

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2015, by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60th Avenue, Commerce City, CO 80022 ("Grantor") and the South Adams County Water and Sanitation District ("Grantee" or "District"), a special district and a quasi-municipal corporation of the State of Colorado, whose address is 6595 East 70th Avenue, Commerce City, Colorado 80037.

RECITALS

For good and valuable consideration, the receipt whereof is hereby acknowledged, Grantor hereby grants to the District, its successors and assigns, an Easement for the non-exclusive and permanent right to enter, re-enter, occupy and use the hereinafter described property to construct, maintain, repair, replace, remove, enlarge and operate one or more sanitary sewer or water pipelines and all underground and surface facilities related thereto, including, but not limited to, the following: electric or other control systems, underground cables, wires, connections, mains and conduits, valves, vaults, manholes, pump stations, lift stations, wells, well housings, ventilators and the like 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:

The property described in **Exhibit A** ("Property"), attached hereto and made a part hereof as if fully set forth herein.

Grantor shall not stop, limit, hinder or impede the construction, operation, use and maintenance of the referenced District facilities, except in the lawful exercise of its rights under this Easement or at law.

NOW THEREFORE, 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 Property for the full use of the Easement provided for herein.
2. The District shall have the right to cut, trim, control, and remove trees, brush and other obstructions which injure or interfere with the District's use, occupation, or enjoyment of the Easement or the operation, maintenance, repair, or patrolling of the District's facilities, without liability for damages arising therefrom.
3. Grantor shall not construct any permanent building or similar structure on the Easement, without the District's prior written consent, though Grantor may maintain a parking surface and install and maintain temporary or removable and replaceable objects such as yard lights, mail boxes, signs, fences, and shrubs, flowers, or plants without deep root systems, within the Easement. Furthermore, in no event shall Grantor:
 - (a) 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; or

- (b) Change, by excavation or filling, the present grade or ground level of the Easement by more than one (1) foot without the prior written consent of the District.

If in the process of exercising one or more of the rights described in this Agreement the District finds it necessary to remove any of the previously described items which have been placed or planted within the Easement by Grantor, the District shall do so at its own cost. The District shall replace any temporary or removable and replaceable items disturbed or removed by the District if requested by the Grantor and such replacement is consistent with the Easement.

4. The District shall have and exercise the right of subjacent and lateral support for the full and complete use of the Easement. The Grantor shall take no action which would impair the earth cover over, or the lateral or subjacent support for, any line or related facilities within the Easement; provided, however, that upon obtaining the specific written permission of the District, the earth cover over any pipeline or lines may be modified; except that permission normally will not be granted for modification involving cover of less than four and one half (4.5) feet, nor greater than ten (10) feet measured vertically from the top of any lines or facilities.

5. After construction, repair, replacement or enlargement of any lines or facilities within the Easement, the general surface of the ground (including any parking surface) shall be restored as nearly as reasonably can be done, given the existence of these lines or facilities, to the grade and condition it was in immediately prior to construction. Topsoil shall be replaced in cultivated and agricultural areas, and any excess earth resulting from installation by the District shall be removed from the Easement at the expense of the District. The District agrees that for a period of one (1) 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 within the Easement.

6. Grantor retains the right to the use and occupancy of the Property insofar as such use and occupancy is consistent with the terms of this Agreement and does not impair the District's use of the Easement. Grantor and its successors, assigns, together with licensees, or guests, agree to hold the District harmless from claims arising from the installation, use, maintenance, repair or other acts associated with the District's facilities on the Property, except for claims arising from negligence on the part of the District.

7. It is mutually agreed by and between the parties hereto that the District may commence the exercise of its rights to the use of the Easement forthwith, or it may postpone the exercise of all or some part of its rights hereunder to some future time.

8. The failure of the District to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of the District in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by the District of any default hereunder shall in any manner be construed as constituting a waiver of such default.

9. The District 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 District 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).

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

11. The provisions of this Easement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Easement.

12. 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 hereto. In the event any party hereto or its successor or assign seeks to enforce its rights hereunder through litigation, arbitration or other administrative proceeding, the non-prevailing party shall be required to pay the reasonable attorney fees and costs of the prevailing party as part of any judgment, order, or award.

13. The Grantor reserves the right to grant further easement interests in the Property to other utilities and grantees upon obtaining written consent from the District, which consent shall not be unreasonably withheld if the District'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 District's existing and any future planned facilities.

14. This Easement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute over the Easement's terms and conditions, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of Adams County, Colorado.

15. Unless special provisions are attached hereto, the above and foregoing constitute the entire agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto, with respect to the subject matter of this Agreement.

SPECIAL PROVISIONS

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the day and year first written above.

CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST:

Approved as to form:

Laura J. Bauer, CMC, City Clerk

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**

By:_____
Manager

Attest:_____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me this ____ day of _____ 2015, by _____, as _____ of South Adams County Water and Sanitation District and _____, as _____ of South Adams County Water and Sanitation District.

Witness my hand and official seal:

Notary Public

My commission expires:_____