

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between City of Commerce City ("Grantor") and the South Adams County Water and Sanitation District (the "District"), a special district and a quasi-municipal corporation of the State of Colorado, whose address is 6595 East 70<sup>th</sup> Avenue, Commerce City, Colorado 80037 ("Grantee").

### WITNESSETH:

For good and valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby grants to the District, its successors and assigns, an easement (the "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, operate and/or inspect 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, pumps and pump stations, lift stations, wells, well housings, ventilators, transformers, lights and the like (collectively the "District Facilities") 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** (the "Easement Property"), attached hereto and made a part hereof as if fully set forth herein.

NOW, THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto as follows:

1. Grantor shall not stop, limit, hinder or impede the construction, operation, use and maintenance of the District Facilities within the Easement Property, except in the lawful exercise of its rights under this Agreement and at law.
2. The District shall have and exercise the right of ingress and egress in, to, over, through and across the Easement Property for the full use of the Easement provided for herein.
3. The District shall have the right to cut, trim, control, and remove trees, brush and other obstructions located within the Easement or upon Grantor's adjacent property which injure or interfere with the District's use, occupation, or enjoyment of the Easement or the construction, operation, maintenance, repair, replacement, removal, enlargement, or inspection of the District Facilities, without liability for damages arising therefrom.
4. Grantor shall not construct any permanent building or similar structure on the Easement Property except for roadway improvements. If any such items are placed on the Easement Property after the date of this Agreement, the District may remove the items without liability for damages arising therefrom and bill Grantor for its actual costs for the removal. The District shall not be responsible to replace such items after it has exercised its rights under this Agreement. The Grantor shall pay the costs of removal within thirty (30) days of receiving a bill

from the District.

5. Grantor may install temporary or removable and replaceable objects such as yard lights, mail boxes, signs, fences, and shrubs, flowers, or plants without deep root systems, on the Easement Property. 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 permitted items which have been placed or planted on the Easement Property by Grantor, the District shall do so at its own cost, and the District shall not be responsible to replace such items after it has exercised its rights under this Agreement.

6. In no event shall Grantor:

- (a) Construct or place, longitudinally along or otherwise within the Easement Property, 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 Property by more than one (1) foot without the prior written consent of the District.

7. 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 of the District Facilities within the Easement Property; 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 resulting in cover of less than four and one half (4.5) feet, nor greater than ten (10) feet measured vertically from the top of any pipelines or other subsurface District Facilities.

8. After construction, repair, replacement or enlargement of any pipelines or District Facilities on the Easement Property, the general surface of the ground shall be restored as nearly as reasonably can be done, given the existence of these pipelines or District 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 Property at the 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 occurs as a result of the work done by the District within the Easement Property.

9. Grantor retains the right to the use and occupancy of the Easement 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 release the District from any and all claims arising from the

construction, installation, use, maintenance, repair replacement, operations or other acts associated with the District's facilities on the Property, except for claims arising from negligence on the part of the District.

10. The District will secure and maintain general liability insurance sufficient to cover any liability for its actions on the Easement Property, in an amount determined in the reasonable discretion of the Board of Directors of the District.

11. 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.

12. 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.

13. The District shall use reasonable efforts to cause all contractors and subcontractors performing work on or about the Easement Property to take all necessary safety measures with respect to the construction and maintenance activities. The District shall make reasonable efforts to request that all contractors and subcontractors performing work on or about the Easement Property to name the Grantor as an additional named insured with respect to any applicable insurance policies (except for worker's compensation policies).

14. 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.

15. If the District abandons use and operation of the District Facilities installed on the Easement Property, such abandonment shall not constitute abandonment of its rights under this Agreement or the Easement.

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

17. 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.

18. The Grantor reserves the right to grant further easement interests in the Easement 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:

- (a) Such further easement interests shall be no closer than ten (10) feet from the District's existing and any future planned District Facilities, except as stated in (b).
- (b) In the case of utilities crossing District lines or other District Facilities, crossings shall be perpendicular where possible and the other utilities shall be installed in accordance with the District's Rules and Regulations and Design Standards and buried at least one and one (1½) half feet below any existing or future planned District Facilities. The utility shall take reasonable measures required by the District to protect in place any existing District Facilities, and the District may require a representative of the District to be on-site for such installation, at the cost of the additional grantee.

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

20. 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**

[None]

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

**CITY OF COMMERCE CITY, COLORADO**

By: \_\_\_\_\_  
Sean Ford, Mayor

Attest:

Approved as to Form

\_\_\_\_\_  
Laura J. Bauer, MMC, City Clerk

\_\_\_\_\_  
Robert Sheesley, City Attorney

STATE OF COLORADO     )  
                                          ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal:

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

*Signatures continue on the next page*

**SOUTH ADAMS COUNTY WATER  
AND SANITATION DISTRICT**

By: \_\_\_\_\_  
President

Attest: \_\_\_\_\_  
Secretary

STATE OF COLORADO     )  
                                          ) ss.  
COUNTY OF ADAMS     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_, by \_\_\_\_\_, as President of South Adams County Water and  
Sanitation District and \_\_\_\_\_, as Secretary of South Adams County  
Water and Sanitation District.

Witness my hand and official seal:

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_