

license is granted to the parties and their respective officers, employees, agents and contractors for the limited purposes set forth herein.

B. HL&P acknowledges and agrees that the STATE's right of ingress and egress described in Section 5.02.A. of this Agreement shall be and remain in effect as long as the Improvements and any other structure placed on the Premises by HL&P remain on the Premises and/or as necessary for the STATE to confirm the removal (in whole or in part) of the Improvements. Such right of ingress and egress shall survive the expiration or earlier termination of this Agreement.

5.03. HL&P shall be fully liable and responsible for any damage, of any nature, arising or resulting from any act or omission of HL&P or HL&P's officers, employees, agents, contractors and invitees, which are related to the exercise of the rights granted in this Article V.

5.04.A. HL&P 's use of the Premises is subject to and contingent upon compliance with the following covenants, obligations and conditions (the "Special Conditions"):

1. The rail spur bridge has to be at least as high as the existing Santa Fe Railroad bridge.

2. The rail spur bridge has to have the same number of pilings and placed at the same intervals as the existing Santa Fe Railroad bridge.

3. The rail spur bridge cannot obstruct the Brazos River anymore than the existing Santa Fe Railroad bridge does.

4. HL&P shall construct the rail spur bridge in accordance with the American Railway Engineering Association standards which are comparable to the Texas Department of Transportation standards.

B. Prior to any construction, installation or other activities on the Premises, HL&P shall provide written notice of all Special Conditions, if any, to any contractor and/or agent involved in such activities. HL&P shall send a copy of such notice to the General Land Office, ATTN: Asset Management, 1700 N. Congress Avenue, Austin, Texas 78701-1495.

5.05. The STATE, its agents, representatives and employees shall have the right to enter upon the Premises at any reasonable time (or any time in case of emergency) for purposes of inspection, repair (and HL&P agrees to repay the State the reasonable cost of any such repair on written demand) and any other purpose necessary to protect the STATE's interests therein. Further, the STATE shall have the right to use or to permit the use of any or all of the Premises for any purpose deemed, in the STATE's sole discretion, to be consistent with HL&P's easement grant.

5.06. HL&P shall not use, or permit the use of the Premises for any illegal purpose. HL&P shall comply, and will cause its officers, employees, agents, contractors and invitees to comply, with all applicable laws, ordinances, rules, and regulations of governing agencies concerning use of the Premises.

5.07. Failure by HL&P to construct maintain and operate the Improvements in accordance with this Article V shall render such

Improvements "unauthorized structures" under TEX. NAT. RES. CODE ANN., §51.302 (Vernon Supp. 1996).

#### ARTICLE VI. ASSIGNMENTS

6.01. HL&P SHALL NOT ASSIGN THE PREMISES OR THE RIGHTS GRANTED HEREIN, IN WHOLE OR PART, TO ANY THIRD PARTY FOR ANY PURPOSE WITHOUT THE PRIOR WRITTEN CONSENT OF THE STATE, WHICH MAY BE GRANTED OR DENIED IN THE STATE'S SOLE DISCRETION. ANY UNAUTHORIZED ASSIGNMENT SHALL BE VOID AND OF NO EFFECT, AND SUCH ASSIGNMENT SHALL NOT RELIEVE HL&P OF ANY LIABILITY FOR ANY OBLIGATION, COVENANT, OR CONDITION OF THIS AGREEMENT. THIS PROVISION, AND THE PROHIBITION AGAINST ASSIGNMENT CONTAINED HEREIN, SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT. FOR PURPOSES OF THIS AGREEMENT, AN ASSIGNMENT IS ANY TRANSFER, INCLUDING BY OPERATION OF LAW, TO ANOTHER OF ALL OR PART OF THE PROPERTY, INTEREST OR RIGHTS HEREIN GRANTED.

#### ARTICLE VII. PROTECTION OF NATURAL and HISTORICAL RESOURCES

7.01. HL&P shall use the highest degree of care and all appropriate safeguards to: (i) prevent pollution of air, ground, and water in and around the Premises, and (ii) to protect and preserve natural resources and wildlife habitat. HL&P shall comply with all applicable rules and regulations of the General Land Office, the School Land Board, and other governmental agencies responsible for the protection and preservation of public lands and waters. In the event of pollution or an incident that may result in pollution of the Premises or adjacent property which is the result of HL&P's (or HL&P's employees', contractors', and agents') acts or omissions, HL&P shall immediately notify the STATE, use all means reasonably available to recapture any pollutants which have escaped or may escape, and mitigate for any and all natural resources damages caused thereby.

7.02. HL&P IS HEREBY EXPRESSLY NOTIFIED OF THE NATIONAL HISTORIC PRESERVATION ACT OF 1966 (PB-89-66, 80 STAT. 915, 16 U.S.C.A. SECTION 470, ET.SEQ.) AND THE TEXAS ANTIQUITIES CODE (TITLE 9, CHAPTER 191, TEX. NAT. RES. CODE ANN. [VERNON SUPP. 1996]). IN CONFORMANCE WITH THESE LAWS, IN THE EVENT THAT ANY SITE, FOUNDATION, BUILDING, STRUCTURE, LOCATION, OBJECT, ARTIFACT, ITEM OR OTHER FEATURE OF ARCHAEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL, OR HISTORIC INTEREST IS ENCOUNTERED DURING THE ACTIVITIES AUTHORIZED BY THIS AGREEMENT, HL&P SHALL IMMEDIATELY CEASE ANY AND ALL ACTIVITIES, AND NOTIFY THE COMMISSIONER OF THE TEXAS GENERAL LAND OFFICE AND THE TEXAS HISTORICAL COMMISSION, P.O. BOX 12276, AUSTIN, TEXAS 78711, SO THAT APPROPRIATE ACTION MAY BE TAKEN. IN THE EVENT THAT HL&P IS REQUIRED TO CEASE ACTIVITIES, THE STATE SHALL NOT BE LIABLE FOR ANY COSTS OF HL&P, HL&P'S AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS OR ANY OTHER PERSON OR ENTITY AS A RESULT OF ANY INTERRUPTION OF HL&P'S ACTIVITIES OR INABILITY TO USE THE PREMISES AS HEREIN CONTEMPLATED.

#### ARTICLE VIII. INDEMNITY and INSURANCE

8.01. HL&P shall be fully liable and responsible for any damage, of any nature, arising or resulting from its own acts or omissions related to its exercise of the rights granted herein. HL&P agrees to and shall indemnify and hold the STATE, the STATE's officers, agents, and employees, harmless from and against claims, suit, costs, liability or damages of any kind, including strict liability claims, without limit and without regard to cause of the damages or the negligence of any party, except for the consequences of the negligent acts or willful misconduct of the STATE, the STATE's officers, agents, employees, or

invitees, arising directly or indirectly from HL&P's use of the Premises (or any adjacent or contiguous PSF land) or from any breach by HL&P of the terms, covenants or conditions contained herein.

8.02. A. HL&P agrees to either (i) purchase and maintain a Required Policy (as hereinafter defined) of insurance coverage, or (ii) provide Financial Documentation (as hereinafter defined) to the STATE. HL&P agrees to deliver or cause to be delivered to the STATE and/or the STATE's designee either, as applicable: (i) a certificate of insurance for any Required Policy or (ii) Financial Documentation, within ten (10) days of execution of this Agreement. At all times during the term of this Agreement, HL&P shall cause the required evidence of insurance coverage or financial capacity to be deposited with the STATE. If HL&P fails to do so, such failure may be treated by the STATE as a default by HL&P under this Agreement.

B. The phrase "Required Policy" shall mean the policy of insurance required to be maintained by HL&P under rules promulgated by the General Land Office and/or the School Land Board. Such Required Policy shall insure against any and all loss or damage as may be required by rule (including, without limitation, coverage for bodily injury, death, property damage, premises and operations, products liability, contractual liability, and/or strict liability). Any Required Policy shall name the STATE (and any of its successors and assigns designated by the STATE) as an additional insured.

C. The phrase "Financial Documentation" shall mean a financial statement and/or other evidence of financial responsibility or capacity which is determined to be satisfactory to the STATE.

#### ARTICLE IX. DEFAULT, TERMINATION and EXPIRATION

9.01. If, following 30 days prior written notice from the STATE specifying a default or breach, HL&P fails to pay any money due hereunder or is in breach of any term or condition of this Agreement, the STATE shall have the right, at its option and its sole discretion, to terminate this Agreement and all rights inuring to HL&P herein by sending written notice of such termination to HL&P in accordance with Article XI of this Agreement. Upon sending of such written notice, this Agreement shall automatically terminate and all rights granted herein to HL&P shall revert to the STATE. Such termination shall not prejudice the rights of the STATE to collect any money due or to seek recovery on any claim arising hereunder.

9.02.A. Except as otherwise provided in subsection B, HL&P shall, within one hundred twenty (120) days from the date of expiration or sooner termination of this Agreement, remove all personal property, structures, and the Improvements, and shall restore the Premises (and any other property affected by such removal activities) to the same condition that existed before HL&P entered thereon. Such removal and restoration activities shall be conducted in accordance with General Land Office guidelines in effect at the time of removal/restoration which may include, without limitation, specific removal techniques required for protection of natural resources, and mitigation or payment in lieu of mitigation for any and all damages resulting from removal activities. HL&P shall notify the STATE at least ten (10) days before commencing removal/restoration activities so that a Texas General Land Office field inspector may be present.

B. Pursuant to 31 TEX. ADMIN. CODE §13.13(c)(1), the STATE may waive the removal/restoration requirements in this Section 9.02 if, in the STATE's sole opinion and discretion, such waiver is in the best interest of the State. Any such waiver shall be in writing and may be conditioned upon factors including, without limitation, the nature and sensitivity of the natural resources in the area, potential damage to or destruction of property, beneficial uses of the existing improvement(s), and other factors considered to be in the best interest of the STATE.

#### ARTICLE X. HOLDOVER

10.01. If HL&P holds over and continues in possession of the Premises after expiration or earlier termination of this Agreement, HL&P will be deemed to be occupying the Premises on the basis of a month-to-month tenancy subject to all of the terms and conditions of this Agreement, except that as liquidated damages by reason of such holding over, the amounts payable by HL&P under this Agreement shall be increased such that the Consideration payable under Section 4.01 of this Agreement and any other sums payable hereunder shall be two hundred percent (200%) of the amount payable to the STATE by HL&P for the applicable period immediately preceding the first day of the holdover period. HL&P acknowledges that in the event it holds over, the STATE'S actual damages will be difficult, if not impossible, to ascertain, and the liquidated damages herein agreed to be paid are reasonable in amount and are payable in lieu of actual damages and are not a penalty. HL&P further acknowledges that acceptance of hold over Consideration does not imply STATE consent to hold over.

10.02. The tenancy from month-to-month described in Section 10.01 of this Agreement may be terminated by either party upon thirty (30) days written notice to the other.

10.03. The Consideration due after notice of termination has been given is to be calculated according to Section 10.01 hereinabove on a pro rata basis. If upon notice of termination by the STATE, HL&P pays Consideration in excess of the amount due and payable and the STATE accepts such payment, the acceptance of such payment will not operate as a waiver by the STATE of the notice of termination unless such waiver is in writing and signed by the STATE. Any such excess amounts paid by HL&P and accepted by the STATE shall be promptly refunded by the STATE after deducting therefrom any amounts owed to the STATE.

#### ARTICLE XI. NOTICE

11.01. Any notice which may or shall be given under the terms of this Agreement shall be in writing and shall be either delivered by hand, by facsimile, or sent by United States first class mail, adequate postage prepaid, if for the STATE to Deputy Commissioner, Asset Management, addressed to his attention, 1700 North Congress Avenue, Austin, Texas 78701-1495, FAX: (512) 463-5098, and if for HL&P, to P. O. Box 1700, Houston, Texas 77251-1700, (713) 228-9211. Any party's address may be changed from time to time by such party by giving notice as provided above, except that the Premises may not be used by HL&P as the sole notice address. No change of address of either party shall be binding on the other party until notice of such change of address is given as herein provided.

11.02. For purposes of the calculation of various time periods referred to in this Agreement, notice delivered by hand shall be deemed received when delivered to the place for giving notice to a party

referred to above. Notice mailed in the manner provided above shall be deemed completed upon the earlier to occur of (i) actual receipt as indicated on the signed return receipt, or (ii) three (3) days after posting as herein provided.

## ARTICLE XII. INFORMATIONAL REQUIREMENTS

12.01. A. HL&P shall submit to the STATE, within one hundred twenty (120) days following installation or construction of the Improvements authorized in this Agreement, an "as-built" survey and field notes prepared by a surveyor duly licensed by the State of Texas. The as-built survey shall be conducted in accordance with the STATE's survey requirements attached hereto as Exhibit D. Failure or refusal by HL&P to timely provide the as-built survey when due hereunder and the continuance of such failure for thirty (30) consecutive days after the receipt of the STATE's written notice to HL&P specifying such failure may be treated as a default by HL&P hereunder and the STATE may, in addition to any other remedy and in the STATE's sole discretion, terminate this Agreement and require removal of any personal property and the Improvements located on the Premises in accordance with Section 9.02 of this Agreement.

B. Upon receipt of the as-built survey, prepared in accordance with this Section 12.01, the STATE shall compare the as-built survey with the proposed location of the Improvements, as represented by HL&P's application to the STATE and set forth in Section 2.01 (and referenced Exhibits) hereof. If there are any changes or discrepancies in the location of the Improvements authorized by this Agreement, the STATE may, in its sole discretion, either (i) terminate this Agreement and require removal and/or relocation of the Improvements upon written notice to HL&P, or (ii) replace Exhibit B attached hereto with a substitute corrected exhibit denoted "Exhibit B-1". The substitute shall be the as-built survey, signed by both parties, and, upon attachment hereto, Exhibit B shall be void and of no further effect.

12.02. If all or any part of the Improvements are buried, HL&P shall submit to the STATE, within one hundred twenty (120) days following installation or construction of the Improvements, a "burial survey" prepared by a surveyor duly licensed by the State of Texas. The burial survey shall be conducted in accordance with the STATE's survey requirements attached hereto as Exhibit D. Failure or refusal by HL&P to timely provide the burial survey when due hereunder and the continuance of such failure for thirty (30) consecutive days after the receipt of the STATE's written notice to HL&P specifying such failure may be treated as a default by HL&P hereunder and the STATE may, in addition to any other remedy and in the STATE's sole discretion, terminate this Agreement and require removal of any personal property and the Improvements located on the Premises in accordance with Section 9.02 of this Agreement.

12.03. HL&P shall provide written notice to the STATE of any change in HL&P's name, address, corporate structure, legal status or any other information relevant to this Agreement.

12.04. HL&P shall provide to the STATE any other information reasonably requested by the STATE in writing within fifteen (15) days following such request or such other time period approved by the STATE (such approval not to be unreasonable withheld).

12.05. Except with regard to initial construction/installation of the Improvements and emergencies, prior to conducting any activities at the Premises which may materially impact natural resources in or around the Premises, HL&P shall provide written notice to the STATE describing the proposed activities in detail and any procedures which will be used to protect natural resources. Such notice shall be provided by HL&P to the STATE at least sixty (60) days prior to conducting re-burial activities, and at least thirty (30) days prior to conducting major repairs, modification, or other activities. HL&P acknowledges and agrees that the STATE shall have at least twenty (20) days following receipt of the notice to review the proposed activities and to impose specific conditions for conducting such activities which, in the STATE's sole determination, are necessary to protect natural resources or to mitigate for actual damages to natural resources. If the STATE has not provided notice to HL&P within twenty (20) days following receipt of HL&P's notice, the STATE is deemed to have approved, subject to the terms of this Agreement, the proposed activities to be conducted at the Premises. In case of emergencies, HL&P may undertake all actions necessary to prevent imminent injury or damage to public health, safety or welfare, and/or to protect natural resources. Within twenty-four (24) hours following such emergency actions, HL&P shall provide notice to the STATE of such actions as hereinabove provided. (If not during normal business hours, call 1-800-832-8224).

12.06. HL&P hereby acknowledges that late submission by HL&P to the STATE of information (including, without limitation, as-built, confirmation and/or burial surveys) required under this Agreement will cause the STATE to incur various expenses not contemplated by this Agreement, the exact amount of which are presently difficult to ascertain. Accordingly, if any information required to be submitted within a certain time under the terms of this Agreement shall not be received by the STATE on or before five (5) days after the date when due, then, HL&P shall pay to the STATE a "Late Charge" equal to one hundred dollars (\$100.00) for each day so past due. The STATE and HL&P agree that such Late Charge represents a fair and reasonable estimate of the expenses that the STATE will incur by reason of such late submission of information by HL&P. Acceptance of such Late Charge by the STATE shall not constitute a waiver of HL&P's default with respect to any such past due information, nor prevent the STATE from exercising any other rights and remedies granted under this Agreement, at law, or in equity.

#### ARTICLE XIII. MISCELLANEOUS PROVISIONS

13.01. With respect to terminology in this Agreement, each number (singular or plural) shall include all numbers, and each gender (male, female or neuter) shall include all genders. If any provision of this Agreement shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of the Agreement, but such other provisions shall continue in full force and effect.

13.02. The titles of the Articles in this Agreement shall have no effect and shall neither limit nor amplify the provisions of the Agreement itself. This Agreement shall be binding upon and shall accrue to the benefit of the STATE, its successors and assigns, HL&P, HL&P's successors and assigns (or heirs, executors, administrators and assigns, as the case may be); however, this clause does not constitute a consent by the STATE to any assignment by HL&P, but instead refers only to those instances in which an assignment is hereafter made in strict compliance with Article VI above, or in the case of a deceased



natural person grantee, refers to the instances previously referred to in this sentence and also circumstances in which title to HL&P's interest under this Agreement passes, after the demise of HL&P, pursuant to HL&P's will or the laws of intestate succession. The words "hereof," "herein," "hereunder," "hereinafter" and the like refer to this entire instrument, not just to the specific article, section or paragraph in which such words appear.

13.03. Neither acceptance of Consideration (or any portion thereof) or any other sums payable by HL&P hereunder (or any portion thereof) to the STATE nor failure by the STATE to complain of any action, non-action or default of HL&P shall constitute a waiver as to any breach of any covenant or condition of HL&P contained herein nor a waiver of any of the STATE's rights hereunder. Waiver by the STATE of any right for any default of HL&P shall not constitute a waiver of any right for either a prior or subsequent default of the same obligation or for any prior or subsequent default of any other obligation. No right or remedy of the STATE hereunder or covenant, duty or obligation of HL&P hereunder shall be deemed waived by the STATE unless such waiver be in writing, signed by a duly authorized representative of the STATE.

13.04. No provision of this Agreement shall be construed in such a way as to constitute the STATE and HL&P joint venturers or co-partners or to make HL&P the agent of the STATE or make the STATE liable for the debts of HL&P.

13.05. In all instances where HL&P is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

13.06. Under no circumstances whatsoever shall the STATE ever be liable hereunder for consequential damages or special damages. The terms of this Agreement shall only be binding on the STATE during the period of its ownership of the Premises, and in the event of the transfer of such ownership interest, the STATE shall thereupon be released and discharged from all covenants and obligations thereafter accruing, but such covenants and obligations shall be binding during the Agreement term upon each new owner for the duration of such owner's ownership.

13.07. All monetary obligations of the STATE and HL&P (including, without limitation, any monetary obligation for damages for any breach of the respective covenants, duties or obligations of either party hereunder) are performable exclusively in Austin, Travis County, Texas.

13.08. The obligation of HL&P to pay all Consideration and other sums hereunder provided to be paid by HL&P and the obligation of HL&P to perform HL&P's other covenants and duties under this Agreement constitute independent, unconditional obligations to be performed at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is expressly provided for in this Agreement and not otherwise. HL&P waives and relinquishes all rights which HL&P might have to claim any nature of lien against, or withhold or deduct from or offset against, any Consideration or other sums provided hereunder to be paid to the STATE by HL&P. HL&P waives and relinquishes any right to assert, either as a claim or as a defense, that the STATE is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of the STATE not expressly set forth in this Agreement.

57

N: 13745000.00

JERRY EASEMENT  
A.T. & S.F. RR. CO.  
(GULF COAST & SANTA FE  
RAILWAY COMPANY)  
VOL. 248 PG. 233 F.B.C.D.R.  
FIRST TRACT - 414 AC.

EXISTING A.T. & S.F. RR. CO. TRESTLE

G.C. & S.F. RR.  
VOL. 94, PG. 173  
(1.45 AC.)

A.T. & S.F. RR. (G.C. & S.F. RR.)

SECOND TRACT  
0.43 AC.

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LONG. = 95° 33'18.500"  
SET 3/4" I.R.

PROPOSED  
R-0-W

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
VOL. 1834 PG. 1181, WITH REVERSION CLAUSE  
TRACT 1

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LONG. = 95° 33' 24.657"  
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CENTERLINE OF PROPOSED  
H.L. & P. CO. BRIDGE

LUCIAN M. BUKOWSKI, JR., et al.  
VOL. 392 PG. 290 F.B.C.D.R.  
70 AC. OUT OF 301 AC.  
REF.: VOL. 124, PG. 363 F.B.C.D.R.  
(A.K.A. - RIVER TRACT)  
ADDRESS:  
LUCIAN M. BUKOWSKI, JR.  
c/o JANET McDONALD  
2801 CHARLESTON NE  
ALBUQUERQUE, NM 87110-2701

BRAZOS RIVER  
WELL #2

HIGH BANK

BRAZOS RIVER

DIRECTION OF FLOW

HIGH BANK

E: 3064000.00

N 02°51'10" W  
741.85

THE JOHNSON CORP.  
VOL. 1109, PG. 486  
RESIDUE OF 172.022 AC.  
110.899 AC.

ADDRESS:  
JOHNSON CORP.  
4615 SW FREEMAN, STE. 300  
HOUSTON TX. 77027

THOMAS BARNETT LEAGUE  
A-7

HORATIO CHRISMAN LEAGUE

A-18

N: 13744000.00

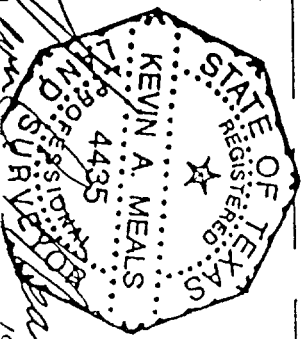
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230.04

N 87°08'50" E

DAVID FITZGERALD LEAGUE  
A-25

All coordinates and bearings refer to the Texas Coordinate System of 1983, South Central Zone, as defined in the Texas Natural Resources Code, section 21.071, et seq, and are based on the position of "H.G.C.S.D. # 72", having published coordinates of:  
N=13734551.840, E=3039592.175, U.S. Survey Foot.  
The applied scale factor of 0.9998666.



10/12/95

TEXAS GENERAL LAND OFFICE PERMIT  
FOR  
H.L. & P. CO. BRAZOS RIVER BRIDGE

400 FEET

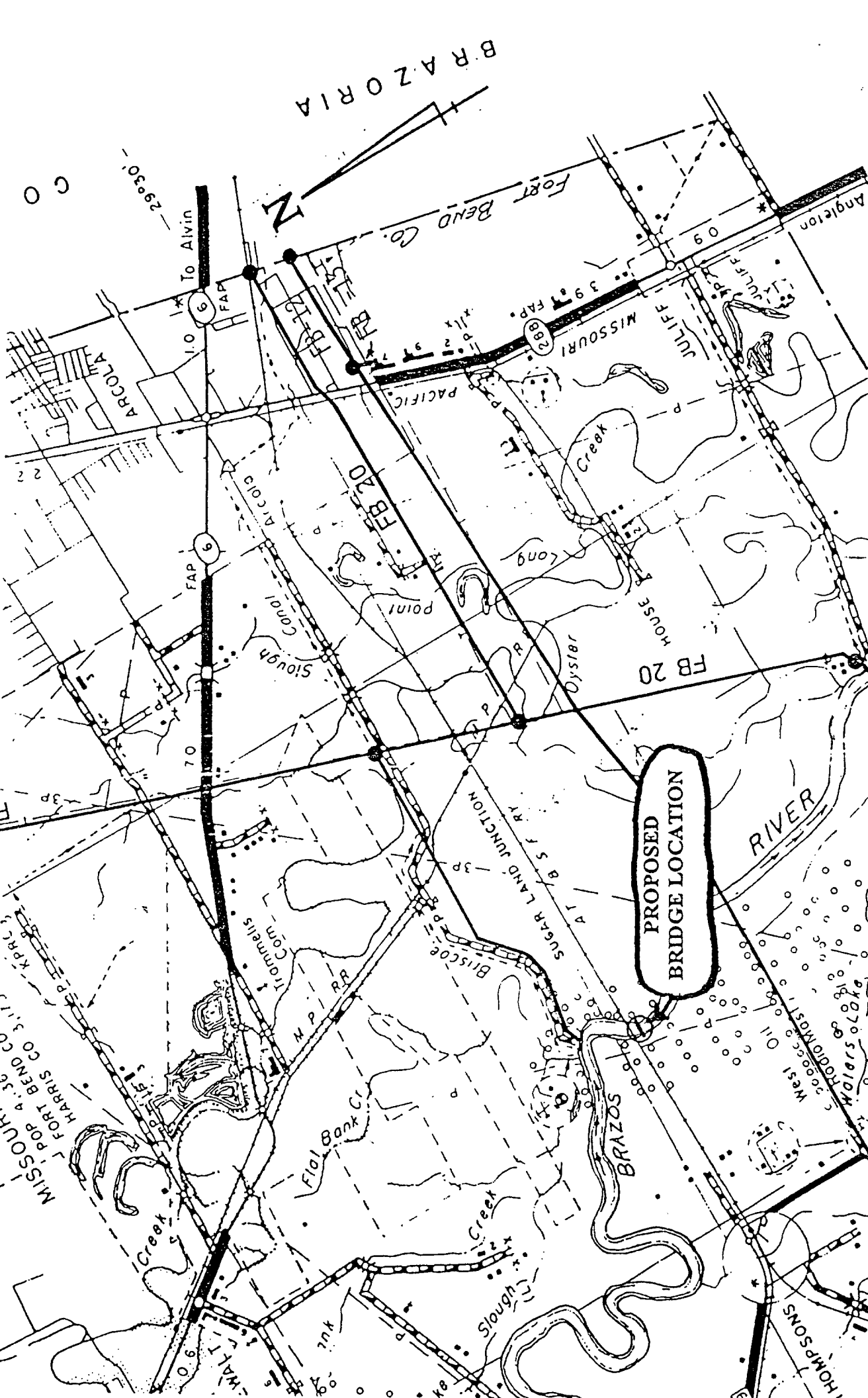
EXHIBIT B  
ME 960003 H&P



EXHIBIT A

ME 960003 FL&P

DKT 28980 ATTCHMT 5 COH1-5



**CERTIFICATE OF SERVICE**

PUC Docket No. 28980

I hereby certify that a true and correct copy of the foregoing document was filed with the Commission and copies have been provided to all parties by hand delivery, courier, overnight delivery, certified mail (return receipt requested), registered mail, facsimile, electronic mail, or United States first class mail on this 16th day of December, 2003.

Bunny Browning