



Request for Council Action

TO: Mayor and City Council
THROUGH: Tim Murray, City Administrator
FROM: Mark DuChene, City Engineer
MEETING DATE: April 13, 2021
SUBJECT: Approve License for Utility to Cross Public Waters with Minnesota Department of Natural Resources for Watermain Crossing Related to NW Area Water Tower and Watermain Improvements - City Contract 2019-12

Background:

As part of the proposed NW Water Tower and Watermain Improvements Project, the proposed watermain to extend under I-35 must cross under an un-named stream that is identified as a public water and under the jurisdiction of the Minnesota Department of Natural Resources (MNDNR). In order to cross under the stream, the MNDNR requires a license agreement. The proposed license agreement is for an initial term of 50 years and costs \$507.

Recommendation:

Approve License for Utility to Cross Public Waters with Minnesota Department of Natural Resources for Watermain Crossing Related to NW Area Water Tower and Watermain Improvements - City Contract 2019-12

Attachments:

- License for Utility to Cross Public Waters, License Number UWAT012389

March 30, 2021

Mark DuChene
City of Faribault
208 First Avenue NW
Faribault, MN 55021

RE: License # UWAT012389
Legal Description: Covering certain public water in Rice County
Company Project No. T21.119018

Dear Licensee:

Enclosed is one copy of the above license for execution by your company. The application is not included in this mailing but will be made a part of the final license when completed. The license is for a 50 year period commencing April 1, 2021. A fee of \$507.00 is payable upon return of this license. You are required to comply with the terms of the license document including certain construction procedures.

Please refer to additional resource comments that are noted below.

- Inspect and clean all equipment prior to bringing it to the project areas to prevent the introduction and spread of invasive species. Attached are sheets on best practices for equipment cleaning and for preventing the spread of aquatic invasive species.
- Use only wildlife-friendly erosion control materials (non-plastic, non-welded, and not chicken wire). Attached is a wildlife-friendly erosion control information sheet.
- Use only weed-free mulches, top soils, and seed mixes. Re-vegetate disturbed soil with native species suitable to the local habitat immediately after construction completes. Attached is the standard State Seed Mixes.

Please have the document by an officer of your company, with the officer's title listed beneath his or her signature. If the document is signed by a person who is not an officer of the company, please send us a copy of the power of attorney or board resolution which authorized this person to sign the document on behalf of the company. The license can be signed in ink and mailed to me at the New Ulm office as usual or digitally signed and emailed to me. The payment still needs to be a paper check mailed to the New Ulm office.

Enclose payment of \$507.00 made payable to the Department of Natural Resources. Payment is for the term of the license. Within two or three weeks, one executed license complete with application and attachments will be sent to you for your files.

As per the terms of the license, please contact me 10 days prior to installation and within 10 days following completion of licensed work.

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Once construction is completed, please send me the "as-built survey", if one is available, for the crossings incorporated under this license. If you have any questions, please contact me at 507-233-1210 or email me at KARLA.IHNS@state.mn.us. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Karla Ihns".

Karla Ihns
Realty Specialist

Enclosure(s)

cc: Army Corps of Engineers

LICENSE FOR UTILITY TO CROSS PUBLIC WATERS

This license is issued by the State of Minnesota, acting by and through its commissioner of natural resources, and hereafter called the “State”, under authority and subject to Minnesota Statutes, section 84.415, and Minnesota Rules Chapter 6135 and other applicable law, to the Licensee as named and for the fee and term as specified below.

Name and Address of Licensee: City of Faribault
208 First Avenue NW
Faribault, MN 55021

License Fee: Five Hundred Seven and NO/100 Dollars (\$507.00)

Term (years): 50 Years

Effective Date: April 1, 2021

Expiration Date: March 31, 2071

Purpose of License: Construction, maintenance and operation of a liquids pipeline under water under the covenants and agreements of the Licensee to use the following described waters:

That part of the following descriptions as shown on the attached application and map, all of which are made a part hereof by reference.

SW ¼ SE ¼ in Section 1, Township 110 North, Range 21 West, in Rice County

This license is granted subject to the following provisions:

1. **Use of premises.**

- A. This license is subject to the provisions of Minnesota Statutes, section 84.415 and Minnesota Rules Chapter 6135. All standards of Chapter 6135 are incorporated as terms and conditions of this license, except such variations as are identified and approved by the State in the license applications, plans and specifications which are attached and made part of the terms and conditions of this license. The Licensee is bound by the crossing location and installation method as detailed in the application and approved by the State. The Licensee shall not deviate from the terms and conditions of this license or the application as approved by the State unless it has first obtained written permission from the State.
- B. When the installation occurs more than six months after the issuance of the license, the Licensee shall contact the State 20 days prior to installation.
- C. No merchantable timber shall be cut, used, removed or destroyed without first paying the State the timber value in the sum stated above as determined by the State. Slash material on state water crossings must be disposed of within 30 days of clearing activities.
- D. For overhead crossings of state waters, lines shall have a minimum clearance of 25 feet above the water, unless otherwise approved by the State.
- E. When directed by the State as a condition of the license, flight diverters shall be placed on overhead utility lines.
- F. Any cable or conduit located at a shoreline shall be sufficiently buried so that it does not become exposed.
- G. When directed by the State as a condition of the license, underwater crossings shall be marked by permanent signs on the banks at the points where the line enters and leaves the public waters.

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- H. To protect fish spawning activities, the State may prohibit work in the public water or within a specified distance of the public water during the spawning season.
2. **State's rights and reservations.** The use of these waters by the Licensee in constructing or maintaining the lines for which this license is granted shall be subject to the use, sale, or leasing for mineral or other legal purposes. The Licensee will not cause any unnecessary hindrance to the activities of the State and shall allow access across the license area by the State when needed.
3. **Erosion and Revegetation.**
- A. Erosion control measures shall be adequately designed for site characteristics. They shall be installed prior to commencement of construction and maintained for as long as needed. All erosion control measures installed next to a water body shall run parallel to the contours.
 - B. All disturbed areas shall be restored to original contours and elevations and stabilized as soon as possible following construction. Areas of subsidence and crowning shall be repaired. Topsoil shall be reserved on site and used to re-dress disturbed areas.
 - C. All disturbed areas shall be revegetated using state approved seed mixes. All seed and plant materials shall be certified weed-free. Weed-free straw or hay shall be used for mulching and erosion control. Native species plants should be used, whenever possible, to revegetate disturbed areas. This revegetation should occur as early in the season as possible to permit adequate regrowth.
 - D. The Licensee shall monitor revegetation at state water crossings until the site is stabilized and the vegetation is self-sustaining. Where severe or repeated damage is occurring or where measures have not been successful, preventative and corrective actions shall be taken by the Licensee, including construction of appropriate barriers, installation of warning signs, and other methods in consultation with the State.
 - E. The Licensee shall routinely inspect for erosion that may develop during the term of the license. Areas of erosion shall be stabilized by the Licensee.
 - F. If a disturbed area cannot be stabilized with vegetation before September 15 in the year that the utility was installed, the Licensee shall submit a written site stabilization plan to the State for approval. This plan shall describe erosion control, mulching, dormant seeding and monitoring. Seeding shall occur as soon as soil conditions are suitable.
 - G. Excavated materials shall not be deposited or stored alongside public water in a manner where the materials can be redeposited into the public water by reasonably expected high water or storm run-off.
4. **Herbicides and Pesticides.**
- A. The Licensee must request and obtain written permission to apply herbicides or pesticides to state waters from the State prior to treatment. This request shall consist of (1) a map identifying proposed treatment areas and (2) a description of the proposed treatment plan, including target species, herbicide or pesticide name, rate of application, a description of application method, and beginning and end dates. All applications must be according to label regulations and as otherwise specified by the State. The Licensee shall not apply pesticides that are restricted for use on certified state forest land administered by the State.
 - B. The Licensee must submit annual reports detailing herbicide or pesticide application on areas covered under the license. The report must include the dates, acres, location expressed as quarter-quarter section, township and range, herbicide or pesticide used, target species, and such other information as may be reasonably required by the State for the purpose of verifying herbicide or pesticide use.
 - C. The Licensee shall post all places commonly used by the public for access along the utility corridors treated with herbicides or pesticides.
5. **Invasive Species.**
- A. The Licensee shall inspect all state water crossings for the presence of invasive species and noxious weeds prior to commencing clearing activities and take action to prevent their spread. For installation of the utility line, the State will identify on a map the known infested sites to be avoided. For maintenance and operation, the Licensee is responsible for obtaining updated information on known infested sites.

- B. If the State or the Licensee discover additional invasive species infestation areas on state water crossings during construction, the Licensee shall immediately take action to prevent spread from the newly discovered infested area and then consult with the State on a resolution.
 - C. The Licensee shall prevent invasive species from entering into or spreading within state water crossing by cleaning equipment and clothing prior to arriving at the license area. The Licensee shall legally dispose of material cleaned from equipment and clothing at a location offsite and the materials must be secured prior to transport to avoid dispersal.
 - D. Whenever possible, parking, staging areas and travel routes shall not be within known infested sites. Where there are multiple state water crossings and at least one contains invasive species, the Licensee shall to the extent practicable start work at the site with the fewest number of invasive plants, leaving the most heavily infested sites to last. The Licensee shall make every effort to schedule operations and site visits to avoid the spread of weed seed.
 - E. The Licensee shall continue to control invasive species on state water crossings for the terms of the license using methods approved by the State.
6. **Crossing of State Trail.**
- A. The location of any crossing of a state trail must be approved in advance by the State. The State may provide written instructions as to specific construction standards to be followed for the crossing of the state trail.
 - B. Utility installation and maintenance activities shall be conducted in a manner so as to minimize disturbance of state trail use and to separate the public from work areas. The Licensee must provide signs to warn state trail users of construction hazards.
 - C. The Licensee is responsible for repairing any damage to the state trail in a manner satisfactory to the State.
 - D. For maintenance and operations, prior approval must be obtained from the State for the cutting or trimming of trees within the state trail right-of-way.
 - E. The Licensee may not close the state trail right-of-way without the prior written approval of the State.
7. **Maintenance, operations and repairs.**
- A. The Licensee must keep the premises in a neat and orderly condition, and shall remove all refuse and debris that may accumulate thereon.
 - B. After initial installation, no merchantable timber shall be cut, used, removed or destroyed by the Licensee without first contacting the State at least 60 days in advance to determine if a timber payment is needed. Slash material on state water crossings must be disposed of within 30 days of maintenance activities.
 - C. Emergency repairs and replacements may be made without prior notification to the State by the Licensee according to conditions and standards prescribed by Minnesota Rules, Chapter 6135 and the method of installation identified in this license. The Licensee shall notify the State of this activity as soon as practicable.
 - D. The Licensee shall employ appropriate erosion and sedimentation measures at the site during any emergency repairs. The State must approve plans for restoration of the site after the emergency repairs are conducted.
 - E. Other than the herbicide or pesticide application reporting as provided in paragraph 4, the Licensee shall notify the State of the extent and method of any routine maintenance and the proposed schedule. The notification must be in writing and must be provided either annually or at least 20 days prior to commencing any routine maintenance work on state water crossings subject to this license, The Licensee shall include a specific description of the proposed maintenance activities including location, clearing methods, erosion and sedimentation control measures, removal of merchantable timber, revegetation plans, and plans for preventing the spread of invasive species. The Licensee may commence any routine maintenance work unless notified to the contrary by the State within 20 days after the State's receipt of the maintenance plan. The State may require the Licensee to adjust its maintenance plans due to natural resource management concerns.
8. **State inspection.** The project hereunder shall at all times during and after construction be subject to inspection by the State and for that purpose the Licensee shall grant access to the premises at all reasonable times.
9. **Compliance with laws.** The Licensee shall comply with all federal, state and local laws and regulations, including municipal ordinances, affecting said lands or the area in which they are situated.

10. **Taxes and assessments.** The Licensee will pay when due all taxes and assessments levied against said waters or any improvements owned, used, or controlled by the Licensee, provided that the taxes or assessments are imposed due to this license.
11. **Enforcement.** No delay by the State in enforcing any of the conditions of this license shall operate as a waiver of any of its rights.
12. **Liability.** This license is permissive only. No liability shall be imposed upon or incurred by the State of Minnesota or any of its officers, agents, or employees, officially or personally, on account of the granting of the license or on account of any damage to any person or property resulting from any act or omission of the Licensee or any of its agents, employees, or contractors relating to any license matter. This license shall not be construed as estopping or limiting any legal claims or right of action of any person against the Licensee, its agents, employees, or contractors for any damage or injury resulting from any such act or omission, or as estopping or limiting any legal claim or right of action of the State against the Licensee, its agents, employees, or contractors, for violation of or failure to comply with the provisions of the license or applicable provisions of law. The Licensee shall indemnify and hold harmless the State from all claims arising out of the Licensee's use of the above described lands whether such claims are asserted by civil action or otherwise.
13. **Termination and cancellation.**
 - A. At the end of the license period and if both parties wish to renew, the renewal fee will be determined by the State.
 - B. This license shall be cancelable upon reasonable notice by the State for violation of any of its terms, or if at any time its continuance will conflict with a public use of the land over or upon which it is granted, or for any other reason. Licensee shall ensure that Licensee's employees, agents and contractors have received and thoroughly understand all conditions of this license.
 - C. Unless otherwise authorized by the State, upon the surrender, expiration or cancellation of this license, the Licensee shall remove from the above described lands all the utility lines and related structures owned by it. If Licensee does not remove such lines or related structures, all such lines or structures remaining shall become the property of the State, to be used or disposed of as the State elects. If the State requires the Licensee to remove utility lines and related structures and Licensee fails to do so, the Licensee agrees to pay the State for the costs of removing and disposing of such lines or structures.
14. **Assignment or transfer.** The Licensee shall not without the State's prior written consent: a) assign, convey or otherwise transfer this license or any interest under it; b) sublet the license corridor or any part thereof; or c) permit the use or occupancy of the license corridor or any part thereof by anyone other than the Licensee. This license shall extend to, and bind the successors, heirs, legal representatives and assigns of the Licensee, if any. The State may require a party who has requested to sublet, use or occupy the license corridor to obtain a separate license from the State prior to occupying or using the license corridor.
15. **Reports.** The Licensee must submit reports on herbicide and pesticide use as provided in paragraph 4 and maintenance and repair work as provided in paragraph 7.
16. **Contacts.** The contact for the State is the Regional Lands and Minerals Operations Supervisor, who is Cheryl Kelley-Dobie at 218-308-2627. Any questions about this license shall be directed to the Regional Lands and Minerals Operations Supervisor. The Regional Lands and Minerals Operations Supervisor may direct the Licensee to contact additional State staff for reviews and approvals.

17. **Special provisions.** This license is subject to the SPECIAL PROVISIONS attached hereto (if none, state none).
None.

ACCEPTED AND ACKNOWLEDGED

CITY OF FARIBAULT
Licensee

By _____

Name _____

Title _____

Date _____

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

By _____

Regional Lands and Minerals Operations Supervisor

Date _____

Form approved by Lands and Minerals Division, DNR, March 5, 2015.

License Number UWAT012389