

AGREEMENT DATE: _____

(TO BE COMPLETED BY DENVER WATER – PROPERTY MANAGEMENT)

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“**Agreement**”) is made between THE CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, (“**Grantor**”) and the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS (“**Board**”), a municipal corporation of the State of Colorado. Each party to this Agreement may be referred to individually as “**Party**,” and collectively as “**Parties**.” The Parties agree as follows:

RECITALS

A. An Easement Agreement dated February 9, 2006 by and between CP Bedrock, LLC and the City and County of Denver was recorded on February 13, 2006 with the City and County of Denver’s Clerk and Recorder at Reception Number 2006027027. This is a 30-foot-wide, exclusive easement for storm water and sewage purposes, and is located immediately adjacent to the north boundary of 45th Avenue and west of Tower Road.

A

B. A plat for CP Bedrock Filing No.1 was recorded with the City and County of Denver’s Clerk and Recorder on August 15, 2008 at Reception Number 2008113595. Plat note #6 conveyed Tract A-2 in fee simple title to the City of County of Denver for a wetlands channel to be maintained by the Urban Drainage and Flood Control District. Tract A-2 is platted in the same general location as and overlies the storm water and sewage Easement Agreement along the north boundary of 45th Avenue and west of Tower Road.

C. A Correction Easement and Consent dated July 5, 2018 by and between CP Bedrock, LLC and the City and County of Denver was recorded with the City and County of Denver’s Clerk and Recorder on July 16, 2018 at Reception Number 2018086766. This document corrected the exclusive nature of the Easement Agreement recorded at Reception Number 2006027027.

D. The Board is in receipt of a proposal titled CP Bedrock Phase 3 Project# 19335. The proposal requires a waterline perpendicularly cross Tract A-2 and connect to an existing waterline in 45th Avenue. As a condition of approval of Project #19335, Denver Water needs to ensure that it has legal access to the waterline. The parties have agreed to this Agreement to ensure that Denver Water has the legal access it needs.

AGREEMENT

1. GRANT OF EASEMENT: For and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof is acknowledged by the Grantor, the Grantor grants to the Board, its successors and assigns, the permanent, non-exclusive easement (“**Easement**”) to enter, re-enter, occupy, and use the property located in the County of DENVER and State of Colorado described in the attached

Exhibit A (hereinafter referred to as the “**Easement Area**”) to construct, install, inspect, monitor, maintain, repair, substitute, change the size of, replace, remove, enlarge, and operate one or more water pipelines and all underground and surface appurtenances, collectively “**Facilities**,” in, through, over, and across the Easement Area. By way of example and not by way of limitation, the parties intend to include (i) mains and conduits within the term “**pipeline(s)**,” and (ii) valves, vaults, manholes, hydrants, electric or other related control systems, underground cables, wires, connections, ventilators, and the like within the term “**appurtenance(s)**.”

2. EXHIBITS: The following Exhibits are attached to and incorporated in this Agreement:
Exhibit A – Legal Description and Parcel Map (CAD drawing No. 19335-2) of the Easement Area.

In the event the survey, the legal description in Exhibit A, and/or the drawing attached to Exhibit A are found to be inaccurate, the Grantor will comply with the Board’s request to execute, acknowledge, initial, and/or deliver to the Board any documentation reasonably necessary to correct such inaccurate documents to fulfill the purposes of this Agreement.

3. BOARD’S RIGHT OF ACCESS: The Board shall have the right of ingress and egress in, through, over, and across the Easement Area in any manner and for any purpose necessary for the full enjoyment of the right of occupancy and use provided in this Agreement.

4. NO DEDICATION: No right of access by the general public to any portion of the Easement is conveyed by this Agreement.

5. EFFECT OF DEDICATION: The Board hereby acknowledges that the Easement granted herein shall automatically terminate and be released as to all or any portion of the Easement Area that may be included within the boundaries of any land that is dedicated by the Grantor as public right-of-way at any time and from time-to-time after the Effective Date of this Agreement. Such termination and release shall be effective automatically upon the adoption of a dedication ordinance, or similar instrument, by the Grantor; provided that, if requested by the Grantor, the Board shall execute an amendment to this Agreement or other written instrument provided by the Grantor confirming the effect and extent of the termination and release resulting from the dedication.

6. SLOPE: Due to variations in topography, the Easement and the pipe(s) may take on an uphill or downhill direction having a slope of greater than 4 percent; however, sloping within the Easement Area across its width may not exceed 4 percent in any direction to ensure stability of maintenance equipment and vehicles.

7. PROHIBITED OBSTRUCTIONS: Except as expressly identified in this Agreement, the Easement shall be free of obstacles throughout the Easement Area. The Grantor shall not construct, place, plant, or allow any of the following, whether temporary or permanent, on any part of the Easement Area: structure, building, fence, retaining wall, overhang, street light, power pole, yard light, mail box, sign, or trash receptacle; shrub, tree, woody plant, or nursery stock; or any other obstruction of any kind (collectively referred to as “**Prohibited Obstructions**”).

8. PROHIBITED ACTIONS: The Grantor shall not stop, limit, hinder, or interfere with the construction, maintenance, repair, replacement, removal, enlargement, or operation of the Facilities within the Easement Area.

9. SURFACE RESTORATION:

9.1. After construction of any water pipeline(s) by the Board, the general surface of the ground, except as it may have been necessarily modified to accommodate the appurtenances, shall be restored, as nearly as reasonable, to the grade and condition existing immediately prior to construction. Topsoil shall be replaced in cultivated and agricultural areas, and any excess earth resulting from installations by the Board shall be removed from the Easement Area at the sole expense of the Board.

9.2. For a period of one year following completion of construction by the Board that involves disturbance of the surface of the ground, the Board shall maintain the surface elevation and quality of the soil by correcting any settling or subsiding that occurs as a result of the work done by the Board.

9.3. If the Board or the Board's agents disturb or destroy any fencing existing at the time of this Agreement's execution, then the Board shall repair or replace such fencing as nearly as reasonable to its original condition. However, the Grantor shall not construct any new fencing across or within the Easement Area.

10. SUBJACENT AND LATERAL SUPPORT; EARTH COVER:

10.1. The Board shall have the right of subjacent and lateral support to whatever extent is necessary or desirable for the full, complete and undisturbed enjoyment of the rights described in this Agreement. The Grantor shall take no action that would impair the earth cover over, or the lateral or subjacent support for, any of the Facilities within the Easement Area.

10.2. The Board's Engineering Standards require no less than 4½ feet and no more than 10 feet of earth cover, measured vertically from the top of any pipeline(s). Deviation from this requirement shall be permitted only upon prior, written permission from the Board. If such permitted deviation undertaken by the Grantor requires any alterations, repairs or replacements to any pipeline(s), such alteration, repair or replacement shall be at the Grantor's expense.

11. GRANTOR'S RETAINED INTERESTS: The Grantor has retained the right to the undisturbed use and occupancy of the Easement Area insofar as such use and occupancy is consistent with and does not materially impair any grant contained in this Agreement.

12. ABANDONMENT: The Board may commence the exercise of its rights to use the Easement immediately, or it may postpone the exercise of all or some part of its rights under this Agreement to some future time, which shall not constitute abandonment.

13. NO WARRANTY OF TITLE: The Grantor does not make, and hereby expressly disclaims, any and all representations and warranties of any kind or nature whatsoever relating to the subject matter of this Agreement, including, without limitation, any aspect of the physical condition of the Easement Area or the status of title thereto.

14. NOTICES: The Parties shall contact the persons listed below, or other persons that may be designated by the Board in writing from time to time, for all matters related to administration of this Agreement. All notices, requests, demands, information and other communications required or permitted to be provided under this Agreement shall be in writing and shall be deemed to have been given and effective: (a) when delivered personally to the other party or (b) seven days after posting in the United States mail, first-class postage prepaid, properly addressed as follows.

If to the Board:

City and County of Denver, acting by and through
its Board of Water Commissioners
Attention: Chief Engineering Officer
1600 W. 12th Avenue
Denver, CO 80204

with a copy to:

City and County of Denver, acting by and through
its Board of Water Commissioners
Attention: Director of Engineering-Property
1600 W. 12th Avenue
Denver, CO 80204

If to the Grantor:

City and County of Denver
Municipal Operations
201 W. Colfax Ave, Dept 1207
Denver, CO 80202

15. GENERAL PROVISIONS:

15.1. Successors and Assigns: This Easement and each and every one of the benefits and burdens of this Agreement are covenants running with the land and shall inure to the benefit and be binding upon the respective legal representatives, heirs, devisees, executors, administrators, successors and assigns of the Parties, and any subsequent owners of title to any part of the land upon which the Easement is located. The Board may transfer and delegate any or all of the rights granted and obligations imposed by this Agreement without any prior consent of or notice to the Grantor.

15.2. Perpetual Duration – No Merger: No merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in any portion of the property upon which the Easement is located to the Board, or its successors or assigns. It is the express intent of the Parties that this Easement not be extinguished by, merged into, modified, or otherwise deemed affected by any other interest or estate in any portion of the property upon which the Easement is located now or hereafter held by the Board or its successors or assigns.

15.3. Construction: This Agreement shall not be construed more strictly against one Party than another merely because it may have been prepared by counsel for one of the Parties.

15.4. Venue and Governing Law: For the resolution of any dispute arising from this Agreement, venue shall be in the courts of the City and County of Denver, State of Colorado. This Agreement shall be governed by and construed under the laws of the State of Colorado, without regard to its conflict of laws principles.

15.5. No Attorneys' Fees and Costs: Except as otherwise specifically provided in this Agreement, if there is any litigation, mediation, arbitration or other dispute resolution proceedings arising out of or related to this Agreement, each Party shall pay for its own attorney(s)' and other professional(s)' fees, costs and expenses.

15.6. Severability: If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of that provision and the rest of this Agreement shall remain in full force and effect.

15.7. No Waiver: The failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the Agreement's provisions, and, notwithstanding such failure, no Party shall be thereby released from any obligations under the Agreement.

15.8. Non-Business Days: Except as otherwise specifically provided in this Agreement, all periods of time set forth in this Agreement shall be calendar days, not business days. If any date for any obligation under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in Colorado Rule of Civil Procedure 6, then the relevant date shall be extended automatically until the next business day.

15.9. Headings: The headings contained in this Agreement are included solely for convenience, are not intended to be full or accurate descriptions of the content thereof, and shall not be considered part of this Agreement or affect its interpretation.

15.10. Governmental Immunity Act: The Parties understand and agree that the Parties are relying upon, and has not waived, the monetary limitations of \$350,000 per person, \$990,000 per occurrence, and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as it may be amended from time to time.

15.11. Article X of the Charter: This Agreement is made under and conformable to the provisions of the Charter of the City and County of Denver, which control the operation of the Denver Municipal Water System, consisting of Article X of the Charter. Insofar as applicable, the Charter provisions are incorporated herein and made a part hereof and shall supersede any apparently conflicting provision otherwise contained in this Agreement.

15.12. Entire Agreement: This Agreement constitutes the entire agreement between the Board and the Grantor and replaces all prior written or oral agreements and understandings.

The terms of this Agreement may not be changed, waived, modified or varied in any manner whatsoever unless in writing signed by all Parties.

15.13. Counterparts and Originals: A copy of the Agreement may be executed by each Party, separately, and may be delivered by mail or electronic copy, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

15.14. Representation of Authority of Signatories: Each individual executing this Agreement on behalf of the Grantor represents and warrants that the execution and delivery of this Agreement and all related documents have been duly authorized by the Grantor for which the individual is signing and that the individual has the legal capacity to execute and deliver this Agreement and thereby bind the Grantor.

15.15. Effective Date: This Agreement shall become effective on the date it is signed by the Board's Chief Engineering Officer and fully-executed by the Grantor.

16. SPECIAL PROVISIONS: NONE

SIGNATURES FOLLOW ON THE NEXT PAGE

Reserved for City and County of Denver Signatures

Exhibit "A"

A parcel of land situated in the Northeast Quarter (NE 1/4) of Section 21, Township 3 South, Range 66 West of the Sixth Principal Meridian, City and County of Denver, State of Colorado, more particularly described as follows:

Commencing at the East one-quarter corner of said section 21 whence the northeast corner of said section 21 bears North 00°12'48" West, said line forming the Basis of Bearing for this legal description; Thence North 27°32'03" West, a distance of 716.49 feet to a point on the north line of Tract A-2, C.P. Bedrock Filing No.1 as recorded under Reception No. 2008113595, said point also being the True Point of Beginning;

Thence South 00°15'11" East, a distance of 26.07 feet to a point on the northerly right-of-way of East 45th Avenue;

Thence along said northerly right-of-way, South 85°58'17" West, a distance of 30.07 feet;

Thence departing from said northerly right-of-way, North 00°15'11" West, a distance of 28.04 feet to a point on the north line of said Tract A-2;

Thence along said north line, North 89°44'05" East, a distance of 30.00 feet to the point of beginning;

Parcel contains 812 Square feet (0.019 Acres) more or less.

Ry P. Rusk, Colo Reg. P.L.S. No. 38226
Foresight West Surveying, Inc.
4955 Iris Street
Wheat Ridge, Colorado 80033
303.504.4440



Reviewed by DWD Property	Initials	Date
	<i>AB</i>	10/2/2018

NE 1/4 SECTION 21, TOWNSHIP 3 SOUTH, RANGE 66 WEST 6th PM

----- CITY AND COUNTY OF DENVER -----

BASIS OF BEARINGS:
Bearings are based on the E line of
Sec 21 being N00°12'48"W using NAD
83 State Plane Coordinates.

E 46TH AVE

16.15
22

NE Cor Sec 21
3" Alum Cap
LS 13155

**SE1/4 NE1/4
SEC 21**

YAMPA ST

84'

42' RANGE LINE

50' CIG GAS EASEMENT BK 809, PG 219 (ADAMS COUNTY)
REC NO 2009078081 - RELEASE OF EASEMENT
REC NO 2011034409 - RELEASE OF EASEMENT

10' PSCO EASEMENT
REC. NO. 2004236788
10' TELECOMMUNICATIONS EASEMENT
REC. NO. 2006152617

TOWER RD

E Line NE1/4 Sec 21
N00°12'48"W

120'

30' DENVER WASTEWATER EASEMENT
REC NO 2006027027

**CP BEDROCK LLC
A DELAWARE LIMITED
LIABILITY COMPANY
UNPLATTED**

**C.P.
BEDROCK
FILING
NO.2**

N89°44'05"E
30.00'

Point of
Beginning

C.P. BEDROCK FILING NO.1
Tract A-2

N00°15'11"W
28.04'

S85°58'17"W
30.07'

S00°15'11"E
26.07'

36' RANGE LINE

E 45TH AVE



Point of Commencement
E1/4 Cor Sec 21
2" Alum Cap LS 28649

N27°32'03"W
716.49'

22

Parcel Map Not P.L.S. Stamped or Certified

PARCEL CONTAINS 0.019 ACRE± (812 SQ FT)

LEGEND

- EASEMENT ACQUIRED
- BNDRY EXISTING DW ESMT

DOCUMENT DATED:
SEC'Y FILE DOC.
RIMS ITEM NO.
CARD NO.

DRN.RPR PM. gme S. [Signature]
APPD. [Signature]
SHEET 1 OF 1 SHEET

MAIN

**EASEMENT ACQUIRED
FROM CITY AND COUNTY
OF DENVER**

DATE: OCTOBER 3, 2018

DENVER WATER
1600 West 12th Ave
Denver, Colorado 80204-3412
T: 303.628.6000
F: 303.628.6851
denverwater.org

SCALE: 1" = 100'

CAD 19335-2_PMG1

Contract Control Number:
Contractor Name:

PWADM-201950120-00
BOARD OF WATER COMMISSIONERS

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

Mayor

Clerk and Recorder, Ex-Officio Clerk of the City
and County of Denver

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

Assistant City Attorney

Manager of Finance

By:

Auditor

Contract Control Number:
Contractor Name:

PWADM-201950120-00
BOARD OF WATER COMMISSIONERS

By: _____

Name: _____
(please print)

Title: _____
(please print)

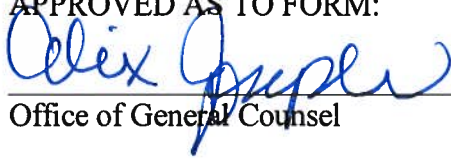
ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

APPROVED AS TO FORM:


Office of General Counsel

CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS


By:  Robert J. Mahoney
Chief Engineering Officer

Date: 