AGENDA:

7:00 p.m. OPEN MEETING—PLEDGE OF ALLEGIANCE:

Item 1 7:00 p.m. MINUTES:
A. Approval of the minutes of the February 4, 2019 Regular Council Meeting—waive reading of same.

Item 2 7:05 p.m. ITEMS FROM THE PUBLIC:

Item 3 7:10 p.m. CONSENT AGENDA:
A. Acknowledge receipt of Commission Minutes
   • Planning Commission—February 11, 2019

B. Planning Commission Recommendations:
   • Set Public Hearing Dates for Lily Hansen’s variance request to allow for the installation of solar panels on a street facing at 1537 10th Avenue:
     ➢ Planning Commission- March 11, 2019 at 7 p.m.
     ➢ City Council- March 18, 2019 at 7 p.m.

   • Set Public Hearing Dates for Miramac Properties CUP request to allow for the construction of a garage on a non-conforming single family residential lot at 610 4th Street:
     ➢ Planning Commission- March 11, 2019 at 7 p.m.
     ➢ City Council- March 18, 2019 at 7 p.m.

C. Approve Electronic Bidding Policy.

Item 4 7:15 p.m. PUBLIC HEARING—2019 STREET & UTILITY IMPROVEMENT PROJECT:

A. Adopt Resolution No. 1565, a resolution ordering the 2019 Street & Utility Improvement projects

B. Adopt Resolution No. 1566, approving plans and specifications for the 2019 Street & Utility Improvements projects and
authorizing the City Engineer to advertise for bids.

C. Approve BNSF Crossing Surface Installation Agreement for sidewalk at 9th Avenue crossing

D. Approve Pipe Line License Agreement with BNSF for watermain at 9th Avenue crossing

E. Approve Pipe Line License Agreement with BNSF for storm sewer at 9th Avenue crossing.

Item 5 7:25 p.m. REPORTS:
A. Council Member Swenson
   • Public Works Commission

B. Council Member Jones
   • Public Safety Commission

C. Mayor Dingle
   • Planning Commission

D. Council Member Zenner
   • Parks & Recreation Commission

E. Council Member Foote
   • Heritage Days Committee

F. Mayor Dingle
   • Administration

Item 6 7:35 p.m. BILLS FOR APPROVAL: $126,069.25

Item 7 7:35 p.m. COUNCIL COMMENTS AND REQUESTS:

Adjourn
PROPOSED MINUTES

CITY OF ST. PAUL PARK
REGULAR COUNCIL MEETING
February 4, 2019

Meeting called to order at 7:00 p.m. Present: Acting Mayor Swenson; Council Members Foote, and Zenner. Also present: City Administrator Walsh and City Clerk Ornquist. Mayor Dingle and Council Member Jones were excused. Pledge of allegiance said by all.

MINUTES:

Motion by Zenner, second by Foote to approve the minutes of the January 22, 2019, postponed meeting—waive reading of same. Motion carried 3-0.

ITEMS FROM THE PUBLIC: None

CONSENT AGENDA:

A. Adopt Resolution No. 1564, a resolution approving Master Partnership Agreement with the Minnesota Department of Transportation.

B. Approve conditional employment offer to Julie Pelton for the Administrative Assistant position, pending successful completion of the background investigation.

C. Approve conditional employment offer to Melissa Boettcher for the Accounting Technician position, pending successful completion of the background investigation.

Motion by Zenner, second by Foote to approve the consent agenda items listed above. Motion carried 3-0.

REPORTS:

A. Council Member Jeff Swenson
   • Public Works Commission
     ⇒ Next meeting to be held March 5, 2019 at 7 p.m.

B. Council Member Jones
   • Public Safety Commission
     ⇒ None

C. Mayor Dingle
   • Planning Commission
     ⇒ None

D. Council Member Zenner
   • Parks & Recreation Commission
     ⇒ Next meeting to be held February 14, 2019 at 7 p.m.

E. Council Member Foote
   • Heritage Days Committee
     ⇒ Next meeting to be held February 11, 2019 at 7 p.m.

F. Mayor Dingle
   • Administration
     ⇒ None
**BILLS FOR APPROVAL:**  $189,327.63

Motion by Foote, second by Zenner to approve the bills in the amount of $189,327.63. Motion carried 3-0.

**COUNCIL COMMENTS AND REQUESTS:**

None

Meeting adjourned 7:03 p.m.

Sharon Ornquist
City Clerk
Meeting called to order at 7:06 p.m. by Chair Dingle

Members present: Dan Dingle, Doug Pierro, Sharon Whitmore, Jeff Fischer, Patrick Downs
Also present: Council Liaison Sandi Dingle

Pledge of Allegiance said by all.

Approval of Minutes:

Motion by Fischer, second by Pierro to approve the minutes of the December 10, 2018 Planning Commission meeting. Motion carried 5-0.

Commission Actions:

REVIEW REQUEST

A. Lily Hansen, 1537 10th Avenue, St. Paul Park MN 55071 – Variance request to allow for the installation of solar panels on a street facing roof.

Council Liaison Dingle stated she drove by the residence. In reviewing the ordinance and recalling when the ordinance was changed, it does require solar panels not be street facing so as not to create a glare. The garage has a low pitch roof and wouldn't create a glare issue; the system is flush mount so it should blend well. A variance can be requested if there are practical difficulties that include inadequate access to direct sunlight. The way the house is positioned, along with trees in back yard, front facing would be the only place for the system. They do meet the criteria and it would be appropriate to move forward with a public hearing. The surrounding neighbors will be notified and can be heard at the public hearing if they have any issues with the aesthetic aspects.

Commission member Whitmore concurred with Council Liaison Dingle’s comments.

Motion by Whitmore, second by Fischer to recommend Council set Public Hearing dates for Lily Hansen’s variance request to allow for the installation of solar panels on a street facing roof of March 11 for the Planning Commission and March 18 for City Council. Motion carried 5-0.

B. Tina Lockner, Miramac Properties, 10129 Powers Lake Trail, Woodbury MN 55129 – CUP request to allow for the construction of a garage on a non-conforming single family residential lot at 610 4th Street.

Council Liaison Dingle stated she drove by this property as well. It’s a single family home being improved. The only reason for a CUP is because the home is in light industrial zoning. There is plenty of room for the garage and required setbacks are met. This request would also be appropriate to move forward for a public hearing.

Commission member Fischer stated he is familiar with the property and agreed with Council Liaison Dingle’s comments.

Motion by Fischer, second by Pierro to recommend Council set Public Hearing dates for Miramac Properties CUP request to allow for the construction of a garage on a non-conforming single family residential lot at 610 4th Street of March 11 for the Planning Commission and March 18 for City Council. Motion carried 5-0.
New Business: None
Staff Reports: None
Unfinished Business: None

Meeting adjourned 7:12 p.m.
1. Motion by Whitmore, second by Fischer to recommend Council set Public Hearing dates for Lily Hansen’s variance request to allow for the installation of solar panels on a street facing roof of March 11 for the Planning Commission and March 18 for City Council. Motion carried 5-0.

2. Motion by Fischer, second by Pierro to recommend Council set Public Hearing dates for Miramac Properties CUP request to allow for the construction of a garage on a non-conforming single family residential lot at 610 4th Street of March 11 for the Planning Commission and March 18 for City Council. Motion carried 5-0.
PLANNING MEMO

TO: St. Paul Park Planning Commission
Kevin Walsh, City Administrator

FROM: Nate Sparks, City Planner

DATE: February 7, 2019

RE: Application Review – Variance – 1537 10th Ave

BACKGROUND
Lily Hansen has made an application for a variance to allow for solar panels on the street facing roof of her garage. Section 74-239 (b) (5) does not allow for street facing solar panels on a roof except by variance.

PROPOSED VARIANCE
The City’s Zoning Ordinance Section 74-239 (b) (5) states standards for allowing roof mounted solar panels:

(5) Roof mounting:
  a. Roof mounted solar collectors may be flush mounted or bracket mounted.
  b. Bracket mounted collectors shall be permitted only when a determination is made by the city building official that the underlying roof structure will support apparatus, wind, and snow loads and all applicable building standards are satisfied.
  c. No roof mounted solar energy systems may be on the street facing side of any roof.
  d. No more than 85 percent of the portion of the roof permitted for solar energy systems shall be covered by such systems.

When this ordinance was adopted, the Planning Commission wanted to review solar panel installations on the street facing side of roofs. Therefore, such an installation would require a variance.

In this case, the applicant’s property has Abdella Park in the rear and there are trees in the back yard. The most open and clear space for accessing sunlight for solar panels is on the street side of the garage roof.

The proposal is meeting all the other standards of the ordinance.

VARIANCE REVIEW
The purpose of a variance is to provide for deviations from the literal provisions of this division in instances where their strict enforcement would cause practical difficulties because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of this division. The board of adjustment and appeals shall not approve any variance request unless they find failure to grant the variance will result in practical difficulties and the following criteria have been met:
The proposed variance is consistent with the comprehensive plan.
(2) The proposed variance is in harmony with the general purpose and intent of this section.
(3) The purpose of the variance is not based exclusively upon economic considerations.
(4) The plight of the landowner is created by circumstances unique to the property not created by the landowner.
(5) The granting of the variance will not alter the essential character of the neighborhood in which the parcel of land is located.
(6) The property owner proposes to use the property in a reasonable manner not permitted by this section.
(7) The requested variance is the minimum action required to eliminate the practical difficulty.
(8) The variance does not involve a use that is not allowed within the respective zoning district.
(9) That the granting of the variance will not confer special privileges on the parcel in question that are not generally available to other property in the same zoning district.

Furthermore, Minnesota State Statutes 462.357 Subd. 6 states:

“Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.”

**PLANNING COMMISSION REVIEW**
The Planning Commission should review the request and determine if any additional information is needed for the public hearing.
LAND USE APPLICATION

I. Property Owner Information

Name (please print): Lily Hansen
Site Address: 1537 10TH AVE St. Paul Park MN 55071
(Mailing Address: (Street) (City) (State) (Zip)
Phone#: (651) 373-0184 Alternate Phone#
Email: lily.hansen86@gmail.com

II. Application Request

☐ Variance $300 + $1,000 Escrow
☐ Variance Extension Request $50
☐ Rezone $500 + $1,000 Escrow
☐ Interim Use Permit $300 + $1,000 Escrow
☐ Interim Use Permit Commercial $500 + $1,000 Escrow
☐ Interim Use Permit Extension Request $50
☐ Alley/Street Vacation $350
☐ Sketch/Concept Plan $500 + $2,000 Escrow
☐ Conditional Use Permit $300 + $1,000 Escrow
☐ Conditional Use Permit Commercial $500 + $1,000 Escrow
☐ Conditional Use Permit Extension Request $50
☐ Preliminary Plat $500 + $30 per lot/unit, + $2000 Escrow
☐ Final Plat $500 + $2,000 Escrow
☐ Minor Subdivision $500 + $1,000 Escrow
☐ PUD $300 + $2,000 Escrow
☐ Other

III. Property Information

PURPOSE: Describe your request. Attach map(s), site plan(s), or survey(s) that show property dimensions, setback information and dimensions of proposed building (if any). Submit any other related information pertinent to your request that would be beneficial to Planning Commission review. Submit eight (8) copies of all plus one (1) electronic copy.
NOTE: For PUD requests, submit 12 copies (4 large, 8 11x17).

Installation of a flush mount solar array on the south facing roof of the residence. The south facing roof faces 10th Ave.

STREET ADDRESS FOR WHICH ABOVE ACTION IS REQUESTED:
1537 10TH AVE

PROPERTY ID & LEGAL DESCRIPTION (from deed or certificate of title):
0702721230072

ST PAUL PARK VETERANS PROJ NO.2 Lot 5 Block 4 LOTS FOUR (4), AND FIVE (5), EXCEPTING THEREFROM THAT PART OF LOTS FOUR (4) AND FIVE (5) LYING EAST OF A LINE DRAWN PERPENDICULAR TO THE SOUTH LINE OF SAID LOT FIVE (5), FROM A POINT ON THE SOUTH LINE OF SAID LOT FIVE (5) 75 FEET EAST FROM THE SOUTHWEST

Date Appearance is Requested:

Revise Application: Rec'd 1/23/19 - IN COMPLETE MAILING LIST
IV. Notice of Fees and Authorization of Application

The City Fees Ordinance states that the property owner shall reimburse the City for all related costs generated by this application. Such expenses may include, but are not limited to, overhead costs (printing, mailing, supplies, etc.) and fees paid to consultants and other professionals (planning, legal and engineering). These fees are due immediately upon notification by the City and, if not paid, will be assessed to the owner(s) of the subject property. Upon request, the City will provide an itemized statement of the various expenses incurred by the City as a result of the application. The City reserves the right to withhold final action on a Land Use Application and/or rescind prior action until all fees are paid. The City may also require deposits if deemed necessary.

In signing this application, you are acknowledging that you have read the above statement and fully understand that you are responsible for all costs incurred by the City in processing and reviewing this application. Signing below is also authorizing City staff, commission members, and council members to access and inspect the property during the application period.

[Signature]

Date Submitted

1/22/19

Please complete this form and submit original to:

City of St. Paul Park
600 Portland Avenue
St. Paul Park MN 55071
GENERAL NOTES

1. FIELD VERIFY ALL MEASUREMENTS
2. ITEMS BELOW MAY NOT BE ON THIS PAGE
3. NO SPECIAL ACCESS INSTRUCTIONS
4. THERE ARE NO CLEARANCE ISSUES DUE TO OVERHEAD POWERLINES
5. UTILITY AC DISCONNECT AND PV PRODUCTION METER ARE LOCATED TOGETHER IN A READILY ACCESSIBLE LOCATION WITHIN 10' OF THE MAIN SERVICE METER
6. 24/7 UNESCORTED KEYLESS ACCESS SHALL BE PROVIDED FOR THE UTILITY METERS AND AC DISCONNECT

DISTANCES

PV SOLAR PANELS - MICRO INVERTERS: 5' MAX
MICRO INVERTERS - AC COMBINER BOX: 50' MAX
AC COMBINER BOX - UTILITY AC DISCONNECT: 2'
UTILITY AC DISCONNECT - PV PRODUCTION METER: 2'
PV PRODUCTION METER - PV SERVICE PANEL: 2'
PV SERVICE PANEL - MAIN SERVICE PANEL: 5'
MAIN SERVICE PANEL - BI-DIRECTIONAL METER: 5'

01 SITE PLAN

1/16" = 1'-0"
GENERAL NOTES
1. FIELD VERIFY ALL MEASUREMENTS
2. ITEMS BELOW MAY NOT BE ON THIS PAGE
3. NO SPECIAL ACCESS INSTRUCTIONS

NAME | DESCRIPTION | QTY
--- | --- | ---
SNAP-N-RACK & MISK HARDWARE | SNAP-N-RACK ATTACHMENTS KITS | 242-92093 SNR ATTACHMENT KIT | 15
| FLASHINGS/L-FEET | 242-92047 B-Clear LFoot w/ Flash | 60
| LAG BOLT | 5/16 LAG BOLT (3’ LENGTH) | 60
| RAIL, 162” SNR | 232-01076 SNR RAIL 162IN | 15
| RAIL, 122” SNR | 232-01068 122IN RAIL | 0
| RAIL SPICE | 242-00914 B-STND-SPLICE-AS CLEAR | 10
| GROUND LUG | 242-02101 GROUND LUG ASSEMBLY, 6-12AWG | 5
| MID CLAMP | 242-02052 B-MID 1.50-2.00 CLEAR | 20
| END CLAMP | 242-02066 B-1.49-2 C | 20
| END CAP | 232-01023, SNAPNRACK, STANDARD RAIL END CAP | 20

CONTRACTOR
ALL ENERGY SOLAR
PHONE: (800) 620-3370
ADDRESS: 1642 CARROLL AVE
ST PAUL, MN 55104
LIC. NO.:
ELE. NO.:
ADDRESS:

NEW PV SYSTEM: 5.400 kWp

LILY
HANSEN - 26312
1537 10TH AVENUE
ST PAUL PARK, MN 55071
APN: 0702721320006

ENGINEER OF RECORD
A.Y.
M.M
1537 10TH AVENUE
ST PAUL PARK, MN 55071

PAPER SIZE: 11" x 17" (ANSI B)
1. ROOF MATERIAL: ASPHALT SHINGLE
2. ROOF STRUCTURE: TRUSS
3. ATTACHMENT TYPE: SNAP N RACK FLASHED L-FOOT
4. MODULE MANUFACTURER: JA SOLAR
5. MODULE MODEL: JAM72S01-360/PR
6. MODULE LENGTH: 77.17 IN.
7. MODULE WIDTH: 39.02 IN.
8. MODULE WEIGHT: 49.6 LBS.
9. SEE SHEET A-103 FOR DIMENSION(S)
10. MIN. FIRE OFFSET: NO FIRE CODE ENFORCED
11. TRUSS SPACING: 24 IN. O.C.
12. TRUSS SIZE: 2X4 NOMINAL
13. LAG BOLT DIAMETER: 5/16 IN.
14. LAG BOLT EMBEDMENT: 2.5 IN.
15. TOTAL SPAN: 8 FT.
16. TOTAL AREA: 313.66 SQ. FT.
17. TOTAL WEIGHT: 924.39 LBS.
18. WEIGHT PER ATTACHMENT: 15.41 LBS.
19. DISTRIBUTED LOAD: 2.95 PSF.
20. MAX. HORIZONTAL STANDOFF: 48 IN.
21. MAX. VERTICAL STANDOFF:
   LANDSCAPE: 26 IN., PORTRAIT: 39 IN.
22. STANDOFF STAGGERING: YES
23. RAIL MANUFACTURER (OR EQUIV.): SNAP N RACK
24. RAIL MODEL (OR EQUIVALENT): SERIES 100
25. RAIL WEIGHT: 0.75 PLF.
26. MAX. TRUSS SPAN: 8 FT.
27. MODULE CLEARANCE: 3 IN. MIN., 6 IN. MAX.

FIELD VERIFY ALL MEASUREMENTS

NEW PV SYSTEM: 5.400 kWp

LILY HANSEN - 26312
1537 10TH AVENUE
ST PAUL PARK, MN 55071
APN: 0702721320006
PHONE: (800) 620-3370
ADDRESS: 1642 CARROLL AVE
ST PAUL, MN 55104
PHONE: (612) 626-5800
LICENSED SOLAR ELECTRICIAN
PHONE: 475-385-4000
LICENSE: ELE. NO.:
PAPER SIZE: 11" x 17" (ANSI B)
ENGINEER OF RECORD
DATE: 01.17.2019
DESIGN BY: A.Y.
CHECKED BY: M.M.
REVISIONS
S-501.00
(SHEET 11)
Series 100 Residential Roof Mount System

The SnapNrack Series 100 Roof Mount System is engineered to optimize material use, labor resources and aesthetic appeal. This innovative system simplifies the process of installing solar modules, shortens installation times, and lowers installation costs; maximizing productivity and profits.

The Series 100 Roof Mount System boasts unique, pre-assembled, stainless steel “Snap-In” hardware and watertight flash attachments. This system is installed with a single tool. No cutting or drilling means less waste and labor. It is fully integrated with built-in wire management, solutions for all roof types, one-size-fits-all features, and can withstand extreme environmental conditions. Series 100 is listed to UL Standard 2703 for Grounding/Bonding, Fire Classification and Mechanical Loading. UL 2703 Certification and Compliance ensures that SnapNrack installers can continue to provide the best in class installations in quality, safety and efficiency.

- Appealing design with built-in aesthetics
- No grounding lugs required for modules
- All bonding hardware is fully integrated
- Rail splices bond rails together, no rail jumpers required
- No drilling of rail or reaching for other tools required
- Class A Fire Rating for Type 1 and 2 modules

System Features Include

- Stainless Hardware
- Single Tool Installation
- Easy Leveting
- No Cutting or Drilling
-Integrated wiring management
- Preassembled hardware
- Integrated bonding
- UL 2703 Certified

SERIES 100 TECHNICAL DATA

<table>
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<tr>
<th>Materials</th>
<th>5000 Series aluminum</th>
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<tr>
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<td>Stainless steel</td>
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<td>Galvanized steel and aluminum flashting</td>
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<tr>
<td>Material Finish</td>
<td>Silver and black anodized aluminum</td>
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<td></td>
<td>Mill finish on select products</td>
</tr>
<tr>
<td></td>
<td>Silver or black coated hardware</td>
</tr>
</tbody>
</table>

Wind Loads

| Load | 110 – 190 mph (ASCE 7-10) |

Snow Loads

| Load | 0 – 120 psf |

Array Pitch

| Pitch | 0 – 60 degrees |

877-732-2860 | www.snaprack.com | contact@snaprack.com

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All Energy Solar
1537 10th Avenue
St Paul, MN 55104
Phone: (800) 620-3370
Lic. No.:
HIC. No.:
ELE. No.:
Address:
1642 Carroll Ave
St Paul, MN 55104

Resource Document

Date: 01.17.2019
Design By: A.Y.
Checked By: M.M.
SnapNrack Series 100 Flashed L Foot Kit is an industry-leading, weatherproof solution for attaching to composition shingle roofs. The Flashed L Foot provides a fully flashed method for mounting the SnapNrack Series 100 system. The combination of Series 100 and the Flashed L foot is guaranteed to improve labor times and ensure the highest quality install possible.

### Flashing
- Available in black galvanized steel or aluminum for enhanced corrosion resistance
- L Foot attaches to bottom edge of flashing, removing the need for shingle cutting
- Innovative stamped features provide increased rigidity

### L Foot
- Engineered for maximum adjustability with the ability to orient in any direction
- Vertical adjustability up to 3" using available spacers

### L Foot Base
- Provides a long lasting watertight seal over the life of the system that does not rely on rubber (elastomeric seals) that will degrade over time
- Easily installs with off-the-shelf lag screws

### Channel Nut
- Provides snap-in installation to the rail channel with no drilling required
- Wide range of adjustability due to sliding ability in rail prior to final tightening

SnapNrack solutions are focused on simplifying the installation experience through intuitive products and the best value management in the industry.

877-732-3860  www.snapnrack.com  contact@snapnrack.com

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### RESOURCES
- snapnrack.com/resources
- snapnrack.com/configurator
- snapnrack.com/where-to-buy

### PAPER SIZE: 11" x 17" (ANSI B)

### CONTRACTOR
ALL ENERGY SOLAR
PHONE: (800) 620-3370
ADDRESS: 1642 CARROLL AVE
ST PAUL, MN 55104

### LIC. NO.:
HIC. NO.:
ELE. NO.:

### ADDRESS:
1642 CARROLL AVE
ST PAUL, MN 55104

### ENGINEER OF RECORD
LILY HANSEN - 26312
1537 10TH AVENUE
ST PAUL PARK, MN 55071
APN: 0702721320006

### DATE:
01.17.2019

### CHECKED BY:
M.M.

### REVISIONS
R-006.00
PLANNING MEMO

TO: St. Paul Park Planning Commission
    Kevin Walsh, City Administrator

FROM: Nate Sparks, City Planner

DATE: February 7, 2019

RE: Application Review – CUP – 610 4th Street

BACKGROUND
Miramac Properties has made an application for a conditional use permit to allow for the construction of a garage on a non-conforming single family residential lot at 610 4th Street. The property is zoned I-1, Light Industrial.

APPLICANT'S PROPOSAL
The property is zoned I-1 but is occupied by a single family house. The City allows for the expansion of non-conforming single family homes by a conditional use permit. If the proposed expansion is not going to impede the eventual future redevelopment of the property, it may be approved.

The applicant is proposing to build a 20’ x 22’ two car garage on the property. The access will be from an alley. The garage will be 7.5 feet from the side lot line and 12.5 feet from the alley. The required setbacks for a residential garage are 5 feet from the side and 10 feet from an alley.

CONDITIONAL USE PERMIT REVIEW CRITERIA
The planning commission shall consider possible adverse effects of the proposed interim use. Its judgment shall be based upon, but not limited to, the following factors:

1. The proposed action has been considered in relation to the specific policies and provisions of and has been found to be consistent with the official city comprehensive land use plan.

2. The proposed use is or will be compatible with present and future land uses of the area.

3. The proposed use conforms with all performance standards contained in this article.

4. The proposed use will not tend to or actually depreciate the area in which it is proposed.

5. The proposed use can be accommodated with existing public services and will not overburden the city's service capacity.
PLANNING COMMISSION REVIEW
The Planning Commission should review the request and determine if any additional information is needed for the public hearing.
LAND USE APPLICATION

I. Property Owner Information

Name (please print): Miramac Properties Inc. (Tina Luckner)

Site Address: 110 4th Street, Saint Paul Park, MN 55071

Mailing Address: 1129 Powers Lake Trail, Lino Lakes, MN 55129

Phone#: 651-398-6964

Email: Tina.Luckner@results.net

II. Application Request

☐ Variance $300 + $1,000 Escrow
☐ Variance Extension Request $50
☐ Rezone $500 + $1,000 Escrow
☐ Interim Use Permit $300 + $1,000 Escrow
☐ Interim Use Permit Commercial $500 + $1,000 Escrow
☐ Interim Use Permit Extension Request $50
☐ Alley/Street Vacation $350
☐ Sketch/Concept Plan $500 + $2,000 Escrow

Conditional Use Permit $300 + $1,000 Escrow
Conditional Use Permit Commercial $500 + $1,000 Escrow
Conditional Use Permit Extension Request $50
Preliminary Plat $500 + $30 per lot/unit, + $2000 Escrow
Final Plat $500 + $2,000 Escrow
Minor Subdivision $500 + $1,000 Escrow
PUD $300 + $2,000 Escrow
Other

III. Property Information

PURPOSE: Describe your request. Attach map(s), site plan(s), or survey(s) that show property dimensions, setback information and dimensions of proposed building (if any). Submit any other related information pertinent to your request that would be beneficial to Planning Commission review. Submit eight (8) copies of all plus one (1) electronic copy.

NOTE: For PUD requests, submit 12 copies (4 large, 8 11x17).

Residential 2 car garage construction in I-1 Zoning

STREET ADDRESS FOR WHICH ABOVE ACTION IS REQUESTED:

110 4th Street

Present Zoning: I-1

PROPERTY ID & LEGAL DESCRIPTION (from deed or certificate of title):

Lot Nine (9), Block Forty-Six (46), of Division No. Two (2), of St. Paul Park

Parcel Number 12-27-22-21, 0007

Date Appearance is Requested:

Revise Application:
IV. Notice of Fees and Authorization of Application

The City Fees Ordinance states that the property owner shall reimburse the City for all related costs generated by this application. Such expenses may include, but are not limited to, overhead costs (printing, mailing, supplies, etc.) and fees paid to consultants and other professionals (planning, legal and engineering). These fees are due immediately upon notification by the City and, if not paid, will be assessed to the owner(s) of the subject property. Upon request, the City will provide an itemized statement of the various expenses incurred by the City as a result of the application. The City reserves the right to withhold final action on a Land Use Application and/or rescind prior action until all fees are paid. The City may also require deposits if deemed necessary.

In signing this application, you are acknowledging that you have read the above statement and fully understand that you are responsible for all costs incurred by the City in processing and reviewing this application. Signing below is also authorizing City staff, commission members, and council members to access and inspect the property during the application period.

[Signature]

[Date Submitted]

Please complete this form and submit original to:

City of St. Paul Park
600 Portland Avenue
St. Paul Park MN 55071
**Items Selected:**
- Gable roof w/ 4/12 pitch, Standard Trusses 2’ O.C.
- Truss Design Location Zip Code: 55071
- 2x4 Wall Framing Material
- 22’ Wide X 20’ Deep X 8’ High
- Vinyl Double 4’ Lap Siding
- White
- 1/2” OSB Wall Sheathing
- Block-it Housewrap
- 0” gable/0” eave overhangs
- 1/2” OSB Roof Sheathing
- Castlebrook, Weathered Wood Shingles
- White Aluminum Fascia
- White Premium Roof Edge
- 1 - Garage Door Opener
- Pine Overhead Door Jamb

**Options Selected:**
- The options you have selected are:
  - 15 L.B. Roof Felt
  - 1-1/4” Coil Roofing Nails
  - Truss Spacers
  - Standard Concrete Blocks
  - Anchor Bolts
  - 1 - 16x7 Overhead Door - Non-Insulated RP White
  - 1 - 32x80 Service Door - CM1 6-Panel Steel RS

**Estimated price:** $4,398.46*

*Today's estimated price, future pricing may go up or down.

*Tax, labor, and delivery not included.

---

**Take this sheet to the Building Materials counter to purchase your materials.**

Floor type (concrete, dirt, gravel) is NOT included in estimated price. The floor type is used in the calculation of materials needed. Labor, foundation, steel beams, paint, electrical, heating, plumbing, and delivery are also NOT included in estimated price. This is an estimate. It is only for general price information. This is not an offer and there can be no legally binding contract between the parties based on this estimate. The prices stated herein are subject to change depending upon the market conditions. The prices stated on this estimate are not firm for any time period unless specifically written otherwise on this form. The availability of materials is subject to inventory conditions. MENARDS IS NOT RESPONSIBLE FOR ANY LOSS INCURRED BY THE GUEST WHO RELIES ON PRICES SET FORTH HEREIN OR ON THE AVAILABILITY OF ANY MATERIALS STATED HEREIN. All information on this form, other than price, has been provided by the guest and Menards is not responsible for any errors in the information on this estimate, including but not limited to quantity, dimension and quality.

Please examine this estimate carefully. MENARDS MAKES NO REPRESENTATIONS, ORAL, WRITTEN OR OTHERWISE THAT THE MATERIALS LISTED ARE SUITABLE FOR ANY PURPOSE BEING CONSIDERED BY THE GUEST. BECAUSE OF THE WIDE VARIATIONS IN CODES, THERE ARE NO REPRESENTATIONS THAT THE MATERIALS LISTED HEREIN MEET YOUR CODE REQUIREMENTS. THE PLANS AND/OR DESIGNS PROVIDED ARE NOT ENGINEERED. LOCAL CODE OR ZONING REGULATIONS MAY REQUIRE SUCH STRUCTURES TO BE PROFESSIONALLY ENGINEERED AND CERTIFIED PRIOR TO CONSTRUCTION.
**Estimate Id: 20742**

***Here are the wall configurations for your design.***

Illustration May Not Depict All Options Selected

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**Gable Front View**

**Gable Back View**

(1) - GARAGE DOOR 16X7 WHITE NONINSL RAISED PNL EXTSP

---

**Eave Front View**

**Eave Back View**

(1) - PREHUNGSTE PH32RHSTEE CM-1 6-PANEL STEEL DOOR

---

**Building Size:** 22 feet wide x 20 feet long x 8 feet high  
**Approximate Peak Height (includes 1 row of concrete blocks):** 12 feet 8 inches (152 inches)  
**NOTE:** Overhead doors may need to be "Wind Code Rated" depending on your building location.  
Confirm the door requirements with your local zoning official before construction.

Menards-provided material estimates are intended as a general construction aid and have been calculated using typical construction methods. Because of the wide variability in codes and site restrictions, all final plans and material lists must be verified with your local zoning office. Menards is a supplier of construction materials and does not assume liability for design, engineering or the completeness of any material lists provided. Underground electrical, phone and gas lines should be located and marked before your building plans are finalized. Remember to use safety equipment including dust masks and tight and hearing protection during construction to ensure a positive building experience.
Building Size: 22 feet wide X 20 feet long X 8 feet high

Note: Wall construction is 2x4 @ 16" on center
CITY OF ST. PAUL PARK
BIDDING POLICY

I. PURPOSE AND NEED FOR A POLICY

This policy sets forth the requirements for bidding and advertising for competitively bid projects that are estimated to exceed $175,000. It defines and clarifies the City bidding process that is established by statute, including processes specific to electronic advertising and bidding. Contracts that involve special assessments under Minnesota State Statute 429 have additional requirements; contact the City Engineer for direction on the appropriate process to use before starting a 429 project.

II. POLICY

The City of St. Paul Park follows Minnesota State Statutes in regard to bidding and other requirements for municipal contracts. These include procedures for competitive bidding and mandated terms for contractual agreements.

III. PROCEDURES

A. Approval: Projects or procurements must be either in the approved budget or require City Council authorization prior to bidding. All competitively bid contracts require City Council action awarding a contract.

B. Specifications: A City standard construction contract template shall be used as the starting point for construction contract drafting. These templates detail the City’s contract requirements based upon the estimated contract amount. Bid bonds, responsible bidder, insurance, performance and payment bonds and withholding affidavits are required for all competitively bid contracts.

C. Advertisement for Bid: Specific language is required for the advertisement for bids. The City’s standard advertisement for bids should be used to ensure required language is included. When using electronic bidding, the notice will clearly state that paper bids will not be accepted. Contact the City Engineer for assistance with generating an advertisement for bids if necessary. Projects estimated to exceed $175,000 require publication in the City’s official newspaper and a trade publication at least ten days prior to the bid opening. Projects that include special assessments require at least three weeks of advertisement prior to the bid opening. State Statute allows the City to use the City’s website to replace the official newspaper and an electronic plan distribution service such as QuestCDN to replace the trade publication requirement. An affidavit of publication is required from each publishing entity. If the advertisement is completed electronically, the affidavit must be created by the City staff or agent publishing the bid and requires acknowledgement of publication, including date, notarized signature and content of the advertisement for bids. Screen shots of the digital bid advertisement shall be included with the affidavit to document that the advertisement was published. Staff shall ensure that the bidding website has the functionality to facilitate submission of required information and documents to meet all state statutes and bidding laws.

D. Bid Requirements: Required documents from the bidders include but are not limited to a
bid bond, bid form containing responsible contractor language, human rights certification, and affidavit of non-collusion. All paper bids must be sealed and identified on the outside wrapper.

E. Bid Opening: The bid opening will take place in a conference room, council chambers, or other public place where any bidders present may observe. Two City staff or agents will be present when the bid time expires. All bids shall be acknowledged and read aloud or viewed online. Bid results will be available after this process is complete. Only the name of the bidder and the dollar amount specified is public information; all other bid data is not public until after the Council awards the contract. For online bids, all bid submittals and documents for the winning contractor, including the bid tabulation and abstract, shall be scanned and retained.

F. After Bid Opening: Bids should evaluated to determine the responsibility of the bidder. The contract must be awarded to the lowest responsible bidder. If City staff determines the lowest bidder is not the lowest responsible bidder, the City Attorney shall be contacted for consultation and justification prior to recommendation to the City Council. A signed contract, certificate of insurance, performance bond and payment bond are required before a notice to proceed is issued.

G. The City has the right to reject all bids.

H. All bid submittals and documents shall be retained in accordance with the City record retention schedule.

IV. RESPONSIBILITY AND AUTHORITY

Administrative implementation of policy. By authority of applicable Minnesota Statutes.

Submitted by: ________________________________ Date: _______________
Reviewed by: ________________________________ Date: _______________
NOTICE OF HEARING
ON IMPROVEMENTS
ST. PAUL PARK, MINNESOTA

NOTICE IS HEREBY GIVEN, that the City Council of the City of St. Paul Park, Washington County, Minnesota, will hold a public hearing at 7:00 p.m. on the 19th day of February 2019, in the Council Chambers of the City Hall, 600 Portland Avenue, St. Paul Park, Minnesota, to consider making of the following improvements:

Street reconstruction, pedestrian improvements, railroad crossing improvements, storm sewer, sanitary sewer, and watermain improvements in the following street:

- 9th Avenue between 2nd Street and Summit Avenue

Surface and Storm Sewer Improvements in the following alley:

- The alley between Holley Avenue and Ashland Avenue from 13th Avenue to Pullman Avenue

The estimated cost of said improvements is $2,534,750 for the 9th Avenue project, and $150,580 for the alley improvements, which is proposed to be assessed against the benefited properties. The area proposed to be assessed for all or part of said cost is the property abutting those portions of the streets above described, all within the City of St. Paul Park, Minnesota. A reasonable estimate of the impact of the assessment will be available at the public hearing.

All persons desiring to be heard with respect to said improvements will be heard by the City Council on the time and date and at the place above stated. Written and oral objections will be considered at the above hearing.

Dated January 23, 2019

Kevin Walsh
City Administrator
Memorandum

To: Kevin Walsh  
   City Administrator

From: Morgan Dawley, PE, City Engineer  
      Jim Stremel, PE, Project Manager

Date: February 14, 2019

Re: 2019 Street and Utility Improvement Projects  
    Public Improvement Hearing, Approve Plans/Specs, Authorize Ad for Bids  
    WSB Project No. R-012276-000

Background
On October 1, 2018, the City Council of St. Paul Park resolved to receive the feasibility report and order the preparation of final plans for the street and utility reconstruction project to be constructed in the year 2019. The City Council conducted an improvement hearing on November 11, 2019 and subsequently ordered the project.

The second improvement hearing is being held a result of a procedural rescheduling in order to include additional benefitting properties in the preliminary assessment roll for the 9th Avenue project. The additional properties (parcels 22, 23, 24) do not abut the project directly but do have access to 9th Avenue through a recorded easement over one of the properties that does abut 9th Avenue (parcel 18).

The justification and methodology to establish benefit for these land-locked parcels was discussed with the City attorney. The amount of the assessment was calculated by taking the “value” of the assessment within the easement area (through parcel 18) and dispersing that amount to the additional properties using an area method based on established land use. The amount of the assessment for parcel 18 was then reduced accordingly as this parcel has the “burden” of the easement. The assessment amounts for the remaining properties in the preliminary assessment roll remain unchanged.

2019 Street and Utility Improvement Projects Overview
The overall scope and cost of the project has not changed since the first improvement hearing. The proposed improvements for the 2019 Street and Utility Improvement Projects are separated into two project areas:

- **9th Avenue**, between 2nd Street and Summit Avenue, which consists of existing bituminous pavement removal, subgrade correction, concrete curb and gutter replacement, new pavement installation, watermain replacement and looping extensions, sanitary sewer mainline and service replacement, drainage and storm sewer improvements, and sidewalk extension.

- The alley between Holley Avenue and Ashland Avenue, from 13th Avenue to Pullman Avenue; these improvements consist of existing gravel surface removal, subgrade corrections, bituminous paving, and drainage/storm sewer improvements.

The total estimated project cost for the 2019 Street and Utility Improvement Projects is **$2,541,550** for the 9th Avenue Improvements, and **$150,580** for the Alley Improvements, which includes a 10% contingency and 28% indirect cost for legal, engineering, administrative, and financing costs. The project is proposed to be funded through special assessments to benefiting property owners, State Aid funds, and City funds.

Next Steps
The plans and specifications for both the 9th Avenue and Alley project areas have been completed as ordered at the October 1, 2018 meeting and staff is recommending City Council authorization to seek bids for the projects. As separate projects, there is anticipated to be some benefit of cost, administration, and
engineering efficiencies realized by bidding the two projects together and constructing them under the same construction contract.

The next step is for the City Council to conduct the second improvement hearing on the proposed improvements along 9th Avenue and the Alley area, order the project so that the additional parcels can be included in the preliminary assessment roll and will then have a “pending assessment”, approve the plans and specifications, and authorize the advertisement of bids.

**BNSF Railroad Agreements**

The 9th Avenue project extends across an existing BNSF right-of-way and active railroad line (east of 4th Street and west of Pleasant Avenue). In order to construct the project with the proposed pedestrian crossing, watermain crossing, and storm sewer crossing, agreements with BNSF will be required.

There are separate agreements for each crossing. The contract agreements for the proposed watermain and storm sewer work permits the City to complete this work within the railroad right-of-way; the fee for each contract is $8,749.25. The sidewalk crossing agreement will require a payment to the railroad in the amount of $26,324.00, but includes the cost for BNSF to furnish and install the new crossing surface panels separately from the City’s project.

**Electronic Bidding Policy**

Over the last number of years, the construction industry has been trending toward the use of electronic bidding for public project procurement. To date, the City has requested only paper bids for their public infrastructure improvement projects. While paper bids are still a viable and reasonable means to obtain bids, many cities are specifying the use of electronic bidding. With electronic bidding, cities are experiencing time savings, greater accuracy in bid results, and efficiency for City staff and contractors alike.

Current state statutes do allow for cities to use electronic bidding for project procurement, but the statutes do not provide specific guidance regarding the procedure of receiving and opening electronic bids. The statute simply says that vendors may submit bids electronically “…in a form and manner required by the municipality “…, essentially leaving it up to the individual cities to determine how to handle electronic bidding. The League of Minnesota Cities has suggested that cities adopt a policy related to the procedures for electronic bidding.

A draft electronic bidding policy has been provided for the City Council to consider. The City Council could, without a policy in place, authorize bidding of the 2019 Street and Utility Improvement Project using electronic means on a trial basis and then consider adopting a policy at a later date.

**Recommended Action**

Following the improvement hearing, adopt the resolution ordering the public improvements, adopt the resolution accepting plans and specifications and authorizing the advertisement for bids.

Consider the three BNSF railroad agreements for approval.

**Attachments**

- Resolutions
- Parcel Maps (both the 9th Avenue and Alley projects)
- Preliminary Assessment Rolls (both the 9th Avenue and Alley projects)
- BNSF railroad agreements (watermain, storm sewer, sidewalk crossings)
2019 Street Improvements Project
9th Avenue - 2nd Street to Summit Avenue
St. Paul Park, MN

1 inch = 300 feet

Project Location
Assessed Parcels

11TH AVE
9TH AVE
4TH ST
2ND ST
3RD ST
1ST ST
2ND AVE
3RD AVE
4TH AVE
10TH AVE
SUMMIT AVE
PORTLAND AVE

Assessed Parcels

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Note: Property owners 'opt out' services for Potential liabilities are not included in water or sewer assessments above.
2019 Street Improvement
Alley Project - Between Holley Ave and Ashland Ave
St. Paul Park, MN
## Preliminary Assessment Roll

**WSB Project:** 2019 Alley Reconstruction  
**Project Location:** City of St. Paul Park  
**WSB Project No.:** 12276-000  
**Total Cost of Project:** $101,300.00  
**Number of Properties:** 18  
**Proposed Assessment:** $5,627.77

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**Total Assessment:** $106,927.63
WHEREAS, pursuant to resolution of the city council adopted May 21, 2018, a feasibility report prepared by WSB & Associates providing information regarding whether the proposed improvements are necessary, cost-effective, and feasible; whether it should best be made as proposed or in connection with some other improvement; the estimated cost of the improvement as recommended; and a description of the methodology used to calculate individual assessments for affected parcels was received by the Council on October 1, 2018, and

WHEREAS, pursuant to the consensus of the council on January 22, 2019 the above referenced feasibility reports were amended to include additional benefitting properties; and

WHEREAS, a resolution of the city council adopted the 22\textsuperscript{nd} day of January 2019, fixed a date for a council hearing on the proposed street and utility improvement within the following segments of public right-of-way:

1. 9\textsuperscript{th} Avenue between 2\textsuperscript{nd} Street and Summit Avenue
2. The alley between Holley Avenue and Ashland Avenue from 13\textsuperscript{th} Avenue to Pullman Avenue

AND WHEREAS, ten days’ mailed notice and two weeks’ published notice of hearing was given, and the hearing was held thereon on the 19\textsuperscript{th} day of February 2019, at which all persons desiring to be heard were given an opportunity to be heard thereon,

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ST. PAUL PARK, MINNESOTA:

1. Such improvement is necessary, cost-effective, and feasible as detailed in the amended feasibility report.

2. Such improvement is hereby ordered as proposed in the city council resolution adopted 19\textsuperscript{th} day of February 2019.

3. WSB & Associates Inc. is hereby designated as the engineer for this improvement.

4. The City Council declares its official intent to reimburse itself for the costs of the improvement from the proceeds of the tax-exempt bond if issued.

Adopted this 19\textsuperscript{th} day of February 2019, by the City Council of St. Paul Park, Minnesota.

_____________________________
Sanidi Dingle, Mayor

ATTEST:

___________________________
Sharon Ornquist, City Clerk
RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND ORDERING ADVERTISEMENT FOR BIDS  
2019 STREET & UTILITY IMPROVEMENT PROJECTS

WHEREAS, pursuant to a resolution passed by the council on October 1, 2019, the city engineer has prepared plans and specifications for the improvement of:

1. 9th Avenue between 2nd Street and Summit Avenue
2. The alley between Holley Avenue and Ashland Avenue from 13th Avenue to Pullman Avenue

by the reconstruction of the roadway and utilities and has presented such plans and specifications to the council for approval;

NOW, THEREFORE BE IT RESOLVED, by the City Council of St. Paul Park, Minnesota:

1. Such plans and specifications, a copy of which is attached hereto and made a part hereof, are hereby approved.

2. The city clerk shall prepare and cause to be inserted in the official paper and in Finance and Commerce an advertisement for bids upon the making of such improvement under such approved plans and specifications. The advertisement shall be published 3 weeks prior to opening bids, shall specify the work to be done, shall state that bids will be opened at 10:00 AM, Friday, March 22, 2019, considered by council at 7:00 P.M. on April 1, 2019, in the council chambers of the city hall. Any bidder whose responsibility is questioned during consideration of the bid will be given an opportunity to address the council on the issue of responsibility. No bids will be considered unless sealed and filed with the clerk and accompanied by a cash deposit, cashier’s check, bid bond or certified check payable to the clerk for 5 percent of the amount of such bid.

Adopted this 19th day of February 2019 by the City Council of St. Paul Park, Minnesota.

____________________________________
Sandi Dingle, Mayor

ATTEST:

______________________________
Sharon Ornquist, City Clerk
CROSSING SURFACE INSTALLATION AGREEMENT

BNSF File No.: BF10014522
Line Segment 0003, Mile Post 0420.706
U.S. DOT Number 061135X, 9th Ave S Crossing Extension
St. Paul Subdivision

This Crossing Surface Installation Agreement (hereinafter called, this “Agreement”) is entered into effective as of _____________, 2019, by and between the City of St. Paul Park (hereinafter called, “AGENCY”), and BNSF Railway Company (hereinafter called, “BNSF”),

WHEREAS, BNSF operates a freight transportation system by rail with operations throughout the United States and Canada; and

WHEREAS, AGENCY desires to extend the existing crossing surface at 9th Ave S Crossing with a new concrete crossing surface;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **BNSF Work.** BNSF will install a new concrete crossing surface for a width of 16-feet on the Main Line track, from edge of pavement to edge of pavement. The new crossing surface will adequately cover the new sidewalk crossing at the 9th Ave South crossing. BNSF will perform all necessary track upgrades to accommodate the new crossing surface.

2. **AGENCY Work.** AGENCY must construct the Project as shown on the attached Exhibit A and do all work (“AGENCY’s Work”) provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. AGENCY must furnish all labor, materials, tools and equipment for the performance of AGENCY’s Work. The principal elements of AGENCY’s Work are as follows:

   (a) Design and Construction of 9th Ave South roadway and sidewalk approaches;

   (b) Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, “MUTCD”);

   (c) Installation of advance warning signs in accordance with the MUTCD;

   (d) Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF’s right-of-way;

   (e) Provide suitable drainage, both temporary and permanent;

   (f) Provide all barricades, lights, flagmen or traffic control devices as necessary, during the installation of the concrete pedestrian crossing surfaces;

   (g) Construct concrete sidewalk surface on approaches to each track;
Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF; and

It is expressly understood by Agency and BNSF that the trail and any right to install utilities will be governed by a separate permit or license agreement between the parties hereto;

3. Payment; Invoicing. Upon execution of this Agreement by both parties hereto, BNSF will send AGENCY an invoice detailing the total amount owed by AGENCY for the new crossing surface. BNSF shall send to AGENCY a final invoice upon completion and Agency shall pay the final invoice within 30 days of receipt.

Agency’s ESTIMATED total cost for the new crossing surface is twenty six thousand three hundred twenty four and No/100 Dollars ($26,324.00), as detailed per Exhibit B.

4. Maintenance of the Crossing Surface. After installation of the new crossing surface is completed, BNSF will maintain, at its own cost and expense, the crossing surface, against normal wear and tear, in a satisfactory manner for the expected life of the crossing surface. Notwithstanding the preceding sentence, BNSF shall be entitled to receive any contribution toward the cost of such maintenance made available by reason of any existing or future laws, ordinances, regulations, orders, grants, or other means or sources.

If the crossing surface installed hereunder cannot, through age, be maintained, or requires replacement, the cost of installation of a new crossing surface will be paid by the Agency.

5. Vehicular Traffic during Installation. The AGENCY shall provide, at its own cost and expense, all necessary barricades, lights or traffic control devices for detouring traffic at the 9th Ave S Crossing during installation of the new crossing surface.

6. Drainage. The AGENCY agrees to allow BNSF to drain water from the 9th Ave S Crossing area into existing AGENCY storm sewers, if such storm sewers are available. Drain pipes and filter fabric necessary for such drainage will be furnished and installed by BNSF.

7. Roadway Surfacing Work. The AGENCY agrees to provide, at its sole cost and expense, enough material to cover the distance between the existing trail surface at 9th Ave S Crossing and the new crossing surface on both sides of the track.

8. Contractor Requirements: AGENCY must require its contractor to comply with the obligations set forth in this Agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor, the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

No work shall be commenced within BNSF’s right of way until the AGENCY’s contractor shall have (i) executed and delivered to BNSF an agreement in the form of said Exhibit C-1 and (ii) delivered to and secured BNSF’s approval of the required insurance (iii) coordinated with Roadmaster a minimum of 30 days prior to construction.

9. Term. This Agreement begins on the effective date set forth above and remains in effect until completion of all work contemplated in this Agreement and AGENCY’s payment of the amounts set forth in Section 3 above.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first written above.

BNSF Railway Company:

By: ___________________________
Printed Name: ___________________
Title: __________________________

City of St. Paul Park:

By: ___________________________
Printed Name: ___________________
Title: __________________________

WITNESS:

By: ___________________________
Printed Name: ___________________
Title: __________________________
EXHIBIT “A”

[PLAN OVERVIEW]
EXHIBIT “B”

[COST ESTIMATE FOR RAILROAD WORK]
LOCATION: NEWPORT
LINE SEGMENT: 3
AFE NUMBER: 5912819
PLAN ITEM NUMBER: 234570000
MILEPOST: 420.706
PROPERTY OF: BNSF RAILWAY COMPANY
DIVISION: TC
OPERATED BY: BNSF RAILWAY COMPANY
SUBDIVISION: ST PAUL
JOINT FACILITY: CITY OF ST PAUL PARK
% BILLABLE (+/-): 100.0
TAX STATE: MN
SPONSOR: VP ENGINEERING
REPORTING OFFICE: 718
BUDGET YEAR: 2019

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP - TCE DIV ST PAUL SUB LS 3 MP 420.706 - DOT# 061135X - 100% BILLABLE TO CITY OF ST PAUL PARK - ST. PAUL PARK, MN 061135X
9TH AVE S: CITY OF ST. PAUL PARK SURFACE EXTENSION PROJECT FOR SIDEWALK, 100% BILLABLE TO CITY, 16-FT X 1
PRIMARY FUNDING SOURCE IS STATE

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SYSTEM MAINTENANCE AND PLANNING
ESTIMATE REF. NUMBER: 5912819
COSTING DATE: 01/01/2019
PRINTED ON: 12/17/2018
PRINTED BY: Savard
ESTIMATED BY: Savard
**MAINTAIN PROPRIETARY CONFIDENTIALITY**

BNSF RAILWAY COMPANY
FHSM ESTIMATE FOR
CITY OF ST PAUL PARK

LOCATION: NEWPORT

**DETAILS OF ESTIMATE**

**PLAN ITEM**: 234570000

**VERSION**: 1

**PURPOSE, JUSTIFICATION AND DESCRIPTION**

**PIP - TCE DIV ST PAUL SUB LS 3 MP 420.706 - DOT# 061135X - 100% BILLABLE TO CITY OF ST PAUL PARK**

ST. PAUL PARK, MN 061135X 9TH AVE S: CITY OF ST. PAUL PARK SURFACE EXTENSION PROJECT FOR SIDEWALK, 100% BILLABLE TO CITY, 16-FT X 1

REQUESTED BY RICHARD D. SCOTT 12/10/18

**PRIMARY FUNDING SOURCE IS STATE**

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EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General:

- **1.01.01** The Contractor must cooperate with BNSF RAILWAY COMPANY, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of the Agency project under agreement BF10014522.

- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit “C-1” Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit “C-1”. Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.

- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.

- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway’s opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway’s Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to
any liability on the part of Railway. Railway’s right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

Lydia Ener  
City of St. Paul Park, MN  
ler@wsbeng.com  
763-270-3464  
701 Xenia Avenue S, Suite 300  
Minneapolis, MN 55416

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.

- **1.01.06** The Contractor must notify (Agency) and Railway's Manager Public Projects, telephone number (763) 782-3492 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor’s notification to Railway must refer to Railway's file BF10014522.

- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current “BNSF-UPRR Guidelines for Temporary Shoring” must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current “BNSF-UPRR Guidelines for Temporary Shoring”. All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and
calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

### 1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site [www.BNSFContractor.com](http://www.BNSFContractor.com). The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

### 1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.

- **1.03.02** The Contractor must notify the Railway's Division Engineer and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.

- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
  - 15'-0" Horizontally from centerline of nearest track
  - 21'-6" Vertically above top of rail
- 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
- 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
- 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
- 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

1.03.04 Upon completion of construction, the following clearances shall be maintained:
- 25' Horizontally from centerline of nearest track
- 23' 6" Vertically above top of rail

1.03.05 Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the (Agency) and must not be undertaken until approved in writing by the Railway, and until the (Agency) has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.

1.03.06 In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.

1.03.07 The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by (Agency) for approval before work is undertaken and this work must not be undertaken until approved by the Railway.

1.03.08 At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.

1.03.09 Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a
treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway’s Property all of Contractor’s tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway’s Property to be left in a condition acceptable to the Railway’s representative.

**1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:**

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.BNSFContractor.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

- **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion a) to be on Railroad’s property, or b) that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad’s Employees, Hazardous Materials on Railroad’s property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at www.eVerifile.com, in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad’s designee. Contractor shall be subject to periodic audit to ensure
Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
  - **1.05.02a** When, upon inspection by Railway’s Representative, other conditions warrant.
  - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
  - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
  - **1.05.02d** When any hazard is presented to Railway track, communications,
signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

- **1.05.03** Flagging services will be performed by qualified Railway flaggers.

- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.

- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

- **1.05.03c** The cost of flagger services provided by the Railway will be borne by (Agency). The estimated cost for one (1) flagger is approximately between $800.00-$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

- **1.05.03d** The average train traffic on this route is 56 freight trains per 24-hour period at a timetable speed 25 MPH and 0 passenger trains.

### 1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.

- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing **must** include the Railway's flagger, as applicable, and include the
procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.

- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.

- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.

- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.

- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, [www.BNSFCContractor.com](http://www.BNSFCContractor.com), however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. (NOTE –
Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)

- **1.06.09** THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY’S REPRESENTATIVE.

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)

- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.

- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

**1.07 Excavation:**

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway’s Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF’s Field Engineering Representative.** All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for**
the location of all underground utilities before excavating.

- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

- **1.07.04** Any excavations, holes or trenches on the Railway’s Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

**1.08 Hazardous Waste, Substances and Material Reporting:**

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway’s Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway’s Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

**1.09 Personal Injury Reporting**

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor’s invitees while on the Railway’s Property must be reported immediately (by phone mail if unable to contact in person) to the Railway’s representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway’s Project Representative no later than the close of shift on the date of the injury.
NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

☐ Passenger on train (C)  ☐ Non-employee (N)
  (i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)

☐ Contractor/safety sensitive (F)  ☐ Contractor/non-safety sensitive (G)

☐ Volunteer/safety sensitive (H)  ☐ Volunteer/other non-safety sensitive (I)

☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates

☐ Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates

☐ Non-trespasser (J) - Off railroad property

If train involved, Train ID:

______________________________________________

Transmit attached information to Accident/Incident Reporting Center by:
Fax 1-817-352-7595 or by Phone 1-800-697-6736 or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name) ___________________________________ (Employee No.) ___________________ (Phone #) ___________________

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490
# Non-Employee Personal Injury Data Collection

Information required to be collected pursuant to federal regulation. It should be used for compliance with federal regulations only and is not intended to presume acceptance of responsibility or liability.

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<tr>
<th><strong>1.</strong> Accident City/St:</th>
<th><strong>2.</strong> Date:</th>
<th><strong>3.</strong> Temperature:</th>
<th><strong>4.</strong> Weather:</th>
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<th><strong>5.</strong> Driver's License No (and state) or other ID:</th>
<th><strong>SSN (required):</strong></th>
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<th><strong>6.</strong> Name (last, first, mi):</th>
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<th><strong>7.</strong> Address:</th>
<th><strong>City:</strong></th>
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<th><strong>8.</strong> Date of Birth:</th>
<th><strong>and/or Age:</strong></th>
<th><strong>Gender:</strong></th>
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<th><strong>9.</strong> Injury:</th>
<th><strong>ID Body Part:</strong></th>
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<tr>
<td></td>
<td>(i.e., Laceration, etc.)</td>
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<th><strong>10.</strong> Body Part:</th>
<th><strong>Description of Accident (To include location, action, result, etc.):</strong></th>
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<th><strong>11.</strong> Treatment:</th>
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<tr>
<td>First Aid Only</td>
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<td>Required Medical Treatment</td>
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<tr>
<td>Other Medical Treatment</td>
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<th><strong>12.</strong> Dr. Name:</th>
<th><strong>Date:</strong></th>
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<th><strong>13.</strong> Dr. Address:</th>
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<tr>
<td>Street:</td>
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<td>City:</td>
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<td>St:</td>
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<td>Zip:</td>
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<th><strong>14.</strong> Hospital Name:</th>
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<th><strong>15.</strong> Hospital Address:</th>
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<tr>
<td>Street:</td>
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<td>City:</td>
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<td>St:</td>
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<th><strong>16.</strong> Diagnosis:</th>
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Report prepared to comply with federal accident reporting requirements and protected from disclosure pursuant to 49 U.S.C. 20903 and 83 U.S.C. 490.
EXHIBIT "C-1"

Agreement Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR

Railway File: ___________________________________

Agency Project: BF10014522

______________________________ > (hereinafter called “Contractor”), has entered into an agreement (hereinafter called “Agreement”) dated ____________, 2019, with the City of St. Paul Park for the performance of certain work in connection with the following project: BF10014522. Performance of such work will necessarily require Contractor to enter BNSF RAILWAY COMPANY (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for City of St. Paul Park (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY
CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) TERM
This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.
3) INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $2,000,000 each occurrence and an aggregate limit of at least $4,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

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

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waver of subrogation in favor of and acceptable to Railway.
- Additional insured endorsement in favor of and acceptable to Railway.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers’ compensation and employers’ liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Railway employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired
The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railway.
- Additional insured endorsement in favor of and acceptable to Railway.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers’ Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

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

- Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the Railway as the Insured with coverage of at least $2,000,000 per occurrence and $6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the Railway prior to performing any work or services under this Agreement
- Definition of “Physical Damage to Property” shall be endorsed to read: “means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured’ care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway’s Blanket Railroad Protective Liability Insurance Policy.
Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against Railway for all claims and suits against Railway. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railway for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railway for loss of its owned or leased property or property under Contractor’s care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of Railway. If granted by Railway, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all Railway liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor’s insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing services, Contractor shall furnish to Railway an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company  
c/o CertFocus  
P.O. Box 140528  
Kansas City, MO 64114  
Toll Free: 877-576-2378  
Fax number: 817-840-7487  
Email: BNSF@certfocus.com  
www.certfocus.com

Contractor shall notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best’s Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
If coverage is purchased on a “claims made” basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor’s insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railway herein.

Failure to provide evidence as required by this section shall entitle, but not require, Railway to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor’s obligations hereunder.

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

In the event of a claim or lawsuit involving Railway arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, Railway shall mean “Burlington Northern Santa Fe LLC”, “BNSF Railway Company” and the subsidiaries, successors, assigns and affiliates of each.
4) SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway (“Sales Taxes”), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; provided, however, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway’s own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway’s sole cost and expense, contest in Contractor’s own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.
5) EXHIBIT “C” CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit “C” attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (http://www.bnsf.com/communities/faqs/permits-real-estate/), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

6) TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.
Contractor and its subcontractors must give Railway’s representative 6 weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor’s expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor’s work so as to not cause any delays to any trains.
IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

 contractor Legal Name
By: ____________________________
Printed Name: ____________________
Title: ____________________________
Contact Person: ___________________
Address: _________________________
City: ___________________________  
State: _______ Zip: _____________
Fax: ____________________________
Phone: _________________________
E-mail: _________________________

BNSF Railway Company
By: ______________________________
Name: ___________________________
Manager Public Projects
Accepted and effective this ______day of 2019.
PIPELINE LICENSE

THIS PIPELINE LICENSE ("License") is made to be effective ____________, 2019 (the "Effective Date") by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Licensor") and CITY OF ST. PAUL PARK ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, 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 and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "Drawings and Specifications"), one (1) pipeline, 8 inches in diameter inside a(n) 30 inch steel casing (collectively, the "Pipeline"), across or along Licensor's rail corridor at or near the station of St. Paul Park, County of Washington, State of Minnesota, Line Segment 0003, Mile Post 420.70 as shown on the attached Drawing No. 74389, dated December 17, 2018, attached hereto as Exhibit "A" and incorporated herein by reference (the "Premises").

2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.

3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.

4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry potable water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose.

5. Alterations. Except as set forth in this License, 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 Licensor's prior written consent.

COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, the sum of eight thousand seven hundred forty-nine and 25/100 Dollars ($8,749.25) as compensation for the use of the Premises.

7. Costs and Expenses.

7.1 For the purpose of this License, "cost" or "costs" and "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.

7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of Section 8 below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "Services"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and
holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. *Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates.* Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this Section 7.

7.3 Licensor, at its sole discretion, may elect to designate a third party (the "Scheduling Agent"), to perform and/or arrange for the performance of the Services.

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

**LICENSOR’S RESERVED RIGHTS**

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;

9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or

9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 4 above.

10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

**LICENSEE’S OPERATIONS**

11. **Construction and Maintenance of the Pipeline.**

11.1 Licensee shall not enter or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's Roadmaster, at 80 44th Avenue NE Minneapolis, MN 55421, telephone (763) 782-3083, at least fifteen (15) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.

11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in Section 24 hereof.

11.7 Licensor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Licensor for the cost of such observation or inspection related services pursuant to Section 8. If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel or representatives due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this Section 11, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of Section 8. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

12. Boring and Excavation.

12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall 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 whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor’s underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor’s Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Pipeline. Upon receiving Licensee’s timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor’s standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee’s operations will be subject at all times to the liability provisions herein.

12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor’s reasonable opinion that granular material is present, Licensor may select a new location for Licensee’s use, or may require Licensee to furnish for Licensor’s review and approval, in Licensor’s sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee’s sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

12.3 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:

12.3.1 filled in to surrounding ground level with compacted bentonite grout; or

12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor’s property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

13.1 For purposes of this License: (a) "Indemnitees" means Licensor and Licensor’s affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "Liabilities" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys’ fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "Licensee Parties" means Licensee or Licensee’s officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

13.2 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):
13.2.1 THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,

13.2.2 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,

13.2.3 LICENSEE’S OCCUPATION AND USE OF THE PREMISES,

13.2.4 THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR

13.2.5 ANY ACT OR OMISSION OF ANY LICENSEE PARTY.

13.3 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITENES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE’S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITENES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

13.4 IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITENES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, Assertions OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

13.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.

13.6 Upon written notice from Licensor, Licensee agrees to 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 Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.
14. **Personal Property Risk of Loss.** ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

15. **Insurance.** Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

15.1 **Commercial General Liability Insurance.** This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

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

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers’ compensation and employers’ liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

15.2 **Business Automobile Insurance.** This insurance shall contain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.

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

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 **Workers’ Compensation and Employers’ Liability Insurance.** This insurance shall include coverage for, but not limited to:

- Licensee's statutory liability under the workers’ compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers’ Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.
This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL 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 shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor’s Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is $1,266.00.

- I **elect** to participate in Licensor’s Blanket Policy;
- I **elect not** to participate in Licensor’s Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

15.6.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.

15.6.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
15.6.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.

15.6.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

15.6.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

15.6.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

15.6.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

15.6.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

15.6.10 Failure to provide evidence as required by this Section 15 shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.

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

15.6.12 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable.

15.6.13 For purposes of this Section 15, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.
COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS


16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.

16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "Safety Orientation") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.

16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of-way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "Rights") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.

16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.

16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its 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 CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the Pipeline on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this Section 17.2.
17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DISCLAIMER OF WARRANTIES

18. No Warranties.

18.1 LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY 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.

18.2 LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.

19. Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.
LIENS AND TAXES

21. **Liens and Charges.** Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices 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 Licensor to take any such action shall not relieve Licensee of any obligation or liability under this Section 21 or any other Section of this License.

22. **Taxes.** Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "Improvements") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. **Default and Termination.** In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of Section 15, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:

23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of Section 26 below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in Section 15.

23.2 Should Licensee not comply fully with the obligations of Section 17 regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.

23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this Section 23 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. **Surrender of the Premises.**

24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:

24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;
24.1.2 report and restore any damage to the Premises or Licensor’s other property arising from, growing out of, or connected with Licensee’s use of the Premises;

24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.

24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under Section 24.1 above (the “Restoration Obligations”), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensor to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee’s obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. Assignment.

26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this Section 26 shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

26.2 For purposes of this Section 26, the word “assign” shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee’s parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE
LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR’S SOLE DISCRETION.

26.3 Notwithstanding the provisions of Section 26.1 above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "Purported Assignment") to another party (a "Purported Transferee"), the Purposed Transferee’s enjoyment of the rights and privileges granted under this License shall be deemed to be the Purposed Transferee’s agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of Section 15 above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purposed Assignment.

26.4 The provisions of this Section 26 shall survive the expiration or earlier termination of this License.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed 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 Licensor: Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham, Suite 110
Fort Worth, TX 76155
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2310 Lou Menk Dr. –GOB3W
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: City of St. Paul Park
600 Portland Ave.
St. Paul Park, MN 55071

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.

29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.
32. **Integration.** This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

33. **Joint and Several Liability.** If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

34. **Waiver.** The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

35. **Interpretation.**

35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.

35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.

36. **Counterparts.** This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

37. **Licensor's Representative.** Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

END OF PAGE – SIGNATURE PAGE FOLLOWS
This License has been duly executed by the parties hereto as of the date below each party’s signature; to be effective, however, as of the Effective Date.

**LICENSOR:**

**BNSF RAILWAY COMPANY,** a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.,
4200 Buckingham Road, Suite 110
Fort Worth, TX  76155

By:  

Title:  

Date:  

**LICENSEE:**

**CITY OF ST. PAUL PARK**

600 Portland Ave.
St. Paul Park, MN  55071

By:  

Title:  

Date:  
EXHIBIT "A"
ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
AND
CITY OF ST. PAUL PARK

DRAWING NO. 74389
KFH
STATE OF MN

COORDINATE SYSTEM: _MN_S
TRACKING NO. 18-61740

SCALE: 1 IN = 50 FT
TWIN CITIES DIV.
ST PAUL_SUBDIV.
L.S. 0003 MP: 420.70
DATE: 12/17/2018

REFERENCE: 9th Ave
Pleasant Ave

CARRIER PIPE: PVC C900
WALL THICKNESS: 0.362" - 0.50"
COATING: -
CONTENTS: POTABLE WATER

CARRIER PIPE: 8" 30"
WORKING PRESSURE: 65 PSI
LENGTH ON R/W: 101'

CASING PIPE: 101'
BURY: BASE/RAIL TO TOP OF CASING
BURY: NATURAL GROUND
BURY: ROADWAY DITCHES
CATHODIC PROTECTION
VENTS: NUMBER SIZE HEIGHT OF VENT ABOVE GROUND

NOTE: CASING TO BE JACKED OR DRY BORED ONLY

AT ST PAUL PARK
COUNTY OF WASHINGTON
STATE OF MN

DRAWING NO. 74389
PIPELINE LICENSE

THIS PIPELINE LICENSE ("License") is made to be effective ____________, 2019 (the "Effective Date") by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Licensor") and CITY OF ST. PAUL PARK ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. **Grant of License.** Licensor hereby grants Licensee a non-exclusive license, 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 and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "Drawings and Specifications"), one (1) pipeline, 21 inches in diameter inside a 42 inch steel casing (collectively, the "Pipeline"), across or along Licensor's rail corridor at or near the station of St. Paul Park, County of Washington, State of Minnesota, Line Segment 0003, Mile Post 420.70 as shown on the attached Drawing No. 74390, dated December 19, 2018, attached hereto as Exhibit "A" and incorporated herein by reference (the "Premises").

2. **Term.** This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.

3. **Existing Improvements.** Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.

4. **Use of the Premises.** Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry storm water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose.

5. **Alterations.** Except as set forth in this License, 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 Licensor's prior written consent.

COMPENSATION

6. **License Fee.** Licensee shall pay Licensor, prior to the Effective Date, the sum of eight thousand seven hundred forty-nine and 25/100 Dollars ($8,749.25) as compensation for the use of the Premises.

7. **Costs and Expenses.**

   7.1 For the purpose of this License, "cost" or "costs" and "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.

   7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of Section 8 below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "Services"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and
unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this Section 7.

7.3 Licensor, at its sole discretion, may elect to designate a third party (the "Scheduling Agent"), to perform and/or arrange for the performance of the Services.

8. Payment Terms. All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in The Wall Street Journal in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

 LICENSOR’S RESERVED RIGHTS

9. Reserved Rights of Use. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;

9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or

9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 4 above.

10. Right to Require Relocation. If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

 LICENSEE’S OPERATIONS

11. Construction and Maintenance of the Pipeline.

11.1 Licensee shall not enter or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's Roadmaster, at 80 44th Avenue NE Minneapolis, MN 55421, telephone (763) 782-3083, at least fifteen (15) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.

11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.

11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in Section 24 hereof.

11.7 Licensor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Licensor for the cost of such observation or inspection related services pursuant to Section 8. If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel or representatives due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this Section 11, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of Section 8. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

12. Boring and Excavation.

12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall 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 whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee
shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

12.3 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:

12.3.1 filled in to surrounding ground level with compacted bentonite grout; or

12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

13.1 For purposes of this License: (a) "Indemnitees" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "Liabilities" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "Licensee Parties" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

13.2 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):
13.2.1 THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,

13.2.2 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,

13.2.3 LICENSEE’S OCCUPATION AND USE OF THE PREMISES,

13.2.4 THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR

13.2.5 ANY ACT OR OMISSION OF ANY LICENSEE PARTY.

13.3 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED (“CERCLA”) OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE’S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE’S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

13.4 IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

13.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.

13.6 Upon written notice from Licensor, Licensee agrees to 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 Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR
THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

15.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

15.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to the following:
- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:
- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
15.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL 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 shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is $1,266.00.

- [ ] I elect to participate in Licensor's Blanket Policy;
- [ ] I elect not to participate in Licensor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

15.6.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.

15.6.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.

15.6.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor
arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.

15.6.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

15.6.6 If coverage is purchased on a “claims made” basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

15.6.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

15.6.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

15.6.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

15.6.10 Failure to provide evidence as required by this Section 15 shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.

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

15.6.12 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable.

15.6.13 For purposes of this Section 15, Licensor shall mean “Burlington Northern Santa Fe, LLC”, “BNSF Railway Company” and the subsidiaries, successors, assigns and affiliates of each.

**COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS**


16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "Safety Orientation") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.

16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of-way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "Rights") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.

16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.

16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its 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 CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the Pipeline on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this Section 17.2.

17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DISCLAIMER OF WARRANTIES

18. No Warranties.

18.1 LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT Include ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY 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.

18.2 LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.

19. Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.

LIENS AND TAXES

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices 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 Licensor to take any such action shall not relieve Licensee of any obligation or liability under this Section 21 or any other Section of this License.

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the
"Improvements") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of Section 15, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:

23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of Section 26 below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in Section 15.

23.2 Should Licensee not comply fully with the obligations of Section 17 regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.

23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this Section 23 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. Surrender of the Premises.

24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:

24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;

24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;

24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.

24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under Section 24.1 above (the "Restoration Obligations"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all
liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. Assignment.

26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this Section 26 shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

26.2 For purposes of this Section 26, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.

26.3 Notwithstanding the provisions of Section 26.1 above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "Purported Assignment") to another party (a "Purported Transferee"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of Section 15 above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or
description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.

26.4 The provisions of this Section 26 shall survive the expiration or earlier termination of this License.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed 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 Licensor:  
Jones Lang LaSalle Brokerage, Inc.  
4200 Buckingham, Suite 110  
Fort Worth, TX 76155  
Attn:  Permits/Licenses

with a copy to:  
BNSF Railway Company  
2310 Lou Menk Dr. –GOB3W  
Fort Worth, TX 76131  
Attn:  Senior Manager Real Estate

If to Licensee:  
City of St. Paul Park  
600 Portland Ave.  
St. Paul Park, MN 55071

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.

29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. **Interpretation.**

   35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.

   35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.

36. **Counterparts.** This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

37. **Licensor's Representative.** Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.
This License has been duly executed by the parties hereto as of the date below each party’s signature; to be effective, however, as of the Effective Date.

**LICENSOR:**

**BNSF RAILWAY COMPANY,** a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.,
4200 Buckingham Road, Suite 110
Fort Worth, TX 76155

By: __________________________

Title: __________________________

Date: __________________________

**LICENSEE:**

**CITY OF ST. PAUL PARK**

600 Portland Ave.
St. Paul Park, MN 55071

By: __________________________

Title: __________________________

Date: __________________________
### Description of Pipeline

**Pipeline Shown Bold**

<table>
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<tr>
<th>Size</th>
<th>Carrier Pipe</th>
<th>Casing Pipe</th>
<th>Length on R/W</th>
<th>Working Pressure</th>
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<td>21&quot;</td>
<td>RCP</td>
<td>STEEL</td>
<td>101'</td>
<td>-</td>
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<tr>
<td>42&quot;</td>
<td>CLASS 3</td>
<td>CLASS B</td>
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**Specifications / Grade**

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<th>Wall Thickness</th>
<th>Bearing Base/Rail to Top of Casing</th>
<th>Natural Ground</th>
<th>Roadway Ditches</th>
<th>Cathodic Protection</th>
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<td>2.75&quot;</td>
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<td>0.563&quot;</td>
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**Note:** Casing to be jacked or dry bored only.

---

**Exhibit "A"**

Attached to contract between BNSF Railway Company and City of St. Paul Park.

**Location:**

- **Coordinate System:** MN_S
- **TOWNSHIP & RANGE:** 27N 22W
- **MERIDIAN:** 4PM
- **SCALE:** 1 IN = 50 FT
- **DATE:** 12/19/2018

---

**Map Reference:** ref039
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