

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT ("Agreement") is granted this ____ day of _____, 2016 ("Effective Date"), by CITY OF COMMERCE CITY, a home rule municipality existing pursuant to the laws of the State of Colorado whose address is 7887 East 60th Avenue, Commerce City, CO 80022 ("Grantor"), to FAIRMOUNT CEMETERY COMPANY, a nonprofit corporation formed under the laws of the State of Colorado whose address is 430 S. Quebec St., Denver, CO 80247 ("Grantee"), for good and valuable consideration, the receipt of which is hereby acknowledged, as follows:

1. Easement. The Grantor grants to the Grantee, its agents, successors, and assigns, a non-exclusive and permanent access easement for the rights of vehicular access, ingress, and egress to and from York Street to the Grantee's adjacent property over and across the property described in Exhibit A ("Easement Property"), which exhibit is attached and incorporated into this Agreement (the "Easement"). The Grantee, or others on its behalf, may construct and shall maintain in good condition at all times, a roadway within the Easement Property for the full enjoyment of the Easement, subject to all requirements of the Grantor including the Grantor's Engineering Construction Standards and Specifications.

2. Reservation. The Grantor shall not be required to improve or maintain any roadway or other facilities within the Easement Property. The Grantor retains the right to the undisturbed use and occupancy of the Easement Property insofar as such use and occupancy is consistent with and does not impair the Grantee's use of the Easement. The Grantor reserves the right to grant additional easements within the Easement Property, subject to the rights granted to Grantee hereunder. Notwithstanding any the foregoing, the Grantor may temporarily restrict use of the Easement Property for reasonable periods of time, to perform maintenance or construction activities or to permit other users to perform such activities within the Easement Property.

3. Limitations. The Grantee acknowledges and agrees that this Easement is subject to all prior rights, rights-of-way, easements, and other encumbrances affecting the Easement Property. The Grantor makes no warranty of title with respect to the Easement Property.

4. Conditions. The following are express conditions to granting of the Easement to which the Grantee agrees:

a. The Grantee shall be liable and responsible for any and all damages (except for ordinary wear and tear) to persons or property caused by or arising out of the actions, obligations or omissions of the Grantee, its employees, agents, representatives, contractors or other persons acting under the Grantee's direction or control in the exercise of Grantee's rights and obligations under this Easement.. The Grantee shall indemnify and hold harmless the Grantor, its elected and appointed officials and its employees, agents and representatives (the "Indemnified Parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, actual and reasonable attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the negligent, grossly negligent, willful and wanton, or intentional actions or omissions of the Grantee within the Easement Property, and/or its employees, agents or representatives or other persons acting under Grantee's direction or control within the Easement Property. The provisions set forth in this paragraph shall survive the termination of this Easement.

b. All work performed by or on behalf of the Grantee in connection with this Agreement shall be done with reasonable and professional care and the Grantee shall cause all contractors doing work on the Easement Property to take all necessary safety measures, comply with all applicable laws, ordinances, requirements, rules and regulations, and comply with all terms and conditions of this Agreement.

c. At all times during any construction within the Easement Property, the Grantee, or such other person or entity who shall perform the construction ("Constructing Party"), shall procure and keep in full force a policy of comprehensive general liability insurance insuring the Constructing Party or Grantee as the case may be, and naming the Grantor (and Grantee if a Constructing Party does the work) as an additional insured(s) against any liability for personal injury, bodily injury or death arising out of the work on the Easement Property with at least Two Million Dollars (\$2,000,000.00) each occurrence. The limits of said insurance shall not, however, limit the liability of the Constructing Party and Grantee hereunder.

d. The Constructing Party (or Grantee, if Grantee performs the work) shall pay or cause to be paid all costs for work done by or on behalf of the Grantee or any of its designees, contractors or assigns occupying or doing work on or adjacent to any portion of the Easement Property. The Constructing Party (or Grantee, if Grantee performs the work) shall keep the Easement Property free and clear of any mechanic's liens and other liens on account of work done or performed on behalf of the Grantee and shall indemnify, defend, and hold harmless the Grantor and the Easement Property from and against any such liens without regard to the validity of such liens. Should any liens be filed or recorded against the Easement Property or any action affecting title thereto be commenced as a result of work by or for the Grantee on the Easement Property, the Constructing Party (or Grantee, if Grantee performs the work) shall cause such liens to be removed of record within ten (10) days thereof.

e. The Grantee shall cause this Agreement to be recorded in the records of the Clerk and Recorder of Adams County, Colorado.

5. No term or condition of this Easement 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.*, as to any public entity.

(Signatures contained on next page(s).)

IN WITNESS WHEREOF, the undersigned has set his hands effective the day and year first above written.

CITY OF COMMERCE CITY

Sean Ford, Mayor

APPROVED AS TO FORM:

Robert D. Sheesley, City Attorney

ATTEST:

Laura J. Bauer, MMC, City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The above and foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Sean Ford, Mayor of the City of Commerce City.

Notary Public

My commission expires: _____

ACCEPTED:

FAIRMOUNT CEMETERY COMPANY

By: _____

Name: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The above and foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, _____ of _____.

Notary Public

My commission expires: _____