

RIO245TH

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **EASEMENT**

NAME OF CONTRACTOR: THE DENVER AND RIO GRANDE WESTERN
RAILROAD SYSTEM

SUBJECT/PROJECT: SEWER EASEMENT - WATER-WAY LICENSE -
RIGHT OF WAY TO BUILD A 27 INCH SEWER FOR SEWAGE PIPE ALONG
THE CENTER OF SOUTH 5TH STREET THROUGH THE ROADBED UNDER THE
TRACKS OF THE RAILROAD

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1924

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

Form 3333

WATER-WAY LICENSE

THIS AGREEMENT, Made and entered into in duplicate this 15th day of February, A. D. 1924, 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

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 Line of vitrified clay pipe 27 inches in diameter to be laid, maintained and used for sewerage purposes in the City of Grand Junction along the center of South Fifth Street through the roadbed under the tracks of The Denver and Rio Grande Western Railroad at said city at a depth of about 6 feet from top of pipe to base of rails in said tracks; - said pipe to be surrounded with a layer of concrete 6 inches in thickness under and within 10 feet from any track crossed.

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.

1½. The Licensor will and hereby agrees to furnish material for and build and remove such temporary reach-overs for support of his tracks as may by him be deemed necessary for the safe and uninterrupted use of his tracks during the period of construction of said water-way. All work of building and removing such reach-overs and any material used therefor and rendered unfit for further use by the Licensor shall be paid for by the Licensee, and the Licensee shall at its own expense restore the roadbed and tracks of the Licensor at said point of crossing to a good and safe condition, satisfactory to 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.

J. H. [Signature]

As Receiver of
THE DENVER AND RIO GRANDE WESTERN RAILROAD SYSTEM

In ~~Witness~~
Attest:

[Signature]
Clerk

CITY OF GRAND JUNCTION,
By: *[Signature]*
President of the Council

Description Correct.

[Signature]
Chief Draftsman.

APPROVED:
As to Execution,

[Signature]
General Attorney.

APPROVED:
(SIGNED) L. H. LUKE
General Manager ~~[Signature]~~

As to Description

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

[Signature]
General Superintendent.
[Signature]
Superintendent.

[Signature]
ENGINEER MAINTENANCE OF WAY

R E S O L U T I O N

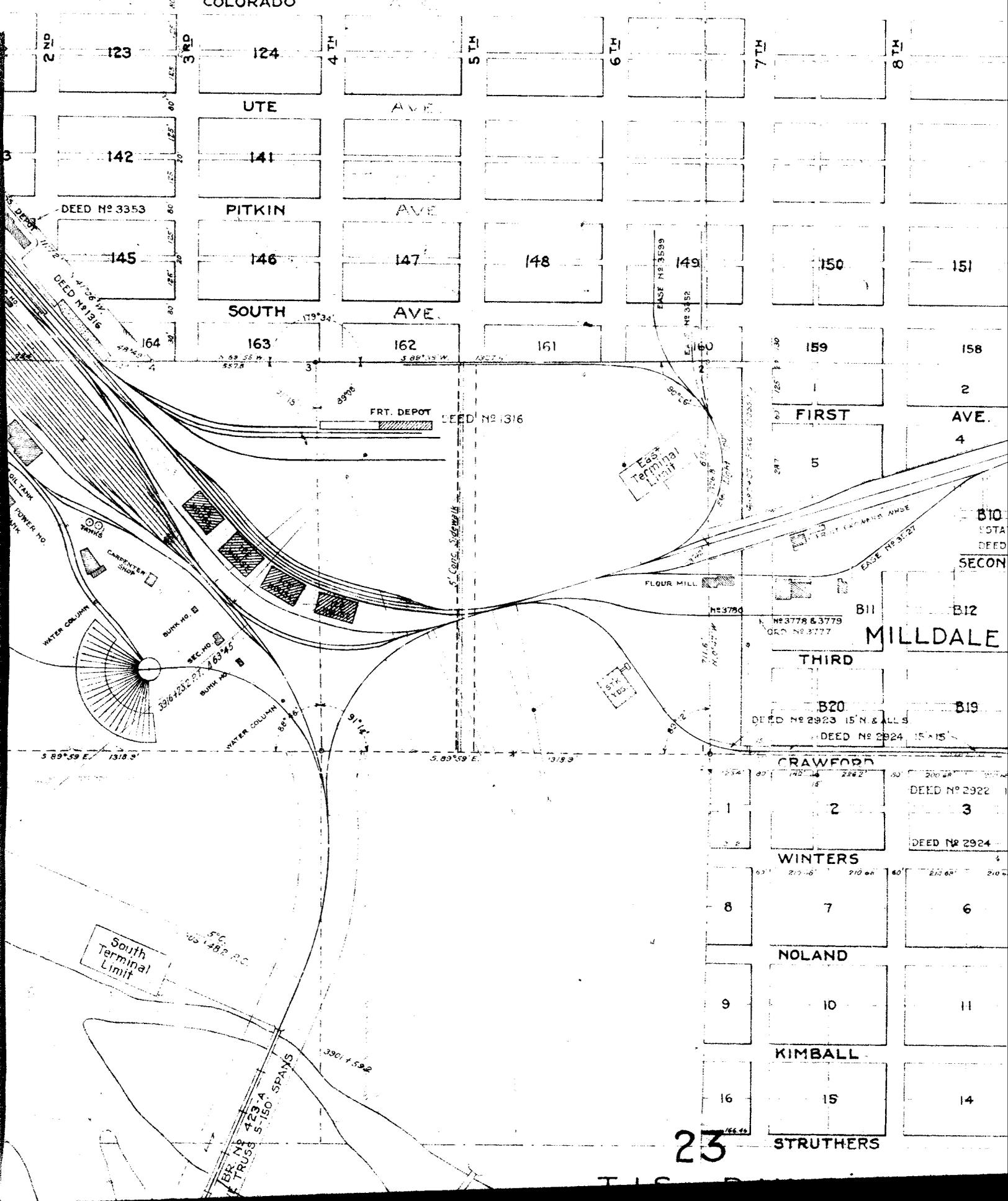
BE IT RESOLVED, That the license with T. H. Beacom, as Receiver of The Denver and Rio Grande Western Railroad System, bearing date of February 15, 1924, covering use of a portion of the right-of-way of The Denver and Rio Grande Western Railroad, at Grand Junction, Colorado, for installation of 27-inch vitrified clay 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 M E S A)

I, Treasurer, 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 20 day of March, A. D. 1924.

IN WITNESS WHEREOF, I have hereto set my hand and affixed the seal of said City, this 21 day of March A. D. 1924.

Treasurer
City Clerk



23

STRUTHERS

NOLAND

WINTERS

CRAWFORD

MILLDALE

FIRST AVE

SOUTH AVE

PITKIN AVE

UTE AVE

THE DENVER AND RIO GRANDE WESTERN RAILROAD SYSTEM

T. H. BEACOM, RECEIVER

"THE SCENIC LINE OF THE WORLD"

I. H. LUKE,
GENERAL MANAGER.
GEO. E. JOHNSON,
ASSISTANT TO GENERAL MANAGER.
L. F. WILSON,
GENERAL SUPERINTENDENT OF TRANSPORTATION.

OPERATING DEPARTMENT

DENVER, COLORADO

May 10, 1924

W. J. O'NEILL,
GENERAL MECHANICAL SUPERINTENDENT.
ARTHUR RIDGWAY,
CHIEF ENGINEER.
A. C. SHIELDS,
ENGINEER MAINTENANCE OF WAY

Mr. Fred A. Peck, City Auditor,
City of Grand Junction,
Colorado.

Dear Sir:

I enclose herewith duplicate executed copy of Agreement No. 3869, in favor of the City of Grand Junction, covering construction of 24-inch pipe line for drainage and sewer purposes, and construction of 8-inch pipe line for water supply, across our right of way and under tracks at West Main Street, Grand Junction, Colorado, effective April 1, 1924.

Kindly acknowledge receipt.

Yours truly,

Arthur Ridgway
Chief Engineer

Enc.