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2020-2331

Pages 9 Doc Tax \$ _____ EX # _____
Fee Amt \$ 58.00 Ck Pd \$ _____
Cash PD \$ _____ Refund \$ _____
Paid by _____ Ck # _____
_____ Ck # _____
CUSTOMER CHG CODE #1 - \$58.00

71-OT
96-OT

NE Dept of Environment and Energy
By: _____ DEE182 _____

State of Nebraska Gage County ss. Entered in
Numerical Index and filed for record the
23RD day of JULY, 2020
at 2:15 o'clock P. M., and recorded as
INSTRUMENT NO. 2020-2331

Donna Shivers
Register of Deeds

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

TRACT INDEX XX
COMPUTER 0
COMPARED 0
PAGED 0

City of Beatrice, Nebraska
400 Ella Street
Beatrice, NE 68310

By _____ Deputy

Space Above for Record's Use Only

**AMENDED AND RESTATED
ENVIRONMENTAL COVENANT**

This Amended and Restated Environmental Covenant is executed this 23rd day of July, 2020, by the City of Beatrice, Grantor and the City of Beatrice, Holder/Grantee, pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613.

RECITALS:

A. Grantor is the owner of real property legally described as follows:

A tract of land being a part of lots 8, 9, 10, 11, and 12, Block 71, a part of Lot 7, Block 96, a part of vacated Front Street, and a part of vacated Bell Street, all located in the Original Town of Beatrice, Gage County, Nebraska as more fully described on the "Legal Description" attached hereto and incorporated herein.

(hereinafter "Property").

B. Holder/Grantee is the owner of the Property and is a municipality located in Gage County, Nebraska.

C. The Property has been used for a former manufactured gas plant and was the site of release(s) of certain hazardous substances, pollutants or contaminants.

D. The Property is the subject of an environmental response project or action pursuant to the Nebraska Voluntary Cleanup Program authorized by the Remedial Action Plan Monitoring Act, Neb. Rev. Stat. § 81-15,181 et seq. (Reissue 2014), the Nebraska

2020-2331



Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 et seq. (Reissue 2014), and all rules and regulations promulgated thereunder.

E. The Agency, as defined in Neb. Rev. Stat. §76-2602, is the Nebraska Department of Environmental Quality now known as the Nebraska Department of Environment and Energy ("Agency").

F. The selected environmental response project or action is documented in a Remedial Action Plan (RAP) dated August 2016 public record 20160048148 and approved by the Agency on December 28, 2016. The administrative record for this project or action is available to the public and located at the Agency, 1200 N St., Suite 400, Lincoln, NE 68508.

G. This document amended and restates the Environmental Covenant dated the 15th day of July, 2019 and recorded on the 24th day of July, 2019 as Instrument no. 2019-1864 in the office of the Register of Deeds for Gage County, Nebraska.

NOW, THEREFORE,

Grantor hereby declares that the Property will hereinafter be bound by, held, sold and conveyed subject to the following terms, conditions, obligations, and restrictions set forth herein, which will run with the land, in perpetuity, unless amended or terminated pursuant to Paragraph 11 below.

1: Representations and Warranties. The Grantor warrants to the other signatories to this Covenant that:

- a. The Grantor is the title owner of the Property;
- b. The Grantor holds sufficient title to the Property to grant the rights and interests described in this Environmental Covenant; and
- c. The Grantor has identified no other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lien holders.

2: Purpose. The purpose of this Environmental Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to contamination that remains on the Property and to ensure that the Property is not developed, used, or operated in a manner incompatible with the approved remediation.

3: Running with the Land. The Environmental Covenant is perpetual and conveys to the Holder/Grantee real property rights that will run with the land, and gives to the Agency the right to enforce the activity and use limitations described in Paragraph 4. The terms, conditions, obligations, and limitations in this Environmental Covenant are binding on the Grantor, its successors, heirs, executors, assigns and transferees, and all persons, corporations or other entities obtaining or succeeding to any right, title or interest in the Property after the effective date of this Environmental Covenant. All real estate located within the Property are subject to the terms, conditions, obligations and

2020-2331

limitations in this Environmental Covenant. Acceptance of any conveyance, transfer, lease or sublease of the Property, or part thereof, will bind each transferee, its heirs, executors, successors, transferees and assigns to the terms, conditions, obligations, and limitations during their respective period of ownership or occupancy, as applicable. Notice of any transfer of any interest in the Property must be promptly provided to the Agency by the transferor. The Grantor is bound by the terms, conditions, obligations and limitations in this Environmental Covenant only during its period of ownership or occupancy after the effective date. This Environmental Covenant in no way amends, modifies, limits or releases the Grantor from its duties and obligations under the approved environmental response project or action.

4. Activity and Use Limitations. The Property is subject to the following activity and use limitations:

- a. Land use limitations: The Property shall not be used for any purpose other than open space, for existing utility infrastructure, and for access to the City property and utilities on the existing access road. Permanent buildings or other barriers or restrictions to conveyance of floodwater are prohibited.
- b. Groundwater use limitations: Groundwater use is prohibited with the exception of sampling for water quality characterization or treatment. No wells other than water quality monitoring wells or closed loop ground heat exchange wells are allowed.
- c. Disturbance limitations: Disturbance of clean fill cover or onsite excavation is limited to necessary access road maintenance, utility installation and repair or replacement, repair or maintenance of the site, and similar types of work. Any digging, excavating, grading, earth moving, or any other soil or land disturbance must be in accordance with the approved Operations and Maintenance Plan; and
- d. Inspections: Until August 26, 2050, the Property shall be inspected annually and after significant flood events to maintain the integrity of the clean fill cover over the ISS columns, of the riverbank, of the vegetation, and to prevent or mitigate erosion and promote stability, as more fully set out in the Operation and Maintenance Plan dated March 2019 public record number 20190027559 as approved by the Agency on March 22, 2019 and as amended by public recorded number 20200064504 as approved by the Agency on April 23, 2020. The maintenance, mitigation, utility waste management and notification requirements of the amended Operation and Maintenance Plan remain in effect beyond said date.

5. Reserved Rights of Grantor. The Grantor hereby reserves unto itself and its successors all rights and privileges in and to the use of the Property which are not incompatible with the limitations granted herein.

6. Compliance Reporting. One year from the effective date of this Environmental Covenant, and on an annual basis thereafter until August 26, 2050, the then-current

2020-2331

owner of the Property shall submit to the Agency written documentation verifying that the activity and use limitations remain in place and are being complied with. During said period and thereafter, any signatory to this Environmental Covenant shall notify the Agency as soon as possible of conditions that would constitute a breach of the activity and use limitations.

7. Enforcement. The terms of this Environmental Covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with Neb. Rev. Stat. §76-2611. Failure to exercise such rights of enforcement will in no event bar subsequent enforcement by any signatory and shall not be deemed a waiver of the signatory's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict or limit the Agency from exercising any authority under applicable law. The prevailing party in any action to enforce any provision of this Environmental Covenant is entitled to recover all costs of such action. Any Holder/Grantee and the Agency shall be entitled to recover damages caused by violations of this Environmental Covenant.

8. Rights of Access. The Grantor and any then-current owner hereby grants to the Agency, its agents, contractors, and employees, the right of access to the Property to monitor compliance with the terms, conditions, obligations, and limitations of this Environmental Covenant. Nothing in this Environmental Covenant shall limit or otherwise affect the Agency's right of entry and access or the Agency's authority to take response actions under applicable law.

9. Notice Upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property, including but not limited to, deeds, leases and mortgages, shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be in substantially the form set forth below. Within thirty (30) calendar days of the date any such instrument of conveyance is executed, the Grantor or then-owner must provide the Agency with a certified copy of said instrument and its recording reference in the Gage County Register of Deeds.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED _____, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF GAGE COUNTY, NEBRASKA ON _____, IN [DOCUMENT _____, BOOK _____, PAGE _____], AND APPROVED BY THE BEATRICE CITY COUNCIL ON _____. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a. Land use limitations: The Property shall not be used for any purpose other than open space, for existing utility infrastructure, and for access to the City property and utilities on the existing access road. Permanent buildings or other barriers or restrictions to conveyance of floodwater are prohibited.
- b. Groundwater use limitations: Groundwater use is prohibited with the exception of sampling for water quality characterization or treatment. No

2020-2331

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- c. Disturbance limitations: Disturbance of clean fill cover or onsite excavation is limited to necessary access road maintenance, utility installation and repair or replacement, repair or maintenance of the site, and similar types of work. Any digging, excavating, grading, earth moving, or any other soil or land disturbance must be in accordance with the approved Operations and Maintenance Plan; and
- d. Inspections: The Property shall be inspected annually and after significant flood events to maintain the integrity of the clean fill cover over the ISS columns, of the riverbank, of the vegetation, and to prevent or mitigate erosion and promote stability, as more fully set out in the Operation and Maintenance Plan dated March 2019 public record number 20190027559 as approved by the Agency on March 22, 2019 and as amended by public record number 20200064504 as approved by the Agency on April 23, 2020.

10. Waiver of Certain Defenses. The persons and entities bound by this Environmental Covenant hereby waive any defense to the enforcement of this Environmental Covenant based on laches, estoppel, or statute of limitations.

11. Amendment and Termination. Amendment or termination of this Environmental Covenant shall comply with Neb. Rev. Stat. §76-2609 and §76-2610. The terms of this Environmental Covenant may be modified or terminated by written consent of the Director of the Agency, the then current title owner, and all original signatories unless exempted by Neb. Rev. Stat. §76-2609 and §76-2610. The amendment or termination is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any amendment or termination of this Environmental covenant shall be as provided by Neb. Rev. Stat. §76-2609. As provided in Neb. Rev. Stat. §76-2610(c), except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

12. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Captions. The captions in this Environmental Covenant are for convenience and reference only and are not a part of this instrument and shall have no effect upon construction or interpretation.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

15. Recordation. Within thirty (30) calendar days after the date of the Agency's approval of this Environmental Covenant, the Grantor shall record the Environmental

2020-2331

Covenant, in the same manner as a deed to the property, with the Gage County Register of Deeds.

16. Effective Date. The effective date of this Environmental Covenant amended hereby is July 24, 2019 and the effective date of this Amended and Restated Environmental Covenant is the date upon which the fully executed hereof has been recorded as a deed record for the Property with the Gage County Register of Deeds.

17. Distribution of Environmental Covenant. Within sixty (60) calendar days of the effective date, the Grantor shall distribute a file-stamped and date-stamped copy of the recorded Environmental Covenant to:

Regional EHS Manager
Centel Corporation
600 New Century Parkway
New Century, KS 66031

EHS Property Protection and Network Safety Manager
Sprint Corporation
6450 Sprint Parkway
KSOPHN-0404-4B302
Overland Park, KS 66251

18. Notice. Unless otherwise notified in writing by the Agency, any document or communication required by this Environmental Covenant shall be submitted to:

Remediation Section
Waste Management Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, NE 68509-8922

Regional EHS Manager
Centel Corporation
600 New Century Parkway
New Century, KS 66031

EHS Property Protection and Network Safety Manager
Sprint Corporation
6450 Sprint Parkway
KSOPHN-0404-4B302
Overland Park, KS 66251

City Administrator
City of Beatrice

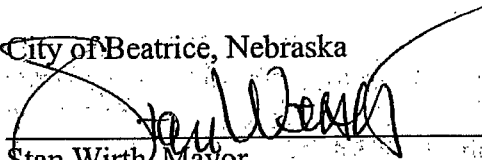
2020-2331

400 Ella Street
Beatrice, NE 68310

GRANTOR:

IN WITNESS WHEREOF, the undersigned as authorized representative of City of Beatrice as Grantor, as the owner of the Property and as the Grantee and the Holder of this Environmental Covenant, hereby consents to this Amended and Restated Environmental Covenant and has caused this Amended and Restated Environmental Covenant to be executed on this 22nd day of July, 2020.

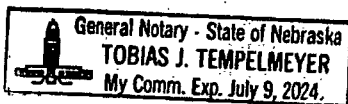
By: City of Beatrice, Nebraska




Stan Wirth, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF GAGE)

The foregoing instrument was acknowledged before me this 20th of July, 2020 by Stan Wirth, as Mayor for and on behalf of the City of Beatrice, Nebraska who acknowledged said Environmental Covenant on behalf of Grantor.





Notary Public

(SEAL)

AGENCY:

IN WITNESS WHEREOF, Nebraska Department of Environmental Quality as an Agency defined in Neb. Rev. Stat. § 76-2602(2), is not a party to this Environmental Covenant and does not acquire or assume any liability, obligation, or responsibility under state or federal law by virtue of signing this Environmental Covenant, nor is Nebraska Department of Environmental Quality a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).

2020-2331

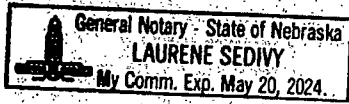
In accordance with Neb. Rev. Stat. §76-2610 (a)(1), the Agency hereby consents to this Amended and Restated Environmental Covenant.

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

By: [Signature]
Director

STATE OF NEBRASKA)
) ss.
COUNTY OF Lancaster)

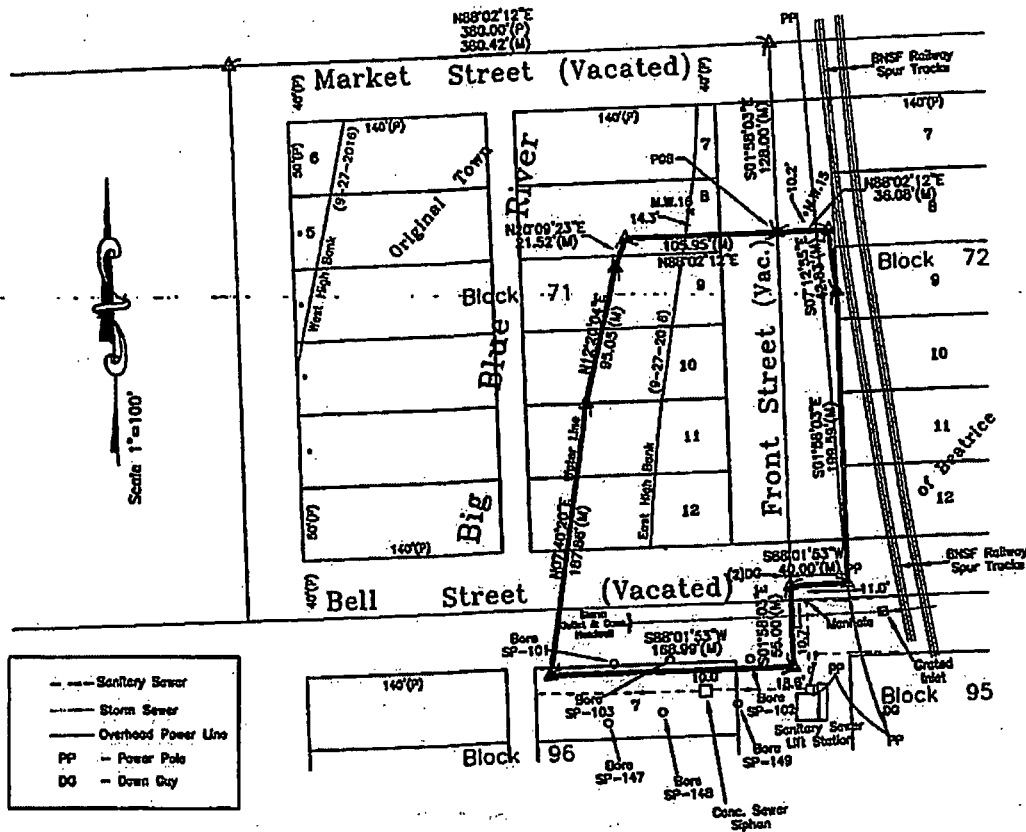
The foregoing instrument was acknowledged before me this 14 of July, 2020 by Jim Macy who acknowledged said Environmental Covenant on behalf of the Agency.



[Signature]
Notary Public

(SEAL)

2020-2331



LEGAL DESCRIPTION

A tract of land being a part of Lots 8 through 12, Block 71, a part of Lot 7, Block 96, a part of vacated Front Street, and a part of vacated Bell Street, all located in Original Town of Beatrice, Gage County, Nebraska.

For the purpose of this legal description, the basis of bearings is the centerline of vacated Market Street, having an assumed reference bearing of N 88°02'12" E.

Referring to the intersection of the centerlines of vacated Market Street and vacated Front Street; thence southerly S 01°58'03" E, on the centerline of vacated Front Street, 128.00 feet, to the Point of Beginning; thence easterly N 88°02'12" E, parallel with the centerline of vacated Market Street, 36.08 feet; thence southerly S 07°12'55" E, 42.83 feet, to a point of intersection on the East Right of Way line of vacated Front Street; thence southerly S 01°58'03" E, on the East Right of Way line of vacated Front Street, 199.59 feet, to a point 10.00 feet northerly of as measured perpendicular to the centerline of vacated Bell Street; thence westerly S 88° 01'53" W, on a line 10 feet northerly from and parallel with the centerline of vacated Bell Street, 40.00 feet, to a point of intersection on the centerline of vacated Front Street; thence southerly S 10°58'03" E, on the centerline of vacated Front Street, 55.00 feet, to a point 45.00 feet southerly from as measured perpendicular to the centerline of vacated Bell Street; thence westerly S 88°01'53" W, on a line 45.00 feet southerly from and parallel with the centerline of vacated Bell Street, 168.99 feet, to the East edge of water of the Big Blue River; thence on the East edge of water of the Big Blue River, on the following described courses, northerly N 07°40'20" E, 187.86 feet; thence northerly N 12°20'04" E, 95.05 feet; thence northerly N 20°09'23" E, 21.52 feet; thence leaving the East edge of water of the Big Blue River easterly N 88°02'12" E, parallel with the centerline of vacated Market Street, 105.95 feet, to a point of intersection on the centerline of vacated Front Street, said point also being the true Point of Beginning:

Containing a calculated area of 1.188 acres more or less or 51,769.71 square feet more or less. Subject to all easements, restrictions, and reservations of record.

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of Beatrice, Nebraska
400 Ella Street
Beatrice, NE 68310

Space Above for Record's Use Only

**AFFIDAVIT OF DISTRIBUTION OF
AMENDED AND RESTATED ENVIRONMENTAL COVENANT**

State of Nebraska)
County of Gage) SS.

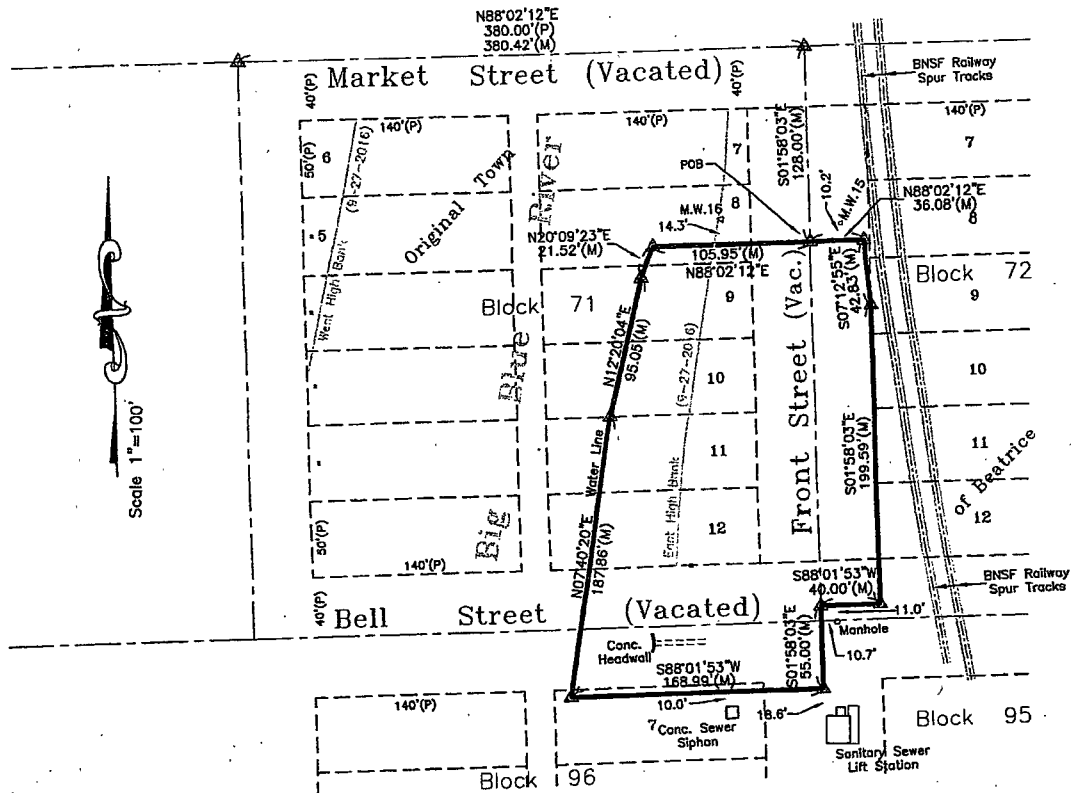
The undersigned being first duly sworn on oath states:

1. My name is Tobias Tempelmeyer and I am the City Administrator for the City of Beatrice, Nebraska and this affidavit is made based on my personal knowledge.
2. I know and attest that a certain Amended and Restated Environmental Covenant, executed on the 22nd day of July, 2020, by the City of Beatrice, Grantor and the City of Beatrice, Holder/Grantee, pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613 as to real property legally described as follows:

A tract of land being a part of lots 8, 9, 10, 11, and 12, Block 71, a part of Lot 7, Block 96, a part of vacated Front Street, and a part of vacated Bell Street, all located in the Original Town of Beatrice, Gage County, Nebraska as more fully described on the "Legal Description" attached hereto and incorporated herein.

(hereinafter "Property") was recorded with the Register of Deeds for Gage County, Nebraska on the 23rd day of July 2020 as Instrument No. 2020-2331.

3. I know and attest that on the 3rd day of August, 2020, I on behalf of the City of Beatrice distributed a file-stamped and date-stamped copy of the recorded Environmental Covenant by United States Postal Service overnight priority mail, to:



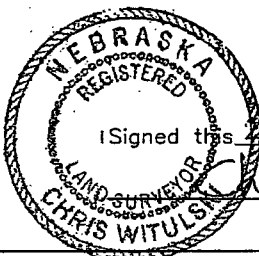
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Containing a calculated area of 1.188 acres more or less or 51,769.71 square feet more or less. Subject to all easements, restrictions, and reservations of record.



I Signed this 23rd day of April, 2019.

Chris W. Wituski

Chris Wituski