

DRG4712S

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT (REVOCABLE PERMIT)

NAME OF AGENCY OR CONTRACTOR: WILSON MCCARTHY AND HENRY SWAN, TRUSTEES OF THE PROPERTY FOR THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: WATER WAY LICENSE FOR WATER MAIN EXTENDING NORTH ALONG 12TH STREET PARALLEL WITH AND ABOUT 35 FEET WEST FROM EAST LINE FOR A DISTANCE OF 255 FEET WITHIN RIGHT-OF-WAY AND PIPE CROSSING UNDER MAIN TRACK AT MILE POST 448; CONTRACT NO. 18185

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1947

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE



THE DENVER AND RIO GRANDE WESTERN RAILROAD CO.

WILSON MCCARTHY AND HENRY SWAN, TRUSTEES

Grand Junction, Colorado
March 12, 1947

City of Grand Junction
Grand Junction, Colorado

Attention: Mr. Herbert D. Fritz
City Manager

Gentlemen:

I am attaching hereto executed contract No. 18185 covering one 18" diameter pipe for use as water main in the City of Grand Junction extending north along 12th Street in the vicinity of MP 448+2393' which pipe is to be encased within a 42" diameter No. 10 ga. galv. corrugated metal pipe 170 ft. in length where it passes beneath said Railroad Company's tracks, for your information and file.

Yours truly,

L. V. Wright
Superintendent

WATER-WAY LICENSE

THIS AGREEMENT, Made and entered into the 28th day of January 1947, by and between WILSON McCARTHY and HENRY SWAN, as Trustees of the property of THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a corporation of the State of Delaware, hereinafter called the "Licensor," and

CITY OF GRAND JUNCTION, a municipal corporation of the State of Colorado,

hereinafter called the "Licensee":

WITNESSETH, That the Licensor, for and in consideration of the covenants and agreements of the Licensee herein contained and upon the terms and conditions hereinafter set forth, hereby licenses and permits the construction, maintenance and use of a water-way across the right of way and under the track or tracks of the railroad in the County of Mesa, State of Colorado, as herein specified, to-wit:

One 18-inch diameter cast iron pipe for use as water main in the City of Grand Junction, Mesa County, Colorado, extending north along 12th Street parallel with and about 35 feet west from the east line of said street for a distance of about 255 feet within the right of way of said Railroad Company said pipe crossing under the main track at Mile Post 448 plus 2393 feet and to be encased within a 42-inch diameter #10 gauge galvanized corrugated metal pipe 170 feet in length where it passes beneath said Railroad Company's tracks and to be placed at a depth of not less than 3 feet between bottom of ties and top of said corrugated metal pipe under said tracks, within the southwest quarter of the southwest quarter of Section 13, T. 1 S., R. 1 W., Ute Principal Meridian, as shown on the attached map.

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 itself of any subsequent breach of the same or any other condition.

1. The Licensee agrees to pay to the Licensor, in advance, the sum of Five Dollars (\$5.00), as consideration for license and permit herein granted.

2. The Licensee agrees to bear all expense incurred by the Licensor for labor, material and supervision in connection with the construction of said water-way and to pay therefor promptly upon presentation of bill or bills by the Licensor.

3. If the Licensor shall elect to construct said water-way or a portion thereof, and shall so notify the Licensee, the Licensee agrees to pay the Licensor, in advance, such sum of money estimated to be \$, as shall be necessary to construct such portion or all of said water-way, including the cost of all necessary material and the transportation thereof and the cost of all labor and superintendence. If the Licensor shall elect not to construct said water-way, 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 Licensor may deem best for the safety and proper protection of the track, roadbed and premises of the Licensor. If the amount 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.

4. 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 Licensor, said water-way and all its appurtenances in accordance with plans and in manner satisfactory to the Licensor; the Licensor, however, shall have the right, if it so elects, at any time, though it 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 Licensor 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 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.

5. 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, without special written license or permit first had and obtained from the Licensor, or the Licensor's duly authorized agent, except in cases of emergency when work is necessary to avert loss or damage to property. 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 Licensor.

6. 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 its 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 it may from time to time elect; and in case of any change at any time in the arrangement, construction or plan of the Licensor's tracks, 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.

7. The Licensee shall at all times protect, 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 employees, 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 agreement. 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 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 agreement resting upon said Licensee that is hereinbefore or hereinafter expressed or implied.

8. If the Licensee shall fail to locate, construct, operate, repair, extend, renew or remove said water-way in accordance with the terms of this agreement and to the entire satisfaction 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 and perform any of the conditions, stipulations, covenants and provisions of this agreement to be kept 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 address is known, at the post office nearest to the place where the said water-way is located.

9. 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 or hereinafter provided, this license and agreement shall remain in full force and effect until terminated by written notice given by the Licensor not less than 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 the right of way for railroad purposes, this license shall immediately cease *ipso facto*.

10. This license shall be construed and held to include and be binding upon the heirs, executors, administrators, successors and assigns of said Licensor and Licensee respectively; Provided, however, that the Licensee shall not assign this license or any interest therein directly or indirectly, nor encumber the same, without the written consent of the Licensor first had and obtained.

11. Notwithstanding the above or anything elsewhere herein contained, it is understood that the Trustees of the property of The Denver and Rio Grande Western Railroad Company, Licensor herein, are acting under appointment of the District Court of the United States for the District of Colorado in a proceeding for reorganization of said Railroad Company under Section 77 of the Federal Act in Relation to Bankruptcy, as amended; and it is agreed that upon termination of said trusteeship of The Denver and Rio Grande Western Railroad Company, this agreement (if not theretofore terminated as provided herein) and all the obligations of the Trustees hereunder, shall be terminated unless this agreement be accepted and adopted by the party in whom the title to or possession of the railroads now in the Trustees' charge is then vested, in manner provided by order or decree of said Court, or otherwise. In any event, this agreement shall not be binding or obligatory upon the Trustees after their discharge as such, or in their personal capacity.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first hereinabove written.

WILSON McCARTHY and HENRY SWAN, as Trustees of the property of THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, Licensor.

By Wilson McCarthy

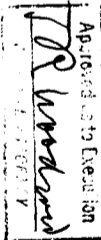
By Henry Swan

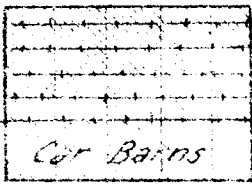
- CITY OF GRAND JUNCTION Licensee.

By Helen C. Tomlinson City Manager

ATTEST:

Helen C. Tomlinson
City Clerk





Street Rv

Main Track

To Denver

I.C.C. No. 110

City Water Main
18" Cast Iron Pipe
In 42"x170' C.M.P.
Under Tracks.

23
T.13., 201W.
UT 1PM

M.P. 448 + 209.3

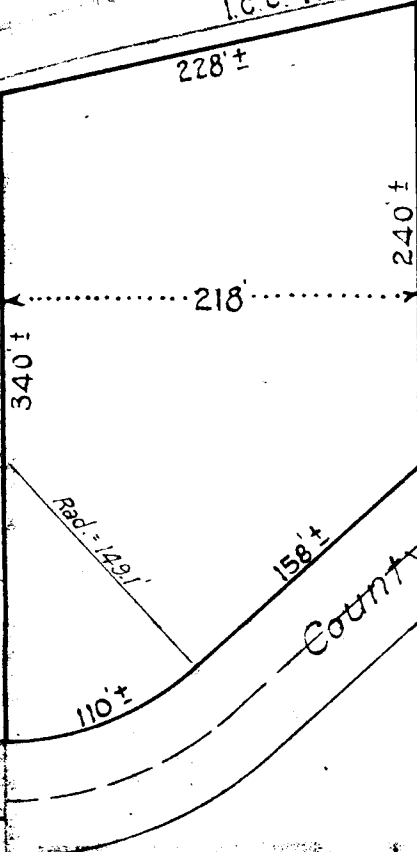
BLK. 7
SUBDIVISION

1ST
AVE.

BLK. 8
MILLDALE

2ND
AVE.

12th Street



Deed No. 4416
R. 2220 No. 2016
2-11-37

Deed No. 4416 grants right for ditches
across this tract

D. & R. G. W. R. R.
GRAND JUNCTION
MESA CO., COLO.
Scale: 1" = 100'

**Proposed
Pipe Line Crossing
License to**

CITY OF GRAND JUNCTION

Drg. No 988