

INTERAGENCY AGREEMENT - DIA PENA STATION WATER FACILITIES

THIS INTERAGENCY AGREEMENT ("**Agreement**") is entered into as of the date stated on the DEN signature page below, by and between the **CITY AND COUNTY OF DENVER**, on behalf of its DEPARTMENT OF AVIATION ("**DEN**"), and the **CITY AND COUNTY OF DENVER**, acting by and through its **BOARD OF WATER COMMISISONERS** ("**Board**"), both Colorado municipal entities.

WHEREAS, DEN owns, operates, and maintains the Denver Municipal Airport System, including Denver International Airport (also "**DEN**"); and

WHEREAS, the Board owns and operates a municipal water supply system currently serving the City and County of Denver; and

WHEREAS, DEN and the Board entered into prior agreements extending the Board's water supply system to DEN. The following agreements provide for the Board's construction, operation, maintenance, repair, replacement, and ownership of these water facilities:

- 1) A "Participation Agreement," Contract No. CE 92001, dated January 24, 1989, with a First Amendment dated May 19, 1992; and
- 2) An Interagency Memorandum of Understanding ("MOU") dated September 17, 1990, with a September 10, 1991 First Amendment and a June 9, 1993 Second Amendment, which MOU is terminated; and
- 3) An Inter-Agency Revocable Permit dated November 9, 1998, for Board maintenance, operation, utilization, and repair of all water distribution facilities constructed by the Board in, across, or throughout DEN; and

WHEREAS, DEN has entered into a Non-Exclusive License Agreement ("**License**") with Aviation Station North Metropolitan District No. 1, a quasi-municipal corporation ("**District**") for the grading and construction of streets and infrastructure, including potable and nonpotable water distribution facilities, on DEN property near the Peña Boulevard Commuter Rail Station, such property shown and legally described in attached and incorporated **Exhibit A** ("**DEN Rail Property**"); and

WHEREAS, unlike the prior agreements between DEN and the Board, more fully described in the third WHEREAS clause above, the District and not the Board will construct potable and nonpotable water distribution facilities within the DEN Rail Property; and

WHEREAS, DEN and the Board agree water service will be provided to the DEN Rail Property through potable and nonpotable water distribution facilities constructed by the District for the phased, orderly development of water supplies to serve expected development on the DEN Rail Property.

NOW THEREFORE, for and in consideration of the prior and following mutual covenants and agreements herein contained DEN and the Board agree as follows:

1. **GRANT OF RIGHTS.** In consideration of the Board providing water service to the DEN Rail Property, DEN hereby grants the Board a revocable permit for the Board's operation, maintenance, repair, reconstruction, and replacement of conduits, water mains and service lines, with all appurtenances ("**Water Facilities**") within the DEN Rail Property, including all Water Facilities constructed by the District, upon Board's written acceptance of Water Facilities constructed by the District, pursuant to Board Engineering Standards, Operating Rules, and Water Sales requirements.

2. **LIMITATION OF BOARD RIGHTS.**

2.1. No fee or other property right in or on the DEN Rail Property is granted by this Agreement. This Agreement is solely a contractual right for the Board's operation, maintenance, repair, reconstruction, and replacement of Water Facilities in, across, and through the DEN Rail Property.

2.2. This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between DEN and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to DEN for airport purposes, and the expenditure of federal funds for the extension, expansion or development of DIA.

2.3. DEN reserves the right of use and occupancy of the DEN Rail Property, subject to the rights granted herein, provided that DEN shall not unreasonably interfere with the Board's exercise of the rights granted hereunder. DEN specifically reserves for itself and other assignees of City, without limitation, the right to cross the DEN Rail Property, the right to place equipment or other utilities above, across and within the DEN Rail Property, and all rights which do not unreasonably interfere with the Board's rights or do not conflict with Board Engineering Standards, Operating Rules and Water Sales requirements.

3. **TERM**

3.1. Subject to the provisions hereof, the privileges granted herein shall commence upon execution of this Agreement by all parties, and shall terminate upon any termination of the Revocable Permit referred to in the third Whereas clause above, *excepting that* the parties understand and agree that all activities on the DEN Rail Property, by any person, entity, or party, are subject to the regulation and control of the Federal Aviation Administration ("**FAA**"), and any portion or all of this Agreement may be terminated upon 30 days' notice to the Board if the FAA requests or requires DEN to do so.

3.2. The Board's Water Facilities for the DEN Rail Property are essential for the operation of the Peña Boulevard Commuter Rail Station and DEN itself.

If this Agreement is not terminated pursuant to its terms, then the term of this Agreement shall be coincidental with the operation of DEN for aviation activity.

4. REVOCATION.

DEN agrees the Board cannot perform its responsibilities to supply water if this Agreement is terminated for any reason. If this Agreement is terminated, then DEN shall provide other means acceptable to the Board to continue the water supply to the DEN Rail Property. If the Board determines, in its sole discretion, water cannot be supplied to the Den Rail Property, then all obligations of the Board to supply water to the DEN Rail Property under this or any other agreement between the Board and DEN shall terminate.

5. SECURITY. The Board will require its contractors, agents and employees to comply with any and all existing and future security regulations adopted by DEN, including as they may be amended from time to time.

6. ENVIRONMENTAL.

6.1. The Board will not be responsible for any environmental contamination or costs caused by the District, DEN, or any third party, whether occurring prior to or after Board activity on the DEN Rail Property.

6.2. The Board, in conducting any activity on the DEN Rail Property, shall comply with all applicable local, state or federal environmental rules, regulations, statutes, laws or orders (collectively "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. For purposes of this Agreement, the term "Hazardous Materials" means substances, materials or waste, the generation, handling, storage, treatment or disposal of which is regulated by any local, state or federal government authority or laws, as a "hazardous waste," "hazardous material," "hazardous substance," "pollutant" or "contaminant" and including, without limitation, those designated as a "hazardous substance" under Section 311 or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Secs. 1321, 1317), defined as a "hazardous waste" under Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Sec. 6903), or defined as a "hazardous substance" under Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sec. 9601), and, including, without limitation, petroleum products and byproducts, PCBs and asbestos.

6.3. Board shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal, state and local environmental permit requirements relating to Board's use of the DEN Rail Property. The Board agrees to notify the Department of Aviation, at Airport Office Building, 8500 Pena Boulevard, Denver, Colorado 80249-6340, 303-342-4200, immediately if, during the course of the Work pursuant to this Agreement, Board encounters any visible, odorous, or otherwise recognizable contamination of the DEN Rail Property ("**Existing Contamination**"). DEN will, upon notification, perform reasonable and appropriate

sampling and analysis of such Existing Contamination. The Board shall proceed with activities at other locations on the DEN Rail Property until DEN has completed testing and/or remediation, if any, of the area in question.

6.4. In the case of the release, spill, discharge, leak, disturbance or disposal of Hazardous Materials as a result of Board's or its contractor's, subcontractor's, agent's, or representative's activities on the DEN Rail Property, Board shall immediately control and diligently remediate all contaminated media to applicable federal, state, and local standards. Board shall reimburse DEN for any penalties and all reasonable costs and expenses, including without limitation, reasonable attorney's fees incurred by DEN as a result of the release or disposal by Board or its contractors, subcontractors, agents and representatives of any Hazardous Materials on the DEN Rail Property. Board shall also immediately notify DEN in writing of the release, spill, leak, discharge or disturbance of Hazardous Materials and the control and remediation response actions taken by Board, and any responses, notifications actions taken by any federal, state or local agency with regard to such release, spill or leak. Board shall make available to DEN for inspection and copying, upon reasonable notice and at reasonable times, any requirement under this Section. If there is a requirement to file any notice or report of a release or threatened release of any Hazardous Materials at, on, under, or migrating from the DEN Rail Property, Board shall provide copies of all results of such report or notice to DEN. The provisions of this section shall expressly survive the termination of this Agreement.

7. LIABILITY. Each party shall be liable for the errors and omissions of its agents and employees to the extent provided by the Colorado Governmental Immunity Act. This obligation shall survive termination of this Agreement. Nothing herein shall be construed as a waiver by either party of the protections afforded by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et. seq.*, as amended.

8. NOTICES. Any notices or demands provided for herein shall be in writing and shall be deemed effectively given or made (i) immediately when served personally upon the party to be notified, (ii) immediately upon confirmation of facsimile transmission to the party to be notified if on a business day and given before 5:00 p.m. local time in the time zone of the recipient (or on the next business day if given after 5:00 p.m. on a business day), (iii) three (3) business days after being sent to the party to be notified by United States registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) business day after being sent to the party to be notified by reputable overnight courier, prepaid, return receipt acknowledged, all of the foregoing (i) though (iv) to the address, or facsimile number, as applicable, of such party set forth below or to such other address as such party may last have designated by notice hereunder:

DEN: Aviation Chief Executive Officer
Denver International Airport
8500 Pena Boulevard, Ninth Floor
Denver, Colorado 80249-6340

with a copy to: Airport Legal Services, Chief Counsel

Denver, International Airport
8500 Pena Boulevard, Ninth Floor
Denver, Colorado 80249-6340

to the Board: CEO/Manager
Denver Water
1600 West 12th Avenue
Denver, Colorado 80204

with a copy to: Denver Water, Legal Division
1600 West 12th Avenue
Denver, Colorado 80204

Rejection or refusal to accept delivery or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of notice as of the date such notice was deposited in the mail or delivered to the courier or transmitted via confirmed facsimile. When used in this Agreement, a “business day” shall mean a weekday which is not a federal or State of Colorado holiday.

9. SEVERABILITY. In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable.

10. BOND ORDINANCES. This Agreement is in all respects subject and subordinate to any and all City applicable bond ordinances for the City’s airport system and to any other bond ordinances which should amend, supplement or replace such bond ordinances.

11. NONDISCRIMINATION. In connection with the performance of work under this Agreement, Board may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variation, marital status, or physical or mental disability. Board shall cause the foregoing to be inserted in all subcontracts hereunder.

12. SUBJECT TO APPROPRIATION. Any obligation of DEN or the Board under this Agreement shall extend only to monies appropriated for the purpose of this Agreement by the Denver City Council or the Board, as appropriate, and encumbered for the purposes of this Agreement on an annual basis. The financial participation of DEN provided in this Agreement shall derive solely from the enterprise funds controlled by DEN and not from the General Fund or any other funds of the City.

13. CONFLICTS AND DISTRICT LICENSE.

13.1. If there is a conflict between the District License and this Agreement, this Agreement shall control. If there is a conflict between this Agreement

and Board Engineering Standards, Operating Rules and Water Sales requirements, then Board Engineering Standards, Operating Rules and Water Sales requirements shall control.

13.2. Any termination of the License between DEN and the District will not terminate this Agreement.

13.3. DEN will provide the Board a fully executed copy of the District License and any amendments.

14. FINAL APPROVAL. This Agreement is expressly subject to and shall not be or become effective or binding on the City until approved by the City Council and fully executed by all signatories of the City and County of Denver.

END OF AGREEMENT; SIGNATURE PAGES AND EXHIBIT FOLLOW

Contract Control Number:

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 _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: PLANE-201524093-00

Contractor Name:

By: WB Robert J. Mahoney

Name: Robert J. Mahoney
(please print)

Title: Director of Engineering
(please print)

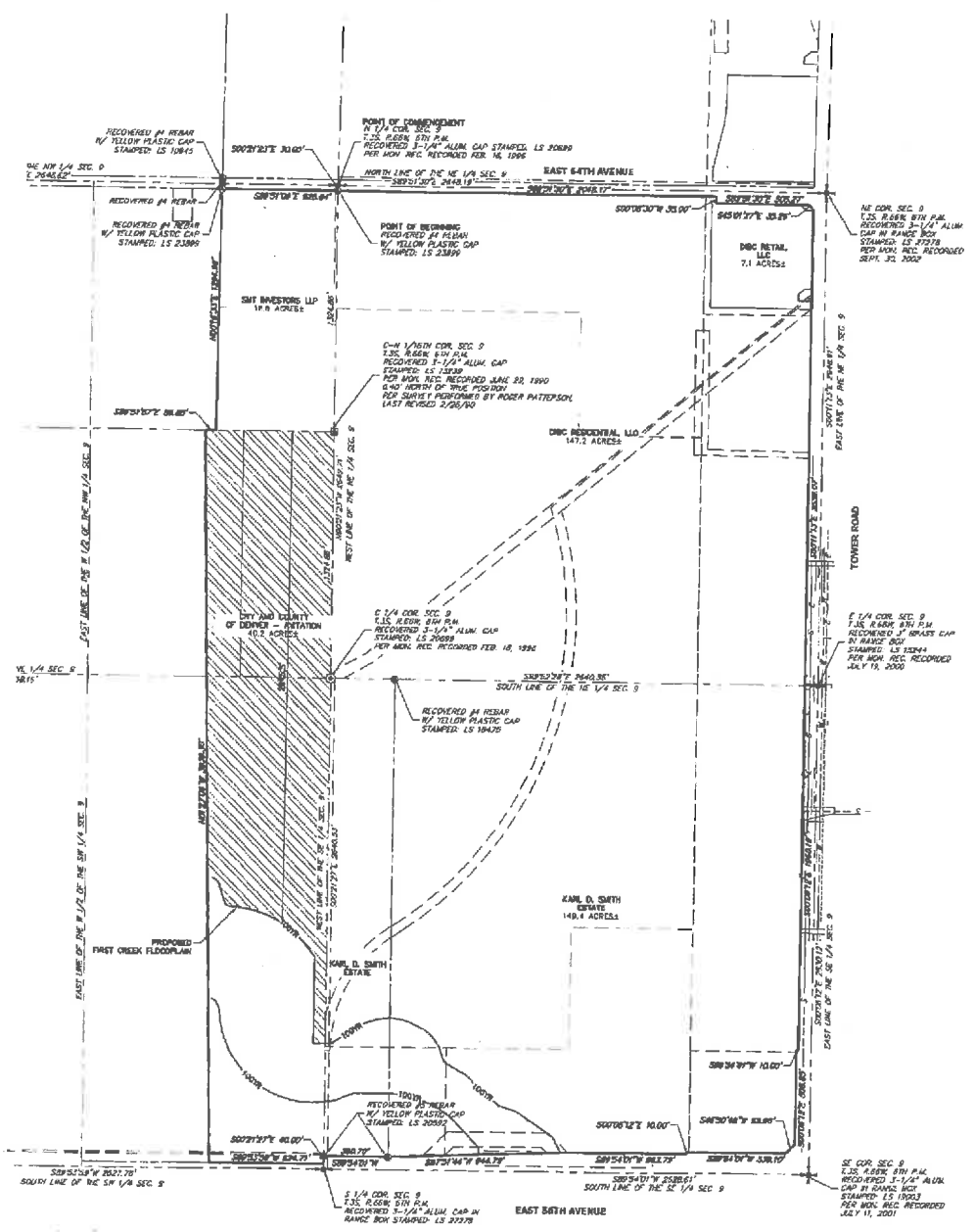
APPROVED AS TO FORM:

By: MJ Brennan

Name: Mary J Brennan
(please print)

Title: Attorney
(please print)





Agreement applies to hatched property

EXHIBIT C
 61ST AND PENA
 JOB NO. 15500.01
 MAY 28, 2015



Colorado 303-740-0300 • Colorado Springs 719-580-2589
 Fort Collins 970-691-5533 • www.jr-engineering.com