

## **CONDITIONAL USE PERMIT**

### **FOR A PUBLIC UTILITY INSTALLATION**

#### **CASE #CU-123-20**

**WHEREAS**, the City Council of the City of Commerce City, Colorado, having considered the report of the Director of Community Development, and having adopted the findings and recommendation of the Planning Commission, and having approved with conditions a conditional use permit to allow for the installation of a public utility pursuant to the Land Development Code of the City of Commerce City in Case #CU-123-20 specifically described as the Second Creek Interceptor which extends from E. 81st Avenue and Tower Road to E. 120th Avenue and Wheeling Street along Second Creek and the Sand Creek Interceptor which is near E. 64th Avenue and York Street, Commerce City, Colorado; and

**WHEREAS**, the City of Commerce City finds that this Conditional Use Permit is only appropriate if certain conditions are met; and

**WHEREAS**, the City of Commerce City desires to set to writing the conditions of the Conditional Use Permit.

**NOW THEREFORE**, the Conditional Use Permit applied for in Case # CU-123-20 shall issue subject to the following conditions:

#### **CONDITIONS:**

- A. Permit holder will comply with its application resubmittal dated May 2020 with updates dated June 2020, August 2020 and October 2020 and the 95% design plans dated May 2020, to the extent consistent with the City Code and the conditions of approval.
- B. Alterations to the route of this pipeline<sup>1</sup> outside of the approved easements, or any modification requiring raising the pipeline or its components above-grade (except as currently approved) will require an amendment to this Conditional Use Permit.
- C. The pipeline is to be used to transport wastewater, as defined in the Metro Wastewater Reclamation District's *Rules and Regulations Governing the Operation, Use, and Services of the System* (Rules and Regulations), including, but not limited to liquid wastes, solid wastes, night soil, industrial wastes, and any other substance, whether it be liquid, solid, in suspension, or in solution, in a Municipal Sewer System or in the District System, or in both such systems. Any change in the element being transported through this pipeline will require an amendment to this Conditional Use Permit.
- D. Due to the pipeline length and extended duration of construction, the pipeline will be constructed in a phased approach. Prior to commencing a phase of the pipeline construction within Commerce City, the permit holder shall obtain approval of the required permits and

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<sup>1</sup> As used herein, the term pipeline refers to an "interceptor" which is a sewer line with nominal pipe diameter equal to or greater than 24 inches that conveys sewage by gravity.

plans with respect that phase of construction and for activities in Commerce City and furnish a copy to the Planning Division, including without limitation:

1. Temporary use permits and building permits for the construction staging areas and structures;
  2. Construction drawings illustrating the tunnel or open cut construction methods identified in this conditional use permit (Commerce City Engineering Division);
  3. Traffic control plan(s) (Commerce City Engineering Division);
  4. Grading permit(s) (Commerce City Engineering Division), meeting all requirements set forth in the Commerce City Engineering Division's Engineering Construction Standards and Specifications and including Grading, Erosion, and Sediment Control (GESC) Plans;
  5. Floodplain permit(s) (Commerce City Engineering Division) for each section of pipeline found within a Commerce City floodplain;
  6. Emergency access/response plan (South Adams County Fire Protection District) (which must also be provided to the City's emergency manager and South Adams County Fire Protection District). This plan is to be kept up-to-date, and the permit holder shall notify the agencies previously listed within 90 days when a change is made to this plan;
  7. Applicable State or Federal permits required for construction work within the Second Creek floodplain and wetland areas;
  8. An issuing permit from CDOT;
  9. Results of Pre-Construction Flammable Gas Monitoring and production of a Materials Management Plan. These documents shall outline mitigation of issues related to hazardous materials and flammable gas and include review from county and state health departments, as applicable. Submit the Construction Completion Report (Tri-County Health or CDPHE) after project completion.
  10. A summary of their findings and proposed actions (if applicable) regarding properties with on-site wastewater treatment systems adjacent to the Second Creek Interceptor, including review from county and state health departments, as applicable, from Tri-County Health or CDPHE;
  11. A fugitive dust plan and evidence of an Air Pollution Emission Notice (APEN) application from the Air Pollution Control Division, Colorado Department of Health and Environment. Alternately, the permit holder can provide evidence from the APCD that they are not subject to these requirements;
- E. Prior to commencing a phase of the pipeline construction within Commerce City, the permit holder shall obtain the necessary property interests required for that phase of construction and operation of the Second Creek Interceptor and any temporary use or staging areas within Commerce City, including temporary and permanent easements, consents, licenses, and lease agreements, and furnish copies to the Planning Division, including without limitation from the following:
1. The Farmers Reservoir and Irrigation Company;
  2. LC Fulenwider, Oakwood Homes, or owners of any property in the Reunion Development;
  3. The City of Commerce City and any of its affiliated districts;
  4. The South Adams County Water and Sanitation District;
  5. Public Service Company of Colorado;

6. Brighton School District 27J and
  7. Any other public or private owners.
- F. The permit holder shall coordinate with Commerce City Parks and Recreation to ensure that proper notice, signage, and alternative trail access and routes are established, if necessary, during construction near existing trails
  - G. The permit holder shall repair any open space, trail, road, and right-of-way areas that may be damaged during construction or maintenance.
  - H. The permit holder shall coordinate with Commerce City Parks and Recreation in the construction of any maintenance road and shall construct its maintenance road to Commerce City specifications for trails.
  - I. The permit holder shall provide an outreach program to notify the community of construction activities, as provided in the applicant's narrative. The permit holder will provide at least 7 calendar days' notice of any activity affecting existing sidewalks or roadways and 14 calendar days' notice for any activity affecting existing trails to the Commerce City Communications Division, Public Works Department (for roads and sidewalks), and Parks and Recreation (for trails) to ensure that proper notice is provided.
  - J. The permit holder shall notify all property owners by mail within 300-feet of the pipeline 7 calendar days prior to beginning construction of the pipeline within the Commerce City boundaries.
  - K. The permit holder shall restore any land disturbance as soon as possible. Revegetation will be in accordance with the stormwater management plan permit and will be conducted as soon as possible or within the first available planting season.
  - L. The permit holder shall follow the proposed noise and odor mitigation practices found in page 5-5 of the applicant's application narrative.
  - M. The permit holder shall follow the weed management and revegetation practices outlined on page 5-3 of their application.
  - N. The operation shall comply with all applicable rules and regulations of the state and federal agencies and the Commerce City Municipal Code and Land Development Code.
  - O. The permit holder shall ensure, with approval of the Mile High Flood District, stream reconstruction at each open cut crossing of any major drainageway, including without limitation Second Creek and West Fork of Second Creek.
  - P. The permit holder shall meet directly with the applicable school districts and coordinate the timing of construction to occur during a time when school is not in session, to the extent practicable.
  - Q. At the conclusion of the construction of the pipeline, the permit holder shall provide copies of 'as built' surveys, drawings, geotechnical data, and materials testing results to the city's Planning Division.
  - R. The permit holder shall notify the Commerce City Planning Division if and when any permanent discontinuation of the use of this pipeline for wastewater transmission takes place. The permit holder shall be required to furnish a mitigation plan for the pipeline at that time.


Failure to comply with the above conditions shall constitute basis for revocation by the City of Commerce City, after public hearing, of the Conditional Use Permit authorized for the above-described property, it being expressly determined by the City Council that the Conditional Use Permit granted by the City of Commerce City in Case # CU-123-20 is not proper in the absence



of compliance with the conditions herein contained. In the alternative, the City may proceed with legal action for injunctive relief to enforce the conditions herein imposed or issue a summons and complaint in the Commerce City municipal court for violation of the aforesaid conditions, and in the event a summons and complaint is issued in the Commerce City municipal court, and upon finding a violation of the condition set forth in this Conditional Use Permit, the municipal court may impose any penalty authorized by the Land Development Code. The remedies herein provided for shall be considered cumulative and not mutually exclusive.

**IN WITNESS WHEREOF**, the undersigned have set their hands effective the 2<sup>nd</sup> day of November, 2020.

CITY OF COMMERCE CITY, COLORADO

  
Benjamin A. Huseman, Mayor

ATTEST



Dylan A. Gibson, City Clerk

