

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“Agreement”) is made between the **City of Commerce City** hereinafter called “Grantor”, (whether grammatically singular or plural) and the **Park Creek Metropolitan District**, hereinafter called “District”.

WITNESSETH:

For and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to the Grantor in hand paid by the District, the receipt whereof is hereby acknowledged, the Grantor hereby grants to the District, its successors and assigns, the permanent right to enter, re-enter, occupy and use the described property to construct, maintain, repair, replace, remove, enlarge and operate one or more water pipelines and all underground and surface appurtenances thereto, including electric or other related control systems, underground cables, wires and connections and surface appurtenances, in, through, over and across the following described parcel of land situate, lying and being in the County of Adams and State of Colorado, to-wit:

(For Legal Description, please see Exhibit “A”, attached hereto and made a part hereof)

By way of example and not by way of limitation, the parties intend to include within the terms “pipelines” and “appurtenances” the following: mains and conduits, valves, vaults, manholes, control systems, ventilators, and the like.

IT IS HEREBY MUTUALLY covenanted and agreed by and between the parties hereto as follows:

1. The District shall have and exercise the right of ingress and egress in, to, over, through and across the above described property for any purpose needful for the full enjoyment of any other right of occupancy or use provided for herein. The District shall have the right to construct and maintain a temporary access roadway of varying width, as needed in the opinion of the District, along the length of the easement. Both parties agree that the purpose of this roadway is to allow vehicular access during construction and thereafter to the District, its contractors and its intended assignee, the City and County of Denver, acting by and through its Board of Water Commissioners, hereinafter called “Board”. The easement area shall be free of obstacles throughout the length of the easement. Due to variations in topography, the easement and the pipe may take on an uphill or downhill direction having a slope of greater than 4%; however, sloping within the easement across its width may not exceed 4% in any direction to insure stability of maintenance equipment and vehicles.

2. The Grantor shall not construct or place any structure or building, fence, retaining wall, street light, power pole, yard light, mail box, sign or trash receptacle, temporary or

permanent, or plant any shrub, tree, woody plant or nursery stock, on any part of the above described easement. Any structure or building, fence, street light, power pole, yard light, mail box or sign, temporary or permanent, or shrub, tree, woody plant or nursery stock, of any kind situated on the above described easement as of the date of this Agreement, may be removed by the District without liability for damages arising therefrom.

3. The Grantor, for itself, its successors and assigns, shall, upon written request, provide to the District any information within its possession about past and currently existing Environmental Contamination (as defined herein) in the easement area. Such information shall include but not be limited to environmental studies, reports, samples, agreements, liens, letters and any remediation work that has been done or is ongoing to clean the area or is planned to occur. If (i) contaminated soils exist in the easement area upon the effective date of this Agreement, for which the Grantor or its successors or assigns are responsible under applicable state or federal laws and (ii) upon discovery of such contamination, the District, in its discretion, determines to proceed with the construction of the water line, the District, at the District's sole expense, shall take corrective action to clean the contamination to the full width of the easement area and a depth of at least twelve (12) feet from finished grade or to two (2) feet below the bottom of the water line as determined by the Board. Contamination shall be cleaned to the appropriate state and federal standards set forth by the U.S. Environmental Protection Agency and Colorado Department of Public Health and Environment or to the standards of corrective action plans for the property currently approved by the U.S. Environmental Protection Agency and Colorado Department of Public Health and Environment. The District shall provide documents verifying corrective action to the Grantor and the Board prior to the installation of pipeline facilities.

4. As used in this Agreement, "corrective action" shall refer to risk assessment, active remediation, passive remediation, voluntary cleanup, investigation and/or monitoring of Environmental Contamination.

5. As used in this Agreement, "Environmental Contamination" means the presence within the easement area of any hazardous material, including but not limited to any substances defined as or included in the definition of "hazardous substance," "hazardous material" or "toxic substances" in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement of governmental authority regulating, relating to or imposing liability or standard of conduct concerning any hazardous, toxic or dangerous substance or material, as now or at any time hereafter in effect, and in the regulations adopted, published and/or promulgated pursuant to said laws.

6. The District shall make the initial installation of the water pipeline within the easement herein described at the District's sole expense. The water pipeline shall be installed in accordance with then current Board Engineering Standards.

7. Fencing existing at the time of this Agreement which is disturbed or destroyed by the District or the District's agents in constructing the water facilities shall be replaced by the

District to its original condition as nearly as reasonable; however, the Grantor shall not construct new fencing across or within the easement.

8. The District shall have and exercise the right of subjacent and lateral support to whatever extent is necessary or desirable for the full, complete and unmolested enjoyment of the rights described herein. It is specifically agreed between the parties that the Grantor shall take no action which would impair the earth cover over, or the lateral or subjacent support for any water pipeline or lines and appurtenances within the easement. The Board's Engineering Standards require no less than four and one-half (4½) feet and no more than ten (10) feet of earth cover, measured vertically from the top of any pipeline or lines. Deviation from this requirement will be permitted only upon specific prior, written permission from the Board. If such modification undertaken by the Grantor requires alterations to any pipeline facility, such alteration shall be at the Grantor's expense.

9. After construction of any water pipeline or lines, the general surface of the ground, except as necessarily modified to accommodate appurtenances, shall be restored, as nearly as reasonable, to the grade and condition immediately prior to construction, including the restoration of vegetation. Topsoil shall be replaced in cultivated and agricultural areas, and any excess earth resulting from installations by the District shall be removed from the easement at the sole expense of the District. The District agrees that for a period of one-year following construction which involves disturbance of the surface of the ground, the District will maintain the surface elevation and quality of the soil by correcting any settling or subsiding that may occur as a result of the work done by the District.

10. The District agrees that other public utilities such as sanitary sewer, storm sewer, gas, and electric lines, may be installed in the above described easement as long as they do not interfere with the District's or the Board's (as assignee) rights and as long as piping crossing the water line(s) at right angles, or a substantially right angles, is metallic or concrete. Any piping or cable that crosses the water line(s) and is not metallic or concrete, **must** be encased within steel conduit and/or concrete ducts. Any and all utilities which parallel the water facilities will not be permitted within ten (10) feet of water facilities without prior express permission of the District or the Board. The intent is to reserve for the water lines at least twenty (20) feet of the easement width.

11. The Grantor has retained the right to the undisturbed use and occupancy of the subject property insofar as such use and occupancy is consistent with and does not impair any grant herein contained and except as herein otherwise provided.

12. The District is acquiring the rights in the subject property in order to insure to the Board, as the District's assignee, a dominant easement for the exercise of the Board's functions, and that the exercise of any rights in the subject property other than those retained by the Grantor should be within the discretion of the Board. The District, or following any assignment, the Board agrees to permit and authorize such other uses of the subject property, not reserved in the Grantor, as will not impair such dominant rights, upon the payment of reasonable compensation to the District or the Board and upon such terms, limitations, and conditions as the Board shall find reasonably necessary to protect its dominant right of occupancy of the subject property for

such purpose without undue or unnecessary injury to or impairment of the estate retained by the Grantor.

14. This Agreement and all rights and obligations hereunder shall be assignable to the Board; provided, however, that in the event of such assignment, the District shall remain solely responsible for any corrective action for Environmental Contamination in accordance with the terms of paragraph 3 hereof. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties.

15. For the resolution of any dispute arising from this Agreement, venue shall be in the courts of Adams County, State of Colorado.

16. Unless special provisions are listed below and/or attached, the above constitutes the whole Agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties with respect to the subject matter of this instrument. To the extent that any special provisions are in conflict with any other provisions, the special provisions shall control and supersede any other terms or provisions.

17. SPECIAL PROVISIONS:
This easement or any portion thereof shall automatically terminate upon dedication and construction of that portion of such easement as shall be dedicated as public right of way. Any portion of the easement area not so dedicated or designated and constructed shall remain in full force and effect.

Before commencing any construction in the easement, the District shall obtain all necessary permits and approvals required by the Commerce City Revised Municipal Code

CITY OF COMMERCE CITY
a Colorado Home Rule Municipality,

Sean Ford, Mayor

Robert R. Gehler, City Attorney

The foregoing instrument was acknowledged before me on this _____ day of _____, 2015 by Sean Ford, as **Mayor** of City of Commerce City, a **Colorado home rule municipal corporation**.

My commission expires:_____

PARK CREEK METROPOLITAN
DISTRICT a quasi-municipal corporation
and political subdivision of the State of
Colorado

Date: _____