Terms And Conditions Applicable to Utility Easements Granted by Plat and to Utility Easements Reserved by Ordinance Vacating Public Right-of-Way

These Terms and Conditions ("Terms and Conditions") set forth the terms and conditions applicable to: all utility easements or dedications granted by subdivision plat or replat that reference this document, and to all utility easements retained or reserved by a City of Colorado Springs ordinance vacating public right-of-way that reference this document ("Ordinance"). Such easements are herein referred to as the "Permanent Easement".

For good and valuable consideration, by the adoption of any such Ordinance or by the execution and recordation of a subdivision plat or replat of the real property legally described therein ("Property"), the owner of the Property ("Grantor") granted this Permanent Easement to the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"), on behalf of its enterprise, Colorado Springs Utilities ("Grantee"). Both Grantor and Grantee hereinafter are individually referred to as "Party" and collectively referred to as "Parties."

1. **Non-Exclusive Permanent Easement.** The Permanent Easement is hereby deemed a perpetual, non-exclusive permanent easement to enter, occupy, and use the Permanent Easement to construct, reconstruct, install, use, operate, maintain, repair, patrol, replace, upgrade, or remove one or more pipelines, conduits, poles, vaults, meters, regulator stations, switches, transformers, valves, hydrants, manholes, access roads or any other utility structures (including, but not limited to, communication facilities), and all necessary underground or aboveground cables, wires, and appurtenances thereto, including, but not limited to, electric or other control systems, cables, wires, connections, and surface appurtenances ("Improvements") and to make any cuts and fills in the earth necessary to the performance of such work, in, on, under, through, over and across the Permanent Easement.

2. **Ingress and Egress.** Grantee shall have the perpetual right of reasonable ingress and egress in, to, through, over, under, and across the Property for access to and from any roads, highways, streets, alleys, or any other point to the Permanent Easement in order to perform Grantee's rights in the Permanent Easement. To the maximum practicable extent, Grantee shall use existing gates, roads, trails or facilities to avoid disruption of Grantor's operations on the Property.

3. **Additional Construction.** Grantee shall have the right to construct, reconstruct, install, use, operate, maintain, repair, patrol, replace, upgrade, or remove at any time or from time to time, one or more additional Improvements and appurtenances thereto within the Permanent Easement. Such right shall be perpetual, and Grantor shall not stop, hinder, or impede construction of such additional Improvements or limit the same within the Permanent Easement.

4. **Grantor's Rights Unaffected.** Except as provided in Section 5 below, Grantor shall retain the right to make full use of the Property, except for such use as might endanger or interfere with the rights of Grantee in the Permanent Easement. Grantor shall only perform or permit other persons or entities to perform construction or other work within the Permanent Easement after prior written approval by Grantee and only if such construction or other work is performed in accordance with these Terms and Conditions, all applicable laws, rules and regulations, and Grantee's rules and regulations as they may be modified from
time to time. Grantor reserves use of the Permanent Easement, whether longitudinal or otherwise, for installing the following with written approval from Grantee: pavement, curbs, gutters, sidewalks, parking areas and associated curb cuts, paved driveways, fences (except fences which cannot be reasonably removed and erected again, such as, but not limited to: stone, brick, or other masonry type fences or walls), low-height landscaping, and sprinkler systems which are capable of being reasonably located by Grantee ("Grantor’s Improvements"); provided however, that the exercise of such rights, in the reasonable opinion of Grantee, does not injure or interfere with, now or in the future, any of the Grantee’s rights in the Permanent Easement including, but not limited to, Grantee’s rights of maintenance and reasonable access.

5. **Installations within Permanent Easement.** Grantor shall not construct or place any permanent structure or building on any part of the Permanent Easement including, but not limited to: posts, poles, fences (except posts, poles, or fences that can be easily removed and erected again; and except for garage-door porch stoops and only those retaining walls up to 4 feet in height that may be required to extend into the side lot-line easements of a residential property), dwellings, garages, barns, sheds, storage structures of any kind, lean-tos, play houses or other play structures, outbuildings, gazebos, hot tubs, swimming pools, concrete patios, decks, basketball/sports courts, retaining wall, or any edifice projections such as, but not limited to: balconies, verandas, porches, building overhangs, or bay windows. Without liability for damages, Grantee may remove any structure or building constructed or placed within the Permanent Easement. If Grantor constructs, places or permits any structure or building within the Permanent Easement, then Grantor shall reimburse Grantee for all expenses (including, but not limited to removal, court, collection, and attorneys’ fees and costs) associated with or arising from removing such structure or building. Despite anything herein to the contrary, if the City approves a projection into the Property’s building-setback pursuant to section 7.4.102.F of the City Code ("Projection Approval"), then the Projection Approval shall be considered Grantee’s prior written consent to Grantor’s encroachment into the Permanent Easement as described in that Projection Approval, provided however, if Grantee determines that (as a result of the Projection Approval) it is necessary to relocate any existing Improvements, then Grantor acknowledges that such relocation shall be at the Grantor’s sole expense, regardless of the Projection Approval; and Grantor shall grant to Grantee any permanent easements required for the relocated Improvements. Moreover, in no event shall Grantor:

a. construct or place, longitudinally along or otherwise within the Permanent Easement, any tree, underground pipeline, cable, wire, conduit, valve, stub, storm water drainage pipeline facilities or other utility or appurtenance without the prior written consent of Grantee; or

b. change, by excavation or filling, the present grade or ground level of the Permanent Easement without the prior written consent of Grantee. Despite anything herein to the contrary, if the City approves Grantor’s grading plan for the Property ("Grading Plan Approval"), then the Grading Plan Approval shall be considered Grantor’s prior written consent to change the grade of the Permanent Easement as described in that Grading Plan Approval, provided that no Improvements exist within the Permanent Easement. Further, if Grantee determines that (as a result of the Grading Plan Approval) it is necessary to relocate any existing Improvements, then Grantor acknowledges that such relocation shall be at the Grantor’s sole expense, regardless of the Grading Plan Approval, and Grantor shall grant to Grantee any permanent easements required for the relocated Improvements. Grantor shall prevent the construction or alteration of landfills, wetlands, land excavations, water impoundments, including storm water quality features or facilities, and other land uses within the
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Permanent Easement unless the prior written consent of Grantee is provided. Additionally, Grantor shall not construct any new or alter any existing landfills, wetlands, water impoundments, and other similar uses within the Property, which might, in Grantee’s reasonable discretion, endanger or interfere with any Improvements, including, but not limited to, Grantee’s rights of maintenance and reasonable access, without the prior written consent of Grantee.

6. **Surface Restoration to Land.** Grantee shall replace, repair, or reimburse Grantor for the reasonable cost of replacement or repair of physical damage to Grantor’s Improvements on the Property, whether or not within the Permanent Easement, but only if such damage is caused by Grantee’s construction, reconstruction, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Improvements. In the construction, reconstruction, installation, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Improvements, Grantee shall promptly restore, replace, or repair the surface of the Permanent Easement to as close to its condition immediately prior to such work as may be reasonably possible. Despite anything contained herein to the contrary, Grantor shall not be liable for damage to, nor shall it be obligated to repair or replace any structures, buildings, or any other articles whatsoever, which are constructed, installed, or otherwise existing within the Permanent Easement in violation of the terms of these Terms & Conditions including, but not limited to, any tree(s) that interfere with the Improvements or Grantee’s rights in the Permanent Easement.

7. **Maintenance of Permanent Easement.** Grantor shall be responsible for the surface maintenance of the easement; however, Grantee shall have the perpetual right, but not the obligation, to cut, trim, control, and remove trees, brush, and other obstructions which injure or interfere with the Grantee’s use, occupation or enjoyment of the Permanent Easement, or Grantee’s right to construct, reconstruct, install, use, operate, maintain, repair, patrol, replace, upgrade, or remove its Improvements, without liability for damages arising there from.

8. **Subjacent and Lateral Support.** Grantor shall not impair any lateral or subjacent support for the Improvements.

9. **Nature of Easement and Additional Uses.** The Permanent Easement is perpetual and runs with the land. It also is deemed to touch and concern the land. Grantee’s exercise of any rights in the Permanent Easement other than those retained by Grantor shall be within the sole discretion of Grantee. Grantee shall permit and authorize such other uses of the Permanent Easement that are consistent with the uses described in paragraph 1 herein and not hereby reserved in Grantor.

10. **Warranty of Title.** Grantor warrants that it has good and merchantable title to the Property and has the full right and lawful authority to grant the Permanent Easement. Further, Grantor warrants, promises, and agrees to defend Grantee in the exercise of Grantee’s rights hereunder against any defect in Grantor’s title to the Property or Grantor’s right to grant the Permanent Easement.

11. **Indemnity/Liability.** Grantor hereby releases Grantee and shall fully protect, defend, indemnify and hold harmless Grantee, the City, their officers, City Council, Utilities Board, directors, employees, agents and representatives from and against any and all claims, costs and fees (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other
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dispute resolution costs), losses, damages, causes of action, or liability of any nature (including, but not limited to environmental) arising from or in connection with the Permanent Easement, Grantor’s Improvements, or the Improvements to the extent arising from or due to Grantor’s action(s) or failure(s) to act.

12. Waiver. The failure of either Party 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 either Party 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 either Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

13. Governing Law and Jurisdiction. The Permanent Easement shall be construed in accordance with the laws of the State of Colorado, the Colorado Springs City Charter, City Code, Ordinances, Rules and Regulations. In the event of any dispute over the Permanent Easement, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

14. Binding Effect. Each and every one of the benefits and burdens of this Permanent Easement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors, transfers, agents, and assigns of the Parties.

15. No Third Party Beneficiaries. Except as expressly provided otherwise, this Permanent Easement is intended to be solely for the benefit of the Parties and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action or other right.