

NON-EXCLUSIVE EASEMENT AGREEMENT

THIS NON-EXCLUSIVE EASEMENT AGREEMENT (the "Agreement") is dated this ____ day of _____, 2019, by and between **Farmers Reservoir and Irrigation Company** ("Grantor"), and Adams County Board of Commissioners ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of that certain right of way more particularly described or depicted on **Exhibit A** attached hereto (the "Right of Way") for and all canal improvements and appurtenances upon the right of way (the "Canal");

WHEREAS, Grantee desires to obtain an easement from Grantor (the "Easement") for the purposes and intended uses as set forth in **Exhibit B** attached hereto ("Allowed Uses") and in the location designated on the drawings set forth in Exhibit A; and

WHEREAS, Grantor is willing to grant the Easement upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the sum of Fifteen thousand dollars (\$15,000.00), and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and as additional consideration the obligations and agreements of Grantee to be performed hereunder, Grantor does hereby grant, sell, bargain and convey unto Grantee, its successors and assigns, a non-exclusive easement over and/or across and/or under the Right of Way for the Allowed Uses.

1. **Permitted Structures.** Grantee shall not construct, modify or remove any improvements in the Right of Way except for those improvements that are depicted and described by the plans and specifications attached hereto as **Exhibit C** (the "Permitted Structures"). If no Exhibit C is attached to this Agreement, no structures or improvements are permitted on the easement.

2. **Canal Use; Interference; Damages.** In constructing the Permitted Structures and thereafter in maintaining, replacing, operating and removing the Permitted Structures, Grantee shall do so in such manner as not to damage the Canal, particularly the embankments and access thereto, and so as not to interfere with the flow of water in the Canal or the management or maintenance of the Canal, except as agreed pursuant to this Section 2. Any damage to the Canal, its embankments, and any appurtenance of the Grantor within the Right of Way, including fences, roads or other improvements, shall be promptly repaired by Grantee at its sole cost to the satisfaction of Grantor.

In the event that any construction, maintenance, modification, operation or removal of the Permitted Structures requires that the operation of the Canal be restricted or the flow of water reduced or curtailed for a period of time, and in the event that the Grantor shall in its sole discretion agree to such reduction or curtailment of the use of the Canal for a period of time, the specific period of time shall be agreed to in advance by the Grantor and Grantee and shall be set forth and separately signed by the parties in the form set forth in **Exhibit D** attached hereto ("Canal Use").



Reduction Form”). No officer, director, employee or agent of the Grantor shall have the authority to make an oral agreement or representation which binds the Grantor to a reduction or curtailment of the use of the Canal by the Grantor. Only the president of the Grantor, or such corporate official as is designated in writing by the Board of Directors of the Grantor, shall have any authority to execute the Canal Use Reduction Form. If no Exhibit D is attached to this Agreement, Grantor shall have no obligation to reduce or curtail the flow of water in the canal for the benefit of Grantee.

Grantor may cooperate with the Grantee in managing or maintaining the flow of water in the Canal to assist the Grantee in accessing, constructing, maintaining, replacing, operating or removing the Permitted Structures, but such cooperation is within the sole discretion of the Grantor, and the Grantor shall not at any time be required to stop or reduce the flow or quality of water in the Canal or in any way to modify its operations for the benefit of the Grantee except as set forth in a fully executed Canal Use Reduction Form. In no event shall the Grantor be liable for any damages that may occur to the Permitted Structures or to the interests of the Grantee related to the Permitted Structures arising from the use or operation of the Canal and Right of Way by the Grantor, absent the intentional act of the Grantor to the Permitted Structures.

In the event that Grantee's use of the Right of Way interferes with the flow of water in the Canal or the management or maintenance of the Canal, and such interference is not agreed to pursuant to a Canal Use Reduction Form or such interference extends beyond the time agreed to in the Canal Use Reduction Form, Grantee shall be liable for all damages caused by such interference. Grantor shall use its best efforts to mitigate such damages, but Grantee acknowledges that damages resulting from Grantor's inability to deliver water to its shareholders and others entitled to water through Grantor's facilities at a time when water is legally and physically available may include, but are not limited to, the cost of acquiring and delivering a similar quantity of water if available, and possible damage to or loss of crops if replacement water cannot be delivered in a timely manner.

3. **Inspection; Notice Prior to Commencement of Construction.** Grantor shall have the right to inspect the Right of Way prior to the construction of any permitted structures under this Agreement. Grantee shall provide Grantor with no less than 24 hours' notice prior to the commencement of construction of the Permitted Structures and shall provide Grantor with access to the Right of Way for the purposes of inspection prior to construction. Grantee shall also permit Grantor regular access to the Right of Way during the construction of the Permitted Structures. The frequency, times and dates of such inspections shall be determined by Grantor, in its sole discretion. In the event Grantee fails to provide the proper notice or access as required by this paragraph, Grantee agrees that, at Grantor's sole discretion, Grantee will promptly uncover any buried Permitted Structure at Grantee's expense to allow inspection by Grantor, or to pay liquidated damages in the amount of \$5,000 per Permitted Structure that is not uncovered. For the purposes of this Section, if the Permitted Structures include multiple pipelines, each individual pipeline shall be considered a "Permitted Structure."

4. **Maintenance and Repair.** Grantee agrees that it will at all times maintain the Permitted Structures and will, at Grantee's sole expense, repair all breaks, leaks or damages to the Permitted Structures or to the Canal and Right of Way arising from the construction, maintenance, replacement, operation, or removal of the Permitted Structures or arising from Grantee's, or its



employees, agents, contractors, subcontractors, assigns, lessees, licensees and agents (collectively, and together with Grantee, "Grantee's Responsible Parties") use of and access to the Right of Way. Further, if damage to the Canal or Right of Way of the Grantor is sustained arising from the Permitted Structures or the access or use of the Right of Way by the Grantee, then Grantee will, with all due diligence, repair such damage or replace such property of Grantor to the same condition as it was prior to such damage. Further, Grantee agrees to pay any and all monetary damages arising from the Permitted Structures or the Grantor's access and use of the Right of Way that are incurred by Grantor and its stockholders or water users.

5. **Seepage.** Grantee acknowledges that the Canal is an earthen canal, that the operation of the Canal results in subsurface seepage of water from the Canal to the surrounding land, and that the Canal's historic operation has resulted in prescriptive rights for the continuation of such seepage. Grantee agrees to indemnify and hold Grantor harmless from any damage to Grantee's Property or the Permitted Structures or incurred from the loss of use of the Easement caused by such seepage from the Canal.

6. **Environmental.** Grantee shall protect the Right of Way from damage caused in whole or in part by acts or omissions of Grantee's Responsible Parties. Grantee shall clean, remediate, cure, repair and correct any such damage caused by Grantee's Responsible Parties to any elements of the Right of Way and shall remediate any environmental condition on the Right of Way in full compliance with any federal, State or local law, regulation or order caused by Hazardous Materials used, stored, dumped, spilled, released or deposited by Grantee's Responsible Parties on the Right of Way. "**Hazardous Materials**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Colorado, or the United States Government including, without limitation, any material or substance that is (i) defined as a "hazardous substance" under appropriate state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Act (33 U.S.C. § 1321); (v) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. § 6903); (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601); or (vii) defined as a "regulated substance" pursuant to Subchapter IX Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. § 6991).

7. **Third Party Claims.** To the extent permitted by law, Grantee agrees to protect Grantor and save and hold it harmless from any and all third party claims and damages that the Permitted Structures and their operation, construction, maintenance and removal may directly or indirectly cause.

8. **Release.** Grantee hereby releases Grantor, its successors, assigns, employees, agents and stockholders from any and all claims and damages of whatsoever character to the Permitted Structures located on or across the Canal and Right of Way arising out of either the operation or maintenance of the Canal.

9. **Assumption of Risk.** Grantee's Responsible Parties shall enter onto the Right of Way at their own risk and they further ASSUME ALL RISKS related to the same. Grantor shall have no



liability to Grantee's Responsible Parties for any losses related to or arising from entry onto the Right of Way, and Grantee hereby irrevocably and forever releases and indemnifies Grantor from any losses relating thereto, except to the extent the same were caused by the gross negligence or willful misconduct of Grantor.

10. **Workmanlike Manner.** In all actions undertaken on property belonging to Grantor by any of Grantee's Responsible Parties, all work shall be completed in a prompt, good and workmanlike manner, free of all liens (including mechanic's liens) and encumbrances on the Right of Way.

11. **Compliance with Laws.** Grantee shall comply with all applicable federal, state and local laws, rules and ordinances in connection with its use of the Right of Way, shall obtain all permits and approvals required by applicable governmental or quasi-governmental entities in connection with Grantee's use of the Right of Way as permitted to the extent permitted by law hereunder, and shall take all affirmative or remedial actions required by such governmental entities, indemnifying Grantor from all expenses and costs which it may incur in connection therewith.

12. **Right to Terminate.** In the event of default in the performance of any of the obligations set forth herein by Grantee that Grantee does not cure within thirty (30) days after written notice of default from Grantor, or in the case of a matter that would reasonably take more than thirty days to remedy, if Grantee shall fail to undertake substantial action to cure the default within thirty (30) days after written notice of default, Grantor, in addition to any other remedies that may be available to the Grantor in law or equity shall have the right to terminate this Agreement.

13. **Covenant Running with the Land.** Unless otherwise agreed in writing by the Parties, the rights and obligations of the Grantee set forth herein shall be deemed to be a covenant running with the land owned by the Grantee that is benefited by this Agreement.

14. **Miscellaneous.**

a. **No Representation.** The grant of the Easement by Grantor under this Agreement is without any representation or warranty of title of any nature. Grantor has made no representation of the quality of its title, and in the event that it shall at any time be determined that the Easement granted hereby is beyond the right or authority of the Grantor, the rights and interests hereby Granted shall be limited to such rights and interests as are within the right and authority of the Grantor to grant as of the date of this Agreement.

b. **Non-Exclusivity.** The Easement is further subject to any previously or subsequently granted rights of way or use of the Right of Way which arise by or through Grantor or which exist by right of use or claim independent of Grantor.

c. **Notice.** Any notice required or allowed to be given under this Agreement shall be given by properly addressed email and by certified mail posted on the same day as email notice is given. Notice is effective as of the time the email is sent. Notice is effective if sent to the persons and addresses set forth in this paragraph, unless notice (as described in this paragraph) is given to specify a different person or address.



All notices to Grantee shall be sent to:

Adams County, Colorado
Attn: Andy Koehler
4430 South Adams County Parkway
Brighton, CO 80601
Email: kbeach@adcogov.org

With a copy to:

Adams County, Colorado
Attn: County Attorney's Office
4430 South Adams County Parkway
Brighton, CO 80601
Email: countyattorney@adcogov.org

All notices to Grantor shall be sent to:

Farmers Reservoir and Irrigation Company
Attn: Scott Edgar, General Manager
80 South 27th Avenue
Brighton, CO 80601
Email: scott@farmersres.com

With a copy to:

Joseph B. Dischinger, Esq.
Fairfield and Woods, P.C.
1801 California Street, Suite 2600
Denver, Colorado 80202-2645
Email: jdischinger@fwlaw.com

d. Assignment. Any assignment by Grantee shall be subject to the review and prior written approval of the Grantor. Grantee's rights hereunder may be sold, assigned or leased, in whole or part, by Grantee to any Affiliate, subsidiary or parent-company of Grantee with the prior written consent of Grantor, which shall not be unreasonably withheld or delayed. Grantee's rights hereunder may not be sold, assigned or leased, in whole or in part, by Grantee to any non-affiliated third party without the prior written consent of Grantor, which consent shall be in Grantor's sole discretion. Grantee shall not permit any non-affiliated third party or Utility Company to use the Permitted Structures or any easement under this Agreement without the prior written consent of Grantor, which consent shall be in Grantor's sole discretion. Grantor's consent to any assignment, sale or lease of Grantee's rights hereunder, whether to an Affiliate, non-affiliated third party or Utility Company, shall be conditioned upon payment to Grantor of additional consideration by the purchaser, lessee or assignee prior to such assignment, sale or lease. For purposes of this



Agreement, "Affiliate" shall mean any entity which shares a common owner or operator with Grantee or any entity which controls, is controlled by or shares common control with Grantee. For purposes of this Agreement, "Utility Company" shall be defined as a privately, publicly, or cooperatively owned line, facility or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public.

e. **Applicable Law.** This Agreement shall be deemed to have been executed in the State of Colorado regardless of the actual location of execution, shall be deemed to be exercised in the State of Colorado and shall be interpreted in accord with the laws of the State of Colorado. Jurisdiction for any claim or action between the parties that may arise under this Agreement shall be in the County of Adams, Colorado.

f. **Retained Rights.** All rights and interests of the Grantor that are not expressly granted to Grantee pursuant to this Agreement shall remain wholly vested in the Grantor.

g. **Enforceability.** Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision herein and any present or future statute, law, ordinance or regulation contrary to which the Parties have no legal right to contract, the latter shall prevail, but the provision of this Agreement affected shall be limited only to the extent necessary to bring it within the requirements of such statute, law, ordinance or regulation.

h. **No Waiver.** No term or condition of this Agreement will be deemed to have been waived or amended unless expressed in writing, and the waiver of any condition or the breach of any term will not be a waiver of any subsequent breach of the same or any other term or condition.

i. **No Amendments.** This Agreement may not be amended or terminated except by a written instrument signed by the Grantor and the Grantee or as otherwise expressly set forth herein.

j. **Entire Agreement.** This Agreement, together with the exhibits attached hereto, contains the entire agreement of the Parties hereto with respect to the subject matter hereof and no prior written or oral agreement shall have any force or effect or be binding upon the Parties hereto. This Agreement shall be binding upon, and inure to the benefit of, the Parties, their heirs, executors, personal representatives, nominees, successors or permitted assigns.

k. **Prevailing Party.** In the event that either Party commences suit to recover damages arising from a breach of this Agreement or otherwise to seek enforcement hereof, the prevailing party shall be entitled to an award of reasonable attorneys' fees, together with court costs and litigation expenses reasonably incurred and actually paid.

l. **Headings.** Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference. Such titles and captions in no way define, limit, extend or describe the scope of this Agreement nor the intent of any provision hereof.



m. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a flourish.

EXECUTED in duplicate the day and year first written above.

GRANTOR:

**FARMERS RESERVOIR AND
IRRIGATION COMPANY**

By: Scott Edgar, General Manager

ATTEST:

Molly Lockhart, Assistant Corporate Secretary

STATE OF COLORADO }
 } ss.
COUNTY OF ADAMS }

The foregoing instrument was acknowledged before me this ____ day of _____, 2019,
by Scott Edgar as General Manager and Molly Lockhart as Assistant Corporate Secretary of Farmers
Reservoir and Irrigation Company.

Witness my hand and notarial seal.

My commission expires _____.

[SEAL]

Notary Public



GRANTEE:


ADAMS COUNTY BOARD OF
COMMISSIONERS

By: Steven J. O'Dorisio, Chair

ATTEST:

Josh Zygielbaum, Clerk and Recorder

STATE OF COLORADO }
 }ss.
COUNTY OF ADAMS }

APPROVED AS TO FORM
COUNTY ATTORNEY


The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by
_____ as _____ of _____.

Witness my hand and notarial seal.

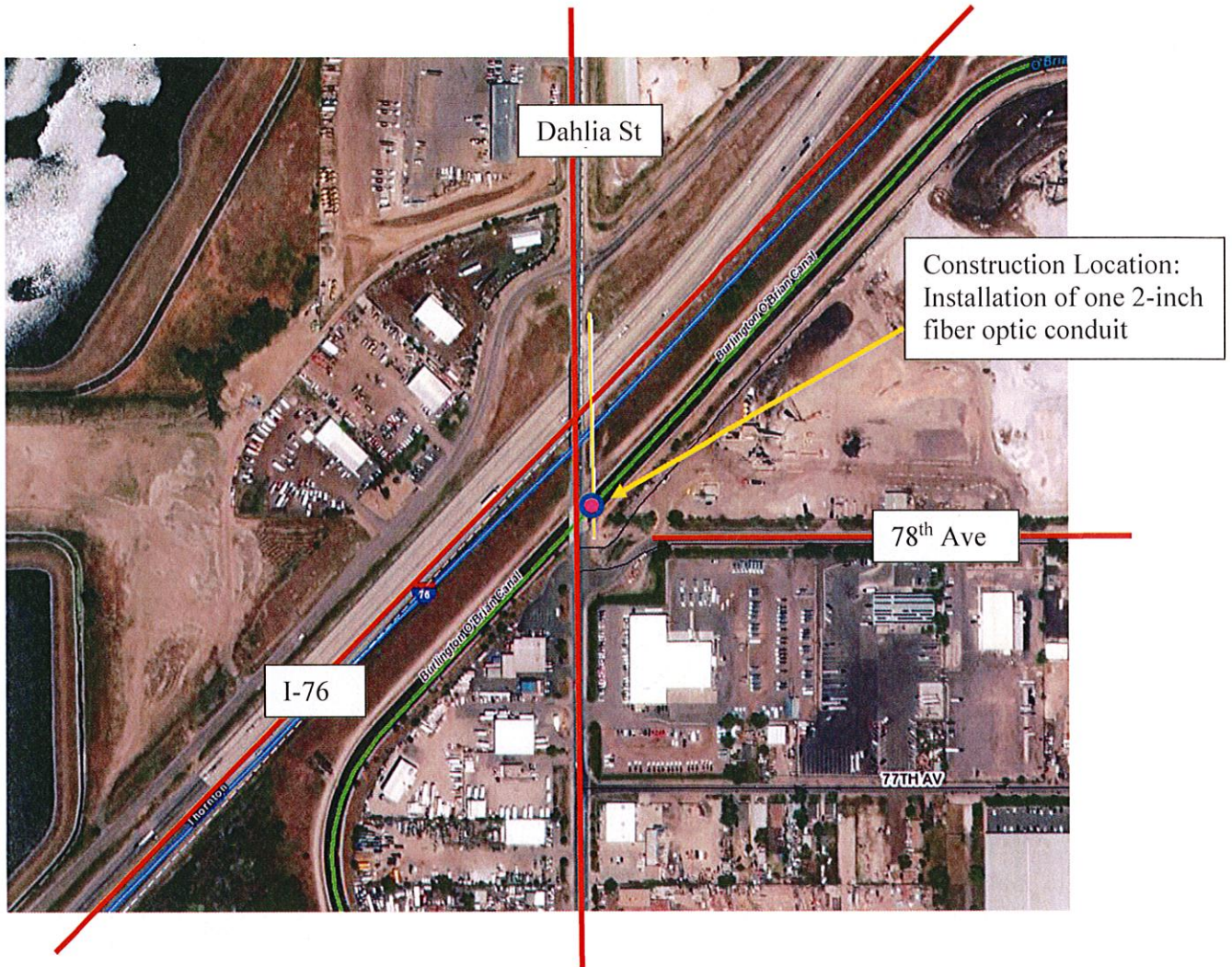
My commission expires _____.

Notary Public



EXHIBIT A

Legal Description or Map Depiction of Right of Way and Depiction of Easement
Township 2 South, Range 68 West, Section 31, in Adams County, Colorado.
Burlington/O'Brian Canal



[Handwritten signature]

Exhibit B

Description of Permitted Uses

Installation of one 2-inch fiber optic conduit

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a flourish.

EXHIBIT C

Special Conditions:

1. Keep the Inadvertent Fluid Release Plan on site during construction. Notify FRICO immediately if a frac out occurs during the HDD operation regardless if it happens on or off FRICO's ROW.
2. Provide a closed utility locate ticket to FRICO representatives at the pre-construction meeting to verify that all existing utilities have been located.
3. Immediately after construction is complete, install marker posts adjacent to FRICO's property on both sides of the canal that identify the crossing and its contents (Per 5.2 of the Design Manual).
4. Install silt fencing between the entry pit and FRICO property prior to drilling and extra fence needs to be on site if needed as specified in section 5.4.2.3 of the Design Manual.
5. Radiographically or ultrasonically test all pipe joints within FRICO's ROW and provide results to FRICO. Contractor must submit a testing schedule to FRICO for approval prior to beginning HDD operations.
6. Inform FRICO 48-hours' in advance of the pipeline hydrostatic pressure testing so that FRICO has the opportunity to observe the test. Provide a copy of the test results with the as-built information (Per 5.3.4 of the Design Manual).
7. Provide As-Built Drawings with the actual profile and alignment, including x-y-z coordinates at all grade changes and at intervals not to exceed 25 feet to FRICO at completion of the project.
8. A preconstruction meeting should be scheduled at least 72 hours prior to the commencement of construction activities. Written notification should be provided at least 48 hours prior to beginning construction.



Approved Plans and Drawings for Construction of Permitted Structures

(Pages 1-5)

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a flourish.

CANAL CROSSING

DAHLIA STREET
COMMERCE CITY, COLORADO

CONTACT INFORMATION:

ADAMS COUNTY
TRANSPORTATION DEPARTMENT PH: 720.523.6821

UTILITY NOTIFICATION CENTER OF COLORADO
LOCATE REQUEST LINE PH: 811 OR 1.800.922.1987

FARMERS RESERVOIR AND IRRIGATION COMPANY
SCOTT EDGAR, GENERAL MANAGER
FARMERS RESERVOIR AND IRRIGATION COMPANY (FRICO)
80 SOUTH 27TH AVENUE
BRIGHTON CO 80601
(303) 659-7373

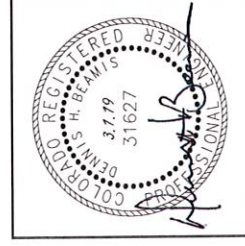
COMMUNICATION CONSTRUCTION AND ENGINEERING
OSP ENGINEER: MATT HUDSON
PROJECT MANAGER: GREG PRIMAVERA
FIELD SUPERVISOR: TREVOR DYKES

ENGINEER
PROFESSIONAL ENGINEER: DENNIS BEAMIS PH: 701.516.7548

FRICO APPROVAL BLOCK

THE SIGNATURE OF THE GENERAL MANAGER OF FRICO IS FOR THE PURPOSES OF ACKNOWLEDGING ACCEPTANCE OF THE DESIGN OF THE PERMITTED STRUCTURES ONLY. THE SIGNATURE SHALL NOT IN ANY WAY CHANGE THE RIGHTS AND OBLIGATIONS OF EITHER PARTY WITH RESPECT TO THE ADAMS COUNTY CONDUIT INSTALLATION TO WHICH THESE DESIGNS ARE ATTACHED. FRICO IS EXPRESSLY RELYING UPON THE DESIGN STANDARDS AND PERFORMANCE STANDARDS SET FORTH IN THESE DRAWINGS AS PRESENTED BY COMMUNICATION CONSTRUCTION AND ENGINEERING, INC. AND BY COMMUNICATION CONSTRUCTION AND ENGINEERING, INC. SHALL BE SOLELY RESPONSIBLE THAT, AS CONSTRUCTED, THE PERMITTED STRUCTURES SHALL PERFORM AS SPECIFIED HEREIN.

GENERAL MANAGER, THE FARMERS RESERVOIR AND IRRIGATION COMPANY



PE Stamp



REVISIONS	
DATE	REASON
10/24/18	APPLICATION SUBMITTAL
2/28/19	REVIEW COMMENTS

CANAL CROSSING
DAHLIA STREET
COMMERCE CITY, COLORADO

SHEET TYPE

TITLE SHEET

DRAWN BY: M. HUDSON
DATE: February 28, 2019
SHEET # 1
OUT OF 5



**COMMUNICATION
CONSTRUCTION
& ENGINEERING**
COMMUNICATION CONSTRUCTION
AND ENGINEERING
2901 E. 14TH AVE. UNIT 1
DENVER, CO 80229



REVISIONS
DATE REASON
10/24/18 APPLICATION SUBMITTAL
2/28/19 REVIEW COMMENTS

CANAL CROSSING
DAHLIA STREET
COMMERCE CITY, COLORADO

SHEET TYPE

PROJECT SHEET

SHEET #

4

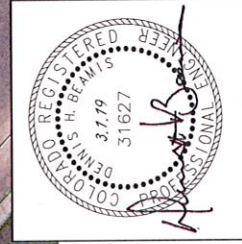
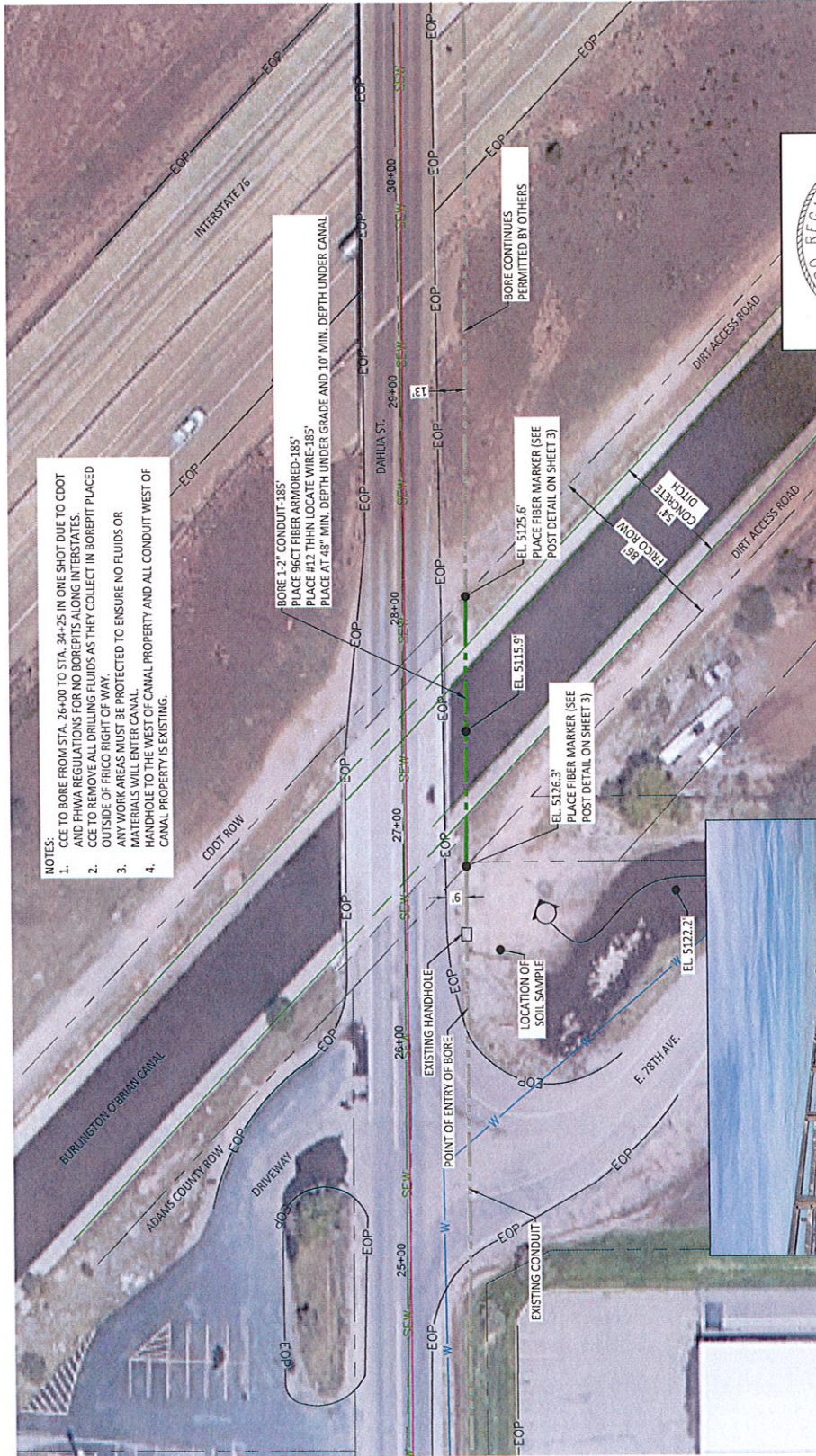
DRAWN BY:

M. HUDSON

DATE:

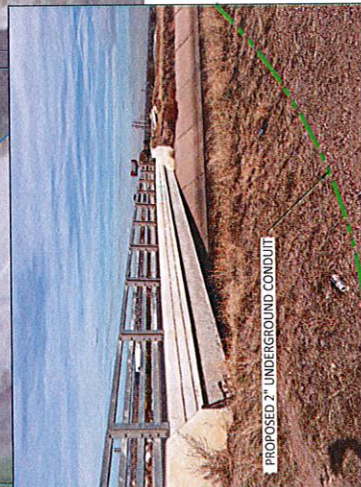
OUT OF 5

February 28, 2019



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[Handwritten signature]



- NOTES:
1. CCE TO BORE FROM STA. 26+00 TO STA. 34+25 IN ONE SHOT DUE TO CDOT AND FHWA REGULATIONS FOR NO BOREPITS ALONG INTERSTATES.
 2. CCE TO REMOVE ALL DRILLING FLUIDS AS THEY COLLECT IN BOREPIT PLACED OUTSIDE OF FRICO RIGHT OF WAY.
 3. ANY WORK AREAS MUST BE PROTECTED TO ENSURE NO FLUIDS OR MATERIALS WILL ENTER CANAL.
 4. HANDHOLE TO THE WEST OF CANAL PROPERTY AND ALL CONDUIT WEST OF CANAL PROPERTY IS EXISTING.

BORE 1-2" CONDUIT-185'
PLACE 96CT FIBER ARMORED-185'
PLACE #12 THIN LOCATE WIRE-185'
PLACE AT 48" MIN. DEPTH UNDER GRADE AND 10' MIN. DEPTH UNDER CANAL

BORE CONTINUES
PERMITTED BY OTHERS

EL. 5125.6'
PLACE FIBER MARKER (SEE
POST DETAIL ON SHEET 3)

EL. 5115.9'

EL. 5126.3'
PLACE FIBER MARKER (SEE
POST DETAIL ON SHEET 3)

EL. 5122.2'

LOCATION OF
SOIL SAMPLE

EXISTING HANDHOLE

POINT OF ENTRY OF BORE

EXISTING CONDUIT

ADAMS COUNTY ROW

DRIVEWAY

CDOT ROW

INTERSTATE 76

DAHLIA ST.

DIRT ACCESS ROAD

FRICO ROW

CONCRETE DITCH

DIRT ACCESS ROAD

BURNETT CREEK BRANCH CANAL

E. 78TH AVE.



**COMMUNICATION
CONSTRUCTION
& ENGINEERING**
COMMUNICATION CONSTRUCTION
& ENGINEERING
2501 E. 4TH AVE. UNIT 1
DENVER, CO 80229



REVISIONS

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CANAL CROSSING

DAHLIA STREET
COMMERCE CITY, COLORADO



SHEET TYPE

PROJECT SHEET

DRAWN BY:
M. HUDSON

DATE:
February 28, 2019

PE Stamp

