

UTILITY EASEMENT

THIS UTILITY EASEMENT (this "Agreement") is made and entered into this ____ day of _____, 2015 (the "Effective Date"), by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose principal business address is 7887 E. 60th Avenue, Commerce City, Colorado 80022 (the "Grantor"), and SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT, a special district and a quasi-municipal corporation of the State of Colorado whose principal business address is 6595 E. 70th Avenue, Commerce City, Colorado 80022 ("Grantee").

WHEREAS, the Grantee desires to install a water line within the Grantor's property; and

WHEREAS, the Grantor has agreed to grant to Grantee an easement to locate the water line within Grantor's property, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of mutual covenants herein provided and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Grant of Easement.** The Grantor, without warranting title or interest and subject to the covenants set forth in this Agreement, grants to the Grantee, its successors and assigns, a non-exclusive and permanent easement (the "Easement"), including the right of ingress and egress into, over, under and across, the property described in **Exhibit A** (the "Property") for construction, installation, operation, maintenance, inspection, repair and replacement of an underground water line in accordance with the plans attached as **Exhibit B** (the "Utility"); provided, however, the Grantee shall not unreasonably interfere with the public use of the Property for its intended purpose and the Grantee shall construct and install the Utility in a manner that minimizes disturbance of existing vegetation and irrigation systems within the Property. The Grantee shall not deviate from Exhibit B without prior written consent of the Grantor. Exhibits A and B are attached and incorporated by reference.
2. **Subjacent and Lateral Support.** The Grantee 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 Easement. Except for modifications specifically permitted in writing by the Grantee, the Grantor shall take no action that will impair the earth cover over or the lateral or subjacent support for the Utility within the Property.
3. **Restoration of Surface.** If the Property's surface has been disturbed or modified by the installation, repair or replacement of the Utility, the Grantee will restore the general surface of the Property as nearly as may be possible to the grade and condition that existed immediately prior to the installation, repair or replacement work performed by the Grantee, except as necessarily modified to accommodate the Utility with the Grantor's approval. Topsoil shall be replaced and cultivated in agricultural areas and any excess earth resulting from installation by the Grantee shall be removed from the Property at the Grantee's sole expense. For a period of one year following construction which involved disturbance of the surface of the Property, the Grantee 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 Grantee.

4. Restriction on Grantor. The Grantor shall not construct any permanent building or similar structure on the Property without the Grantee's prior written consent. The Grantor may install temporary or removable and replaceable facilities, landscaping, plants and shrubs within the Property. The Grantee, at its own cost, may remove any of the temporary or removable and replaceable items that have been properly placed within the Property, in the process of exercising its rights under this Agreement. The Grantee, at its own cost, shall replace any temporary or removable and replaceable items removed by the Grantee if requested by the Grantor and such replacement is consistent with the Easement. Furthermore, in no event shall Grantor construct or place, longitudinally along or otherwise within the Easement, any tree, underground pipeline, cable, wire, conduit, valve, stub, or other utility or appurtenance without the prior written consent of the District.

5. Reservation of Grantor. The Grantor retains unto itself and such others currently making use of the Property, and those who may in the future make use of the Property, the right to the undisturbed use and occupancy of the Property insofar as such use and occupancy is consistent with and does not impair the Easement.

6. Additional Easements. The Grantor reserves the right to grant further easement interests in the Property to other utilities and grantees upon obtaining written consent from the Grantee, which consent shall not be unreasonably withheld if the Grantee's rights to the use of the Easement will not be materially impaired by such grant; provided, that such further easement interests shall be no closer than ten (10) feet from the Grantee's existing and any future planned facilities.

7. Safety Measures; Insurance. The Grantee shall cause all contractors and subcontractors performing work on or about the Property to take all necessary safety measures with respect to the construction and maintenance activities. The Grantee shall require all contractors and subcontractors performing work on or about the Property to name the Grantor as an additional named insured with respect to any applicable insurance policies (except for worker's compensation policies).

8. Maintenance. Grantee, at its sole cost and expense, shall be solely responsible for the maintenance of the Utility. Grantee, at its own cost, shall promptly repair any damage to the Property as a result of Grantee's use or work or as otherwise agreed to in writing by the parties.

9. Term; Termination.

a. Term. This Agreement shall remain in effect and may be terminated only upon the Grantee's material breach of this Agreement or Grantee's abandonment or removal of the Utility. In the event of a material breach by Grantee, Grantor shall provide Grantee with written notice of the breach and 30 days to cure the breach prior to exercising the right to terminate the Agreement.

b. Abandonment. If the Grantee abandons its rights in the Easement and cease to use the same, all right, title and interest of the Grantee under this Agreement shall cease and terminate and the Grantor shall hold said premises as the same; provided that prior to any claim of abandonment, the Grantor shall give the Grantee ninety days advance

written notice for the Grantee to avoid an abandonment by providing written notice of intent to continue to use the Easement.

- c. Remedies. Upon termination of this Agreement for any reason whatsoever, the Grantee shall remove the Utility or relinquish to the Grantor all right, title, interest and control in the Utility. If the Grantee fails to remove the Utility at the Grantor's demand, the Grantor may remove the Utility at the Grantee's expense. Any remedy set forth in this Agreement shall be in addition to any other remedy available to the Grantor in law or in equity.

10. Compliance with Applicable Law. The Grantee shall comply with all applicable federal, state and local laws, ordinances and regulations in exercising any of the rights granted under this Agreement.

11. Notice. Any given notices hereunder shall be in writing and shall be deemed to have been sufficiently given if delivered by hand, sent by fax or sent by prepaid certified United States mail, return receipt requested, to the following addresses provided, however, that any party shall have the right to change its address for notice hereunder by the giving of written notice to the other party in the manner set forth below.

If to the Grantor:

Director
Dept. of Parks, Recreation and Golf
City of Commerce City
7887 E. 60th Avenue
Commerce City, CO 80022

With a copy to:

City Attorney
City of Commerce City
7887 E. 60th Avenue
Commerce City, CO 80022

Risk Manager
City of Commerce City
7887 E. 60th Avenue
Commerce City, CO 80022

If to Grantee:

South Adams County Water and
Sanitation District
Attention: District Manager
6595 E. 70th Avenue
Commerce City, CO 80022

With a copy to:

Carolyn R. Steffl, Esq.
Moses, Wittemyer, Harrison & Woodruff
P.O. Box 1440
Boulder, Colorado 80306-1440

12. General Provisions.

- a. Independent Contractor; No Partnership or Agency. Notwithstanding any language in this Agreement or any representation of warranty to the contrary, the relationship between the Grantee and the City shall be as independent contractors, and neither the Grantor nor the Grantee shall be deemed or constitute an employee, servant, agent, partner or joint venture of the other.

- b. No Third-Party Beneficiaries. Enforcement of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties. The parties expressly intend that any person other than the Grantor and the Grantee shall be deemed to be only an incidental beneficiary under this Agreement.
- c. Assignment. The Grantee shall not assign this Agreement without the Grantor's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.
- d. Agreement Binding. This Agreement, and all benefits and burdens granted by it, shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, personal representatives, successors and assigns.
- e. No Waiver. The waiver of any breach of a term, provision or requirement of this Easement Agreement shall not be construed as or deemed a waiver of any subsequent breach of such term, provision or requirement or of any other term, provision or requirement of this Agreement.
- f. Governing Law and Venue; Recovery of Costs. This Agreement shall be governed by the laws of the State of Colorado. Venue for state court actions shall be in the 17th Judicial District in Adams County, Colorado, and venue for federal court actions shall be in the United States District Court for the District of Colorado. If legal action is brought to resolve any dispute among the parties related to this Agreement, the prevailing party in such action shall be entitled to recover reasonable court costs and attorney fees from the non-prevailing party.
- g. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq.
- h. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and, except as provided herein, may not be modified or amended except by written agreement of the parties.
- i. Authority. The parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this Agreement on behalf of the parties and to bind the parties to its terms.
- j. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.
- k. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.
- l. Severability. The provisions of this Agreement are severable. If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such

holding shall not invalidate or render unenforceable any other provision of this Agreement.

- m. Acknowledgement of Open Records Act – Public Document. The Grantee hereby acknowledges that the Grantor is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, and as such, this Agreement may be subject to public disclosure.
- n. Controlling Terms. If the terms of this Agreement and its exhibits conflict, this Easement Agreement shall control.

IN WITNESS WHEREOF, the City of Commerce City and South Adams County Water and Sanitation District have executed this Utility Easement as of the Effective Date.

CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

Robert Gehler, City Attorney

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The above and foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Sean Ford, Mayor of the City of Commerce City.

Notary Public

My commission expires: _____

**SOUTH ADAMS COUNTY WATER AND
SANITATION DISTRICT**

Jim Jones
Jim Jones, District Manager

ATTEST:

Sue Maeno

Title: D+C Systems Manager

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The above and foregoing instrument was acknowledged before me this 19th day of February, 2015, by Jim Jones, District Manager of the South Adams County Water and Sanitation District.

My commission expires: 2/9/17

Sandra Joan Schrawder
Notary Public

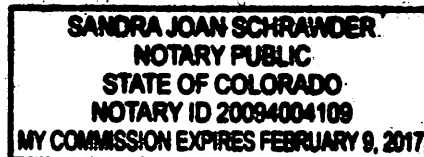


EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHWEST 1/4 OF SECTION 32, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH P.M., LYING WITHIN TRACT A, RANGE VIEW SUBDIVISION AMENDED AND PLOT 6, 2ND ADDITION TO HENEBRYDALE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT A; THENCE S 00°12'04" E, ALONG THE EASTERLY LINE OF SAID TRACT A, A DISTANCE OF 92.59 FEET TO THE POINT OF BEGINNING;

THENCE S 90°00'00" E, THROUGH SAID PLOT 6, A DISTANCE OF 168.95 FEET, TO THE WESTERLY RIGHT-OF-WAY LINE OF MONACO STREET; THENCE S 00°12'04" E, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 30.00 FEET; THENCE N 90°00'00" W, THROUGH SAID PLOT 6 AND TRACT A, A DISTANCE OF 204.07 FEET, TO THE PROPOSED EASTERLY RIGHT-OF-WAY LINE OF LOCUST STREET; THENCE NORTHERLY, ALONG SAID PROPOSED RIGHT-OF-WAY LINE, THE FOLLOWING 2 COURSES;

1. N 00°12'04" W, 23.03 FEET;

2. N 54°58'10" E, 21.72 FEET;

THENCE THROUGH SAID TRACT A, THE FOLLOWING 2 COURSES:

1. S 00°00'00" E, 5.50 FEET;

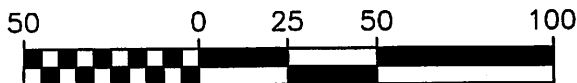
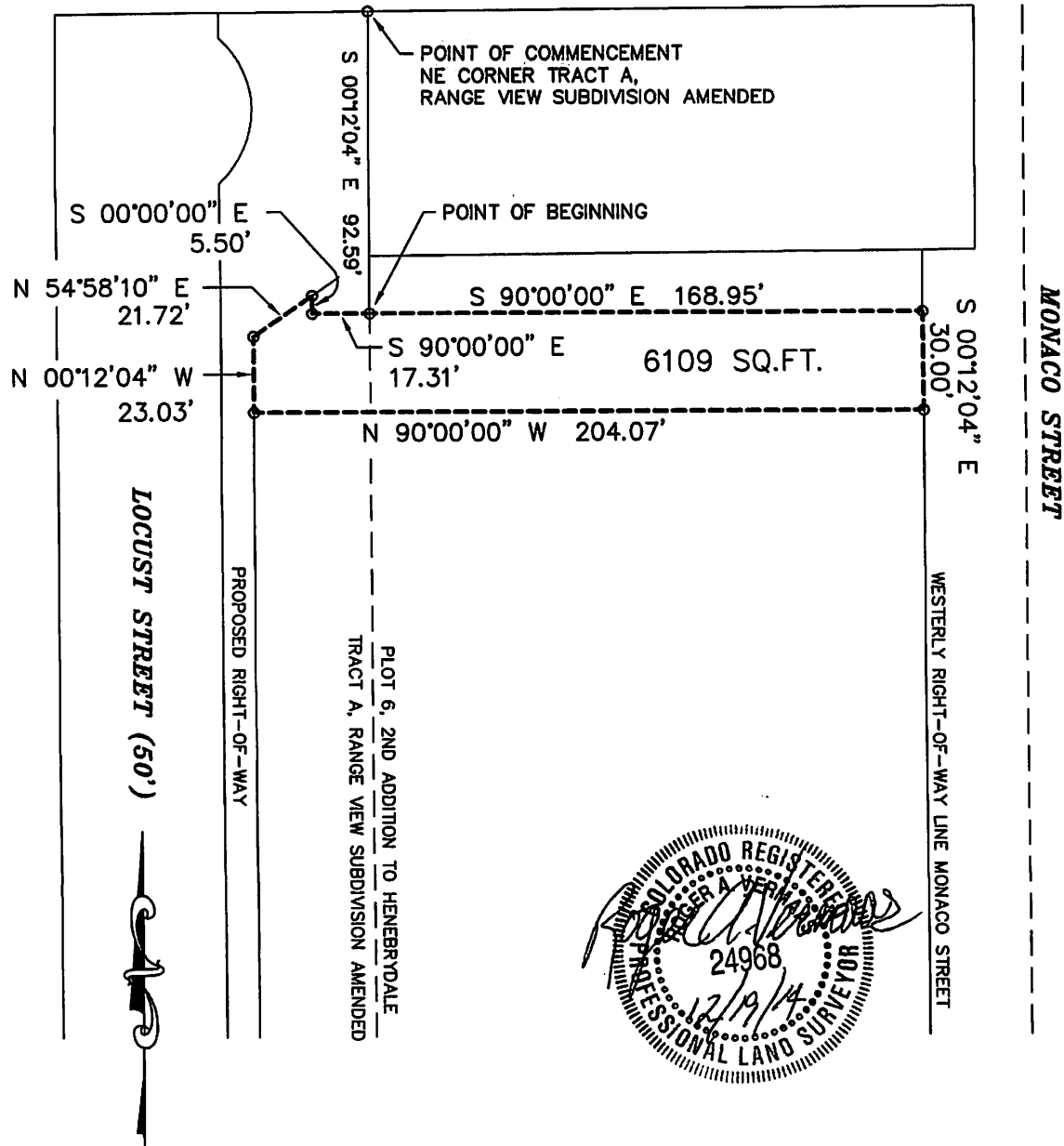
2. S 90°00'00" E, 17.31 FEET TO THE POINT OF BEGINNING,
COUNTY OF ADAMS, STATE OF COLORADO.

PARCEL CONTAINS 6109 SQUARE FEET, MORE OR LESS.

ROGER A. VERMAAS,
PROFESSIONAL LAND SURVEYOR, COLO.L.S.#24968
FOR, AND ON BEHALF OF ASPEN SURVEYING, INC.
2993 S. PEORIA ST. #G-5, AURORA, CO 80014



EXHIBIT B



ORIGINAL SCALE: 1"=50'

NOTE: THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION



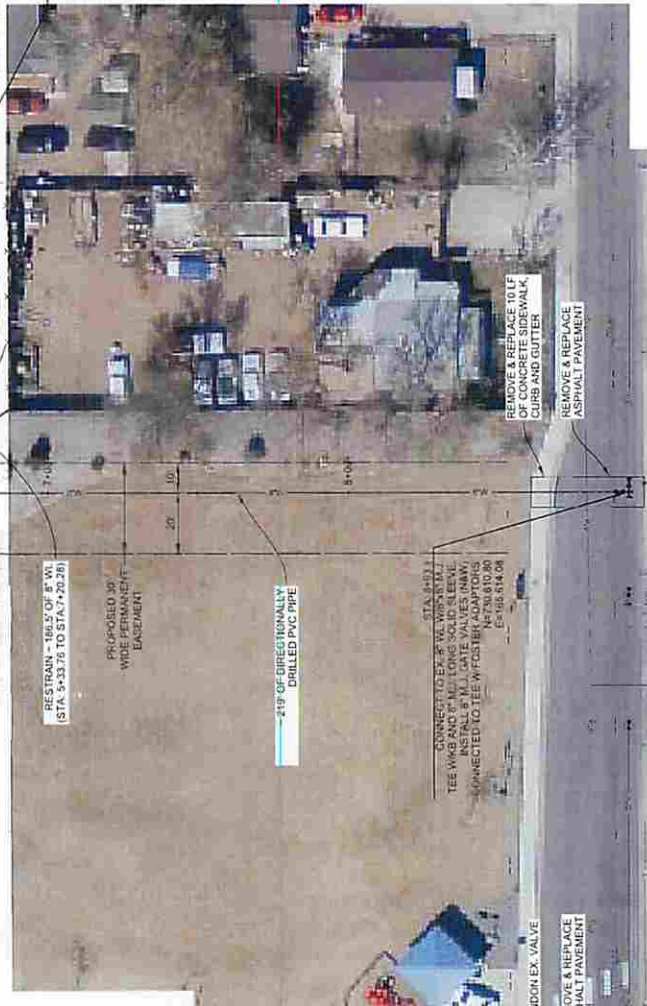
Aspen Surveying, Inc.

2993 S. Peoria Street, Suite G-5

Aurora, Co. 80014

Ph. (303) 750-4590 Fax (303) 750-0646

SCALE:	1" = 50'	JOB NO.	2014-0181
DATE:	12/18/14	MULLER ENGINEERING COMPANY, INC.	
DRAWN BY:	TPF		1 OF 1



AND INSTALL A 6" M.J. CAP AND 6" M.J. PLUG IN TEE W/K.B. IN BETWEEN

- [illegible]

ENGINEERING CO., INC.
 1775 W. CENTER STREET, SUITE 410
 DALLAS, TEXAS 75201
 (214) 343-1234

**South Adams County
 Water & Sanitation District**
 1005 East Fifth Avenue, P.O. Box 337
 Commerce City, Colorado 80015-0337
 (303) 266-2448

DATE: 06/29/2014
BY: WATC P&P
FILED: 14-07-01
SHEET: 5 OF 12

[illegible]