



Request for City Council Committee Action from the Department of Public Works

Date: June 18, 2013

To: Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee

Subject: **Agreement with Burlington Northern Santa Fe Railway for Temporary Occupancy Permit**

Recommendation:

Authorize the proper City officials to enter into an agreement with Burlington Northern Santa Fe Railway (BNSF) for a temporary occupancy permit related to a project to rehabilitate a drain pipe under BNSF and City property.

Previous Directives: None

Department Information:

Prepared by: Peter J. Pfister, Professional Engineer

Approved by: _____

Steven A. Kotke, P.E., Director of Public Works

Presenters in Committee: Peter J. Pfister

Reviews: NA

Financial Impact

- No financial impact

Community Impact

- Neighborhood Notification
- City Goals
- Comprehensive Plan
- Zoning Code
- Other

Supporting Information

Project Overview

Water Treatment and Distribution Services has a cast iron drain pipe from the Columbia Heights Membrane Filtration Plant that crosses the property of BNSF along 37th Avenue

Northeast, between Main Street and East River Road. The pipe conveys spent filter backwash from the membrane plant to the Fridley campus where it can be treated for recycling or discharge. The pipe is broken, and a project to repair the break is underway, with the request for approval of a contract for repairs in process. The required repairs do not constitute an emergency; however, exigent attention is recommended.

In order to perform the repair, City and Contractor personnel will need to access and use both City property and adjacent BNSF property. The project location is in the vicinity of an active BNSF rail line. BNSF requires that a temporary occupancy permit be obtained for use of its property, a copy of which is attached. The Permit contains indemnification language and spells out standard rights and responsibilities of the parties.

Permit Agreement

The permit agreement allows the City and its agents to use portions of BNSF property to perform work on City-Owned pipes. The agreement does not affect the City's pre-existing property rights. In exchange for a nonexclusive license to enter BNSF property for a term of six months, the City agrees to terms including the following:

- Pay a permit fee of \$1,000 and reimburse BNSF for actual expenses for providing a flag person to assist with the work.
- Observe BNSF safety rules and comply with all applicable laws.
- Utilize prudent and professional environmental practices.
- Use the property in a manner which allows for BNSF's operations and does not otherwise disturb BNSF property.
- Indemnify BNSF from all claims related to or arising out of the work being performed by the City and/or its agents.
- The City's Contractor would be required to obtain special insurances for work carried out on the property.
- Report any conditions that may cause hazards to persons, property, or the environment promptly to BNSF.
- Remove equipment and restore the premises following completion of work.
- The agreement allows for the City, at its option, to participate in BNSF's Railroad Protective Liability Insurance for the project, This is a special type of insurance that BNSF requires for work on its premises. It is recommended by staff that the City elect to participate rather than obtaining its own policy.
- Follow specified notice and termination provisions
- Apply Texas law to the Agreement so as to reflect the location of BNSF headquarters.

The City Attorney's Office has reviewed and edited the Permit, and has issued preliminary approval of all terms and provisions.