

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

RESOLUTION 20-25

Authorization for the Executive Director to Enter into an Easement Agreement with Ting Fiber, Inc.

WHEREAS, SEMSWA has been organized to manage and maintain regional stormwater facilities within its boundaries; and

WHEREAS, Ting Fiber, Inc, is proposing to install an active cabinet and fiber line by the means of open cut at 19399 East Prentice Avenue, Centennial, CO 80015, and as more particularly described as Tract B Blk 1 Jackson Farm Sub 4th Flg and a portion of Tract F Blk 1 Jackson Farm Sub 4th Flg; and

WHEREAS, SEMSWA owns and maintains a sub-regional detention pond at 19399 East Prentice Avenue; and

WHEREAS, Arapahoe Parks and Recreation District (APRD) has an agreement with SEMSWA to maintain the park facilities at 19399 East Prentice Avenue; and

WHEREAS, SEMSWA staff has determined that the installation of the proposed active cabinet and buried fiber line will not harm the Pond nor any associated storm sewers or structures located at 19399 East Prentice Avenue; and

WHEREAS, attached hereto is an Easement Agreement, which Ting, Inc. is required to obtain in order to install its active cabinet and fiber line; and

WHEREAS, attached hereto is an exhibit showing the boundaries of the easement at 19399 East Prentice Avenue.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board authorizes the Executive Director of SEMSWA to enter into an Easement Agreement and to grant an easement to Ting to install its active cabinet and fiber line by open cut on property owned and maintained by SEMSWA.

SOUTHEAST METRO STORMWATER AUTHORITY
acting by and through
SEMSWA WATER ACTIVITY ENTERPRISE

Date: September 16, 2020

ATTEST:

Secretary

Chairperson

APPROVED AS TO FORM:
Attorney for
Southeast Metro Stormwater Authority

By _____
Edward J. Krisor

EASEMENT AGREEMENT

This easement agreement ("Agreement") is entered into as of _____, 2020, between **Ting Fiber, Inc.**, a Delaware corporation ("Grantee"), and Southwest Metro Stormwater Authority (SEMSWA) ("Grantor"), a political subdivision and a public corporation of the State of Colorado, whose legal address is 7437 S. Fairplay St, Centennial, CO, 80112.

WITNESSETH

- WHEREAS, Grantor is the current owner of certain real property or properties in the City of Centennial, Arapahoe County, Colorado, commonly known as 19399 East Prentice Avenue, Centennial, CO 80111, and as more particularly described as Tract B Blk 1 Jackson Farm Sub 4th Flg and a portion of Tract F Blk 1 Jackson Farm Sub 4th Flg attached hereto and incorporated by reference (individually or collectively, the "Property").

- WHEREAS, Grantee has requested a permanent easement in, over, across, under, and through certain portions of the Property as more particularly described in Exhibit 'A' attached hereto and incorporated by reference (the "Easement Area").

- WHEREAS, Grantor is willing to grant an easement based on the terms and conditions listed below.

NOW THEREFORE, in consideration of the premises and the mutual agreements set forth herein, and in exchange for other good and valuable consideration, and intending to be legally bound, the parties hereto agree as follows:

AGREEMENT

- **Grant of Easement.** Grantor hereby grants to Grantee, its subsidiaries, successors, assigns, lessees and agents, a non-exclusive right of way and easement (together with the rights and privileges herein granted, the "Easement") in, on, over, under, across and through the Easement Area for the purposes of laying, burying, installing, erecting, constructing, reconstructing, replacing, upgrading, expanding, relocating, operating, repairing, maintaining, supplementing and removing facilities consisting of but not limited to buried conduits, cables, wires or fibers, above-ground posts, terminals and related equipment appropriate for installation, use or maintenance of such conduits, cables, wires or fibers (the "Easement Facilities") in order to offer internet services to residents and businesses within the Property. Grantee is permitted to install fiber cable by open cut with associated handholds along with one active cabinet and bollards per the Construction Drawings dated July 16, 2020. Other than those improvements, there shall be no other above ground improvements. The Easement shall include the right of reasonable ingress and egress to and from the Easement Area. Subject to the requirement of Section 3(a) below, Grantee shall not be liable for damages caused by its removal of trees, undergrowth, and brush within the Easement Area necessary or appropriate for the enjoyment of the Easement. Grantor shall not, nor shall Grantor authorize others to, construct or create any road, reservoir, excavation, obstruction, structure or building or change the land grade on, in, over, under, through, or across the Easement Area that reasonably interferes with the Easement Facilities without the prior written consent of Grantee, which shall not be unreasonable withheld. Grantor retains all of its rights, if any, to grant,

convey, assign, and restrict any and all rights (including future rights and uses) on the Easement Area; provided, however, and notwithstanding the foregoing, that Grantor shall not use or access, or authorize others to use or access, the Easement Facilities, and Grantor shall not use or authorize others to use the Easement Area in a manner that reasonably interferes with or impairs in any way the Easement Facilities or the exercise by Grantee of its rights granted in this Agreement. Grantee accepts the Easement Area subject to all easements, restrictions, and rights of way of record and subject to all other utilities that are currently installed in the Easement Area whether or not those utilities have a recorded right to be present in the Easement Area including but not limited to Xcel Energy facilities. Grantee shall not damage any current facilities located in the Easement Area and shall defend, indemnify, and hold Grantor harmless from any demands, claims, or lawsuits alleging such damage.

Grantor presently has drainage and flood control improvements located within the vicinity of the Easement Area. Grantee shall take no action or inaction which will potentially damage or interfere with the proper functioning of those improvements.

- **Term.** This Agreement shall continue in full force and effect from the date of this Agreement [in perpetuity], unless this Agreement is amended, modified or terminated pursuant to a separate agreement executed, acknowledged by both the Grantor and Grantee and recorded in the real property records in which the Property is located.

- **Construction, Maintenance and Repairs.**

- **By Grantee.** All expenses and costs for the construction of the Easement Facilities shall be borne by Grantee. Grantee shall periodically inspect, maintain, repair, reconstruct and replace the Easement Facilities, or otherwise exercise its Easement rights, to ensure the safe and reasonable operation of the Easement Facilities, and bear all related costs and expenses. Grantee shall return any landscape, sprinkler systems or other property of Grantor disturbed during construction to the pre-construction state, to the extent practicable.

- **By Grantor.** Any damage caused to the Easement Facilities by Grantor or by Grantor's agents, employees or contractors shall be repaired and restored by Grantee at the expense of Grantor.

- **Insurance.**

- During the term of this Agreement, the Grantee shall obtain and maintain Commercial General Liability Insurance, including coverage for sudden and accidental pollution legal liability, with a combined single limit of \$1,000,000 for bodily injury and property damage per occurrence and in the aggregate, including coverage for premises-operations, blanket contractual liability, broad form property damage, personal injury liability, independent contractors, products/completed operations and explosion, collapse and underground. The limit requirements stated above may be met through a combination of primary and excess policies. The limits set forth above are minimum limits and shall not be construed to limit the liability of a party.

- Nothing in this Agreement shall be construed to prevent Grantee from satisfying its insurance obligations pursuant to this Agreement under a blanket policy or policies of insurance that meet or exceed the requirements of this Section.

- The Grantee shall obtain from the insurance companies providing the coverages required by this Agreement a waiver of all rights of subrogation or recovery in favor of the Grantor and, as applicable, its members, managers, shareholders, affiliates, assignees, officers, directors, and employees.

- **Customer Service.** The Grantee will maintain a local or toll-free telephone number which will be available to its subscribers twenty-four (24) hours a day, seven (7) days a week. Grantee representatives will be available to respond to customer telephone inquiries during normal business hours. The Grantee will begin working on service interruptions promptly and in no event later than the next business day after notification of the service problem, excluding conditions beyond the control of the Grantee.

- **Notices.** Any notice, consent, approval, or request for consent required or permitted to be given under this Agreement shall be given in writing to the parties hereto at the applicable address specified below and shall be: (1) mailed by first class, United States Mail, postage prepaid, certified, with return receipt requested; (2) hand delivered; or (3) sent by a nationally recognized overnight courier service. All notices shall be effective upon the earlier to occur of actual receipt or refusal to receive. The parties hereto may change their address to another address or addresses in the United States by giving notice thereof to the other in conformity with this provision. As of the effective date of this Agreement, the parties' addresses for notice shall be:

If to Grantor:

Southeast Metro Stormwater Authority
7437 South Fairplay Street
Centennial, CO 80112

If to Grantee:

Ting Internet
421 Dr Martin Luther King Jr Dr E, No #2
Starkville, MS 39759

- **Relocation.** Should any governmental authority require and compensate Grantor for the relocation of the Easement or if a relocation of the Easement Area is required as a result of a condemnation of the Property or other governmental action, relocation will be performed by Grantee or its agents, and the cost of the relocation shall be paid by Grantee.

- **Representations.** Grantor and Grantee each represent and warrant that: (i) it has the full right and authority to enter into, execute and deliver this Agreement; (ii) it has taken all requisite action to approve the execution, delivery and performance of this Agreement; (iii) this Agreement

constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and (iv) its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body or violate or constitute a default under any material contract to which such party is a party or is otherwise bound.

- **Assignment.** This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns. Subject to the terms of this Agreement, Grantee shall have all rights and benefits necessary or useful to the full and complete enjoyment and use of the Easement for the purposes stated in this Agreement, including the right to sell, grant, lease, or otherwise transfer all or any part of the rights in or use of the Easement Facilities subject to Grantor's written approval, which shall not be unreasonably withheld. Subject to Grantee's rights set forth in this Agreement, Grantor shall have all other rights and benefits necessary or useful to the full and complete enjoyment and use of the Property, including the right to sell, grant, lease, or otherwise transfer all or any part of the Property.

- **Indemnification.**

- Grantee shall indemnify, defend (by counsel of its own choosing, who shall be reasonably acceptable to Grantor), and hold Grantor and its customers harmless from and against any and all loss, liability, damage, and expense (including reasonable attorneys' fees) arising out of any written demand, written claim, suit, or judgment for damages to any property or for bodily injury to or death of any persons including, but not limited to, customers, agents, and employees of either party to this Agreement, allegedly caused by any act or omission of Grantee in connection with this Agreement, except to the extent caused by Grantor.

- Grantor, to the extent permitted by law, shall indemnify, defend (by counsel by its own choosing, who shall be reasonably acceptable to Grantee), and hold Grantee and its customers harmless from and against any and all loss, liability, damage, and expense (including reasonable attorneys' fees) arising out of any judgment for damages to any property or for bodily injury to or death of any persons including, but not limited to, customers, agents, and employees of either party to this Agreement, caused by negligent act or omission of Grantor in connection with this Agreement, except to the extent caused by Grantee.

- **Miscellaneous**

The following miscellaneous terms and conditions shall also apply to this Agreement:

- Execution in Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

- Binding Effect. The provisions of this Agreement are for the benefit only of the Grantor and Grantee and their respective heirs, executors, administrators, successors and assigns, and the Grantor and Grantee do not intend to create or to confer any benefits upon any persons, firms or entities not a party to this Agreement, and no third party shall have the right to enforce the provisions hereof. The submission of an unsigned copy of this Agreement to Grantor shall not

constitute an offer or option to create an easement. This Agreement shall become effective and binding only upon execution and delivery by both Grantor and Grantee.

- Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Colorado without reference to its choice of law principles. Any suit brought by either party against the other party for claims arising out of this Agreement shall be brought in the State of Colorado, Arapahoe County, and/or, if applicable, the United States District Court for Colorado.

- Entire Agreement. The exhibits referred to herein are integral parts hereof and are hereby made a part of this Agreement. This Agreement constitutes the entire and final agreement and understanding between the Grantor and Grantee with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. This Agreement may only be modified or supplemented by an instrument in writing executed by duly authorized representatives of Grantor and Grantee.

- No Partnership or Joint Venture. The relationship between Grantor and Grantee shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including but not limited to federal income tax purposes.

- Headings. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its contents.

- Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provisions shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. In lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid, or enforceable.

- FIRPTA. Grantee is not, and has never been, a “foreign person” as such term is defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

- OFAC. Grantee is not: (a) in violation of any applicable laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (“Executive Order”) and relating to Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, (b) an individual, entity or governmental authority (any of them, for purposes of this Section, a “Person”) named as a “specially designated national and blocked person” on the most current list published by the Office of Foreign Asset Control of the Department of the Treasury (“OFAC”) at its official website or any

replacement official publication, (c) a Person listed in the Annex to the Executive Order or otherwise subject to the provisions of the Executive Order, or (d) a Person who is otherwise a Person with whom a U.S. Person is prohibited from dealing under the regulations administered by OFAC.

- Construction. Grantor and Grantee understand, agree, and acknowledge that this Agreement has been freely negotiated by both parties; and that, in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

- Covenants Run with the Land. The terms and provisions of this Agreement shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the Grantee, its successors and assigns.

- Brokers. Each party represents and warrants to the other that it has not engaged the services of, or dealt with any broker, salesperson or other entity who may claim a commission or other payment in conjunction with this Agreement. Grantee agrees to indemnify, defend, and hold Grantor harmless from and against all loss, damage, claims, costs, and expenses (including reasonable attorneys' fees) caused by a breach of the foregoing representation. Grantor, to the extent permitted by law, agrees to indemnify, defend, and hold the Grantee harmless from and against all loss, damage, claims, costs, and expenses (including reasonable attorneys' fees) caused by a breach of the foregoing representation.

- Recording. Grantee shall record this Agreement in the appropriate records of Arapahoe County, Colorado.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and agreeing to be legally bound hereby, Grantor and Grantee have executed this Agreement as of the dates set forth below.

(GRANTOR SIGNATURE PAGE FOLLOWS)

GRANTOR:

Southeast Metro Stormwater Authority

By:

Name:

Title: Executive Director

[illegible]

I, a Notary Public of the County and State aforesaid, certify that _____, personally appeared before me this day and acknowledged that he is the Executive Director of Southeast Metro Stormwater Authority, a political subdivision and a public corporation of the State of Colorado, and that as such officer being authorized to do so, executed the foregoing instrument on behalf of the Southeast Metro Stormwater Authority.

Witness my hand and official stamp or seal this _____ day of _____,
2020.

Notary Public

(Place Stamp or Seal below)

My Commission Expires: _____

(GRANTEE SIGNATURE PAGE FOLLOWS)

GRANTEE:

Ting Fiber, Inc.,
a Delaware corporation

By:

Name:

Title:

STATE OF _____)
) ss.
COUNTY OF _____)

I, a Notary Public of the County and State aforesaid, certify that _____, personally appeared before me this day and acknowledged that s/he is the _____ [Title] of Ting Fiber, Inc., a Delaware corporation, and that as such corporate officer being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official stamp or seal this _____ day of _____, 2020.

Notary Public

(Place Stamp or Seal below)

My Commission Expires: _____

Exhibit A

Easement **LEGAL DESCRIPTION**

A PORTION OF TRACT "B" AND TRACT "D", JACKSON FARM SUBDIVISION FILING NO. 4 AND TRACT "F", SMOKEY RIDGE, LYING WITHIN THE NORTH HALF OF SECTION 15, TOWNSHIP 5 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 15;
THENCE ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 15, NORTH 00°29'15" EAST, A DISTANCE OF 1334.96 FEET TO THE SOUTHEAST CORNER OF SAID TRACT "D", SAME BEING THE SOUTHWEST CORNER OF SAID TRACT "F", SAME BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF EAST PRENTICE AVENUE (A 60-FOOT WIDE PUBLIC RIGHT-OF-WAY) AND THE **POINT OF BEGINNING**;
THENCE ALONG THE SOUTH LINE OF SAID TRACT "D", NORTH 89°30'45" WEST, A DISTANCE OF 1.50 FEET;

THENCE DEPARTING SAID NORTH LINE AND THROUGH SAID TRACTS "D" AND "B", THE FOLLOWING THREE (3) COURSES:

1. NORTH 00°02'40" EAST, A DISTANCE OF 18.13 FEET;
2. NORTH 90°00'00" WEST, A DISTANCE OF 14.07 FEET;
3. NORTH 00°00'00" EAST, A DISTANCE OF 13.36 FEET;

THENCE THROUGH SAID TRACTS "B" AND "F" THE FOLLOWING SEVEN (7) COURSES:

1. SOUTH 89°31'07" EAST, A DISTANCE OF 23.44 FEET;
2. SOUTH 37°27'31" EAST, A DISTANCE OF 38.81 FEET TO THE BEGINNING OF A NON-TANGENT CURVE ON THE AFOREMENTIONED NORTHERLY RIGHT-OF-WAY LINE OF EAST PRENTICE AVENUE, HAVING A RADIUS OF 300.00 FEET;
3. CURVING TO THE RIGHT ALONG SAID RIGHT-OF-WAY LINE AND THE ARC OF SAID CURVE, CONCAVE NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF 01°23'28", FOR AN ARC LENGTH OF 7.28 FEET (THE CHORD OF SAID CURVE BEARS SOUTH 87°04'36" WEST, A DISTANCE OF 7.28 FEET);
4. DEPARTING SAID RIGHT-OF-WAY LINE, NORTH 37°27'31" WEST, A DISTANCE OF 22.69 FEET;
5. NORTH 90°00'00" WEST, A DISTANCE OF 5.90 FEET;
6. SOUTH 00°02'40" WEST, A DISTANCE OF 18.18 FEET TO A POINT ON THE SAID NORTHERLY RIGHT-OF-WAY LINE OF EAST PRENTICE AVENUE;
7. THENCE ALONG SAID RIGHT-OF-WAY LINE, NORTH 89°30'45" WEST, A DISTANCE OF 4.50 FEET TO THE **POINT OF BEGINNING**.

CONTAINING: 621 SQUARE FEET OR 0.014 ACRE OF LAND.

THE BASIS OF BEARINGS FOR THIS LEGAL DESCRIPTION IS THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 5 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO, AS SHOWN ON THE PLAT OF JACKSON FARM SUBDIVISION FILING NO. 4. SAID LINE BEARS NORTH 00°29'15" EAST.

PREPARED BY:
STACY LYNN JACOBS, PLS
COLORADO REG. NO. 38495
FOR, AND ON BEHALF OF:
R&R ENGINEERS-SURVEYORS, INC.
PROJECT NO. TF20095



EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF THE NORTH HALF OF SECTION 15, TOWNSHIP 5 SOUTH, RANGE 66 WEST
SIXTH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO



"JACKSON FARM
SUBDIVISION
FILING NO. 4"

TRACT "B"

TRACT "D"

E. PRENTICE AVE.

(60' WIDE PUBLIC R.O.W.)

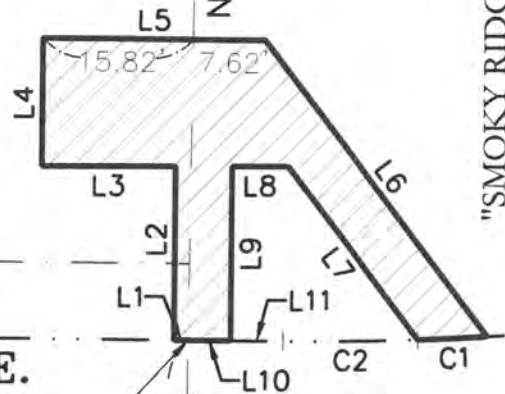
POINT OF BEGINNING

N 1/4 CORNER
SECTION 15

N0°29'15"E

TRACT "F"

"SMOKY RIDGE"



SCALE: 1"=20'



AREA OF EASEMENT

**POINT OF
COMMENCEMENT**

C 1/4 CORNER
SECTION 15

1334.96'
BASIS OF BEARINGS

NOTE

THIS DRAWING IS MEANT TO DEPICT THE ATTACHED LEGAL
DESCRIPTION AND IS FOR INFORMATIONAL PURPOSES ONLY.
IT DOES NOT REPRESENT A MONUMENTED LAND SURVEY.

PARCEL CONTAINS 621 SQ. FT. OR 0.014 ACRE

EASEMENT EXHIBIT

Date: 7/31/2020
Drawn: SLJ
Checked:
Job No.: TF20095

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of
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R&R ENGINEERS-SURVEYORS, INC.
1635 W. 13TH AVENUE, SUITE 310
DENVER, COLORADO 80204
PH: 303-753-6730
WWW.RRENGINEERS.COM

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF THE NORTH HALF OF SECTION 15, TOWNSHIP 5 SOUTH, RANGE 66 WEST
SIXTH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO

LINE DATA TABLE

LINE #	DIRECTION	LENGTH
L1	N89°30'45"W	1.50'
L2	N00°02'40"E	18.13'
L3	N90°00'00"W	14.07'
L4	N00°00'00"E	13.36'
L5	S89°31'07"E	23.44'
L6	S37°27'31"E	38.81'
L7	N37°27'31"W	22.69'
L8	N90°00'00"W	5.90'
L9	S00°02'40"W	18.18'
L10	N89°30'45"W	4.50'
L11	N89°30'45"W	5.50'



CURVE DATA TABLE

CURVE #	RADIUS	LENGTH	DELTA	CHORD DIRECTION	CHORD LENGTH
C1	300.00'	7.28'	1°23'28"	S87°04'36"W	7.28'
C2	300.00'	14.22'	2°42'55"	S89°07'47"W	14.22'

NOTE

THIS DRAWING IS MEANT TO DEPICT THE ATTACHED LEGAL DESCRIPTION AND IS FOR INFORMATIONAL PURPOSES ONLY. IT DOES NOT REPRESENT A MONUMENTED LAND SURVEY.

EASEMENT EXHIBIT

Date: 7/31/2020
Drawn: SLJ
Checked:
Job No.: TF20095

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of
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1635 W. 13TH AVENUE, SUITE 310
DENVER, COLORADO 80204
PH: 303-753-6730
WWW.RRENGINEERS.COM