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DEBORAH L. PEYTON, RECORDER/REGISTRA
DELAWARE COUNTY IOWA

EWS Drafted by/Return to: Josh Kritenbrink 402-398-7618
Northern Natural Gas Company, 1111 South 103rd Street, Omaha, NE 68124-1000
P.O. Box 3330

73701-5

## ENCROACHMENT AGREEMENT

This instrument made and entered into this 27th day of April, 2006, by and between NORTHERN NATURAL GAS COMPANY, a Delaware corporation, (hereinafter referred to as "Northern"), with principal offices at 1111 South 103rd Street, Omaha, Nebraska 68124-1000, and CITY OF MANCHESTER, IOWA (hereinafter referred to as "Owner").

WITNESSETH THAT:

WHEREAS, Northern is the holder of an Easement granted by Wm. Rossow, a widower, on the 11th day of June, 1956, covering the following described premises in Delaware County, Iowa:

> The East one half of the North 34 acres of West 42 acres of East fractional one half of Northeast Quarter of Section 6, Township 88 North, Range 5 West; and

which Easement was recorded the 17th day of September, 1956, in Book I, at Page 342, in the Office of the Recorder for Delaware County, Iowa (hereinafter referred to as "Easement"); and

WHEREAS, pursuant to the authority contained in said Easement, Northern has constructed and currently operates and maintains a 6-inch pipeline (IAB73701), along with the right to install additional facilities from time to time (hereinafter referred to as "Pipeline Facilities"), across and through the above described premises; and

WHEREAS, Owner is the present owner of the following described real property, with Pipeline Facilities situated upon the following described land in Delaware County, Iowa (hereinafter referred to as the "Owned Premises"):

> Burrington Road, located in the Northeast Quarter (NE¼) of Section 6, Township 88 North, Range 5 West.

WHEREAS, Owner plans to construct a 12-inch water main (hereinafter referred to as "Encroachment") upon and within a portion of the confines of Northern's Easement as depicted on Exhibit "A", with this written consent; and

WHEREAS, Owner has been advised by Northern that Northern is a natural gas transmission company and that Northern operates a high pressure underground natural gas pipeline through the Owned Premises; and

WHEREAS, Owner has requested permission from Northern to maintain, use, and enjoy the Encroachment upon a portion of Northern's Easement and in close proximity to Northern's Pipeline Facilities; and

WHEREAS, Northern is willing to grant such permission upon the terms and conditions set forth as follows.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. Northern hereby grants permission to Owner to maintain, operate and use upon the Owned Premises and in close proximity to Northern's Pipeline Facilities, the said Encroachment, subject to the following conditions:

A. That Owner assumes all risks for damages, injuries, or loss to either property or persons, which may be incurred by Owner or its respective agents, invitees, or licensees present on or in the vicinity of the Easement and in any way associated with said Encroachment.

B. That the permission granted herein is limited exclusively to the proposed Encroachment within Northern's Easement. Owner shall not alter the grade or permit such alteration anywhere on the land upon which Northern has reserved its easement rights, without the prior express written consent of Northern.

C. That Owner shall at all times conduct all its activities on said Easement in such a manner as not to interfere with or impede the operation of Northern's Pipeline Facilities and activities in any manner whatsoever.

D. That Owner shall not plant any trees or shrubs within the confines of Northern's Easement without the prior express written consent of Northern.

2. Owner agrees to indemnify, protect, and hold Northern, its parent, affiliates, subsidiaries, and their directors, officers, employees, representatives, and agents harmless from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage, injury, suit, proceeding, judgment, cost, or expense of whatever kind or nature, including but not limited to reasonable attorneys' fees, arising from or as a result of any incident, act, action, cause of action, negligence, transaction or omission of Owner in connection with, or incidental to the construction, operation, maintenance, or use of the said Encroachment within, upon or in the vicinity of the Easement Area, or from the operation, maintenance, use or presence of Northern's Pipeline Facilities upon or in the vicinity of the Encroachment except where such loss, cost, liability, or expense was proximately caused by the negligence of Northern or its employees. It is understood and agreed by the parties that under this Agreement, Owners shall be jointly and severally liable.

3. Owner agrees that protection of Northern's Pipeline Facilities will be maintained at all times.

4. Should Northern need to remove any of Owner's said Encroachment within its Easement in order to construct, maintain, operate, repair, remove, or resize Northern's existing or additional Pipeline Facilities, Owner or its respective heirs, successors, and assigns shall pay the cost of removing and replacing or reinstalling said Encroachment. In addition, all repair and maintenance work performed by Northern on its existing or additional Pipeline Facilities located on the Owned Premises shall be performed in a reasonable workmanlike manner and Northern shall restore the surface and grade of the Owned Premises where the work is performed, but shall not be liable for loss, damage, or replacement to Owner's said Encroachment or any associated equipment and facilities that exist within the Easement, and in this regard, Owner hereby releases Northern, its employees, agents, officers, and directors from any and all liability for any such loss or damage.

5. The Parties hereto understand that this Agreement in no way constitutes a waiver by Northern of its rights to enjoy its Easement unencumbered by the construction of said Encroachment within Northern's Easement.

6. It is expressly agreed to by and between the parties hereto that if Owner is in violation of any terms or conditions set forth in this Agreement, Northern, at its option, may terminate this Agreement upon ten (10) days' notice to the Owner. In the event of such termination, Owner shall immediately remove any and all of said Encroachment which may be situated on the Easement, or if Owner fails to remove any and all of said Encroachment, Northern may, at its option, remove said Encroachment at the expense of Owners and without any liability whatsoever. It is further agreed that the failure by Northern to exercise such option as to any such violation shall not constitute a waiver of Northern's future right to exercise such option as to the same or any future violation.

7. The provisions of the Easement, and all rights, powers, privileges, and duties, obligations, and liabilities created thereby, remain in full force and effect and are not affected hereby except to the extent and in the manner set forth above.

8. Owner agrees to indemnify, defend and hold Northern, its parent and affiliated companies, and the directors, officers and employees of any such corporate entities harmless from and against any liability, damage, claims, loss, cause of action, suit, proceeding, judgment, cost (including the cost or expense of environmental response, removal or remediation activities), fees or expense, including reasonable attorney's fees arising from: (1) non-compliance with any laws, regulations and orders applicable to the ownership or the operation and maintenance of the said Encroachment on the Owned Premises described herein, and (2) any incidents, acts, releases, negligence, transactions or omissions, or conditions on or affecting the Easement that would (i) contribute to or constitute a violation of any local, state or federal environmental rule, regulation, law or judicial order, (ii) result, in whole or in part, in any requirement to clean up or otherwise remedy or remediate a condition, (iii) give rise to any lien, liability, injunction, order, restriction, claim, expense, damage, fine or penalty, or (iv) adversely affect human health or the environment at or near the Easement.

This instrument and the covenants and agreements herein contained shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties and the benefits of this Agreement shall run with the land.

IN WITNESS WHEREOF, the parties have executed this instrument the day and year first above written.

"NORTHERN"
NORTHERN NATURAL GAS COMPANY

By Glen R Hass
Glen R. Hass
Agent and Attorney in Fact

"OWNER"

By Milt L. Kramer
Milt Kramer
Mayor

STATE OF NEBRASKA )
)SS
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 1st day of May, 2006, by *Glen R. Hass, Agent and Attorney-in-Fact*, for Northern Natural Gas Company, a Delaware corporation, on behalf of the corporation.

(S E A L)

GENERAL NOTARY - State of Nebraska
GAIL L. SPEVAK
My Comm. Exp. June 28, 2007

Gail L. Spevak
Notary Public
My Commission Expires 6-28-07

STATE OF Iowa )
)SS
COUNTY OF Delaware )

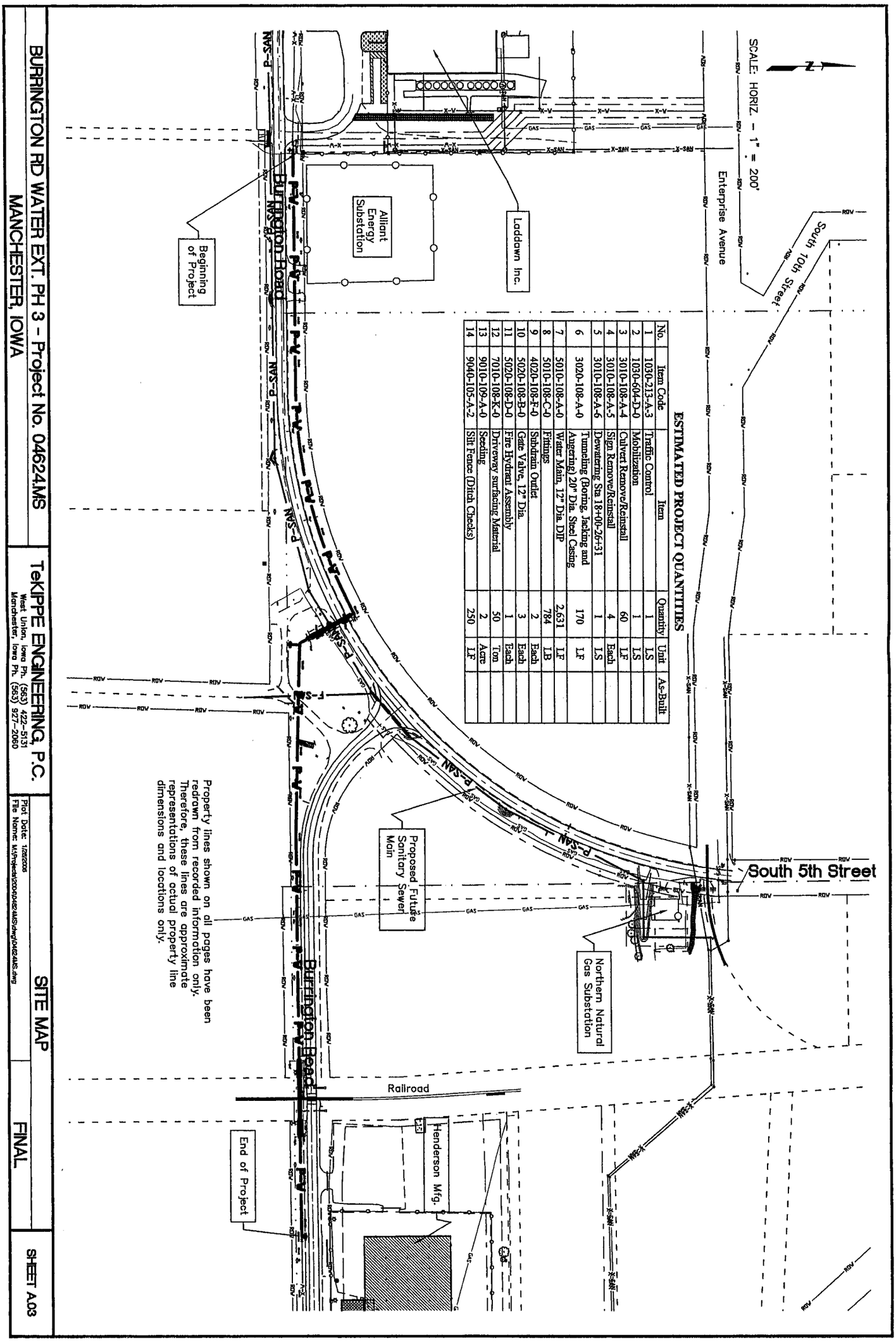
The foregoing instrument was acknowledged before me this 27th day of April, 2006, by Milt Kramer, Mayor, for City of Manchester, Iowa.

(S E A L)

LAURA K. THOMAS
Commission Number 718135
My Commission Expires
8-26-08

Laura K. Thomas
Notary Public
My Commission Expires 8-26-08

Exhibit "A"




**ESTIMATED PROJECT QUANTITIES**

| No. | Item Code | Item | Quantity | Unit | As-Built |
|---|---|---|---|---|---|
| 1 | 1030-213-A-3 | Traffic Control | 1 | LS | |
| 2 | 1030-604-D-0 | Mobilization | 1 | LS | |
| 3 | 3010-108-A-4 | Culvert Remove/Reinstall | 60 | LF | |
| 4 | 3010-108-A-5 | Sign Remove/Reinstall | 4 | Each | |
| 5 | 3010-108-A-6 | Dewatering Sta 18+00-26+31 | 1 | LS | |
| 6 | 3020-108-A-0 | Tunneling (Boring, Jacking and Augering) 20" Dia. Steel Casing | 170 | LF | |
| 7 | 5010-108-A-0 | Water Main, 12" Dia. DIP | 2,631 | LF | |
| 8 | 5010-108-C-0 | Fittings | 784 | LB | |
| 9 | 4020-108-F-0 | Subdrain Outlet | 2 | Each | |
| 10 | 5020-108-B-0 | Gate Valve, 12" Dia. | 3 | Each | |
| 11 | 5020-108-D-0 | Fire Hydrant Assembly | 1 | Each | |
| 12 | 7010-108-K-0 | Driveway surfacing Material | 50 | Ton | |
| 13 | 9010-109-A-0 | Seeding | 2 | Acre | |
| 14 | 9040-105-A-2 | Silt Fence (Ditch Checks) | 250 | LF | |

BURRINGTON RD WATER EXT. PH 3 - Project No. 04624.MS

MANCHESTER, IOWA

TeKIPPE ENGINEERING, P.C.

West Union, Iowa Ph. (563) 422-5131
Manchester, Iowa Ph. (563) 927-2060

SITE MAP

Plot Date: 1/28/2005
File Name: M:\Projects\2004\04624\MS\dwg\04624MS.dwg

FINAL

SHEET A.03