

**LICENSE AGREEMENT FOR UNDERGROUND
PIPELINES, CABLES AND CONDUITS**

THIS AGREEMENT is made and entered into as of the ___ day of _____, 20__ by and between KANKAKEE, BEAVERVILLE & SOUTHERN RAILROAD, (hereinafter "Railroad") and CITY OF WEST LAFAYETTE, INDIANA, an Indiana municipal corporation (hereinafter "Licensee");

W I T N E S S E T H :

1. Upon execution of this Agreement, the Licensee shall pay the sum of Five Hundred and No/100 Dollars (\$500.00) as a one-time, document processing fee and the further sum of Seven Hundred Fifty and No/100 Dollars (\$750.00) annually on January 1st for the term of this Agreement, beginning upon execution hereof in the amount of Two Hundred Fifty and 68/100 Dollars (\$250.68), for the prorated period of September 1, 2010 through December 31, 2010 (annual fees to be adjusted as follows). Railroad reserves the right to make adjustments in these charges as follows

The annual license fee specified above shall be adjusted annually (beginning with the payment due January 1, 2011) and shall be changed by the same percentage increase as reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (1967=100)" specified for "All Items - United States" compiled by the Bureau of Labor Statistics of the United States Department of Labor (the "Index"). In no event shall the rent be less than the base rent payable as of the effective date of this License.

The current base rent payable shall be changed in accordance with the following:

- (a) The current base rent shall be adjusted annually, commencing January 1, 2011.
- (b) Each adjustment shall be made with reference to the price index for the fourth month immediately preceding the effective date of each adjustment (Current Price Index).
- (c) Each such adjustment shall be made by determining the percentage change of the then Current Price Index over the price Index for the full calendar month of the effective date of this License ("Base Price Index").
- (d) Such percentage shall be computed by (i) obtaining the difference between the Current Price Index and the Base Price Index and (ii) dividing such difference by the Base Price Index.
- (e) The percentage thus determined shall be multiplied by the then applicable current base rent hereinabove set forth, and the product thus determined shall represent the change payable in addition to the current base rent until a subsequent adjustment shall be made under this section.

In the event the Index shall hereafter be converted to a different standard of reference base or otherwise revised, the determination of the percentage change shall be made with the use of such conversion factor, formula, or table for converting the Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then as shall be reasonably determined by Railroad. Railroad shall provide prior notice to Licensee of all increases in rent and, upon request from Licensee, shall provide the calculation used to determine the current base rent.

2. In consideration of the license fees to be paid by the Licensee and in further consideration of the faithful performance by the Licensee of the covenants herein contained, the Railroad, insofar as it lawfully may, hereby grants to the Licensee license and permission to construct and maintain

one 60-inch steel pipeline containing one 36-inch ductile iron pipeline across, along and underneath the property of the Railroad located approximately 1,725 feet west of Mile Post 260 and 2,330 feet east of the centerline of Airport Road (hereinafter "Pipeline"), at or near West Lafayette, Tippecanoe County, Indiana, as set forth AND subject to the specifications set forth on Exhibit A, attached hereto and made a part hereof.

3. This Agreement shall commence as of the date first herein written and shall continue in full force and effect for as long as the same shall be used for conveying sanitary sewage in exact accordance with attached construction plans and for no other purposes whatsoever or until terminated by the provisions set forth herein.

That either party may terminate this agreement at any time hereafter by serving upon the other thirty (30) days' notice, in writing, of the election to terminate this Agreement. When this Agreement shall be terminated, Licensee within thirty (30) days after the expiration of the time stated in said notice, agrees at its own risk and expense to remove said facilities from the property of Railroad, or such portion thereof as Railroad shall require removed, and to restore the Railroad premises to a neat and safe condition, and if Licensee shall fail to do so within said time, Railroad shall have the right, but not the duty, to remove and restore the same in a safe and environmentally sound manner, at the risk and expense of Licensee. Nothing herein contained shall be construed as conferring any property right on Licensee.

4. The license and permission herein granted to Licensee are subject and subordinate, however, to the rights in Railroad, its successors and assigns, its grantees, lessees and licensees, to construct, reconstruct, operate, use, maintain, repair and renew on, beneath or above the property covered hereby, and structures, improvements or facilities of similar or different character as are now or in the future may be located on, beneath or above said properties.

5. Licensee shall, except in emergencies, give not less than seventy-two (72) hours written notice to Railroad of the day, hour and location that it proposes to undertake any construction or maintenance work and in the event of an emergency shall notify Railroad as soon as possible.

Licensee shall require each of its contractors and subcontractors to observe and conform to the conditions and requirements specified herein; and for the purposes of the safety, protective and indemnification provisions hereof, such contractors and subcontractors, their agents, servants and employees, and other persons on the Railroad property at the invitation of the Licensee, its contractors or subcontractors, shall be deemed the agents or employees of the Licensee.

6. Licensee shall, at no expense to Railroad, obtain all permits and approvals required to exercise this license and Licensee shall install, maintain and operate its facilities in accordance with all requirements of lawful public authority. Licensee shall be responsible for any taxes, assessments and charges made against the pipeline or other of Licensee's facilities on Railroad's property or the operation of any of them.

7. The pipeline shall be installed at least six (6) feet below the tracks of the Railroad, measured from the base of rail to top of pipeline or, if no tracks are located on the property, at least six (6) feet below the natural ground, measured from the top of ground to top of the pipeline. Said pipeline shall be constructed of such material and in such a manner as will assure the safety of Railroad. Railroad's authorized representative shall have the right, but not the duty, to require certain material or procedures to be used or to supervise the construction, maintenance, restoration or other work on Railroad's property at Licensee's expense. If in the opinion of Railroad's authorized representative casing of the pipeline is required at the time of installation or at any time subsequent thereto, Licensee shall promptly arrange for such casing at its own risk and expense.

8. If, in the opinion of the authorized representative of Railroad the work to be done by the Licensee pursuant to this Agreement will make necessary or desirable any change in the Railroad's facilities, or those of the Railroad's tenants or licensee's, on the Railroad property, which are reasonably related to the licensee's facilities the Railroad shall have the right, but not the duty, to make such changes, the expense thereof to be borne by the Licensee. Railroad shall have the right, but not the duty, to furnish flagging or other protection or to perform work to support its tracks or otherwise protect its property or facilities at any time, which are reasonably related to the licensee's facilities at Licensee's sole risk and expense.

9. Licensee agrees at any time, or from time to time, at its own risk and expense, upon the request of the authorized representative of Railroad, to make such change or changes as may be necessary in the opinion of said representative to accommodate any change or improvement which Railroad may desire to make in or upon its property, which are reasonably related to the licensee's facilities. In case Licensee shall fail within thirty (30) days after notice from the Railroad to make such change or changes, Railroad shall have the right, but not the duty, to make such change or changes, or remove Licensee's facilities from said property at the risk and expense of Licensee.

10. Licensee shall at its expense take such measures as may be necessary and adequate in connection with its property or the property of Railroad to protect facilities of Railroad and those of others using Railroad's property from interference by induction, conduction, physical contact or otherwise attributable to the exercise by Licensee of the licensee granted to it.

In the event Railroad advises Licensee to take any action to protect Railroad, its facilities or facilities on Railroad's property, Licensee shall promptly take the indicated action, including, but not limited to, stopping the operation of the pipeline. If Licensee fails to do so, Railroad shall have the right, but not the duty, to perform on behalf of Licensee in a safe and environmentally sound manner at the sole risk and expense of Licensee.

Licensee shall undertake to locate all prior installations on Railroad property in the vicinity of said pipeline and shall be solely responsible to insure that such installations are protected.

11. In the event Railroad elects to renew, replace, repair or alter any tracks or other facilities or to construct new facilities or to make other use of the property covered by this license, and in connection therewith requires the removal of any facilities placed by Licensee on Railroad's property or should any facilities or Licensee need renewal or repair, Licensee shall, within thirty (30) days of receipt of notice, arrange for such removal, renewal or repair at Licensee's risk and expense. In the event removal is required, the facilities shall be relocated at such location on Railroad's property as is designated by Railroad, provided that Railroad's authorized representative determines that a location is reasonable available. Renewal or repair shall be to such condition as is indicated by Railroad's authorized representative. If Licensee fails to comply with the foregoing, Railroad shall have the right, but not the duty, to remove, renew or repair such facilities in a safe and environmentally sound manner at the sole risk and expense of Licensee.

12. Cost and expense for work performed by the Railroad pursuant to this Agreement shall consist of the direct cost of labor and material plus Railroad's standard additives in effect at the time the work is performed. All payments required of Licensee under this Agreement shall be made promptly upon presentation of a bill.

13. Licensee, as a further consideration and as a condition without which this license would not have been granted, agrees to indemnify and save harmless Railroad, its officers, employees and agents and to assume all risk, responsibility and liability for death of, or injury to, any persons, including, but not limited to, officers, employees, agents, patrons and licensees of the parties hereto, and for loss, damage or injury to any property, including but not limited to, that belonging to the parties hereto (together with all liability for any expense, attorney's fees and costs incurred or sustained by the Railroad, whether in

defense of any such claims, demands, actions and causes of action or in the enforcement of the indemnification rights hereby conferred) arising from, growing out of, or in any manner or degree directly or indirectly caused by, attributable to, or resulting from the grant or exercise of this license or the construction, maintenance, repair, renewal, alteration, change, relocation, existence, presence, use, operation, or removal of any structure incident thereto, or from any activity conducted on or occurrence reasonably related to the Licensee originating on the area covered by the license regardless of the negligence of Railroad, its officers, employees and agents. Licensee further agrees to release and indemnify and save harmless Railroad, its officers, employees, agents or patrons, resulting from Railroad operations at or near the area in which the license is to be granted whether or not the death, injury or damage resulting therefrom may be due to the negligence of the Railroad, its officers, employees or agents or otherwise. At the election of Railroad, the Licensee, upon receipt of notice to that effect, shall assume or join in the defense of any claim based upon allegations purporting to bring said claim within the coverage of this section.

14. It is expressly understood Railroad does not warrant title to the premises and Licensee accepts the grant of privileges contained herein subject to all lawful outstanding liens, superior rights, and prior licenses, grants and easements. Licensee agrees it shall not have or make any claim against Railroad for damages on account of any deficiency in title and agrees that in the even of failure or insufficiency of such title the sole remedy of Licensee shall be the right to return of the consideration paid in advance, provided for herein, or a proportionate part thereof in the event of a partial deficiency or insufficiency of title. Licensee further agrees to indemnify and save harmless the Railroad and to assume all risk, responsibility and liability (including any expenses, attorney's fees and costs incurred or sustained by Railroad) arising from, growing out of, or in any manner or degree directly or indirectly attributable to or resulting from any deficiency or insufficiency of its title affecting the right of the Railroad to make this grant.

15. In case Railroad shall at any time, or from time to time, require the relocation of only a portion of said pipeline, this Agreement shall continue in full force and be applicable to the portion or portions of said pipeline and other facilities remaining from time to time until said pipeline has been relocated.

16. Nothing in this Agreement shall be construed to place any responsibility on Railroad for the quality of the construction, maintenance or other work performed on behalf of Licensee hereunder or for the condition of any of Licensee's facilities.

Any approval given or supervision exercised by Railroad hereunder, or failure of Railroad to object to any work done, material used or method of construction, reconstruction or maintenance, shall not be construed to relieve Licensee of its obligation under this Agreement.

17. This Agreement shall not be binding on either party hereto until all parties have executed the space provided below.

18. Licensee shall provide the Insurance coverage as set forth in the Insurance Requirements attachment hereto. Proof of satisfactory insurance pursuant to the Insurance Requirements is necessary prior to the execution of this Agreement by Railroad.

19. This Agreement shall be binding on the successors and assigns of the parties hereto, but no assignment hereof by the Licensee, its successors, legal representatives or assigns, shall be binding upon the Railroad without its written consent in each instance.

20. Any Notice required or permitted to be served under the terms of this Agreement shall be sent by certified mail, postage fully prepaid, and return receipt requested, to the parties at the following addresses:

To Railroad: Kankakee, Beaverville & Southern Railroad.
P.O. Box 119
Iroquois, IL 60945
Attn: Manager - Real Estate

To Licensee: City of West Lafayette
500 South River Road
West Lafayette, IN 47906-4377
Attn: David S. Henderson

or at such other address as the respective parties may from time to time give notice of.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate, the day and year first above written.

CITY OF WEST LAFAYETTE, INDIANA

KANKAKEE, BEAVERVILLE & SOUTHERN
RAILROAD

By: _____
Name:
Its:

By: _____
Name: Kevin D. Brons
Its: Manager - Real Estate

Witnessed by:

Witnessed by:

Name:

Name: Terrie A. Brockett