

**STATE OF MINNESOTA
MINNESOTA ENVIRONMENTAL QUALITY BOARD**

**In The Matter of
the City of Hutchinson
(Hutchinson Utilities Commission)
Pipeline Project**

STIPULATION AGREEMENT

Part 1. PARTIES. This Stipulation Agreement (“Agreement”) applies to and is binding upon the following parties:

- a. the Minnesota Environmental Quality Board (EQB); and
- b. the City of Hutchinson (Hutchinson Utilities Commission) (hereinafter collectively referred to as the City).

Part 2. PURPOSE AND SCOPE OF STIPULATION AGREEMENT. The purpose of this Agreement is to resolve alleged violations regarding the repair of drain tile that was cut during construction of the pipeline. Nothing in this Agreement is intended to address other alleged violations by the City. By entering into this Agreement, the City is settling a disputed matter between itself and the EQB, and the City does not admit that the alleged violation set out in Part 6 of this Agreement occurred. Except for the purposes of implementing and enforcing this Agreement, nothing in this Agreement constitutes an admission by any Party, or creates rights, substantive or procedural, that can be asserted or enforced with respect to any claim of or legal action brought by a person who is not a party to this Agreement.

Part 3. AUTHORITY. This Agreement is entered into under the authority vested in the EQB by Minnesota Statutes § 116C.04, subd. 10.

Part 4. DEFINITIONS. Unless otherwise explicitly stated, the definitions in Minnesota Statutes Chapters 116C and 116I, and in Minnesota Rules Chapters 4405 and 4415 apply, as appropriate, to the terms used in this Agreement.

Part 5. BACKGROUND. The following is the background of this Agreement:

In December 2002, the EQB issued a Pipeline Routing Permit to the City of Hutchinson (Hutchinson Utilities Commission) for a 90 mile long natural gas pipeline from Trimont, Minnesota, in Martin County to the City of Hutchinson in McLeod County. In March 2003, the EQB amended the permit to more specifically identify the route and to incorporate an Agricultural Impact Mitigation Plan (“Mitigation Plan”) into the Permit and make it an enforceable part of the Permit. The Permit requires the City to comply with certain construction practices described in the Mitigation Plan.

In the first week of October, the EQB learned about the manner in which the City was repairing drain tile that was cut during construction, that the City had used unslotted full-round pipe rather than slotted pipe. On October 16, 2003, the EQB Board heard a status report on the pipeline during the monthly Board meeting. The City reported on its activities and on the status of construction. Several landowners also addressed the Board and described certain City practices that the landowners alleged were not in compliance with the Mitigation Plan.

The City advised the Board that construction was nearly complete on the pipeline, except for a few parcels along the way that the City was required to skip until a 90-day notice requirement was satisfied the last week of October.

Part 6. ALLEGED VIOLATION. The EQB alleges that the City has violated Paragraph 3.D.1. of the Agricultural Impact Mitigation Plan. Paragraph 3.D.1. of the Mitigation Plan establishes requirements for repair of tile lines damaged or severed by the pipeline trench.

“Where tile lines are severed by the pipeline trench, three-sided steel channel iron, angle iron, full-round slotted pipe or half pipe, or an equivalent material, will be used to support the repaired tile lines.” The EQB alleges that the City failed to properly repair the drain tile that was cut along nearly the entire length of the pipeline by using an unslotted full pipe to support the repaired tile lines rather than a slotted full pipe or other material specified in the Mitigation Plan.

Part 7. THE CITY’S REQUIREMENTS. The City agrees to undertake the following actions with regard to repairing the drain tile that it cut during construction of the pipeline:

A. The City shall notify each landowner on whose property drain tile was repaired using unslotted pipe of the opportunity to have the unslotted pipe appropriately slotted, or replaced with slotted pipe or other material specified in the Mitigation Plan. The notification shall be in writing and shall be given by January 1, 2004.

B. The City shall also advise each landowner in the notice that the landowner has the option to accept a cash settlement in lieu of the City’s repair of the drain tile on condition that the landowner uses the money to pay for repair of the tile. The landowner shall have until November 1, 2004, to accept the City’s offer of payment or not.

C. The obligation of the City to repair any drain tile that has been improperly installed or repaired shall continue until October 1, 2013, unless the landowner agrees to an earlier termination date or accepts a cash payment. When a landowner elects to have the City repair the drain tile, the City shall repair the tile within three months of the request, weather permitting. In the event a landowner accepts a cash payment, the City’s obligation to repair or replace any drain tile in the future under the Mitigation Plan or this Agreement shall end.

D. In the event the City shall maintain that it properly slotted the full-round pipe used in the tile repair by drilling holes in the pipe north of mile post 65, the City shall advise the EQB of

those landowners. If the EQB shall agree with the City that the pipe has been properly slotted, the City shall be relieved of complying with the requirements of this Agreement for those landowners.

E. Any slotted full-round pipe to be used by the City to repair a cut drain tile line shall have perforations (i.e., slots) uniformly spaced along the length and circumference of the pipe that have a minimum area of one square inch for every linear foot of pipe (1 in.²/ft. or 21 cm²/m).

F. In the event a landowner identifies or has identified a tenant or an agent as the person to represent the landowner with regard to any obligations required of the City under this Agreement, the City may satisfy its obligations by reaching agreement with the tenant or agent.

G. The City represents that it has sufficient financial resources to make payments to landowners if the landowner should elect to accept a payment in lieu of repair of the drain tile.

Part 8. PAYMENT. The City agrees to pay \$10,000 to the EQB for the violation alleged in Part 6 within 30 days after the effective date of this Agreement. Payment of this amount is to be by check or money order payable to the State of Minnesota. The money shall be deposited in the general fund of the State of Minnesota.

Part 9. PENALTIES FOR VIOLATIONS OF THIS AGREEMENT. If the City fails to comply with the requirements of Part 7 of this Agreement, the City shall pay to the EQB a penalty in the amount of \$500.00 per violation. The City shall pay a penalty under this Part within 30 days after receiving written notice from the EQB that the penalty is due, unless the City contests the underlying violation of the Agreement. The Parties agree to refer any contested matter to the Office of Administrative Hearings for resolution. Payment of a stipulated penalty does not relieve the City of its obligation to fulfill and complete requirements under the Agreement and to otherwise comply with the terms and conditions of the Agreement.

Part 10. OTHER VIOLATIONS. Nothing in this Agreement shall preclude the EQB from investigating the City's performance with regard to other requirements of the Mitigation Plan and from seeking or imposing additional sanctions or remedies for any violations of the Mitigation Plan that are established by the EQB, including the payment of monetary penalties, payments for future crop losses, the implementation of remedial action to correct any deficiencies in the construction of the pipeline, or modification or suspension of the Pipeline Routing Permit. The costs of any investigation conducted by the EQB, after discussion with the City, will be charged to the City as part of the fees for administration of the permit.

Part 11. COVENANT NOT TO SUE AND RESERVATION OF REMEDIES. With respect to the City, the EQB agrees not to exercise any administrative, legal or equitable remedies, including suspension or revocation of the Permit, available to the EQB to address the violation alleged regarding improper repair of cut drain tile described in Part 6 as long as the City performs according to and has complied with the terms, covenants and agreements contained in this Agreement. The EQB reserves the right to enforce this Agreement or take any action authorized by law, if the City fails to comply with the terms and conditions of this Agreement. Further, the EQB reserves the right to seek to enjoin violations of this Agreement. Nothing in this Agreement shall prevent the EQB from exercising these rights and nothing in this Agreement constitutes a waiver of these rights.

Part 12. RETENTION OF RECORDS. The City shall retain in its possession all records and documents related to this Agreement. The City shall preserve these records, documents, reports and data for a minimum of three years after the termination of this Agreement despite any

document retention policy of the City to the contrary, and shall promptly make all such documentation available for review upon request by the EQB.

Part 13. APPLICABLE LAWS AND PERMITS. The City shall undertake all actions required to be taken pursuant to this Agreement in accordance with the requirements of all applicable state and federal laws and regulations. Except to the extent such conduct is modified by this Agreement, the City shall comply with all requirements of the Pipeline Routing Permit, including the Agricultural Impact Mitigation Plan. Nothing in this Agreement exempts or relieves the City of its obligation to comply with applicable local governmental requirements.

Part 14. OTHER CLAIMS. Nothing herein shall release the City from any claims, causes of action or demands in law or equity from any person, firm, partnership or corporation not a signatory to this Agreement for any liability it may have arising out of or relating to the construction of the pipeline. Neither the City nor the EQB shall be held as a party to any contract entered into by the other party to implement the requirements of this Agreement.

Part 15. LIABILITIES. Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. The State's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minn. Stat. §§ 3.732 et seq., and other applicable law.

Part 16. SUCCESSORS. This Agreement shall be binding upon the City and its successors and upon the EQB, its successors and assigns. If the City sells or otherwise conveys or assigns any of its rights, title or interests in the pipeline, the conveyance shall not release the City from any obligation imposed by this Agreement, unless the party to whom the right, title or interest has been transferred or assigned agrees in writing to fulfill the obligations of this Agreement and the EQB approves the transfer or assignment.

Part 17. AMENDMENTS. This Agreement may be amended only by written agreement between the parties.

Part 18. EFFECTIVE DATE. This Agreement shall be effective on the date it is approved by the EQB and signed by the EQB Chair.

Part 19. TERMINATION. This Agreement shall terminate on October 1, 2013, or upon such earlier date that the EQB determines that every landowner along the pipeline has reached a settlement with the City.

Part 20. SURVIVAL. The provisions of Parts 2, 10, 11, 12, 13, 14, 15, 16, and 19 of this Agreement and the rights, duties and obligations of the EQB and the City created in those provisions shall survive termination of this Agreement.

BY THEIR SIGNATURES BELOW, THE UNDERSIGNED REPRESENT THAT THEY HAVE AUTHORITY TO BIND THE PARTIES THEY REPRESENT, AND THEIR AGENTS, CONTRACTORS, AND SUBSIDIARIES

CITY OF HUTCHINSON

**STATE OF MINNESOTA
ENVIRONMENTAL QUALITY BOARD**

By: _____

By: _____

ROBERT A. SCHROEDER

Title:

Title: CHAIR

Date: _____

Date: _____