

PIPELINE CROSSING CONTRACT (KCS Contract No. _____)

THIS AGREEMENT is effective this 22nd day of August, 2016 by and between **THE KANSAS CITY SOUTHERN RAILWAY COMPANY**, a Missouri corporation, called herein "Railway Company", and **THE CITY OF DENTON, TEXAS**, a Texas home-rule municipal corporation, to be addressed at 221 N. Elm Street, Denton, TX 76201, called herein "Licensee".

WITNESSETH:

WHEREAS, concurrently with execution of this Contract, Agreement #SF0157496, dated May 22, 1979 between Railway Company and Licensee to construct and maintain one (1) water pipeline one hundred thirty six point four (136.4) feet in length and (6.90) inches in diameter across and along the right of way of Railway company at Denton (Denton County), Texas, is hereby superseded and terminated, provided, however, that this termination shall not extinguish any rights or obligation arising from breaches of said earlier Agreement during its existence.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Railway Company, without any warranty or guarantee of suitability of the premises for Licensee's or any other purpose, hereby permits Licensee a license to construct, maintain, operate, use and remove a proposed water pipeline under Railway Company's tracks and right-of-way at Mile Post D-105.10 (Alliance Subdivision), Denton (Denton County), TX, the course of the pipeline being described as follows:

As indicated on print of drawing no. 16-2961 dated 07-14-2016 and approved 07-15-2016, marked Exhibit "A", attached hereto and incorporated herein by reference.

The rights granted under this Agreement are subject to all outstanding superior rights whether or not of record (including those in favor of licensees and lessees of Railway Company's property, and others) and the right of Railway Company to renew and extend the same, and is made without covenant of title, or for quiet enjoyment. Railway Company does not warrant title and Licensee accepts the rights granted herein and shall make no claim against Railway Company for deficiency of title. Licensee acknowledges that the Railway Company's interest in the right-of-way varies from segment to segment and may include lesser interests than fee title. Licensee shall, at Licensee's sole cost and expense, obtain any and all necessary rights and consents from parties other than Railway Company which may have or claim any right, title or interest in the property upon which the Railway Company's right-of-way is located.

2. The carrier pipe shall consist of 12.75" X 136' PVC DR-18 having a minimum wall thickness of 0.50" and shall be encased in 22" x 136' steel having a minimum wall thickness of 0.50" and a maximum yield point of 50,000 PSI. Maximum operating pressure of the pipeline shall not be greater than 150 PSI. Licensee expressly agrees that its under-track installation shall be by conventional dry bore method and that no boring or excavation shall occur within Railway Company's right-of-way, nor shall any boring occur in the track embankment. The angle of the pipeline crossing beneath Railway Company's property and tracks shall be no less than 113°.

Construction, maintenance, operation, use and removal of the pipeline shall not endanger the safety or condition of Railway Company's property in any way, or the operation of trains or cars, and the pipeline shall be laid at a minimum depth of 10' below the bottom of Railway Company's base of rail and at a minimum depth of 6' below ground level at all other points on the right-of-way. Excavations made on Railway Company's property shall be promptly refilled by Licensee, the earth well tamped, and the ground left in the same condition as before laying of the pipeline.

The pipeline shall be maintained so as to prevent the escape of its contents being conveyed. Connections or valves shall not be placed in the pipeline nearer than forty feet (40') from the center of Railway Company's nearest track. Further, the pipeline and its operation and use, shall comply with any and all applicable governmental laws, rules, and regulations. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 60-250.5, 60-741.5, and 29 C.F.R. part 470, relating to equal employment opportunity, if applicable. If required by Railway Company, gates and check valves shall be placed in convenient locations. Licensee agrees that no hydrostatic pressure testing shall be allowed unless the carrier pipe has been encased in a steel casing meeting Railway Company and AREMA specifications.

Construction, maintenance, operation, use and removal of the pipeline shall not endanger the safety or condition of Railway Company's employees or property in any way, or the operation of trains or cars. The location of the pipeline shall be marked, with markers maintained and plainly visible at the right-of-way lines.

3. Licensee shall promptly make necessary repairs to the pipeline, and, in the event of Licensee's failure to do so, repairs may be made by Railway Company at Licensee's expense, which cost Licensee expressly agrees to pay upon presentation of the bill.

Should Railway Company at any time decide a change in the location or other changes in the pipeline are desirable, Licensee will at its cost make the changes at Railway Company's request, and, upon the failure of Licensee to do so, Railway Company may make such changes at Licensee's expense, which expense Licensee expressly agrees to pay upon receipt of the bill.

LICENSEE HEREBY ASSUMES ANY AND ALL RISKS ARISING OUT OF, INCIDENT TO, OR IN ANY WAY CONNECTED WITH THE CONSTRUCTION, MAINTENANCE, OPERATION, USE OR REMOVAL OF THE PIPELINE. IN CONSIDERATION OF THE PRIVILEGES HEREIN GRANTED, LICENSEE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXPRESSLY AGREES TO INDEMNIFY AND SAVE HARMLESS RAILWAY COMPANY AND ANY OTHER RAILWAY COMPANIES OPERATING OVER OR USING THE TRACKS OF RAILWAY COMPANY, ITS OR THEIR OFFICERS, AGENTS, REPRESENTATIVES, CONTRACTORS, SERVANTS AND EMPLOYEES, SUCCESSORS AND ASSIGNS, AS THE CASE MAY BE, FROM AND AGAINST ANY AND ALL ACTIONS, PROCEEDINGS, CLAIMS, DEMANDS, LOSSES, OUTLAYS, DAMAGES, LIABILITIES AND EXPENSES (WHETHER ARISING IN OR BASED UPON TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) INCLUDING ATTORNEYS' FEES, WHICH MAY BE INCURRED ON ACCOUNT OF INJURY TO OR DEATH OF ANY PERSON WHOMSOEVER, OR LOSS OF OR DAMAGE TO ANY PROPERTY IN ANY WAY, DIRECTLY OR INDIRECTLY, RESULTING FROM, ARISING OUT OF, OR CONNECTED WITH THE CONSTRUCTION, MAINTENANCE, OPERATION, USE OR REMOVAL OF THE PIPELINE BY LICENSEE OR BY ANYONE ACTING IN ITS BEHALF, ITS OR THEIR, AS THE CASE MAY BE, EXERCISE OF OR PERFORMANCE OF OR ITS OR THEIR FAILURE TO EXERCISE OR PERFORM ANY OF THE RIGHTS, PRIVILEGES, DUTIES OR OBLIGATIONS GRANTED OR IMPOSED UNDER THE PROVISIONS OF THIS AGREEMENT. LICENSEE, TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES TO INDEMNIFY AND SAVE HARMLESS RAILWAY COMPANY AND OTHER RAILWAY COMPANIES OPERATING OVER OR USING THE TRACKS OF RAILWAY COMPANY, ITS OR THEIR OFFICERS, AGENTS, REPRESENTATIVES, CONTRACTORS, SERVANTS AND EMPLOYEES, SUCCESSORS AND ASSIGNS FROM AND AGAINST THEIR OWN NEGLIGENCE, EXCEPT FOR SUCH INJURY, DEATH, LOSS OR DAMAGE WHICH MAY BE DUE TO THE SOLE ACTIVE NEGLIGENCE OF RAILWAY COMPANY, ITS OFFICERS, AGENTS, REPRESENTATIVES, CONTRACTORS, SERVANTS, OR EMPLOYEES. LICENSEE HEREBY

RELEASES RAILWAY COMPANY AND OTHER RAILWAY COMPANIES OPERATING OVER THE TRACKS FROM ANY DAMAGE TO THE PIPELINE FROM ANY CAUSE WHATSOEVER.

4. It shall be the exclusive duty and responsibility of Licensee to inspect the property subject to this Agreement to make sure that it is safe for the entry of its employees, agents and contractors. Licensee shall advise all of its employees, agents and contractors entering the property of any safety hazards on the property, including, without limitation, the presence of moving vehicles, buried cables, tripping hazards and overhead wires. Licensee shall instruct all of its employees, agents and contractors entering the property that all persons, equipment and supplies must maintain a distance of at least twenty-five feet (25') from the centerline of the track unless authorized by the on-site railroad flagman to be closer than twenty-five feet (25'). Licensee shall ensure that no personnel, equipment or supplies under its control are within the clearance point of the track when moving railroad equipment may be seen from or heard at the property subject to this Agreement. Finally, Licensee shall adopt, publish and enforce safety rules for its employees, agents and contractors that will be on Railway Company's right of way consistent with the requirements of this Section.

5. Rights herein granted are personal and may not be assigned without Railway Company's written consent. The provisions of this Agreement shall be binding upon the successors and permitted assigns of both parties.

6. Upon termination of this Agreement, Licensee shall immediately remove the pipeline from the property of Railway Company and restore the property to its original state. Upon failure of Licensee to remove the pipeline and restore the property to its original state, Railway Company may remove it and restore the property to its original state at Licensee's expense, which cost and expense Licensee agrees to pay.

7. Licensee shall not enter nor commence construction on or under Railway Company's property or right-of-way unless accompanied by a qualified construction observer and flagger to oversee Licensee's work on Railway Company's property or right-of-way. Licensee will be responsible for all construction observer, flagging and mobilization costs, herein referred to as "Services", and arranging for these necessary Services associated with the installation. To enable arrangements to oversee for these Services that are to be performed under this Agreement, Licensee must submit a written scheduling request to Railway Company's Scheduling Agent, hereinafter referred to as "Scheduling Agent", which request is received by the Scheduling Agent for approved Railway Company qualified construction observer and flagging contractor a minimum of thirty (30) Business Days in advance before Licensee proposes to commence work on or under Railway Company's property or right-of-way. (A "Business Day" is any day Monday through Friday which is neither a federal holiday nor a state holiday at the address of Railway Company's scheduling agent stated below.) The request must contain Licensee's name, the date of this Agreement, the location of the work to be performed, and how many consecutive Business Days will be required for Licensee to complete the work. Licensee's request must be delivered to Scheduling Agent by contacting Bartlett & West at 785-228-3101 to leave a message and/or by sending an email to kccrossings@bartwest.com.

Licensee will, upon receipt of an invoice from Scheduling Agent specifying in reasonable detail Scheduling Agent's costs and expenses of providing these Services, reimburse Scheduling Agent for all of their costs and expenses of providing an inspection, flagging and mobilization prior to installation.

Railway Company's designation of a company or individual as a "qualified" flagger or flagger provider, or Scheduling Agent, shall be construed solely as Railway Company's willingness to allow said individual or entity to provide Services on Railway Company's property or right-of-way without further proof of qualification, and shall not be construed as an endorsement or other verification of the abilities or qualifications of said Scheduling Agent by Railway Company. All flaggers or Scheduling Agents provided

herein shall be treated solely as independent contractors of Licensee, with no relationship to Railway Company, for all purposes herein. Licensee and its agents, employees and contractors will clear the tracks when directed to do so by the flagger. The presence of the flagger will not relieve Licensee of its duty to keep all of its agents, employees and contractors clear of the tracks when trains are in dangerous proximity to the licensed area. The actions or inactions of the flagger shall be construed for all purposes herein as the actions or inactions of the Licensee, and shall be governed by Licensee's duties of indemnification, and saving harmless under Section 3 of this Agreement.

If Licensee's scheduling request fails to reach Scheduling Agent at least thirty (30) Business Days before Licensee's proposed commencement of work, Railway Company may refuse to allow commencement of the work on the Licensee's proposed commencement date. If Railway Company will not allow the work to proceed on Licensee's proposed commencement date because the scheduling request did not reach Scheduling Agent in time, Railway Company will inform Licensee of this fact as promptly as possible and work with Licensee to arrange an alternative commencement date for the work.

The construction observer and flagger will remain at the site on a reasonably continuous basis to oversee the work, and charges will accrue for each day spent awaiting the completion of the work and the installation of appropriate signs marking where Licensee's facilities enter and leave Railway Company's property and right-of-way. If installation takes longer than contracted for with Scheduling Agent, Licensee will, upon receipt of an invoice from Scheduling Agent specifying in reasonable detail Scheduling Agent's costs and expenses of providing the inspection, flagging and mobilization, reimburse Scheduling Agent for all of Scheduling Agent's costs and expenses of providing an inspector, flagger and mobilization.

Once Licensee has submitted its scheduling request to Scheduling Agent, should Licensee require a change to the scheduled date, Licensee shall provide Scheduling Agent at least two (2) Business Days' notice prior to the requested start date of the work. If Licensee fails to provide two (2) Business Days' notice of the change, Licensee shall be charged, and agrees to pay, the daily rate, and any travel costs actually incurred, for the construction observer, flagging and mobilization for one (1) day.

8. Licensee shall pay Railway Company an additional license fee, set in accordance with Railway Company's then current fee schedule, for any additional pipelines, wires or facilities permitted by Railway Company and associated with the crossing.

9. The term of this Agreement shall be for a period of ten (10) years, beginning on the date first written above, and will automatically renew at the end of the initial ten (10) year term for additional one (1) year periods until cancelled by either party upon thirty (30) days advance notice. Notwithstanding the above, either party may terminate this Agreement at any time upon thirty (30) days written notice.

10. Environmental Protection: Licensee shall not permit hazardous waste, hazardous substances or hazardous materials (as those terms are defined in any federal, state or local law, rule, regulation or ordinance) on or in the area covered by this Agreement without the written consent of Railway Company.

Licensee shall at all times keep the area covered by this Agreement in a safe, clean and sanitary condition, and shall not mutilate, damage, misuse, alter or permit waste therein. Should any discharge, leakage, spillage or emission of any hazardous waste, hazardous substance or hazardous material or pollution of any kind occur upon, in, into, under or from the area covered by this Agreement due to Licensee's use and occupancy thereof, Licensee, at its sole cost and expense, shall clean all property affected thereby, to the satisfaction of Railway Company and any governmental body having jurisdiction thereover.

Licensee shall comply with all applicable ordinances, rules, regulations, requirements and laws whatsoever including (by way of illustration only and not by way of limitation) any governmental authority or court controlling environmental standards and conditions on the premises and shall furnish satisfactory evidence of such compliance upon request by Railway Company. **IF, AS A RESULT OF LICENSEE'S OPERATION HEREUNDER, ANY SUCH ORDINANCE, RULE, REGULATION, REQUIREMENT, DECREE, CONSENT DECREE, JUDGMENT, PERMIT OR LAW IS VIOLATED, OR IF, AS A RESULT OF ANY ACTION BY LICENSEE, ANY HAZARDOUS OR TOXIC WASTE, MATERIALS OR SUBSTANCES SHOULD ENTER OR OTHERWISE AFFECT ANY PART OF THE AREA COVERED BY THIS AGREEMENT (INCLUDING SURFACE, SUBSURFACE, AIRBORNE AND/OR GROUND CONTAMINATION), LICENSEE SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, INDEMNIFY AND SAVE HARMLESS RAILWAY COMPANY FROM AND AGAINST ANY PENALTIES, FINES, COSTS, RESPONSE, REMEDIAL, REMOVAL AND CLEAN-UP COSTS, CORRECTIVE ACTION, NATURAL RESOURCE DAMAGE AND DAMAGES AND EXPENSES OF ANY OTHER NATURE WHATSOEVER, INCLUDING LEGAL FEES AND COURT COSTS, IMPOSED UPON OR INCURRED BY RAILWAY COMPANY, CAUSED BY, RESULTING FROM OR IN CONNECTION WITH SUCH VIOLATION OR VIOLATIONS.**

FOR THE PURPOSES OF THIS ENVIRONMENTAL PROTECTION SECTION, LICENSEE AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND SAVE HARMLESS RAILWAY COMPANY FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, ACTIONS, LIABILITY, RESPONSIBILITY AND CAUSES OF ACTION (WHETHER ARISING IN OR OUT OF TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) ASSERTED AGAINST THEM FOR DEATH, INJURY, LOSS OR DAMAGE RESULTING TO RAILWAY COMPANY'S EMPLOYEES OR PROPERTY, OR TO LICENSEE OR LICENSEE'S EMPLOYEES OR PROPERTY, OR TO ANY OTHER PERSONS OR THEIR PROPERTY, AND FOR ALL PENALTIES, FINES, COSTS, RESPONSE, REMOVAL, REMEDIAL AND CLEAN UP COSTS, CORRECTIVE ACTION, NATURAL RESOURCE DAMAGE AND DAMAGES AND EXPENSES OF ANY OTHER NATURE WHATSOEVER, INCLUDING LEGAL FEES AND COURT COSTS, ARISING FROM, RELATED TO OR HAPPENING IN CONNECTION WITH THE USE OF THE AREA COVERED BY THIS AGREEMENT BY LICENSEE AND ITS AGENTS, REPRESENTATIVES, SERVANTS, EMPLOYEES AND CONTRACTORS.

FOR THE PURPOSES OF THIS ENVIRONMENTAL PROTECTION SECTION, LICENSEE FURTHER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, THAT ITS OBLIGATION OF INDEMNIFICATIONS AND SAVING HARMLESS HEREUNDER, TO THE FULLEST EXTENT BOTH ARE PERMITTED BY LAW, SHALL BE STRICT AND ABSOLUTE AND SHALL REMAIN IN FULL EFFECT IRRESPECTIVE OF ANY NEGLIGENCE ON THE PART OF RAILWAY COMPANY.

11. So long as this Agreement is in effect Licensee agrees to maintain comprehensive general liability and contractual liability insurance that covers Licensee's maximum potential liability under the Texas Tort Claims Act. Licensee may discharge this obligation through a self-insurance, self-retention program that satisfies all applicable laws, rules and regulations.

12. Licensee agrees to furnish Licenser with a certified copy of resolution or ordinance adopted by the City of Denton, Texas, authorizing the City Manager to execute this contract on behalf of the City.

IN WITNESS WHEREOF, the IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their authorized representatives as of the date first above written.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

By: _____
Srikanth Honnur, P.E.

Title: Track and Bridge Construction Director

Date: _____

THE CITY OF DENTON, TEXAS

By: _____

Title: _____

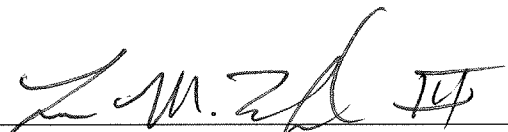
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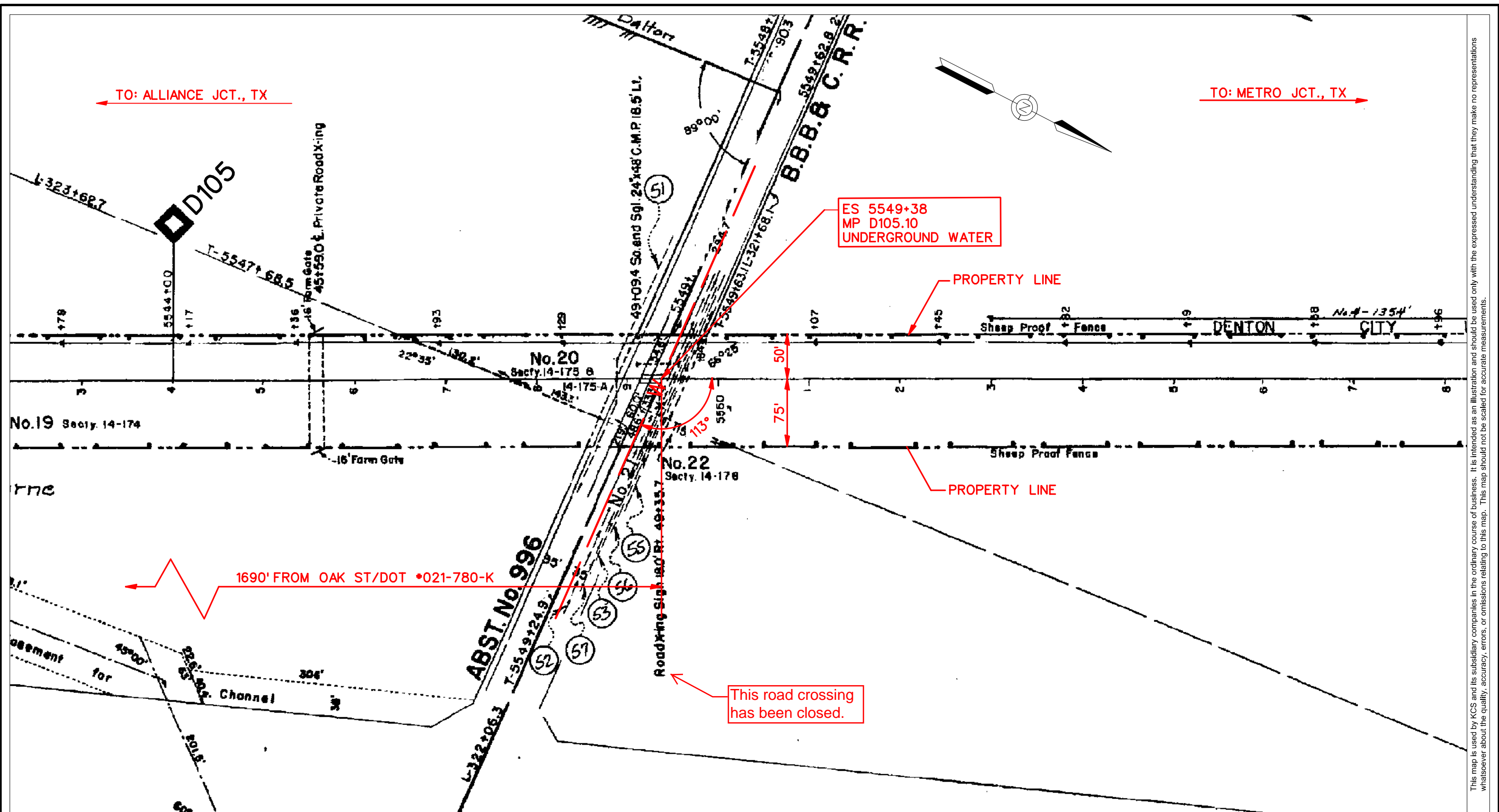
Attest: _____




ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: 



SPECIFICATIONS:								
	CARRIER	CASING	CASING					
CONTENTS:	WATER	N/A	METHOD OF INSTALLATION: CONVENTIONAL DRY BORE	<div>KANSAS CITY SOUTHERN RAILWAY COMPANY</div> <div></div>	Date:	07-14-2016	APPROVED BY:	<div>EXHIBIT "A"</div> <div>PROPOSED UNDERGROUND WATER PIPELINE CROSSING FOR CITY OF DENTON</div> <div>AT MP D105.10 ALLIANCE SUBD. DENTON, TEXAS (33.219266, -97.172318)</div>
LENGTH OF PIPE ON RW:	136'	136'	BURY: BASE OF RAIL: 10'		Drawn By:	JFB		
OUTSIDE DIAMETER:	12.75"	22.00"	BURY: (Not beneath tracks) 6'		Checked By:	TRF		
PIPE MATERIAL:	PVC DR-18	STEEL	BURY: (Roadway ditches) 6'		Company:	BARTLETT & WEST		
MAX YIELD:	N/A	50,000 PSI	CATHODIC PROTECTION: N/A		Sheet No:	1 of 1	Map #: 16010	
WALL THICKNESS:	0.50"	0.50"	CASING VENTED: NO - VENTS ABOVE SURFACE: N/A		Scale:	1" = 100'	KCS FILE NO:	
WORKING PRESSURE:	150 PSI	N/A	NUMBER OF VENTS: N/A					
TYPE OF JOINT:	GASKET	WELDED	SEALS: BOTH ENDS: YES TYPE: UNKNOWN					
COATING:	N/A	POLYETHYLENE	PARALLEL DISTANCE FROM CL OF TRACK: N/A					

This map is used by KCS and its subsidiary companies in the ordinary course of business. It is intended as an illustration and should be used only with the expressed understanding that they make no representations whatsoever about the quality, accuracy, errors, or omissions relating to this map. This map should not be scaled for accurate measurements.