

## **SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT ("AGREEMENT"), made effective as of October 20, 2020, between the **FARMERS RESERVOIR AND IRRIGATION COMPANY**, a Colorado mutual ditch company organized and existing under the laws of the State of Colorado, whose address is 80 South 27<sup>th</sup> Avenue, Brighton, Colorado 80601 ("FRICO"), the **BURLINGTON DITCH, RESERVOIR AND LAND COMPANY**, a Colorado mutual ditch company organized and existing under the laws of the State of Colorado, whose address is 80 South 27<sup>th</sup> Avenue, Brighton, Colorado 80601 ("BURLINGTON"), **HENRYLYN IRRIGATION DISTRICT**, a Colorado statutory irrigation district whose address is 29490 County Road 14, Keenesburg, Colorado 80643 ("HENRYLYN"), **EAST CHERRY CREEK VALLEY WATER AND SANITATION DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado whose address is 6201 South Gun Club Road, Aurora, Colorado 80016 ("ECCV"), **ARAPAHOE COUNTY WATER AND WASTEWATER AUTHORITY**, a quasi-municipal corporation and political subdivision of the State of Colorado whose address is 13031 East Caley Avenue, Centennial, Colorado 80111 ("ACWWA"), and **UNITED WATER AND SANITATION DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado whose address is 8301 E. Prentice Avenue, Suite 100, Greenwood Village, Colorado 80111 ("UNITED"), and the **METRO WASTEWATER RECLAMATION DISTRICT**, a public body and political subdivision of the State of Colorado ("DISTRICT"), whose legal address is 6450 York Street, Denver, Colorado 80229 (each a "PARTY," and collectively, the "PARTIES").

### **WITNESSETH:**

WHEREAS, the Parties hereto have reached a settlement concerning the District's Second Creek Interceptor project ("PROJECT") and the need for the Project to cross the O'Brian canal at a location in Adams County Colorado; and

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. This Agreement shall only be effective upon being duly executed by all Parties hereto.
2. Upon execution of this Agreement, and upon and subject to approval and authorization by the Metro Wastewater Reclamation District Board of Directors ("DISTRICT BOARD"), the District shall duly execute the Access Easement which is attached hereto as **Exhibit A** ("ACCESS EASEMENT"), located at the District's Robert W. Hite Treatment Facility, providing FRICO access around the Regional Transportation District's ("RTD's") light rail infrastructure at the location and subject to the terms and conditions specified in the Access Easement. The Access Easement shall be delivered to the Escrow Company (as defined in paragraph 3, below) upon approval by the District Board, expected to be obtained by October 20, 2020.

3. Upon execution of this Agreement, FRICO will fully and duly execute the NON-EXCLUSIVE PERMANENT UNDERGROUND EASEMENT AND TEMPORARY CONSTRUCTION LICENSE, along with all exhibits ("EASEMENT"), a copy of which is attached hereto as **Exhibit B**, and place same in escrow, as described in the Easement, with H.C. Peck & Associates, Inc., 3401 Quebec St #8100, Denver, Colorado 80207 ("ESCROW COMPANY") no later than 12:00 noon on October 21, 2020. Upon receipt of both the Easement and the Access Easement as described above, the fully and duly executed Easement shall be released by the Escrow Company to the District, and the fully and duly executed Access Easement shall be released by the Escrow Company to FRICO ("RELEASE OF ESCROW"), both per the terms of the Escrow Instructions, attached hereto as **Exhibit C**.

4. If this Agreement is executed by FRICO and the District by 5:00 PM on October 20, 2020, then the parties shall cancel depositions that are currently scheduled in Adams County District Court case no. 2020cv30945.

5. Upon Release of Escrow, FRICO, the District, Burlington, Henrylyn, ECCV, ACWWA, and United will direct their counsel to take all action necessary so as to dismiss the pending condemnation action (2020cv30945 in Adams County District Court) without prejudice, with each Party to pay its own costs and attorney fees, and to vacate the October 27, 2020 hearing. Burlington, Henrylyn, ECCV, ACWWA, and United shall withdraw their cross-petitions to intervene and consent to the dismissal without prejudice, and shall pay their own costs and attorney fees.

6. Upon execution of this Agreement, FRICO, the District, Burlington, Henrylyn, ECCV, ACWWA, and United will direct their counsel to take all action necessary so as to dismiss the civil action (2020cv31272 in Adams County District Court) ("COLLATERAL SUIT") without prejudice, with each side to pay its own costs and attorney fees. The Easement provides permission for the District to use the License Area, the Easement Property, and Easement Vertical Area (all as defined in the Easement), and therefore the Collateral Suit cannot be reinstated or maintained if the District is exercising rights under the Easement within time frames established in the Easement. However, the Collateral Suit may be reinstated or refiled if the District: (a) the District reinstates the pending condemnation action (2020cv30945 in Adams County District Court) for any reason; (b) the District brings a new condemnation action to cross the O'Brian Canal with the Second Creek Interceptor Project; (c) the District defaults (or threatens imminent default by an affirmative action that indicates specific intent to violate the terms of the Easement) under the Easement in a manner that may cause or result in additional harm to the use, operation, or maintenance of the Ditch. The provisions of this Paragraph 6 relate only to the crossing contemplated by the Easement, and shall not operate to bar litigation between the parties on other matters.

7. Except for the circumstances set forth in Paragraph 6, above, upon execution of this Agreement, FRICO, Burlington, Henrylyn, ECCV, ACWWA, and United agree not to institute any other civil action or other legal proceeding that is intended to stop, delay, or alter the District's

Project, except for any action to interpret or enforce this Agreement or the Easement.

8. Upon execution of this Agreement, FRICO, Burlington, Henrylyn, ECCV, ACWWA, and United further agree not to oppose, and to promptly withdraw and rescind any pending opposition to all applications, agreements and permits sought for the District's Project before the State of Colorado, Adams County, the City of Commerce City, any other regulatory authority, along with all these regulatory authorities' agencies, divisions, councils, boards or commissions. Upon execution of this Agreement and upon the District's request, FRICO shall make a statement in support the District's Project to Commerce City, which statement shall be approved in advance by the District.

9. Burlington, Henrylyn, ECCV, ACWWA, and United have executed this Agreement to acknowledge that each has read, understands, consents to and does not dispute the terms hereof, and ratifies this agreement to the extent of its affected interests.

10. Burlington, Henrylyn, ECCV, ACWWA, and United hereby further waive and release any all defenses, objections and claims in connection with this Agreement and the Easement, and further waive and release any all claims to any compensation in connection with the District's acquisition and use of the Easement. Each Party will pay its own costs and attorney fees in connection with this Agreement and the Easement.

11. By entering into this Agreement, the District does not waive or release any of the rights, monetary limitations or protections afforded to it under the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, *et seq.*, or common law sovereign immunity. FRICO does not hereby waive any right to assert that such rights, monetary limitations or protections do not apply to a given circumstance.

12. ~~Nothing in this Agreement~~ is intended to constitute a multi-year fiscal obligation under the Colorado Constitution, Art. X, Section 20, and any future year fiscal or monetary obligation of the District is subject to duly authorized appropriations by the District Board.

13. If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable, if allowed by law, in lieu of such invalid, illegal, or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid, or unenforceable provision so that the resulting reformed provision is legal, valid, and enforceable. If such reformation is not possible, this Agreement shall be construed and enforced without such provision, to the extent that this Agreement is then capable of execution within the original intent of the Parties.

14. The Parties agree that the terms, conditions, rights and obligations of this Agreement may be interpreted and/or enforced through an action in Adams County District Court only, and that they may be enforced by claims for declaratory and/or injunctive relief, specific performance and/or damages.

15. The above and foregoing 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 hereto with respect to the subject matter of this Agreement.

16. The terms of this Agreement may be modified only by a writing duly executed and acknowledged by the Parties hereto.

17. The persons executing this Agreement below represent and warrant that they are authorized to do so by the Parties hereto. Scanned copies of signatures shall be treated as originals. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed to one and the same agreement.

IN WITNESS WHEREOF the parties have executed this instrument as of the day and year first above written.

SIGNATURES APPEAR ON FOLLOWING PAGES



**Burlington Ditch, Reservoir and Land  
Company, a mutual ditch company  
organized and existing under the laws of  
the State of Colorado**

Address:  
80 South 27<sup>th</sup> Avenue Brighton, CO 80601

STATE OF Colorado )  
 ) ss.  
COUNTY OF Adams )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of October 2020 by  
Scott Edgar as General Manager of the Burlington Ditch, Reservoir and Land Company, a  
Colorado mutual ditch company.

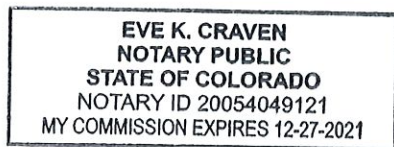
Witness my hand and official seal.


My Commission Expires: 12.27.21

[SEAL]



Notary Public



  
Henrylyn Irrigation District, a Colorado  
statutory irrigation district

Address:  
29490 County Road 14, Keenesburg, CO 80643

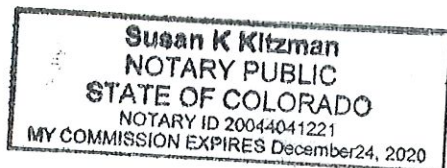
STATE OF Colorado )  
 ) ss.  
COUNTY OF Weld )

The foregoing instrument was acknowledged before me this 20 day of October, 2020 by Rodney Baumgartner as Manager of the Henrylyn Irrigation District, a Colorado statutory irrigation district.


Witness my hand and official seal.

My Commission Expires: 12-24-2020

[SEAL]



  
Notary Public

  
East Cherry Creek Valley Water and  
Sanitation District, a quasi-municipal  
corporation and political subdivision of  
the State of Colorado

Address:  
6201 South Gun Club Road, Aurora, CO 80016

STATE OF Colorado )  
COUNTY OF Arapahoe ) ss.

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of October, 2020 by David Kaunisto as General Manager of the East Cherry Creek Valley Water and Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado.

Witness my hand and official seal.

My Commission Expires: July 20, 2023

[SEAL]



  
Notary Public

*Emily Lowell*

Arapahoe County Water and  
Wastewater Authority, a quasi-  
municipal corporation and political  
subdivision of the State of Colorado

Address:  
13031 East Caley Avenue, Centennial, CO 80111

STATE OF Colorado )  
 ) ss.  
COUNTY OF Arapahoe )

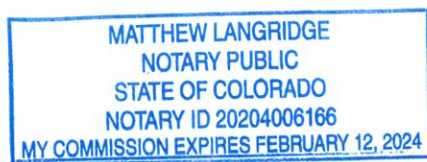
Emily  
Lowell

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of October, 2020 by  
~~Steve Witter~~ as ~~General Manager~~ of the Arapahoe County Water and Wastewater Authority, a  
~~Water Resources Manager~~ quasi-municipal corporation and political subdivision of the State of Colorado.

Witness my hand and official seal.

My Commission Expires: 2/12/2024

[SEAL]

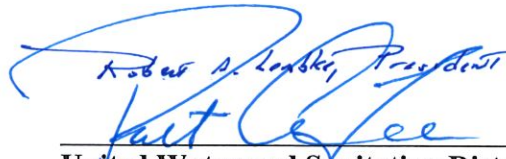


*[Signature]*  
\_\_\_\_\_  
Notary Public



APPROVED  
as to  
FORM

  
Oct 20, 2020

  
Robert A. Lembke, President

United Water and Sanitation District, a  
quasi-municipal corporation and  
political subdivision of the State of  
Colorado

Address:  
8301 E. Prentice Avenue, Suite 100, Greenwood Village, CO  
80111

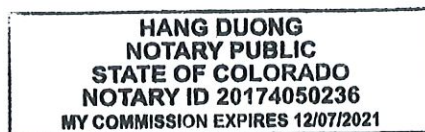
STATE OF Colorado )  
 ) ss.  
COUNTY OF Arapahoe )

The foregoing instrument was acknowledged before me this 20th day of October, 2020 by Robert Lembke as President of the United Water and Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado.

Witness my hand and official seal.

My Commission Expires: 12/07/2021

[SEAL]



  
Notary Public



**The Farmers Reservoir and Irrigation  
Company, a mutual ditch company  
organized and existing under the laws of  
the State of Colorado**

Grantor's Address:

80 South 27th Avenue Brighton, CO 80601

STATE OF Colorado )  
 ) ss.  
COUNTY OF Adams )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of October, 2020 by Scott Edgar as General Manager of the Farmers Reservoir and Irrigation Company, a Colorado mutual ditch company.

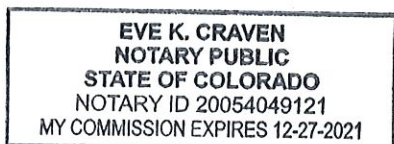
Witness my hand and official seal.

My Commission Expires: 12.27.21

[SEAL]



Notary Public



**METRO WASTEWATER RECLAMATION  
DISTRICT**

By: [Signature]  
District Manager, its authorized  
representative

**APPROVED AS TO FORM**

By: [Signature]  
District General Counsel

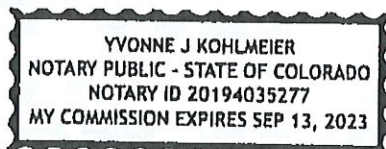
STATE OF Colorado )  
 ) ss.  
COUNTY OF Adams )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of October, 2020 by William J Conway as District Manager of the Metro Wastewater Reclamation District, a public body and political subdivision of the State of Colorado.

Witness my hand and official seal.

My Commission Expires: September 13, 2023

[SEAL]



[Signature]  
Notary Public

**NON-EXCLUSIVE, PERMANENT  
UNDERGROUND EASEMENT AND TEMPORARY CONSTRUCTION LICENSE**

THIS NON-EXCLUSIVE, PERMANENT UNDERGROUND EASEMENT AND TEMPORARY CONSTRUCTION LICENSE ("EASEMENT"), made effective as of October, 21, 2020, between **THE FARMERS RESERVOIR AND IRRIGATION COMPANY**, a Colorado mutual ditch company organized and existing under the laws of the State of Colorado, whose address is 80 South 27<sup>th</sup> Avenue, Brighton, Colorado 80601 ("GRANTOR"), the **BURLINGTON DITCH, RESERVOIR AND LAND COMPANY**, a Colorado mutual ditch company organized and existing under the laws of the State of Colorado, whose address is 80 South 27<sup>th</sup> Avenue, Brighton, Colorado 80601 ("BURLINGTON"), **HENRYLYN IRRIGATION DISTRICT**, a Colorado statutory irrigation district whose address is 29490 County Road 14, Keenesburg, Colorado 80643 ("HENRYLYN"), **EAST CHERRY CREEK VALLEY WATER AND SANITATION DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado whose address is 6201 South Gun Club Road, Aurora, Colorado 80016 ("ECCV"), **ARAPAHOE COUNTY WATER AND WASTEWATER AUTHORITY**, a quasi-municipal corporation and political subdivision of the State of Colorado whose address is 13031 East Caley Avenue, Centennial, Colorado 80111 ("ACWWA"), and **UNITED WATER AND SANITATION DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado whose address is 8301 East Prentice Avenue, Suite 100, Greenwood Village, Colorado 80111 ("UNITED"), to the extent of their affected interests (as provided in Paragraph 26, below), and the **METRO WASTEWATER RECLAMATION DISTRICT**, a public body and political subdivision of the State of Colorado ("DISTRICT"), whose legal address is 6450 York Street, Denver, Colorado 80229 (each a "PARTY," and collectively, the "PARTIES").

**WITNESSETH:**

WHEREAS, Grantor is the owner of real property located in the County of Adams, State of Colorado, currently being used as a ditch for water conveyance ("DITCH"); and

WHEREAS, the District intends to construct and operate a regional wastewater pipeline and related improvements and facilities and needs to cross the Ditch at the location described herein (that portion of the pipeline and related improvements and facilities located beneath and adjacent to Grantor's Ditch is herein referred to as the "PROJECT"); and

WHEREAS, Grantor desires to grant to the District, a permanent, non-exclusive right to enter, reenter, occupy, and use a portion of the subsurface of Grantor's property in the location more particularly described in **Exhibit A**, attached hereto and made a part hereof ("EASEMENT PROPERTY"), in accordance with the provisions of this Easement; and

WHEREAS, Grantor desires to provide to the District a temporary construction license for purposes of open-cut construction and installation of the District's pipeline and other facilities described herein, including consent to the use of a geotextile-lined temporary lateral bypass ditch along with its connection to and disconnection from the Ditch (to the extent located on Grantor's property), in the location more particularly described in **Exhibit B**, attached hereto and made a part hereof ("LICENSE AREA"), in accordance with the provisions of this Easement.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, Grantor and the District agree as follows:

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October 21, 2020  
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1. Grantor hereby grants to the District, its successors and permitted assigns, the permanent, non-exclusive right to enter, reenter, occupy, and use the Easement Property to construct, install, inspect, monitor, maintain, repair, renew, substitute, change the size of (except with regard to changing the size of the pipeline casing), replace, remove, abandon in place (upon filling pipeline), operate and use one underground sanitary sewer pipeline, pipeline casing, and stabilizing grout, force main, electrical lines, control lines, sample lines, and all other underground equipment, appurtenances and facilities thereto or therein, of such size and capacity as necessary, desirable or required by the District in order to operate the wastewater pipeline, in its sole discretion, and to install, inspect, monitor, maintain, repair, renew, replace, or abandon in place a concrete cap over same ("EASEMENT PURPOSES"). During initial construction and installation pursuant to this Easement, Grantor grants a license upon and over the License Area (described in **Exhibit B**) and the Easement Property (described in **Exhibit A**) to the District for the construction of improvements in furtherance of the Easement Purposes.

2. Upon completion of the initial construction and installation of the Project and restoration of the Ditch as provided for herein, the District's rights for all Easement Purposes including, but not limited to the rights to operate, maintain, and use its pipeline and related facilities, are limited to those portions of the Easement Property that are below the surface and between the elevations of 5085.00 feet above sea level and 5097.00 feet above sea level (NAVD88 Datum), the higher of which elevations is at least four feet (4') below the currently existing bottom (invert) of the Ditch at this location ("EASEMENT VERTICAL AREA"). Should a field survey determine that the elevation of the Easement Vertical Area needs a slight adjustment either up or down to meet the District pipeline's gravity flow requirement or other Project objectives, or to comply with this Easement, such adjustment shall be made to the elevations, provided that the Easement Vertical Area is at least four feet (4') below the currently existing bottom (invert) of the Ditch at this location. The District's rights for the initial construction and installation of the Project and related facilities pursuant to this Easement are limited to the Easement Property and the License Area, and shall be by open cut (not trenchless techniques) except to the extent such work is accomplished by use of the in-place pipeline casing, as contemplated in Paragraph 7, below.

3. The initial construction and installation by open cut construction method component of the Project shall be completed according to Plans and Specifications that will be produced and shared with Grantor by January 31, 2021. The District hereby agrees that the Plans and Specifications for the open cut shall be in accordance with the concept plan attached hereto as **Exhibit C**, and in accordance with the agreed upon checklist of information, attached hereto as **Exhibit D**, and in accordance with the excerpts from the Grantor's Design Review Manual that are attached hereto as **Exhibit E** ("DRM"). The open cut shall be designed and built in accordance with the Plans and Specifications. Grantor shall review the open cut Plans and Specifications and either approve the same or detail requested changes by February 17, 2021, with any objections or complaints provided in detail. If resubmitted by the District, Grantor shall either approve the same or detail requested changes within fourteen (14) calendar days of receipt, with any objections or complaints provided in detail. Grantor's approval of the Plans and Specifications for the open cut shall not be unreasonably withheld, conditioned or delayed. Further, Grantor shall approve the open cut Plans and Specifications if they provide the information on the checklist of information (**Exhibit D**) and are consistent with the DRM (**Exhibit E**). Shop drawings, if any, shall be provided to Grantor upon completion of such drawings and before construction on the Easement Property begins. If materials are tested prior to

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installation, the District shall give Grantor reasonable notice of such testing and the opportunity to be present at such testing. During construction of the open cut, Grantor shall be given reasonable access to inspect the materials and workmanship which shall conform to the Plans and Specifications for the open cut, but such access and inspection shall not delay or hinder the Project. The construction of the temporary lateral bypass ditch ("BYPASS") (if required) and the construction of the concrete cap described in Paragraph 7 hereof, shall be completed according to Plans and Specifications that will be produced and shared with Grantor by January 31, 2021. The District and Grantor shall reasonably cooperate in reviewing and conferring on the Plans and Specifications and all comments or requested changes to the Bypass or concrete cap Plans and Specifications shall be submitted by Grantor not later than February 17, 2021, with any objections or complaints provided in detail. The District will attempt in good faith to accommodate Grantor's comments or requested changes, but the District will have the final say on the Plans and Specifications for the Bypass and the concrete cap, provided that it is demonstrated that the Plans and Specifications for the Bypass will convey not less than 200 cubic feet per second (200 cfs) of water with one foot of freeboard, and that the Bypass will be lined with geotextile to prevent seepage and erosion. Both Parties agree to make good faith efforts to resolve any issues with respect to the Plans and Specifications for Bypass and concrete cap no later than March 15, 2021. No other ground-disturbing activities, including but not limited to tunneling and other "trenchless" construction techniques, are authorized on the Easement Property or the License Area by this Easement, except for the work related to the Bypass described herein. The open cut installation shall be timed and designed to avoid water losses as follows:

a. The District may select one specific period of 30 consecutive days ("CONSTRUCTION WINDOW") in which the Project will be constructed and installed within the Easement Property (with the use of the License Area) by giving written notice to Grantor by May 1, 2021 of its intent to construct and install the Project within its proposed Construction Window.

b. No later than September 1, 2021, Grantor shall respond to the District in writing, either:

i. To confirm that Grantor shall not cause water to be in the Ditch at the location of the Easement Property and the License Area during the entire Construction Window, and proceed according to the provisions of Paragraph 4, below; or

ii. To require construction of the Bypass and proceed according to the provisions of Paragraph 5, below.

c. During the Construction Window, the right to use the License Area granted to the District herein shall not be restricted or revoked.

d. For purposes of Paragraphs 4 and 5, the Construction Window referenced above shall occur entirely within the period between October 20, 2021 and December 3, 2021 ("CONSTRUCTION SEASON").

e. For purposes of Paragraphs 4 and 5, Grantor represents and warrants to the District that Grantor has the authority, and the legal and physical ability to Turn Off the Ditch (as defined in Paragraph 4, below) as called for herein and that Grantor may do so unilaterally and without obtaining the consent of any other party.

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4. If Grantor confirms the Construction Window as provided in Paragraph 3.b.i., above, Grantor shall close all headgates and other entry points for the purposeful introduction of water into the Ditch that are located upstream of the Easement Property that must be closed to prevent them from allowing the flow and/or passage water to the Easement Property and the License Area ("TURN OFF THE DITCH"). Grantor will Turn Off the Ditch 48 hours prior to the commencement of the Construction Window, and shall not open the headgates again or otherwise allow the purposeful introduction of water into the Ditch ("TURN ON THE DITCH") until the earlier of: a) completion of the Project as determined by the District and communicated to Grantor in writing; or b) 48 hours prior to the end of the Construction Window.

5. If Grantor requires construction of the Bypass as per Paragraph 3.b.ii, above, then prior to the commencement of the Construction Window, the District shall construct a Bypass, which shall meet the criteria stated in Paragraph 3 and as depicted on the District's Plans and Specifications. The construction, connection, and disconnection of the Bypass shall be sequenced as follows:

a. The District may start construction of the Bypass as described on its Plans and Specifications (except for the two connections to the Ditch) at any time, provided such work is located outside of the Easement Property and the License Area, and provided that the District has appropriate permission from the owner of the property through which the Bypass runs, if that owner is not Grantor. The District shall complete construction of the Bypass as described on its Plans and Specifications, except for the two connections to the Ditch, not less than five (5) days prior to the commencement of the Construction Window. The District shall notify Grantor within 24 hours after completion. Grantor shall then inspect the Bypass within 48 hours after the notice. On the date of Grantor's inspection, Grantor shall advise the District as to whether the Bypass is reasonably suitable for the conveyance of 200 cfs with a minimum of one foot of freeboard ("SUITABILITY INSPECTION"), and if not, will specify at that same time any reasonably necessary corrections, and District shall thereafter make such corrections as reasonably necessary to ensure that it is. Within 24 hours of notice that any such corrections have been made, Grantor will conduct such further Suitability Inspections thereafter as necessary to serve the purpose of this Paragraph 5.a. If the Bypass is constructed in conformance with the Plans and Specifications in all material respects (capacity, freeboard, and lining), the Bypass shall be deemed suitable by Grantor for purposes of this Paragraph 5.a.

b. After the Bypass passes Suitability Inspection, upon written notice from the District, Grantor will Turn Off the Ditch for 48 consecutive hours prior to the commencement of the Construction Window and the District shall then connect both ends of the Bypass to the Ditch. If there is a delay in completing the Bypass in a manner that is reasonably suitable, the District may postpone the start of the Construction Window upon written notice to Grantor, provided that the under no circumstance shall the Construction Window extend beyond the Construction Season.

c. Upon commencement of the Construction Window and completion of both connections of the Bypass to the Ditch, Grantor may resume diverting water into the Ditch at a volume not to exceed 200 cfs at the location of the Easement Property and License Area.

d. Prior to the close of the Construction Window, the District shall give Grantor written notice of when the Grantor shall Turn Off the Ditch for 48 consecutive hours, during which



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time the District shall disconnect the Bypass at both locations and restore the Ditch to a condition as good as existed before the connection of the Bypass. Grantor will Turn On the Ditch 48 hours after Grantor Turns Off the Ditch as provided in this Paragraph 5.d. The District shall restore the Ditch to operable condition during the Construction Window. The District may complete reclamation, final grading, and reseeding after the Construction Window ends, provided that such work is restricted to locations that are outside of the Ditch and do not affect its banks.

e. Grantor's obligation to Turn Off the Ditch and curtail water flows in the Ditch pursuant to this Easement extends only to closing all appropriate headgates and other designated locations of water flows that do or could allow passage of water to the Easement Area and/or the License Area. Grantor does not, and cannot, control "nuisance water" that may enter the Ditch from sources outside of the control of Grantor, its shareholders, or any of the other Parties, including but not limited to storm events, groundwater seepage, broken infrastructure, or runoff. The District assumes the risk that such nuisance water may enter the Ditch from these other sources that are outside of Grantor's control.

6. Time is of the essence with respect to the construction of the Bypass (if the Bypass is required), Turning Off the Ditch (for construction of the Project, or to provide for the connection and disconnection of the Bypass), and completing the connection and disconnection of the Bypass (if the Bypass is required). For Grantor, the District's failure to meet deadlines could result in the loss of water at a time when water is available and in priority. For the District, Grantor's failure to meet deadlines to Turn Off the Ditch could result in additional costs associated with construction delays and other problems related to timely construction of the Project. Accordingly, for defaults with respect to time or other obligation contained in Paragraphs 3, 4 and/or 5 as set forth below, the Parties have the following remedies in addition to whatever remedies they may have at law or in equity:

a. Failure by Grantor to timely and fully comply with any of the provisions of Paragraphs 3, 4 and/or 5, shall provide for the following remedies to the District which remedies shall be immediately available to the District:

i. If the Project is not commenced due to Grantor's failure or refusal to Turn Off the Ditch during the Construction Window, then the District shall be entitled to an affirmative injunction from the Adams County District Court requiring Grantor to Turn Off the Ditch for the entire 30-day month of November 2022 and to allow the District to complete the installation of the Project at that time. In connection with the District's seeking said injunction, (A) Grantor, on behalf of itself and its shareholders, waives service of process of a summons and complaint (upon Grantor being given notice), waives all challenges and defenses to said injunction (whether preliminary or permanent), and confesses to the entry of an affirmative injunction (preliminary and/or permanent) as described herein; and (B) Grantor shall be responsible for the District's related costs and attorney's fees in obtaining and enforcing the injunction and this Agreement; and (C) Grantor shall pay to the District liquidated damages in the amount of \$330,000.

ii. If the Project is commenced and completed during the Construction Season, but the Project's construction and installation is delayed due to Grantor's failure



Non-Exclusive, Permanent Underground  
Basement and Temporary Construction License  
October 21, 2020  
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or delay in Turning Off the Ditch, inspecting or approving the Bypass and/or its connections to the Ditch, making or completing the Suitability Inspection or due to Grantor's refusal or failure to comply with this Agreement, then the District shall be entitled to liquidated damages in the amount of \$12,500 per day of delay caused by Grantor. The Parties agree that the amount of liquidated damages provided for in this Paragraph 6.a. is reasonable (and not a penalty) due to the difficulty in determining: (A) actual damages resulting from delay in completing the Project; (B) the length and nature of the delay; (C) regulatory impacts of any delay; (D) the potential expenses incurred to maintain grade and to complete the Project; (E) the actual costs of de-mobilization and re-mobilization and the future availability and cost of crews, materials and equipment; and (F) other unknowns resulting from Grantor's failure or refusal to timely and fully comply with any of the provisions of Paragraphs 3, 4 and/or 5 of this Agreement.

b. If requested by the District in writing, Grantor shall extend the Construction Window beyond 30 days and/or extend the time it will Turn Off the Ditch under Paragraph 5.b. and/or 5.d. beyond 48 hours, provided that no extension goes beyond the Construction Season. If the requested extension occurs while the Bypass is in place and constructed in accordance with the Plans and Specifications, the District shall pay Grantor \$12,500 per day of extension as consideration for any extension contemplated in this Paragraph 6.b. Alternatively, if any period of extension occurs while the Bypass is not in place or not connected, the District will pay actual damages as measured by the market cost of replacement water (according to then current Denver Water pricing for replacement water) that Grantor was legally and physically able to divert, but was prevented from doing so by the District's requested delay. Payments or damages under this Paragraph 6.b. are not required or available if the delay (and resulting extension request) is proximately caused by Grantor.

c. If the District does not complete construction and restore the Ditch to an operable condition (including disconnecting the Bypass if a Bypass is required) by the end of the Construction Season, and provided that such failure or delay was not proximately caused by Grantor, the Grantor may restore the Ditch and disconnect the Bypass (if a Bypass was constructed) at the District's sole cost and expense and without liability to the District for damage to the Project. Grantor will coordinate with the District regarding the disposition of District improvements and potential future completion dates and shall only fill, crush, or remove Project improvements if reasonably required to promptly restore the Ditch to its operable condition, or if the Project is not anticipated to be completed within 24 months. The District shall reimburse Grantor's actual and reasonable costs of completing restoration work within 30 days after presentation to the District of an invoice supported by commercially reasonable documentation.

d. In the event of a default covered by Paragraph 6.c., in addition to the remedies provided in Paragraph 6.c., Grantor may recover its actual damages as measured by the market cost of replacement water (according to then current Denver Water pricing for replacement water) that Grantor was legally and physically able to divert, but was prevented from doing so by the District's breach or failure to comply with the provisions of this Paragraph 6.d. Alternatively, and in lieu of

Non-Exclusive, Permanent Underground  
Easement and Temporary Construction License  
October 21, 2020  
Page 7

actual damages, provided that Grantor was legally and physically able to divert, but was prevented from doing so by the District's breach or failure to comply with the provisions of this Paragraph 6.d, Grantor may elect liquidated damages in the amount of \$10,000 per day. The District shall be responsible for Grantor's related costs and attorney's fees in any civil action required to enforce Paragraphs 6.c. and 6.d.

e. The District represents and warrants that it intends to complete the Project by the end of the Construction Window and to cooperate with Grantor as provided for herein. Grantor represents and warrants that it intends to Turn Off the Ditch and to cooperate with the District as provided for herein.

7. Grantor acknowledges and consents to the District's installing the pipeline casing via open cut, but that the carrier pipeline and stabilizing grout (to be located within the casing) may be installed from either end of the casing after the open cut is closed. After installation of the pipeline casing and during the open cut, the District shall install a concrete cap over the pipeline casing within the Easement Vertical Area to protect the installation, at an elevation and thickness consistent with the District's Plans and Specifications as provided in Paragraph 3 hereof. Construction of the concrete cap in material conformance with these Plans and Specifications shall be sufficient. The cap shall be located over the casing pipe and extend no more than one foot above the top of the casing pipe. Upon completion of the construction of the pipeline and the concrete cap, the District shall then restore the surface, channel, and banks of the Ditch to a similar condition as they existed prior to construction, and shall allow Grantor to inspect the same to determine that it is suitable to resume water deliveries. Upon completion of the Project and prior to the end of the Construction Window, the District will make such corrections to those portions of the Ditch that were disturbed by the District and that are reasonably necessary to ensure that the portion of Ditch disturbed by the District pursuant to this Agreement is in suitable condition to resume water deliveries. If a Bypass is required, then promptly after disconnection of the Bypass, the District shall cause the Bypass to be filled and the disturbed surface of the ground used for the Bypass to be restored and revegetated, but the work described in this final sentence of Paragraph 7 may occur either during or after the Construction Window, provided it does not affect the Ditch or the banks of the Ditch.

8. The District shall pay Grantor \$30,000 at the time of the full execution and recording of this Agreement. At that same time, the District will deposit the additional sum of \$345,000 into escrow ("ESCROW FUNDS") with a title company, escrow company, or other independent financial institution licensed to do business in Colorado ("ESCROW COMPANY"). If the Project is constructed and installed before December 3, 2021 as contemplated in either Paragraphs 4 or 5, the surface of the Ditch is restored, and all other installation, construction and restoration work within the Easement Property and the License Area is completed, the Escrow Company shall disburse and pay to Grantor one of the two (but not both of) following amounts: i) if Grantor Turns Off the Ditch and keeps it off for 30 days as contemplated in Paragraph 4, the sum of \$345,000 which, in addition to the \$30,000 paid previously, shall constitute full and final compensation and consideration for the rights and obligations contained herein; or ii) if a Bypass is required as contemplated in Paragraph 5, the sum of \$220,000 which, in addition to the \$30,000 paid previously, shall constitute full and final compensation and consideration for the rights and obligations contained herein, and the remaining \$125,000 shall be returned to the District. If the District is entitled to

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Page 8

any liquidated damage amounts as provided for in Paragraph 6.a, the Escrow Company shall not disburse any Escrow Funds to Grantor until the amount of liquidated damages owing to the District has been paid to the District, with the Escrow Funds being used to satisfy any amount owed to the District. If the Grantor is entitled to any amounts as provided for in Paragraphs 6.b, 6.c, and/or 6.d, the Escrow Company shall not refund any portion of the Escrow Funds to the District until the amounts owing to Grantor has been paid to the Grantor, with the amount of any Escrow Funds to be returned to the District, first being used to satisfy any amount owed to the Grantor. Payment of amounts owing under Paragraph 6 from Escrow Funds shall not limit either Party's right to pursue, or ability to recover excess liability under this Agreement for either Party.

9. Once the Project is constructed and installed, the surface of the Ditch is restored, and all other installation, construction and restoration work within the Easement Property and the License Area is completed, this Easement provides no other rights to the District outside of the Easement Vertical Area, and any further or additional access to or use of the surface of Easement Property by the District will be by separate instrument. Except as provided in this Agreement (for initial construction and installation), and at all times after the Project is constructed and installed, all of the District's activities and improvements pursuant to this Easement shall be contained horizontally within the Easement Property and contained vertically within the Easement Vertical Area.

10. Grantor shall not remove, relocate, or modify the concrete cap without prior written approval of the District. Grantor shall advise the District not less than 30 days in advance if Grantor plans to temporarily expose the concrete cap. Grantor shall advise the District promptly if Grantor inadvertently exposes the concrete cap, and shall summarize the circumstances and describe damage to the concrete cap, if any. Grantor shall be responsible for any damage it causes to the concrete cap or any of the District's other facilities located within the Easement Vertical Area.

11. Grantor shall neither cause nor permit the construction or placement of any improvement or object into the Easement Vertical Area within the Easement Property without prior written approval from the District, which approval shall not be unreasonably withheld, conditioned or delayed. In making such an evaluation, the District will determine, in its sole discretion, whether such placement or construction interferes with or impairs the District's use of the Easement Vertical Area for the Easement Purposes. Any prohibited construction or placement on or in the Easement Vertical Area beneath the Easement Property, including new utility installations not conforming to Paragraph 18 hereof, shall be removed by the owner of said installation within 30 days after demand by the District or, if not promptly removed by the owner of said installation, the same may be removed by Grantor or the District with such removal to occur in such manner as shall be approved by Grantor and the District (in their respective reasonable discretion, but such approval shall not be unreasonably withheld, conditioned or delayed) in order to minimize the risk of harm to the Easement Purposes and the Ditch.

12. The District shall be responsible for all activities and work that it undertakes pursuant to this Easement and for its Project and shall bear all costs and other expenses incurred in connection with its activities, work, pipeline and facilities, including the installation, construction, replacement, removal, ownership, operation, repair, abandonment, and use of the improvements it installs or places in the Easement Property except to the extent such costs, other expenses are caused by Grantor, its servants or

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October 21, 2020  
Page 9

agents or anyone claiming by or through Grantor.

**ALL OF THE DISTRICT'S ACTIVITIES AND USES OF THE  
EASEMENT PROPERTY, THE LICENSE AREA, AND THE  
EASEMENT VERTICAL AREA SHALL BE AT THE DISTRICT'S  
OWN RISK, AND THAT OF ITS CONTRACTORS AND  
REPRESENTATIVES.**

13. The District shall have the right of subjacent and lateral support to whatever extent is necessary or desirable for the full, complete and unmolested enjoyment of the rights herein granted. Grantor also has the right of subjacent and lateral support to whatever extent is necessary or desirable for the full, complete and unmolested enjoyment of its canal and its ownership of the fee simple estate. The District shall neither take nor permit any action that would impair the lateral or subjacent support for Grantor's canal or canal improvements. The District has designed its improvements in a manner that is in substantial conformance with Grantor's design standards and that takes into account that the canal will seep into the Easement Vertical Area, and that such seepage may affect subjacent and lateral support. Grantor shall neither take nor permit any further affirmative action which would impair the lateral or subjacent support for the District's pipeline or any of the other equipment, facilities or appurtenances within the Easement Vertical Area.

14. Grantor must periodically clean and reshape the canal in order to maintain its operation, and may do so without notice to the District, subject to Paragraph 10, above, which is intended to provide protection for the District's improvements, and provided that such cleaning and reshaping shall not impair the Easement Purposes.

15. Grantor retains the right to the undisturbed use and occupancy of the Easement Property and the Easement Vertical Area insofar as such use and occupancy are subject to the restrictions of this Easement and are consistent with and do not impair or interfere with any Easement Purposes or any grant herein contained. Grantor shall not however, physically occupy or allow others to physically occupy the Easement Property or the License Area during the Construction Window, except for the Suitability Inspection, reasonable inspection of construction progress as provided for herein, and except for access that is necessary for operation and maintenance of the Ditch.

16. District recognizes that the principal and historic use of the Ditch is the conveyance of water to Grantor's stockholders, and Grantor and the District agree that (except during the Construction Window) the Easement Purposes that are contained within the Easement Vertical Area will not interfere or cause interference with such use, unless such improvements fail in a manner that damages the Ditch.

17. Grantor recognizes that the Project is intended to convey wastewater to the District's treatment facility, and may include such improvements and appurtenances within the Easement Vertical Area that are shown on the Plans and Specifications and directly related to that function.

18. Utilities that are not included in the Project, such as water, storm piping, gas, electric, and

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October 21, 2020  
Page 10

telephone, may be installed in the Easement Property, only by consent of both Grantor and the District, and provided that such crossings do not interfere with or impair the District's rights herein granted, that utilities crossing the Easement Property cross at approximately right angles (with appropriate spacing) and that no utilities are permitted to parallel the District's facilities within 10 feet thereof. All other uses of the Easement Property within the Easement Vertical Area must also be approved in writing by the District in advance, which approval shall not be unreasonably withheld, conditioned or delayed. In making such an evaluation, the District will determine, in its sole discretion, whether such placement or construction interferes with or impairs the District's use of the Easement Vertical Area for the Easement Purposes. The District may require removal of unauthorized or non-conforming utility installations as provided in Paragraph 11, above.

19. If the District, by written instrument, expressly abandons or releases its rights herein granted and ceases to use the same, all right, title and interest of the District hereunder shall cease and terminate, and the Grantor shall hold the Easement Property, as the same may then be free from the rights so abandoned or released and the District shall abandon its pipeline, casing and other improvements in place by filling all voids with an appropriate material intended for comparable pipeline abandonment, but nothing herein shall be construed as working a forfeiture or abandonment of any interest derived hereunder and not owned by the District at the time of the abandonment or release of the District's rights. In the absence of such express written abandonment as provided for herein, abandonment or cessation of the use of its facilities located on or under the Easement Property by the District shall not constitute an abandonment of its rights under this Easement.

20. By accepting and using this Easement, the District does not waive or release any of the rights, monetary limitations or protections afforded to it under the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, *et seq.*, or common law sovereign immunity. Grantor does not hereby waive any right to assert that such rights, monetary limitations or protections do not apply to a given circumstance.

21. Nothing in this Agreement is intended to constitute a multi-year fiscal obligation under the Colorado Constitution, Art. X, Section 20, and any future year fiscal or monetary obligation of the District is subject to duly authorized appropriations by the District Board of Directors.

22. This Easement shall run with the land and the benefits and burdens of this Easement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and permitted assigns of the Parties hereto.

23. If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable, if allowed by law, in lieu of such invalid, illegal, or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid, or unenforceable provision so that the resulting reformed provision is legal, valid, and enforceable. If such reformation is not possible, this Agreement shall be construed and enforced without such provision, to the extent that this Agreement is then capable of execution within the original intent of the Parties. The Grantor and the District agree that the terms, conditions, rights and obligations of this Easement may be interpreted and/or enforced through an action in Adams County District Court only, and that they may be enforced by claims for declaratory and/or injunctive relief and/or damages.

24. The above and foregoing constitutes the whole agreement between the Parties and no

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Easement and Temporary Construction License  
October 21, 2020  
Page 11

additional or different oral representation, promise or agreement shall be binding on any of the Parties hereto with respect to the subject matter of this instrument. The terms of this Easement may be modified only by a writing duly executed and acknowledged by the Parties hereto.

25. The persons executing this instrument below represent and warrant that they are authorized to do so by the Parties hereto. Scanned copies of signatures shall be treated as originals. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed to one and the same agreement.

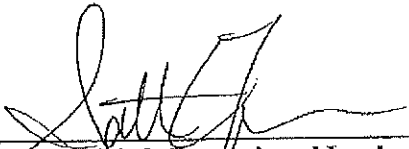
26. Burlington, Henrylyn, ECCV, ACWWA, and United have executed this agreement to acknowledge that each has read, understands, consents to and does not dispute the terms hereof, and ratifies this agreement to the extent of its affected interests. Burlington, Henrylyn, ECCV, ACWWA, and United hereby further waive and release any all defenses, objections and claims to the activities contemplated by this Agreement, and further waive and release any all claims to any consideration or compensation in connection herewith.

IN WITNESS WHEREOF the parties have executed this instrument as of the day and year first above written.

SIGNATURES APPEAR ON FOLLOWING PAGES

Non-Exclusive, Permanent Underground  
Easement and Temporary Construction License  
October 21, 2020  
Page 12

ACKNOWLEDGED AS  
PROVIDED IN PARAGRAPH  
26:

  
Burlington Ditch, Reservoir and Land  
Company, a mutual ditch company  
organized and existing under the laws of the  
State of Colorado

Address:  
80 South 27<sup>th</sup> Avenue Brighton, CO 80601

STATE OF Colorado )  
 ) ss.  
COUNTY OF Adams )

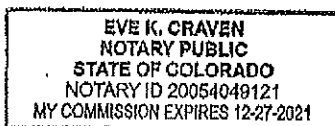
The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of October, 2020 by Scott Edgar  
as General Manager of the Burlington Ditch, Reservoir and Land Company, a Colorado mutual ditch  
company.

Witness my hand and official seal.

My Commission Expires: 12.27.21

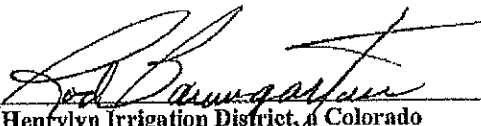
[SEAL]

  
Notary Public



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October 21, 2020  
Page 13

ACKNOWLEDGED AS  
PROVIDED IN PARAGRAPH  
26:

  
Henrylyn Irrigation District, a Colorado  
statutory irrigation district

Address:  
29490 County Road 14, Keenesburg, CO 80643

STATE OF Colorado )  
 ) ss.  
COUNTY OF Weed )

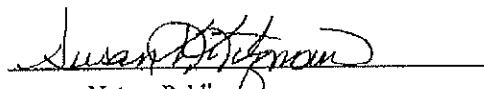
The foregoing instrument was acknowledged before me this 20 day of October, 2020 by Rodney Baumgartner as Manager of the Henrylyn Irrigation District, a Colorado statutory irrigation district.

Witness my hand and official seal.

My Commission Expires: 12-24-2020

[SEAL]

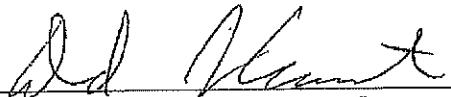


  
Notary Public



Non-Exclusive, Permanent Underground  
Easement and Temporary Construction License  
October 21, 2020  
Page 14

ACKNOWLEDGED AS  
PROVIDED IN PARAGRAPH  
26:

  
East Cherry Creek Valley Water and  
Sanitation District, a quasi-municipal  
corporation and political subdivision of the  
State of Colorado

Address:  
6201 South Gun Club Road, Aurora, CO 80016

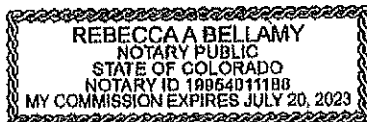
STATE OF Colorado )  
COUNTY OF Arapahoe ) ss.

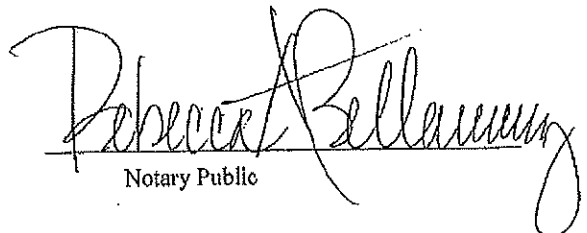
The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of October, 2020 by David Kaunisto as General Manager of the East Cherry Creek Valley Water and Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado.

Witness my hand and official seal.

My Commission Expires: July 20, 2023

[SEAL]



  
Notary Public

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Easement and Temporary Construction License  
October 21, 2020  
Page 15

ACKNOWLEDGED AS  
PROVIDED IN PARAGRAPH  
26:

*Emily Lowell*

Arapahoe County Water and Wastewater  
Authority, a quasi-municipal corporation  
and political subdivision of the State of  
Colorado

Address:  
13031 East Caley Avenue, Centennial, CO 80111

STATE OF Colorado )  
COUNTY OF Arapahoe ) ss.

The foregoing instrument was acknowledged before me this 22 day of October, 2020 by Steve Witter <sup>Emily Lowell</sup>  
as ~~General Manager~~ of the Arapahoe County Water and Wastewater Authority, a quasi-municipal  
corporation and political subdivision of the State of Colorado.

Water  
Resources  
Manager

Witness my hand and official seal.

My Commission Expires: 2/12/2024


[SEAL]

MATTHEW LANGRIDGE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20204006166  
MY COMMISSION EXPIRES FEBRUARY 12, 2024

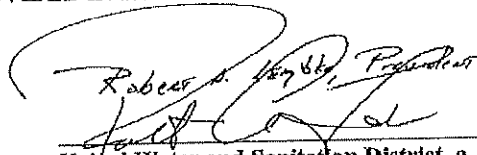
*[Signature]*  
Notary Public

Non-Exclusive, Permanent Underground  
Easement and Temporary Construction License  
October 21, 2020  
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APPROVED  
as to  
FORM

  
Oct 20, 2020

ACKNOWLEDGED AS  
PROVIDED IN PARAGRAPH  
26:

  
United Water and Sanitation District, a  
quasi-municipal corporation and political  
subdivision of the State of Colorado

Address:  
8301 E. Prentice Avenue, Suite 100, Greenwood Village, CO 80111

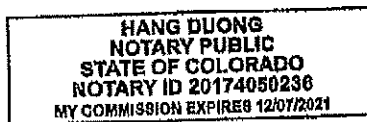
STATE OF Colorado )  
 ) ss.  
COUNTY OF Arapahoe )

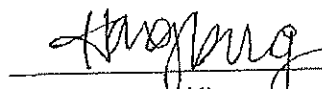
The foregoing instrument was acknowledged before me this 20th day of October, 2020 by Robert Lemke as President of the United Water and Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado.

Witness my hand and official seal.

My Commission Expires: 12/07/2021

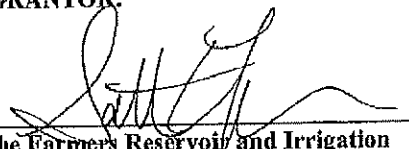
[SEAL]



  
Notary Public

Non-Exclusive, Permanent Underground  
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October 21, 2020  
Page 17

GRANTOR:

  
The Farmers Reservoir and Irrigation  
Company, a mutual ditch company  
organized and existing under the laws of the  
State of Colorado

Grantor's Address:

80 South 27th Avenue Brighton, CO 80601

STATE OF Colorado )

COUNTY OF Adams ) ss.

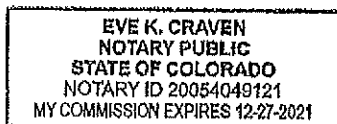
The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of October, 2020 by Scott Edgar  
as General Manager of the Farmers Reservoir and Irrigation Company, a Colorado mutual ditch company.

Witness my hand and official seal.

My Commission Expires: 12.27.21

[SEAL]

  
Notary Public



Non-Exclusive, Permanent Underground  
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Page 18

**METRO WASTEWATER RECLAMATION  
DISTRICT**

Agreed and accepted by:

By: [Signature]  
District Manager, its authorized representative

APPROVED AS TO FORM

By: [Signature]  
District General Counsel

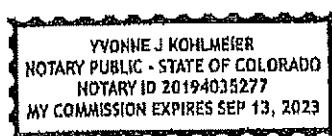
STATE OF Colorado )  
 ) ss.  
COUNTY OF Adams )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of October, 2020 by William J. Conway as District Manager of the Metro Wastewater Reclamation District, a public body and political subdivision of the State of Colorado.

Witness my hand and official seal.

My Commission Expires: September 13, 2023

[SEAL]



[Signature]  
Notary Public

Electronically Recorded RECEPTION#: 2020000108514,  
10/22/2020 at 12:15 PM, 19 OF 40,  
TD Pgs: 0 Josh Zygielbaum, Adams County, CO.

EXHIBIT A  
To Non-Exclusive, Permanent Underground  
Easement and Temporary Construction License  
"Easement Property"



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Merrick & Company  
5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111  
303-751-0741 / Fax 303-751-2581 / www.merrick.com

Job No.: 65319752-02  
File: \Exhibits & Property Descriptions\SDI-0231-R2  
Date: May 6, 2020

**EXHIBIT A**  
**PROPERTY DESCRIPTION**  
**PARCEL SDI-0231**

**FARMERS RESERVOIR AND IRRIGATION COMPANY**

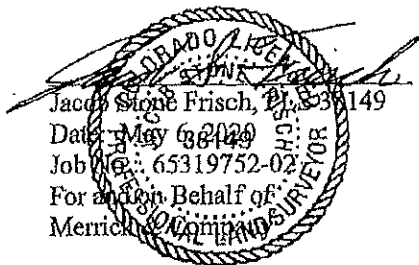
A Permanent Sanitary Sewer Easement being a portion of a parcel of land described in Book 69 at Page 145, recorded January 6, 1914 in the Adams County Clerk and Recorder's Office, being in a portion of the Northwest Quarter of Section 7, Township 2 South, Range 66 West of the 6th Principal Meridian, County of Adams, State of Colorado, being more particularly described as follows:

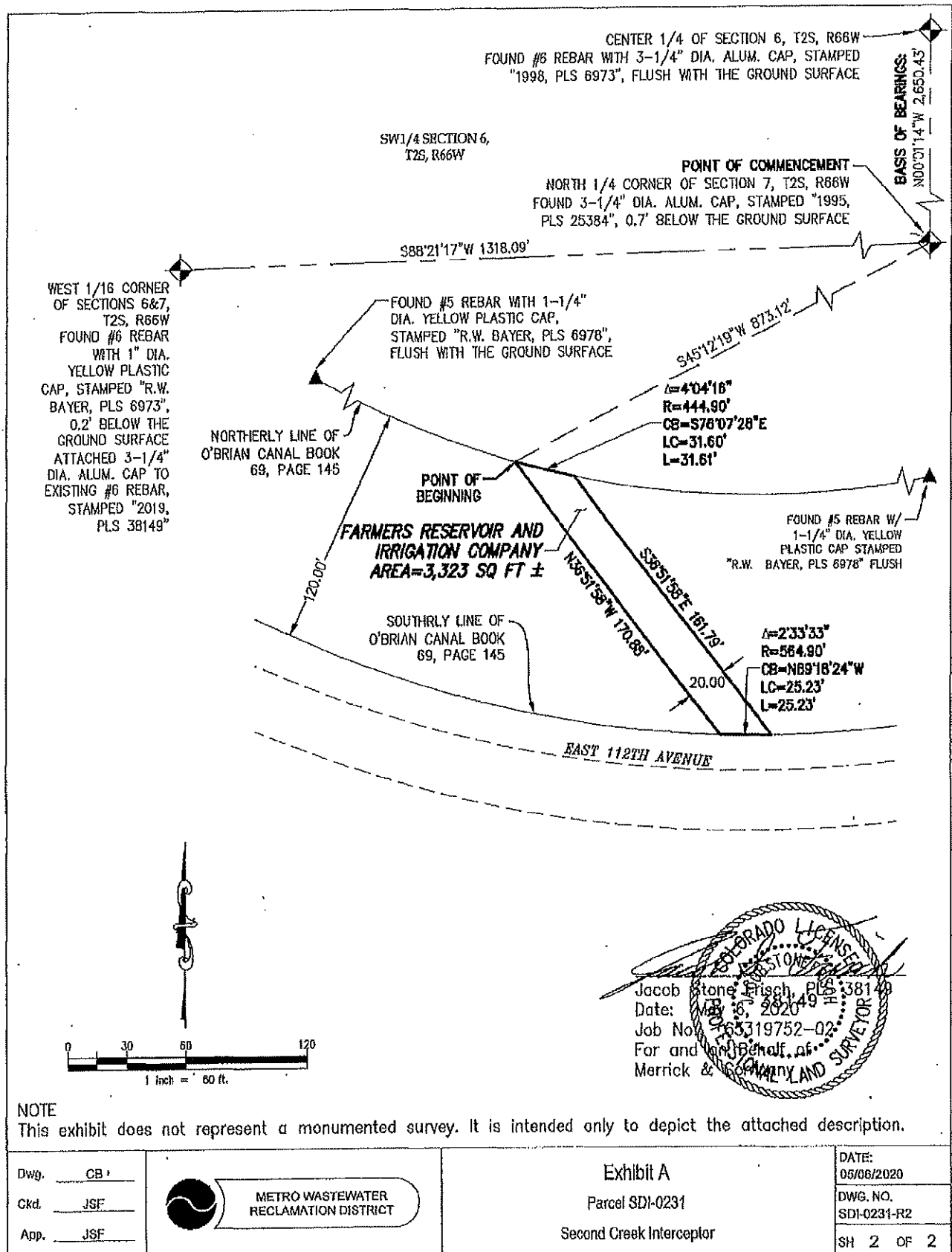
**COMMENCING** at the North Quarter Corner of said Section 7, whence the Center Quarter Corner of Section 6, Township 2 South, Range 66 West of the 6th Principal Meridian bears N00°01'14"W a distance of 2,650.43 feet;  
THENCE S45°12'19"W non-tangent with the following described curve a distance of 873.12 feet to the **POINT OF BEGINNING**;

THENCE along the northerly line of the O'Brian Canal as described in said Book 69 at Page 145, along the arc of a curve to the left, having a central angle of 04°04'16", a radius of 444.90 feet, a chord bearing S76°07'28"E a distance of 31.60 feet, and an arc distance of 31.61 feet;  
THENCE S36°51'58"E non-tangent with the previous and following described curves a distance of 161.79 feet;

THENCE along the southerly line of said O'Brian Canal, along the arc of a curve to the right, having a central angle of 02°33'33", a radius of 564.90 feet, a chord bearing N89°18'24"W a distance of 25.23 feet, and an arc distance of 25.23 feet;  
THENCE N36°51'58"W non-tangent with the previous described curve a distance of 170.88 feet to the **POINT OF BEGINNING**.

Containing 3,323 square feet, more or less.

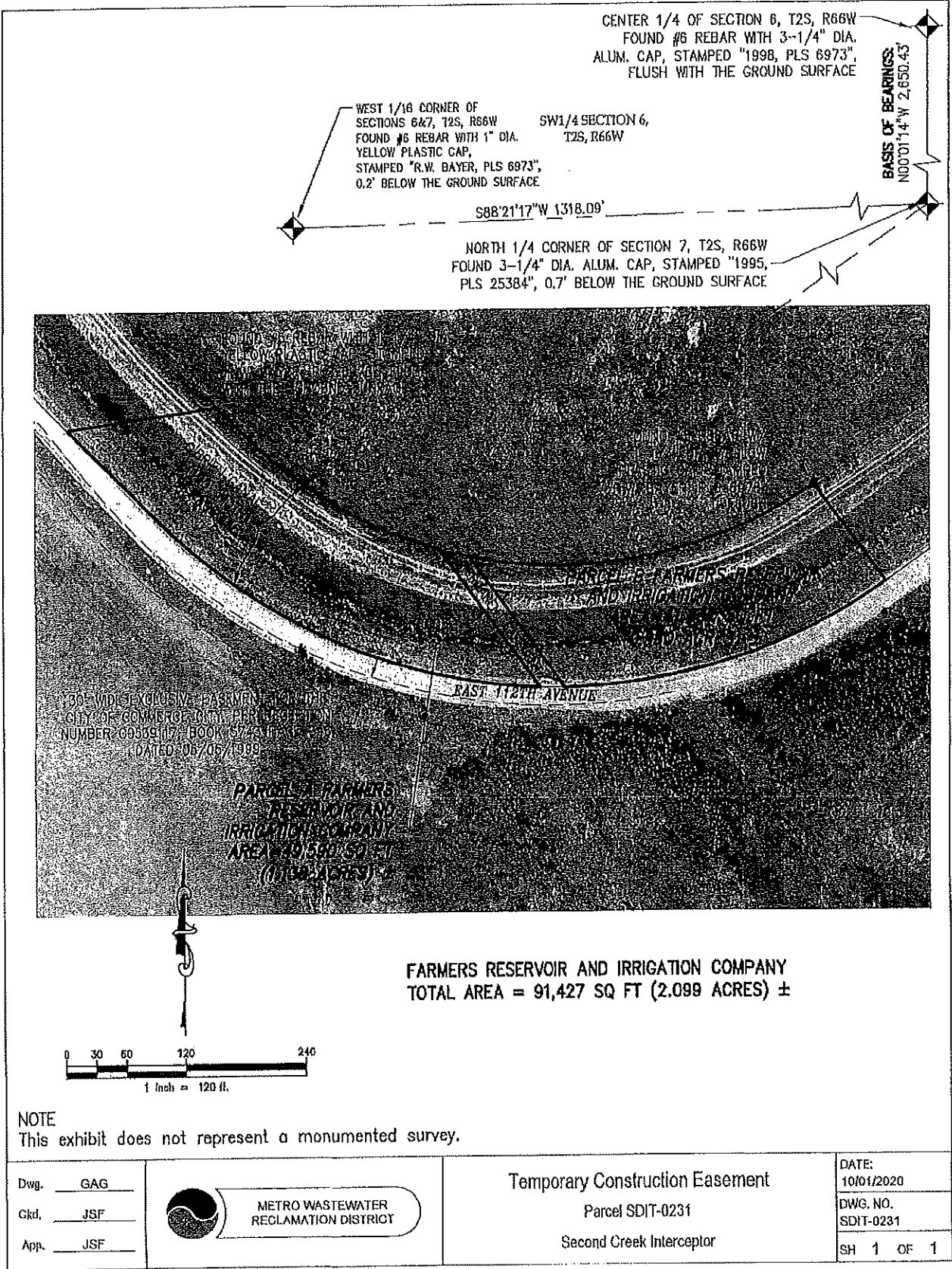






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10/22/2020 at 12:15 PM, 22 OF 40,  
TD Pgs: 0 Josh Zygielbaum, Adams County, CO.

EXHIBIT B  
To Non-Exclusive, Permanent Underground  
Basement and Temporary Construction License  
"License Area"



Electronically Recorded RECEPTION#: 2020000108514,  
10/22/2020 at 12:15 PM, 24 OF 40,  
TD Pgs: 0 Josh Zygielbaum, Adams County, CO.

EXHIBIT C  
To Non-Exclusive, Permanent Underground  
Basement and Temporary Construction License  
"Plans and Specifications"

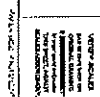


EXHIBIT D  
To Non-Exclusive, Permanent Underground  
Easement and Temporary Construction License

**CHECKLIST OF INFORMATION**  
(Information to be included on Plans and Specifications)

The Plans and Specifications for the open cut shall include the following information:

- ☐ Cross Section through base of channel perpendicular to profile. Include fill requirements, compaction, QAQC, etc.
- ☐ Cross section through FRICO's western embankment perpendicular to profile. Include fill requirements, compaction, QAQC, etc.
- ☐ Fill specs (types and compaction, pipe bedding, flow fill etc.)
- ☐ Excavation plan (i.e., laid back slopes)
- ☐ Survey point in bottom of canal to be added to drawings to confirm elevations
- ☐ Limits of disturbance for excavation to be shown on drawing
- ☐ Material specs and geometry of FRICO's access road to be rebuilt
- ☐ Details on trench plugs. Note eastern plug seems to be inside of ROW. Correct if required
- ☐ Provide utility marker posts outside of FRICO ROW/road
- ☐ Specifications for required channel lining when reconstructing channel
- ☐ Material types to be used as bedding, clay lining and backfill

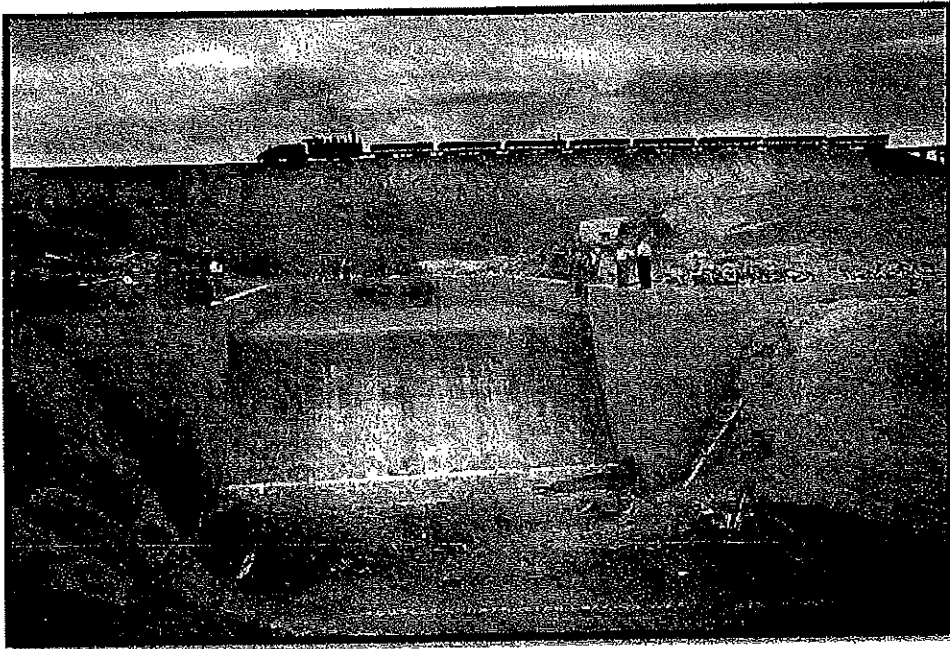
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10/22/2020 at 12:15 PM, 27 OF 40,  
TD Pgs: 0 Josh Zygielbaum, Adams County, CO.

EXHIBIT E  
To Non-Exclusive, Permanent Underground  
Easement and Temporary Construction License  
"Design Review Manual Excerpts"

(Note: redactions in this Exhibit are in the original copy,  
and redacted text is not applicable to the Project)

# **THE FARMERS RESERVOIR AND IRRIGATION COMPANY**

## **DESIGN REVIEW MANUAL SUBSET OF MANUAL FOR METRO**



October 2020

80 South 27<sup>th</sup> Avenue  
Brighton, CO 80601-2602

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### **CUT-OFF COLLARS**

For underground pipelines or utilities installed by trenching through the canal right-of-way, reinforced concrete cut-off collars shall be provided. The bottom and sides of the collar shall be cast against undisturbed ground as shown on **Figure 1.1**. This can be difficult when trench boxes or sheet piling are used to shore the sides of an excavation, as is commonly done to support the walls of bore pits. In this case extending the collars to undisturbed ground may be impractical. Acceptable alternatives in the event it is not possible to install collars as depicted on **Figure 1.1** are the use of compacted clay, flash fill, flow fill, or equivalent depending on conditions. In these cases, the low permeability material shall be placed to span the full width of the bore pit. If safe access to the trench is possible, then compacted clay is the preferred option. The drawings should clearly show the plan for concrete collar backfill if embedding into the native ground is not possible. This is particularly important for the area between the outer edges of the concrete and the native ground. Alternative plans must be approved by FRICO.



The collars shall project at least 24 inches from the wall of the casing pipe if used or carrier pipe if no casing is used and shall be cast a minimum of four feet from the end of the pipe and a minimum of three feet from the limits of the flow section.

Collars shall be not less than 12 inches thick with reinforcement as shown on **Figure 11** (attached). For jack boring operations that include the use of bore pits, the concrete cutoff collars along with the bore pits shall be located outside the FRICO Property. Concrete cutoff collars are to be installed on the ditch side of bore pits.

## GENERAL NOTE REQUIREMENTS

All plans should include the following FRICO general notes:

FARMERS RESERVOIR AND IRRIGATION COMPANY NOTES

4. FRICO AND ITS AGENTS OR CONSULTANTS DO NOT WARRANT OR GUARANTEE THE ADEQUACY OF DESIGNS REVIEWED AND APPROVED BY FRICO. FRICO'S REVIEW OF PROJECT REPORTS, PLANS, AND SPECIFICATIONS IS FOR THE SOLE BENEFIT OF FRICO TO DETERMINE IF PROJECT DETAILS CONFORM TO FRICO DESIGN GUIDELINES, WHICH ARE NECESSARY TO REASONABLY ASSURE THAT PROJECTS DO NOT ADVERSELY AFFECT THE FACILITIES OR OPERATIONS OF FRICO.

[illegible]

[illegible]

12. GROUNDWATER ENCOUNTERED DURING CONSTRUCTION SHALL NOT BE RELEASED TO FRICO'S CANAL OR OTHER FACILITIES WITHOUT WRITTEN APPROVAL FROM THE FRICO GENERAL MANAGER.
13. ALL CONCRETE USED FOR THE PROJECT SHALL CONFORM TO ACI 350. THE CONTRACTOR SHALL SUPPLY FRICO WITH SHOP DRAWINGS AND SPECIFICATIONS FOR ALL PRE-FABRICATED CONCRETE STRUCTURES TO INSURE CONFORMANCE TO ACI 350.
14. WHERE THE EXISTING SIDES OR BOTTOM OF THE CANAL ARE DISTURBED AND ARE TO BE REPLACED, THE TOP TWO FEET OF BACKFILL MATERIAL SHALL BE CLAY CONTAINING AT LEAST 40 PERCENT BY DRY WEIGHT PASSING THE #200 SIEVE (FINES) AND A PLASTICITY INDEX OF 15 OR GREATER. AS AN ALTERNATIVE, THE EXISTING MATERIAL CAN BE MIXED WITH TWO PERCENT POWDERED DRY BENTONITE (BY DRY WEIGHT) PROVIDED THE EXISTING SOILS CONTAIN AT LEAST 25 PERCENT FINES. THE MATERIALS UPON COMPACTION SHALL HAVE A PERMEABILITY LESS THAN OR EQUAL TO  $1 \times 10^{-9}$  CM/SEC AS DETERMINED BY ASTM D 5084.
15. THE CHANNEL CLAY LINING SHALL BE COMPACTED TO 90% OF THE MODIFIED PROCTOR (ASTM D1557) AND WITHIN -2% TO +2% OF THE OPTIMUM MOISTURE CONTENT. FILL SHALL BE PLACED IN THIN LIFTS WITH MAXIMUM LOOSE LIFT THICKNESS OF 12 INCHES. PLACEMENT ON DITCH

SLOPES MAY REQUIRE OVERBUILDING AND CUTTING BACK TO OBTAIN THE REQUIRED COMPACTION.

- [REDACTED]
- [REDACTED]
17. MATERIALS GRAIN SIZE ANALYSIS (ASTM D422), ATTERBERG LIMITS (ASTM D4318), AND MOISTURE-DENSITY RELATIONSHIP TESTS (ASTM D1557) SHALL BE COMPLETED, AS A MINIMUM, ON EACH SOIL TYPE OR AT A RATE OF 300 CY OF MATERIAL PLACED, WHICHEVER IS GREATER.
18. COMPACTION OF BEDDING, CLAY LINING AND ALL TYPES OF BACKFILL SHALL BE TESTED AT A RATE OF AT LEAST FOUR TESTS PER 1,000 SQUARE FEET OF FILL MATERIAL PER LIFT. THIS FREQUENCY MAY BE ALTERED BY THE ENGINEER OR FRICO REPRESENTATIVE DEPENDING ON THE PROJECT, THE METHODS BY WHICH THE CONTRACTOR IS USING TO OBTAIN COMPACTION, OR IF CIRCUMSTANCES WARRANT ADDITIONAL TESTING. THE TESTING SHALL BE AT VARIOUS DEPTHS AND LOCATIONS. THE ENGINEER OR AN OWNER'S REPRESENTATIVE RESERVES THE RIGHT TO REQUEST ADDITIONAL TESTS AND DETERMINE THE LOCATION OF TESTING. THE TESTING MAY BE COMPLETED EITHER BY SAND CONE DENSITY TEST (ASTM D1556) OR BY THE NUCLEAR GAUGE (ASTM D6938) METHODS. TEST RESULTS SHALL BE SUBMITTED TO FRICO'S REPRESENTATIVE WITHIN 24 HOURS OF THE TEST OR ON THE NEXT WORKING DAY.
19. ON STEEP SIDE SLOPES, FILL MATERIALS, WHETHER CLAY LINING OR SUBGRADE SOILS, MAY BE REQUIRED TO BE PLACED IN HORIZONTAL LIFTS ALONG THE SLOPE TO ACHIEVE THE REQUIRED COMPACTION. THIS METHOD WILL CREATE AN OVERBUILT SECTION THAT WILL BE CUT BACK TO FORM THE DESIGN SLOPE.
20. CONTRACTOR SHALL MAINTAIN SILT FENCE AND OTHER EROSION AND SEDIMENT CONTROL BMPs ON A DAILY BASIS AND SHALL PREVENT DEBRIS FROM ENTERING INTO THE CANAL. THE CONTRACTOR WILL BE RESPONSIBLE FOR DAILY CLEANING OF DEBRIS THAT ENTERS THE CANAL, IF BMPs FAIL.
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

22. AS-BUILT DOCUMENTS ARE TO BE SUPPLIED TO FRICO PRIOR TO SUBSTANTIAL COMPLETION / CONSTRUCTION ACCEPTANCE OF THE IMPROVEMENTS. RECORD DOCUMENTS SHALL BE SUBMITTED ELECTRONICALLY IN BOTH PDF AND AUTOCAD FORMAT PRIOR TO FRICO ACCEPTANCE. AS-BUILT DRAWINGS SHALL BE SIGNED AND STAMPED BY A REGISTERED PROFESSIONAL ENGINEER.
23. INSTALL MARKER POSTS AT FRICO'S ROW LIMITS ON BOTH SIDE OF THE CANAL TO DESIGNATE THE LOCATION OF ANY UNDERGROUND UTILITIES.

**FRICO APPROVAL BLOCK**

The standard FRICO approval block should be attached to the cover page of all plans.

**FRICO APPROVAL BLOCK**

The signature of the General Manager of FRICO is for the purpose of approving these Plans and Specifications. The signature shall not in any way change the rights and obligations of either party with respect to the Non-Exclusive, Permanent Underground Easement and Temporary Construction License to which these Plans and Specifications relate.

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General Manager, the Farmers Reservoir and Irrigation Company

**FRICO CONTACT INFORMATION**

The Farmers Reservoir and Irrigation Company should be added to the agency contact list on the first page of the drawings as follows:

Scott Edgar, General Manager  
Farmers Reservoir and Irrigation Company (FRICO)  
80 South 27th Avenue  
Brighton CO 80601  
(303) 659-7373

## **5. UNDERGROUND CROSSINGS**

### **5.1 GENERALLY**

All utility lines and pipelines that are proposed to cross under FRICO Property or Facilities (including but not limited to telephone, coaxial cable, fiber optic lines, electric power lines, storm drains, water mains and laterals, sewer mains and laterals, graywater pipelines, natural gas pipelines, oil pipelines, etc.) shall adhere to the guidelines in this Section 5 [REDACTED].

Section 5.3 provides guidelines for utility and pipeline crossings that are installed underground using trenching techniques. This method involves excavating through the Canal channel, installing the utility line, and backfilling the installation to the appropriate lines and grades of the original Canal channel. The methods most commonly used involve cased techniques (in which a larger carrier pipe or conduit is used to encase the utility line or pipeline). [REDACTED]

### **5.2 STANDARDS APPLICABLE TO UNDERGROUND UTILITY OR PIPELINE INSTALLATIONS**

All piped crossings of Canals shall be identified by marker posts located outside the FRICO Property on both sides of the Canal.

### **5.3 TRENCHED INSTALLATIONS**

#### **5.3.1 GENERALLY**

Trenching through canal banks is acceptable provided that the installation can be completed in a manner that protects the long-term integrity of FRICO's facilities. [REDACTED]

#### **5.3.2 CASED TRENCHED CANAL CROSSINGS**

Underground utilities or pipelines are to be carried in steel pipe for the full width of the FRICO Property adhering to FRICO's standard.

Except with respect to telephone, coaxial cable, fiber optic, and electric power lines:

- The carrier pipe shall be separated from the casing pipe using grout or insulated casing spacers properly dimensioned and spaced to safely accommodate the utility or pipeline and prevent shorting of the carrier pipe's cathodic protection system. Where applicable, the carrier pipe shall include restrained joints for the entire length within the casing pipe.

- The casing shall be liquid-tight and the casing sealed to the carrier pipe at each end of the casing.
- Casing pipe should be a minimum of six inches larger in diameter than carrier pipe in order to provide a minimum of three inches of clearance around the carrier pipe. Carrier pipe shall be centered inside the casing pipe.
- Casing pipe shall be suitably protected from failure due to corrosion for a minimum design life of 50 years. The corrosion protection design and details shall be included in applicable design drawings. If cathodic protection consists of using an over-thickened steel pipe, design calculation shall be provided that include the potential soil reactivity and how this relates to the rate of wear on the casing pipe.

Minimum specifications for casing pipe are set out in Table 5.3.2.

TABLE 5.3.2 SPECIFICATIONS FOR CASING PIPE		
Pipe Diameter	Material	Wall Thickness
12-inch or smaller	Steel	3/16-inch wall
Over 12-inch and less than 24-inch	Steel	1/4-inch wall
24-inch to less than 60-inch	Steel	3/8-inch wall
60-inch and larger diameter	special design by a professional engineer registered in the State of Colorado	

- For future line location, all crossings must meet the requirements of ASCE 38 or explain why the standard is not met. At a minimum, all installed crossings will be required to have the following.
  - Geophysical method of pipe detection (ASCE 38 - Utility quality level B):
    1. Magnetic field detection using tracer wire pulled along with the carrier pipe. The tracer wire shall consist of copper clad steel (CCS) direct burial #12 AWG solid (0.0808-inch diameter) steel core hard drawn extra high strength horizontal directional drill tracer wire, 1,150 lb. average tensile break load, 45 mil high molecular weight, high density blue complying with ASTM-D-1248, 30-volt rating, Copperhead Industries 1245G-BHS-2500, or equal.
    2. For metallic pipe installations, tracer wire may not be more effective than the steel pipe itself for line detection purposes. Consequently, a galvanic sacrificial anode Cathodic Protection (CP) system with test stations located outside of FRICO's ROW and within 50 feet of the HDD pipe crossing where wires are connected to the metallic pipeline and routed to a test station at the surface can be used in lieu of or in tandem with tracer wire.
  - Pipeline markers installed along the pipeline alignments at the edges of FRICO's ROW

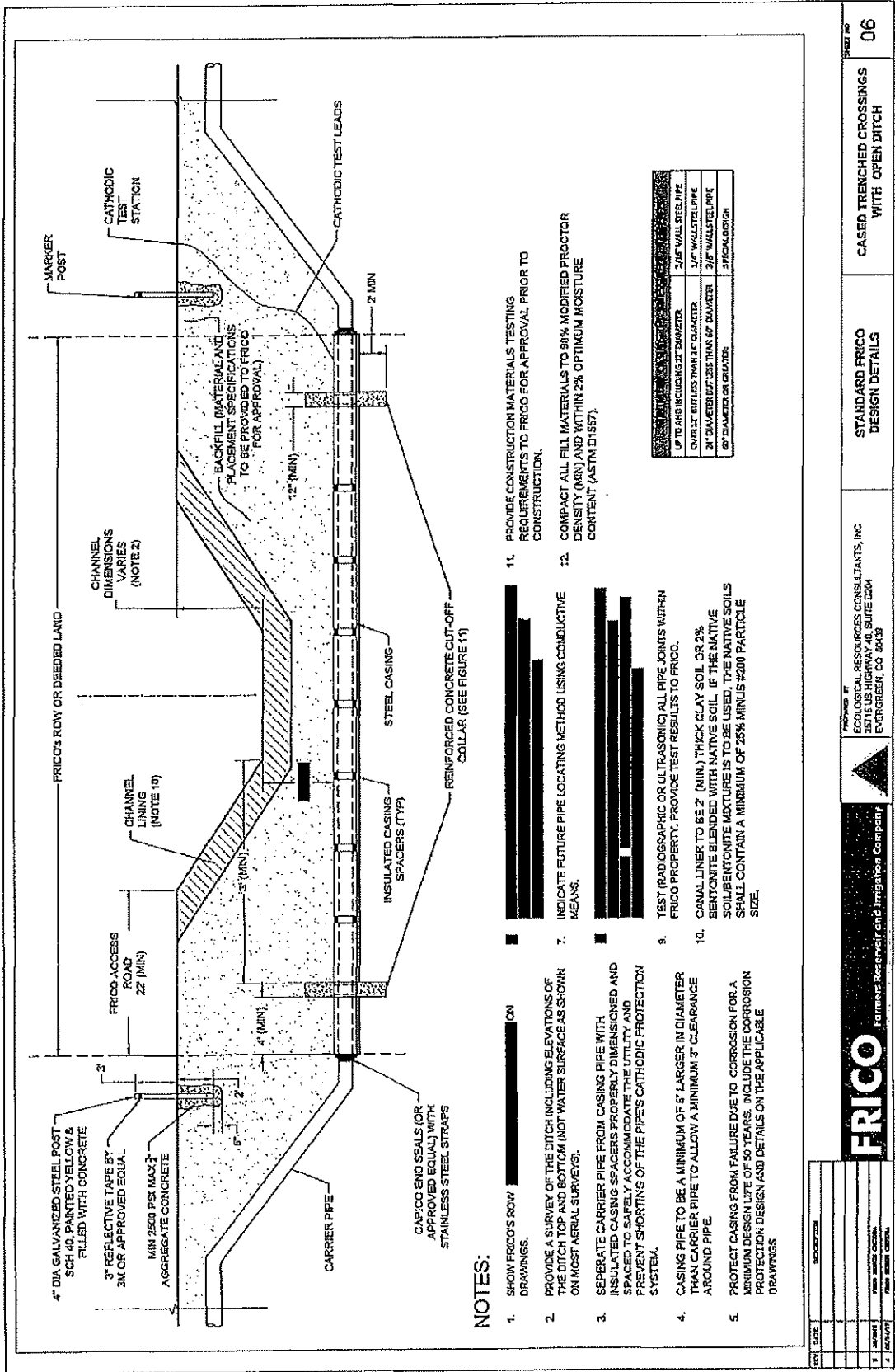
- [REDACTED]
- Register pipeline with 811
- Line location methods shall be included on the drawings

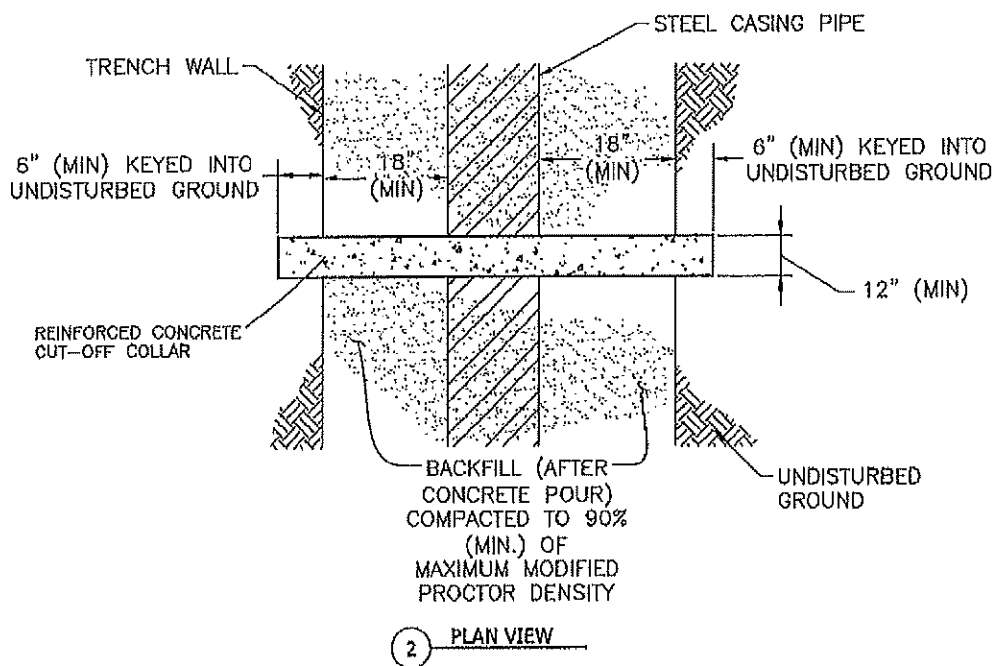
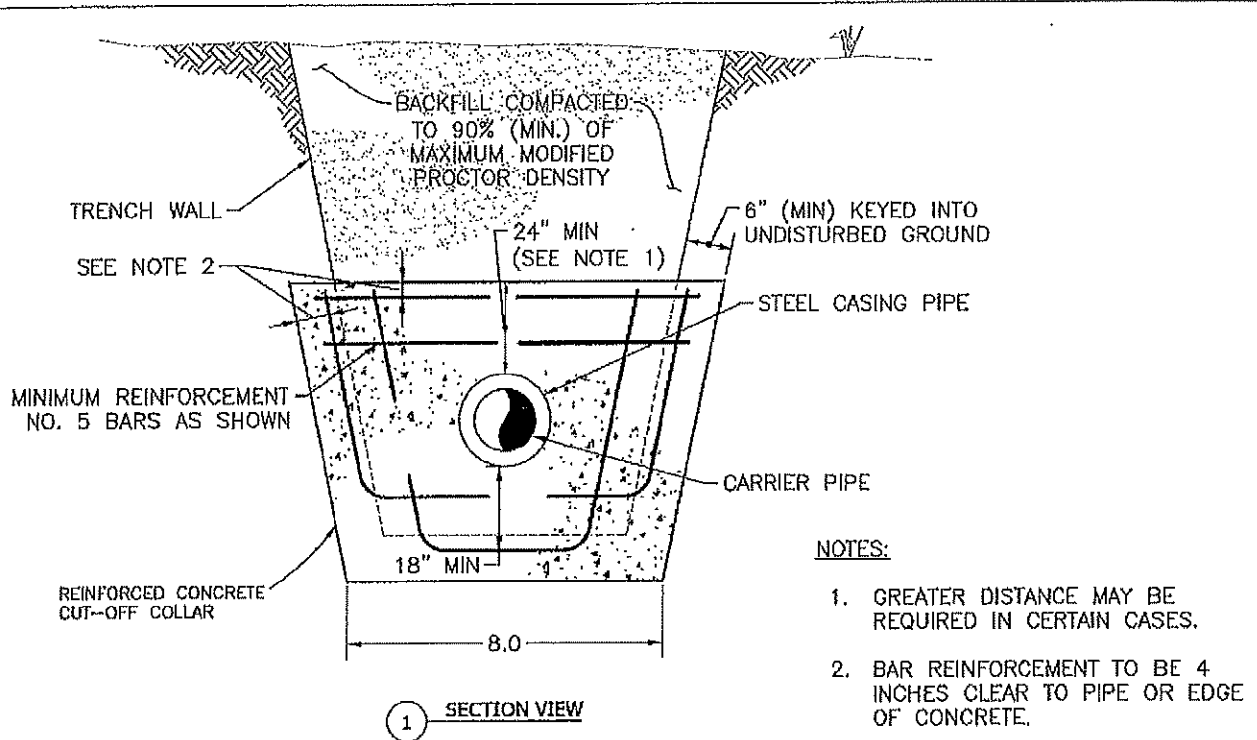
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

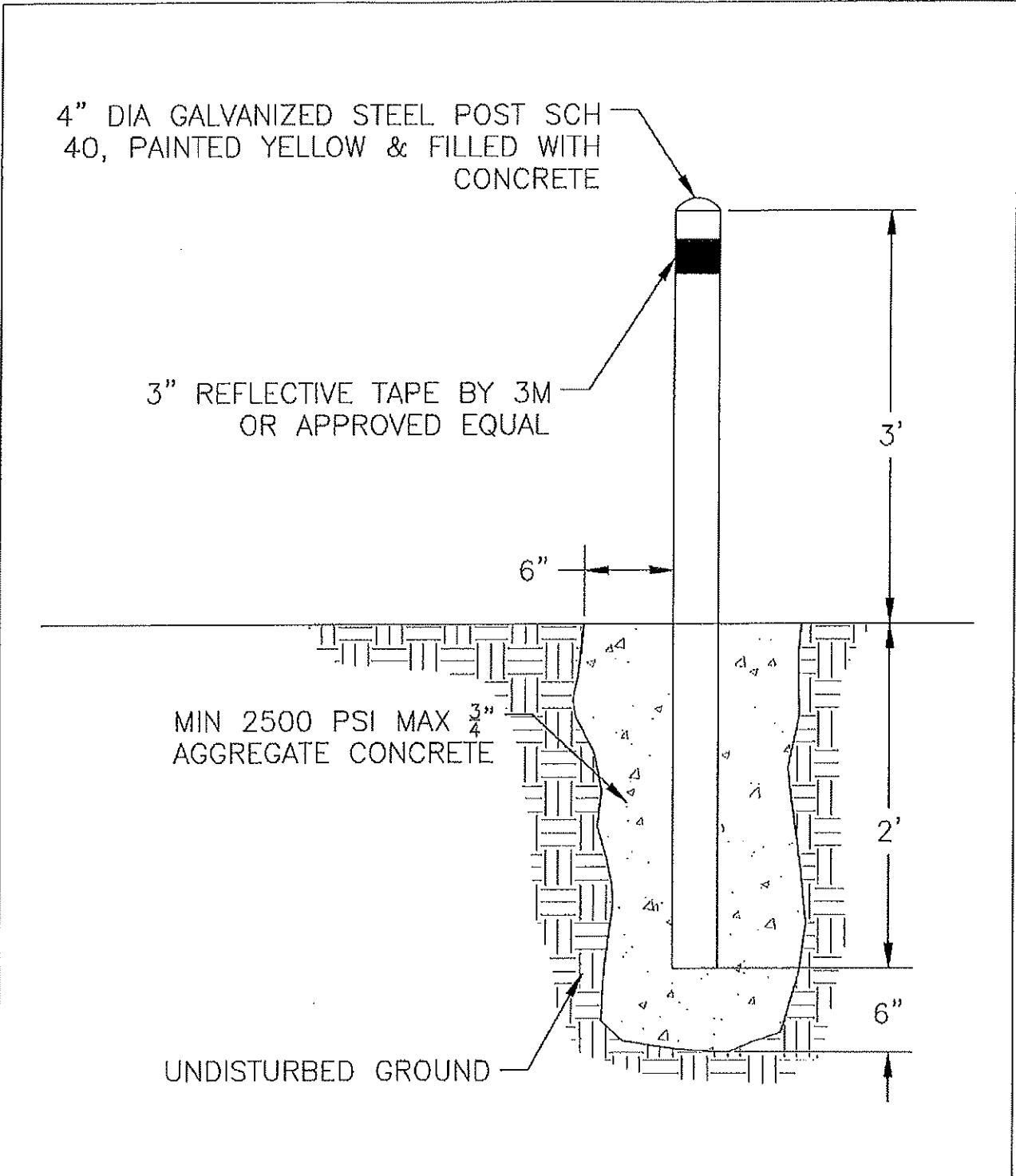
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FIGURES





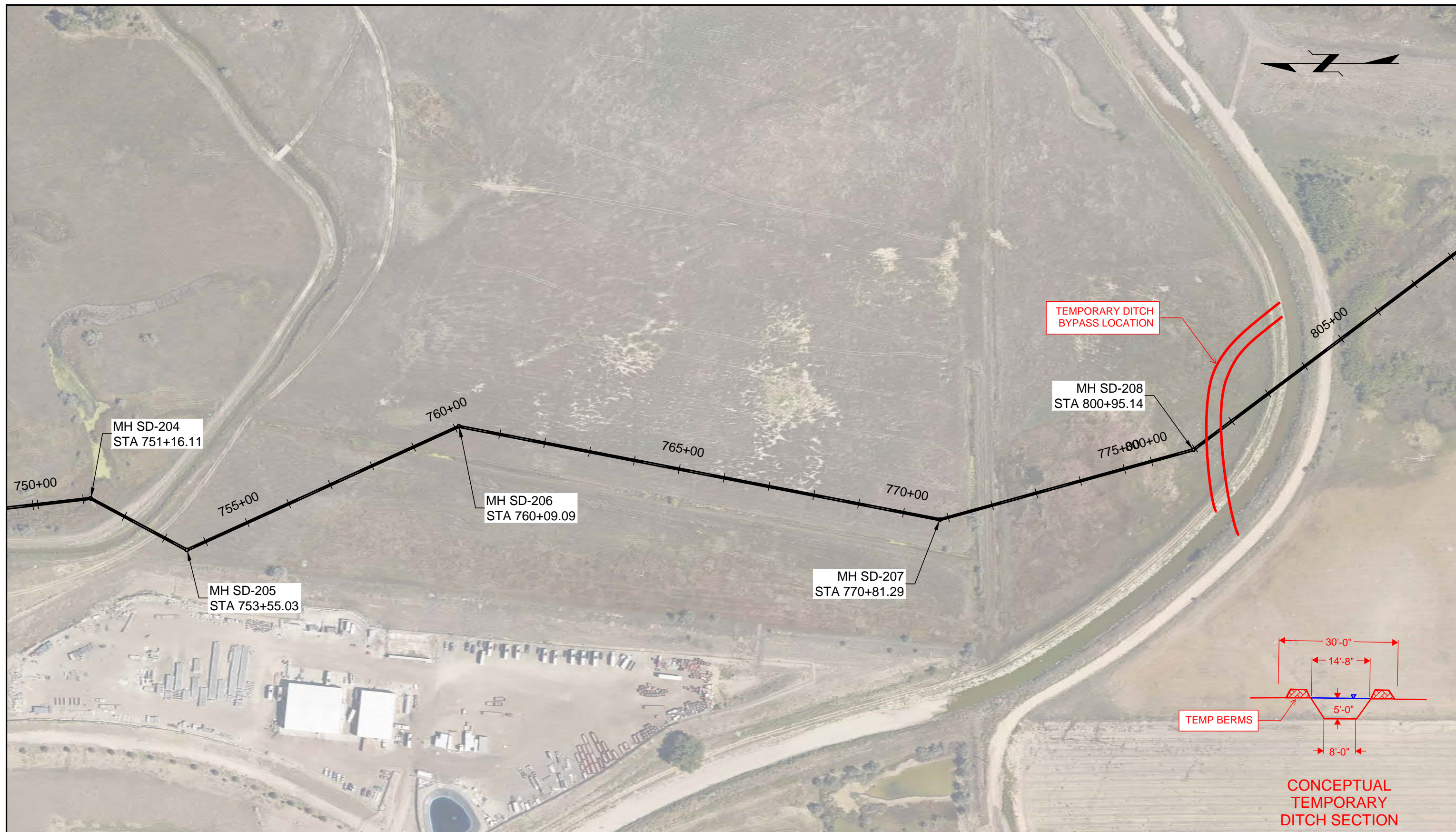




STANDARD FRICO DESIGN DETAILS		POST DETAIL	SHEET NO 12
DATE: 12/2018		PREPARED BY ECOLOGICAL RESOURCES CONSULTANTS, INC 38718 US HIGHWAY 40, SUITE D204 EVERGREEN, CO 80439	
<b>FRICO</b> Farmers Reservoir and Irrigation Company			

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## SECOND CREEK INTERCEPTOR

O'BRIAN CANAL CONCEPTUAL  
TEMPORARY DITCH BYPASS PLAN

DATE  
10/2020

FIGURE  
FIG 2