

## **PERMANENT EASEMENT AGREEMENT**

THIS PERMANENT EASEMENT AGREEMENT ("Agreement"), made effective as of \_\_\_\_\_, 20\_\_\_\_, between **Brighton School District No. 27J, a Colorado School District**, whose address is 18551 E. 160<sup>th</sup> Avenue, Brighton, Colorado 80601 ("Grantor"), and **METRO WASTEWATER RECLAMATION DISTRICT**, a special district and political subdivision of the State of Colorado (the "Grantee"), whose legal address is 6450 York Street, Denver, Colorado 80229 (Grantor and Grantee are each a "Party," and are referred to collectively as the "Parties").

### **WITNESSETH:**

WHEREAS, Grantor is the owner of real property located in the County of Adams, State of Colorado, more particularly described on **Exhibit A**, attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, Grantor desires to grant to the Grantee, a permanent, non-exclusive right to enter, reenter, occupy and use a portion of the Property in the location more particularly described in **Exhibit B**, attached hereto and made a part hereof (the "Easement Property"), in accordance with the provisions of this Agreement and for the Easement Purposes defined below.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION of the sum of seven thousand three hundred and sixty five dollars (\$7,365.00), the mutual promises and undertakings herein set forth and good and other valuable consideration, the receipt and sufficiency of which is acknowledged and confessed, Grantor and the Grantee agree as follows:

1. Grantor hereby sells, conveys and grants to the Grantee, its successors and assigns, the permanent, non-exclusive right to enter, reenter, occupy and use the Easement Property to construct, lay, install, inspect, monitor, maintain, repair, renew, substitute, change the size of, replace, remove, abandon in place, operate and use one or more underground sanitary sewer pipelines, force mains, manholes, electrical lines, control lines, sample lines, and all underground, surface and above ground equipment, appurtenances and facilities thereto or therein, of such type, size and capacity as necessary, desirable or required by the Grantee in its sole discretion (the "Easement Purposes"). Permissible surface and above-ground equipment, appurtenances and facilities are limited to manholes. Grantor further agrees that any third-party entity hired or contracted with the Grantee may occupy, use, own, operate or install any surface or subsurface equipment, appurtenance and facilities within the Easement Property as deemed necessary, desirable or required by the Grantee in its sole discretion upon reasonable notice to the Grantor, provided that such third-party use does not materially increase either the burden of the easement or the impact to Grantor.

2. Grantor also grants the Grantee the right of ingress and egress over and across the Property and the Easement Property to allow the Grantee access for vehicles, personnel, materials and equipment in connection with the Easement Purposes. The access rights granted to the Grantee across the Property shall include, but shall not be limited to, travel by means of roads, driveways

and parking lots if any exist; otherwise by such reasonable route or routes as shall occasion the least practical damage and inconvenience to Grantor.

3. Grantor shall neither cause nor permit the construction or placement of any structure or building, street light, power pole, yard light, mailbox, well, reservoir, trash receptacle, or sign, temporary or permanent, or any other improvement, or the planting of any tree, woody plant or nursery stock, of any kind, on any part of the Easement Property without prior written approval from the Grantee, which approval shall not be unreasonably withheld, conditioned or delayed. In making such an evaluation, the Grantee will determine whether such placement or construction unreasonably interferes with the Grantee's use of the Easement Property for the Easement Purposes. Fences existing as of the date hereof which do not impair access for vehicles, personnel and equipment through the length of the Easement Property which are disturbed or destroyed by the Grantee's exercise its rights hereunder shall be replaced by the Grantee to their original condition as nearly as may reasonably be done. The Parties hereby acknowledge any existing fences within the Easement Property are depicted in the attached **Exhibit B**. Fences existing as of the date hereof which impair access for vehicles, personnel and equipment through the length of the Easement Property shall be modified to allow passage of vehicles, personnel, materials and equipment by constructing a gate or other passage devise in the existing fence if applicable and desirable. Grantor shall not, however, construct or install new fencing that would impair access for vehicles, personnel, materials and equipment through the length of the Easement Property, or otherwise unreasonably interfere with the Grantee's use of the Easement Property for the Easement Purposes, without the written approval of the Grantee. Grantor will, at Grantor's expense, move any vehicles, equipment or other personal property stored on the Easement Property as reasonably directed by the Grantee. Any prohibited use, installation or storage located on the Easement Property, including new utility installations not conforming to Paragraph 10 hereof, shall be promptly removed by Grantor upon the request of Grantee. If not timely removed by Grantor, Grantee may remove the same at Grantor's expense without liability to the Grantee for damages, if any, arising therefrom.

4. The Grantor shall provide to the Grantee all information within its possession or control about past and currently existing environmental conditions and/or contamination on or of the Property. Such information shall include but not be limited to environmental studies, reports, samples, agreements, liens, citations, notices, letters as well as information related to remediation work that has been done, is ongoing, or is planned to occur for the Property.

5. With respect to environmental conditions, responsibility and liability in connection with the Property, the Grantee shall be responsible for any contamination or hazardous or dangerous substances, including hydrocarbons or other pollutants, which the Grantee brings into or onto the Property pursuant to this Agreement. Conversely, the Grantor shall be responsible for any contamination or hazardous or dangerous substances, including hydrocarbons or other pollutants which, as of the date of this Agreement, already exist on, in or under the Property, or which are brought into or onto the Property by Grantor.

6. The Grantee shall be responsible and liable for any and all costs, claims and other expenses incurred for or related to the installation, construction, replacement, removal, ownership, operation, repair and use of Grantee's facilities located within the Easement Property except to the

extent such costs, claims or other expenses are caused by the acts of Grantor, or its servants, contractors or agents. However, Grantor and Grantee are both relying on and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or any other limitation or defense otherwise available to Grantor or Grantee under Colorado law.

7. After the initial construction and installation of the pipeline and related facilities, if there are any subsequent construction or other operations by the Grantee which disturb the surface of the Easement Property, the Grantee will restore the general surface of the ground as nearly as may reasonably be done to the grade and condition it was in immediately prior to construction, except as necessarily modified to accommodate Grantee's facilities and uses permitted hereby. Topsoil shall be replaced and any excess earth resulting from installations by the Grantee shall be removed from the Easement Property at the sole expense of the Grantee. Asphalt, concrete and other impervious surfaces that are disturbed shall be patched and other pervious areas shall be re-seeded. For a period of one (1) year following disturbance of the surface of the Easement Property by the Grantee, the Grantee will maintain the surface elevation and quality of the soil by correcting any settling or subsidence that may occur as a result of the work done by the Grantee. The provisions of this paragraph shall only apply to Grantee's restoration obligations that may arise after completion of the initial construction and installation of the pipeline and related facilities.

8. The Grantee 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 shall neither take nor permit any action which would impair the lateral or subjacent support for any sewer lines or other equipment, facilities or appurtenances within the Easement Property. Grantor shall not materially modify the earth cover over a Grantee pipeline without advance written authorization from the Grantee and shall provide for full payment or reimbursement to the Grantee of all costs of adjusting Grantee facilities made necessary by such modification as determined by the Grantee.

9. Grantor retains the right to the undisturbed use and occupancy of the Easement and the Property insofar as such use and occupancy are subject to the restrictions of this Agreement and any applicable access agreements between the Parties and are consistent with and do not impair or unreasonably interfere with any Easement Purpose or grant herein contained.

10. Grantor may authorize other utilities such as water, storm sewer, gas, electric, and telephone, to be installed in the Easement Property, provided that they do not interfere with the Grantee's rights herein granted, that utilities crossing the Easement Property cross at approximately right angles (with appropriate spacing) and that no utilities be permitted to parallel the Grantee's facilities within ten (10) feet thereof. Except for utilities as herein authorized and for roadways, all other surface and subsurface uses of the Easement Property must be approved in writing by the Grantee before installation. Unauthorized or non-conforming utility installations may be removed by the Grantee at Grantor's expense without liability for damages, if any, arising therefrom. In the event the Grantee is forced to file an action to enforce its rights under this instrument or to recover damages for removal or installations as set forth herein, the Grantee shall be entitled to recover its reasonable attorney's fees, court costs and expert costs as part of such action.

11. If the Grantee, by written instrument, abandons or releases its rights herein granted and ceases to use the same, all right, title and interest of the Grantee 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 shall own all material and structures of the Grantee so abandoned or released, but nothing herein shall be construed as working a forfeiture or abandonment of any interest derived hereunder and not owned by the Grantee at the time of the abandonment or release of the Grantee'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 Grantee shall not constitute an abandonment of its rights under this Agreement.

12. Grantor warrants that it has full right and lawful authority to make the grant herein contained and promises and agrees to defend the Grantee in the exercise of its rights hereunder against any defect in its title to the Easement Property and Property, and against any defect in its right to make said grant. The individuals executing this Agreement on behalf of the Parties represent and warrant that they are authorized to do so.

13. The benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the Parties hereto.

14. This Agreement shall be governed by the laws of the State of Colorado, and exclusive jurisdiction for any legal action concerning the provisions hereof shall be in the District Court for the County of Adams, State of Colorado.

15. Should any one or more provisions of this Agreement be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Agreement, the intent being that the various sections and provisions hereof are severable.

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

17. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Electronic or scanned signatures shall be treated as originals.

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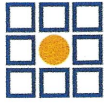
**GRANTEE:  
METRO WASTEWATER  
RECLAMATION DISTRICT**

By: \_\_\_\_\_  
District Manager

By: \_\_\_\_\_  
District General Counsel

## **Exhibit A**

Lot 1, Stuart Middle School, County of Adams, State of Colorado



**MERRICK®**

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: Y:\Survey\65319752-Metro Waste Water\02-Survey\Office Data\DWGS\Exhibits &  
Property Descriptions  
Date: May 3, 2019

**EXHIBIT B**  
**PROPERTY DESCRIPTION**

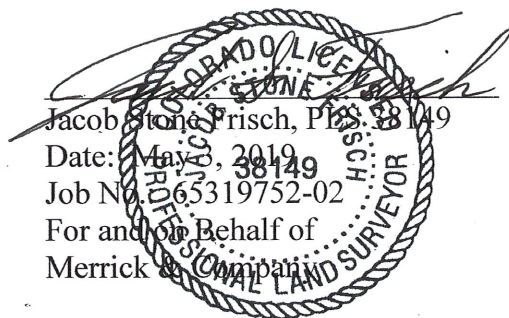
PARCEL SDI-0281  
BRIGHTON SCHOOL DISTRICT NO. 27J,  
a Colorado School District

A Permanent Sanitary Sewer Easement being a portion of Lot 1, Stuart Middle School, according to the plat thereof recorded August 31, 2009 at Reception No. 2009000064856 in the Adams County Clerk and Recorder's Office, being in a portion of the Northwest Quarter of Section 17, 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 17, whence the Center Quarter Corner of said Section 17 bears S00°16'15"W a distance of 2,657.55 feet;  
THENCE S07°38'39"W a distance of 883.22 feet to the **POINT OF BEGINNING**;

THENCE S61°24'46"E a distance of 128.76 feet;  
THENCE S00°16'15"W along the easterly line of said Lot 1 a distance of 45.44 feet;  
THENCE N61°24'46"W a distance of 222.25 feet;  
THENCE N89°30'46"E along the northerly line of said Lot 1 a distance of 82.31 feet to the **POINT OF BEGINNING**.

Containing 0.161 Acres, more or less.

  
Jacob Stone Frisch, P.L.S. 38149  
Date: May 3, 2019  
Job No. 65319752-02  
For and on Behalf of  
Merrick & Company



**POINT OF COMMENCEMENT**  
NORTH 1/4 CORNER OF SECTION 17, T2S, R66W  
FOUND #6 REBAR WITH 3-1/4" DIA. ALUM. CAP,  
STAMPED "JR ENG, 2008, PLS 30099", PROJECTING  
0.5' ABOVE THE GROUND SURFACE IN A RANGE BOX

FOUND BENT #5 REBAR, NO CAP,  
0.1' BELOW THE GROUND SURFACE

10' WIDE UTILITY EASEMENT PER RECEPTION  
NUMBER 2009000064856, DATED 08/31/2009

S89°30'46"W 1,312.02'

1,116.35'

N89°30'46"E 82.31'

NORTHERLY LINE  
OF LOT 1

**POINT OF BEGINNING**

113.36'

S61°24'46"E 128.76'

50' WIDE ACCESS EASEMENT FOR  
SINCLAIR TRANSPORTATION COMPANY  
PER RECEPTION NUMBER 2008000081179,  
DATED 10/10/2008

CHAINLINK FENCE

**BRIGHTON SCHOOL  
DISTRICT NO. 27J  
AREA=0.161 ACRES ±**

30' WIDE EXCLUSIVE UTILITY EASEMENT FOR THE  
COMMERCE CITY NORTHERN INFRASTRUCTURE GENERAL  
IMPROVEMENT DISTRICT PER RECEPTION NUMBER  
C0612526, BOOK 5952 PAGE 99, DATED 11/12/1999

NW1/4 SECTION 17,  
T2S, R66W

EASTERLY LINE  
OF LOT 1

S00°16'15"W 45.44'

BASIS OF BEARINGS: S00°16'15"W 2,657.55'

1,675.12'

CENTER 1/4 OF SECTION 17, T2S, R66W  
FOUND #6 REBAR WITH 3-1/4" DIA. ALUM CAP,  
STAMPED "JOHNSTON ENG ASSOC, 1999, PLS  
25379", FLUSH WITH THE GROUND SURFACE

0 100 200 400  
1 inch = 200 ft.

Jacob Stone Frisch, PLS 38149  
Date: May 3, 2019  
Job No: 65319752-02  
For and on Behalf of  
Merrick & Company

**NOTE**

This exhibit does not represent a monumented survey. It is intended only to depict the attached description.

Dwg. ELZ  
Ckd. JSF  
App. JSF



METRO WASTEWATER  
RECLAMATION DISTRICT

**Exhibit B**

Parcel SDI-0281

Second Creek Interceptor

DATE:  
05/03/2019

DWG. NO.  
SDI-0281

SH 2 OF 2