



## Dow Pipeline Company

a subsidiary of The Dow Chemical Company

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ROW #: 30" DT

August 6, 2020  
Revised August 2, 2022

Fort Bend County Engineering Department  
c/o Schaumburg & Polk, Inc.  
11767 Katy Fwy # 900  
Houston, TX 77079  
Attention: Michael Boenig

*Sent via E-mail: michael@allgoodconstruction.com*

**RE: Extending July 26, 2019 Letter of No Objection for Fort Bend County Engineering Department's Construction Plans for Reconstruction of Katy Flewellen Road from Willow Lane to Gaston Road Which Will Cross Dow Pipeline Company's Existing 30" DT Pipeline in Katy, Fort Bend County, Texas.**

Dear Fort Bend County Engineering Department:

Dow Pipeline Company ("Company") agrees to extend the July 26, 2019 Letter of No Objection that was issued for the proposed construction plans for the reconstruction of Katy Flewellen Road ("Facility") from Willow Lane to Gaston Road by Fort Bend County ("Facility Owner") which will cross over Company's existing 30" DT pipeline in Katy, Fort Bend County, Texas, as detailed and shown on Civil Corp's Project Drawing No. 14-2-0170, Sheet Nos. 1-44, dated 3/27/2019, provided that the Facility Owner agrees and adheres to the following conditions:

1. **Design Plans and Specification.** Prior to commencing any operations covered by this Letter of No Objection, Facility Owner must submit to Company detailed design plans and specifications, including final plan and profile drawings, equipment and material specifications and construction methods and procedures ("Plans"). Company does not assume any liability for the Facility design or proper location, both of which will be the Facility Owner's sole responsibility. It is Facility Owner's responsibility to design, construct, and operate the Facilities and conduct all other activities under this Letter of No Objection in a safe and prudent manner and in compliance with all applicable governmental and regulatory requirements.
2. **Notice.** Facility Owner must notify Company's Field Technician at least 72 hours prior to any work near Company's pipeline(s). Contact for Company is:

Dustin Mercado, Field Tech – 979-264-9418 (Mobile)

3. **One-Call Notifications.** Facility Owner must perform all "One-Call" damage prevention notifications as may be required by local, state or federal regulations prior to any excavation within Company's right of way.

4. **Aerial Overhead Crossings.** Facility Owner may install proposed Facility over Company's pipeline, provided a 10 feet solid vertical clearance must be maintained between grade and the powerline. Additionally poles must provide 7 feet clearance between Company's pipeline and pole. If crossing over Company's pipeline condition 6 will apply.
5. **Crossings Over.** Facility Owner may install proposed Facility over Company's pipeline, provided a 36" solid vertical clearance must be maintained between the bottom of Facility and the top of the Company's pipeline. If the crossing is made by the use of directional drilling or other boring methods, Facility Owner must provide an inspection window or other suitable means to verify that the required clearance is maintained above Company's existing pipeline.
6. **Machine Excavation.** Machine excavation over Company's pipeline(s) may only be done with a bucket that has smooth sides and mouth or has the digging teeth barred. All digging with a bucket must be parallel with the pipeline(s). Digging may not be performed across or perpendicular to Company's pipeline(s). Excavation by mechanical means will only be allowed over and alongside Company's pipeline(s) to within 24" of Company's pipeline(s). Excavation closer than 24" to Company's pipeline(s) must be performed by hand.
7. **Relocation or Adjustments.** It is normal practice for proposed facilities to be installed beneath existing facilities. Facility Owner acknowledges and agrees that by installing the Facilities over Company's existing pipeline(s), Facility Owner will, at any time in the future, perform relocations or adjustments to its Facilities, as considered necessary by Company and will pay for or reimburse Company for additional costs which Company may incur in the operation, maintenance, repair or replacement of its pipeline(s), by virtue of the fact that the proposed Facilities are placed over rather than under Company's existing pipeline(s).
8. **Damages.** Company is not responsible for any damages to Facilities placed in Company's right-of-way resulting from any maintenance, repair or other work that may be required by the Company.
9. **Ground Cover.** The ground cover over Dow's pipeline(s) may not be reduced below the existing grade.
10. **Cathodic Protection.** Facility Owner expressly understands and agrees that Company's pipeline(s) are cathodically protected and that (a) Facility Owner will operate and maintain its Facilities in a manner as not to interfere in any way with the cathodic protection of Company's pipeline(s); and (b) Company will have no liability to Facility Owner or to any third party as a result of any damages or other adverse effects which Company's cathodic protection may have on the Facilities or third party properties. Cathodic test lead stations must be installed on the Facilities and on Company's pipeline where it is practical and as required by Company.
11. **Precautions.** Facility Owner will take all necessary precautions, as determined by Company's on-site representative, to prevent stress or damage to Company's existing pipeline(s). Such precautions or procedures may include the placement of mats over Company's right-of-way.
12. **Double Layer Matting.** Double Layer Matting will be required when crossing Company's existing pipeline and Right-of-Way with extreme loads and equipment. Company's on-site representative will determine if load or equipment is extreme.
13. **Zero Load Slabs.** Zero load Slabs are required for all proposed paved crossings over Company's existing pipelines if there is less than 60" of undisturbed soil between the top of Company's

pipeline and the bottom of the proposed Facility. Requirements for complete Zero load Slab are made a part of this Letter of No Objection.

14. **Work and Clean-Up.** All work and clean-up within Company’s existing Right-of-Ways will be done to the satisfaction of Company’s on-site representative.
15. **Indemnification.** *To the extent of the law, Facility Owner must indemnify, hold harmless and defend Company, its agents, officers, directors, employees, shareholders, representatives, insurers, subsidiaries, and other affiliated companies (“Dow Group”) from and against all claims, losses, costs (including attorney’s fees and court costs and other costs of suit), demands, damages, judgments, penalties, liabilities, debts, expenses, and causes of action of whatever nature or character, and whether arising out of contract, tort, negligence, strict liability, breach of warranty, products liability, premises liability, misrepresentation, violation of applicable law, act or omission, or any cause whatsoever, (“Claims”), arising out of Facility Owner’s presence on Company’s property or this Letter of No Objection in any way. These obligations will apply to any claims asserted by or arising in favor of Facility Owner, its contractors or subcontractors, agents, representatives, employees, invitees, insurers, spouses, relatives, or any third party. Facility Owner’s indemnity obligations will not apply to any Dow Group with respect to any Claim resulting from the Dow Group’s sole negligence (other than imputed negligence).*
16. **Construction Commencement.** If construction work does not commence within 180 days of the date of acceptance, this Letter of No Objection will automatically expire. This Letter of No Objection, however, may be extended by the parties’ mutual written agreement.
17. **Termination.** Following written notice to Facility Owner and the expiration of a 120-day cure period, Company may terminate the Letter of No Objection immediately if there are any deviations from the Plans, or if Facility Owner fails to comply with any of the requirements contained in the Letter of No Objection.
18. **Definition of Facility Owner.** All references to Facility Owner include Facility Owner’s employees, contractors and agents.
19. **“Including.”** Unless the context requires otherwise, the term “including” means “included, but not limited to.”
20. **Headings.** Headings are for convenience only and do not affect this Letter of No Objection’s interpretation.
21. **Construction.** This Letter of No Objection will be construed as though both parties participated equally in its drafting. Any rule of construction that a document is to be construed against the drafting party will not apply to this Letter of No Objection.
22. **Choice of Law.** Texas law applies to this Letter of No Objection without regard to any choice-of-law rules that might direct the application of the law of any other jurisdiction. Any dispute regarding this Letter of No Objection will be adjudicated in the United States District Court for the Southern District of Texas or, if that court does not have jurisdiction, in the Judicial District Court for Harris County, Texas.
23. **Entire Agreement.** This Letter of No Objection constitutes the sole agreement of the parties with respect to its subject matter. It supersedes any prior written or oral agreements or

communications between the parties. It may not be modified except in a writing signed by the parties.

- 24. **Severability.** If any part of this Letter of No Objection is for any reason held to be unenforceable, the rest of it remains fully enforceable. If any provision is held unenforceable, the parties will attempt to agree on a valid or enforceable provision that will be a reasonable substitute for the unenforceable provision.
- 25. **Successors and Representatives.** This Letter of No Objection binds and inures to the benefit of the parties and their respective heirs, personal representatives, and successors.
- 26. **Survival.** Any of this Letter of No Objection’s terms and conditions which by their nature require performance or observance to occur after termination will survive this Letter of No Objection’s termination.
- 27. **Waiver.** If either party fails to require the other to perform any of this Letter of No Objection’s terms, that failure does not prevent the party from later enforcing that term. If either party waives the other’s breach of a term, that waiver is not treated as waiving a later breach of the term.

Please sign below indicating your acceptance and agreement to the foregoing terms and return to me by e-mail, fax or mail prior to beginning work. Please also provide a copy for your construction inspector to retain on site during performance of the crossing. Please let me know if I can be of further assistance.

Sincerely,

*Thomas M. Jackson*

Thomas M. Jackson  
Manager, Land & Right-of-Way

Cc: Dustin Mercado  
William Nickel

**Agreed and Accepted:**

*Fort Bend County Engineering Department*

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_