

240

FORT BEND COUNTY FY 2010
COMMISSIONERS COURT AGENDA REQUEST FORM
Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

Date Submitted: 12/30/2009

Submitted By: P. Batts

Department: Engineering

AGENDA ITEM

Court Agenda Date: 01/05/2010

Phone Number: 281 633 7507

SUMMARY OF ITEM: Take all appropriate action on Standard Utility Agreement between Fort Bend County, the State of Texas, and Dow Pipeline Company regarding roadway changes for Highway FM1464 (from Shiloh Lake Drive to SH99) not to exceed \$494,530.00, Precinct 4. (Fund: Right of Way)

RENEWAL AGREEMENT/APPOINTMENT

YES

☐

NO

☐

REVIEWED BY COUNTY ATTORNEY'S OFFICE:

YES

☐

NO

☐

List Supporting Documents Attached:

Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

DISTRIBUTION:

Original Form Submitted with back up to County Judge's Office ☐ (✓ when completed)

If by E-Mail to ospindon@co.fort-bend.tx.us

If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

<input type="checkbox"/>	Auditor	(281-341-3774)	<input type="checkbox"/>	Comm. Pct. 1	(281-342-0587)
<input type="checkbox"/>	Budget Officer	(281-344-3954)	<input type="checkbox"/>	Comm. Pct. 2	(281-403-8009)
<input type="checkbox"/>	Facilities/Planning	(281-633-7022)	<input type="checkbox"/>	Comm. Pct. 3	(281-242-9060)
<input type="checkbox"/>	Purchasing Agent	(281-341-8642)	<input type="checkbox"/>	Comm. Pct. 4	(281-980-9077)
<input type="checkbox"/>	Information Technology	(281-341-4526)	<input type="checkbox"/>	County Clerk	(281-341-8697)
<input type="checkbox"/>	Other:		<input type="checkbox"/>	County Atty	(281-341-4557)

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify):

1-7-10 3 orig's. ret. to Paulette at Engineering



Property Acquisition Services, Inc.

19855 Southwest Freeway, Suite 200, Sugar Land, Texas 77479

LETTER OF TRANSMITTAL

To: Fort Bend County Engineering
1124 Blume Road
Rosenberg, Texas 77471

Date: December 17, 2009
RE: Utility Agreement
FM 1464: From Shiloh Lake Dr. to
SH 99

Attention: Paulette Batts, Executive Assistant

WE ARE SENDING YOU: ☒ ATTACHED ☐ UNDER SEPARATE COVER

THE FOLLOWING ITEMS: ☒ UTILITY AGREEMENT ☐ UTILITY REIMBURSEMENT ☐ SPECIFICATIONS ☐ OTHER: _____

VIA: ☐ OVERNIGHT EXPRESS ☒ OUR MESSENGER ☐ OTHER: _____

COPIES		SHEET NO. / DESCRIPTION
QTY.	TYPE	
3	Original(s)	DOW Pipeline Company - Utility Agreement; TxDOT U#-not yet assigned

THESE ARE TRANSMITTED AS CHECKED BELOW:

☒ FOR APPROVAL ☐ REVIEWED AS SUBMITTED ☐ FOR REVIEW AND COMMENT
☐ FOR YOUR USE ☐ REVIEWED AS NOTED ☐ ISSUED FOR CONSTRUCTION
☐ AS REQUESTED ☐ REVISE AND RESUBMIT ☐ OTHER:

REMARKS:

Attached for your review and further handling are the following forms and supporting documents as submitted by Dow Pipeline Company (DOW) based on the Actual Cost Basis. The total estimated cost is set at \$494,530.00. The widening of FM 1464 will require DOW to extend approximately 105 LF of 36" split casing over their existing 30" pipeline. All work is anticipated to take place outside the existing ROW and in DOW's own easement; therefore, the eligibility has been determined to be 100% reimbursable for all reasonable and eligible costs.

We recommend approval as submitted.

IF ENCLOSURES ARE NOT AS NOTED, KINDLY NOTIFY US AT ONCE. TELEPHONE: 281-343-7171.


Chris Mayfield
Utility Coordinator



STANDARD UTILITY AGREEMENT ACTUAL COST – LOCAL GOVERNMENT

U-Number:

District: Houston
Federal Project No.: n/a
ROW CSJ: 1415-02-041
Highway Project Letting Date: Feb 2010

County: Fort Bend
Highway: FM 1464
From: Shiloh Lake Dr.
To: SH 99

This Agreement by and between the State of Texas, acting by and through the Texas Transportation Commission, ("**State**"), and Fort Bend County, Texas, acting by and through its duly authorized official, ("**Local Government**"), and Dow Pipeline Company, acting by and through its duly authorized representative, ("**Owner**"), shall be effective on the date of approval and execution by and on behalf of the **State**.

WHEREAS, the **State** has determined that it is necessary to make certain highway improvements in the state highway system, which said changes are generally described as follows: WIDEN 2 LANES UNDIVIDED TO 4 LANES DIVIDED ON EXISTING LOCATION; BASE REPAIR, OVERLAY AND REALIGNMENT AND DETENTION PONDS

WHEREAS, these proposed highway improvements will necessitate the adjustment, removal, and/or relocation of certain facilities of **Owner** as indicated in the following statement of work: Dow Pipeline Company will install approximately 105 feet of split casing on its 30 inch pipeline from existing TX-DOT ROW to the edge of the newly acquired TX-DOT ROW. Dow Pipeline Company will also relocate an existing cathodic protection ground well and rectifier and will install new test leads on the newly installed casing and such work is shown in more detail in **Owner's** plans, specifications and costs (estimated at \$494,530.00), which are attached hereto and made a part hereof, and which are prepared in form and manner required by 23 CFR 645, Subpart A, and amendments thereto; and

WHEREAS, the **State** and the **Local Government** have previous to this date entered into an agreement, said agreement being attached as Exhibit "B" and incorporated for all purposes herein, to accept responsibility for the adjustment, removal, or relocation of certain utility facilities required by highway improvements on the hereinabove designated project.

WHEREAS, the **Owner**, has provided sufficient legal authority to the **Local Government** to establish an interest in properties affected by the abovementioned highway improvements. Said facilities are located upon such properties as indicated in the statement of work as described in Exhibit "A".

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the parties mutually agree as follows:

The **State** will administer federal funds in payment of the costs incurred in the adjustment or relocation of **Owner's** facilities to the extent authorized under Title 23, Code of Federal Regulations, Part 645, Subpart A. The State's participation will not exceed Ninety percent (90%) of the total cost of authorized expenses after receipt of a final billing prepared in accordance with the abovementioned federal regulations. The **Local Government's** participation shall consist of the remaining Ten percent (10%) of the cost of the adjustment or relocation.

The **Owner** has determined that the method to be used in developing the adjustment or relocation costs shall be as specified for the method checked and described hereinafter:

- ☒ (1) Actual direct and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.

- ☐ (2) Actual direct and related indirect costs accumulated in accordance with an established accounting procedure developed by the **Owner** and approved by the **Local Government** and **State**.

Subject to the participation percentage as set out above, the **Local Government** will, upon satisfactory completion of the adjustment or relocation, and upon receipt of a final billing prepared in the form and manner prescribed by Federal regulations, make payment in the amount of ninety percent (90%) of the eligible costs as shown in the final billing. The **Local Government** will reimburse the remaining ten percent (10%) after its audit of the final billing. Unless a variance is discovered, the total payments will equal the amount found eligible for reimbursement by the final audit.

When requested, the **Local Government** will make intermediate payments at not less than monthly intervals to **Owner** when properly billed. Such payments will not exceed eighty percent (80%) of the eligible cost as shown in each such billing. Intermediate payments shall not be considered final payment for any listed items. Bills for work completed herein shall be submitted to the **Local Government** not later than ninety (90) days after completion of the work. The **State** will reimburse the **Local Government** in an amount equal to the payment by the **Local Government** to the **Owner** upon receipt of **Owner's** billing statement, and certification by the **Local Government** that payment in the requested amount has been made to the **Owner**. Upon receipt of the final billing and conclusion of the audit, the **Local Government** agrees to pay **Owner** any eligible outstanding retainage, and promptly request final reimbursement from the **State**.

In the event there is a substantial change for the statement of work contained in Exhibit "A", reimbursement is limited to the amount approved pursuant to this agreement and its attached exhibits unless written approval is obtained from the **Local Government** and the **State**. All changes shall be documented on the **Owner's** "as-built" plans supplied to the **State**. In no event can the **Local Government** bind the **State** for additional costs incurred due to the adjustment or relocation.

Upon execution of this agreement by all parties, the **Local Government** will, by written notice, authorize the **Owner** to proceed with the necessary adjustment or relocation, and the **Owner** agrees to prosecute such work diligently in accordance with the **Owner's** plans. Such plans are attached as Exhibit "C". **Owner** agrees to proceed in such a manner that will not result in avoidable delay or interference with the **State's** highway construction. Should **Owner** by its actions cause interference or delay resulting in the imposition of damages upon the **State** by a third party, **Owner** agrees to be responsible for said damages. Such authorization to proceed shall constitute notice on the part of the **State** that the relocation has been included in an approved program as an item of right of way acquisition, that a project agreement which includes the work has or will be executed, and that the utility relocation or adjustment will be required by the final approved project agreement and plans.

The **Owner** will retain records of such costs in accordance with the provisions of 23 CFR Part 645, Subpart A.

The **Owner**, by execution of this agreement, does not waive any rights to which **Owner** may legally have within the limits of the law.

This agreement is subject to cancellation by either the **State** or the **Local Government** at any time up to the date that work under this agreement has been authorized. Such cancellation will not create any liability on either the part of the **State** or the **Local Government**.

The State Auditor may conduct an audit or investigation of any entity receiving funds from the **State** directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds.

It is also expressly understood that the **Owner** conducts the adjustment, removal, or relocation at its own risk, and that the **Owner** agrees to indemnify and hold the **State** harmless for damage to existing facilities caused by the **Owner's** conduct.

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

THE LOCAL GOVERNMENT

By: Robert Hebert

Title: County Judge

Date: 1-5-2010

OWNER

Owner: Dow Pipeline Company

By: L. A. Semper

Title: Right of Way Manager

Date: 12-10-09

EXECUTION RECOMMENDED:

, Houston District *

THE STATE OF TEXAS

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____

**

Date: _____

* For locally-executed agreements, ROW Administrator recommends execution; otherwise District Engineer (or designee) .

** For locally-executed agreements, District Engineer (or designee) approves and executes; otherwise ROW Division Director.

ATTACHMENT "I"
(to be used only for Inclusion in Highway Construction Contract)

In the best interest of both the **State** and the **Owner**, the **Owner** requests the **State** to include the plans and specifications for this work in the general contract for construction of Highway n/a in this area, so that the work can be coordinated with the other construction operations; and the construction contract is to be awarded by the **State** to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed.

Utility: n/a

By: _____

Title: n/a

Date:./a

N/A

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Dow Pipeline Company

FM 1464: From Shiloh Lake Dr to SH 99

CSJ: 1415-02-040

ROW CSJ: 1415-02-041

Attachment A

Plans, Specifications, and Estimated Costs

Cost Estimate

Project: STP 2009(703) ES, FM 1464 from Shiloh Lake Drive to SH 99
Control: 1415-02-040

Engineering Cost:

Dow Pipeline

Project Engineer	30 hours	\$65/hour	\$1,950
Pipeline Technician	8 hours	\$50/hour	\$400
Construction Manager	6 hours	\$65/hour	\$390
Operations Leader	4 hours	\$65/hour	\$260

Surveying

Preliminary Profile of Pipeline	4 days	\$5,000/day	\$20,000
Profile for Split Casing	4 days	\$5,000/day	\$20,000
Drafting	4 days	\$1250/day	\$5,000

Subtotal	\$48,000
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***** **Total Cost (Engineering)** **\$48,000**

JOB SCOPE

- 1 INSTALL SPLIT CASING FROM EXISTING ROW TO PROPOSED ROW
- 2 INSTALL NEW TEST LEAD ON CASING
- 3 INSTALL NEW GROUND BED AND RECTIFIER

1. INSTALL SPLIT CASING - WORK SCOPE

Contractor Labor and Equipment:

Labor and Equipment per day	12 days	\$15,000	\$180,000
3 - Welders and rigs			
7 - Labors			
3 - Operators			
1 - Supervisor			
3 - Backhoes			
Coating Repairs	4 hours	\$250	\$1,000
Temporary Shoring	7 days	\$1,428.58	\$10,000
Traffic Control	7 days	\$714.29	\$5,000
Gell fill casing to prevent it from shorting out cathodic protection	1 day	\$35,000	\$35,000
Well Point Equipment Rental	7 days	\$2,381	\$16,667

Well Point Installation, Operation and Removal	7 days	\$4,761.86	\$33,333
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Subtotal			\$281,000
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Company Labor:

Project Engineer	20 hours	\$65/hour	\$1,300
Pipeline Technician	90 hours	\$50/hour	\$4,500
Construction Manager	120 hours	\$65/hour	\$7,800

Subtotal			\$13,600
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Materials:

<i>Description</i>	<i>Quantity</i>	<i>Unit Cost</i>	<i>Cost</i>
36" Carbon steel pipe	105 ft	\$130/ft	\$13,650
Casing end seals	1	\$500/ea	\$500
30x36 casing spacers	33	\$300/ea	\$9,900
vent pipe	1	\$100/ea	\$100

Subtotal			\$24,150
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2. INSTALL NEW TEST LEAD ON CASING

Contractor Labor, Equipment, and Materials:

Contractor vacuum excavate hole and install test lead	1 day	\$1,500	\$1,500
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3. INSTALL NEW GROUND BED AND RECTIFIER

Contractor Labor, Equipment, and Materials:

Acquire Cathodic Protection Easement	1 site	\$7,500	\$7,500
Contractor drill deep anode well, install anodes, install rectifier.	1 well/rectifier	\$40,000	\$40,000
Cathodic Protection Site Damages	1 site	\$2,500	\$2,500

Company Labor:

Cathodic Protection Technician	10 hours	\$55/hour	\$550
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Subtotal			\$52,050
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*****	Total Cost (Job Scope)		\$370,800
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PROJECT TOTAL COST			\$418,800
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DOW Pipeline Company

FM 1464: From Shiloh Lake Dr

CSJ: 1415-02-040

ROW CSJ: 1415-02-041

Attachment B

Utility's Accounting Method

- ☒ **Actual Cost Method of Accounting**
The utility accumulates cost under a work order accounting procedure prescribed by the Federal or State regulatory body; and
The utility proposes to request reimbursement for actual direct and related indirect costs,
- ☐ **Lump Sum Method of Accounting**
Utility proposed to request reimbursement based on an agreed lump sum amount supported by a detailed cost analysis.
- ☐ **Alternative Method of Accounting**
The utility accumulates costs under an accounting procedure (Chart of Accounts) developed by the utility and approved by the State; and,
The utility proposes to request reimbursement for actual direct and indirect costs; and
The utility owner is a municipality.

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DOW Pipeline Company

FM 1464: From Shiloh Lake Dr to SH 99

CSJ: 1415-02-040

ROW CSJ: 1415-02-041

Attachment C

Utility's Schedule of Work and Estimated Date of Completion

Construction is estimated to start within 30 days from the date of receipt of a fully executed agreement or DOW will notify the county if any unforeseen delays are anticipated. The actual construction is estimated to take 7 days to complete. (weather permitting)

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DOW Pipeline Company

FM 1464: From Shiloh Lake Dr to SH 99

CSJ: 1415-02-040

ROW CSJ: 1415-02-041

Attachment D

Statement Covering Contract Work – ROW-U-48



STATEMENT COVERING UTILITY CONSTRUCTION CONTRACT WORK
(AS APPEARING IN ESTIMATE)

U-No.

District: Houston
County: Fort Bend
Federal Project No.: n/a

ROW CSJ No.: 1415-02-041
Highway No.: FM 1464

I, L.A. Simper, a duly authorized and qualified representative of Dow Pipeline Company, hereinafter referred to as **Owner**, am fully cognizant of the facts and make the following statements in respect to work which will or may be done on a contract basis as appears in the estimate to which this statement is attached.

It is more economical and/or expedient for **Owner** to contract this adjustment, or **Owner** is not adequately staffed or equipped to perform the necessary work on this project with its own forces to the extent as indicate on the estimate.

Procedure to be Used in Contracting Work

- ☐ A. Solicitation for bids is to be accomplished through open advertising and contract is to be awarded to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed.
- ☐ B. Solicitation for bids is to be accomplished by circulating to a list of pre-qualified contractors or known qualified contractors and such contract is to be awarded to the lowest qualified bidder who submits a proposal in conformity with the requirements and specifications for the work to be performed. Such presently known contractors are listed below:
- 1.
 - 2.
 - 3.
 - 4.
 - 5.
- ☒ C. The work is to be performed under an existing continuing contract under which certain work is regularly performed for **Owner** and under which the lowest available costs are developed. (If only part of the contract work is to be done under an existing contract, give detailed information by attachment hereto.)
- ☐ D. The utility proposes to contract outside the foregoing requirements and therefore evidence in support of its proposal is attached to the estimate in order to obtain the concurrence of the State, and the Federal Highway Administration Division Engineer where applicable, prior to taking action thereon (approval of the agreement shall be considered as approval of such proposal).
- ☐ E. The utility plans and specifications, with the consent of the State, will be included in the construction contract awarded by the State.

L.A. Simper
Signature

12-10-09
Date

Right of Way Manager
Title

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DOW Pipeline Company

FM 1464: From Shiloh Lake Dr to SH 99

CSJ: 1415-02-040

ROW CSJ: 1415-02-041

Attachment E

Joint-Use Acknowledgement – ROW-U-JUA

Separate attachment.

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DOW Pipeline Company

FM 1464: From Shiloh Lake Dr to SH 99

CSJ: 1415-02-040

ROW CSJ: 1415-02-041

Attachment F

Eligibility Ratio

On State highway facilities, Texas Transportation Code Section 203.092 provides that utility reimbursement for facility relocation is dependent upon whether the relocation costs are eligible for county and State participation. Pursuant to current state law, county participation is 100% of all reasonable and eligible costs.

The widening of FM 1464 will require DOW to extend approximately 105 LF of 36" split casing over their existing 30" pipeline. All work is anticipated to take place outside the existing ROW in DOW's private easement; therefore, the eligibility has been determined to be 100% reimbursable for all reasonable and eligible costs.

**Total Feet in New ROW = 241-ft
Feet in Existing ROW = 118-ft (0% Eligibility)
Feet in Proposed ROW = 123-ft (100% Eligibility)
Work Done in Existing ROW = 0 ft
Work Done in Proposed ROW = 123 ft**

$241' - 118' = 123' = 100\% \text{ Eligible}$

Upon completion of said adjustment, State will reimburse Fort Bend County 90% of all eligible costs associated with the adjustment of DOW's adjustment.

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DOW Pipeline Company

FM 1464: From Shiloh Lake Dr to SH 99

CSJ: 1415-02-040

ROW CSJ: 1415-02-041

Attachment G

Betterment Calculation and Estimates

Betterment does not exist in this agreement.

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DOW Pipeline Company

FM 1464: From Shiloh Lake Dr to SH 99

CSJ: 1415-02-040

ROW CSJ: 1415-02-041

Attachment H

Proof of Property Interest

On State highway facilities, Texas Transportation Code Section 203.092 provides that if relocation of a utility facility is required by improvement of any segment of the state highway system and the utility has a compensable property interest in the land occupied by the facility to be relocated, the utility is reimbursable for all eligible costs.

To:

The Dow Chemical Co.

PIPELINE RIGHT OF WAY

216897

STATE OF TEXAS

COUNTY OF FORT BEND

KNOW ALL MEN BY THESE PRESENTS:

THAT the undersigned, hereinafter called Grantor, whether one or more, for and in consideration of the sum of TEN DOLLARS (\$10.00) in hand paid, receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto The Dow Chemical Company, a Delaware corporation, its successors and assigns, hereinafter called Grantee, a right of way and unobstructed easement for the purposes of laying, constructing, maintaining, operating, altering, repairing, changing, removing, changing size of, and replacing at any time one pipeline (with necessary fittings, appliances, corrosion control equipment and block valve installations, with the right to enclose the same within a fence) for the transportation of liquids, gases, solids or mixtures of any or all thereof or any substances which can be transported through a pipeline under, upon, over and through the lands of Grantor situated in the County of FORT BEND, State of TEXAS, described as follows, to-wit;

DESCRIPTION OF A 2.117 ACRE RIGHT OF WAY THROUGH THE LANDS OF VIVIAN LEATHERBERRY SMITH, TRUSTEE, IN THE J. H. CARTWRIGHT SURVEY, A-16, FORT BEND COUNTY, TEXAS;

BEGINNING at a point for the Northwest corner of the said right of way, said point being situated in the North line of 52.12 acre tract No. 24 as described in Patent to R. E. Smith dated May 17, 1965 and recorded in Volume 465, Page 447 of the Deed Records of Fort Bend County, Texas, in the said Cartwright Survey, and bearing North 89° 30' East, 320.3 feet from a fence corner situated at the Northwest corner of the said Tract No. 24, said corner lying along the common line between the said Cartwright Survey and the Jane Wilkins Survey, A-96, Fort Bend County, Texas;

THENCE with the North line of said Tract No. 24, same being the North line of the right of way and parallel to fence offset 11.3' South of said the property line being described, North 89° 30' East, at 1090.2' pass the common line between the said Tract No. 24 and a 76.98 acre Tract No. 25, as described in Patent to R. E. Smith, dated May 17, 1965, recorded in Volume 465, Page 447, Deed Records of Fort Bend County, Texas; continuing

R/W 34

- 2 -

North 89° 30' East along North boundary line of said Tract No. 25, at 1154' cross North-South fence line, in all, 3109.4 feet to a point for the Northeast corner of said right of way, same being the Northeast corner of said Tract No. 25, said point being situated along the West right of way line of State Farm to Market Road 1464;

THENCE with the East line of said right of way, same being the East line of said Tract No. 25, and the West right of way line of said road, South 0° 15' West, 91.8 feet to a point for the Southeast corner of said right of way;

THENCE with the most Easterly Southwest line of said right of way North 42° 26' West, 83.0 feet to a point for an internal corner of said right of way;

THENCE with the South line of said right of way, South 89° 30' West, at 1898 feet pass North - South fence, at 1962.3 feet pass common line between said Tracts No's 25 & 24, in all 3039.4 feet to a point for the Southwest corner of the said right of way;

THENCE with the most Westerly Southwest line of said right of way, North 24° 04' West, at 20.4 feet pass said offset fence, in all 32.7 feet to the PLACE OF BEGINNING, said right of way containing 2.117 acres of land, more or less, said right of way being shown on Dow's Drawing No. A3-34L-32370, which is attached hereto and made a part hereof.

The pipeline provided for herein shall be installed along the centerline of the hereinabove described easement, EXCEPT within the area shown in the two insets shown on said Dow Drawing A3-34L-32370. Grantee, for the purpose of initial construction only, may use such additional area as is reasonably necessary for the installation of said pipeline.

The Grantee, its successors and assigns, are hereby expressly given and granted the right to assign this right of way and unobstructed easement, or any part thereof, or any interest therein, and the same shall be divisible among two or more owners as to any right, or rights, created hereunder, so that each assignee or owner shall have the full rights and privileges herein granted to be owned and enjoyed either in common or in severalty.

TO HAVE AND TO HOLD said right of way and unobstructed easement unto said Grantee, its successors and assigns, until such pipeline be constructed, and so long thereafter as a pipeline is maintained thereon, and the undersigned hereby bind themselves, their heirs, executors, administrators (and successors and assigns) to warrant and forever defend all and singular said premises unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming, or to claim, the same, or any part thereof. If Grantee should abandon said pipeline for a period of two years after it has been constructed, then this easement shall be cancelled and annulled and

of no further force and effect. Grantee shall have six months, after written notice, to remove said pipeline and facilities.

The undersigned Grantor, his successors, heirs or assigns, reserves the right to fully use and enjoy said premises except as the same may be necessary for the purposes herein granted; PROVIDED, HOWEVER, that the Grantee shall have the right, from time to time, to cut and clear all trees, undergrowth and other obstructions on said right of way and unobstructed easement that may injure, endanger, or interfere with the use of said pipeline or fittings, appliances, corrosion control equipment and block valve installations appurtenant to said line; provided that after the said pipeline has been laid Grantee shall not be liable for damages caused by keeping said right of way clear of trees, undergrowth, structures, works and other obstructions in the course of the exercise by Grantee of any of its rights hereunder.

The Grantee shall have all other rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including but without limiting the same to, the free right of ingress or egress over and across said right of way and unobstructed easement. Private roads of Grantor, except the road which lies partially within and adjacent to said right of way, shall not be used without further written consent.

The Grantee, by the acceptance hereof, agrees to bury all pipelines, fittings, appliances and installations so that they will not interfere with the normal cultivation of the land (at least 60" of cover over top of pipe) and also to pay for any damage to crops, fences and timber which may arise from maintaining, operating, altering, repairing, changing, removing, changing the size of, and replacing such pipeline. Grantee also agrees that during construction, natural drainage of said land will not be impeded, and that upon completion of the construction of said pipeline, Grantee shall restore the premises including all laterals, drainage facilities and the private road which is within and adjacent to said right of way, to as nearly the condition as existed prior to Grantee's construction activities as is reasonably practicable. Also, Grantee shall wheel compact the back-fill over the pipeline ditch during its back-filling operation.

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- 4 -

Grantor's representatives shall remove the fence within the limits of the above described right of way prior to Oct 30, 1972, and shall replace same after the completion of construction. Grantee, upon statement of reasonable cost for removal and replacement of said fence, shall promptly pay such reasonable cost to Grantor.

It is agreed that after Grantee has been notified in writing of his intent to do so, Grantor may, at his own cost, risk and expense, construct any public utilities, sidewalks and roadways that he may desire across said easement; provided such facilities shall not interfere with or endanger Grantee's pipeline facilities.

It is understood and acknowledged by the Grantor, or Grantors, that the person securing this grant is without authority to make any agreement in regard to the subject matter hereof which is not expressed herein, and that the aforesaid agreement contains and includes all of the terms, conditions and understandings between the parties hereto.

WITNESS THE EXECUTION HEREOF as of the 19th day of October, 1972.

Vivian Leatherberry Smith, Trustee
Vivian Leatherberry Smith, Trustee

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared VIVIAN LEATHERBERRY SMITH, TRUSTEE, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledge to me that she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

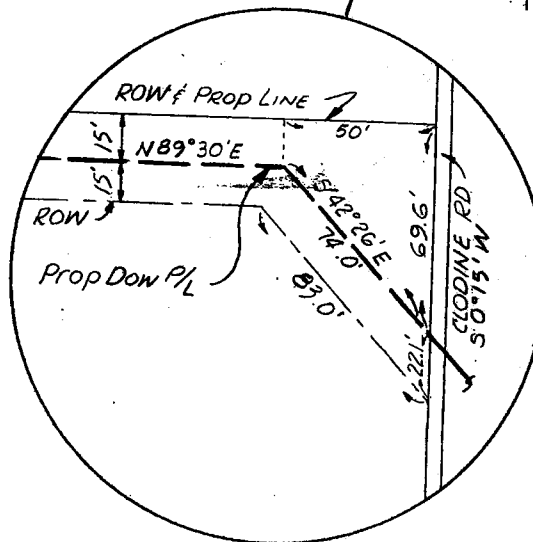
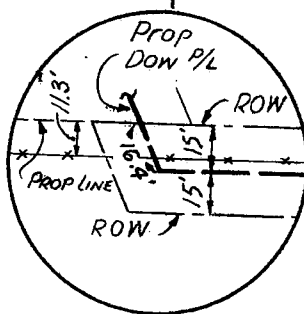
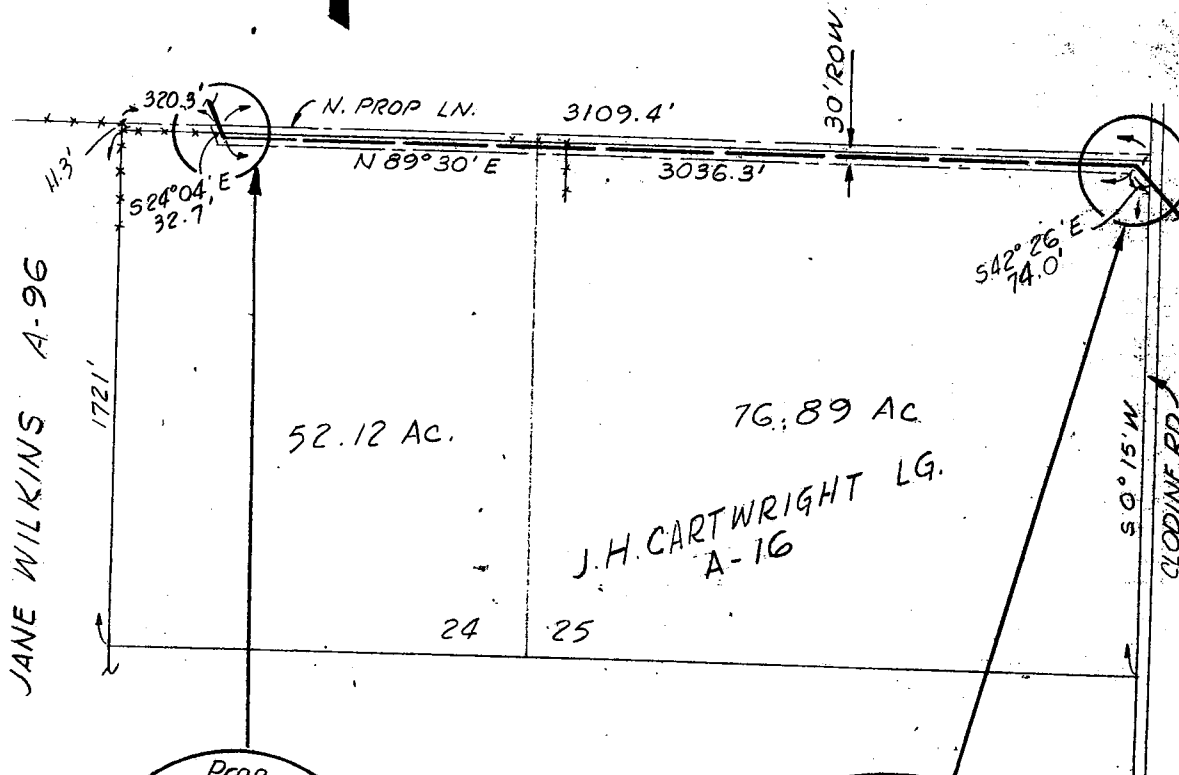
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 19th day of October, A. D. 1972.

Helen Johnston
Notary Public in and for Harris
County, Texas.

My Commission Expires;
HELEN JOHNSTON
Notary Public in and for Harris County, Texas
My Commission Expires June 1, 1973

34

FT. BEND COUNTY, TEXAS



FILED FOR RECORD
AT 8 O'CLOCK M.

NOV 6 - 1972

Elva Maeek
County Clerk, Fort Bend Co., Tex.

THE DOW CHEMICAL COMPANY TEXAS DIVISION FREEPORT, TEXAS	
PLAT SHOWING Proposed Dow Chemical Co. Pipe Line Across the R.E. Smith 129 Acre Out of J.H. Cartwright A-16 Surv. in Ft. Bend County, Texas	
DATE	BY

ASSIGNMENT OF EASEMENTS
AND RIGHTS OF WAY

94186

DEED RECORDS
Waller County, Texas
VOL 273 PAGE 247

THE STATE OF TEXAS :
COUNTIES OF WALLER, :
FORT BEND AND BRAZORIA :

KNOW ALL MEN BY THESE PRESENTS:

THAT THE DOW CHEMICAL COMPANY, a Delaware corporation, with its principal place of business in Midland, Michigan, duly authorized to do business in the State of Texas, hereinafter called "Grantor", for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable considerations to it in hand paid by BRONCO PIPELINE COMPANY, a Texas corporation, with its principal place of business in Houston, Texas, duly authorized to do business in the State of Texas, hereinafter called "Grantee", has TRANSFERRED, ASSIGNED, GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does TRANSFER, ASSIGN, GRANT, BARGAIN, SELL and CONVEY unto said Grantee, its successors and assigns, all of those certain rights, privileges, permits, licenses, easements, rights of way and interests in lands described in Exhibit "A" attached hereto and made a part hereof.

Grantor reserves and excepts all rights of way, servitudes, easements, leases and permits described in Exhibit "A" which Grantor cannot assign or convey without the prior consent of the party or parties under whom Grantor claims, or which would terminate, or be subject to penalty, termination or forfeiture, if assigned or conveyed without the prior consent of some such party. Grantor agrees, without further consideration, upon obtaining such consent, to assign to Grantee each such property or interest which otherwise would have been assigned to Grantee if such property or interest were assignable without the obtaining of such prior consent. Grantor agrees that at the request of Grantee, Grantor will use due diligence to obtain all such consents required for the assignment or transfer of such property or interest intended to be transferred hereunder. Grantor further agrees that it will not, without prior written consent of Grantee, alienate or encumber in favor of any other party, any such property or interest as to which such consents

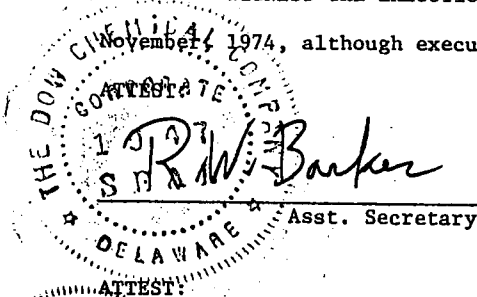
24 x 30 assignment
to Bronco

cannot be obtained.

DEED RECORDS
VOL 273 PAGE 248

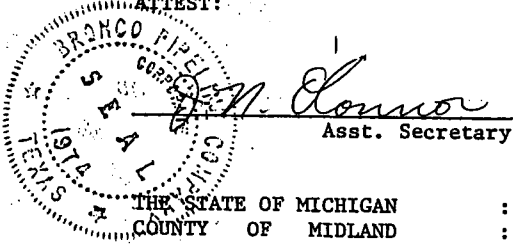
TO HAVE AND TO HOLD said rights, privileges, permits, licenses,
easements, rights of way, and interests in land, unto the said Grantee,
its successors and assigns forever.

WITNESS THE EXECUTION HEREOF, effective as of the 8th day of
November, 1974, although executed at a later date.



THE DOW CHEMICAL COMPANY

By W. A. Groening
Vice President

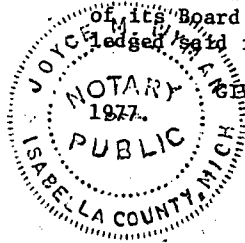


BRONCO PIPELINE COMPANY

By Vincent H. Buckley
President

THE STATE OF MICHIGAN :
COUNTY OF MIDLAND :

BEFORE ME, the undersigned authority, on this day personally
appeared W. A. Groening, to me personally known, who
being by me duly sworn, did say that he is the Vice President of THE DOW
CHEMICAL COMPANY, a corporation, and that the seal affixed to the fore-
going instrument is the corporate seal of said corporation and that said
instrument was signed and sealed in behalf of said corporation by authority
of its Board of Directors, and the said W. A. Groening, acknow-
ledged said instrument to be the free act and deed of said corporation.



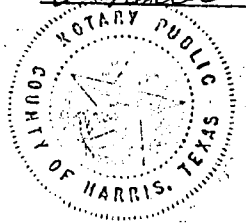
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 25th day of February,

Joyce M. Wyman
Notary Public in and for
County, JOYCE M. WYMAN
Notary Public, Isabella County, Michigan
Acting in Midland County
My Commission Expires November 9, 1980

THE STATE OF TEXAS :
COUNTY OF HARRIS :

BEFORE ME, the undersigned authority, on this day personally
appeared VINCENT H. BUCKLEY, to me personally known, who being by me duly
sworn, did say that he is the President of BRONCO PIPELINE COMPANY, a
corporation, and that the seal affixed to the foregoing instrument is the
corporate seal of said corporation and that said instrument was signed
and sealed in behalf of said corporation by authority of its Board of
Directors, and the said Vincent H. Buckley acknowledged said instrument
to be the free act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 1st day of
March, 1977.



Carole A. Allred
Notary Public in and for Harris
County, Texas.

ARTICLES OF AMENDMENT
TO THE
ARTICLES OF INCORPORATION
OF
BRONCO PIPELINE COMPANY

FILED
In the Office of the
Secretary of State of Texas

MAY 24 1979

Patrick Bruce

Pursuant to the provisions of Article 4.04 of the Texas Business Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

ARTICLE ONE. The name of the corporation is BRONCO PIPELINE COMPANY.

ARTICLE TWO. The following amendment to the Articles of Incorporation was adopted by the shareholder of the corporation on May 9, 1979:

Article One of the Articles of Incorporation is amended to read:

ARTICLE ONE

The name of the corporation is DOW PIPELINE COMPANY.

ARTICLE THREE. The number of shares of the corporation outstanding and entitled to vote at the time of such adoption was ten (10).

ARTICLE FOUR. The holder of all shares outstanding and entitled to vote has signed a consent in writing adopting said amendment.

EXECUTED this the 21st day of May, 1979.

BRONCO PIPELINE COMPANY

By *T. C. Mandrell*
T. C. Mandrell, President

By *Carl Hendrix*
Carl Hendrix, Secretary

THE STATE OF TEXAS

§

COUNTY OF HARRIS

§

§

I, Sarramae Collins, a Notary Public, do hereby certify that on this 21st day of May, 1979, personally appeared before me T. C. MANDRELL, who declared he is President of the corporation executing the foregoing document, and being first duly sworn, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

Sarramae Collins
Sarramae Collins
Notary Public in and for Harris
County, Texas

My Commission expires: 10-10-80

U

DOW Pipeline Company

FM 1464: From Shiloh Lake Dr to SH 99

CSJ: 1415-02-040

ROW CSJ: 1415-02-041

Attachment I

Inclusion in Highway Construction Contract

N/A