

DRG239TH

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **EASEMENT**

PURPOSE: SEWER EASEMENT - 14 INCH WATER PIPE LINE
TO MAINTAIN CONVEY WATER UNDER THE RAILROAD TRACKS AND
ACROSS THE USE OF RIGHT OF WAY OF THE RIO GRANDE JUNCTION
RAILWAY COMPANY

NAME OF PROPERTY OWNER OR GRANTOR: THE DENVER AND RIO
GRANDE WESTERN RAILROAD SYSTEM

STREET ADDRESS/PARCEL NAME/SUBDIVISION (LOT AND BLOCK): WEST
SIDE LINE OF SOUTH 9TH STREET

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1923

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

Form 3333

WATER-WAY LICENSE

THIS AGREEMENT, Made and entered into in duplicate this 24th day of September, - - - -, A. D. 1923, by and between T. H. BEACOM as Receiver of THE DENVER AND RIO GRANDE WESTERN RAILROAD SYSTEM, hereinafter called the "Licensor", of the first part, and the CITY OF GRAND JUNCTION, a municipal corporation of the - - - - -

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State of Colorado, hereinafter called the "Licensee," of the second part:

WITNESSETH: That the Licensor for and in consideration of the covenants and agreements of the Licensee herein contained, hereby licenses and permits the Licensee, upon the terms and conditions hereinafter set forth, to construct, maintain and use a water-way across the right of way and under the tracks of the Licensor as herein specified, to-wit:

A cast iron pipe 14 inches in diameter to be laid, maintained and used to convey water under the railroad tracks and across the right of way of The Rio Grande Junction Railway Company at a depth of not less than 4 feet below base of the rails along a line located 31 feet east from and parallel with the west side line of South 9th Street in the City of Grand Junction, Mesa County, Colorado.

This License is expressly conditioned upon the performance by the Licensee of all and singular, the covenants and agreements hereinafter set forth to be by said Licensee kept and performed, each of said covenants and agreements being hereby made a condition; and it is also hereby stipulated that a waiver by the Licensor of any breach of any condition shall in no way impair the right of the Licensor to avail himself of any subsequent breach of the same or any other condition.

1. All expense incurred by the Licensor for labor, material and supervision in connection with the construction of said water-way crossing shall be borne by the Licensee, and the Licensee agrees to pay therefor promptly upon presentation of bill or bills by the Licensor.

2. If the Licensor shall elect to construct said water-way and shall so notify the Licensee, the Licensee agrees to pay the Licensor, in advance, such sum of money as shall be estimated by the Chief Engineer of the Licensor, or his duly authorized agent, to be necessary to construct said water-way, including the cost of all material and the transportation thereof, the cost of all labor and superintendence. If the Licensor shall elect not to construct said water-way and shall so notify the Licensee, the Licensee shall furnish material for, and construct said water-way at the sole cost and expense of the Licensee, in such manner and according to such plans as the Chief Engineer of the Licensor or his duly authorized agent may deem best for the safety and proper protection of the track, roadbed and premises of the Licensor. Estimate of cost of work if done by the Licensor \$..... If the amount estimated to be advanced by the Licensee as hereinbefore provided, should be in excess of the amount required, the excess shall be returned to the Licensee; if such amount should not be sufficient to cover the expense of work done by the Licensor, the Licensee shall pay such additional amount to the Licensor on demand.

3. The Licensee shall, at the sole cost and expense of the Licensee, maintain, repair and reconstruct, whenever necessary or when required so to do by the Chief Engineer of the Licensor, or by his authorized agent, said water-way and all its appurtenances in accordance with plans and in manner satisfactory to the Chief Engineer of the Licensor or his authorized agent; the Licensor, however, shall have the right, if he so elects, at any time, though he shall be under no obligation whatever to do so, to make necessary or proper repairs or to reconstruct said water-way, notwithstanding the obligation of the Licensee to maintain, repair and reconstruct, and in the event the Licensor at any time elects to repair or reconstruct said water-way, the Licensee shall, upon presentation of estimates, advance such sum of money as the Chief Engineer or his agent may deem necessary for such repair or reconstruction, or upon bill being rendered for work already done, the Licensee shall reimburse the Licensor for the cost of such repair or reconstruction. The optional right of the Licensor to at any time make repairs or to reconstruct said water-way, shall in no manner or degree relieve the Licensee from responsibility to the Licensor or to other persons or corporations for the failure of the Licensee to properly maintain or reconstruct said water-way, or any structure which the Licensee agrees, as aforesaid, to maintain or reconstruct.

4. The Licensee shall not enter upon the premises for the purpose of constructing said water-way nor for the purpose of repairing or renewing the same, nor for any purpose whatever, without special written license or permit, first had and obtained from the Licensor or his duly authorized agent, except in cases of emergency when work is necessary to avert loss or damage to the property of the Licensor. All work of construction, maintenance, operation or reconstruction shall be done by the Licensee in such manner as to cause no interference with the constant, continuous and uninterrupted use of the tracks and property of the Licensor as to operation, maintenance, renewals or possible new construction by the said Licensor.

5. This license shall not be deemed to give the Licensee exclusive possession of any part of the premises described, but the Licensor shall have unimpaired right to retain his track or tracks as now owned and operated at the place of construction of such water-way, and nothing shall be done or suffered to be done by the Licensee at any time that shall in any manner impair the usefulness or safety of said track or tracks of the Licensor or of any track or improvement to be hereafter constructed. The Licensor shall have the right at any and all times hereafter to construct, maintain and operate such additional tracks, structures and improvements where said water-way is to be constructed and across the same, as he may from time to time elect; the Licensee shall, upon notice of such election, extend said water-way, and if required so to do by the Licensor, construct the roadbed for such additional track or tracks over such water-way; and provide structures necessary to carry such additional track or tracks across said water-way according to such plans and specifications as the Licensor may prescribe; and in case of any change at any time in the arrangement, construction or plan of the tracks of the Licensor, or in case of the construction of any buildings or improvements by the Licensor, said water-way shall be altered or entirely removed by the Licensee at the sole cost and expense of the Licensee, in such manner as may be necessary to conform to the tracks, buildings or improvements of the Licensor as so changed, altered or improved, and if the Licensee shall fail to do any of the things in this paragraph enumerated, the Licensor may do or cause the same to be done at the cost of the Licensee.

6. The Licensee shall at all times protect and indemnify and save harmless the Licensor from any and all claims, demands, judgments, costs, expenses, and all damage of every kind and nature made, rendered or incurred by or in behalf of any person or corporation whatsoever, in any manner due to or arising out of any injury to or death of any person, or damage to property of any person or persons whomsoever, including the parties hereto and their employes, or in any manner arising from or growing out of the construction, maintenance, operation, repair, extension, renewal, existence, use or removal of said water-way, or the failure to properly construct, operate, maintain, renew or remove the same, including any insecurity of the surface caused by the construction or use of said water-way, and from all costs and expenses, including attorney's fees connected in anywise with the matters and things contained in this contract. Neither the right of supervision by the Licensor of the location, installation, operation and maintenance of said water-way, nor the exercise or failure to exercise said right, nor the approval or failure to disapprove, by the Licensor of the location, installation, operation and maintenance of said water-way, nor the election of the Licensor to construct or reconstruct the whole or any part, or to repair said water-way, shall be deemed a waiver of the obligations of the Licensee contained in this paragraph or a release therefrom, or from any other obligation of this contract resting upon said Licensee that is hereinbefore or hereinafter expressed or implied.

7. If the Licensee shall fail to locate, construct, operate, repair, extend, renew or remove said water-way in accordance with the terms of this contract and to the entire satisfaction of the Chief Engineer of the Licensor, or shall fail to pay to the Licensor any sum of money for the construction, repair, extension, renewal or removal of said water-way, or shall fail to adjust the said water-way to any changes made by the Licensor, or shall in any respect fail to keep, do and perform any of the conditions, stipulations, covenants and provisions of this agreement to be kept, done and performed by the said Licensee, this agreement shall, at the option of the Licensor, be void and of no effect; and this license shall cease and the Licensor shall have the right to remove said water-way and restore the right of way and premises of the Licensor at any time thereafter at the sole expense of the Licensee. Any forfeiture hereunder may be claimed by the Licensor without notice to the Licensee. Any notice herein provided for shall be sufficiently given and delivered if mailed in an envelope properly stamped and addressed to the Licensee at the last known post office address, or if no post office address is known, at the post office nearest to the place where the said water-way is located.

8. Nonuser of such water-way for the purpose for which it was originally constructed, continuing at any time for the period of one year, shall constitute an abandonment of this license. Unless so abandoned or terminated, as hereinabove provided, this license and contract shall remain in full force and effect for the period of five years from the date hereof, and thereafter until terminated, as hereinabove provided, or until terminated by written notice given by the Licensor sixty days in advance of the date of such termination; but it is understood that if at any time the maintenance and operation of said water-way shall be inconsistent with the use by the Licensor of his right of way for railroad purposes, this license shall immediately cease *ipso facto*.

9. The covenants, stipulations and conditions of this agreement shall extend to and be binding upon the Licensor, his successors and assigns, and shall extend to and be binding upon the Licensee and the heirs, administrators, executors, successors and assigns of the Licensee (as the context may admit), and the term Licensee used herein shall be held to include such persons, copartnerships or corporations as are mentioned herein as of the second part. The Licensee shall not assign this license or any interest therein directly or indirectly, nor incur the same without the written consent of the Licensor first had and obtained, except as otherwise herein provided.

Notwithstanding anything elsewhere herein contained, it is expressly understood and agreed, that upon termination of the existing receivership of The Denver and Rio Grande Western Railroad, in which the Receiver (party hereto) is now acting, this agreement (if not theretofore terminated as provided herein) and all of the obligations of the Receiver hereunder, shall be terminated, unless it be accepted and adopted by the party in whom the title to or possession of the railroads now in the Receiver's charge, is then vested, in manner provided by order or decree of the United States District Court for the District of Colorado (being the Court by whom the Receiver was appointed), or otherwise. In any event, this agreement shall not be binding or obligatory upon the Receiver after his discharge as such, or in his personal capacity.

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

[Handwritten Signature]

As Receiver of
THE DENVER AND RIO GRANDE WESTERN RAILROAD SYSTEM

In presence of:-

Attest:

[Handwritten Signature]
CLERK.

CITY OF GRAND JUNCTION,

By *[Handwritten Signature]*
President of the Council.

Description Correct.

[Handwritten Signature]
Chief Draftsman.

APPROVED:
As to Execution,

[Handwritten Signature]
General Counsel or General Attorney.

As to Description,

[Handwritten Signature]
Chief Engineer.
[Handwritten Signature]
General Auditor.

APPROVED:

[Handwritten Signature]
General Manager. Chief Operating Officer.

[Handwritten Signature]
Asst. Chief Operating Officer.

[Handwritten Signature]
General Superintendent.

[Handwritten Signature]
Superintendent.

RESOLUTION

BE IT RESOLVED, That the license with T. H. Beacom, as Receiver of The Denver and Rio Grande Western Railroad System, bearing date of September 24, 1923, covering use of a portion of the right of way of The Rio Grande Junction Railway Company, at Grand Junction, Colorado, for water pipe line, be entered into by the City of Grand Junction, and the President of the Council is hereby authorized to execute said license on behalf of said City, and the City Clerk is hereby authorized to attest same and affix the seal of the City thereto.

STATE OF COLORADO)
) SS.
COUNTY OF MESA)

I, Frank R. B. Clerk of the City of Grand Junction, Mesa County, State of Colorado, do hereby certify that the foregoing resolution was duly passed and adopted by the City Council of the City of Grand Junction at a regular meeting of the said City Council on the 3rd day of October, A. D. 1923.

IN WITNESS WHEREOF, I have hereto set my hand and affixed the seal of said City, this 11 day of Oct., A. D. 1923.

Frank R. B.
City Clerk.

