

**DEVELOPMENT AGREEMENT
BETWEEN THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND
NORTH TEXAS MUNICIPAL WATER DISTRICT**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made between **THE KANSAS CITY SOUTHERN RAILWAY COMPANY, d/b/a CPKC** (“CPKC”) and the **NORTH TEXAS MUNICIPAL WATER DISTRICT** (“NTMWD”), acting by and through their duly authorized representatives. (CPKC and NTMWD collectively hereafter being called “Parties” and individually as the “Party”).

WHEREAS, CPKC’s future spur track project as depicted on **Exhibit A** (“CPKC Spur Track Project”), incorporated herein by reference, will cross NTMWD’s Lake Texoma Outfall to Wylie Water Treatment Plant 96-inch raw water transmission line, Fiber Optic Cable and NTMWD’s Wylie to Rockwall 48-inch water transmission line east of Spring Creek Parkway, Wylie Texas (collectively “**Affected Waterlines**”); and

WHEREAS, CPKC’s Spur Track Project as further depicted on **Exhibit B**, will conflict with an air valve and blow-off valve on NTMWD’s Wylie to Rockwall Relocation, Phase I 48-inch water transmission line east of Spring Creek Parkway, Wylie Texas (collectively “**Affected Valves**”); and

WHEREAS, NTMWD’s Affected Waterline easements granted by CPKC require NTMWD to install steel casing around the Affected Waterlines within the right-of-way of future railroad crossings and potentially relocate portions or aspects of the Affected Waterlines in order to protect the Affected Waterlines from heavy railroad loads (“**Casing Installation**”); and

WHEREAS, CPKC will make certain adjustments to NTMWD’s Affected Valves to resolve expected conflicts between appurtenances and the proposed parking lot(s) as described in Article One (collectively “**Valve Improvements**”); and

WHEREAS, NTMWD wishes to include CPKC’s performance of the Casing Installation and Valve Improvements (collectively “**Pipeline Improvements**”) in the CPKC Spur Track Project; and

WHEREAS, NTMWD will reimburse CPKC for all costs associated with the Casing Installation work; and

WHEREAS, CPKC will pay for all costs as associated with the Valve Improvements work; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, CPKC and NTMWD agree as follows:

**ARTICLE ONE
PIPELINE IMPROVEMENTS**

1.01 Pipeline Improvements. The Parties agree that:

(a) CPKC will employ a professional engineering firm licensed in the State of Texas to design the Casing Installation to conform with the American Railway Engineering and Maintenance-of-Way Association (AREMA) E-80 train load requirements;

(b) The extent of the Casing Installation will be as follows:

- Wylie to Rockwall 48-inch waterline
 - i. Install 200 linear feet of 60-inch steel split casing around waterline from NTMWD station no. 108+45 to station no. 110+45.
 - ii. Split casing will be welded longitudinally and transverse.
 - iii. Grout annular space between casing and carrier pipe.
- Lake Texoma Outfall to Wylie 96-inch waterline
 - i. Install 280 linear feet of 108-inch steel split casing around waterline from NTMWD station no. 4388+18 to station no. 4390+98.
 - ii. Split casing will be welded longitudinally and transverse.
 - iii. Grout annular space between casing and carrier pipe.
 - iv. Install safety precautions to protect NTMWD Fiber Optic Cable during installation of casing.

(c) CPKC will employ a professional engineering firm licensed in the State of Texas to design the Valve Improvements to conform with the American Association of State Highway and Transportation Officials (ASSHTO) H20 load requirements.

(d) The extent of the Valve Improvements will be as follows:

- Air Valve Improvements:
 - i. Rim elevation of existing manhole at NTMWD pipeline station no. 29+62.61 will be lowered to match top of pavement elevation.
 - ii. Install new manhole approximately 18-feet away and relocate existing vent stack to new manhole, to clear proposed access road.
- Blow-off Valve Improvements:
 - i. Rim elevation of existing manhole at NTMWD pipeline station no. 33+78.03 will be lowered to match top of pavement elevation.

- ii. Extend blow-off valve discharge pipe approximately 60.5-feet to proposed drainage channel.

(e) NTMWD shall have the sole right to approve the Pipeline Improvements design plans, subject to the conditions and limitations set forth herein, prior to CPKC selecting through its bid process a third party to perform the Pipeline Improvements work (the “Contractor(s)”);

(f) Any NTMWD objection(s) to the Pipeline Improvements design plans must be provided in writing to CPKC no later than fourteen (14) calendar days after NTMWD’s receipt of the same from CPKC, otherwise the Pipeline Improvements design plans will be regarded as approved by NTMWD;

(g) If NTMWD provides any objection(s) as set forth in (c) above, the Parties shall confer for no more than thirty (30) calendar days in an effort to reach a mutually-agreeable modification of the Pipeline Improvements design plans to resolve NTMWD’s stated objection(s);

(h) If the Parties cannot reach a mutually-agreeable resolution as set forth in (g) above, then this Agreement shall be terminated—without any responsibility by either Party for any associated costs, expenses, losses, or damages suffered by the other Party—and NTMWD shall be responsible for completing, either on its own or through its own contractor(s), the Casing Installation work within the estimated timeframe for the CPKC Project that will otherwise move forward with CPKC’s selected contractor on the non-Pipeline Improvements work;

(i) Subject to NTMWD being the Party responsible to perform the work in the event of termination of this Agreement as set forth in (h) above or (n) below, the Pipeline Improvements work will be done by a CPKC-selected Contractor following the bid process and pursuant to a construction contract to be entered into by and between CPKC and Contractor specifically covering the Pipeline Improvements work (the “Construction Contract”);

(j) The Pipeline Improvements work will be included in CPKC’s bid package as a separate bid item to clearly indicate the Contractor’s (or Contractors’) estimated specific cost of that work;

(k) Prior to CPKC’s selection of the winning Contractor bid(s), and following NTMWD’s explicit or implicit approval of the Pipeline Improvements design plans as set forth in (e)-(g) above, CPKC shall advise NTMWD both which Contractor(s) CPKC is prepared to select as the winning bid and what that Contractor’s/Contractors’ estimated budget is for the Pipeline Improvements work;

(l) Any NTMWD objection(s) to CPKC's intended Contractor selection must be provided in writing to CPKC, along with the reason(s) for such objection, no later than fourteen (14) calendar days after CPKC's notification of the same to NTMWD, otherwise that Contractor will be regarded as approved by NTMWD;

(m) If NTMWD provides any objection(s) as set forth in (l) above, the Parties shall confer for no more than thirty (30) calendar days in an effort to decide upon an acceptable alternative Contractor to perform the Pipeline Improvements work;

(n) If the Parties cannot reach an agreement as set forth in (m) above, then this Agreement shall be terminated—without any responsibility by either Party for any associated costs, expenses, losses, or damages suffered by the other Party—and NTMWD shall be responsible for completing, either on its own or through its own contractor(s), the Casing Installation work within the estimated timeframe for the CPKC Project;

(o) Installation of the Pipeline Improvements by a CPKC-selected Contractor, as contemplated above, cannot begin until CPKC receives approval from NTMWD to begin the work, which approval shall not be unreasonably withheld or delayed;

(p) The Pipeline Improvements shall in any case be completed by the responsible Party by May 1, 2024; and

(q) NTMWD will pay CPKC for all Casing Installation costs and expenses as set forth herein, except in the event of termination of this Agreement pursuant to (h) and/or (n) above, in which case NTMWD will itself be responsible for the Casing Installation work and all associated costs and expenses.

(r) NTMWD's Fiber Optic Cable and Wylie to Lavon 48-inch waterline must remain in service throughout the Casing Installation work. All Casing Installation work must be completed by May 1, 2024.

(s) NTMWD's Lake Texoma Outfall to Wylie Water Treatment Plant 96-inch raw water transmission line may be removed from service for up to 10 calendar days. CPKC's Contractor must submit a shutdown schedule for NTMWD's review a minimum of 14 calendar days prior to the proposed transmission line shutdown. The shutdown schedule must be approved by NTMWD prior to performing work. All Casing Installation work for the 96-inch transmission line must be completed by June 1, 2024.

(t) NTMWD shall have access to its Fiber Optic Cable, Affected Waterlines and Affected Valves throughout the Pipeline Improvements work.

1.02 Payment for Casing Installation. All costs and expenses, of any kind and nature, related to the Casing Installation on the Affected Waterlines shall be paid entirely by NTMWD. It is anticipated that NTMWD shall pay for the Casing Installation in the following two phases:

(a) The first phase covers CPKC's procurement of design services including plans, construction administration services and material testing services needed for the Casing Installation and associated work. The current estimated cost of design services is \$417,737. As set forth above in 1.01(h), NTMWD shall have the right to terminate this Agreement if the Parties cannot agree on the Pipeline Improvements design plans, in which case NTMWD will have no responsibility to reimburse CPKC for its cost in securing the Casing Installation design plans, although NTMWD will then itself be responsible for all associated Casing Installation costs, including the cost of securing alternative design plans, as set forth above in Section 1.01(h) and (q). Except in the event of such termination, the design work payment shall be made by NTMWD prior to any phase-two construction work commencing.

(b) The second phase covers the construction work needed for the Casing Installation. CPKC shall not enter into any Construction Contract for the Casing Installation until after CPKC's selected Contractor, and its associated estimated budget for the Casing Installation, has been approved by NTMWD as set forth in Section 1. The current estimated cost of the Casing Installation is \$7,177,272.40. As set forth above in 1.01(n), NTMWD shall have the right to terminate this Agreement if the Parties cannot agree on the CPKC-selected Contractor and its associated budget for the Casing Installation, although NTMWD will then itself be responsible for all Casing Installation work and costs, as set forth above in 1.01(h) and (q). The construction work payment shall be made by NTMWD to CPKC upon its award of the Construction Contract to the Contractor and full execution of the Construction Contract by Contractor and CPKC, a copy of which shall be delivered to NTMWD upon full execution. The construction work payment shall be used by CPKC solely for the purpose of making payments to the Contractor under the Construction Contract.

1.04 Reimbursement of CPKC Fees. NTMWD agrees to reimburse ("Reimbursement Payment") CPKC to perform the tasks necessary and related to CPKC's oversight of the Casing Installation. CPKC will use the Reimbursement Payments by NTMWD for costs CPKC incurs in providing the following services:

(a) Design Fees: CPKC's engineering firm shall design the Casing Installation to meet the requirements of AREMA E-80 railway loads. CPKC shall provide NTMWD with an itemized invoice of design plan fees pertaining to the Casing Installation. NTMWD shall have 45 calendar days after mailing of the invoice to submit payment to CPKC.

(b) Construction Fees: Upon KCS's award of the Construction Contract to the Contractor and full execution of the same, CPKC shall provide NTMWD with an itemized invoice of construction fees pertaining to the Casing Installation on a monthly basis. NTMWD shall have 45 calendar days after mailing of the invoice to submit payment to CPKC.

1.05 Third-Party Beneficiary and Additional Insured. CPKC shall have CPKC's engineering firm and Contractor list NTMWD as an additional insured on all required insurance policies related to the Pipeline Improvements work and design. Additionally, CPKC shall include a third-party beneficiary provision for the benefit of NTMWD in all contracts with CPKC's engineering firm and Contractor relating to the Pipeline Improvements work whereby CPKC's engineering firm and Contractor owe the same contractual obligations, duties, and warranties to NTMWD as are owed to CPKC.

ARTICLE TWO

Term

2.01 This Agreement shall be effective upon approval by the NTMWD Board of Directors and subsequent execution by CPKC and NTMWD's Executive Director. The effective date will be the latter of the dates this Agreement is executed by the Parties' authorized representatives.

ARTICLE THREE

Immunity

3.01 It is expressly understood and agreed that, in the execution of this Agreement, neither Party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, expressed or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto. The provisions of this paragraph are solely for the benefit of the Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE FOUR

Notices

4.01 All notices required under the provisions of this Agreement must be in writing, hand-delivered or sent by registered or certified mail to the addresses below:

The Kanas City Southern Railway Company, d/b/a CPKC
Attention: Justin Meyer, SVP Engineering & Mechanical
427 W 12th St.
Kansas City, MO 64105

North Texas Municipal Water District
Jennafer P. Covington
Executive Director
P.O. Box 2408
Wylie, TX 75098

The name and address for notification to either Party may be changed by notice to the other Party.

ARTICLE FIVE Severability

5.01 The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the Agreement shall be enforced as if the invalid provision had never been included.

ARTICLE SIX Successors and Assigns

6.01 This Agreement shall be binding upon the Parties hereto, their successors and assigns. Neither Party will assign or transfer an interest in this Agreement without the written consent of the other Party.

ARTICLE SEVEN Venue

7.01 The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. The Parties agree that this Agreement is performable in Collin County, Texas, and that exclusive venue shall lie in a state court in Collin County, Texas.

ARTICLE EIGHT
Interpretation

8.01 This is a negotiated document and should any part of this Agreement be in dispute, the Parties agree that the Agreement shall not be construed more favorably for either Party.

ARTICLE NINE
Remedies, Non-Waiver

9.01 No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity, but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this Agreement may be waived without the express written consent of the Parties. It is further agreed that one or more instances of forbearance by either Party in the exercise of its respective rights under this Agreement shall in no way constitute a waiver thereof.

ARTICLE TEN
Entire Agreement

10.01 This Agreement embodies the entire agreement between the Parties and may only be modified in writing executed by both Parties.

[SIGNATURE PAGE FOLLOWS]

ATTEST:

**THE KANSAS CITY SOUTHERN RAILWAY
COMPANY, D/B/A CPKC**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: Justin Meyer
Title: SVP Engineering & Mechanical
Date: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

**NORTH TEXAS MUNICIPAL WATER
DISTRICT**

By: _____
Name: _____
Date: _____

By: _____
Name: Jennafer P. Covington
Title: Executive Director
Date: _____

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2024, by Justin Meyer, SVP Engineering & Mechanical of the **THE KANSAS CITY SOUTHERN RAILWAY COMPANY, D/B/A CPKC**, on behalf of said Corporation.

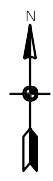
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2024, by **JENNAFER P. COVINGTON**, Executive Director of **NORTH TEXAS MUNICIPAL WATER DISTRICT**.

Notary Public, State of Texas

EXHIBIT B



BOV PIPE TO BE EXTENDED TO PROPOSED CHANNEL

EXISTING BOV MANHOLE
(TO REMAIN IN PLACE)

EXISTING NTMWD CARRIER

EXISTING NTMWD CARRIER

EXISTING ARV STRUCTURE
(TO REMAIN IN PLACE)

PROPOSED ARV OFFSET MANHOLE
(TO ACCOMMODATE ARV)

60.5'

0+00
0+00
0+00

CELOS 45 MPH
LIMIT
HEIGHT
LIMIT
SPEED-SPED

