

AGREEMENT DATE: _____
(TO BE COMPLETED BY DENVER WATER – PROPERTY MANAGEMENT)

EASEMENT AGREEMENT

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

RECITALS

- A. Denver Water owns and operates certain pipes and related facilities (the “**Pipe**”) currently located in an area adjacent to York Street Right of Way pursuant to the Temporary Access Permit and Agreement, dated January 8, 2019 (the “**Permit**”). The area covered by the Permit is described therein as the “**Permit Area**” which is identical to the area covered by this Agreement and defined below as the “**Easement Area**.”
- B. The City and Denver Water wish to provide for permanent access to and use by Denver Water of the Easement Area as needed for the installation, use, maintenance, and operation of the Pipe within the Easement Area and on and subject to the terms and conditions set forth in this Agreement.

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 are acknowledged by the Parties, 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, across and within 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) of the Easement Area. In the event the survey, the legal description in Exhibit A (CAD drawing No. 19637-2_PMGT), and/or the drawing attached to Exhibit A are found by the Parties to be inaccurate, the Grantor will comply with the Board’s request to execute, acknowledge, initial, and/or deliver to the Board any documentation

the Board deems 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 in any manner within the Easement Area or adjacent public right-of-way for any purpose necessary for the full enjoyment of the right of occupancy and use of the Easement as provided in this Agreement.

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

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

6. SLOPE: Due to variations in topography, 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**"). The Board may, without notice to Grantor, remove any Prohibited Obstructions situated within the Easement Area without liability for damages and at the sole expense of the Grantor.

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, except as may be approved by the Board in writing, which approval shall not be unreasonably withheld.

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.

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. PUBLIC UTILITIES:

11.1. Crossings: Other public utilities such as sanitary sewer, storm sewer, gas, electric, and cable lines may be installed in the Easement Area as long as they do not interfere with the Board's rights and as long as the utilities are crossing the pipeline(s) at right angles, or at substantially right angles. Any gas, electric, or cable line that crosses the pipeline(s) and is not metallic or concrete shall be encased within steel conduit and/or concrete ducts.

11.2. Parallel: In order to reserve to the Board's pipeline(s) at least 20 feet of the Easement width, any and all utilities that parallel the Facilities shall not be permitted within 10 feet of the Facilities without prior express and written permission of the Board.

11.3. Existing Utilities: Notwithstanding any term or provision of this Agreement to the contrary, the Board hereby consents to and accepts the existing conditions concerning placement, location, and use of all pipes, utility lines and facilities in place within the Easement Area as of the Effective Date of this Agreement.

12. 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.

13. **DOMINANT EASEMENT:** With regard to all rights arising after the Effective Date, the Board shall have a dominant right of occupancy of the Easement Area for the exercise of the Board's functions, and the exercise of any rights in the Easement Area other than those retained by the Grantor shall be within the discretion of the Board.

14. **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.

15. **NO WARRANTIES:** The Grantor does not make, and hereby expressly disclaims, any and all representations and warranties of any kind or nature 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.

16. **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
Denver City Attorney's Office - Municipal Operations
201 W. Colfax Ave, Dept. 1207
Denver, CO 80202

17. **GENERAL PROVISIONS:**

17.1. **Successors and Assigns:** This Agreement 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.

17.2. 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. Except as specifically set forth in Section 5 of this Agreement, it is the express intent of the Parties that the 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.

17.3. 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.

17.4. 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.

17.5. 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.

17.6. 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.

17.7. 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.

17.8. 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.

17.9. 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.

17.10. 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.

17.11. Charter: This Agreement is made under and conformable to the provisions of the Charter of the City and County of Denver, including those provisions of the Charter 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.

17.12. 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.

17.13. 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.

17.14. 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.

17.15. Effective Date and Termination of Permit: This Agreement shall become effective (the "Effective Date") as of the date printed on the fully-executed signature page for the City. Additionally, the Parties hereby acknowledge and agree that the Permit shall be terminated by mutual agreement upon the full execution and recording of this Easement.

SIGNATURES FOLLOW ON THE NEXT PAGE

EXHIBIT A
LEGAL DESCRIPTION

A PARCEL OF LAND, BEING ALL OF PARCEL 32 TOGETHER WITH A PORTION OF PARCEL 33 AS DESCRIBED IN THE SPECIAL WARRANTY DEED RECORDED APRIL 25, 2018 IN THE OFFICE OF THE CLERK AND RECORDER FOR THE CITY AND COUNTY OF DENVER UNDER THE RECEPTION NUMBER 2018048224, AND TOGETHER WITH ALL OF THAT PARCEL AS DESCRIBED AND RULE AND ORDER RECORDED NOVEMBER 11, 2017 IN THE OFFICE OF THE CLERK AND RECORDER FOR THE CITY AND COUNTY OF DENVER UNDER THE RECEPTION NUMBER 2017150368, LOCATED IN THE SOUTHEAST QUARTER OF SECTION TWENTY-THREE (23) AND THE SOUTHWEST QUARTER OF SECTION TWENTY-FOUR (24), TOWNSHIP THREE (3) SOUTH, RANGE SIXTY-EIGHT (68) WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, DESCRIBED AS FOLLOWS, WITH BEARINGS REFERENCED TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION TWENTY-THREE (23), MONUMENTED ON THE SOUTH END BY A FOUND 3-1/4 INCH ALUMINUM CAP, BEING A WITNESS CORNER 1.00 FOOT NORTHERLY OF THE TRUE POSITION OF THE SOUTHWEST CORNER OF SAID SECTION 23, STAMPED "WC 1.0 FT" "LS 13154" "1988", AND ON THE NORTH END BY A FOUND 3-1/4 INCH ALUMINUM CAP STAMPED "JACOBS" "PLS 24942" "2016" IN A RANGE BOX, ASSUMED TO BEAR NORTH 00°08'31" EAST A DISTANCE OF 1321.79 FEET, TO WIT:

COMMENCE AT THE 1.00 FOOT WITNESS CORNER TO THE SOUTHEAST CORNER OF SAID SECTION 23; THENCE NORTH 00°08'31" EAST, ALONG THE EAST LINE OF THE SOUTHEAST ONE-QUARTER OF SECTION 23, A DISTANCE OF 718.83 FEET TO THE SOUTHEAST CORNER OF THAT PARCEL OF LAND RECORDED AT RECEPTION NUMBER 2017150368 AND THE **POINT OF BEGINNING**;

THENCE NORTH 79°52'35" WEST, ALONG THE SOUTHERLY BOUNDARY OF SAID PARCEL OF LAND RECORDED AT RECEPTION NUMBER 2017150368, A DISTANCE OF 48.68 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF YORK STREET;

THENCE NORTH 00°08'31" EAST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF YORK STREET, A DISTANCE OF 136.50 TO THE NORTHWEST CORNER OF SAID PARCEL 32;

THENCE NORTH 88°57'37" EAST, ALONG THE NORTHERLY BOUNDARY OF SAID PARCEL 32, A DISTANCE OF 47.95 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 32;

THENCE SOUTH 00°08'31" WEST, ALONG THE EAST BOUNDARY OF SAID PARCEL 32, A DISTANCE OF 1.27 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 33;

THENCE SOUTH 89°48'04" EAST, ALONG THE NORTHERLY BOUNDARY OF SAID PARCEL 33, A DISTANCE OF 2.06 FEET;

THENCE SOUTH 00°08'31" WEST A DISTANCE OF 142.68 FEET;

THENCE NORTH 90°00'00" WEST A DISTANCE OF 2.06 FEET TO A POINT ON THE EASTERLY BOUNDARY OF THE PREVIOUSLY CITED PARCEL OF LAND RECORDED AT RECEPTION NUMBER 2017150368;

THENCE SOUTH 00°08'31" WEST, ALONG SAID EASTERLY BOUNDARY, A DISTANCE OF 1.97 FEET TO **POINT OF BEGINNING**.

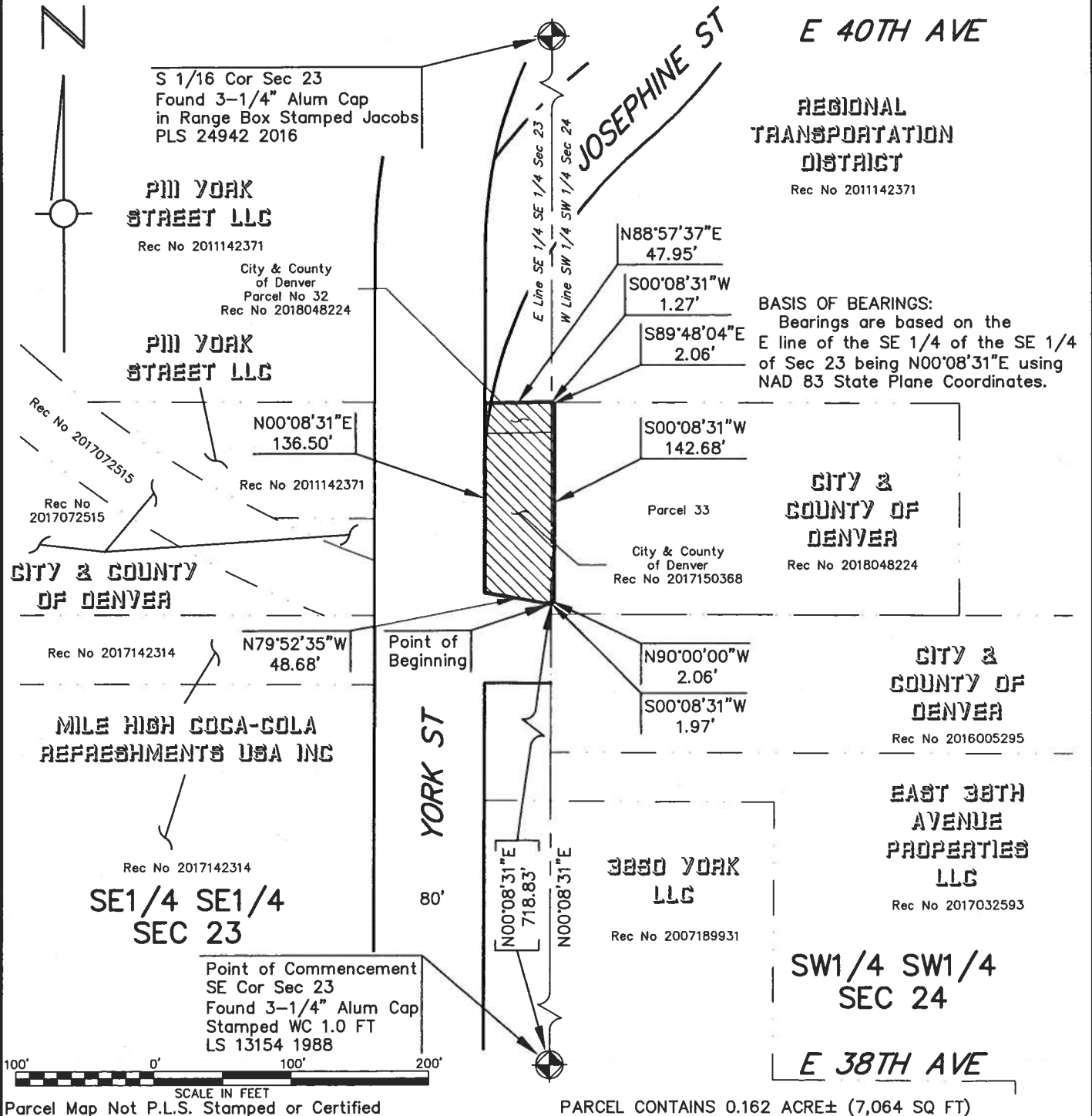
SAID PARCEL OF LAND CONTAINING 7,064 SQUARE FEET (0.162 ACRES), MORE OR LESS, AND IS DEPICTED ON THE ATTACHED GRAPHICAL EXHIBIT FOR REFERENCE.



Reviewed by DWD Property	Initials	Date
	<i>MS</i>	3/5/2019

JEFFREY A. MILLER, PLS 38467
FOR AND ON BEHALF OF MATRIX DESIGN GROUP, INC.
1601 BLAKE STREET, SUITE 200
DENVER, CO 80202
PH. (303)572-0200

SE 1/4 SECTION 23, TOWNSHIP 3 SOUTH, RANGE 68 WEST 6th PM
 SW 1/4 SECTION 24, TOWNSHIP 3 SOUTH, RANGE 68 WEST 6th PM
 ----- CITY AND COUNTY OF DENVER -----

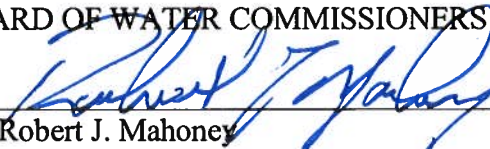


LEGEND EASEMENT ACQUIRED	DOCUMENT DATED: SEC'Y FILE DOC. RIMS ITEM NO. CARD NO. DRN. JOC PM. AEC S. <i>MS</i> APPD. <i>Angela Bailey</i> SHEET 1 OF 1 SHEET	MAIN EASEMENT ACQUIRED FROM CITY AND COUNTY OF DENVER DATE: MARCH 5, 2019	DENVER WATER 1600 West 12th Ave Denver, Colorado 80204-3412 T: 303.628.6000 F: 303.628.6851 denverwater.org SCALE: 1" = 100' CAD 19637-2_PMG
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APPROVED AS TO FORM:


Office of General Counsel

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

608 By: 
Robert J. Mahoney
Chief Engineering Officer

Date: 

THIS EASEMENT AGREEMENT IS ACCEPTED BY THE CITY AND COUNTY OF DENVER:
[SEE SEPARATE SIGNATURE PAGE]

Contract Control Number:
Contractor Name:

PWADM-201950657-00
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-201950657-00
BOARD OF WATER COMMISSIONERS

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)