

RESOLUTION NO. R-021- 136

THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO

RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF ENGLEWOOD, COLORADO (THE “CITY”) AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO, (THE “COUNTY”), REGARDING THE ENGLEWOOD CITY DITCH RELOCATION PROJECT, ASSOCIATED WITH THE WIDENING AND RECONSTRUCTION OF US 85, (HIGHLANDS RANCH PARKWAY TO DAD CLARK GULCH), DOUGLAS COUNTY PROJECT CI 2011-025.

WHEREAS, the Board of County Commissioners of the County of Douglas (the “County”) and the **City of Englewood**, desire to enter into an intergovernmental agreement regarding the Englewood City Ditch Relocation Project associated the widening and reconstruction of US 85 from Highlands Ranch Parkway to Dad Clark Gulch; and

WHEREAS, the County is willing to enter into such an agreement with the **City of Englewood** in accordance with the terms and conditions set forth in the intergovernmental agreement attached hereto; and

WHEREAS, governmental entities are authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and section 29-1-203, C.R.S.; now, therefore,

BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO, that the intergovernmental agreement between the Board of County Commissioners of the County of Douglas and the **City of Englewood**, a copy of which is attached hereto and incorporated herein, is hereby approved, and the Chair of the Board is authorized to execute the agreement on behalf of Douglas County.

PASSED AND ADOPTED this 14th day of December, **2021**, in Castle Rock, Douglas County, Colorado.

THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO

BY:

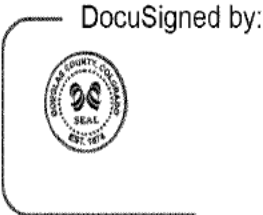
DocuSigned by:
Lora L. Thomas
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LORA L. THOMAS, Chair

ATTEST:

DocuSigned by:
Kristin Randlett
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KRISTIN RANDETT, Clerk to the Board



**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ENGLEWOOD,
COLORADO, AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY
OF DOUGLAS REGARDING THE ENGLEWOOD CITY DITCH RELOCATION
PROJECT ASSOCIATED WITH THE WIDENING AND RECONSTRUCTION OF
US 85 (HIGHLANDS RANCH PARKWAY TO DAD CLARK GULCH),
DOUGLAS COUNTY PROJECT NUMBER CI 2011-025**

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, **2021**, by and between the City of Englewood, Colorado, (the "City"), and the Board of County Commissioners of Douglas County, Colorado (the "County"), hereinafter collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the Parties are legally empowered under Section 29-1-201, et seq., C.R.S. to enter into this Agreement; and

WHEREAS, the County and the City desire to cooperate in advancing the design and construction associated with relocating portions of one of Englewood's raw water supply pipelines, (herein referred to as "City Ditch"), to minimize existing and future conflicts with City Ditch and the proposed US 85 Widening and Reconstruction Project, specifically concerning two (2) segments generally located north of Blakeland Drive and north of Dad Clark Gulch, (located about 1,200-feet north of County Line Road); and

WHEREAS, the two segments of City Ditch need to be relocated as part of an early construction package known as "Englewood City Ditch Relocation Project" hereinafter referred to as the "Project" and the Project shall be constructed in accordance with the final construction contract documents (plans and specifications) approved by the Parties, which is incorporated herein by this reference; and

WHEREAS, The City is contractually obligated to provide contract users raw water through City Ditch beginning April 1, 2022; and

WHEREAS, the Parties agree to advance the Project in exchange for mutual commitments described herein; and

WHEREAS, the County is responsible for managing all aspects of the Project, including providing project oversight during design and construction; and

WHEREAS, the City is responsible for assisting the County with review and approval of the final design (plans and specifications) and assisting the County with review, approval, and final acceptance of construction of the Project; and

WHEREAS, the County is responsible for funding all aspects of the Project, including but not limited to the design, right-of-way acquisition, applicable permits, and construction; and

WHEREAS, the County recently obtained a temporary construction license agreement from the U.S. Army Corps of Engineers (USACE) to relocate the portion of the City Ditch into a Department of the Army Easement for Pipeline Right-of-Way (No. DACW45-2-21-6030) that USACE is granting to the City as shown in **Exhibit A**; and

WHEREAS, by separate agreement, the City is responsible for accepting the easement granted by the USACE to accommodate the proposed new alignment that City staff selected for a segment of City Ditch identified as Bid Schedule A (South), which is partially located west of US highway 85 (US 85) and south of C-470 as shown in **Exhibit A**; and

WHEREAS, by separate agreement, the City will retain rights of the new easement being granted to the City by USACE as described in **Exhibit A**; and the easement is for relocation, installation, operation, maintenance and repair of the City Ditch; and

WHEREAS, the Parties responsibilities are identified below in **Section 1** and **2**.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties hereto agree as follows:

1. City Responsibilities. The City agrees to accept the proposed easement from the USACE as shown in **Exhibit A** which is needed for this relocation project. The proposed easement was recently approved by USACE as well as by the Colorado Fish & Wildlife (CPW) which leases a portion of the USACE's property where the relocation of City Ditch is to occur as part of the Bid Schedule A (South) of the County's Bid Documents. Additionally, the City has recently completed its review of the final Bid Documents; and the County and its consultant (HDR) have incorporated all comments and changes requested by the City representatives, including comments from the City's Utilities Department.

The City agrees to assist the County throughout all phases of construction of the Project, which includes but is not limited to reviewing contractor material submittals and requests for information (RFIs) regarding City criteria; and the City will attend weekly contractor coordination meetings, provide independent inspections by the City as required for City approval of the work; and the City will participate in the final walkthrough prior to Project acceptance by the Parties. If defective work is identified by the City, it shall be brought to the County's attention immediately for corrective measures to occur expeditiously to minimize delays to the Project or County's contractor. The City agrees to provide support staff for this Project without seeking reimbursement from the County or its assigns unless additional City staff time is required due to a contractor construction claim. Any reimbursement requested by the City shall be reasonable and mutually agreed to by the Parties.

If the County elects to unilaterally increase the Project cost and its Project budget, it may do so; provided it does not require a contribution from the City. Any direct financial contribution from the City for this Project requires approval by Parties and executing an amendment to this Agreement.

2. County Responsibilities. The County shall be responsible for managing all phases of the Project. Except as expressly provided in **Section 1**, the County shall be responsible for all Project costs, except changes to the scope of work or delay caused by the City unless mutually agreed to by the Parties. Any other provision of this Agreement notwithstanding and pursuant to Section 29-1-110, C.R.S., the amount of funds appropriated for this Agreement is Two Million Dollars (\$2,000,000.00) for fiscal year 2021. In no event shall the County be liable for payment under this Agreement for any amount in excess thereof, except for changes to the scope of work or delay caused by the County, or as may be required under any third party agreements. The County is not under obligation to make any future apportionment or allocation and any potential expenditure for this Agreement outside the current fiscal year is subject to future annual appropriation of funds for any such proposed expenditure.

The County is responsible for completing the Project in accordance with final contract documents (plans and specifications) approved by both Parties and Stamped by Professional Engineer Registered in the State of Colorado. The County and its assigns will be made aware and are required to follow the terms of the City's proposed Department of the Army Easement for Pipeline Right-of-Way (No. DACW45-2-21-6030), Chatfield Lake Project, Colorado as well as the terms of County's temporary Construction License Agreement with the USACE; and if there is a discrepancy then the most stringent requirements will be followed. The County agrees to Bid this project, provide construction management, material testing and inspections during construction. As part of the construction inspection process, the Parties agree to utilize a detailed video log of the various phases of construction. The County agrees to require the contractor to provide a one-year warranty beginning after written notice of final acceptance has been given to the contractor by the Parties.

3. Time of Performance. Upon execution of this Agreement, the County shall diligently pursue award of the construction contract. Currently, the County anticipates awarding a construction contract in **February 2022** and anticipates the construction will be substantially completed before **June 30, 2022**. The City is contractually obligated to provide its contract users raw water through City Ditch between **April 1** and **October 31**. Any construction during this period that results in a disruption of service must be limited to 48 hours or less, unless prior approval is provided by the City.

4. Remedies. The Parties hereto acknowledge and agree that each Party may exercise all rights and remedies in law or in equity, by a decree in specific performance, or such other legal or equitable relief as may be available. In the event that the construction contract is delayed and does not commence before **December 30, 2022** then the County may terminate this Agreement, unless an extension is agreed to in writing by both Parties prior to **December 15, 2022**; and this Section shall survive the termination of this Agreement.

5. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other party. Such notice shall be deemed to have been given when deposited in the United States mail.

City of Englewood: City of Englewood Utilities
Attn: Steve Simon, Public Works Utilities Director
1000 Englewood Parkway
Englewood, Colorado 80110
SSimon@englewoodco.gov

Douglas County: Douglas County
Attn: Director of Engineering Services
100 Third Street
Castle Rock, Colorado 80104

With electronic copy sent to: attorney@douglas.co.us

6. Appropriation. Pursuant to C.R.S. § 29-1-110, the financial obligations of the Town and the County contained herein which are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

7. No Waiver of Governmental Immunity Act. The Parties hereto understand and agree that the Parties, their Commissioners, Councilmembers, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the County.

8. Additional Documents. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Agreement.

9. Colorado Law. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado, and the Parties waive any right to remove any action to any other court, whether state or federal.

10. Separate Entities. The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.

11. No Third-Party Beneficiaries. The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. Any beneficiary of the terms and conditions of this Agreement are not intended beneficiaries but are incidental beneficiaries only.

12. Severability. It is understood and agreed by the Parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and

the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

13. Recitals. The Recitals to this Agreement are incorporated herein by this reference.

14. Entirety. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties hereof and constitutes the entire agreement between the Parties concerning the subject matter hereof.

Remainder of page left blank.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above.

CITY OF ENGLEWOOD, COLORADO

Othoniel Sierra, Mayor

ATTEST:

Stephanie Carlile, City Clerk

APPROVED AS TO CONTENT:

Steve Simon, Public Works Utilities Director

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BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY

_____, Chair

ATTEST:

APPROVED AS TO CONTENT:

Kristin Randlett,
Clerk to the Board

Douglas J. DeBord,
County Manager

APPROVED AS TO FORM:

APPROVED AS TO FISCAL CONTENT:

Chris Pratt,
Senior Assistant County Attorney

Andrew Copland,
Director of Finance

Exhibit A

No. DACW45-2-21-6030

CHATFIELD LAKE PROJECT, COLORADO

DEPARTMENT OF THE ARMY

EASEMENT FOR PIPELINE RIGHT-OF-WAY

LOCATED ON

CHATFIELD LAKE PROJECT

DOUGLAS COUNTY, COLORADO

THE SECRETARY OF THE ARMY under and by virtue of the authority vested in the Secretary by Title 10 United States Code, Section 2668, having found that the granting of this easement will not be against the public interest, hereby grants to, the **City of Englewood**, with its principal office located at, 1000 Englewood Parkway, Englewood, CO 80110, hereinafter referred to as the grantee, an easement for **the relocation, installation, operation, maintenance and repair of the City of Englewood's city ditch raw water supply pipeline**, hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in **Exhibits "A" & "B"**, hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

THIS EASEMENT is granted subject to the following conditions.

1. TERM

This easement is hereby granted for a term of **Twenty-Five (25)** years beginning **June 1st, 2021**, and ending **May 31st, 2046**.

2. CONSIDERATION

The consideration for this easement shall be the construction, operation and maintenance of the facilities for the benefit of the general public in accordance with the terms and conditions hereinafter set forth.

3. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to **City of Englewood, Utilities Department, 1000 Englewood Parkway, Englewood, CO 80110, Phone: (303) 762-2300**, and, if to the United States, to the District Commander, Attention: Chief, Real Estate Division, 1616 Capitol Avenue, Omaha, Nebraska 68102-4901, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

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CHATFIELD LAKE PROJECT, COLORADO

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Commander", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include assignees, transferees and their duly authorized representatives.

5. SUPERVISION BY THE DISTRICT COMMANDER

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the District Commander, Omaha District, hereinafter referred to as said officer. Upon the completion of any of the above activities, the Grantee shall immediately restore the premises to the satisfaction of said officer. The use and occupation of the premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

6. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

8. INSPECTION AND REPAIRS

The grantee shall inspect the facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

9. PROTECTION OF GOVERNMENT PROPERTY

The grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the grantee under this easement and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

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10. RIGHT TO ENTER

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes; to make inspections; to remove timber or other material, except property of the grantee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

11. TRANSFERS AND ASSIGNMENTS

Without prior written approval by said District Commander, the grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in connection with this easement. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the grantee.

12. INDEMNITY

This condition was deleted prior to the execution of this easement.

13. SUBJECT TO EASEMENTS

This easement is subject to all other existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the grantee.

14. REQUIRED SERVICES

The grantee shall furnish through said facilities such services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates granted by the grantee for similar service.

15. RELOCATION OF FACILITIES

In the event all or any portion of the premises occupied by the said facilities shall be needed by the United States, or in the event the existence of said facilities is determined to be detrimental to governmental activities, the grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises as may be designated by said officer. In the event said facilities shall not be removed or relocated within ninety (90) days after such notice, the United States may cause such relocation at the sole expense of the grantee.

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16. TERMINATION

This easement may be terminated by the Secretary upon thirty (30) days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

17. SOIL AND WATER CONSERVATION

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the grantee during the term of this easement, and the grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the premises resulting from the activities of the grantee shall be corrected by the grantee as directed by said officer.

18. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. The grantee shall promptly comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

c. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the grantee's activities, the grantee shall be liable to restore the damaged resources.

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19. ENVIRONMENTAL CONDITION OF PROPRTY

This condition was deleted prior to the execution of this easement.

20. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and material from further disturbance until said officer gives clearance to proceed.

21. NON-DISCRIMINATION

a. The Grantee shall not discriminate against any person or persons or exclude them from participation in the Grantee's operations, programs or activities conducted on the Premises because of race, color, religion, sex, sexual orientation, gender identity, age, handicap, or national origin, pursuant to Executive Order 13672, 21 July 2014. The Grantee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board. The Grantee shall comply with Department of Justice rules on non-discrimination.

b. The Grantee, by acceptance of this easement, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. §2000d); the Age Discrimination Act of 1975 (42 U.S.C. §6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. §794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Grantee, its agents, successors, transferees, and assignees.

22. RESTORATION

On or before the expiration or termination of this easement, the grantee shall, without expense to the United States, and within such time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. In the event the grantee shall fail to remove said facilities and restore the premises, the United States shall have the option to take over said facilities without compensation, or to remove said facilities and perform the restoration at the expense of the grantee, and the grantee shall have no claim for damages against the United States or its officers or agents for such action.

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23. DISCLAIMER

This instrument is effective only insofar as the rights of the United States in the property are concerned, and the grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the premises.

24. EXECUTIVE ORDER 13658 – ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS

a. Any reference in this section to “prime contractor” or “contractor” shall mean the Grantee and any reference to “contract” shall refer to the Easement. The parties expressly stipulate this contract is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

b. Minimum Wages.

(1) Each worker (as defined in 29 CFR 10.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 13658.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 1, 2015 and December 31, 2015 shall be \$10.10 per hour. The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a) (ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a) (ii) of Executive Order 13658 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor Web site). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 10.23), rebate, or kickback on any account. Such payments shall be made no later than one pay period

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following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the 14(c) worker the greater commensurate wage.

c. Withholding. The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 13658.

d. Contract Suspension/Contract Termination/Contractor Debarment. In the event of a failure to pay any worker all or part of the wages due under Executive Order 13658 or 29 CFR part 10, or a failure to comply with any other term or condition of Executive Order 13658 or 29 CFR part 10, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 10.52.

e. The contractor may not discharge any part of its minimum wage obligation under Executive Order 13658 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

f. Nothing herein shall relieve the contractor of any other obligation under Federal, State or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than \$10.10 (or the minimum wage as established each January thereafter) to any worker.

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g. Payroll Records.

(1) The contractor shall make and maintain for three years records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

- (i) Name, address, and social security number.
- (ii) The worker's occupation(s) or classification(s)
- (iii) The rate or rates of wages paid.
- (iv) The number of daily and weekly hours worked by each worker.
- (v) Any deductions made; and
- (vi) Total wages paid.

(2) The contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 10 and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

h. The contractor (as defined in 29 CFR 10.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

i. Certification of Eligibility.

(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions

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imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

j. Tipped employees. In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 13658. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the contractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 13658. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

k. Anti-retaliation. It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR part 10, or has testified or is about to testify in any such proceeding.

l. Disputes concerning labor standards. Disputes related to the application of Executive Order 13658 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 10. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

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m. Notice. The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

25. HOLD HARMLESS

This condition was deleted prior to execution of this easement.

26. EXECUTIVE ORDER 13706 – ESTABLISHING PAID SICK LEAVE FOR FEDERAL CONTRACTORS

Any reference in this section to "prime contractor" or "contractor" shall mean the Grantee and any reference to "contract" shall refer to the Easement.

a. Executive Order 13706. This contract is subject to Executive Order 13706, the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the Executive Order, and the following provisions.

b. Paid Sick Leave.

(1) The contractor shall permit each employee (as defined in 29 CFR 13.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship that may be alleged to exist between the contractor and employee, to earn not less than 1 hour of paid sick leave for every 30 hours worked. The contractor shall additionally allow accrual and use of paid sick leave as required by Executive Order 13706 and 29 CFR part 13. The contractor shall in particular comply with the accrual, use, and other requirements set forth in 29 CFR 13.5 and 13.6, which are incorporated by reference in this contract.

(2) The contractor shall provide paid sick leave to all employees when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account. The contractor shall provide pay and benefits for paid sick leave used no later than one pay period following the end of the regular pay period in which the

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paid sick leave was taken.

(3) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the requirements of Executive Order 13706, 29 CFR part 13, and this clause.

c. Withholding. The contracting officer shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of Executive Order 13706, 29 CFR part 13, or this clause, including any pay and/or benefits denied or lost by reason of the violation; other actual monetary losses sustained as a direct result of the violation, and liquidated damages.

d. Contract Suspension/Contract Termination/Contractor Debarment. In the event of a failure to comply with Executive Order 13706, 29 CFR part 13, or this clause, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 13.52.

e. The paid sick leave required by Executive Order 13706, 29 CFR part 13, and this clause is in addition to a contractor's obligations under the Service Contract Act and Davis-Bacon Act, and a contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of Executive Order 13706 and 29 CFR part 13.

f. Nothing in Executive Order 13706 or 29 CFR part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under Executive Order 13706 and 29 CFR part 13.

g. Recordkeeping.

(1) Any contractor performing work subject to Executive Order 13706 and 29 CFR part 13 must make and maintain, for no less than three (3) years from the completion of the work on the contract, records containing the information specified in paragraphs (i) through (xv) of this section for each employee and shall make them available for inspection, copying, and transcription by authorized representatives of the Wage and Hour Division of the U.S.

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Department of Labor:

- (i) Name, address, and Social Security number of each employee;
- (ii) The employee's occupation(s) or classification(s);
- (iii) The rate or rates of wages paid (including all pay and benefits provided);
- (iv) The number of daily and weekly hours worked;
- (v) Any deductions made;
- (vi) The total wages paid (including all pay and benefits provided) each pay period;
- (vii) A copy of notifications to employees of the amount of paid sick leave the employee has accrued, as required under 29 CFR 13.5(a)(2);
- (viii) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests;
- (ix) Dates and amounts of paid sick leave taken by employees (unless a contractor's paid time off policy satisfies the requirements of Executive Order 13706 and 29 CFR part 13 as described in §13.5(f)(5), leave must be designated in records as paid sick leave pursuant to Executive Order 13706);
- (x) A copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests, as required under 29 CFR 13.5(d)(3);
- (xi) Any records reflecting the certification and documentation a contractor may require an employee to provide under 29 CFR 13.5(e), including copies of any certification or documentation provided by an employee;
- (xii) Any other records showing any tracking of or calculations related to an employee's accrual or use of paid sick leave;
- (xiii) The relevant covered contract;
- (xiv) The regular pay and benefits provided to an employee for each use of paid sick leave; and
- (xv) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to 29 CFR 13.5(b)(5), to relieve a contractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR 13.5(b)(4).

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(2) (i) If a contractor wishes to distinguish between an employee's covered and non-covered work, the contractor must keep records or other proof reflecting such distinctions. Only if the contractor adequately segregates the employee's time will time spent on non-covered work be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if that contractor adequately segregates the employee's time may a contractor properly refuse an employee's request to use paid sick leave on the ground that the employee was scheduled to perform non-covered work during the time she asked to use paid sick leave.

(ii) If a contractor estimates covered hours worked by an employee who performs work in connection with covered contracts pursuant to 29 CFR 13.5(a)(i) or (iii), the contractor must keep records or other proof of the verifiable information on which such estimates are reasonably based. Only if the contractor relies on an estimate that is reasonable and based on verifiable information will an employee's time spent in connection with non-covered work be excluded from hours worked counted toward the accrual of paid sick leave. If a contractor estimates the amount of time an employee spends performing in connection with covered contracts, the contractor must permit the employee to use her paid sick leave during any work time for the contractor.

(3) In the event a contractor is not obligated by the Service Contract Act, the Davis- Bacon Act, or the Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is exempt from the FLSA's minimum wage and overtime requirements, and the contractor chooses to use the assumption permitted by 29 CFR 13.5(a)(1)(iii), the contractor is excused from the requirement in paragraph (1)(d) of this section to keep records of the employee's number of daily and weekly hours worked.

(4) (i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of Executive Order 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, shall be maintained as confidential records in separate files/records from the usual personnel files.

(ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this contract clause, the records and documents must also be maintained in compliance with the confidentiality requirements of the GINA, section 503 of the Rehabilitation Act of 1973, and/or ADA as described in 29 CFR 1635.9, 41 CFR 60-741.23(d), and 29 CFR 1630.14(c)(1), respectively.

(iii) The contractor shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR 13.5(c)(1)(iv) (as described in 29 CFR 13.5(e)(1)(ii)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure

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is required by law.

(5) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(6) Nothing in this contract clause limits or otherwise modifies the contractor's recordkeeping obligations, if any, under the Davis-Bacon Act, the Service Contract Act, the Fair Labor Standards Act, the Family and Medical Leave Act, Executive Order 13658, their respective implementing regulations, or any other applicable law.

h. The contractor (as defined in 29 CFR 13.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts.

i. Certification of Eligibility. (1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a) (1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts currently maintained on the System for Award Management Web site, <http://www.SAM.gov>.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

j. Interference/Discrimination.

(1) A contractor may not in any manner interfere with an employee's accrual or use of paid sick leave as required by Executive Order 13706 or 29 CFR part 13. Interference includes, but is not limited to, miscalculating the amount of paid sick leave an employee has accrued, denying or unreasonably delaying a response to a proper request to use paid sick leave, discouraging an employee from using paid sick leave, reducing an employee's accrued paid sick leave by more than the amount of such leave used, transferring an employee to work on non-covered contracts to prevent the accrual or use of paid sick leave, disclosing confidential information contained in certification or other documentation provided to verify the need to use paid sick leave, or making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the contractor's operational needs.

(2) A contractor may not discharge or in any other manner discriminate against any employee for: (i) Using, or attempting to use, paid sick leave as provided for under Executive Order 13706 and 29 CFR part 13; (ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under Executive Order 13706 and 29 CFR part 13; (iii) Cooperating in any investigation or testifying in any proceeding under Executive Order 13706

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and 29 CFR part 13; or (iv) Informing any other person about his or her rights under Executive Order 13706 and 29 CFR part 13.

k. Waiver. Employees cannot waive, nor may contractors induce employees to waive, their rights under Executive Order 13706, 29 CFR part 13, or this clause.

l. Notice. The contractor must notify all employees performing work on or in connection with a covered contract of the paid sick leave requirements of Executive Order 13706, 29 CFR part 13, and this clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

m. Disputes concerning labor standards. Disputes related to the application of Executive Order 13706 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 13. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

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THIS EASEMENT is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this ____ day of _____, 2021.

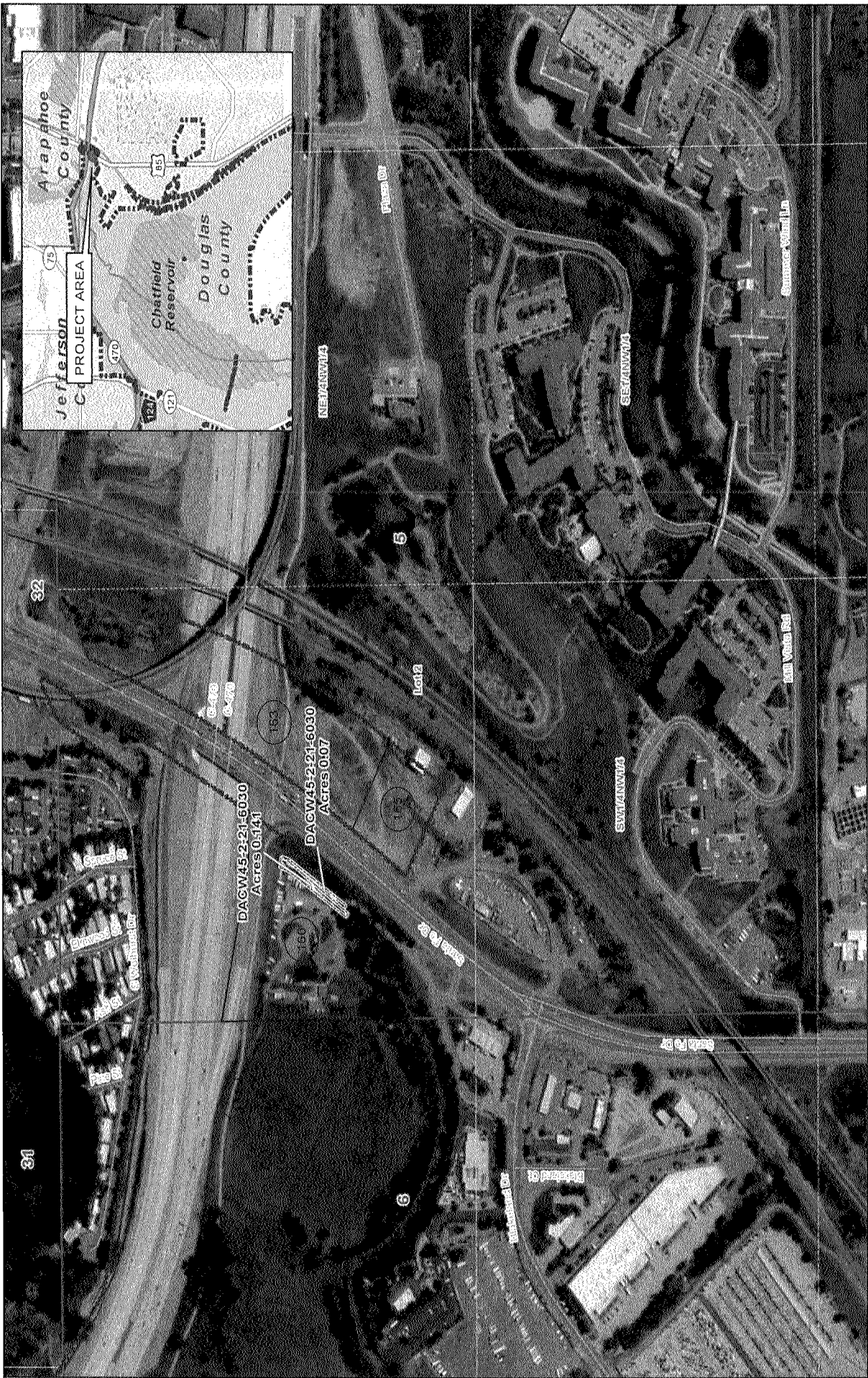
Rick L. Noel
Deputy Chief, Real Estate Division
Real Estate Contracting Officer

THIS EASEMENT is also executed by the grantee this ____ day of _____, 2021.

CITY OF ENGLEWOOD

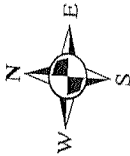
BY: _____

TITLE: _____



Chatfield Lake
Colorado

Douglas County, CO



Township 6 S
Range 68 W
6th P.M.

- ☐ DACW45-2-21-6030 (± 0.21 of an Acre)
☐ Chatfield Boundary
☐ Tracts
☐ Sections
☐ 1/4 Sections
☐ Streams/Rivers
☐ Streets/Roads



Disclaimer: The Government furnishes this data and the recipient accepts and uses it with the express understanding that the United States Government makes no warranties, expressed or implied, concerning the accuracy, completeness, reliability, usability, or suitability for any particular purpose of the information and data furnished. The United States shall be under no liability whatsoever to any person by reason of any use made thereof. Data displayed on this map are approximations derived from GIS layers and should NOT be used in place of survey data or legal land descriptions.


<p>Real Estate</p> <p>RE-S</p>		 <p>US Army Corps of Engineers ^{inc}</p> <p>Omaha District</p>	
Produced By Paige Dunkle	Production Date 24-MAY-2021	Revised By	Revision Date
<p>File Location: T:\jesse\Annette\chaffed\DA\CW45-2-21-8030A\DA\CW45-2-21-8030.mxd</p>			

EXHIBIT "A" ATTACHED TO AND
MADE A PART OF DACW45-2-21-6030

Chatfield Lake
Douglas County, Colorado
Within Tract 166

City of Englewood City Ditch Pipe

A tract of land situated within Government Lot 2 of Section 5, Township 6 South, Range 68 West of the Sixth Principal Meridian, Douglas County, Colorado, being more particularly described as follows:

Commencing at the West quarter corner of said Section 5;

Thence North $12^{\circ}57'19''$ East, 2,119.99 feet to the **POINT OF BEGINNING;**

Thence South $34^{\circ}27'06''$ West, 286.40 feet;

Thence North $54^{\circ}38'02''$ West, 14.03 feet;

Thence North $32^{\circ}24'56''$ East, 255.33 feet;

Thence North $20^{\circ}15'16''$ East, 43.41 feet;

Thence South $80^{\circ}39'36''$ East, 30.55 feet;

Thence South $20^{\circ}15'16''$ West, 24.80 feet to the **POINT OF BEGINNING.**

Said tract of land herein described contains 0.141 of an acre, more or less.

ALSO:

A tract of land situated within Government Lot 2 of Section 5, Township 6 South, Range 68 West of the Sixth Principal Meridian, Douglas County, Colorado, being more particularly described as follows:

Commencing at the West quarter corner of said Section 5;

Thence North $12^{\circ}57'19''$ East, 2,119.99 feet to the **POINT OF BEGINNING;**

Thence South $20^{\circ}15'16''$ West, 27.59 feet;

Thence South $32^{\circ}24'56''$ West, 260.07 feet;

24MAY2021PKD

EXHIBIT "B" ATTACHED TO AND
MADE A PART OF DACW45-2-21-6030

Chatfield Lake
Douglas County, Colorado
Within Tract 166

Thence North $54^{\circ}38'02''$ West, 16.01 feet;

Thence North $34^{\circ}27'06''$ East, 286.40 feet to the **POINT OF
BEGINNING.**

Said tract of land herein described contains 0.070 of an acre,
more or less.

The combined tracts of land herein described contain 0.21 of an
acre, more or less.

24MAY2021PKD

EXHIBIT "B" ATTACHED TO AND
MADE A PART OF DACW45-2-21-6030