



BRYAN D. WEIMER, PWLF
Director

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Board Summary Report

To: Bryan Weimer, PWLF, Director, Public Works & Development

Through: James Katzer, PE, Transportation Division Manager

Through: Cathleen Valencia, PE, Capital Improvement Program Manager

Prepared By: Ryan Seacrist, PE, Capital Improvement Program Engineer III

Date: September 14, 2021

Subject: **C15-002 ILIFF AVENUE OPERATIONAL IMPROVEMENTS (RFP 21-06), PERMANENT EASEMENT AGREEMENT WITH CITY AND COUNTY OF DENVER BY WAY OF BOARD OF WATER COMMISSIONERS (DENVER WATER).**

PURPOSE AND REQUEST

The purpose of this BSR is to request Board of County Commissioners approval of the Public Works and Development Directors signature on the Permanent Easement Agreement.

BACKGROUND AND DISCUSSION

The Iliff Project will add drainage facilities, new and wider sidewalks, turn lanes, bicycle lanes, and intersection improvements with new traffic signals along with telecommunications from Quebec Street to Parker Road (SH 83) all with the purpose of improving operations and safety along the corridor. The Project will also resurface the roadway and provide some lighting as a pilot project for Arapahoe County.

With the Iliff Project, Arapahoe County Public Works and Development (PWD) has initiated the acquisition of easements necessary for the Project's proposed improvements. The referenced parcel was identified as being needed for the Project and the purchase of an easement was negotiated with the

property owner in the amount of \$2,000.00. This payment was approved and made with a previous memo.

ALTERNATIVES

The alternative to is not accept the easement for approval. The project would not be able to proceed in the area of the easement.

FISCAL IMPACT

Funding for this request was previously made to Denver Water under a separate memo.

ALIGNMENT WITH STRATEGIC PLAN

- Be fiscally sustainable
- Provide essential and mandated service
- Be community focused

CONCURRENCE

Public Works staff recommends the signing of the attached Permanent Easement Agreement

RESOLUTION

Enclosures: Permanent Easement Agreement

CC:

Email

Bryan D. Weimer, Public Works Director
James Katzer, Transportation Division Manager
Cathleen Valencia, CIP Manager
Robert Hill, Assistant County Attorney
Rhonda Robinson, Public Works Budget Analyst
Keith Ashby, Purchasing Manager (RFP #21-06)
Trudi Peepgrass, Purchasing Agent
Todd Weaver, Finance Director
Loren Kohler, Accountant III
Kim Lynch, Business Associate
File (C15-002)

RESOLUTION NO. _____. It was moved by Commissioner _____ and duly seconded by Commissioner _____ to approve and accept the easement agreement from the City and County of Denver, acting through its Board of Water Commissioners, and conveying a permanent and non-exclusive easement to access, construct, repair and maintain a box culvert with wingwalls on the property described in Exhibit A of said easement agreement for the Iliff Avenue Operational Improvements Project; and further to authorized the Arapahoe County Director of the Arapahoe County Department of Public Works and Development to execute and record the easement agreement on behalf of Arapahoe County, all as presented to the Board this day.

The vote was:

Commissioner Baker, ____; Commissioner Holen, ____; Commissioner Jackson, ____;
Commissioner Sharpe, ____; Commissioner Warren-Gully ____.

The Chair declared the motion carried and so ordered.

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

NON-EXCLUSIVE EASEMENT AGREEMENT

Contract Control No. 504988

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

1. GRANT OF EASEMENT: For and in consideration of the sum of TWO THOUSAND AND 00/100 DOLLARS (\$2,000.00) and other good and valuable consideration, the receipt whereof is acknowledged by the Board, the Board grants to the Grantee, its successors and authorized assigns, a non-exclusive, perpetual right to enter, re-enter, occupy, and use the property described in the attached **Exhibit A** (hereinafter referred to as the “**Easement**”) to construct, reconstruct, maintain, repair, and utilize (“**Work**”) a BOX CULVERT WITH WING WALLS and any appurtenances (collectively “**Installations**”) within and across the Easement.

2. EXHIBITS: The following Exhibits are attached to and incorporated in this Agreement:
Exhibit A – Legal Description and Parcel Map (CAD drawing No. 20956-2) of the Easement

In the event the survey, the legal description in Exhibit A, and/or the drawing in Exhibit A are found to be inaccurate, the Grantee will comply with the Board’s request to execute, acknowledge, initial, and 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 RETAINED INTERESTS:

3.1. The Board reserves unto itself, its successors and assigns, the permanent right to make full use of the Easement, including, but not limited to, entering and re-entering the Easement as may be necessary or convenient in the operation of any of the Board’s “**Facilities**,” which term shall include, but not be limited to, the following under the control of the Board: utilities, water and other pipelines, water works plants and systems, and all underground and surface appurtenances. 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)**.”

3.2. The Board retains all right to operate, maintain, install, repair, remove, replace, or relocate any of its Facilities within the Easement at any time and in such manner as it deems necessary or convenient.

3.3. The Board reserves the right to grant other parties access and other uses of the Easement that will not unreasonably interfere with the Grantee’s rights under this Agreement.

3.4. The Board shall also have the right to relocate the Easement and Installations, provided that the relocated Easement and Installations can be reasonably used by the Grantee for their

intended purpose. The Board may exercise this right by giving the Grantee a minimum of thirty (30) calendar days' prior written notice thereof.

4. SURVEYING: The Board may perform all survey work related to the Easement that the Board deems necessary. The Grantee shall reimburse the Board for the survey work the Board performs. All of the Board's survey monuments damaged or destroyed by the Grantee shall be re-installed by a Professional Land Surveyor, licensed by the State of Colorado, at the Grantee's sole expense.

5. WORK PLANS: At least thirty (30) days prior to the proposed date for the commencement of any Work, the Grantee shall submit to the Board for its review and approval copies of final detailed plans and specifications for such Work. No Work shall commence until the Board has approved such plans and specifications in writing.

6. PRE-WORK INSPECTIONS: The Grantee shall notify the Board at least fifteen (15) days prior to the commencement of any Work so that the Board may make any inspections of the Easement the Board deems necessary before such Work begins.

7. PRE-WORK NOTICE: The Grantee shall notify the Board's District Foreman at 303-634-3400 at least 48 hours prior to the commencement of any Work so that the Board may have an inspector present during such Work. From time to time, the Board may designate new District Foreman and/or contact phone number.

8. WORK EXPENSES: All Work shall be performed at no expense to the Board, and the Grantee shall own and maintain the Installations within the Easement.

9. WORK STANDARDS: Unless otherwise approved by the Board as provided in Paragraph 5 above, all Installations and all Work performed within the Easement shall comply with all applicable Board's Engineering Standards and/or Capital Project Construction Standards, as they may be revised from time to time. Any Installation and/or Work that does not comply with such applicable standards may be removed and/or corrected by the Board without liability for damages and at the Grantee's expense.

10. CONSTRUCTION DETOURS: The Grantee shall take whatever steps are necessary to re-route traffic during any Work and provide directions through the use of signs. Any of the Board's roads or an acceptable alternative must be open and accessible to the Board's maintenance personnel and equipment whenever the Grantee is performing any Work.

11. SIGNS: All sign locations and content must be approved by the Board's representative prior to installation.

12. WATER:

12.1. The Grantee shall not discharge, or direct or authorize others to discharge, water into or upon any of the Board's property or Facilities, but the Grantee shall provide for carriage of any water over or across any of the Board's property or Facilities in a manner satisfactory to the Board.

12.2. At no time shall the Grantee interfere, or direct or authorize others to interfere, with the flow of water in the Facilities. The Grantee shall assume all risks incidental to the presence of water in the Facilities and shall be responsible for all damages resulting from any interference with the flow of water in the Facilities by the Grantee or by others at the Grantee's direction or authorization.

13. IRRIGATION SEASON: The irrigation season is from April 1 until November 1 each year, and water may be flowing in the Board's Facilities during this time. Therefore, the Work may not occur during this period unless written authorization is obtained from the Board's Director of Operations and Maintenance prior to commencement of any Work.

14. SURFACE RESTORATION:

14.1. Within twenty (20) days from the date of completion of any Work, the Grantee shall clear the Easement and surrounding property of all construction debris and shall restore the Easement and surrounding property, including any damaged roads and fencing, to their pre-existing condition as nearly as may be possible. Restoration and clearing of the surface shall include, but not be limited to, replacement of the topsoil in cultivated and agricultural areas and removal of any excess earth resulting from such Work. Restoration of the roads shall include, but is not limited to, resurfacing.

14.2. If the Grantee does not restore and clear the Easement and any surrounding property, including any damaged roads or fencing, to the satisfaction of the Board and within the timeframe set forth in Subparagraph 15.1, the Board may complete the clearing and/or perform the restoration at the sole expense of the Grantee. The Grantee shall pay in full any and all such clearing and/or restoration costs incurred by the Board, no later than thirty (30) days of receiving the bill from the Board.

15. TREES:

15.1. The Grantee shall provide means, acceptable to the Board, to protect the existing trees from any damage or disruption caused by any Work.

15.2. The Grantee's activity will likely result in the clearance, trimming, or complete removal of trees located within the Board's property. The Grantee must obtain permission from the Board's Recreation Manager at 303-628-6876. Grantee shall be responsible for any reimbursement as directed by the Recreation Manager. The Grantee will be responsible for all clean-up of any trimmings and the removal of logs, branches, limbs, and other debris resulting from the Grantee's activity. Repairs of any damage to Board property will be made by the Grantee at the sole expense of the Grantee and to the satisfaction of the Board's representative. Grantee shall replace any trees removed or damaged shall be replaced at a 1:1 ratio.

16. ENDANGERED SPECIES ACT: Certain Board properties may contain habitat for listed "threatened" or "endangered" species under the Endangered Species Act ("ESA"). The Grantee shall be responsible for determining the presence of such habitat and for complying with the ESA and all other applicable federal laws.

17. ENVIRONMENTAL: The Grantee shall comply with all applicable laws and ordinances and all rules, regulations and requirements of any governmental authority controlling environmental standards and conditions of the Easement. If, as a result of the Grantee's occupancy of the Easement, any such law, ordinance, rule or regulation is violated, the Grantee shall protect, save harmless, defend and indemnify the Board from and against any penalties, fines, costs and expenses including legal fees and court costs incurred by the Board, caused by, resulting from or connected with such violation or violations. In addition, but without limiting the foregoing, the Grantee shall comply with the following:

17.1. Grantee's Duty: The Grantee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Easement by the Grantee, its agents, employees, or contractors without the express written permission of the Board (which the Board shall not unreasonably withhold as long as such Hazardous Material is necessary or useful to the Grantee's occupation of the Easement and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material).

17.2. Indemnification: To the extent permitted by law, if the Grantee breaches the obligations stated in the preceding subparagraph, or if the presence of the Hazardous Material on the Easement caused or permitted by the Grantee results in contamination of the Easement, or if contamination of the Easement by the Hazardous Material otherwise occurs for which the Grantee is legally liable to the Board, then the Grantee shall indemnify, defend and hold the Board harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Easement, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Easement, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorney fees, consultant fees and expert fees) which arise during or after the Easement term as a result of such contamination. This indemnification of the Board by the Grantee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because the Hazardous Material is present in the soil or ground water on or under the Easement.

17.3. Cleanup: If the presence of any Hazardous Material on the Easement caused or permitted by the Grantee results in any contamination of the Easement, the Grantee shall, at its sole expense and after obtaining the Board's written approval, promptly take all actions that are necessary to clean the contamination and return the Easement to the condition existing prior to the introduction of any such Hazardous Material to the Easement. The clean-up of the contamination shall be in compliance with all applicable state and federal standards.

17.4. Definitions: The term "**Hazardous Material**" means any hazardous or toxic substance, material or waste that is or becomes regulated by any local governmental authority, the State of Colorado or the United States, and includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under appropriate state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1321); (v) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601); (vi) defined as a "hazardous substance" under section 1004 of the Solid Waste Disposal Act as amended by the Resources Conservation and Recovery Act (42 U.S.C. § 6902); or (vi) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. § 6991).

18. LIENS: The Grantee shall pay for all materials joined or affixed to the Easement, shall pay in full all persons who perform labor upon the Easement, and shall obtain and provide to the Board lien releases for all such materials and labor. The Grantee shall not permit any mechanic's or materialman's lien of any kind or nature to be enforced against the Easement or other Board property for any Work done and materials furnished at the instance, request or on behalf of the Grantee.

19. DAMAGE: The Grantee shall use reasonable care to prevent any loss or damage to the Board or to others, and to the property of the Board or others, resulting from the Work on or use of the Installations. Any repair, modification, relocation or replacement of any of the Facilities made necessary, in the opinion of the Board, because of any of the Grantee's Work shall be made by the Board at the sole expense of the Grantee.

20. INSURANCE: The Grantee shall, at its sole cost and expense, obtain and maintain the occurrence form of Commercial General Liability insurance for personal injury and property damage, including contractual liability insurance, with combined limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Such insurance shall include the City and County of Denver, acting by and through its Board of Water Commissioners, as an additional insured and shall be primary and non-contributing with respect to any insurance or self-insurance program of the Board. The Grantee shall provide the Board with certificate(s) of insurance evidencing coverage required under this Agreement.

21. INDEMNIFICATION: If and to the extent permitted by law, the Grantee unconditionally and irrevocably agrees to defend, indemnify, and hold harmless the Board, its officers, agents, employees, and insurers against any liability, loss, damage, demand, action, proceeding, cause of action, claim, counterclaim, lien, and expense (including court costs and attorney fees) of every kind and nature, arising out of any act or omission of the Grantee, its officers, agents, or employees (or Grantee's contractors or subcontractors and any of their officers, agents or employees) in any way relating to this Agreement.

22. ABANDONMENT: If the Grantee ceases to use the Easement, all right, title and interest of the Grantee under this Agreement shall cease and terminate, and the Board shall hold the Easement, as the same may then be, free from the rights granted under this Agreement. The Easement shall be deemed abandoned if not used for two (2) consecutive years. If the Easement terminates as provided in this paragraph, the Grantee shall execute any document necessary to reflect such termination.

23. NOTICES: Unless otherwise provided in this Agreement, 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:
Denver Water
Attention: Chief Engineering Officer
Denver, CO 80204

with a copy to:
Denver Water
Attention: Director of Engineering-Property
1600 W. 12th Avenue
Denver, CO 80204

If to the Grantee:

Arapahoe County
Public Works & Development
6924 S Lima Street
Centennial, Co 80112-3853

24. GENERAL PROVISIONS:

24.1. Existing Agreements: This Agreement is subject to all prior agreements, licenses, leases, grants, permits, rights-of-way, reservations, and conveyances, whether recorded or unrecorded, related to the property upon which the Easement is located, and it is the Grantee's responsibility to determine the existence of any conflicting rights or uses.

24.2. Successors and Assigns: Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective successors and assigns of the parties.

24.3. 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.

24.4. 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.

24.5. No Attorneys' Fees and Costs: Except as otherwise expressly stated in this Agreement, in the event 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.

24.6. 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.

24.7. 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.

24.8. Non-Business Days: Except as otherwise specifically provided, 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 CRCP 6, then the relevant date shall be extended automatically until the next business day.

24.9. 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.

24.10. Governmental Immunity Act: The Parties understand and agree that both Parties are relying upon, and have 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.

24.11. 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 said Charter. Insofar as applicable, said Charter provisions are incorporated herein and made a part hereof and shall supersede any apparently conflicting provision otherwise contained in this Agreement.

24.12. Entire Agreement: This Agreement constitutes the entire agreement between the Board and the Grantee 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.

24.13. 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.

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

24.15. Effective Date: This Agreement shall become effective on the date it is signed by the Board's Chief Engineering Officer.

SIGNATURES FOLLOW ON THE NEXT PAGE

APPROVED AS TO FORM:

Blpacondria
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: _____

REGISTERED AND COUNTERSIGNED:

By: _____
Timothy M. O'Brien, CPA
Auditor

Contract Control No.: 504988

Date: _____

The undersigned verifies that he/she has read the foregoing Agreement and agrees to accept and abide by all of its terms and conditions.

COUNTY OF ARAPAHOE

By: _____
Bryan D. Weimer

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this _____ day of _____ 2021, by Bryan D. Weimer as _____ for ARAPAHOE COUNTY.

Witness my hand and official seal.

My commission expires: _____

{SEAL}

Notary Public

EXHIBIT 'A'
Legal Description

A Permanent Easement located within the Denver Water boundaries of the Highline Canal, lying in the Southwest Quarter of the Northwest Quarter of Section 27, Township 4 South, Range 67 West of the 6th Principal Meridian, Arapahoe County, Colorado, said parcels of land being more particularly described as follows:

Commencing at the Center Quarter Corner of said Section 27;
Thence North 88°37'43" West, a distance of 1535.22 feet, to a point at the intersection of the North Right of Way line of E. Iliff Avenue and the Easterly line of Denver Water's property for the Highline Canal, being the **True Point of Beginning**;

1. Thence along said North Right of Way line S 89°59'57" W, a distance of 64.71 feet to its intersection with the Easterly line of a Denver Water easement as recorded at Reception number D1024158 in the Arapahoe County Clerk and Recorders office;
2. Thence along said Denver Water easement N56°42'18"W, a distance of 15.47 feet;
3. Thence leaving said easement N33°17'42"E, a distance of 34.18 feet to said Easterly line of Denver Water's property for the Highline Canal;
4. Thence along said Easterly line S57°48'49"E, a distance of 69.58 feet to the **True Point of Beginning**.

Permanent Easement contains 1,464 Square Feet (0.034 acres), more or less.

Basis of Bearings for above description: Bearings herein are based on the South line of the Northwest Quarter of Section 27, Township 4 South, Range 67 West, of the 6TH P.M., having a Colorado Central Zone NAD 83 (2011) grid bearing of N89°44'18"E. Said line being monumented on the west by the West Quarter Corner of Section 27 (a 3" brass cap in a PVC sleeve marked "D.W.D. S.28 T.4.S. I S.27 R.67W. LS 1839 1987"), and monumented on the east by the Center Quarter Corner of said Section 27 (a 3 1/4" brass cap in a Range Box marked "Colo Dept of Transportation PLS NO 26280 T4S 1/4 27 R67W 1994").

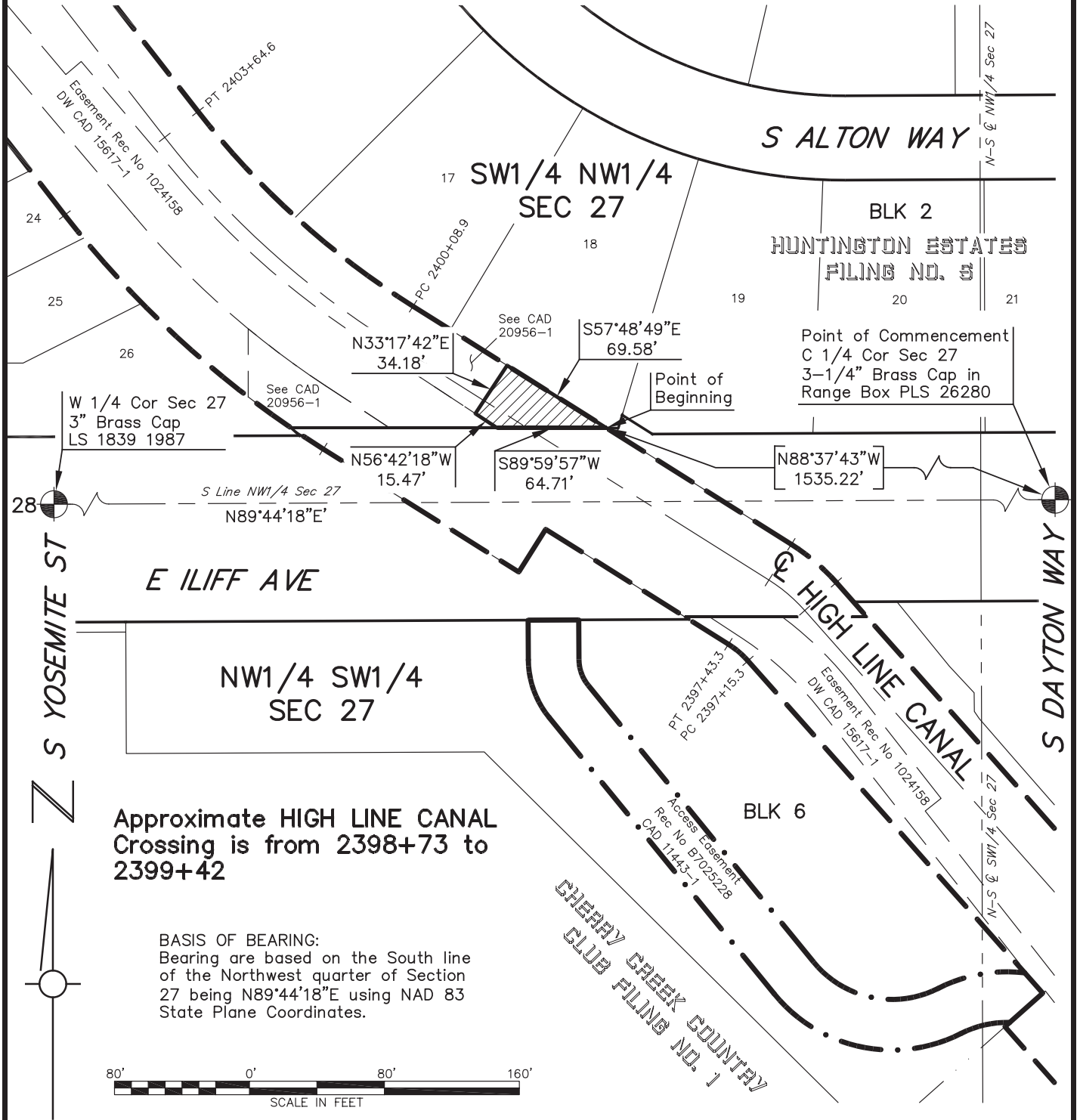
Ramon L. Sanchez, PLS 38605
For and on behalf of David Evans and Associates, Inc.
1600 Broadway
Denver, CO 80202



Digitally signed by Ramon L. Sanchez
Date: 2021.06.23 16:35:19-06'00'

| Reviewed by DWD Property | Initials | Date |
|--------------------------|----------|-----------|
| | | 7/20/2021 |

NW 1/4 SECTION 27, TOWNSHIP 4 SOUTH, RANGE 67 WEST 6th PM
 ----- ARAPAHOE COUNTY -----



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

PARCEL CONTAINS 0.034 ACRE± (1,464 SQ FT)

| | | | |
|---|--|--|--|
| <p>LEGEND</p> <p> EASEMENT GRANTED</p> <p> BNDRY EXISTING DW ESMT</p> <p> BNDRY EXISTING DW PROP</p> | <p>DOCUMENT DATED: SEC'Y FILE DOC.</p> <p>RIMS ITEM NO.</p> <p>TRANS NO.</p> | <p>HIGH LINE CANAL</p> <p>EASEMENT GRANTED TO ARAPAHOE COUNTY FOR BOX CULVERT AND WING WALLS</p> | <p>DENVER WATER</p> <p>1600 West 12th Ave Denver, Colorado 80204-3412 T: 303.628.6000 F: 303.628.6851 denverwater.org</p> |
| | <p>DRN. <input type="checkbox"/> PM. <i>ASE</i> <input type="checkbox"/> S. LAB <input type="checkbox"/></p> <p>APPD. <i>Larry A Bailey</i></p> <p>SHEET 1 OF 1 SHEET</p> | | |
| | | <p>DATE: AUGUST 2, 2021</p> | |

**ARTICLE X
CHARTER OF THE
CITY AND COUNTY OF DENVER**

Amended November 7, 2006

§10.1.1 Board of Water Commissioners created. There shall be and hereby is continued and created a non-political Board of Water Commissioners of five members, to have complete charge and control of a water works system and plant for supplying the City and County of Denver and its inhabitants with water for all uses and purposes.

(Charter 1960, C4.14; amended May 19, 1959)

§10.1.2 Appointments to Board. On the second Monday in July of odd-numbered years, the Mayor shall appoint one or two Commissioners, as the case may be, for terms of six years each to succeed those whose terms are expiring. The members of the Board of Water Commissioners shall each continue in office until their successors are appointed and qualified. Any vacancy on the Board shall be filled promptly by appointment by the Mayor. Each appointee shall be a citizen of the United States, a resident of the City and County of Denver, and at least 25 years of age. If a member of the Board shall cease to be a resident of Denver, the individual shall thereupon cease to be a member of the Board.

(Charter 1960, C4.15; amended May 19, 1959; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.3 Compensation and bonds. The commissioners shall each receive compensation of \$600.00 per annum. Each Commissioner shall give an oath or affirmation and give an official bond in an amount and conditioned and approved as provided by the Board by resolution. The Board may require the Treasurer of the City and County of Denver to give bond conditioned in such manner as shall be determined by the Board. The premiums on all such bonds shall be paid out of the Water Works Fund.

(Charter 1960, C4.16; amended May 19, 1959; amended November 3, 1998; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.4 Board Meetings. The Board shall hold two regular meetings each month on such days as it may by resolution determine, and special meetings at such other times as it may deem necessary. All meetings shall be open and public. If any member of the Board shall be absent for three successive regular meetings, unless excused by vote of the Board, he or she shall cease to be a member and the office shall be deemed vacant.

(Charter 1960, C4.17; amended May 19, 1959; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.5 General powers. The Board shall have and exercise all the powers of the City and County of Denver including those granted by the Constitution and by the law of the State of Colorado and by the Charter in regard to purchasing, condemning and purchasing, acquiring, constructing, leasing, extending and adding to, maintaining, conducting and operating a water works system and plant for all uses and purposes, and everything necessary, pertaining or incidental thereto, including authority to dispose of real or personal property not useful for or required in the water works operation. The Board shall have authority to generate and dispose of electric energy for water works purposes or any other purpose of the City and County of Denver. The Board may lease water facilities or the flow of water for generation of electric energy and may

sell surplus energy, provided that nothing herein shall be construed as permitting the Board to distribute electric energy to the general public. The Board shall have power in the name of the City and County of Denver to make and execute contracts, take and give instruments of conveyance, and do all other things necessary or incidental to the powers herein granted, and in so doing may make such special designation in such instruments as will indicate the capacity in which the City and County of Denver is acting when such actions are taken by or on behalf of the Board of Water Commissioners. The customary practice of dealing in the name of "City and County of Denver, acting by and through its Board of Water Commissioners" is hereby confirmed and approved. The Board shall institute and defend all litigation affecting its powers and duties, the water works system and plant, and any of the Board's property and rights. In any matter affecting the powers, duties, properties, or trusts of the Board, process shall be served on the Board. The Manager of Denver Water is hereby designated as the officer upon whom process may be served in any matter in which the Board of Water Commissioners has the sole authority for the municipal corporation.

(Charter 1960, C4.18; amended May 19, 1959; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02)

§10.1.6 Manager and personnel. The property and personnel under control of the Board shall be referred to generally as Denver Water. The Board shall designate a Manager, who shall cause the Board's policies and orders to be executed and shall bring to the Board's attention matters appropriate for its action. The Board shall have power to employ such personnel, including legal staff, and fix the classifications thereof as it may deem necessary. All such personnel shall be hired and dismissed on the basis of merit. The Board shall define the duties of each of its employees and fix the amount of their compensation. It shall be the duty of the Board to carry out the intent and requirements of Article XX of the Constitution of the State of Colorado with respect to civil service for public utilities and works and to perform the customary functions of a civil service commission with respect to all Board employees. In performing the functions of a civil service commission, the Board or its designee shall have the power to conduct hearings, administer oaths and issue subpoenas enforceable in the County Court of the City and County of Denver. The Board may establish classifications of employment for persons outside the civil service system who serve solely at the pleasure of the Board. Such employees shall include the number of temporary employees the Board deems necessary and not more than 2% of all regular employees of the Board.

(Charter 1960, C4.19; amended May 19, 1959; amended November 3, 1998; Ord. No. 659, § 1, 8-26-02, elec. 11-5-02)

§10.1.7 Water Works Fund. There is hereby created a Water Works Fund into which shall be placed all revenues received from the operation of the Water Works system and plant together with all monies received by the Board from other sources. The Board shall maintain records in compliance with generally accepted accounting principles sufficient for reliance by the Manager of Finance in faithfully accounting for the Water Works Fund. The Board shall promptly deposit all receipts into a bank account in the name of the City and County of Denver acting by and through its Board of Water Commissioners. The Board may invest such funds until they are required for operations of the Board. Monies shall be paid out of the account only upon the authority of the Board and evidenced as required pursuant to procedures established by the Manager of Revenue.

(Charter 1960, C4.20; amended May 19, 1959; amended August 11, 1992; Ord. No. 659, § 1, 8-26-02, elec. 11-5-02, elec. 11-7-06)

§10.1.8 City Auditor. The Auditor of the City and County of Denver shall audit or cause to be audited the accounts of the Board at least annually and make a report of his or her findings to the Council of the City and County of Denver. The Board shall make all of its accounts and records

fully available to the Auditor to enable the Auditor to carry forward these duties that shall be performed without interference with the water works function. Unless excepted by the Audit Committee as provided in section 5.2.2(C), the Auditor, or some person designated by him or her, shall sign all warrants, countersign and register all bonds and written contracts (with the privilege but without the necessity for keeping copies thereof). The Auditor may authorize the affixing of his or her signature by mechanical means.

(Charter 1960, C4.21; amended May 19, 1959; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02, elec. 11-7-06)

§10.1.9 Water rates. The Board shall fix rates for which water shall be furnished for all purposes within the City and County of Denver, and rates shall be as low as good service will permit. Rates may be sufficient to pay for operation, maintenance, reserves, debt service, additions, extensions, betterments, including those reasonably required for the anticipated growth of the Denver metropolitan area, and to provide for Denver's general welfare. The rates may also be sufficient to provide for the accumulation of reserves for improvements of such magnitude that they cannot be acquired from the surplus revenues of a single year.

(Charter 1960, C4.22; amended May 19, 1959)

§10.1.10 Uniformity of rates. Except as herein otherwise specifically provided, rates charged for water furnished for use inside the city limits of the City and County of Denver shall be uniform as far as practicable and so related to the service furnished or the volume of water used as to bring about a fair and equitable distribution among all water users of the total amount to be realized from revenues derived from the sale of water used within the City and County of Denver. No special rate or discount shall be allowed to any property, entity, person or class of persons except as in this charter specifically provided.

(Charter 1960, C4.23; amended May 19, 1959)

§10.1.11 Enforcement of charges. The Board may enforce the payment of any charge by discontinuing service to the premises at which the charge arose without regard to the ownership or occupancy of such premises.

(Charter 1960, C4.24; amended May 19, 1959; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.12 City rates. Commencing January 1, 1960, the Board shall furnish water to the municipal government of the City and County of Denver at rates which shall approximately equal but not exceed the cost of the water furnished, not including items in such rate for debt service, additions, extensions or betterments. Such rate shall not be applicable to agencies or authorities sponsored by or supported by the City and County. The Board shall own, control and operate all water, water rights, structures and facilities of the City and County of Denver pertaining to the Farmers and Gardeners Ditch and the City Ditch. The Board shall furnish water out of the City Ditch or some equivalent source for the use of Denver in City Park and Washington Park, without any charge whatsoever.

(Charter 1960, C4.25; amended May 19, 1959)

§10.1.13 Water leases. The Board shall have power to lease water and water rights for use outside the territorial limits of the City and County of Denver, but such leases shall provide for limitations of delivery of water to whatever extent may be necessary to enable the Board to provide an adequate supply of water to the people of Denver. Every such lease shall contain terms to secure payment of sufficient money to fully reimburse the people of Denver for the cost of furnishing the water together with an additional amount to be determined by the Board. Sales at amounts less than the above minimum may be made if warranted by economic conditions, but a contract providing for such lesser charge shall not extend for more than one year.

(Charter 1960, C4.26; amended May 19, 1959; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.14 Expenses. The entire cost of the operation and maintenance of the water works system and plant under the control of the Board shall be paid from monies of the Water Works Fund. The monies and other assets of the Water Works Fund shall not be used for any purpose except for the management, operation and maintenance of the water works system and plant, including additions, extensions and betterments, for recreational opportunities incidental thereto, and for the payment of interest and principal on bonds and other obligations, the proceeds of which were or shall be used for water works purposes.

(Charter 1960, C4.27; amended May 19, 1959; amended August 11, 1992; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.15 Bonded indebtedness. The Board of Water Commissioners in its sole discretion may issue revenue bonds, the proceeds of which shall be placed in the Water Works Fund and expended for water works purposes, for establishing reserves in connection with such bonds or for refunding the principal of and interest on bonds previously issued by the Board. Revenue bonds shall be payable as to interest and principal solely from the net revenues of the Board. The Board shall pledge to pay the principal and interest on such bonds from revenues of the Board, which pledge shall be irrevocable. The bonds so authorized shall be sold and issued by action of the Board and no other ratification or authorization shall be required. The Board shall have power to refund, pay or discharge the principal of any general obligation bond it issued prior to November 5, 2002, when such bond becomes payable, and may use proceeds of a new revenue bond issuance to refund, pay or discharge the general obligation bonds. Existing or future bonds issued by the Board shall continue to be excluded from the determination of any limit upon the indebtedness of the City and County of Denver.

(Charter 1960, C4.28; amended May 19, 1959; amended May 17, 1983; amended August 11, 1992; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.16 [Reserved]

Editor's note: (Ord. No. 659-02, § 1, adopted August 26, 2002, repealed § 10.1.6, which pertained to bonds of annexed areas and derived from the Charter of 1960, C4.29; amended May 19, 1959)

§10.1.17 Board organization. The Board shall adopt rules governing its organization, the calling of special meetings and the conduct of its business. A majority of the Board shall constitute a quorum and all action by the Board shall be taken by a majority of the whole Board and not otherwise.

(Charter 1960, C4.30; amended May 19, 1959)

§10.1.18 Rules and regulations. The Board may adopt rules and regulations with respect to any matter within its jurisdiction as defined by Charter. It may provide for enforcement of its rules and regulations by imposing special charges in an amount reasonably calculated to secure compliance or recompense for water loss, to achieve water conservation and to reimburse the Board for expenses arising out of violation. In addition to any other lawful remedy, enforcement procedure may include refusal to supply water to a property involved. The City and County of Denver by ordinance may supplement Board rules and regulations and provide penalties for the violation of such an ordinance in the same manner as penalties are provided for the violation of other ordinances. Rules adopted by the Board and within its authority shall supersede any conflicting ordinance provision.

(Charter 1960, C4.31; amended May 19, 1959; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.19 Publication of rules and regulations. Rules and regulations adopted by the Board shall be effective after they shall have remained posted in a conspicuous public place in the principal business office of the Board for a period of fifteen calendar days. Whenever immediate application of a rule or regulation by the Board is necessary for the preservation of the public peace, health or safety, the Board may so declare, and such rule or regulation shall thereupon become effective immediately upon being posted as provided in this section.

(Charter 1960, C4.32; amended May 19, 1959; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.20 Continuity of control of water. The Board may make provision for retaining dominion over the water supply under its control through successive uses of such water, such as reuse and exchange. Such dominion shall not be affected by treatment of wastewater produced by use of the water supply.

(Charter 1960, C4.33; amended May 19, 1959; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.21 Reserved.

Editor's note: (Ord. No. 659-02, § 1, adopted August 26, 2002, repealed § 10.1.21, which pertained to public liability and derived from the Charter of 1960, C4.34; amended May 19, 1959; and Ord. No. 428-02, adopted June 3, 2002, and approved by the electorate August 13, 2002.)

§10.1.22 Conflicting Charter provisions. The provisions of this Article X shall supersede any conflicting provision of the charter existing on May 19, 1959 when this article was adopted.

(Charter 1960, C4.35; amended May 19, 1959; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02)