

AGREEMENT DATE:

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is made between **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation, hereinafter called "Grantor" or sometimes "City", (whether grammatically singular or plural) and the **PARK CREEK METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado, hereinafter called "District".

WITNESSETH:

For and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to the Grantor in hand paid by the District, the receipt whereof is hereby acknowledged, the Grantor hereby grants to the District, its successors and assigns, the permanent right to enter, re-enter, occupy and use the described property to construct, maintain, repair, replace, remove, enlarge and operate one or more water pipelines and all underground and surface appurtenances thereto, including electric or other related control systems, underground cables, wires and connections and surface appurtenances, in, through, over and across the following described parcel of land situate, lying and being in the City and County of Denver and State of Colorado, to-wit:

(For Legal Description, please see Exhibit "A", attached hereto and made a part hereof)

By way of example and not by way of limitation, the parties intend to include within the terms "pipelines" and "appurtenances" the following: mains and conduits, valves, vaults, manholes, control systems, ventilators, and the like. After initial construction of the pipeline and appurtenances, the District and the Board after assignment will provide written notice and a copy of preliminary design drawings of any proposed new pipelines or surface appurtenances or structures to be constructed within any part of the easement area located within City parks to the City's Manager of Parks and Recreation (the "Manager"). Within thirty (30) days after receipt of such notice and drawings, the Manager shall provide written comments of any anticipated adverse impacts upon the City's adjacent park facilities that may result from such installation for the Board's consideration in finalizing the design of such facilities. There shall be no limitation hereunder on the Board's installation of underground pipelines or surface appurtenances. Any new building or other surface structure shall, however, be (i) compatible with adjacent park uses and facilities or (ii) otherwise acceptable to the Manager, acceptance of which shall not be unreasonably withheld. Any disturbance of surface conditions in the easement area during construction shall be restored, as nearly as reasonable, to the condition immediately prior to construction.

IT IS HEREBY MUTUALLY covenanted and agreed by and between the parties hereto as follows:

1. The District shall have and exercise the right of ingress and egress in, to, over, through and across the above described property for any purpose needful for the full enjoyment of any other right of occupancy or use provided for herein. The District shall have the right to construct and maintain an all-weather roadway of varying width, as needed in the opinion of the Board, along the length of the easement. Both parties agree that the purpose of this roadway is to allow vehicular access to the District, its contractors and its intended assignee, the City and County of Denver, acting by and through its Board of Water Commissioners, hereinafter called "Board". The easement area shall be free of obstacles throughout the length of the easement, unless otherwise approved in advance in writing by the District or the Board after assignment. Due to variations in topography, the easement and the pipe may take on an uphill or downhill direction having a slope of greater than 4%; however, sloping within the easement across its width may not exceed 4% in any direction to insure stability of maintenance equipment and vehicles.

2. The Grantor shall not construct or place any structure or building, fence, retaining wall, street light, power pole, yard light, mail box, sign or trash receptacle, temporary or permanent, or plant any shrub, tree, woody plant or nursery stock, on any part of the above described easement without the express, prior, written authorization from the District or the Board after assignment, which approval shall not be unreasonably withheld. Any structure or building, fence, street light, power pole, yard light, mail box or sign, temporary or permanent, or shrub, tree, woody plant or nursery stock, of any kind situated on the above described easement as of the date of this Agreement, may be removed by the District without liability for damages arising therefrom.

3. The District, for itself, its successors and assigns, shall at any time after assignment, upon written request, provide any information within its possession about past and currently existing Environmental Contamination in the easement area. Such information shall include but not be limited to environmental studies, reports, samples, agreements, liens, letters and any remediation work that has been done or is ongoing to clean the area or is planned to occur. If contaminated soils exist in the easement area upon the effective date of this Agreement, for which the Grantor or its successors or assigns or the District are responsible under applicable state or federal laws, the District, at the District's sole expense, shall take Corrective Action to clean the contamination to the full width of the easement area and a depth of at least twelve (12) feet from finished grade or to two (2) feet below the bottom of the water line as determined by the Board. Contamination shall be cleaned to the appropriate state and federal standards set forth by the U.S. Environmental Protection Agency and Colorado Department of Public Health and Environment or to the standards of Corrective Action plans for the property currently approved by the U.S. Environmental Protection Agency and Colorado Department of Public Health and Environment. The District shall provide documents verifying Corrective Action to the Grantor and the Board prior to the installation of pipeline facilities.

4. To the extent it legally may, and as long as the Grantor (excluding its Department of Aviation) or the Board respectively did not cause such Environmental Contamination, the District, for itself, its successors and assigns, shall indemnify the Grantor and the Board against any liability, damages, costs, expenses, causes of action, claims, losses, settlements, fines and {00482311.RTF / 8}

penalties, and reasonable attorneys' fees claimed against the Grantor and the Board respectively relating to (1) the existence, mitigation, or remediation of Environmental Contamination in the easement area; (2) any Corrective Action in the easement area; (3) any Environmental Contamination in the easement area that occurs or is discovered after conveyance of the easement; or (4) the occurrence, disturbance, or movement of existing contaminated soils resulting directly or indirectly from any work conducted by the District or Board in exercise of the rights hereunder.

5. As used in this Agreement, "Corrective Action" shall refer to risk assessment, active remediation, passive remediation, voluntary cleanup, investigation and/or monitoring of Environmental Contamination.

6. As used in this Agreement, "Environmental Contamination" means the presence within the easement area of any hazardous material, including but not limited to any substances defined as or included in the definition of "hazardous substance," "hazardous material" or "toxic substances" in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement of governmental authority regulating, relating to or imposing liability or standard of conduct concerning any hazardous, toxic or dangerous substance or material, as now or at any time hereafter in effect, and in the regulations adopted, published and/or promulgated pursuant to said laws.

7. The District shall make the initial installation of the water pipeline within the easement herein described at the District's sole expense. The water pipeline shall be installed in accordance with then current Board Engineering Standards,

8. Fencing existing at the time of this Agreement which is disturbed or destroyed by the District or the District's contractors in constructing the water facilities shall be replaced by the District to its original condition as nearly as reasonable; however, the Grantor shall not construct new fencing across or within the easement, unless otherwise approved in advance in writing by the District or the Board after assignment, which approval shall not be unreasonably withheld.

9. The District shall have and exercise the right of subjacent and lateral support to whatever extent is necessary or desirable for the full, complete and unmolested enjoyment of the rights described herein. It is specifically agreed between the parties that the Grantor shall take no action which would impair the earth cover over, or the lateral or subjacent support for any water pipeline or lines and appurtenances within the easement. The Board's Engineering Standards require no less than four and one-half (4½) feet and no more than ten (10) feet of earth cover, measured vertically from the top of any pipeline or lines. Deviation from this requirement will be permitted only upon specific prior, written permission from the Board.

10. After construction of any water pipeline or lines, the general surface of the ground, except as necessarily modified to accommodate appurtenances, shall be restored, as nearly as reasonable, to the grade and condition immediately prior to construction. Topsoil shall be replaced in cultivated and agricultural areas, and any excess earth resulting from installations by the District shall be removed from the easement at the sole expense of the District. The District agrees that for

a period of one-year following construction which involves disturbance of the surface of the ground, the District will maintain the surface elevation and quality of the soil by correcting any settling or subsiding that may occur as a result of the work done by the District.

11. The District agrees that other public utilities such as sanitary sewer, storm sewer, gas, and electric lines, may be installed in the above described easement as long as they do not interfere with the District's or an assignee's rights and as long as piping crossing the water line(s) at right angles, or a substantially right angles, is metallic or concrete, unless otherwise approved in advance in writing by the District or the Board after assignment. Any piping or cable that crosses the water line(s) and is not metallic or concrete, must be encased within steel conduit and/or concrete ducts. Any and all utilities which parallel such water facilities will not be permitted within ten (10) feet of such water facilities without prior express permission of the District or the Board after assignment. The intent is to reserve for the water lines at least twenty (20) feet of the easement width.

12. The Grantor has retained the right to the undisturbed use and occupancy of the subject property insofar as such use and occupancy is consistent with and does not impair any grant herein contained and except as herein otherwise provided.

13. The District is acquiring the rights in the subject property in order to insure to the Board, as the District's intended assignee, a dominant easement for the exercise of the District's or after assignment the Board's functions, and that the exercise of any rights in the subject property other than those retained by the Grantor should be within the discretion of the Board. The District or, following any assignment, the Board agrees to permit and authorize such other uses of the subject property, not reserved in the Grantor, as will not impair such dominant rights, upon such terms, limitations, and conditions as the District and the Board shall find reasonably necessary to protect its dominant right of occupancy of the subject property for such purpose without undue or unnecessary injury to or impairment of the estate retained by the Grantor.

14. This Agreement and all rights and obligations hereunder shall be assignable to the Board; provided, however, that in the event of such assignment, the District shall remain responsible for providing information, any Corrective Action and any indemnity for Environmental Contamination in accordance with the terms of paragraphs 3 and 4 hereof and for any obligations under paragraph 9 hereof. Such assignment to the Board shall be in substantially the form of Exhibit B attached hereto and made a part hereof. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties.

15. 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.

16. If the Board abandons the use and operation of the pipeline facilities laid pursuant to this easement for a continuous period of three (3) years, then such abandonment shall constitute the abandonment of the Board's rights under this easement.

17. Unless special provisions are listed below and/or attached, the above constitutes the whole Agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties with respect to the subject matter of

this instrument. To the extent that any special provisions are in conflict with any other provisions, the special provisions shall control and supersede any other terms or provisions.

18. SPECIAL PROVISIONS: This easement or any portion thereof shall automatically terminate and be released upon the dedication of such easement area as public road right-of-way. Any portion of the easement area outside of the dedicated public road right-of-way shall remain in full force and effect.

[Signature pages follow]

THIS EASEMENT AGREEMENT shall become effective as of \_\_\_\_\_.

(Grantor signature page)

CITY AND COUNTY OF DENVER

By: \_\_\_\_\_  
Michael B. Hancock, Mayor

ATTEST:

\_\_\_\_\_  
Debra Johnson, Clerk and Recorder  
Ex-Officio Clerk of the City and County of  
Denver, Colorado

APPROVED AS TO FORM:

D. Scott Martinez, Denver City Attorney

\_\_\_\_\_, Assistant City Attorney  
City and County of Denver, Colorado

(District signature page)

PARK CREEK METROPOLITAN DISTRICT

By:

\_\_\_\_\_ President (or Assistant Secretary)

EXHIBIT A  
Legal Description



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

A part of the Southwest Quarter and a part of the Southeast Quarter of Section 10, Township 3 South, Range 67 West of the Sixth Principal Meridian, City and County of Denver, State of Colorado, more particularly described as follows:

Commencing at the Southwest Corner of said Section 10 from which the South Quarter Corner of said Section 10 bears North 89°29'45" East based on NAD 83/92 Colorado State Plane Coordinates and is the basis of bearings for this description;

thence North 33°10'56" East a distance of 90.74 feet to the southwest corner of Parcel TK-9A (LA-9A) as recorded at Reception Number 2010075685 in the Clerk and Recorder's Office of said City and County of Denver and the Point of Beginning;

thence along the westerly and northerly lines of said Parcel TK-9A (LA-9A) the following four (4) courses:

- 1.) North 00°15'25" West a distance of 35.00 feet;
- 2.) North 89°29'45" East a distance of 1050.57 feet;
- 3.) North 00°30'15" West a distance of 14.00 feet;
- 4.) North 89°29'45" East a distance of 657.25 feet to the northwest corner of Parcel TK-9B (LA-9B) as recorded at said Reception Number 2010075685;

thence North 89°29'45" East, along the northerly line of said Parcel TK-9B (LA-9B), a distance of 195.04 feet to the northwest corner of Parcel TK-9C (LA-9C) as recorded at Reception Number 2010075691 in said Clerk and Recorder's Office;

thence along the northerly and easterly lines of said Parcel TK-9C (LA-9C) the following four (4) courses:

- 1.) North 89°29'45" East a distance of 557.51 feet;
- 2.) South 00°30'15" East a distance of 10.00 feet;
- 3.) North 89°29'45" East a distance of 102.06 feet;
- 4.) South 00°23'59" East a distance of 14.00 feet to the northwest corner of Parcel TK-13C (LA-13 REV. 3) as recorded at said Reception Number 2010075685;

thence North 89°29'45" East, along the northerly line of said Parcel TK-13C (LA-13 REV. 3), a distance of 518.24 feet to the westerly line of Parcel TK-13D (LA-13A REV.) as recorded at said Reception Number 2010075685;

thence North 00°30'15" West, along said westerly line of Parcel TK-13D (LA-13A REV.), a distance of 24.00 feet to a point 124.50 feet north of the south line of said Southeast Quarter of Section 10;

thence North 89°29'45" East, parallel with said south line of the southeast quarter of Section 10, a distance of 263.00 feet to the easterly line of said Parcel TK-13D (LA-13A REV.);

thence South 00°30'15" East, along said easterly line of Parcel TK-13D (LA-13A REV.), a distance of 24.00 feet to the northwest corner of said Parcel TK-13C (LA-13 REV. 3);

thence along the northerly lines of said Parcel TK-13C (LA-13 REV. 3) the following two (2) courses:

- 1.) North 89°29'45" East a distance of 334.25 feet;
- 2.) North 88°51'45" East a distance of 146.76 feet;

thence South 00°00'00" East a distance of 25.00 feet to the southerly line of said Parcel TK-13C (LA-13 REV. 3);

thence along said southerly lines of Parcel TK-13C (LA-13 REV. 3) the following two (2) courses:

- 1.) South 88°51'45" West a distance of 146.40 feet;
- 2.) South 89°29'45" West a distance of 334.38 feet to the southeast corner of said Parcel TK-13D (LA-13A REV.);

thence South 89°29'45" West, along the southerly line of said Parcel TK-13D (LA-13A REV.), a distance of 263.00 feet to the southeast corner of said Parcel TK-13C (LA-13 REV. 3);

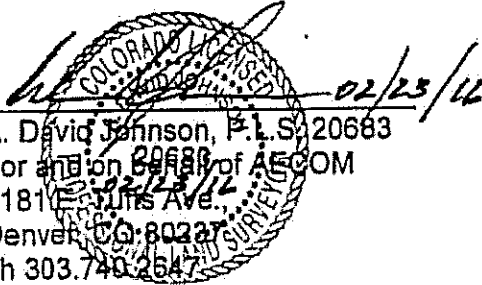
thence South 89°29'45" West, along the southerly line of said Parcel TK-13C (LA-13 REV. 3), a distance of 518.29 feet to the southeast corner of said Parcel TK-9C (LA-9C);

thence South 89°29'45" West, along the southerly line of said TK-9C (LA-9C), a distance of 659.50 feet to the southeast corner of said Parcel TK-9B (LA-9B);

thence South 89°29'45" West, along the southerly line of said TK-9B (LA-9B), a distance of 195.04 feet to the southeast corner of said Parcel TK-9A (LA-9A);

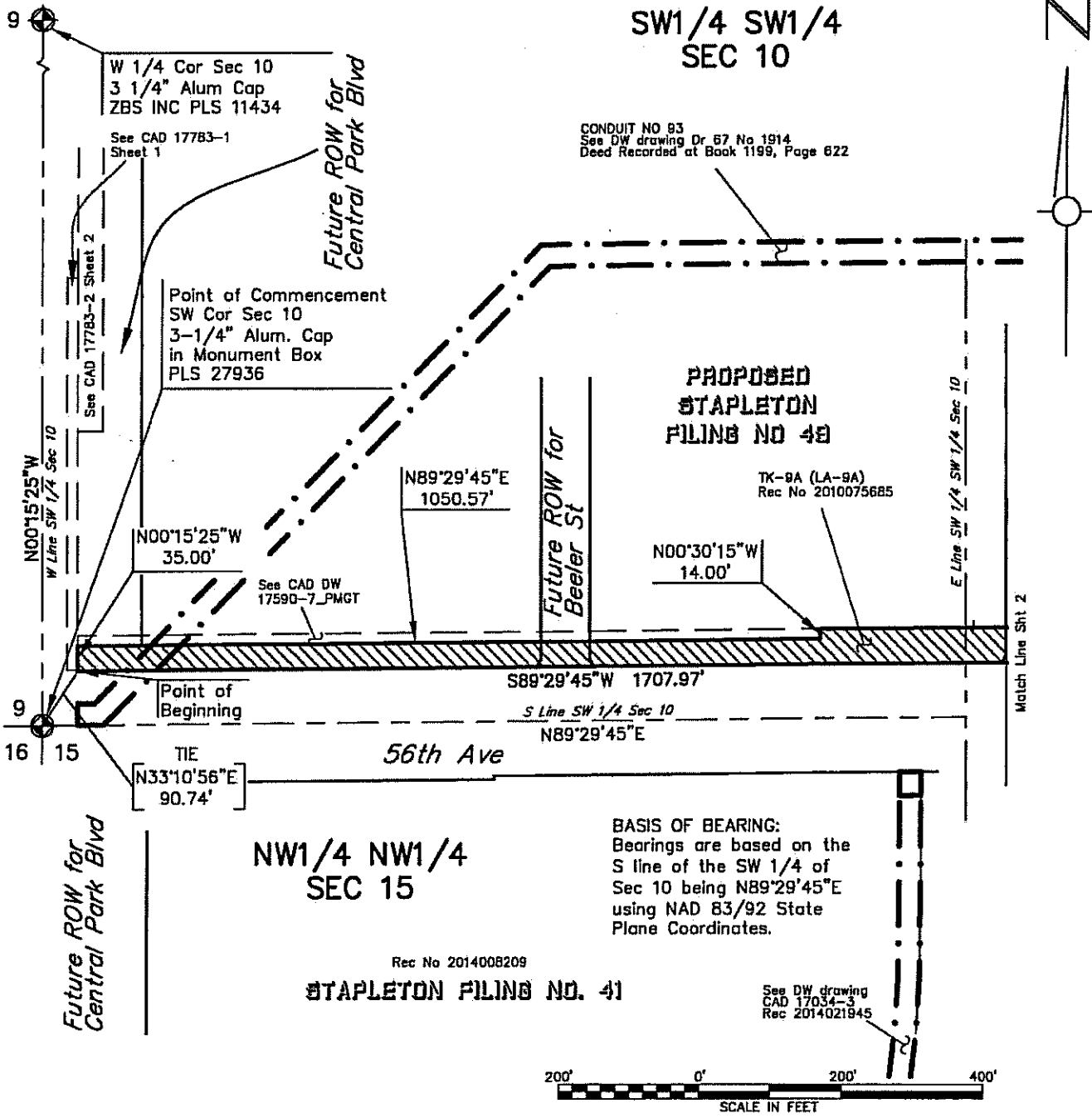
thence South 89°29'45" West, along the southerly line of said TK-9A (LA-9A), a distance of 1707.97 feet to the Point of Beginning.

This Parcel contains 147,698 square feet or 3.391 acres, more or less.

  
A. David Johnson, P.E. S. 20683  
For and on Behalf of AECOM  
8181 E. Willis Ave.  
Denver, CO 80227  
ph 303.740.2647  
dave\_johnson@aecom.com

REVIEWED BY	INITIALS	DATE
DWD SURVEY	<i>[Signature]</i>	3-8-16

S 1/2 SECTION 10, TOWNSHIP 3 SOUTH, RANGE 67 WEST 6th PM  
 ---- CITY AND COUNTY OF DENVER ----



**BASIS OF BEARING:**  
 Bearings are based on the  
 S line of the SW 1/4 of  
 Sec 10 being N89°29'45"E  
 using NAD 83/92 State  
 Plane Coordinates.

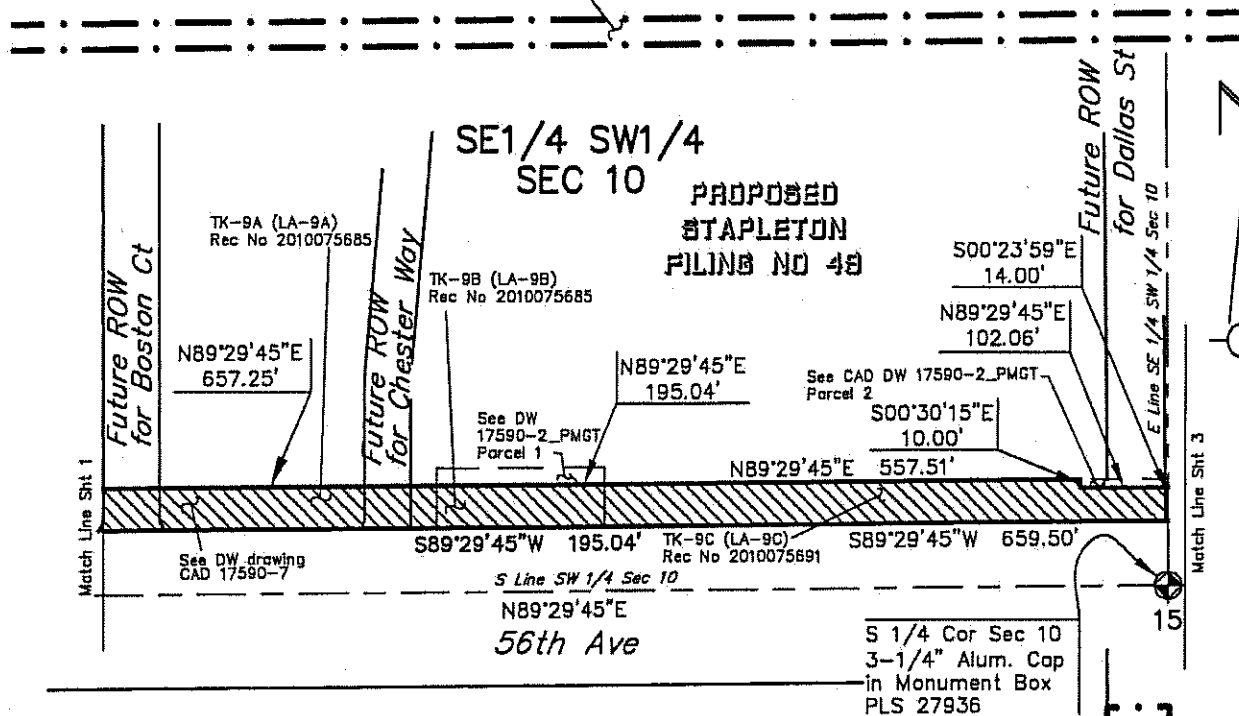


Parcel Map Not P.L.S. Stamped or Certified      PARCEL CONTAINS 3.391 ACRE± (147,698 SQ FT)

<p><b>LEGEND</b></p> <p> EASEMENT ACQUIRED</p> <p> BNDRY EXISTING DW ESMT</p>	<p>DOCUMENT DATED:                  SEC'Y FILE      DOC.</p> <p>RIMS ITEM NO.                  CARD NO. 000</p>	<p><b>CONDUIT NUMBER 93</b></p> <p>EASEMENT ACQUIRED FROM                  DENVER CITY AND COUNTY</p>	<p><b>DENVER WATER</b></p> <p>1600 West 12th Avenue                  Denver, Colorado 80204                  Phone (303)628-8000                  Fax (303)628-6224                  www.denverwater.org</p>
	<p>DRN. EBX/PM. AEM. S. <i>[Signature]</i></p> <p>APPD. <i>[Signature]</i></p> <p>SHEET 1 OF 3 SHEETS</p>		

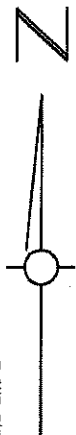
S 1/2 SECTION 10, TOWNSHIP 3 SOUTH, RANGE 67 WEST 6th PM  
 ----- CITY AND COUNTY OF DENVER -----

CONDUIT NO. 93  
 See DW drawing Dr 67 No 1914  
 Deed Recorded at Book 1199, Page 622



Match Line Sht 1

Match Line Sht 3



NE1/4 NW1/4  
 SEC 15

BASIS OF BEARING:  
 Bearings are based on the  
 S line of the SW 1/4 of  
 Sec 10 being N89°29'45"E  
 using NAD 83/92 State  
 Plane Coordinates.



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

<b>LEGEND</b> EASEMENT ACQUIRED BNDRY EXISTING DW ESMT	<b>CONDUIT NUMBER 93</b>  EASEMENT ACQUIRED FROM DENVER CITY AND COUNTY		<b>DENVER WATER</b> 1600 West 12th Avenue Denver, Colorado 80204 Phone (303)628-6000 Fax (303)628-6224 www.denverwater.org
	DRN. EBV, PM. AEM <i>S. Sh</i> APPD. <i>[Signature]</i> SHEET 2 OF 3 SHEETS	DATE: MARCH 08, 2016	

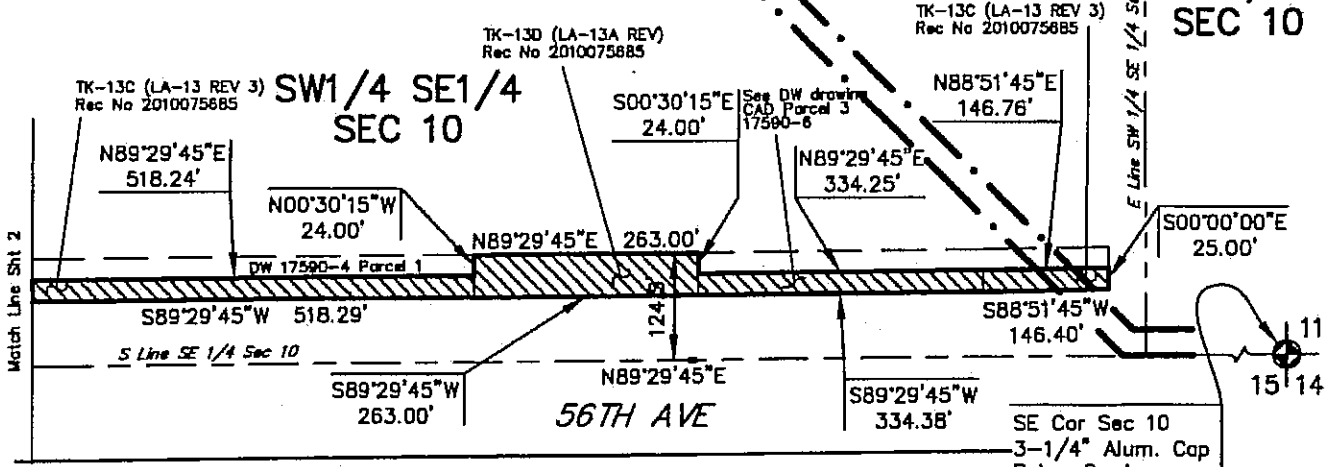
S 1/2 SECTION 10, TOWNSHIP 3 SOUTH, RANGE 67 WEST 6th PM  
 ----- CITY AND COUNTY OF DENVER -----



CONDUIT NO. 93  
 See DW drawing Dr 67 No 1914  
 Dead Recorded at Book 1199, Page 822

FUTURE DENVER  
 PARKS & RECREATION  
 (TRUNK OPEN SPACE)

SE 1/4  
 SE 1/4  
 SEC 10



NW 1/4 NE 1/4  
 SEC 15

STAPLETON BUSINESS  
 CENTER NORTH FILING NO. 1  
 Rec No 2009084385

BASIS OF BEARING:  
 Bearings are based on the  
 S line of the SE 1/4 of  
 Sec 10 being N89°29'45"E  
 using NAD 83/92 State  
 Plane Coordinates.



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

<p><b>LEGEND</b></p> <p> EASEMENT ACQUIRED</p> <p> BNDRY EXISTING DW ESMT</p>	<p>CONDUIT NUMBER 93</p>		<p><b>DENVER WATER</b></p> <p>1800 West 12th Avenue                  Denver, Colorado 80204                  Phone (303)628-8000                  Fax (303)628-8224                  www.denverwater.org</p>
	<p>EASEMENT ACQUIRED FROM                  DENVER CITY AND COUNTY</p>		
	<p>DRN. EBV PM. AEM. S. <i>[Signature]</i></p> <p>APPD. <i>[Signature]</i></p> <p>SHEET 3 OF 3 SHEETS</p>		
<p>DATE: MARCH 08, 2016</p>		<p>SCALE: 1" = 200'</p> <p>CAD 17590-1_PMG1</p>	

EXHIBIT B  
Assignment Form

## EXHIBIT "B"

### QUITCLAIM CONVEYANCE OF EASEMENT

**PARK CREEK METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado ("PCMD"), for good and valuable consideration, but without payment of monetary consideration, the receipt and sufficiency of which is hereby acknowledged, has **RELEASED, REMISED, TRANSFERRED, ASSIGNED AND FOREVER QUITCLAIMED**, and by these presents does hereby **RELEASE, REMISE, TRANSFER, ASSIGN and FOREVER QUITCLAIM** to the **CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS** ("Denver Water"), all of PCMD's right, title and interest in and to that certain Easement Agreement entered into between the City and County of Denver and the Park Creek Metropolitan District dated to be effective as of \_\_\_\_\_, 2016 and recorded \_\_\_\_\_, 2016 at Reception No. \_\_\_\_\_ in the real estate records of the Denver County Clerk and Recorder's office ("Easement Agreement").

**TO HAVE AND TO HOLD** all of PCMD's right, title and interest in and to the Easement Agreement unto Denver Water, its successors and assigns forever, so that neither PCMD, nor PCMD's successors and assigns, or any person claiming by, through or under PCMD shall at any time thereafter have claim, or demand any right, title or interest in and to all or any part of the rights in the Easement Agreement; provided, however, that no provision herein shall be deemed or construed to modify, assign, change or alter PCMD's obligations under paragraph 9 of the Easement Agreement or PCMD's environmental remediation obligations and indemnity pursuant to paragraphs 3 and 4 of the Easement Agreement in furtherance of which PCMD shall also, prior to Denver Water executing this Quitclaim Conveyance of Easement, request in writing from the City and County of Denver any and all information pertaining to past and currently existing environmental contamination within or affecting the easement area not previously given to PCMD, if any.

**IN WITNESS WHEREOF**, PCMD has executed this Quitclaim Conveyance of Easement on the date set forth above.

[Signature page follows]

PARK CREEK METROPOLITAN DISTRICT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of the Park Creek Metropolitan District, a quasi-municipal corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

CITY AND COUNTY OF DENVER,  
ACTING BY AND THROUGH ITS BOARD  
OF WATER COMMISSIONERS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of the City and County of Denver, acting by and through its Board of Water Commissioners.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public