

AGENDA  
SHAKOPEE PUBLIC UTILITIES COMMISSION  
REGULAR MEETING  
MAY 7, 2018

1. **Call to Order** at 5:00pm in the SPUC Service Center, 255 Sarazin Street.
2. **Approval of Minutes**
3. **Communications**
4. **Approve the Agenda**
5. **Approval of Consent Business**
6. **Bills: Approve Warrant List**
7. **Liaison Report**
8. **Reports: Water Items**
  - 8a) Water System Operations Report – Verbal
  - 8b) Railroad Pipeline Crossing Agreement
9. **Reports: Electric Items**
  - 9a) Electric System Operations Report – Verbal
  - 9b) April 2018 MMPA Board Meeting Public Summary
  - 9c) SPU/MMPA Shakopee Energy Education Programs
10. **Reports: Human Resources**
11. **Reports: General**
  - 11a) 2017 Financial Audit Presentation
  - 11b) Insurance Liability Coverage - Waiver
12. **New Business**
13. **Tentative Dates for Upcoming Meetings**

- Mid Month Meeting	--	May 21
- Regular Meeting	--	June 4
- Mid Month Meeting	--	June 18
- Regular Meeting	--	July 2
14. **Adjourn** to 5/21/18 at the SPUC Service Center, 255 Sarazin Street

MINUTES  
OF THE  
SHAKOPEE PUBLIC UTILITIES COMMISSION  
(Regular Meeting)

President Weyer called the regular session of the Shakopee Public Utilities Commission to order at the Shakopee Public Utilities meeting room at 5:00 P.M., April 16, 2018.

MEMBERS PRESENT: Commissioners Joos, Hennen, Meyer and Weyer. Also present, Utilities Manager Crooks, Finance Director Schmid, Planning & Engineering Director Adams, Line Superintendent Drent, Water Superintendent Schemel and Marketing/Customer Relations Director Walsh. Commissioner Amundson was absent as previously advised.

Motion by Joos, seconded by Hennen to approve the minutes of the April 2, 2018 Commission meeting. Motion carried.

There were no Communication items.

President Weyer offered the agenda for approval.

Motion by Hennen, seconded by Joos to approve the agenda as presented. Motion carried.

Motion by Joos, seconded by Hennen to approve the Consent Business agenda as presented. Motion carried.

President Weyer stated that the Consent Items were: Item 11a: February 2018 Financial Results and Item 11d: Front Lobby Remodeling Update.

The warrant listing for bills paid April 16, 2018 was presented.

Motion by Joos, seconded by Hennen to approve the warrant listing dated April 16, 2018 as presented. Motion carried.

There was no Liaison report.

Water Superintendent Schemel provided a report of current water operations. It was reported there were no issues with the water system during the weekend heavy snow. The flushing of fire hydrants has been delayed until the weather improves and stays above 32 degrees at night.

Motion by Hennen, seconded by Meyer to offer Resolution #1194. A Resolution Setting The Amount Of The Trunk Water Charge, Approving Of Its Collection And Authorizing Water Service To Certain Property Described As: Windermere Second Addition. Ayes: Commissioners Joos, Meyer, Hennen and Weyer. Nay: none. Motion carried. Resolution passed.

Motion by Hennen, seconded by Meyer to offer Resolution #1195. A Resolution Approving Of the Estimated Cost Of Pipe Oversizing On The Watermain Project: Windermere Second Addition. Ayes: Commissioners Meyer, Hennen, Joos and Weyer. Nay: none. Motion carried. Resolution passed.

Line Superintendent Drent provided a report of current electric operations. There were no outages due to the weekend snowstorm. There were 2 electric outages reviewed that occurred on April 2 and April 11 respectfully. Over one half of the SPU underground electric cables have been tested. An update on several small construction projects was provided.

Utilities Manager Crooks read the March 2018 MMPA Board meeting public summary.

Item 11a: February 2018 Financial Results was received as Consent Business

Finance Director Schmid reviewed the March 2018 Financial Results.

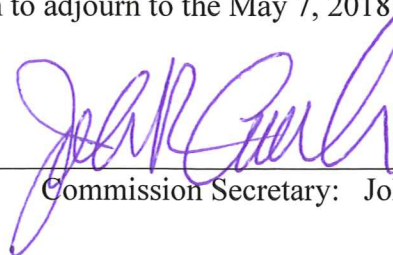
Ms. Schmid discussed the SPU Insurance Liability Coverage. Discussion took place regarding the waiver of monetary limits. The Commission has approved not to waive the limits with the SPU Property and Liability Insurance Coverage over the past several years. The Commission requested more information regarding the issue and asked that it be brought back to the next Commission meeting on May 7.

Item 11d: Front Lobby Remodeling Update was received as Consent Business.

Under New Business, Commissioner Meyer discussed updating the SPU website. Mr. Crooks indicated a detailed work plan is being developed and will be shared with the Commission at a future meeting.

The tentative commission meeting dates of May 7 and May 21 were noted.

Motion by Joos, seconded by Hennen to adjourn to the May 7, 2018 meeting. Motion carried.



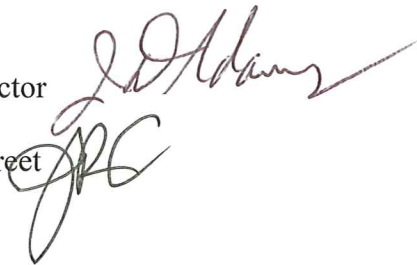
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Commission Secretary: John R. Crooks

SHAKOPEE PUBLIC UTILITIES  
MEMORANDUM

8b

TO: John Crooks, Utilities Manager  
FROM: Joseph D. Adams, Planning & Engineering Director  
SUBJECT: Water Main Project at 2<sup>nd</sup> Avenue and Apgar Street  
DATE: April 26, 2018



ISSUE

To complete the water main project looping the new Rahr Malting warehouse on 2<sup>nd</sup> Avenue the Commission needs to secure a permit to cross Union Pacific Rail Road (UPRR) right of way.

BACKGROUND

The Commission previously awarded a contract to Ryan Contracting to install an 8-inch water main on Rahr Malting property to Apgar Street and then along Apgar Street under 2<sup>nd</sup> Avenue and the UPRR main line track. The water main project will complete a loop of a radial water main previously installed by Rahr Malting to serve their new warehouse building.

The new water main loop will improve fire flows in the industrial area of Rahr's facility and the nearby commercial properties on First Avenue.

DISCUSSION

To install the water main on Rahr Malting's property we have obtained an easement. Between the 2<sup>nd</sup> Avenue right of way and the Rahr owned parcel lies a strip of land that is claimed by UPRR and we have been presented with a Pipeline Crossing Agreement that is attached for the Commission to review and approve.

Installing the water main within the Apgar Street right of way is an alternative to crossing the UPRR strip of land, however that would require expensive restoration of the street improvements. That cost would exceed the UPRR one-time fee of \$3,000.

Under the terms of the UPRR Pipeline Crossing Agreement the Commission must bear the expense of track monitoring and flagging during construction using a service provider that is approved by UPRR. Also attached is Field Services Utility Observation Agreement with Rail Pros, an UPRR approved provider for those services.

REQUESTED ACTION

Staff requests the Commission approve of the UPRR Pipeline Crossing Agreement and the RP Field Services Utility Observation Agreement and authorize their execution.

## PIPELINE CROSSING AGREEMENT

Mile Post: 28.31, Mankato Subdivision  
Location: Shakopee, Scott County, Minnesota

**THIS AGREEMENT (“Agreement”)** is made and entered into as of **April 13, 2018**, (“Effective Date”) by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, (“Licensor”) and **SHAKOPEE PUBLIC UTILITIES**, to be addressed at PO Box 470, 255 Sarazin Street, Shakopee, Minnesota 55379 (“Licensee”).

**IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

**Article 1.      LICENSOR GRANTS RIGHT.**

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

**One (1) Underground Eight (8) Inch Pipe encased in Twenty-Two (22) Inch Steel Pipeline for transporting and conveying water only**

across Licensor's track(s) and property (the “Pipeline”) in the location shown and in conformity with the dimensions and specifications indicated on the print dated April 12, 2018 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

For the purposes of Exhibit A, Licensee acknowledges that if it or its contractor provides to Railroad digital imagery depicting the Pipeline crossing, Licensee authorizes Railroad to use the Digital Imagery in preparing the print attached as an exhibit hereto. Licensee represents and warrants that through a license or otherwise, it has the right to use the Digital Imagery and to permit Railroad to use the Digital Imagery in said manner.

**Article 2.      LICENSE FEE.**

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Three Thousand Dollars (\$3,000.00)**.

**Article 3.      CONSTRUCTION, MAINTENANCE AND OPERATION.**

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

**Article 4. DEFINITION OF LICENSEE.**

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to 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.

**Article 5. INSURANCE.**

A. During the life of the License, Licensee shall fully comply with the insurance requirements described in **Exhibit C**.

B. Failure to maintain insurance as required shall entitle, but not require, Licensor to terminate this License immediately.

C. If the Licensee is subject to statute(s) limiting its insurance liability and/or limiting its ability to obtain insurance in compliance with **Exhibit C** of this license, those statutes shall apply.

D. Licensee hereby acknowledges that is has reviewed the requirements of **Exhibit C**, including without limitation the requirement for Railroad Protective Liability Insurance during construction, maintenance, installation, repair or removal of the pipeline which is the subject of this Agreement.

**Article 6. SPECIAL PROVISION – ONSITE OBSERVATION/INSPECTION.**

Licensor requires licensee to provide monitoring of tracks and on-site observation and/or inspection through Licensor approved inspector named below during all construction and installation work. Licensee is to directly coordinate services with the named inspector.

**Railpros Field Services**  
RPUtility@railprosfs.com  
682-223-5271

**Article 7. TERM.**

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY**

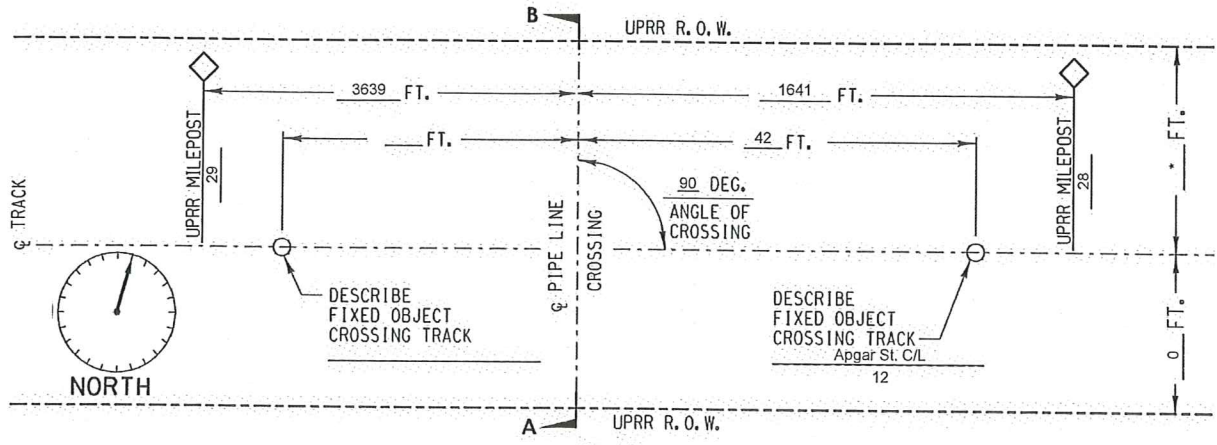
**SHAKOPEE PUBLIC UTILITIES**

By: \_\_\_\_\_  
Adam Engelkamp  
Real Estate - Utilities

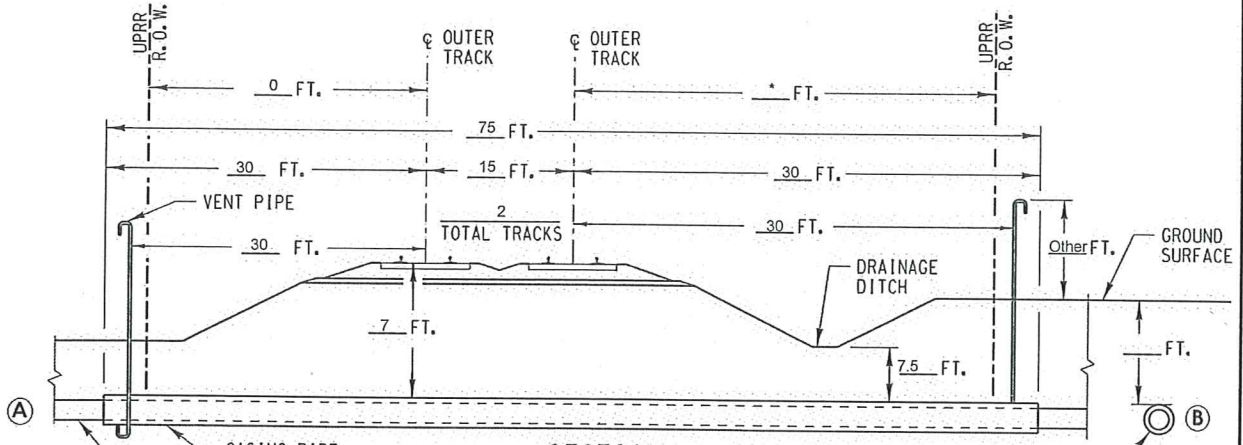
By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

# NON-FLAMMABLE LIQUID PIPELINE

- CROSSING
- ENCROACHMENT
- BOTH



**PLAN**  
SCALE: NONE



**SECTION**  
SCALE: NONE

NOTES: Wireline occupies 35.1' of UP R/W north of track before entering the 80' dedicated street R/W of Appar St.  
 1) ALL DIMENSIONS MEASURED PERPENDICULAR TO THE CENTERLINE OF TRACK  
 2) REFER TO AREMA VOLUME 1, CHAPTER 1, PART 5, SECTION 5.1

- A) METHOD OF INSTALLATION BORED AND JACKED
- B) DIST. FROM CENTERLINE OF TRACK TO PIPE ENCROACHMENT \_\_\_\_\_
- C) SIGNS PROVIDED? AT MINIMUM SIGNS WILL BE PROVIDED AS STATED ABOVE
- D) CARRIER MATERIAL DUCTILE IRON PIPE. IF RCP, CLASS V? NA.  
 COMMODITY TO BE CONVEYED WATER.  
 OPERATIONAL PRESSURE 150 PSI. MAOP 150 PSI.  
 WALL THICKNESS (INCH)/ SCHEDULE 0.25"/. DIAMETER 8 IN.  
 CATHODIC/COATING PROTECTION NO
- E) CASING MATERIAL STEEL PIPE. IF RCP, CLASS V? NA.  
 TOTAL LENGTH CASING PIPE: 81 FT.  
 WALL THICKNESS 0.281 IN. DIAMETER 22 IN.  
 CATHODIC/COATING PROTECTION YES.  
 CASING PIPE IS SEALED AT THE ENDS.
- F) DISTANCE FROM CENTERLINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES  
30 AND 30.



**BUILDING AMERICA®**

**EXHIBIT "A"**

SUBDIVISION: <u>Mankato Sub.</u>	
TRACK TYPE: <u>MAINLINE</u>	
M.P.: <u>28.31</u>	LAT.: <u>44.796877155531</u>
E.S.M.: <u>1494+09 ±</u>	LONG.: <u>-93.53247731924</u>
NEAREST CITY: <u>SHAKOPEE</u>	COUNTY: <u>SCOTT</u> STATE: <u>MN</u>
APPLICANT: <u>SHAKOPEE PUBLIC UTILITIES</u>	
FILE NO.: <u>0305393</u>	DATE: <u>4/12/2018</u>

## **EXHIBIT B**

### **Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.**

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

### **Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.**

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall



include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

**Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.**

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work by calling the Response Management Communication Center (RMCC) at 888-877-7267. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

**Railpros Flagging**  
upflag@railprosf.com  
(877) 315-0513 x 116

**Zachery L. Chaney**  
ASST MGR SIGNAL MNTCE  
Phone: 402-690-8287  
zlchaney@up.com

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensee whether a flagman need be present and

whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Licensor, Licensor will bill Licensee for such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.
- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Licensor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Licensor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Licensor, Licensee shall deliver to Licensor a copy of its safety plan for conducting the work (the "Safety Plan"). Licensor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

**Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.**

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

**Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.**

- A. The license herein granted is subject to the needs and requirements of the Licensor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Licensor's property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

**Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.**

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Licensor's property without the prior written approval of Licensor.

- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Licensor's trackage shall be installed or used by Licensee or its contractors without the prior written permission of Licensor.
- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

**Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

- A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTORS, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.**

**Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.**

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

**Section 9. RESTORATION OF LICENSOR'S PROPERTY.**

In the event the Licensee in any manner moves or disturbs any of the property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licensor.

**Section 10. INDEMNITY.**

- A. As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).
- B. **AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM**

**ANY LOSS OF ANY KIND, NATURE OR DESCRIPTION ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**

**1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;**

**2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;**

**3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;**

**4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;**

**5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR**

**6. LICENSEE'S BREACH OF THIS AGREEMENT,**

**EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.**

C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of 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 incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

**Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.**

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

**Section 12. WAIVER OF BREACH.**

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

**Section 13. TERMINATION.**

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

**Section 14. AGREEMENT NOT TO BE ASSIGNED.**

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

**Section 15. SUCCESSORS AND ASSIGNS.**

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

**Section 16. SEVERABILITY.**

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

Approved: Insurance Group  
Created: 9/23/05  
Last Modified: 03/29/10  
Form Approved, AVP-Law

**EXHIBIT C**  
**Union Pacific Railroad Company**  
**Contract Insurance Requirements**

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

**A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Contractual Liability Railroads" ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

**B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, WHICH MUST BE STATED ON THE CERTIFICATE OF INSURANCE: "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.

**C. Workers Compensation and Employers Liability insurance.** Coverage must include but not be limited to:

Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

**D. Railroad Protective Liability insurance.** Licensee must maintain "Railroad Protective Liability" insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad only as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000.



The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement

**E. Umbrella or Excess insurance.** If Licensee utilizes umbrella or excess policies, and these policies must "follow form" and afford no less coverage than the primary policy.

**Other Requirements**

**F.** All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

**G.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

**H.** Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Licensee required in this agreement, where permitted by law. This waiver must be stated on the certificate of insurance.

**I.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

**J.** The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

**EXHIBIT D**  
**SAFETY STANDARDS**

**MINIMUM SAFETY REQUIREMENTS**

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

**I. Clothing**

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
  - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
  - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

**II. Personal Protective Equipment**

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools
  - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

### **III. On Track Safety**

Licensee and its contractor are responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

### **IV. Equipment**

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
  - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
  - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

**V. General Safety Requirements**

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
  - (v) Before stepping over or crossing tracks, look in both directions first.
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

## RailPros Field Services Utility Observation

THIS AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_, 2018 by and between **Company Name** ("Company"), located in **City and State**, and **RailPros Field Services**, ("RPFS"), located at **Grapevine Texas**. RPFS is a consultant to Union Pacific Railroad ("UPRR").

### A. General Background

1. Company is interested in performing a utility construction project that will cross UPRR's property or Right-of-Way per an executed agreement between the Company and UPRR referred to as **Folder No.** (the "Project").

UPRR requires the Company to utilize the services of RPFS to: 1) observe these services and communicate with UPRR regarding the status of the work and any issues that arise that may impact UPRR or not meet UPRR's executed utility agreement.

### B. Services

1. Utility Construction Observation. The Company is required to utilize the services of RPFS to observe and inspect work being performed on the Project by Company and its contractors and to communicate with UPRR regarding issues that may arise during the Project. RPFS' services do not include supervision or direction of the means, methods, or actual work of Company or its contractors.

### C. RPFS Non-Responsibility

1. The presence of RPFS observers on site will not relieve Company of its responsibilities to comply with the terms of UPRR permit agreement (**Folder No.**) and the required specifications. RPFS will not be responsible for job or site safety or security on the Project.

2. RPFS shall not be responsible for delays caused by Company's failure to furnish necessary information promptly as requested, or for delays resulting from faulty equipment or late, slow, or faulty performance by Company, other contractors or sub-consultants of Company, or government agencies whose performance of work is precedent to or concurrent with the performance of RPFS' observation of Company's work.

3. RPFS shall not be in default or be responsible for damages due to any delays in the performance of the work for any reason other than for RPFS' negligence or misconduct, and RPFS shall be entitled to additional compensation for any such non-culpable delay. Any such adjustments to the project duration and compensation shall be put in writing in the form of an invoice issued to Company upon determination of same.

### D. Company Responsibilities

1. In accordance with generally accepted construction practices, Company will be solely responsible for working conditions on the job site, including security and safety of all persons and property during the Project, and compliance with UPRR safety requirements, local safety requirements and Occupational Safety and Health Administration (OSHA) regulations. This requirement shall apply continuously and not be limited to normal working hours.

2. Wherein the project site is determined by Company to be unworkable due to inclement weather conditions, the Company must notify RPFS's on-site representative as soon as practicable of any such delays.

### E. Compensation

1. Company shall compensate RPFS at the rate or rates shown below for the duration of the project. Compensation will be paid based on the Project Fee, which is defined by the actual number of days worked multiplied by the daily rate stipulated in this section. Invoices are submitted upon completion of

the project or at month end. On-going jobs are billed on a monthly basis. Payments of invoices are due upon receipt, within 30 days. Invoices are subject to a 1% fee for every 30 days the payment is delinquent. The daily rates for said services to be provided under this Agreement are based on eight hours per day and will be as follows:

Mobilization/Administrative Fee.....\$1,000 (Each Project will incur a fee for travel and administrative costs). Project must be cancelled 4 business days prior to the scheduled start date to avoid additional mobilization fee. Multiple mobilization fees or additional labor fees will be charged if the project cannot be constructed in consecutive days or if there is a delay during installation.

Construction Observation/Inspection.....\$1,200/Standard 8-hour day. Overtime rate after 8 hours \$150 Per Hour / Nights Weekends, and Holidays \$1,400 Standard 8-hour day /Overtime rate after 8 hours \$150 per hour (Requires a minimum of 10-business days' notification).

2. RPFS has the right to invoice for fees to cover necessary costs whenever a Project is terminated by the owner, applicant or agent or when the project is installed in absence of RPFS's Utility construction observation and flagging services when required by UPRR.

**F. Commencement Date and Term of Services**

1. RPSF' services will begin upon acceptance of this Agreement by **Company Name** and shall continue through completion of the Project impacting UPRR Right-of-Way.

2. This Agreement has been executed by the authorized representatives of the parties, and is intended to create a binding contractual relationship.

3. This Agreement shall take precedence over other documents, purchase orders, work orders that may be issued and/or signed after this Agreement. In no event, shall the terms and conditions in any RPFS or Company purchase order, work order, or similar document issued after the signing of this Agreement govern over this Agreement.

4. The terms of this Agreement shall automatically renew each year unless either party has terminated the agreement as per **Article 8** of the Standard Provisions. RPFS reserves the right to modify the agreement terms at any time by written instrument to the Company. Agreement modifications will not take effect until such time any current project(s) with the Company is finished and a signed copy of the modified written instrument is returned by the Company to RPFS. RPFS reserves the right to not begin any new projects until a signed copy of the written instrument is returned.

**G. Standard Provisions of Agreement for Professional Services**

1. The attached Standard Provisions of Agreement for Professional Services shall apply to the services provided under this Agreement.

**RailPros Field Services**

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

Title: Project Manager

Date: \_\_\_\_\_

**Company Name**

By: \_\_\_\_\_  
[Authorized Representative]

\_\_\_\_\_  
[Printed Name]

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## STANDARD PROVISIONS OF RPFS' SCHEDULING, OBSERVATION AND FLAGGING AGREEMENT

The Company and RailPros Field Services ("RPFS"), agree that the following provisions shall be part of this Agreement.

1. The Company shall designate an individual with authority to act on behalf of the Company as to all aspects of the Project and shall give prompt written notice to RPFS if the Company becomes aware of any problems with the Project, and shall otherwise fully cooperate as may be required or appropriate in connection with the Project.

2. RPFS' services shall be performed in a manner consistent with that degree of skill and care typically exercised by similar professionals performing similar services under the same or similar circumstances and conditions. RPFS makes no other representations or any warranties, whether expressed or implied, with respect to the services rendered hereunder.

3. In no event, shall any statute of limitations commence to run any later than the date when RPFS' services are substantially completed and any cause of action against RPFS arising from or pertaining to this Agreement must be initiated no later than two (2) years after the date when RPFS' services are substantially completed.

4. In no event, shall RPFS be liable for consequential damages, including lost profits, loss of investment or other incidental damages.

5. Compensation payable to RPFS pursuant to this Agreement shall be in addition to taxes (except income taxes) that may be assessed against RPFS by any state or political subdivision directly on services performed or payments for services performed by RPFS. Such taxes that RPFS may be required to collect or pay shall be added by RPFS to invoices submitted to the Company pursuant to this Agreement.

6. This Agreement may be terminated by either Company or RPFS upon thirty (30) days written notice for any or no reason. Either party may terminate this Agreement upon three days' notice in the event of a material breach of the Agreement by the other party. Company expressly agrees to hold RPFS harmless from any liability arising out of RPFS' termination of its services hereunder. In the event of termination of this Agreement, Company shall promptly pay RPFS for all of the services performed by RPFS prior to the termination of the Agreement. All fees paid are deemed earned.

7. Neither the Company nor RPFS shall assign its interest in this Agreement without the written consent of the other. The services to be provided pursuant to this Agreement are being performed solely for the benefit of the Company and UPRR and no benefit is meant to be conferred upon any other person or entity, and no such person or entity should rely upon RPFS' performance of its services to the Company; and, no claim against RPFS shall accrue to any contractor, subcontractor, owner, officer, director, consultant, engineer, supplier, fabricator, manufacturer, lender, tenant, surety, or any other third-party as a result of this Agreement or the performance or non-performance of services on this Project.

8. Unless otherwise provided by specific agreement, RPFS shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances at the project site.

9. The Company agrees to indemnify and hold RPFS harmless to the same extent the Company agreed to indemnify and hold UPRR harmless in its agreement with UPRR regarding this Project. If the Company lists UPRR as an additional insured on its insurance policy, the Company also agrees to similarly list RPFS as an additional insured on its insurance policy as well.

10. To the extent any damage or claim is covered by insurance during performance of this Agreement, the Company and RPFS waive

all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Company or RPFS, as applicable, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

11. Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation prior to the commencement of any legal or arbitration proceeding as a condition precedent to the right to recover attorney fees in any proceeding. The mediator shall be jointly selected by the Company and RPFS. The mediator's fees shall be shared equally and shall be held at the location selected by the mediator.

12. Equal Opportunity. RPFS shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

13. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

14. This Agreement is the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes all previous agreements, negotiations or understandings, written or oral, between the Parties. The parties hereto declare and represent that no promises, inducements, representations, warranties or other agreements, whether express or implied, not contained herein, have been made, and further declare and represent that they have not executed this Agreement in reliance upon any such promise, inducement, representation, warranty or other agreement not contained herein.

15. This Agreement may only be modified, amended or supplemented in a writing executed by the Parties hereto.

16. No term or provision of this Agreement shall be deemed waived, and no breach or default shall be deemed excused, unless such waiver, consent or excuse is in writing, and signed by the Parties hereto. A waiver by a Party hereto of any breach or default by the other Party to this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach or default hereunder by the other Party.

17. In case any one or more of the provisions in this Agreement should be declared by a court, arbitrator, or governmental agency or department to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.


18. Each Party is or had an opportunity to be represented by counsel and made a full and independent investigation of the matters contained herein and is only entering into this Agreement based on the Party's full satisfaction of the results of any investigation and arm's length negotiations. This Agreement will be deemed to have been jointly and equally drafted by the Parties.

19. Time is of the essence in the performance of the terms and conditions of this Agreement.

20. In the event of any legal, equitable or alternative dispute resolution proceeding to interpret or enforce this Agreement, the prevailing party shall be entitled to its reasonable legal fees and costs.

(Revised 05/17/16)

**SHAKOPEE PUBLIC UTILITIES  
MEMORANDUM**

**TO: SHAKOPEE PUBLIC UTILITIES COMMISSION**  
**FROM: JOHN R. CROOKS, UTILITIES MANAGER**   
**SUBJECT: APRIL 2018 MMPA BOARD MEETING SUMMARY**  
**DATE: MAY 3, 2018**

The Board of Directors of the Minnesota Municipal Power Agency (MMPA) met on April 24, 2018 at the Faribault Energy Park in Faribault, Minnesota.

At the meeting, the Board approved MMPA's 2017 audit report. The report can be found on MMPA's website at <http://www.mmpa.org/about/financials-reports/>


The Board approved the expansion of the Energy Education High School pilot program to all member communities for the 2018-2019 academic year. The Board also received an update about the status of the Hometown Solar projects in Arlington, Shakopee and Chaska

Participation in MMPA's Residential Clean Energy Choice program increased over March, with seven different MMPA members having new customer signups during the month. Customer penetration of MMPA's Clean Energy Choice program for residential customers is at 2.7%.



**SHAKOPEE PUBLIC UTILITIES  
MEMORANDUM**

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**TO: SHAKOPEE PUBLIC UTILITIES COMMISSION**  
**FROM: JOHN R. CROOKS, UTILITIES MANAGER**   
**SUBJECT: ENERGY EDUCATION PROGRAMS**  
**DATE: MAY 4, 2018**

In an ongoing partnership with our power agency, MMPA, we are continuing to develop education programs for students in our service area.

On April 11 and 12, twenty five Seniors from Shakopee High School participated in a pilot educational program regarding energy and their community. The two afternoon classes were held at the Shakopee Energy Park.

The first day session included information on MMPA and our local utility, power generation development and finished with a tour of the SEP facility. The class was taught by Avant Energy staff and myself.

The second day session consisted of a panel discussion regarding careers in the energy industry. The session consisted of Avant staff and Marketing/Customer Relations Director, Sharon Walsh.

The feedback with the SHS teachers was very positive and the students were very engaged with each class. The class will now be an annual event, with the possibility of having more students participating in future years.

Also within the next 3 weeks, all fourth grade students in the Shakopee School District and SACS will be attending the annual SPU/MMPA field trip to the Faribault Energy Park for a day of energy education. This annual event that began in 2012 has had over 12,000 fourth graders from MMPA member communities take part in the program. The program has been an outstanding success.

Due to the overall positive feedback and news of what is taking place between SPU and MMPA regarding energy education programs, I have been asked to conduct a presentation at the American Public Power Association National Conference in New Orleans on June 19.

## Energy Education

### High School Program *Shakopee High School*





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# SHAKOPEE PUBLIC UTILITIES

“Lighting the Way – Yesterday, Today and Beyond”

April 20, 2018

TO: John Crooks, Utilities Manager  
FROM: Renee Schmid, Director of Finance and Administration  
SUBJECT: Insurance Liability Coverage - Waiver

## Overview

Staff is in the process of renewing the Utilities Property and Liability Insurance Coverage for the coming year. In order to extend coverage, the Commission is required to make a decision to either “waive” or “not waive” the monetary limits on municipal tort liability. More information regarding the implications of this decision is included in the attached waiver form from the League of Minnesota Cities.

At the commission meeting on April 16<sup>th</sup>, 2018, the commission asked staff to bring back some additional information regarding costs under the decision to waive or not statutory tort limits and purchase of excess liability. It has been the practice of the utility to purchase excess liability in the past as a means to provide for additional coverage for claims not protected under tort liability.

The annual costs for general liability insurance with the election to not waive statutory limits and excess liability insurance that the commission paid in 2017-2018 were as follows:

- General Municipality Liability \$2,000,000: \$23,869 – Claims are limited to \$500,000/occurrence and \$1,500,000 in aggregate for all claims
- Excess Liability - \$2,000,000: \$16,080

If the commission were to elect to waive the statutory limits, we could expect to see an increase in our general liability premiums of approximately 4%. In addition, the commission’s exposure to claims increases from \$500,000/occurrence to \$2,000,000/occurrence. If we incur an actual claim, our experience rating will also increase and could potentially drive premiums up another 20 to 50%. The primary purpose and benefit to not waive the statutory limit is to limit our liability exposure as an entity. Our insurance representative recommends that we not waive the statutory limits. Our insurance representative also recommends that if the commission does waive the statutory limit, we should then increase excess liability coverage to a \$5,000,000 limit, resulting in an additional increase in premium of approximately \$10,000.

## Recommendation

- Staff recommends the commission elect to “not waive” the monetary limits as a measure to limit any future claims exposure.



# SHAKOPEE PUBLIC UTILITIES

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## Requested Action by Commission

The Commission is asked to make a decision on tort liability limits and select one option below:

- The Commission **DOES NOT WAIVE** the monetary limits on municipal tort liability established by Minnesota Statutes, Section 466.04
- The Commission **WAIVES** the monetary limits on municipal tort liability established by Minnesota Statutes, Section 466.04 to the extent of the limit on the liability coverage obtained from LMCIT.



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## LIABILITY COVERAGE – WAIVER FORM

**LMCIT members purchasing coverage must complete and return this form to LMCIT before the effective date of the coverage. Please return the completed form to your underwriter or email to [pstech@lmc.org](mailto:pstech@lmc.org)**

This decision must be made by the member's governing body every year. You may also wish to discuss these issues with your attorney.

League of Minnesota Cities Insurance Trust (LMCIT) members that obtain liability coverage from LMCIT must decide whether to waive the statutory tort liability limits to the extent of the coverage purchased. The decision has the following effects:

- *If the member does not waive the statutory tort limits*, an individual claimant would be able to recover no more than \$500,000 on any claim to which the statutory tort limits apply. The total all claimants would be able to recover for a single occurrence to which the statutory tort limits apply would be limited to \$1,500,000. These statutory tort limits apply regardless of whether the city purchases the optional excess liability coverage.
- *If the member waives the statutory tort limits and does not purchase excess liability coverage*, a single claimant could potentially recover up to \$2,000,000 for a single occurrence. (Under this option, the tort cap liability limits are waived to the extent of the member's liability coverage limits, and the LMCIT per occurrence limit is \$2 million.) The total all claimants would be able to recover for a single occurrence to which the statutory tort limits apply would also be limited to \$2,000,000, regardless of the number of claimants.
- *If the member waives the statutory tort limits and purchases excess liability coverage*, a single claimant could potentially recover an amount up to the limit of the coverage purchased. The total all claimants would be able to recover for a single occurrence to which the statutory tort limits apply would also be limited to the amount of coverage purchased, regardless of the number of claimants.

Claims to which the statutory municipal tort limits do not apply are not affected by this decision.

\_\_\_\_\_  
LMCIT Member Name

Check one:

- The member **DOES NOT WAIVE** the monetary limits on municipal tort liability established by Minnesota Statutes, Section 466.04.
- The member **WAIVES** the monetary limits on municipal tort liability established by Minnesota Statutes, Section 466.04 to the extent of the limits of the liability coverage obtained from LMCIT.

Date of city council/governing body meeting \_\_\_\_\_

Signature \_\_\_\_\_ Position \_\_\_\_\_