



Request for Council Action

TO: Mayor and City Council
THROUGH: Tim Murray, City Administrator
FROM: Mark DuChene, City Engineer
MEETING DATE: October 23, 2018
SUBJECT: Approve Utility Occupancy License with Dakota, Minnesota & Eastern Railroad Corporation (d.b.a. Canadian Pacific) for TH 60 Reconstruction Project – City Contract 2019-03

Background:

As part of the 2019 TH 60 Reconstruction Project, City Contract 2019-03, the City is replacing early 1900's vintage watermain along the project corridor with a modern PVC watermain which includes replacing it underneath the existing railroad crossing between Irving Avenue and 8th Avenue NW. This railroad is under the jurisdiction of Dakota, Minnesota & Eastern Railroad Corporation (d.b.a. Canadian Pacific) and the railroad requires a utility occupancy license in order to construct the work.

Recommendation:

Approve Utility Occupancy License with Dakota, Minnesota & Eastern Railroad Corporation (d.b.a. Canadian Pacific) for TH 60 Reconstruction Project – City Contract 2019-03

Attachments:

- Dakota, Minnesota & Eastern Railroad Corporation (d.b.a. Canadian Pacific) Utility Occupancy License No. 5036201

UTILITY OCCUPANCY LICENSE

NO. 5036201

THIS UTILITY OCCUPANCY LICENSE (“License”) is made effective the 1st day of October, 2018, by and between

1. PARTIES:

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, a Minnesota corporation, doing business as Canadian Pacific, with its general offices at Canadian Pacific Plaza, 120 South Sixth Street, Minneapolis, MN 55402 (hereinafter referred to as “CP”),

and

CITY OF FARIBAULT, with a mailing address at 208 NW 1st Ave., Faribault, MN 55021 (“Licensee”).

2. ACKNOWLEDGEMENT

CP hereby acknowledges and authorizes Licensee to install, maintain and operate the following “Utility Line” across, over and/or under its railroad corridor property and tracks, pursuant to the terms and conditions of this License.

(a) Specifications

Utility Type: underground water main
Size/Capacity: 12' PVC inside an 18" Steel casing
Installation: 9.5' minimum under tracks
Ancillary Items: None

(b) Location

Lat/Long: 44.294648 -93.282510
PLSS: NW ¼ of the NW ¼ S31, T110N, R20W
City, County, State: Faribault, Rice County, MN
Milepost, Subdivision: Mile Post 117.28 on the Owatonna. (BE# MN44)

as shown upon Appendix 3 attached and incorporated herein (the “Property”).

(c) Applicable Fees

Licensee agrees to pay CP the following charges:

- (i) One-time fee of **\$1.00** to cover Utility License and also CP’s reasonable expenses incurred in reviewing Licensee’s notice to occupy CP’s right-of-way; and
- (ii) Reimbursement for CP’s reasonable and customary charges to have a flagman or watchman present during Licensee’s work on the Property, pursuant to Section 10.0(c).

Attachments

The following documents are incorporated in this Agreement:

- (i) Appendix 1 – Contacts
- (ii) Appendix 2 – Insurance Requirements
- (iii) Appendix 3 – Exhibit A

(d) Work; License To Be Available At Work Site:

- (i) “Work,” shall mean any activity conducted by Licensee relative to the installation, maintenance, repair, replacement, relocation, servicing, or removal of the Utility Line which involves entry onto the Property.

- (ii) **“Work Site,”** shall mean the general location of Licensee’s activities relative to the Work. Licensee shall keep a copy of this License at the Work Site and shall make it available upon request by any employee or agent of CP.

3.0 Effective Date

The **“Effective Date”** of this Agreement shall be October 1st, 2018. Notwithstanding the Effective Date, the rights granted to Licensee under this License shall be effective on the later of the Effective Date, or the last date it is executed by a party.

4.0 Term

The rights granted Licensee under this License shall remain until terminated by Licensee by providing CP with thirty (30) days’ advanced written notice.

5.0 Mechanics’ And Materialmen’s Liens

If any mechanics’ or material men’s liens, or similar lien, is asserted against the Property, or any other property of CP, as a direct consequence of the Work, Licensee shall immediately take steps to satisfy, defend, or obtain the release of such lien, all at Licensee’s cost and expense.

6.0 Contact; Notices

(a) Contact Persons

Communications pursuant to this License shall be directed to the contact persons listed in Appendix 1, or their designees. Either party may change this contact information by providing written notice to the other party.

(b) Notices

Except at otherwise provided in this License, all notices shall be in writing and shall be effective upon delivery to the Contact Person for the party notice is being given to. If notice is given by facsimile, the notice shall not be deemed effective until received in legible form.

(c) Notification Prior To Beginning Work

Except in the case of an emergency, Licensee shall notify CP’s Engineering contact person by telephone not less than five (5) Working Days before commencing the Work. **“Working Days”** do not include Saturdays, Sundays, or federally recognized Holidays.

7.0 Permitted & Prohibited Use; Rights of CP

(a) Permitted Use

The use of the Property by Licensee shall be limited to the Work, or such other activity as may be approved by CP in writing. Licensee may permit governmental authorities with jurisdiction of the Work to enter the Property for the purpose of performing applicable governmental functions, including but not limited to inspecting or monitoring the Work.

(b) Prohibited Uses and Activities

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

- (i) *Advertising* – Licensee shall not permit any advertisements or signs upon the Property (except signs that may be required by applicable governmental law, rule or regulation based on the nature and extent of the Work); and
- (ii) *Use of Hazardous Substances* – Licensee shall not, without prior written disclosure and approval by CP, use or authorize the use of any Hazardous Substances on the Property, including installation of any above or underground storage tanks; subject thereto, Licensee shall arrange at its own cost for the lawful transportation and off-site disposal of any and all Hazardous Substances that it shall use or generate. **“Hazardous Substances”** shall mean any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product,

distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in applicable regulatory or environmental laws.

8.0 Reservation and Rights of CP

(a) Railroad Activities Take Priority Over Work

All Work by Licensee shall be subordinate to the reasonable needs of CP in connection with the operation, maintenance and movement of railroad trains and equipment on the Property. Notwithstanding the foregoing, the parties agree to cooperate in good faith to schedule their respective work activity on the Property to minimize each other's delays.

(b) Interference With Prior/Future Use

Licensee right to use the Property to perform the Work is subject to any prior easements, licenses, or permits to use the Property for tracks, roads, walkways, poles, wires, pipelines, sewers, billboards, and other improvements. Furthermore, CP reserves the right to place upon, across, above and/or under the Property additional tracks, roads, walkways, poles, wires, pipelines, sewers, billboards, and other improvements in any manner that does not interfere with Licensee's Work or the Utility Line.

(c) Relocation – Licensee shall relocate the Utility Line, at its sole cost and expense, if CP determines that such relocation is reasonably necessary for the current operation of the railroad tracks.

(d) Monitoring

CP may elect to be present at the Property during the Work and to monitor same, at CP's sole cost and expense.

9.0 Investigation; Compliance with Laws; Safety Requirements

(a) Prior Use – Before performing Work on the Property, Licensee shall obtain consent of all persons or entities that are using or occupying any portion of the Property, if such consent is required by applicable laws and/or regulations. CP will cooperate with Licensee in obtaining such consent from any person or entity that unreasonably withholds consent.

(b) Underground Utilities And Structures

- (i) Licensee shall, pursuant to applicable laws and/or regulations, be responsible for determining the location of all underground utilities (e.g. electric lines, telephone lines, gas lines, steam lines, sewer lines, water lines, fiber optic cable), and utility structures.
- (ii) Licensee shall call the Gopher State One Call at (800) 252-1166 and make arrangements to have all applicable underground utilities marked prior to commencing any excavation or boring on the Property.
- (iii) CP will cooperate with Licensee to identify the location of underground utilities and utility structures known to CP, but such cooperation shall not relieve Licensee of its obligations under (i) and (ii) above.
- (iv) Licensee shall call CP's Call-Before-You Dig group at (866) 291-0741, no less than five (5) Working Days prior to the date that Work is to be performed, in order for CP to mark its underground facilities on the Property. CP shall mark all its underground facilities on the Property within this five (5) day period to avoid delaying Licensee.

(c) Permits and Licenses; Compliance With Laws

Licensee shall secure, at no expense to CP, any permits or licenses required in connection with the Work, and shall comply with all laws applicable to the Work and the use and operation of the Utility Line, including but not limited to any laws, standards, regulations, and permit requirements relating to environmental pollution and/or contamination, or to occupational health and safety.

(d) Compliance With CP Safety Requirements

While on the Property Licensee shall comply with CP's safety requirements as set forth in the document entitled "**Minimum Safety Requirements for Contractors Working on Railway Property**". It is Licensee's responsibility to obtain the most up-to-date copies of these requirements prior to commencement of any Work and ensuring that every person on the Property has access thereto.

10.0 Work in Close Proximity to Railroad Operations; Drainage

(a) Interference With Railroad Operations – Licensee shall keep CP fully apprised of its proposed activities on the Property so as to prevent any interference with the operations of CP's trains or equipment (or the trains and equipment of others lawfully using the tracks) operating on or near the Property.

(b) Clearance – No Work shall be done or any equipment or other obstruction placed over or within 25 feet laterally of the centerline of any track without advanced notification to CP.

(c) Flagging – Licensee shall make arrangements with CP for such flagging or watchmen service as CP deems necessary for the protection of railroad traffic. Pursuant to Section 2(c)(2) above, Licensee will compensate CP for its reasonable and customary charges to provide flagging or watchmen service. The fact that CP provides such service shall not relieve either party from liability under this License.

(d) Certain Work Close to Track Not Permitted; Lateral Support

(i) Unless otherwise agreed to in writing by CP, excavations, borings, wells, pits, test holes, probe sites, and the like shall not be located closer than 25 feet from the centerline of the nearest railroad track on or adjacent to the Property, nor will Licensee take, or allow any of its employees, agents or contractors to take, any action on the Property that would materially impair the lateral or sub-adjacent support of adjacent lands or railroad tracks.

(ii) Unless otherwise agreed to in writing by CP, drilling and excavating equipment (and related equipment) shall not be located closer than 25 feet from the centerline of the nearest railroad track or any railroad track.

(iii) In the event that CP permits excavations, borings, wells, pits, test holes, probe sites, and the like in close proximity to tracks, embankments or other features providing lateral support or sub-adjacent support to land or tracks, then notwithstanding anything herein to the contrary, Licensee shall be responsible for designing and constructing, at no cost to CP, any measures required to prevent the collapse, erosion or impairment to said land or tracks.

(e) Storm Water – Licensee shall not, unless otherwise agreed to in writing by CP, make any changes to the Property that would either increase the historic flow rate of storm water from the Property, or create an impediment to the historic flow of storm water from the Property.

(f) Fences – If the parties agree that it is necessary for the safety of the railroad operations, employees and/or the public, for a fence to be erected during the Work, Licensee agrees to erect such fencing at its sole cost and expense. Following completion of the applicable Work, Licensee shall remove such fencing and fill and tamp any post holes with clean material.

11.0 Conduct

(a) Property Clean, Safe and Free From Nuisance – During any Work Licensee shall not permit the existence of any nuisance (as defined pursuant to Minnesota law) upon the Property, and shall at all times during the Work keep the Property in a clean, safe and sanitary condition free from any unreasonable accumulations of waste materials, debris or refuse.

(b) Release of Hazardous Substances – Licensee shall not cause or allow its employees, agents or contractors to cause, the release of any Hazardous Substances on or from the Property.

- (c) Response Actions** – Licensee shall promptly take all necessary action in response to a release or potential release of Hazardous Substance at the Property, caused by Licensee or attributable to any act and/or omission of Licensee (or its employees, agents or contractors), that could:
- (i) give rise to any claim under applicable environmental laws and/or regulations;
 - (ii) cause a public health or workplace hazard; or
 - (iii) create a nuisance (as defined pursuant to Minnesota law).
- (e) Release or Suspected Release** – Licensee shall promptly notify CP of any actual or suspected release of any Hazardous Substances on or from the Property, regardless of the cause of the release.
- (f) Notices, Summons, Citations, etc.** – Licensee shall promptly provide CP with copies of any all summons, citations, directives, information inquiries or requests, notices of potential responsibilities, notices of violations or deficiencies, orders or decrees, claims, causes of action, complaints, investigations, judgments, or other communications, written or oral, actual or threatened, received by Licensee that is applicable to the Property or Work, including but not limited to notices from the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or other federal, state or local agency or authority, or any other entity or individual, concerning:
- (i) any release of a Hazardous Substance on or from the Property;
 - (ii) the imposition of any lien on the Property; or
 - (iii) any alleged violation of or responsibility under any applicable environmental law.

12.0 Liability

- (a) Damage to Tracks, Facilities, and Equipment** – If any tracks, facilities, or equipment owned, used, or maintained by CP are damaged in connection with the Work or Licensee's use or operation of the Utility Line, CP shall repair (or arrange for the repair of) such damage and Licensee shall pay the full cost of such repair within 30 days after receipt of CP's invoice.
- (b) Assumption of Risk** – Licensee is fully aware of the dangers of working on and about railroad property and railroad operations and knowingly and willingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur while on and about the Property. Without in any way limiting the scope of the preceding sentence, Licensee assumes the risk that the Utility Line and any Work or appurtenances thereto on the Property may be disturbed, damaged, or destroyed by CP or third persons, and except where arising from the intentional malicious conduct of CP or its employees, agents, or invitees, Licensee shall not make any claim against CP on account of same, even if such disturbance, damage, or destruction arises from the negligence of CP or its employees, agents, or invitees. Licensee assumes full responsibility for protecting its installations and personal property from theft and vandalism while such installations and personal property are on the Property.
- (c) Indemnity** – As used in this License, “**Indemnified Parties**” means the following businesses and their officers, directors, employees, and agents: Soo Line Railroad Company, Delaware and Hudson Railroad Corporation, Inc., Dakota, Minnesota and Eastern Railroad Corporation, Soo Line Corporation, Canadian Pacific Railway Company, Wyoming Dakota Railroad Properties, Inc., any company doing business as Canadian Pacific, and any railway company or contractor operating trains or rail equipment upon railway tracks in close proximity to the Property or the Utility Line, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing.

To the maximum extent permitted by applicable law, Licensee shall release, indemnify and defend the Indemnified Parties (as defined below) against all claims, demands, actions, suits, judgments, losses, damages (including, but not limited to, lost profits and other actual, compensatory, direct, consequential, punitive, and exemplary damages), expenses, penalties, fines, sanctions, court costs, litigation costs, and attorneys' fees (collectively, Claims) arising out of or relating to any destruction of (or damage to) any property or natural resource, any injury to

(or death of) any person, or any environmental pollution or contamination whatsoever, where such destruction, damage, injury, death, pollution, or contamination actually or allegedly arises in whole or in part from the presence of the Utility Line on the Property or any Work connected therewith, or any action or omission of Licensee while on or about the Property pursuant to this License, or the exercise by Licensee of the rights and permissions granted by this License.

13.0 Insurance – Prior to commencing any Work, Licensee shall procure and maintain in effect (or cause its contractor to procure and maintain in effect) the insurance coverages set forth in Appendix 2.

14.0 Miscellaneous Provisions

(a) Amendment/Waiver – This License cannot be amended, modified or revised unless done in writing and signed by CP and Licensee. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this License or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) Compliance with Law – Both parties agree to comply with all applicable federal, state and local laws, orders, rules and regulations (“**Laws**”).

(c) Assignment; Binding Effect – This License may not be assigned by Licensee without first obtaining CP’s written consent. The terms and conditions contained in this License will bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(d) Entire Agreement – This License and the appendix attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this License. Except as otherwise stated in this License, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this License and the transactions it contemplates.

(e) Governing Law – This Agreement will be governed by the laws of the state in which the Property is located, without regard to conflicts of law.

(f) Interpretation – Unless otherwise specified, the following rules of construction and interpretation apply:

- (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof;
- (ii) use of the term "including" will be interpreted to mean "including but not limited to";
- (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed;
- (iv) appendix are an integral part of this Agreement and are incorporated by reference into this Agreement;
- (v) use of the terms "termination" or "expiration" are interchangeable;
- (vi) reference to a default will take into consideration any applicable notice, grace and cure periods;
- (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement;
- (viii) the singular use of words includes the plural where appropriate and
- (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the

Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(g) Survival. Any provisions of this License relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this License that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

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

(i) Duplicate Copies and Counterparts – This License may be executed in counterparts, which together shall constitute one and the same. The parties may execute more than one copy of this License, each of which shall constitute an original.

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

CITY OF FARIBAULT

**DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION, doing
business as CANADIAN PACIFIC**

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

APPENDIX 1

1. RAILROAD CONTACTS:

A. Real Estate: Processing of License, fees

Address	Contact Info
Canadian Pacific Real Estate US – Utility Permits Canadian Pacific Plaza – Suite 700 120 South Sixth Street Minneapolis, Minnesota 55402	Phone: (612) 904-6143
	Fax: (612) 904-6147
	Email: Real_Estate_US@cpr.ca

B. Risk Management: Submittal of Insurance Coverage Renewals.

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

C. Engineering: Application, Review of Technical Specifications

Address	Contact Info
Canadian Pacific 900 Canadian Pacific Plaza 120 South Sixth Street Minneapolis, MN 55402	Name: Otis Goodman
	Title: Supervisor Public Works - US West
	Phone: (630) 860-4117
	Fax: (630) 335-3116
	Email: Otis_Goodman@cpr.ca

D. Scheduling of Flagging:

The following must be contact **no less than 10 Working Days** (excludes Saturday, Sunday and holidays observed by CP) prior to date on that Work is to be performed.

Otis Goodman, contact info in Section C.

E. Utility Locates

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

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

In Minnesota, the utility locating service is called Gopher State One Call at 651-454-0002 and, in addition to dialing 8-1-1, can be reached at
<http://www.gopherstateonecall.org/>

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

2. LICENSEE CONTACTS:

A. Licensee Information

Licensee:	City of Faribault		
Type of Entity:		State of Formation:	Mn
Mailing Address:	208 NW 1 st Ave. Faribault, MN 55021		
Delivery Address: (if different)	Same		
Billing Address (if different)			
Telephone No.	507.333.0360	Web Site:	

B. Licensee Contact

THIS IS THE INDIVIDUAL TO WHOM CP SHOULD SEND DOCUMENTS AND OTHER CORRESPONDENCE.

Name:	Mark DuChene	Address. Write "Same" if same as above
Company:	Same	
Title:	Director of Engineering	
Office Number:	507.333.0360	Same
Fax Number		
Mobile Number:	507.412.0477	
Email:	Mduchene@ci.faribault.mn.us	

C Construction Contact

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

Name:		Address.
Company:		
Title:		
Office Number:		
Fax Number:		
Mobile Number:		
Email:		

D. Additional Contact

Optional information if needed.

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

E. Emergency Contact:

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

Name:	
Office Number:	
Mobile Number:	
Email:	

APPENDIX 2

Insurance Requirements

1. **General Insurance Requirements.**

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

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

"It is agreed that the policy or policies of insurance evidenced by this certificate covers the liability assumed by the insured in connection with work pursuant to Utility Occupancy License No. **5036201** dated **October 1, 2018** by and between Licensee and Dakota Minnesota & Eastern Railroad Company encompassing an **underground water main** crossing at **Faribault, Rice County, MN**, including work upon railroad property, within railroad right of way and in close proximity operating railroad tracks."
- 1.5. Cross Liability (severability of interest endorsements). Except for automobile coverage, all policies, shall be endorsed with a cross liability (severability of interest) endorsement in substantially the following form:

"This policy shall insure each person, firm, or corporation hereunder in the same manner and to the same extent as if a separate policy had been issued to each, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurance company's liabilities."
- 1.6. Additional Insureds: Waiver of Subrogation. The policy shall be endorsed to add the following as additional insureds:

Dakota Minnesota & Eastern, Soo Line Corporation and Canadian Pacific Railway Company, (collectively, the Protected Parties) and its associated or affiliated subsidiaries (and the Directors, Officers, employees, agents and trustees of all of the foregoing). The policy shall also be endorsed to waive subrogation rights against the Protected Parties.
- 1.7. Coverage amounts subject to increase. The Parties agree that Utility Lines can have a long useful life and that the insurance coverage limits initially set forth in this License may not be adequate during entire life of the Utility Line. Accordingly, the insurance coverages set forth herein shall be subject to change relative change in CP standards. The License shall not be required to comply with increased coverage limits until CP provides the Licensee with 90 days advance written notice of a change in coverage limits, or following notice by CP in connection with any Work by the Licensee that requires flagging.

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

2. **Required Insurance Policies and Limits of Coverage.**

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

2.1. **Commercial General Liability Insurance – Normal Operation of Utility Line:**

So long as the Utility remains in place pursuant to this License in the status of normal operation, Licensee shall obtain Commercial general liability insurance with a policy limit of not less than \$5,000,000 per occurrence for bodily injury, death, and damage to or destruction of property (including the loss of use thereof).

The policy will include those policy extensions commonly referred to as broad form completed operations, blanket contractual, contractor's protective, excavation, collapse, and underground damage. The policy shall by its wording or by endorsement insure those liabilities and obligations which this License contemplates will be assumed by Licensee, including liabilities and obligations to indemnify the Indemnified Parties (defined in Section 12(c)). The policy, also by its wording or by endorsement, shall not exclude operations on or in the vicinity of the railway right of way.

2.2 **Automobile Liability and Property Damage Insurance:**

During any period in that Work is to be performed on the Utility Line, Licensee or its contractor performing the Work, shall obtain Automobile liability and property damage insurance in an amount not less than \$2,000,000, personal injury and property damage combined, covering

the ownership, use, and operation of any motor vehicles and trailers licensed for use on public highways which are owned, non-owned, leased, or controlled by Licensee or its contractor and used in connection with the Work.

2.3. Workers Compensation Insurance:

During any period in that Work is to be performed on the Utility Line, Licensee or its contractor performing the Work, shall obtain Workers compensation insurance which shall be in strict accordance with the requirements of the most current and applicable state Workers Compensation insurance laws, and Employers' Liability insurance including Occupational Disease insurance with limits of not less than One Million Dollars (\$1,000,000) each accident/each employee, and where appropriate coverage under said policies to be extended for liability under the FELA, USL&H Act, and the Jones Act. The Licensee shall, before any services are commenced under this License submit written evidence that it has obtained full Workers Compensation insurance coverage for persons whom it employs or may employ in carrying out the services under this License. CP and its associated or affiliated companies (and the Directors, Officers, employees, agents and trustees of all of the foregoing) shall be waived of any and all subrogation in the event of injury, death, losses, incidents, claims and potential claims.

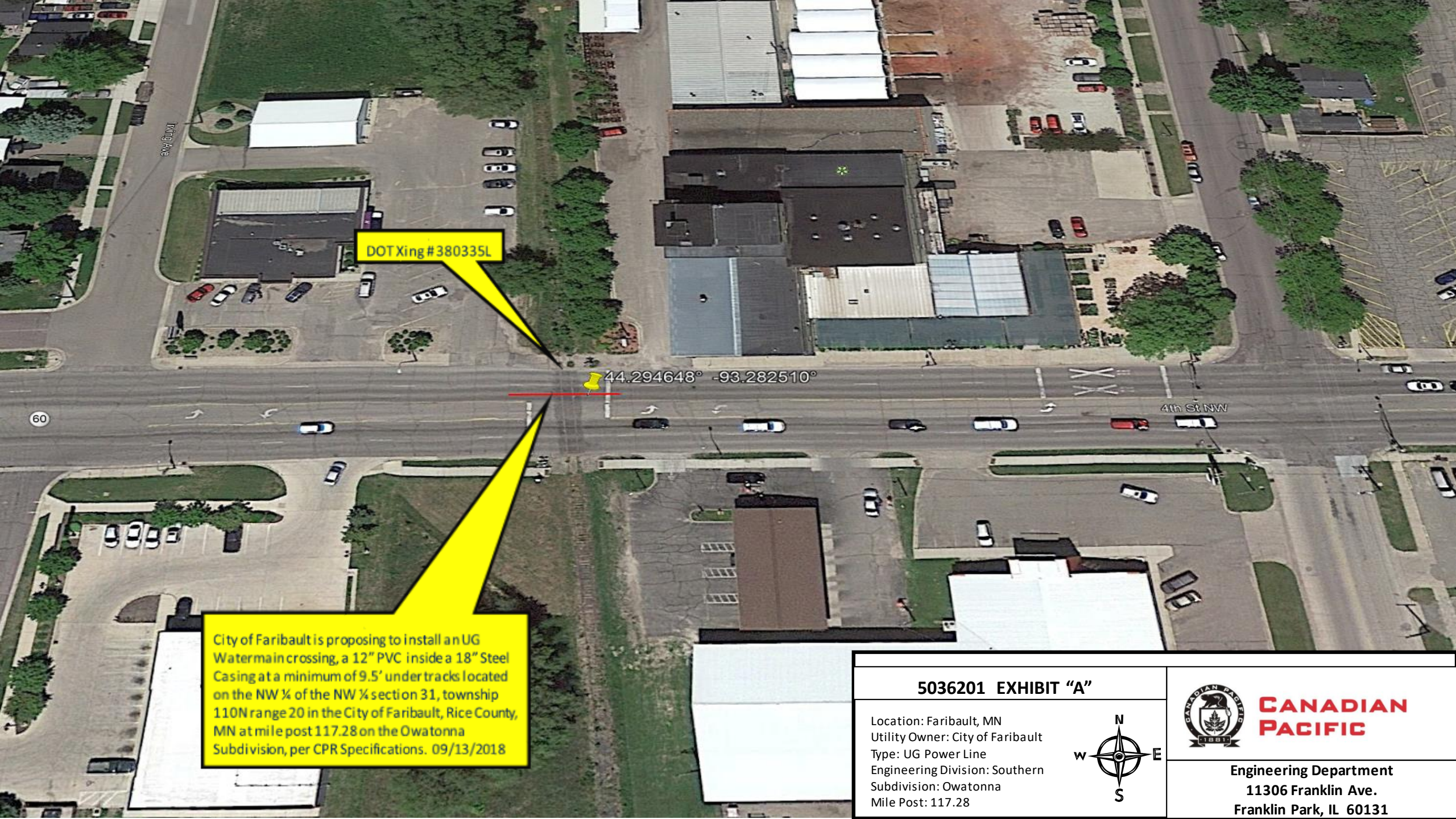
2.4. Railroad Protective Liability Insurance:

During any period in that Work is to be performed on the Utility Line, Licensee or its contractor performing the Work, shall obtain Railroad protective liability insurance (occurrence form), in the name of Dakota, Minnesota & Eastern Railroad Corporation and Canadian Pacific Railway Company, with a single limit (personal injury and property damage combined) of not less than Five Million Dollars (\$5,000,000) per occurrence and Ten Million Dollars (\$10,000,000) per aggregate. The Services shall not commence until such time as the evidence of coverage is received and approved by CP. Railroad Protective Liability insurance shall only be applicable during the Term.

2.5 Contractor's Pollution Liability insurance:

Including naming CP as an additional insured, with a limit of not less than Two Million Dollars (\$2,000,000) for any one loss or pollution event. Coverage shall not be limited to, claims for bodily injury, death, damage to property including the loss of use thereof, clean-up costs and associated legal defense expenses arising from pollution conditions caused by, and/or exacerbated by, services performed by the contractor on behalf of CP. The policy shall be endorsed to contain a blanket contractual liability endorsement. If this policy is written on a "claims-made" basis it shall remain in effect for no less than twelve (12) months after the expiry or termination of this agreement

APPENDIX 3



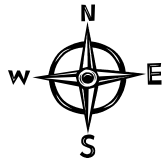
DOT Xing #380335L

44.294648° -93.282510°

City of Faribault is proposing to install an UG Watermain crossing, a 12" PVC inside a 18" Steel Casing at a minimum of 9.5' under tracks located on the NW ¼ of the NW ¼ section 31, township 110N range 20 in the City of Faribault, Rice County, MN at mile post 117.28 on the Owatonna Subdivision, per CPR Specifications. 09/13/2018

5036201 EXHIBIT "A"

Location: Faribault, MN
Utility Owner: City of Faribault
Type: UG Power Line
Engineering Division: Southern
Subdivision: Owatonna
Mile Post: 117.28



CANADIAN PACIFIC

Engineering Department
11306 Franklin Ave.
Franklin Park, IL 60131