are incorporated herein by this reference.

**16. UNDERGROUND UTILITIES AND STRUCTURES:**

The provisions of Section XIII.B.2 of the Construction Agreement are incorporated herein by this reference.

**17. RESTORATION OF PROPERTY; DISPOSAL OF CUTTINGS ETC.:**

The provisions of Section XIII.G of the Construction Agreement are incorporated herein by this reference.

**18. DAMAGE TO TRACKS, FACILITIES, AND EQUIPMENT:**

The provisions of Section VI.A of the Construction Agreement are incorporated herein by this reference.

**19. INDEMNITY:**

The provisions of Section VI.C of the Construction Agreement are incorporated herein by this reference.

**20. ASSUMPTION OF RISK:**

The provisions of Section VI.B of the Construction Agreement are incorporated herein by this reference.

**21. INSURANCE:**

The provisions of Section V of the Construction Agreement are incorporated herein by this reference.

**22. PERMITS AND LICENSES; COMPLIANCE WITH LAWS:**

The provisions of Section XIII.B.3 of the Construction Agreement are incorporated herein by this reference.

**23. AGREEMENT TO BE AVAILABLE AT WORK SITE:**

Licensee shall keep a copy of this agreement at the Work site and shall make it available upon demand by any employee or agent of CPR.

**24. UNAUTHORIZED USE OF PROPERTY:**

Any unauthorized use of the Property by Licensee, including use after the expiration date of this agreement, shall be subject to legal action by CPR.

**25. AGREEMENT EFFECTIVE WHEN SIGNED:**

This agreement, which is written in duplicate, shall become effective when both Licensee and CPR have signed it.

**26. REPORTS:**

The provisions of Section XIII.E.4 of the Construction Agreement are incorporated herein by this reference.

**27. WORK AT NO COST TO CPR:**

The Work will be performed at no cost to CPR.

**28. MECHANICS' AND MATERIALMEN'S LIENS:**

The provisions of Section XIII.I of the Construction Agreement are incorporated herein by this reference.

**29. SURVIVAL OF INDEMNITY PROVISIONS:**

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

**30. MERE LICENSE:**

The license granted by this agreement is a mere license to use the Property for the specified purpose and does not create any estate or interest in the Property.

**31. NO WARRANTY OF TITLE:**

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

**32. ASSIGNMENT; BINDING EFFECT:**

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

**33. GOVERNING LAW:**

This agreement shall be construed and interpreted in accordance with the laws of the state in which the Property is located, without reference to the choice of law rules of that state.

**34. ENTIRE AGREEMENT:**

This agreement is the full, complete, and entire agreement 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 agreement.

**35. HEADINGS:**

The headings used in this agreement 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 agreement.

**36. OWNERSHIP OF INSTALLATIONS:**

As between CPR and Licensee, and unless CPR agrees in writing to assume ownership thereof, any wells or similar installations placed on the Property pursuant to this agreement shall be and remain the property of Licensee, and Licensee shall be responsible for the proper

maintenance and closure thereof; provided, however, that CPR shall have a reasonable right of access to such installations for the purpose of taking samples therefrom. In the event CPR desires to obtain samples from any such installations, it shall give Licensee such oral or written notice as is reasonable under the circumstances, and Licensee shall cooperate with CPR to facilitate the taking of such samples on a schedule consistent with CPR's needs; unless otherwise agreed to by Licensee, all such samples shall be taken in the presence of Licensee or its contractor or agent.

**37. SINGULAR AND PLURAL:**

As used in this agreement, the singular form of a word includes the plural form of that word, and vice versa, and this agreement 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.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in counterparts, each of which shall be considered as an original, by their proper officers thereunto duly authorized as of the dates below indicated.

Executed by the CITY, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF DUBUQUE, IOWA

By: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

By: \_\_\_\_\_

\_\_\_\_\_  
Clerk

Executed by the Company, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

DAKOTA, MINNESOTA, & EASTERN RAILROAD CORPORATION  
*Doing business as Canadian Pacific*

By: \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

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## **EXHIBIT A**

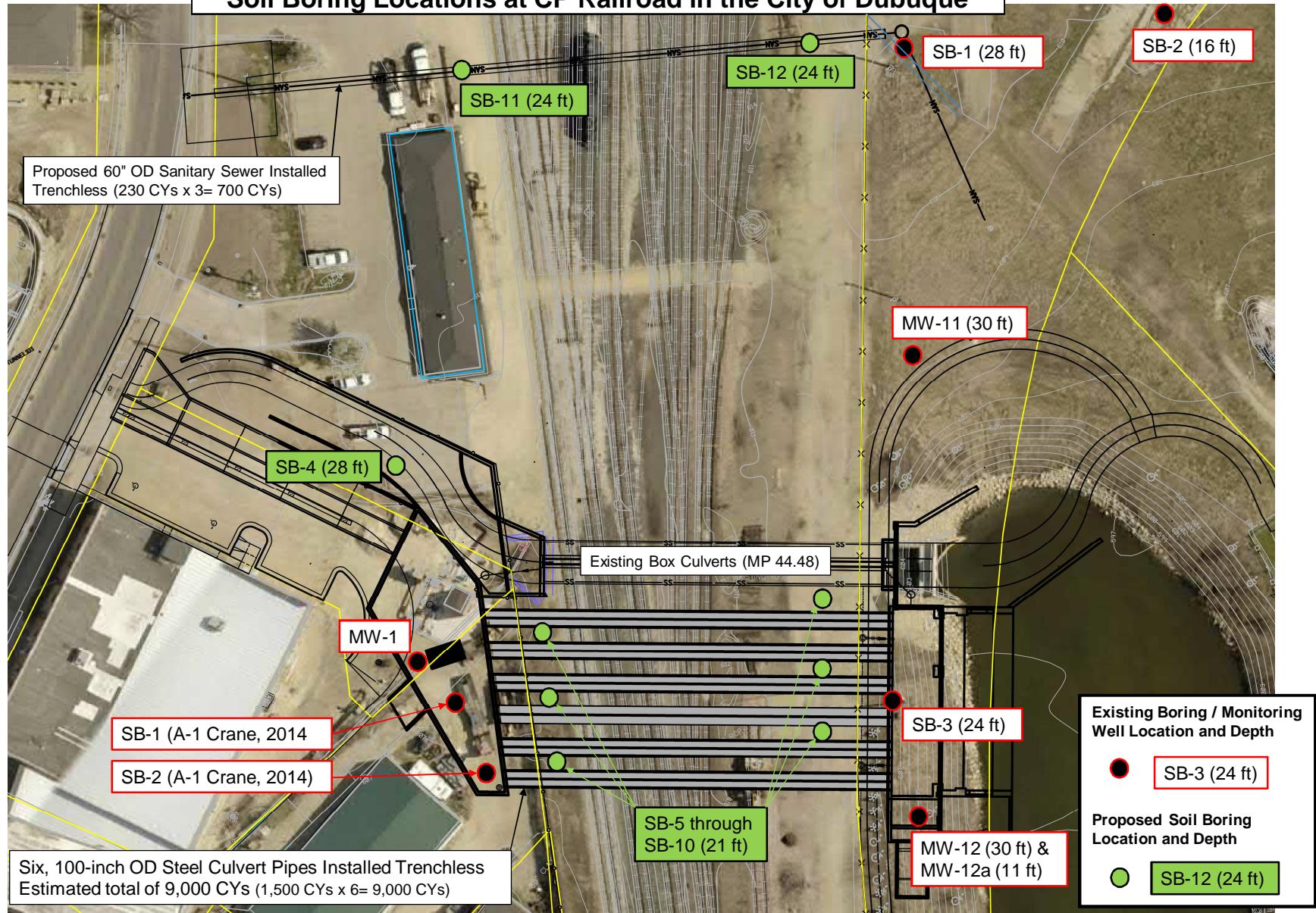
{map of the Property marked to show locations of borings, wells, etc.}

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## **EXHIBIT B**

{description of the Work, together with proposed timetable}

**EXHIBIT A**  
**Soil Boring Locations at CP Railroad in the City of Dubuque**



## EXHIBIT B

**CITY OF DUBUQUE, UPPER BEE BRANCH  
SOIL INVESTIGATION FOR TRENCHLESS CROSSINGS OF THE CP RAILROAD PROPERTY  
November 2018**

Additional soil sampling is proposed to further characterize soil and obtain landfill approval for trenchless spoils waste that will be generated:

1. For waste characterization, nine (9) borings are proposed on the CP Railroad property, borings SB4 through SB12 shown on Exhibit A.
2. Hollow-stem auger drilling with a truck-mounted drilling rig will be used to advance borings to proposed depths of 21 to 28 feet.
3. Two soil samples from boring SB4 and one soil sample from each of the remaining borings (boring B5 through B12) will be collected and submitted for analysis for 8 RCRA metals, hydrocarbons, VOCs, and PAHs.
4. Analysis for TCLP metals and TCLP VOCs will be added to some sample if elevated totals concentrations are detected.
5. Soil borings will be abandoned after samples are collected.