

RIO7304S

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF AGENCY OR CONTRACTOR: THE DENVER AND RIO GRANDE  
WESTERN RAILROAD COMPANY BY: J.A. GREENER (SUPERINTENDENT)

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: CONTRACT  
26621 COVERING A 12-INCH DIAMETER STORM SEWER PIPE LINE  
CROSSING AT 4TH AVE. AND S. 10TH STREET RAILROAD RIGHT OF  
WAY

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1973

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

*Rio Grande*  
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

J. A. GREENER  
SUPERINTENDENT

650 DAVIS ROAD  
ROPER, UTAH 84119

650 Davis Road  
Salt Lake City, Ut. 84119

May 9, 1973  
File U-26621

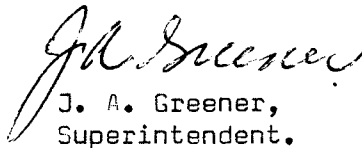
City of Grand Junction  
P.O. Box 968  
Grand Junction, Colorado

Gentlemen:

Attached hereto is your fully executed copy of Contract 26621 covering a 12-inch diameter storm sewer pipe line crossing opposite Mile Post 448 + 3480 feet at Grand Junction, Colorado.

In any future reference to this crossing, please refer to both the Mile Post location and the contract number.

Very truly yours,

  
J. A. Greener,  
Superintendent.

JP/mp

Att.

CC:-Mr. L. O. Ficklin

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

**PIPE LINE CROSSING AGREEMENT**

THIS AGREEMENT, Made and entered into this 15th day of February, 1973, by and between THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a corporation of the State of Delaware (hereinafter called "Railroad Company"), party of the first part, and CITY OF GRAND JUNCTION, a municipal corporation of the State of Colorado, P. O. Box 968, Grand Junction, Colorado (hereinafter called "Licensee"), party of the second part,

**WITNESSETH:**

Section 1. The Railroad Company, for and in consideration of the covenants and agreements herein set out, to be by Licensee kept, observed and performed, hereby licenses and permits the Licensee, subject to the terms and conditions hereinafter stated, to construct and thereafter to maintain and operate the pipe line or pipe lines hereinafter described (hereinafter called "Pipe Line") upon or along or across the right of way and under the track or tracks of the Railroad Company as herein specified, to-wit:

A 12 inch diameter Storm Sewer pipe line crossing the right of way and under trackage of the Railroad Company opposite Mile Post 448+3480 ft., at Grand Junction, Colorado shown on attached Map No. G-229 and installed in accordance with specifications shown thereon.

The foregoing License is subject and subordinate to the prior and continuing right and obligation of the Railroad Company to use and maintain its entire Railroad right of way in the performance of its public duty as a common carrier, and is also subject to the right and power of the Railroad Company to construct, maintain, repair, renew, use, operate, change, modify or relocate additional railroad tracks, telegraph, telephone, signal or other wire lines, pipe lines, and other facilities, structures or improvements upon, along or across any or all parts of said right of way and said Pipe Line, all or any of which may be freely done at any time or times by the Railroad Company, without liability to the Licensee or any other party for compensation or damages. In the event the Railroad Company elects to construct additional railroad tracks, structures or improvements upon its right of way and over and/or across said Pipe Line, the Licensee shall, upon notice of such election, extend said Pipe Line according to such plans and specifications as the Railroad Company may prescribe.

The foregoing License is also subject to all outstanding superior rights (including those in favor of telegraph and telephone companies, lessees of said right of way and others) and the right of the Railroad Company to renew and extend the same.

Section 2. The Licensee agrees to use the Pipe Line for the following purposes and for no other, to-wit:

Conveyance of sewage

Section 3. The Licensee agrees to pay to the Railroad Company, in advance, the sum of \$50.00 as consideration for the License herein granted.

Section 4. The Pipe Line shall be constructed, operated, maintained, repaired, extended, renewed and/or reconstructed by the Licensee in strict conformity with specifications prescribed by the Chief Engineer of the Railroad Company and in such manner and according to such plans as said Chief Engineer may deem best for the safety and proper protection of the tracks, roadbed and premises of the Railroad Company.

The Licensee shall keep and maintain the soil over the Pipe Line thoroughly compacted and the grade even with the adjacent surface of the ground.

All work performed on said right of way in connection with the construction, maintenance, repair, extension, renewal or reconstruction of the Pipe Line shall be done under the supervision and to the satisfaction of the Railroad Company.

If the Railroad Company shall elect to construct said Pipe Line or a portion thereof, and shall so notify the Licensee, the Licensee agrees to pay the Railroad Company, in advance, such sum of money estimated to be \$....., as shall be necessary to construct such portion or all of said Pipe Line, including the cost of all necessary material and the transportation thereof and the cost of all labor and superintendence. If the amount to be advanced by the Licensee as herein 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 Railroad Company, the Licensee shall pay such additional amount to the Railroad Company on demand.

Prior to the commencement of any work by the Licensee in connection with the construction, maintenance, repair, extension, renewal or reconstruction of the Pipe Line where it passes underneath the roadbed and tracks of the Railroad Company, the Licensee shall submit to the Railroad Company plans setting out the method and manner of handling the work, and shall not proceed with the work until such plans shall have been approved by the Chief Engineer of the Railroad Company, and then only under the supervision of said Chief Engineer, or his authorized representative. The Railroad Company shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its said track or tracks during the time of construction, maintenance, repair, extension, renewal or reconstruction of the Pipe Line, and in the event the Railroad Company provides such support, the Licensee shall pay to the Railroad Company, within 15 days after bills shall have been rendered therefor, all expense incurred by the Railroad Company in connection therewith, which said expense shall include all assignable costs plus 10 percent (10%) to cover elements of expense not capable of exact ascertainment.

Section 5. The Licensee shall notify the Railroad Company at least 48 hours in advance of the commencement of any work upon said right of way in connection with the construction, maintenance, repair, extension, renewal or reconstruction of the Pipe Line except in cases of emergency when work is necessary to avert loss or damage to the property of the Railroad Company.

Section 6. The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal, and any and all modification, revision, extension, relocation, removal or reconstruction of the Pipe Line, including any and all expense which may be incurred by the Railroad Company in connection therewith for supervision or inspection, or otherwise.

Section 7. The Railroad Company, however, shall have the right, if it so elects, though it shall be under no obligation whatsoever to do so, to make necessary or proper repairs, or to reconstruct said Pipe Line, notwithstanding the obligation of the Licensee to maintain, repair and reconstruct, and, in the event the Railroad Company at any time elects to repair or reconstruct said Pipe Line, the Licensee shall, upon presentation of estimate, advance such sum of money as the Chief Engineer of the Railroad Company may deem necessary for such repair or reconstruction, or, upon bill being rendered for work already done, the Licensee shall reimburse the Railroad Company for the cost of such repair or reconstruction.

The optional right of the Railroad Company at any time to make repairs or to reconstruct said Pipe Line, shall in no manner or degree relieve the Licensee from responsibility to the Railroad Company or other persons or corporations for the failure of the Licensee to properly maintain or reconstruct said Pipe Line or any structure which the Licensee agrees hereunder to maintain and reconstruct.

Section 8. The Licensee shall, at its sole expense, make any and all modifications or changes in the Pipe Line, or move all or any part thereof to such new location as may be required by the Railroad Company at any time, in connection with the construction, maintenance, repair, renewal, use, operation, change, modification or relocation of railroad tracks, telegraph, telephone, signal or other pole and wire lines, pipe lines and other facilities, structures or improvements of the Railroad Company, upon said right of way.

All the terms, conditions, and stipulations of this agreement, with reference to the construction, maintenance, repair and renewal of the Pipe Line on said right of way, in the location hereinbefore described, shall apply to the Pipe Line as modified, changed or relocated within the contemplation of this section.

Section 9. The Pipe Line shall be constructed and, at all times maintained, repaired, extended, renewed and operated, in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and premises of the Railroad Company, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

Section 10. Licensee shall fully pay for all materials, joined or affixed to, and labor performed upon, said right of way in connection with the construction, maintenance, repair, extension, renewal or reconstruction of the Pipe Line, and shall not permit or suffer any mechanics' or materialmen's liens of any kind or nature to be enforced against said right of way for any work done or materials furnished thereon, at the instance or request, or on behalf of the Licensee, and the Licensee shall indemnify and hold harmless the Railroad Company from and against any and all liens, claims, demands, costs and expenses of whatsoever nature, in any way connected with or growing out of such work done, labor performed, or materials furnished.

The Licensee shall promptly pay or discharge all taxes, rates, charges and assessments levied upon, in respect to, or on account of the Pipe Line so as to prevent the same becoming a charge or lien upon said right of way, or any other property of the Railroad Company, and so that the taxes, charges and assessments levied upon or in respect to

said right of way and other property of the Railroad Company shall not be increased because of the location, construction or maintenance of the Pipe Line, or any improvement, appliance or fixture connected therewith, placed upon said right of way, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the right of way, or other property of the Railroad Company, then the Licensee shall pay to the Railroad Company an equitable proportion of such taxes, determined by the value of Licensee's property upon said right of way as compared to the entire value of said right of way.

Section 11. In the event the Licensee shall take down any fence of the Railroad Company or in any manner move or disturb any of the other property of the Railroad Company in connection with the construction, maintenance, repair, extension, renewal or reconstruction of the Pipe Line, then and in that event the Licensee shall, as soon as possible, and at its sole expense, restore such fence and/or such other property to the same condition as it was in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and save harmless the Railroad Company from and against any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbing of any of the other property of the Railroad Company.

Section 12. In the event the Railroad Company shall dispose of any of its property upon which the Pipe Line is located, as herein provided, the Licensee or permit herein granted with respect to the portion of the Pipe Line located upon the property so disposed of, shall forthwith cease and determine.

Section 13. The Licensee shall indemnify and hold harmless the Railroad Company from and against any and all liability, loss, damage, claims, demands, cost and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever (including employees and passengers of the Railroad Company), or damage to or loss of or destruction of property whatsoever (including damage to the roadbed, tracks, equipment, or other property of the Railroad Company or property in its care or custody) whether such injury, death, loss, destruction or damage grows out of or arises from the bursting of or leaks in the Pipe Line, or the explosion or ignition of gas or oil carried therein, or escaping therefrom, or in any other way whatsoever is due to, or arises because of, the existence of the Pipe Line or the operation, construction, maintenance, repair, extension, renewal, modification, reconstruction, revision, relocation or removal of the Pipe Line, or any part thereof, or to the contents therein or therefrom. And the Licensee does hereby release the Railroad Company from all liability for damages on account of injury to the Pipe Line from any cause whatsoever.

Neither the right of supervision by the Railroad Company of the location, construction, maintenance, repair, extension, renewal, reconstruction or relocation of the Pipe Line, nor the exercise or failure to exercise said right, nor the approval or failure to disapprove by the Railroad Company of the location, construction, maintenance, repair, extension, renewal or reconstruction of said Pipe Line, nor the election of the Railroad Company to repair or reconstruct the whole or any part of said Pipe Line shall be deemed a waiver of the obligation of the Licensee contained in this section, or a release therefrom or from any other obligation of this contract resting upon said Licensee that is hereinbefore or hereinafter expressed or implied.

Section 14. For the further protection of the Railroad Company, the Licensee, before any work is begun, agrees to procure and maintain at Licensee's own expense, in a company acceptable to the Railroad Company, Comprehensive General Liability Insurance in minimum limits of \$.....200,000.....one person, \$.....1,000,000.....one accident for bodily injury, and \$.....500,000.....for property damage, which policy shall specifically insure the liability assumed by the Licensee under Sections 11 and 13 of this agreement. Licensee shall furnish the Railroad Company Certificates of Insurance, in duplicate, evidencing such insurance to be in full force and effect and that the same will not be cancelled without at least fifteen (15) days' advance written notice by Insurance Company to the Railroad Company's Insurance Department, 1531 Stout Street, Denver, Colorado.

See Exhibit A attached hereto and hereby made a part hereof. Said insurance shall be maintained throughout the period of construction of the facilities referred to in Section 1 hereof.

Section 15. Disuse of the Pipe Line continuing, at any time for a period of one year, shall constitute an abandonment thereof, and in the event of such an abandonment the Railroad Company may, at its option terminate this agreement.

If the Licensee shall fail to keep and perform all or any of the covenants and agreements herein contained, to be by it kept and performed, or if the Licensee shall fail to make any of the payments which it is obligated to make hereunder, and such default shall continue for a period of thirty (30) days after written notice from the Railroad Company to the Licensee, specifying such default, then the Railroad Company may, at its option, forthwith terminate this agreement.

Notwithstanding anything to the contrary herein contained, it is agreed that if at any time the maintenance and operation of said Pipe Line shall be inconsistent with the use by the Railroad Company of its right of way for railroad purposes, this License shall immediately cease, ipso facto.

Section 16. Within ninety (90) days after the termination of this agreement howsoever, the Licensee shall, at its sole expense, remove the Pipe Line from those portions of said right of way not occupied by the roadbed and track or tracks of the Railroad Company and shall restore, to the satisfaction of the Railroad Company, said portions of said right of way to as good condition as they were in at the time of the construction of the Pipe Line, and if the Licensee fails so to do, the Railroad Company may do such work of removal and restoration at the expense of the Licensee. The Railroad Company may, at its option, upon such termination, at the expense of the Licensee, remove the portions of the Pipe Line located underneath the said roadbed and track or tracks and restore said roadbed to as good condition as it was in at the time of the construction of the Pipe Line, or it may permit the Licensee to do such work of removal or restoration under the supervision of the Railroad Company. In the event of the removal of the Pipe Line as in this section provided, the Railroad Company shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account of such removal, and such removal shall in no manner prejudice or impair any right of action for damages or otherwise that the Railroad Company may have against the Licensee.

Nothing in this section contained shall obligate the Licensee to remove the Pipe Line because of the termination of this License under the provisions of Section 12 hereof, in cases where the Licensee shall have made arrangements for the continuation of the Pipe Line with the grantee or grantees of the Railroad Company.

Section 17. The waiver by the Railroad Company of the breach of any condition, covenant or agreement herein contained, to be kept, observed and performed by the Licensee, shall in no way impair the right of the Railroad Company to avail itself of any subsequent breach thereof.

Section 18. The Licensee shall not sublet, in whole or in part, the License herein granted, and shall not assign this agreement without the written consent of the Railroad Company, and it is agreed that any transfer or assignment, or attempted transfer or assignment of this agreement, or any of the rights hereby granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void, and, at the option of the Railroad Company, shall terminate this agreement.

Section 19. This agreement shall take effect as of the 20<sup>th</sup> day of April, 1973, and shall continue in full force and effect until terminated as herein provided.

Section 20. Subject to the provisions of Section 18 hereof, this agreement shall be binding upon and enure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate as of the date first herein written.

ATTEST:

W. E. Martusow  
Secretary

THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY

By J. H. Waring  
Chief Engineer

ATTEST:

Leva B. Lockhart  
City Clerk

CITY OF GRAND JUNCTION  
Licensee

W. H. K. K. K.  
Mayor

## EXHIBIT "A"

# Certificate of Insurance

<b>Name &amp; Address To Whom Issued</b> The Denver and Rio Grande Western Railroad Co. P. O. Box 5482, Denver, Colorado 80217	<b>Insured Name &amp; Address</b> City of Grand Junction (Etal) Grand Junction, Colorado
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This is to certify that the following policy or policies, have been issued by this Company:

Type of Insurance	Policy Number	Effective Date	Expiration Date	Limits of Liability
Manufacturers' or Contractors' (Bodily Injury)				\$ Each Person
				\$ Each Accident
Manufacturers' or Contractors' (Property Damage)				\$ Each Accident
				\$ Aggregate
Comprehensive General Bodily Injury	34 CBP 180005	9/1/72	9/1/75	\$ 200,000 Each Person
				\$ 1,000,000 Each Accident
				\$ Aggregate Products
				\$ 500,000 Each Accident
Comprehensive General Property Damage				\$ Aggregate Operations
				\$ Aggregate Protective
				\$ Aggregate Products
				\$ Aggregate Contractual
				\$
Automobile (Bodily Injury)				\$ Each Person
				\$ Each Accident
Automobile (Property Damage)				\$ Each Accident
Umbrella	DCL 45 71 50	9/1/72	9/1/75	\$1,000,000 over Hartford Primary
				<i>Westchester</i>

Notwithstanding anything contained therein to the contrary, policy hereinabove referred to is extended to specifically insure liability assumed by City of Grand Junction under section (s) 11 and 13 of Pipe Line Crossing Agreement dated February 15, 1973 with The Denver and Rio Grande Western Railroad Company being S. 68°47' E. 1823 ft. from M.P. 449 covering crossing of the Railroad Company's tracks ~~at or about~~

In event of any change or cancellation of coverage afforded by this Certificate, at least fifteen (15) days' advance notice shall be given to Insurance Department of The Denver and Rio Grande Western Railroad Company, P. O. Box 5482, Denver, Colorado 80217.

Hartford Fire Insurance Company  
(Name of Insurance Company)

Date March 28, 1973

By *Brian J. Makony*  
The Valley Agency (Authorized Agent)

NO. 4335 (10)

D&RGW Cont 26621 FOI

12" storm sewer pipeline  
crossing opposite Mile Post  
448-3480 4th Ave. & S. 10th St.

Storm Sewers 1973

2-15-1973



NO. 4335  
D&RGW Cont 26621 for  
12" storm sewer pipeline  
crossing opposite Mile Post  
448-3480 4th Ave. \$ S. 10th St.

Storm Sewers 1973

2-15-1973