

Exhibit 1

LICENSE FOR A RECREATIONAL TRAIL ALONG THE ENTRANCE TO THE DULUTH ORE DOCK FACILITY

This License for a Recreational Trail ("Agreement") along the entrance to the Duluth Ore Dock Facility in Duluth, Minnesota, is made and entered into as of _____, 2020, by and between **Wisconsin Central Ltd.** (hereinafter referred to as "Railroad Company") whose mailing address is 17641 S. Ashland Avenue, Homewood, Illinois 60430-1345 and **City of Duluth** (hereinafter referred to as "Licensee") whose mailing address is 411 West First Street, Duluth, Minnesota 55802.

W I T N E S S E T H:

IN CONSIDERATION of the mutual covenants and agreements herein set forth, Railroad Company, insofar as it lawfully may, does hereby grant unto Licensee a right or license to construct, maintain and use a public recreational trail on, over and across the property or right-of-way along the entrance to Railroad Company's Duluth Ore Dock Facility in the location illustrated on the attached Exhibit A.

Licensee shall pay to Railroad Company upon execution of this Agreement the sum of **\$1,000.00** for preparation and handling of this Agreement. The aforesaid sum is not refundable in the event Licensee elects not to enter upon Railroad Company's property or in the event Railroad Company elects to terminate this Agreement.

Licensee shall at all times conduct its work in accordance with the "Special Provisions" which are hereby made a part hereof as Exhibit B.

UPON AND SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. DEFINITIONS.

(a) Railroad Company's Property. "Railroad Company's Property" shall mean the property as shown on Exhibit A, to the extent owned by Railroad Company, whether owned in full ownership or as a servitude, easement, or right-of-way, including Railroad Company's track, trestle, the land on which the track and trestle are situated, and any adjacent land of Railroad Company on either side of the track and trestle.

(b) License. "License" shall mean the right granted by Railroad Company to Licensee to construct, maintain and use a recreational trail over and across the License Area (defined below), under the terms and conditions set forth herein.

(c) License Area. "License Area" shall mean that portion of Railroad Company's Property over and across which the License is granted. The License Area extends from one edge of the Railroad Company's Property to the opposite edge of the Railroad Company's Property and measures a distance of approximately 20 feet in width,

excepting that portion of the Trail lying northwest of the "MNDOT R/W," all as more fully shown on the attached plans as Exhibit A.

(d) Trail. "Trail" shall mean the recreational trail to be constructed by Licensee consisting of fencing, culverts, rip rap, drainage and a ten foot wide asphaltic surface pavement within the License Area.

(e) Cost. "Cost" shall mean the actual cost of labor, outside services, equipment and materials for construction of the Trail, plus Railroad Company's then current customary additives for overhead and other indirect costs.

2. USE.

(a) This Agreement shall only affect and burden the License Area and no other portion of Railroad Company's Property, and the Trail shall be constructed, located, and maintained entirely within the License Area. Licensee shall have no right to use or cross any other portion of Railroad Company's Property or to use the Trail for any purposes other than as expressly permitted herein, and Licensee, as a further consideration, cause, and condition without which this Agreement would not have been granted, agrees to restrict its employees', agents' and invitees' use to those purposes and then only to said location and no other for crossing the Railroad Company's Property, including under the trestles or across the tracks.

(b) Licensee shall not do or permit to be done any act which will in any manner interfere with, limit, restrict, obstruct, damage, interrupt, or endanger Railroad Company's operations or facilities.

(c) The License Area shall be limited to non-motorized recreational purposes (except that motorized equipment may be used for construction, maintenance and snow removal purposes) and shall not be used by vehicles of a size, configuration or weight that would damage the facilities of Railroad Company or any equipment, installations, or facilities located on Railroad Company's Property but belonging to third persons unless approved in advance in writing by Railroad Company and then only after suitable precautions have been taken to avoid any such damage.

3. TERM.

(a) This Agreement shall become effective as of the date first written above and shall continue in effect thereafter until terminated in one of the manners set forth below:

(i.) Either party may at any time give the other party written notice of termination specifying the date on which termination shall be effective, provided that such notice shall be delivered at least 120 days in advance of the proposed date of termination.

(ii.) Railroad Company shall have the right to terminate this Agreement immediately upon written notice to Licensee if Licensee at any time breaches or fails to perform any of the terms and conditions hereof;

(iii.) This Agreement shall terminate through non-use or in any other manner provided by law.

(b) Unless the parties mutually agree in writing to leave the Trail in place after termination, the termination of this Agreement shall not be effective until all removal and restoration as required by Section 15 below is complete. Termination of this Agreement shall not release Licensee from any liability or responsibility and duty which accrued prior to such termination, removal and restoration.

4. CONSTRUCTION.

The construction of the Trail, including the necessary grading, fencing, paving, culverts and drainage on Railroad Company's Property, shall be performed by Licensee at its own risk and expense, consistent with construction plans submitted to and pre-approved by Railroad Company pursuant to its standard right-of entry permit procedure.

5. FENCING.

Licensee shall at its own risk and expense install and maintain a fence along the entire southern boundary of the License Area commencing at the pedestrian overpass of Interstate 35 connecting to the Railroad Company's entrance gate and terminating once the License Area is off Railroad Company's Property, which fence must be at least 6 feet in height as shown on Exhibit A.

6. NOTIFICATION TO RAILROAD COMPANY.

At least ten (10) days prior to entering upon the Railroad Company's Property for the purpose of performing any construction or maintenance work hereunder, Licensee shall notify Railroad Company in writing of the type of work to be performed and the date such work will commence. The notice shall be sent to the following address:

Regional Chief Engineer
Wisconsin Central Ltd.
17641 South Ashland Avenue
Homewood, IL 60430

7. RAISING WIRE LINES.

If it should be necessary to raise any wires on Railroad Company's Property to provide safe clearance, Licensee shall make all arrangements therefor at its own sole risk and expense.

8. MAINTENANCE.

Licensee shall, at its own risk and expense, maintain said License Area in good and safe condition commensurate with its intended use. If Licensee fails to maintain the

License Area in good and safe condition commensurate with its intended use, Railroad Company will provide Licensee with written notice specifically describing the manner in which the License Area is not in good and safe condition. If Licensee fails to promptly bring the License Area into good and safe condition, Railroad Company shall have the right, but not the obligation, to enter the License Area and perform the required maintenance without liability to Licensee for any loss or damage to Licensee thereby incurred, and Licensee shall reimburse Railroad Company for the cost thereof, within 30 days of receipt of Railroad Company's invoice. The Licensee, at Licensee's sole cost and expense, shall provide all snow and ice clearing removal and shall keep the weeds, brush, and other vegetation on each side of the License Area cut and mowed at all times that the Trail is open to the public. If Licensee requires access to Railroad Company's Property outside the License Area to satisfy this requirement, Licensee shall obtain written permission from Railroad Company's authorized representative.

9. RIGHT OF WAY TO BE KEPT FREE OF DEBRIS.

Licensee shall at all times during the term of this Agreement, keep the License Area free of obstructions (including obstructions to proper drainage) of any kind, and will not permit any condition which might interfere with the safe and efficient operation of Railroad Company's facilities, or which might damage equipment or facilities belonging to Railroad Company or others, or which might constitute a safety hazard of any kind. If at any time Licensee shall fail to do so, Railroad Company shall have the right, but not the obligation, to remove any obstructions without liability to Licensee for any loss or damage to Licensee thereby incurred, and Licensee shall reimburse Railroad Company for the cost thereof, within 30 days of receipt of Railroad Company's invoice. If the continued or repeated presence of obstructions should, in the opinion of Railroad Company, create an operating hazard, Railroad Company may provide protective services at Licensee's expense until such condition is corrected in a manner reasonably satisfactory to Railroad Company, or at its option may immediately terminate this Agreement.

10. UNAUTHORIZED USE.

It shall be Licensee's responsibility and duty to prevent all unauthorized persons from using the License Area and nothing herein shall be construed to relieve Licensee of this responsibility and duty.

11. GATES AND PROTECTIVE SERVICES

Licensee shall, at its own risk and expense, install and maintain any gate or other barrier which Railroad Company indicates is reasonably necessary and shall keep the gates closed when the License Area is not open to the public or being used for Trail construction or maintenance purposes. Licensee shall, at its own risk and expense, provide whatever protective services Railroad Company shall indicate is necessary. Railroad Company shall have the right, but not the duty, to provide any such protection at Licensee's sole risk and expense and Licensee shall prepay the cost thereof. It is further understood and acknowledged by Licensee that Railroad Company has no obligation or duty to determine the need for any gate or other barrier or the need for protective services.

12. SIGNS, SIGNALS AND WARNING DEVICES.

Licensee acknowledges that Railroad Company has no obligation or duty to alter its operations in any manner, owing to the presence or existence of the Trail or other use or exercise of the right or license granted herein. Licensee assumes, at its own risk and expense, sole responsibility for determining if any signs or other warning devices are necessary or appropriate for the safety of persons using the License Area and specifically acknowledges that Railroad Company has no obligation or duty whatsoever to make any such determination. If the installation of any signs or warning devices on the License Area is presently or hereafter required by Railroad Company, law or by competent public authority, or is otherwise requested by Licensee, the cost shall be solely borne by Licensee.

13. INDEMNITY.

AS A FURTHER CONSIDERATION FOR THE LICENSE HEREIN GRANTED, AND AS A CONDITION WITHOUT WHICH THE LICENSE WOULD NOT HAVE BEEN GRANTED, LICENSEE AGREES TO THE FULLEST EXTENT ALLOWED BY LAW, EXCEPT TO THE EXTENT OF ANY NEGLIGENCE OR OTHER LEGAL FAULT BY OR ON THE PART OF RAILROAD COMPANY OR ITS OFFICERS, EMPLOYEES OR AGENTS, FULLY TO DEFEND, INDEMNIFY AND SAVE HARMLESS RAILROAD COMPANY AND ITS OFFICERS, EMPLOYEES AND AGENTS, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION, AND TO ASSUME ALL RISK, RESPONSIBILITY AND LIABILITY (INCLUDING ALL LIABILITY FOR EXPENSES, ATTORNEY'S FEES AND COSTS INCURRED OR SUSTAINED BY RAILROAD COMPANY, WHETHER IN DEFENSE OF ANY SUCH CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION OR IN THE ENFORCEMENT OF THE INDEMNIFICATION RIGHTS HEREBY CONFERRED),

(A) FOR DEATH OF OR INJURY TO ANY AND ALL PERSONS, INCLUDING BUT NOT LIMITED TO THE OFFICERS, EMPLOYEES, AGENTS, PATRONS, INVITEES AND LICENSEES OF THE PARTIES HERETO, AND FOR ANY AND ALL LOSS, DAMAGE OR INJURY TO ANY PROPERTY WHATSOEVER, INCLUDING BUT NOT LIMITED TO THAT BELONGING TO OR IN THE CUSTODY AND CONTROL OF THE PARTIES HERETO, IN WHOLE OR IN PART 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, THE FAILURE OF LICENSEE TO CONFORM TO THE CONDITIONS OF THIS AGREEMENT, WORK PERFORMED BY LICENSEE UNDER THE TERMS OF THIS AGREEMENT, OR FROM THE CONSTRUCTION, INSTALLATION, MAINTENANCE, REPAIR, RENEWAL, ALTERATION, CHANGE, RELOCATION, EXISTENCE, PRESENCE, USE, OPERATION OR REMOVAL OF ANY STRUCTURE INCIDENT THERETO, AND

(B) FOR DEATH OF OR INJURY TO THE OFFICERS, EMPLOYEES, AGENTS, PATRONS, INVITEES AND LICENSEES OF LICENSEE AND FOR ANY AND ALL LOSS, DAMAGE OR INJURY TO THEIR PROPERTY, AND TO ANY PROPERTY BELONGING TO OR IN THE CARE, CUSTODY OR CONTROL OF LICENSEE, IN WHOLE OR IN PART ARISING FROM, GROWING OUT OF, OR IN ANY MANNER OR DEGREE DIRECTLY OR INDIRECTLY CAUSED BY, ATTRIBUTABLE TO OR RESULTING FROM THE CONDUCT OF ANY RAILROAD OPERATIONS AT OR NEAR THE AREA IN WHICH THE HEREIN CONFERRED LICENSE IS GRANTED OR EXERCISED.

LICENSEE SHALL AT ITS SOLE EXPENSE JOIN IN OR ASSUME, AT THE ELECTION AND ON DEMAND OF RAILROAD COMPANY, THE DEFENSE OF ANY CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION HEREUNDER ARISING. THE WORD "RAILROAD COMPANY" AS USED IN THIS SECTION SHALL INCLUDE THE ASSIGNS OF RAILROAD COMPANY AND ANY OTHER RAILROAD COMPANY THAT MAY BE OPERATING UPON AND OVER THE TRACKS CROSSING THE LICENSE AREA.

LICENSEE SHALL COMPLY WITH ALL APPLICABLE ORDINANCES, RULES, REGULATIONS, REQUIREMENTS AND LAWS OF ANY GOVERNMENTAL AUTHORITY HAVING JURISDICTION OF ENVIRONMENTAL STANDARDS AND CONDITIONS. IF LICENSEE SHALL VIOLATE ANY SUCH ORDINANCE, RULE, REGULATION, REQUIREMENT OF LAW, LICENSEE AGREES TO, AND SHALL PROTECT, SAVE HARMLESS, DEFEND AND INDEMNIFY THE RAILROAD COMPANY FROM AND AGAINST ANY AND ALL PENALTIES, FINES, COSTS AND EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS OF DEFENSE) IMPOSED UPON OR INCURRED BY RAILROAD COMPANY CAUSED BY, ARISING OUT OF, RESULTING FROM OR IN ANY WAY CONNECTED WITH SUCH VIOLATION OR VIOLATIONS. THE LIABILITY OF LICENSEE HEREUNDER SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

14. INSURANCE

Licensee shall provide proof of self-insurance acceptable to Railroad Company for any and all obligations it has under this Agreement prior to entering Railroad Company's Property under this Agreement and shall maintain such self-insurance for the duration of this Agreement. Railroad Company acknowledges that Licensee is self-insured and no liability or property insurance will be maintained by Licensee relating to this Agreement or the Trail.

15. REMOVAL OF TRAIL.

Prior to termination of this Agreement, Licensee shall remove its Trail from Railroad Company's Property and restore the Railroad Company's Property, as near as may be, to its former condition insofar as such restoration may in the opinion of Railroad Company's duly authorized representative be practical, all at Licensee's sole risk and expense. If Licensee fails to so remove and restore, Railroad Company shall have the right, but not the obligation, to do so at Licensee's sole risk and expense. Licensee shall pay the cost of any work performed by Railroad Company upon presentation of a bill. Railroad Company shall have the right to require Licensee to deposit the estimated cost of any or all removal or restoration work involving the Trail or to furnish an acceptable performance bond in such amount upon execution of this Agreement or at any time thereafter to assure complete performance under this Section.

16. ASSIGNMENT.

Licensee shall not have the right to assign this Agreement without first obtaining the consent in writing of the Railroad Company, which consent will not be unreasonably withheld.

17. TAXES.

The Licensee shall pay all taxes, general and special, license fees or other charges which may become due or which may be assessed against the premises of the Railroad Company because of the construction, existence, operation or use of said Trail, or the business conducted in connection with said facility, and shall reimburse the Railroad Company for any such taxes, license fees or other charges which may be paid by the Railroad Company upon the presentation of bills therefor.

18. NON-CONVERSION TO PUBLIC USE.

Licensee agrees to take no action of any kind whatsoever or to allow any third person to take any action which would result in the conversion of this License Area from a trail crossing to a public road on, over or under Railroad Company's Property. In the event of a breach of this condition by the Licensee, the Licensee shall be liable for all damages incurred by the Railroad Company as a result of such breach.

19. BILLS.

All bills submitted by the Railroad Company to Licensee pursuant to the terms of this Agreement shall be paid by Licensee within thirty (30) days of receipt thereof.

20. ENFORCEABILITY.

In the event that any parts, sections or other portions of this Agreement are found unenforceable under the applicable law of any courts having jurisdiction over this Agreement, the remaining parts, sections or other portions thereof and the enforcement of same shall not be affected and shall otherwise remain in full effect and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the date first above written.

WISCONSIN CENTRAL LTD

CITY OF DULUTH

By:

By:

Mayor

Title:

Attest:

City Clerk

Dated:

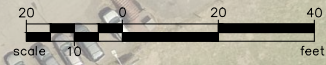
Countersigned:

City Auditor

Approved as to form:

City Attorney

S:\AE\DULUTH\151045\7-const-sves\76-record-dwg\Trail Realignement_recover.dwg 9/15/2020 8:24 AM corleskie



DRAWN BY: _____	_____	_____	_____	_____
DESIGNER: _____	_____	_____	_____	_____
CHECKED BY: _____	_____	_____	_____	_____
DESIGN TEAM	NO.	BY	DATE	REVISIONS

WISCONSIN CENTRAL LTD



PHONE: 218.279.3000
418 W SUPERIOR ST STE 200
DULUTH, MN 55802-1512
www.sehinc.com

DULUTH,
MINNESOTA

CROSS CITY TRAIL - PHASE 2
CN EASEMENT

FILE NO.
DULUT 151045

SPECIAL PROVISIONS

RELATIVE TO FLAGGING AND OTHER PROTECTION OF RAILROAD COMPANY TRAFFIC AND FACILITIES DURING CONSTRUCTION ADJACENT AND ABOVE, ON OR ACROSS, THE PROPERTY OF, OR ON, ABOVE AND BENEATH THE TRACKS OF WISCONSIN CENTRAL LTD.

The Licensee shall, before entering upon the property of Railroad Company for performance of any work, secure a fully executed right of entry license from Railroad Company's Engineering Manager or their authorized representative for the occupancy and use of Railroad Company's property. Licensee shall confer with Railroad Company relative to requirements for railroad clearances, operation and general safety regulations.

To obtain a Right-of-Entry permit in the states of Wisconsin and Minnesota contact Manager of Public Works at least three (3) weeks prior to project start:

Jackie Macewicz
CN-Manager Public Works
3192 S. Pokegama Rd
Superior, WI 54880
Office: 715-345-2503
Email: Jackie.Macewicz@cn.ca

There is a \$1000 fee for the permit.

All employees and/or contractor(s) of Licensee NOT hired by Railroad Company, who are not employed by CN or doing work for CN, are required to register with www.contractororientation.com and complete the basic safety and security tests. Contractor Orientation provides the basic safety, security and PPE requirements for CN. You may find more information on registering with contractor orientation on the contractor orientation website. Once you register, follow the CN links and you will be required to take the course labeled [CN Contractor Security / Safety Course/US Contractors](#).

All employees and/or subcontractors of Grantee, Licensee, Permittee and/or its Contractor NOT hired by Railroad Company, whose duties include and who are engaged in the inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, roadway facilities, or roadway machinery that will work foul of or have the potential to foul a live track are considered Roadway Workers under FRA regulations and CN Policy. They must complete the On-Track Safety Training course approved by Railroad Company and provided by Anna Rivera, R.R. Safety – AMR, P.O. Box 489, Mercer, WI 54547, telephone (920) 517-1677, email rrsafetytraining@yahoo.com. This training must be repeated at least once each calendar year.

- a. EXCEPTION: Railroad Company has exempted those it classifies as “Delivery Persons” from this training. This will include contractors such as UPS, FedEx, trucking companies, etc. who merely access the property to supply materials or equipment.
- b. All the employees and/or subcontractors of Grantee, Licensee, Permittee and/or its Contractor who will operate on-track machinery or those who will provide protection for other employees and/or subcontractors of Grantee, Licensee, Permittee and/or its Contractor must also be trained on CN US Operating Rules pertaining to their duties. They must take and pass the required examination. This training is good for a period of two years.
- c. “Potential to foul a live track” is considered, at a minimum, to be working within twenty-five feet of the track; or as otherwise to be determined by CN Design & Construction Department.

Licensee and/or any contractor engaged on their behalf, shall at all times conduct work in a manner satisfactory to the Engineering Manager of Railroad Company, or their authorized representative, and shall exercise care so as to not damage the property of Railroad Company, or that belonging to any other grantees, licensees, permittees or tenants of Railroad Company, or to interfere with railroad operations.

Engineering Manager of Railroad Company, or their authorized representative, will at all times have jurisdiction over the safety of railroad operations., The decision of the Engineering Manager or their authorized representative as to procedures which may affect the safety of railroad operations shall be final, and Licensee and/or their contractor shall be governed by such decision.

All work shall be conducted in such a manner as will assure the safety of Railroad Company. Railroad Company's authorized representative shall have the right, but not the duty, to require certain procedures to be used or to supervise the work on Railroad Company's property. Any accidents / incidents occurring on Railroad Company property, that result in or had the potential of causing serious injury, lost work days, vehicle or property damage must be reported to the Railroad Company representative within 24 hours. All such incidents will be fully investigated by the Licensee and/or their contractor. The Licensee shall subsequently provide a written report to Engineering Manager of Railroad Company, or their authorized representative, within seven (7) days detailing the nature of the incident, the cause(s), regulatory authorities notified, and a specific action plan to prevent recurrence.

Should any damage occur to Railroad Company property as a result of the authorized or unauthorized operations of Licensee and/or their contractor and Railroad Company deems it necessary to repair such damage or perform any work for the protection of its property or operations, the Licensee and/or their contractor, as the case may be, shall promptly reimburse Railroad Company for the actual cost of such repairs or work. For the purpose of these Special Provisions, actual cost shall be deemed to include the direct cost of any labor, materials,

equipment, or contract expense plus Railroad Company's current standard additives in each instance.

Licensee shall promptly notify Railroad Company of any releases of fuel or other equipment fluids from Licensee's activities hereunder that exceed five (5) gallons in volume. Releases of fuel or fluids amounting to five (5) gallons or less shall be documented by Licensee and reported to Railroad Company on a monthly basis. Licensee shall be solely responsible for reporting a) releases of hazardous substances, materials and wastes from Licensee's activities hereunder in excess of the reportable quantity, and b) releases of petroleum products from Licensee's activities hereunder causing a sheen on any water of the United States, to the appropriate governmental authorities and the Railroad Company.

If the work requires the construction of a temporary grade crossing across the track(s) of Railroad Company, Licensee and/or their contractor shall make the necessary arrangements and execute Railroad Company's temporary grade crossing agreement for the construction, protection, maintenance, and later removal of such temporary grade crossing. The cost of such temporary grade crossing construction and later removal shall be prepaid to Railroad Company. Additional costs for repairs, maintenance or protection will be paid within thirty (30) days upon receipt of bill(s) therefor.

Licensee and/or their contractor shall at no time cross Railroad Company's property or tracks with vehicles or equipment of any kind or character, except at such temporary grade crossing as may be constructed as outlined herein, or at any existing and open public grade crossing. Operation over such crossing shall be at the direction and method of Railroad Company's Engineering Manager or their authorized representative.

Railroad Company may, at Licensee's and/or their contractor's sole cost, risk and expense, furnish whatever protective services it considers necessary, including, but not limited to, flagger(s), inspector(s), and stand-by personnel. Flagging protection, inspection services, or standby personnel required by Railroad Company for the safety of railroad operations because of work being conducted by Licensee and/or their contractor, or in connection therewith, will be provided by Railroad Company and the cost of Licensee and shall be prepaid to Railroad Company by Licensee and/or their contractor. Flagging protection, inspection services, or standby personnel, necessary or provided in excess of prepayment amounts will be billed at the proper rates and will be promptly paid by overnight delivery.

In the event Railroad Company is unable to furnish flagging protection, inspection services, or standby personnel at the desired time or on the desired date(s), or if Licensee's prepayment for such services is exhausted and not replenished by Licensee and/or their contractor, Licensee and/or their contractor shall not perform any work on Railroad Company's property until such time and date(s) that appropriate Railroad Company services can be made available and/or appropriate prepayment is received. It is understood that Railroad Company shall not be liable for any delay or increased costs incurred by Licensee and/or their contractor owing to Railroad Company's inability or failure to have appropriate flagging protection, inspection services, or standby personnel available at the time or on the date requested.

Licensee and/or their contractor shall request and secure flagging protection by written notice to Railroad Company using CN's "Request for Flagging Services" form. This form must be submitted at least ten (10) working days in advance of proposed performance of any work or access to Railroad Company's property.

Flagging protection will be required during any operation involving direct and potential interference with Railroad Company's tracks or traffic. This may include but is not limited to fouling of railroad operating clearances, reasonable proximity of accidental hazard to railroad traffic, work within twenty-five (25) feet horizontally of the nearest centerline of any railroad track, any work over any railroad track, or in any other condition that Railroad Company deems protective services necessary, which may include work on or off Railroad Company's property more than twenty-five (25) feet from the nearest centerline of any railroad track, such as any equipment extension (including but not limited to a crane boom) that will reach or has the potential to reach within twenty-five (25) feet of any track.

Rates: \$1300.00 for each basic day (up to 8 hours)
 \$150.00 for each overtime hour
 Weekend/Holiday work is \$150.00 per hour with 8 hour minimum or
 \$1500.00 plus any overtime.

Licensee and/or their contractor shall request, prepay, and secure Railroad Company signal facility locates by written notice to Railroad Company along with submission of CN's "Request for Flagging Services" form at least ten (10) working days in advance of proposed performance of any work or access to Railroad Company property. Notice to Railroad Company does not fulfill or satisfy any other notification requirements for utility locates for non-railroad facilities.

Flagging-US
17641 South Ashland Ave.
Homewood, IL 60430
Email: Flagging_US@CN.CA

Railroad Company may require that prior to digging, trenching, or boring activities on or near Railroad Company property, or beneath any railroad track, an on-site meeting be conducted with Railroad Company's Signal Department representative. No digging, trenching or boring activities shall be conducted in the proximity of any known buried Railroad Company signal cables without Railroad Company's Signal Department representative being present. Railroad Company utilities are not part of Digger's Hotline. Please request a cable locate by using the Flagging - Cable Locate Form. There is a **\$350** fee for the cable locate that must be prepaid to Railroad Company.

Before commencing work and until any License shall be terminated, Licensee shall provide and maintain the following insurance in form and amount with companies satisfactory to and as approved by Railroad Company.

- a. Statutory Workers Compensation and Employer's Liability insurance.
- b. Automobile Liability in an amount not less than \$1,000,000 dollars combined single limit.
- c. Commercial General Liability (occurrence form) in an amount not less than \$5,000,000 dollars per occurrence, with an aggregate limit of not less than \$10,000,000 dollars. The Policy must name Railroad Company and its Parents as additional insureds in the following form:

Wisconsin Central Ltd. and its Parents
3192 S. Pokegama Rd
Superior, WI 54880
715-345-2503 (office)
Jackie.Macewicz@cn.ca

If the commercial general liability policy required herein contains any exclusions related to doing business or undertaking construction or demolition on, near, or adjacent to railroad facilities; such exclusion must be removed through issuance of endorsement CG 24 17, or a similar endorsement approved by Railroad Company in its sole discretion prior to the commencement of work hereunder.

- d. Pollution Liability Insurance shall be provided on a project/site specific basis when Railroad Company determines such is necessary for the purposes granted by this License.

Whenever required, pollution liability coverage shall be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$1,000,000 per occurrence and an aggregate limit of \$2,000,000.

If the scope of work as defined in this contract includes the disposal of any hazardous or non-hazardous materials from the job site, Licensee shall furnish to Railroad Company evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

If a SUBCONTRACTOR is to be employed by CONTRACTOR for the installation of the work, before commencing work, the SUBCONTRACTOR shall provide and thereafter maintain all of the insurance described in parts A through D, above, in the same forms and amounts as provided for above and subject to the other terms and conditions provided for in paragraphs A through D above.

In the alternative, at the Railroad's option, if a SUBCONTRACTOR is to be employed by CONTRACTOR for the installation of the WORK, before the SUBCONTRACTOR commences work, CONTRACTOR may provide and thereafter maintain all of the insurance described in parts A through D, above, in the same forms and amounts as provided for above and subject to the other terms and conditions provided for above, provided that all such insurance names SUBCONTRACTOR as an additional insured and all such insurance provides coverage to all additional insureds, including the Railroad, for any liability arising out of WORK performed by all other additional insureds, including SUBCONTRACTOR.

Before commencing work, Licensee shall deliver to Railroad Company a certificate of insurance evidencing the foregoing coverage, and upon request, Licensee shall deliver a certified, true and complete copy of the policy or policies at its sole cost and expense. The policies shall provide for not less than thirty (30) days prior written notice to Railroad Company of cancellation of or any material change in, the policies, and shall contain the waiver of right of subrogation.

All persons on Railroad Company's property shall be suitably dressed to perform his/her duties safely and in a manner that will not interfere with his/her vision, hearing or free use of his/her hands or feet. Only waist-length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. All persons shall wear sturdy and protective footwear. All persons 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. All persons shall wear personal protective equipment as specified by Federal and/or State rules, regulations or Railroad Company's requirements. Specifically, the following protective equipment to be worn shall be:

1. Protective head gear (hardhats) that meets ANSI Z89.1, latest revision. It is suggested that all hard hats be affixed with Contractor's company name or logo.
2. Eye protection (safety glasses with side shields) that meet ANSI Z87.1, latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
3. Hearing protection appropriate for noise levels that will be occurring on the job site.
4. Safety/reflective vests.

The rate of pay for Railroad Company employees will be the prevailing hourly rate for not less than eight (8) hours for the class of labor at regular rates during regularly assigned work hours, and at overtime rates outside of regular hours and in accordance with Labor Agreements or Schedules plus Railroad Company's current standard additives in each instance.

Wage rates are subject to change, at any time, by law or agreement between Railroad Company and employees, and may be retroactive because of negotiations or a ruling by an

authorized Governmental Agent. If the wage rates are changed, Licensee and/or their contractor shall pay on the basis of the new rates and/or additives.

No digging, trenching, or boring on Railroad Company property shall be conducted without Railroad Company's written approval of the plans that were furnished to Railroad Company's Engineering Manager at least thirty (30) in advance of the excavation.

The following temporary clearances are the minimum that must be maintained at all times during any operation on or adjacent to Railroad Company property:

- Vertical: 22'-0" (7.00 m) above top of highest rail within 12'-0" (3.81 m) of the centerline of any track
- Horizontal: 12'-0" (3.81 m) from centerline of the nearest track, measured at right angles thereto

If lesser clearances than the above are required for any part of the work, Licensee and/or their contractor shall secure written authorization from Railroad Company's Engineering Manager for such lesser clearances in advance of the start of that portion of the work.

No materials, supplies, or equipment will be stored within twenty-five (25) feet from the centerline of any railroad track, measured at right angles thereto.

Licensee and/or their contractor will be required upon the completion of the work to remove from within the limits of Railroad Company's property all machinery, equipment, surplus materials, false work, rubbish or temporary buildings, and to leave said property in a condition satisfactory to the Engineering Manager of Railroad Company or their authorized representative.

Nothing in these Special Provisions shall be construed to place any responsibility on Railroad Company for the quality or conduct of the work performed by Licensee and/or their contractor hereunder. Any approval given or supervision exercised by Railroad Company hereunder, or failure of Railroad Company to object to any work done, material used, or method of operation shall not be construed to relieve Licensee and/or their contractor of any obligations pursuant hereto or under the License these Special Provisions are appended to.