

LICENSE TO USE
RAIL RIGHT OF WAY
(Government Entity)

This License Agreement (“Agreement”), is made by and between Capital Metropolitan Transportation Authority (“Licensor”), a political subdivision of the State of Texas organized and existing under Chapter 451, Texas Transportation Code, whose address is 2910 E. 5th Street, Austin, Texas 78702 and City of Pflugerville, a home rule city and municipal corporation (“Licensee”), whose mailing address is P. O. Box 589, Pflugerville, Texas 78691 (each a “Party”, and collectively, the “Parties”).

I. General Terms and Conditions

In consideration of the mutual promises, covenants, obligations, and benefits contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the terms and conditions stated herein as evidenced by the signatures of their respective duly authorized representatives below.

A. Premises

Licensor purchased from the City of Austin approximately 162 miles of railroad right-of-way including the track, track support structures, and the real property in the counties of Bastrop, Burnet, Lee, Llano, Travis, and Williamson, Texas by Deed dated May 20, 1998 recorded in Volume 13187, Page 3118 of the Real Property Records of Travis County, Texas, as more particularly described therein (“Deed”). The track, track support structures and the real property are collectively referred to herein as the “Giddings-Llano Line”.

B. License Grant & Use

1. Licensor, subject to the conditions, limitations, and reservations hereinafter set forth, hereby grants to Licensee the right to use that portion of the Giddings-Llano Line in in Austin, Travis County, Texas, located approximately 3,135-feet east of the centerline of NB SH-183 Tollway and NB SH-183 Service Road at Latitude 30°15'49.52"N, Longitude 97°39'45.52"W and Mile Post 52.95 (“Licensed Property”).
2. Licensee is permitted to install and maintain one (1) 42-inch raw waterline, encased within 60-inch steel pipe casing, buried approximately 14-feet below base of Licensor’s rail, and the maintenance and operation of one (1) adjacent and existing 30-inch raw waterline, encased within 42-inch steel pipe casing, buried approximately 10-feet below base of Licensor’s rail (“Facility”).
3. Licensee shall use the Licensed Property solely for installing, operating, and maintaining the Facility in strict compliance with all federal, state, municipality and other governmental regulations and no other purpose.
4. Licensee shall install the Facility within the Licensed Property, at its sole expense, in a manner and at such times which are satisfactory to Licensor. Licensee agrees that the Facility will be designed and constructed in accordance with the submitted plans and profile more fully described in the attached and incorporated herein as **Exhibits “A” and “B”**. Licensee shall not locate any new ground facilities or subterranean facilities within the Licensed Property. No equipment, vehicles, material or supplies will be stored on the Licensed Property or on any portion of the Giddings-Llano Line overnight or on weekends.

5. Licensee shall not perform any installation or other work on the Giddings-Llano Line or the property of Licensor without: (i) submitting the required applications, (ii) paying all required fees, (iii) obtaining a permit issued by Licensor to commence construction of the Facility, (iv) where necessary, pay to have present at the time of construction, Licensor personnel or contractors designated by Licensor to oversee the construction activities (“RWIC”) at the rates set at the time of construction; and, (v) any other administrative fees charged by Licensor.
6. All improvements contemplated under this Agreement shall be at Licensee's sole expense and Licensee shall maintain the Licensed Property and the Facility in a good and safe condition at all times. All licenses, permits or other fees payable to a governmental authority shall be the sole responsibility of Licensee.
7. Licensee shall furnish, install, and maintain, at its sole expense, in a manner satisfactory to Licensor, any signs as are recommended and approved by Licensor to adequately mark the location of Licensee's use of the property of Licensor.
8. In the event Licensee fails to install or maintain the Facility, including all required signage, in a good and safe condition, Licensor reserves the right to perform the required work at Licensee's expense.
9. Licensee shall obtain and maintain all of the certificates, permits and other approvals, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality (collectively, the “Governmental Approvals”) which may be required by any federal, state or local authorities for the location, installation, maintenance or operation of the Facility on the Licensed Property. Licensee shall furnish satisfactory evidence of compliance upon request by Licensor.
10. Licensee will pay all application fees, permitting fees, RWIC charges and other fees charged by Licensor in connection with this Agreement.
11. If an emergency situation arises during construction or any maintenance of the Facility, Licensee shall immediately notify Licensor's Railroad Department by telephone at (512) 997-0010, and then proceed to take only those actions necessary to return the property of Licensor to a safe condition, unless otherwise directed by Licensor.

C. This Agreement is subject and subordinate to:

1. Licensor's mass transit rights, obligations, duties, use, plans and operations;
2. The authority of the Federal Transit Administration and the requirements of any federal grants obtained by Licensor in connection with its acquisition of the Giddings-Llano Line;
3. The regulations and directives of the Federal Railroad Administration;
4. Any rail freight services contract, rail freight operations, and passenger rail operations; and
5. All easements, restrictions, covenants, licenses, encumbrances, leases, conditions, liens and claims of title affecting the Giddings-Llano Line, including the prior rights of the City of Austin set forth in the Deed.

Licensor, and its agents, successors, and assigns, consistent with the rights herein granted, reserve the right to use the Giddings-Llano Line for any and all purposes not inconsistent with the rights granted to Licensee in this Agreement.

D. Term and Consideration

1. This Agreement shall have a perpetual term from the Effective Date.
2. Provided Licensee is not in default under this Agreement, this Agreement will automatically renew on a year-to-year basis. Either party may terminate this Agreement upon written notice provided at least thirty (30) days' prior to the renewal date.
3. Given the public purposes of each entity, and particularly in light of the mutual benefit between the parties, it is in the best interest of CapMetro to enter this Agreement and supports CapMetro's transit mission.
4. This Agreement may be terminated by Licensor at any time upon the occurrence of any of the following events, in its sole and absolute discretion:
 - a. The location, installation, and operation of the Facility is not commenced within six (6) months from the Effective Date of this Agreement;
 - b. The Facility is abandoned by Licensee for more than thirty (30) days;
 - c. Licensee fails to perform or comply with any of the terms and provisions of this Agreement, after written notice to Licensee as provided in Paragraph I. H. Default (unless not required as expressly set forth therein);
 - d. Licensee fails to maintain the liability insurance coverage required by this Agreement;
 - e. Upon ninety (90) days' prior written notice from Licensor to Licensee.
5. This Agreement may be terminated by Licensee upon ninety (90) days' prior written notice from Licensee to Licensor.
6. Licensee and Licensor agree that Licensee's use of the Licensed Property as contemplated in this Agreement does not interfere with the right of Licensor to use the Licensed Property for its intended purpose including, without limitation, by imposing additional expenses and administrative, technical and safety burdens on Licensor.

E. Removal of All Licensee Improvements

Upon termination of the rights hereby granted, Licensee agrees, upon receipt of a written request from Licensor, to remove the Facility, to restore the Licensed Property to the same state and condition in which it existed prior to location and installation of the Facility, and to bear all expense thereof. Should Licensee in such event fail, neglect or refuse to so remove the Facility and restore the Licensed Property, such removal and restoration may be performed by Licensor at the expense of Licensee, and Licensee agrees to make full restitution and reimbursement to Licensor for such sum immediately upon demand.

F. Licensee Responsibilities

1. Licensee shall pay, in full, all persons who perform labor. Licensee will not allow any mechanic or material liens to be filed or enforced against the Giddings-Llano Line, the Licensed Property, or the property of Licensor for work done or materials furnished at Licensee's instance or request. If any such liens are filed thereon, Licensee agrees to immediately remove the same at Licensee's own cost and expense, without regard to the legal enforceability of such liens. Should Licensee fail, neglect or refuse to do so, Licensor shall have the right to terminate this Agreement or at its option pay any amount required to release any such lien or liens, or to defend any action brought thereon, and to pay any judgment entered therein, and Licensee shall be liable to Licensor for all costs, damages and reasonable attorney's fees, and any amounts expended in defending any proceedings, or in the payment of any of such liens, or any judgment obtained against Licensor upon demand with interest at the maximum rate allowed by law from demand until payment.
2. No Hazardous Materials shall be kept, stored, used or discharged on the Licensed Property. Licensee shall comply strictly with all applicable Federal, State and local laws, ordinances, rules and regulations regarding Hazardous Materials, and shall indemnify, defend and hold Licensor harmless from and against any and all liability arising from Licensee's use, storage or discharge of Hazardous Materials on the Licensed Property. For purposes of this Agreement, "Hazardous Materials", mean any substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any applicable federal or state law, as "hazardous substance," "hazardous waste," "acutely hazardous," extremely hazardous," "infectious waste," "toxic substance," "toxic pollutant," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity, including any petroleum, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) or derivatives thereof. "Hazardous Materials" also include, without limitation, those substances listed in the United States Department of Transportation Table (49 CFR 172.101, as amended). The provisions of this paragraph shall survive termination of this Agreement.
3. Licensee shall be solely responsible for obtaining any and all Governmental Approvals and any other licenses, easements, permits, consents, or permissions necessary for Licensee's use of the Licensed Property including, without limitation, from any owner of an interest in the Licensed Property.
4. As requested by Licensor, but no more than twice a year, Licensee will participate in executive-level meetings with Licensor to foster communication and collaboration between the Parties and to verify compliance with the terms of this Agreement. Such meetings will be in addition to regular meetings and communications between the Parties necessary to support day-to-day business.

G. Insurance and Waiver of Subrogation

1. Licensee shall obtain and maintain insurance of the types and in the amounts as set forth on **Exhibit "B"** attached to this Agreement. If Licensee fails to do so, Licensor shall have the immediate right (but not the obligation) to effect such insurance without notice to Licensee, in which event the amount so paid by Licensor shall be paid by Licensee to Licensor upon demand with interest at the maximum rate allowed by law from demand until payment.

2. TO THE EXTENT PERMITTED BY LAW, LICENSEE WAIVES ALL RIGHTS OF RECOVERY AGAINST LICENSOR (AND ANY OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES OF LICENSOR), AND AGREES TO RELEASE THE LICENSOR FROM LIABILITY, FOR LOSS OR DAMAGE TO THE EXTENT SUCH LOSS OR DAMAGE IS COVERED BY VALID AND COLLECTIBLE PROPERTY INSURANCE IN EFFECT COVERING LICENSEE AT THE TIME OF SUCH LOSS OR DAMAGE WHETHER OR NOT SUCH DAMAGE OR LOSS MAY BE ATTRIBUTABLE TO THE NEGLIGENCE OF LICENSOR OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES. IT IS THE EXPRESS INTENT OF LICENSOR AND LICENSEE THAT THE WAIVER OF SUBROGATION CONTAINED IN THIS SECTION APPLY TO ALL MATTERS DESCRIBED HEREIN, INCLUDING, WITHOUT LIMITATION, ANY OF THE SAME THAT ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF LICENSOR OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES.

H. Default

If Licensee defaults in the payment of the License Fees or any other amounts payable under this Agreement and the default continues for ten (10) days after Licensor's written notice specifying the default, or if Licensee defaults in the performance of any other covenant or agreement under this Agreement and the default continues for thirty (30) days after Licensor's written notice specifying the default (expressly excluding the obligation to maintain insurance in which case written notice is not required), Licensor shall have any right or remedy provided herein or available at law or in equity, including, without limiting the foregoing, the right to immediately terminate this Agreement.

I. Responsibility for Liability

To the extent allowed by Texas law, the Parties agree that each Party is responsible to the exclusion of any such responsibility of the other Party for its own proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, arising out of or connected to this agreement and as determined by a court of competent jurisdiction, provided that the execution of this Agreement will not be deemed a negligent act.

J. Right to Eject

Licensor may eject or cause to be ejected from the Licensed Property Licensee or any person acting under Licensee's authority or direction that is engaging in conduct that is unlawful or unsafe. Licensor shall not be liable to Licensee for any damages that may be sustained by Licensee or the ejected person through Licensor's exercise of such right.

K. Force Majeure

Licensor shall not be liable to Licensee for events beyond the control of Licensor that prevents or restricts access to the Licensed Property ("Event of Force Majeure"). Events of Force Majeure shall include, without limitation: Acts of God; strikes, lockouts, or other industrial disputes; epidemics, civil disturbances, acts of domestic or foreign terrorism, riots or insurrections; landslides, lightning,

earthquakes, fire, storms, floods or washouts; explosions; interruptions by government or court orders; declarations of emergencies by applicable federal, state or local authorities; and, present or future orders of any regulatory body having proper jurisdiction and authority. If the use of the Licensed Property is prevented in whole or in material part by an Event of Force Majeure that extends more than thirty (30) days, Licensor may terminate this Agreement upon written notice. Licensee agrees that its exclusive remedy in the event of termination under this paragraph shall be a refund of the unearned fees and charges paid by Licensee prior to the termination. Licensee hereby releases and waives all claims against Licensor for any cost, loss, expense, liability, or damages sustained by reason of such termination.

II. Miscellaneous

A. No Warranty and Assumption of Risk

LICENSOR MAKES NO REPRESENTATION OR WARRANTY AS TO THE NATURE OR EXTENT OF ITS RIGHT, TITLE, OR INTEREST IN OR TO THE LICENSED PROPERTY, AND ANY IMPLIED REPRESENTATION OR WARRANTY AS TO THE NATURE OR EXTENT OF LICENSOR'S RIGHT, TITLE, AND INTEREST IN OR TO THE LICENSED PROPERTY IS HEREBY EXPRESSLY DISAVOWED BY LICENSOR. FURTHERMORE, LICENSEE ACKNOWLEDGES AND AGREES THAT IT ACCEPTS THE CONDITION OF THE LICENSED PROPERTY "AS-IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS, AND LICENSEE ACKNOWLEDGES THAT LICENSOR HAS NOT MADE AND DOES NOT MAKE ANY WARRANTIES OF THE CONDITION OF THE LICENSED PROPERTY OR THAT THE LICENSED PROPERTY IS FIT FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, LICENSEE ACKNOWLEDGES AND AGREES THAT IT WILL INSTALL ALL IMPROVEMENTS LICENSEE REQUIRES ON THE LICENSED PROPERTY, IS RESPONSIBLE FOR THEIR COMPLIANCE WITH ALL APPLICABLE LAWS, AND IS RESPONSIBLE FOR ALL LICENSES, EASEMENTS, PERMITS, CONSENTS, OR PERMISSIONS REQUIRED FOR LICENSEE'S USE OF THE LICENSED PROPERTY AND LICENSOR WILL HAVE NO LIABILITY OR RESPONSIBILITY THEREFORE.

WITHOUT LIMITING ANYTHING CONTAINED IN THIS AGREEMENT, LICENSEE KNOWINGLY AND VOLUNTARILY ASSUMES ANY AND ALL RISKS, KNOWN AND UNKNOWN, WHICH MAY ARISE DIRECTLY OR INDIRECTLY FROM ITS USE OF THE LICENSED PROPERTY OR GIDDINGS-LLANO LINE. LICENSEE SPECIFICALLY AGREES THAT IT WILL NOT SEEK REIMBURSEMENT, DAMAGES OR ANY OTHER KIND OF COMPENSATION FROM LICENSOR, NOR MAKE ANY CLAIMS WHATSOEVER AGAINST LICENSOR, AND LICENSOR SHALL HAVE NO LIABILITY TO LICENSEE OR ANY PERSON ENTERING THE PROPERTY BY, THROUGH OR UNDER LICENSEE'S RIGHTS HEREUNDER, FOR ANY LOSS, COST, DAMAGES, BODILY INJURIES OR DEATH. LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE LICENSED PROPERTY, AND LICENSEE ACCEPTS THE LICENSE TO USE THE PROPERTY "AS IS, WHERE IS" AND WITH ALL FAULTS.

B. Obligation to Report

If Licensee is aware any dangerous or defective condition exists on the Licensed Property that, under the normal course of business is the responsibility of the Licensor, and Licensee fails to report the problem to Licensor, Licensee continues to be responsible for its obligations established in this Agreement. Under these circumstances, Licensor will not be liable for any detrimental consequences.

C. No Waiver

The failure of Licensor to insist in any one or more cases upon the performance of any of the provisions, covenants, agreements or conditions of this Agreement or to exercise any option herein contained shall not be construed as a waiver or a relinquishment for the future of any such provision, covenant, agreement, condition or option. Receipt by Licensor of License Fees or of any other payment or the acceptance by Licensor of performance of anything required by this Agreement to be performed with knowledge of the breach of a covenant shall not be deemed a waiver of such breach. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the Agreement or otherwise available to Licensor by law will not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. No waiver of any provision, covenant, agreement or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by the party against whom such waiver is charged. The express waiver by either Licensor or Licensee of any breach shall not operate to extinguish the covenant or condition, the breach of which has been waived.

D. Governmental Entity

Each Party is a governmental entity and nothing contained herein shall be deemed a waiver of any rights or privileges afforded governmental entities under the laws of the state of Texas law or the Texas Constitution.

E. Governing Law and Venue

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas, and venue shall be in the County where the Licensed Property is located.

F. Attorneys' Fees

In the event Licensor finds it necessary to employ legal counsel to enforce its rights under this Agreement, or to bring an action at law, or other proceeding against Licensee to enforce any of the terms, covenants or conditions herein, Licensee shall pay to Licensor its reasonable attorneys' fees and expenses, regardless of whether suit is filed.

G. Compliance with Laws

Licensee agrees not to use the Licensed Property for any unlawful purpose. Licensor reserves the right, in its sole discretion, to unilaterally amend this Agreement at any time to incorporate any modifications necessary for Licensor's compliance, with all applicable state and federal laws, regulations, requirements and guidelines.

H. No Joint Venture

This Agreement does not intend to, and nothing contained in this Agreement shall, create any partnership, joint venture or other joint or equity type agreement between Licensor and Licensee.

I. No Third Party Beneficiaries

No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Agreement and no such other person, firm organization or corporation shall have any right or cause of action hereunder.

J. Severability

If any provisions of this Agreement are, for any reason, held by a court to be unenforceable, then the invalidity of such provision will not invalidate any other provisions, which other provisions will remain in full force and effect unless removal of such invalid provision destroys the legitimate purpose of the Agreement, in which event the Agreement will be terminated.

K. Recording

Licensee shall not record this Agreement.

L. Personal License

The rights and privileges herein given are personal to the Licensee. Licensee has no exclusive rights or benefits other than those set forth herein.

M. Right of Entry

At any time during the term hereof, Licensor or its representatives shall have the right, without disturbance of Licensee's use or possession, to enter the Licensed Property.

N. Dates of Performance

In the event that the date for performance by either party of any obligation under this Agreement are required to be performed by such party falls on a Saturday, Sunday or national holiday, the time for performance of such obligation shall be deemed extended until the next business day following such date.

O. Exhibits

This Agreement incorporates by reference the following Exhibits:

1. Exhibit "A" (Plans for 42-inch raw waterline)
2. Exhibit "B" (Plans for 30-inch raw waterline)
3. Exhibit "C" (Insurance and Minimum Coverage Requirements)

P. Entire Agreement

This Agreement embodies the entire agreement and understanding between the Parties relating to the transaction contemplated hereby and supersedes any and all prior or contemporaneous oral or written statements concerning the subject matter of this Agreement. In executing this Agreement, the Parties do not rely upon any statement, promise, or representation not expressed herein.

Q. Modification

This Agreement may not be modified, changed or altered in any respect except by the mutual written agreement of the Parties.

R. Notice

All notices required under this Agreement or by law by either party to the other shall be in writing and may be given or served by depositing same in the United States mail, postage paid, registered or certified and addressed to the party to be notified, with return receipt requested; by personally delivering same to such party, or an agent of such party; or by overnight courier service, postage paid and addressed to the party to be notified and sent to the address set forth below. Notice deposited in the U.S. mail in the manner hereinabove described shall be effective upon such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. An address may be changed by written notice to the other party.

If to the Licensee: City of Pflugerville
 P. O. Box 589
 Pflugerville, Texas 78691

If to the Licensor: Capital Metropolitan Transportation Authority
 2910 E. 5th Street
 Austin, Texas 78702
 Attn: Real Estate Department

With copy to: Capital Metropolitan Transportation Authority
 2910 E. 5th Street
 Austin, Texas 78702
 Attn: Chief Counsel

S. Condemnation

If all, or any, portion of the Licensed Property including, but not limited to, the air ways over and across the Licensed Property, is condemned by any authority with condemnation powers, the proceeds of such condemnation shall be the property of Licensor.

T. Time is of the Essence

Time is of the essence in this Agreement.

U. Signature

A copy or facsimile signature shall be deemed an original signature for all purposes. For purposes of this paragraph, the phrase “facsimile signature” includes without limitation, an image of an original signature in whatever means or form.

V. Counterparts

This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument.

W. No Assignment or Subletting

Except as expressly set forth herein, Tenant may not assign or otherwise transfer this Agreement, whether by operation of law or otherwise, and may not sublet (or underlet), or permit, or suffer the Licensed Property, in whole or in part, to be used or occupied by any party other than Licensee and Licensee’s agents without Licensor’s prior written consent, which may be withheld in Licensor’s sole discretion. Any attempted assignment or subletting without Licensor’s consent is void Ab initio.

X. Interpretation

Whenever used herein, the term “including” shall be deemed to be followed by the words “without limitation”. Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender.

Y. Survival

Termination of this Agreement shall not relieve Licensee’s liability or obligation set forth in this Agreement that is expressly stated to survive termination of this Agreement.

Z. Remedies

All rights and remedies in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the Licensor, whether provided by law, equity, statute or otherwise. The election of any one or more remedies the Licensor will not constitute a waiver of the right to pursue other available remedies.

III. Federal Notices

A. Non Discrimination

Licensee shall not discriminate or permit discrimination against any person or organization because of race, color, age, religion, sex or national origin or for any other reason prohibited by law.

B. Compliance with Environmental Standards

Licensee shall comply with the provisions of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

Remainder of page intentionally left blank; Signature page follows.

IV. Signatories

A. Effect Date of Execution

The Agreement will be executed and effective as of the date of Licensor's signature (the "Effective Date").

B. Signatories

This Agreement is hereby accepted and agreed to by the following individuals or officers who represent that they are duly authorized to bind the Parties as set forth above.

Capital Metropolitan Transportation Authority

City of Pflugerville

By: _____

By: _____

Kenneth Cartwright
VP, Facility Management & Capital Construction

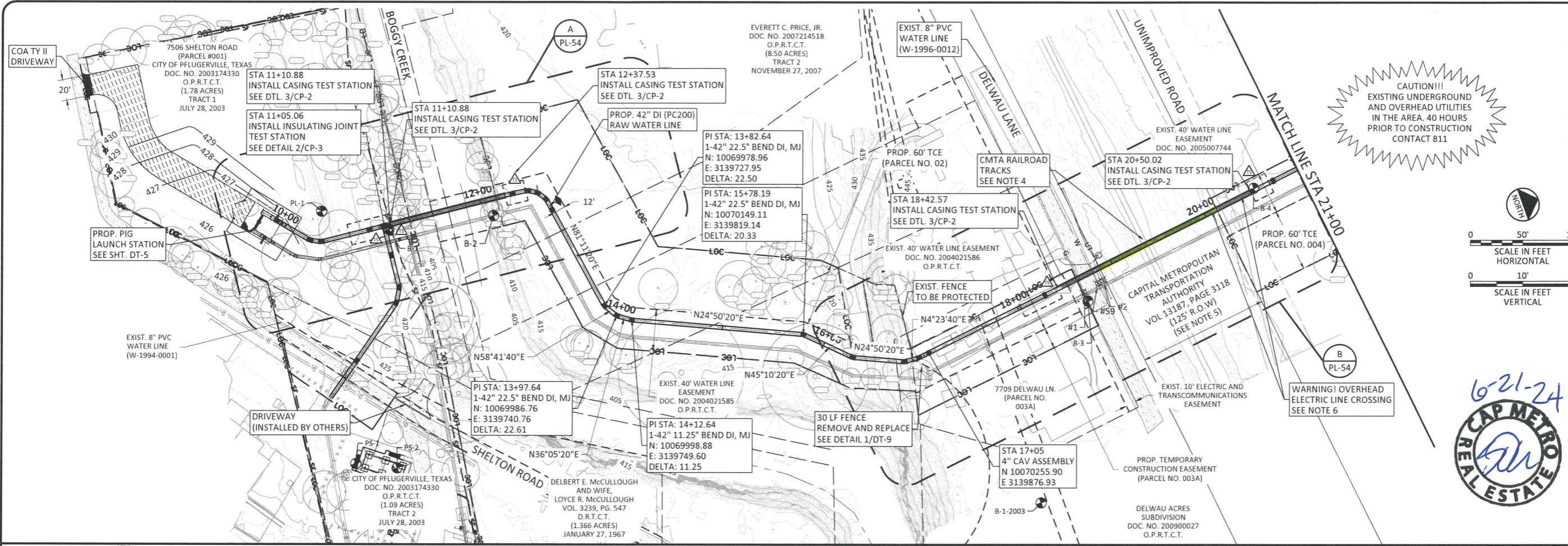
Printed Name: _____

Title: _____

Date: _____

Date: _____

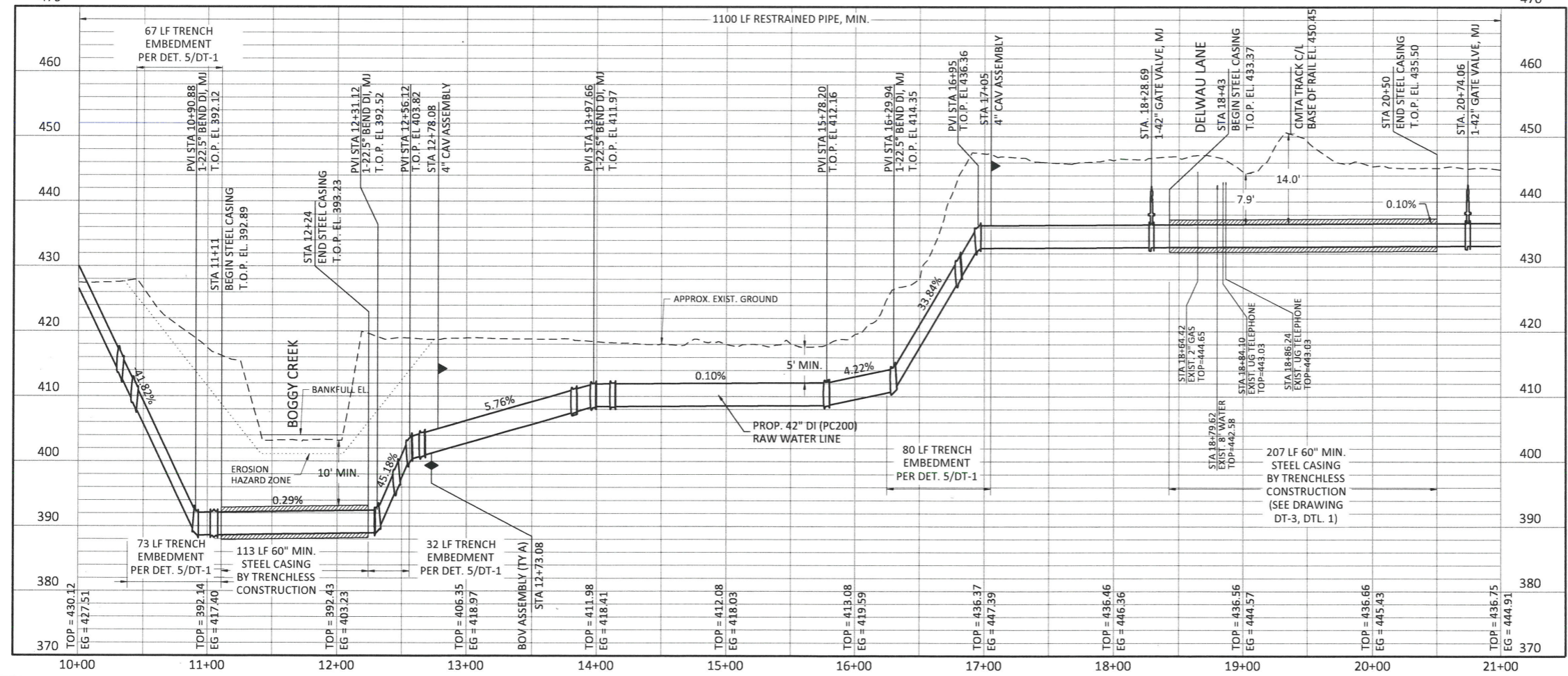
Exhibit "A"
Plans for 42-inch raw waterline



NOT FOR CONSTRUCTION
 THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE PROVISIONS OF THE OPEN PUBLIC RECORDS ACT, TEXAS CHAPTER 89. THIS DOCUMENT IS NOT TO BE USED FOR CONSTRUCTION, BIDDING OR PERMIT PURPOSES.

FREESE & NICHOLS
 10431 Morab Circle, Suite 300
 Austin, Texas 78759
 Phone: (512) 617-5100
 Web: www.freese.com

CITY OF PFLUGERVILLE, TX
SECONDARY COLORADO RIVER RAW WATER LINE - PACKAGE 3
 PIPELINE
PIPELINE PLAN AND PROFILE
STA. 10+00 TO STA. 21+00



RECORD REFERENCES

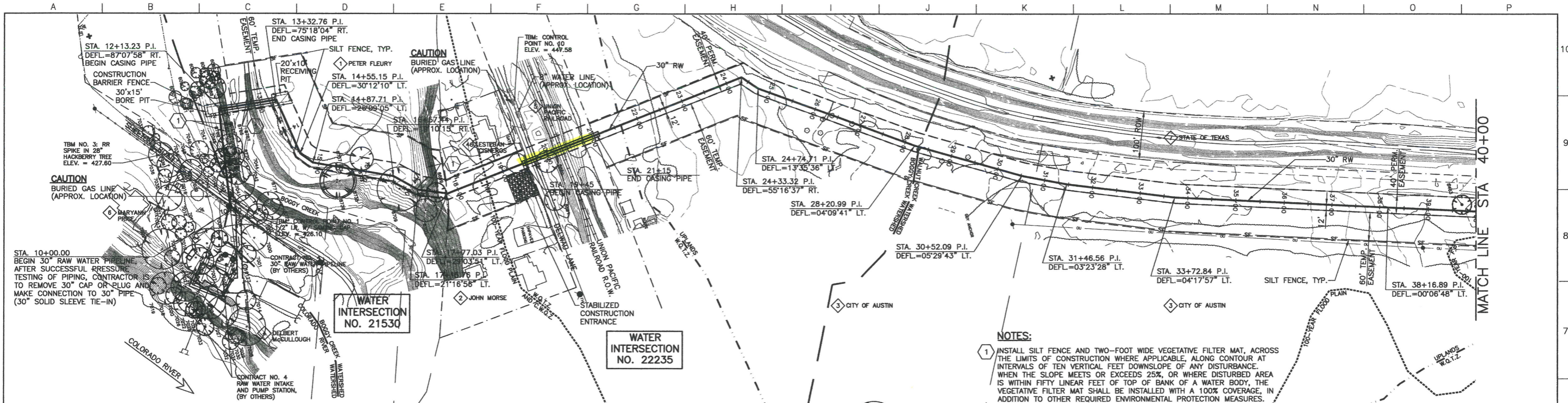
QUAD MAP N21 & N22 NUMBER	WATER 22235 INTERSECTION
MAPSCO 617A & 587W NUMBER	

- NOTES:**
- CONTRACTOR SHALL VERIFY LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO BEGINNING OF CONSTRUCTION.
 - PITS OR SHAFTS ASSOCIATED WITH TRENCHLESS CONSTRUCTION ARE SHOWN IN PLAN VIEW FOR ILLUSTRATION PURPOSES ONLY AND ARE NOT SHOWN IN PROFILE VIEW FOR CLARITY. CONTRACTOR SHALL BE RESPONSIBLE FOR THE DESIGN OF PITS OR SHAFTS ASSOCIATED WITH TRENCHLESS CONSTRUCTION. THE ACTUAL DIMENSIONS OF THE PITS OR SHAFTS SHALL BE CONSTRUCTED WITHIN THE LIMITS OF THE EXISTING EASEMENTS AS SHOWN.
 - COST ASSOCIATED WITH FENCE REPAIR IS SUBSIDIARY TO PIPE ITEM.
 - THE SECONDARY COLORADO RIVER RAW WATER LINE WILL CROSS THE CMTA RAILROAD TRACKS AT APPROXIMATELY RAILROAD MILEPOST 52.95 OR APPROXIMATELY 770 FEET EAST OF THE CENTERLINE OF THE WALNUT CREEK TRAIL CROSSING OF THE CMTA RAILROAD TRACKS.
 - SEE SAFETY NOTES FOR DESIGN & CONSTRUCTION OF ANY INFRASTRUCTURE WITHIN RAILROAD RIGHT OF WAY ON DRAWING G-3 FOR ALL WORK PERFORMED WITHIN CMTA RIGHT OF WAY.
 - AUSTIN ENERGY 138 KV TRANSMISSION LINE WITH ESTIMATED 39' CLEARANCE TO EXISTING GROUND. CONTRACTOR SHALL COMPLY WITH OSHA STANDARD 1926.1408 FOR ALL WORK IN THIS VICINITY.

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Exhibit "B"
Plans for 30-inch raw waterline

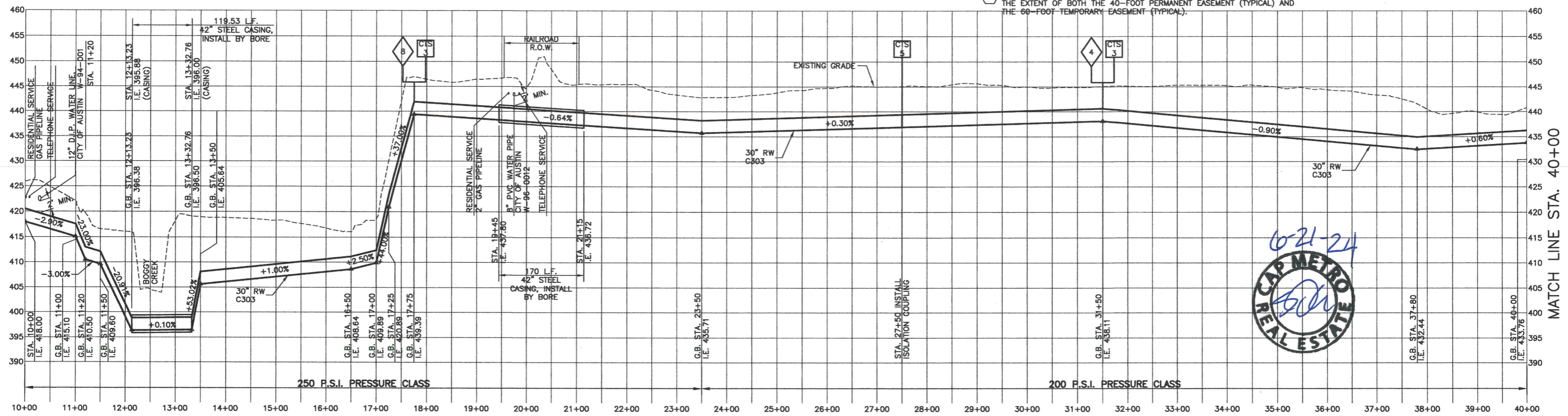


TREE PROTECTION NOTE:
CHAIN LINK TREE PROTECTION IS REQUIRED FOR THE FOLLOWING TREES: 8709

CREEK CROSSING NOTE:
WHERE CONSTRUCTING PIPELINE CREEK CROSSINGS, SPOILS SHALL BE PLACED ON THE UPHILL SIDE OF THE TRENCH AND PLACED ON AS HIGH AN ELEVATION AS POSSIBLE.

PLAN
SCALE: 1" = 100'

- NOTES:**
- INSTALL SILT FENCE AND TWO-FOOT WIDE VEGETATIVE FILTER MAT, ACROSS THE LIMITS OF CONSTRUCTION WHERE APPLICABLE, ALONG CONTOUR AT INTERVALS OF TEN VERTICAL FEET DOWNSLOPE OF ANY DISTURBANCE. WHEN THE SLOPE MEETS OR EXCEEDS 25%, OR WHERE DISTURBED AREA IS WITHIN FIFTY LINEAR FEET OF TOP OF BANK OF A WATER BODY, THE VEGETATIVE FILTER MAT SHALL BE INSTALLED WITH A 100% COVERAGE, IN ADDITION TO OTHER REQUIRED ENVIRONMENTAL PROTECTION MEASURES.
 - THE CONTRACTOR SHALL FIELD VERIFY THE TYPE, LOCATION, AND DEPTH OF ALL UTILITY CROSSINGS PRIOR TO CONSTRUCTION IN ORDER TO ADJUST THE PIPE GRADE IF NECESSARY AND AVOID DAMAGING THOSE UTILITIES. ADJUSTMENTS SHALL BE APPROVED BY THE ENGINEER.
 - UNLESS OTHERWISE NOTED, THE LIMITS OF CONSTRUCTION SHALL INCLUDE THE EXTENT OF BOTH THE 40-FOOT PERMANENT EASEMENT (TYPICAL) AND THE 60-FOOT TEMPORARY EASEMENT (TYPICAL).



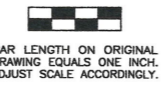
PROFILE
HORIZ: 1" = 100'
VERT: 1" = 10'

AS-RECORDED

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S J LOUIS CONSTRUCTION OF TEXAS Ltd
9862 LORENE, SUITE 104
SAN ANTONIO, TX 78216
(210) 340-9998

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HDR
HDR Engineering, Inc.
4401 WEST GATE BLVD.
SUITE 400
AUSTIN, TEXAS 78745
PHONE: 512-912-5100
FAX: 512-912-5158

Project Manager	K. D. PAYNE
Designed	K. D. PAYNE
Designed	B. M. NEAL
Checked	
Drawn	G. R. WILLIAMS



COLORADO RIVER WATER SUPPLY PROJECT

CONTRACT NO. 3 RAW WATER PIPELINE

AS-RECORDED

PIPELINE PLAN AND PROFILE STA. 10+00 TO STA. 40+00

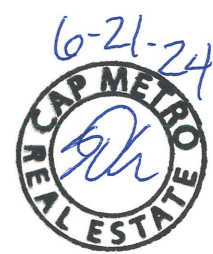
Date	JUNE 2004	Project No.	00000000005637	Drawing No.	1C01	Sheet	Z
Scale	AS NOTED	File Name	5637PNP001.DWG				

ID No.	Land Owner	Phone	Easement Recording No.
	City of Pflugerville Intake Pump Station	Ken Martin, City Engineer 512-251-2243	2003174330
1	Peter and Jumana Fluery	512-288-3456 H 512-386-7636 Mike Nolan - Tenant	2004021585
2	John Morse	978-287-9000 Ext. 49556	2004021586
3	City of Austin-Property C/O Realty Group	512-974-7076	
5	Southern Pacific Rail Road Co. Deeded to City of Austin	City of Austin 512-974-7161	Granted by Permit
7	TxDOT /Abandoned UPRR ROW	Mike Camus 512-832-7042	Granted by Permit
8	City of Austin (Parks) C/O Realty Group	512-974-7076	2003202422
9	BAE Systems, Inc.	Steve Contreras-Facilities Director 512-929-2028 Security: 512-929-2104	2004021591
	TxDOT FM 969 - MLK	Mike Camus 512-832-7042	Granted by Permit
10	YMCA	Larry Smith: 512-322-9622 Jennifer MacCurrach - Tenant 512-751-9351 Cell 512-439-6997 Office	2004057114
11	Dale Allen Haney	512-929-7315	2004024079
12	JM Properties, Ltd	Brenda Horton 512-385-0669	2004024077
13	LSIR, Ltd.	Rey Leggett 512-926-1999	2004053918
14	Loyola Johnny Morris LP	John Crutchfield 512-293-2505	2003257096
	City of Austin Loyola Lane	City of Austin 512-974-7161	Granted by Permit
15	Robert L. Haug	512-264-1109	* Not Recorded (1)

ID No.	Land Owner	Phone	Easement Recording No.
	City of Austin Old Manor Rd.	City of Austin 512-974-7161	Granted by Permit
16	Rupert & Lillie Belle Ceder & Pannell Living Trust	512-426-1397	2003241003
17	Dwyer-Sanders Group Partnership	Danny Burnett 512-327-7415	2003241000
	TxDOT State Highway- 290	Mike Camus 512-832-7042	Granted by Permit
18	290 Jones Investments, Inc.	Pepper Jones 512-468-8585	2004020774
19	Brougher Partners , Ltd.	Dell Boykin 512-478-2121	2004024687
20	Williams Ltd.	Evan Williams 512-477-1277	2004024076 2004024075
21	Waste Management of Texas, Inc.	Joe Fischer - Real Estate 630-572-2406 Austin Manager's Number: 512-272-9370	2004054660
22	John Wilkins Allen	512-261-5460	2004021593
	Travis County Blue Goose Rd.	Don Grigsby 512-854-4215	Granted by Permit
23	Guadalupe Cisneros	David Phelan 512-989-8084	2004024688
24	James Brooks, Jr. Estate	Tamika Vaughn 512-990-5333	2004054661
25	Don & Muriel Lanford Living Trust	Bob Lanford 512-385-2800	2004021592
26	Myrdis Allen, et al	Thomas Madison 512-477-3185	2004099531
27	Clora Jones Estate C/O Dee C. Madison et al	510-452-2011	2004075185
28	Thomas Madison	512-477-3185	2003241001

ID No.	Land Owner	Phone	Easement Recording No.
	Travis County Cameron Road	Don Grigsby 512-854-4215	Granted by Permit
33	Austin HB Residential Properties, Ltd.	John McCullough 512-419-7600	2004057116
	TxDOT FM 734 - Parmer Lane	Mike Camus 512-832-7042	Granted by Permit
34	Clifford M. & Kari C. Frank	512-251-7457	2004053915
35	Skinner Lands Travis County	Shelby Gunter 904-880-4344	2004053916
37	Jennifer Jo Bird	John Bird: 512-452-8121 Joy De Moss - Tenant: 512-913-3361	2004076015 2004076016
38	Bennie D. Hammett, et al	512-251-3088	2004023093
	Travis Counvis County Gregg Lane	Don Grigsby 512-854-4215	Granted by Permit
39	Jack Gullahorn	512-751-7074	2004057115
43	Limestone Springs LP	Sari Khayal 512-328-7377	2003241002
44	A.G. Killingsworth Est.	Willie Mae Killingsworth 512-251-3869	2003257089
	Travis County Killingworth Road	Don Grigsby 512-854-4215	Granted by Permit
49	Iva Lea Worley Barton	817-451-3960	2004074352
50	Land Extensions LP	Pat Boyle 512-217-6489	2004021594
51	Travis County-Property Northeast Metropolitan Park	512-854-9383	* Not Recorded (2)
52	Steven M. Anderson Trust, et al	512-633-4496	2003229823
	Travis County Pecan Street	Don Grigsby 512-854-4215	Granted by Permit
53	Mildred Smith	No Listing	2004076672
54	Kathleen England	281-347-3667	2003236748

NOTES:
 (1) ACQUIRED BY CONDEMNATION. AWARD OF COMMISSIONERS: MARCH 2, 2004. NOTICE OF DEPOSIT: MARCH 10, 2004.
 (2) AGREEMENT DATED JUNE 10, 2003 BETWEEN CITY OF PFLUGERVILLE AND TRAVIS COUNTY (UNRECORDED).



AS-RECORDED

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BAR LENGTH ON ORIGINAL DRAWING EQUALS ONE INCH. ADJUST SCALE ACCORDINGLY.

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 PHONE: 512-912-5100
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Project Manager	K. D. PAYNE
Designed	K. D. PAYNE
Designed	B. M. NEAL
Checked	
Drawn	M. E. WAUER

City of Pflugerville Texas

COLORADO RIVER WATER SUPPLY PROJECT

**CONTRACT NO. 3
 RAW WATER PIPELINE**

GENERAL PROJECT CONCEPT EASEMENTS AND LAND OWNER INFORMATION			
Date	JUNE 2004	Project No.	00000000005637
Scale	NOT TO SCALE	File Name	5637-00G-06.DWG
Drawing No.	0G06	Issue	Z

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 04-20-04 MWAUER 11:35:54

Exhibit “C”
CAPITAL METRO INSURANCE REQUIREMENTS

Licensee shall, at its own cost and expense, procure the insurance set forth in Exhibit B-1 attached hereto and made a part hereof, and promptly pay when due all premiums for the insurance. The insurance shall be kept in full force during the life of the Agreement.

Licensee’s insurance shall be: primary and non-contributory with respect to any insurance which might be carried by Licensor and contain a contractual waiver of subrogation.

Licensee shall furnish to Licensor certificate(s) of insurance evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies.

Licensee shall notify Licensor in writing of any material alteration of such policies, including any change in the retroactive date in any “claims-made” policy or substantial reduction of aggregate limits, if such limits apply or cancellation thereof at least thirty (30) days prior thereto.

All insurance policies shall be written by reputable insurance company or companies acceptable to Licensor with a current Best’s Insurance Guide Rating of A+ and Class XIII or better. All insurance companies shall be authorized to transact business in the State of Texas.

CAPITAL METRO MINIMUM COVERAGE REQUIREMENTS

Coverages shall be listed on front of the certificate, and listing Licensee as certificate holder and Licensor as an additional insured.

1. Commercial General Liability Insurance Coverage with limits of not less than One Million Dollars and No/100 Dollars (\$1,000,000) per occurrence and a combined Aggregate of Two Million Dollars and No/100 Dollars (\$2,000,000) with coverage that includes:
 - Premises/operations
 - Independent contractors
 - Personal Injury
 - Contractual Liability pertaining to the liabilities assumed in the agreement
 - Underground (when ground surface is disturbed)

Such insurance shall include a contractual endorsement pertaining to the liabilities assumed in the Agreement.

2. Comprehensive Automobile insurance coverage with minimum limits of not less than One Million Dollars and No/100 Dollars (\$1,000,000) with combined single limit of Two Million Dollars and No/100 Dollars (\$2,000,000).
3. Workers’ Compensation with Statutory limits
4. Employer Liability Insurance with minimum limits of \$1,000,000

Such insurance shall include a contractual endorsement which acknowledges all indemnification requirements under the Agreement.

Note: Such policies of insurance and certificates provided by Licensee shall provide (i) that Licensor is named as an additional insured (except for workers’ compensation insurance), (ii) that the named insured’s insurance is primary and non-contributory with any insurance maintained by Capital Metro, (iii) a contractual waiver of subrogation where required by written contract or agreement, and (iv) that Capital Metro shall receive notice of any cancellation of the policy.