

PERMANENT EASEMENT AGREEMENT

Property Held Jointly

This Permanent Easement Agreement ("Agreement") effective _____, by and between
(Grantor)
whose address is _____
and the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation ("City"), on
behalf of its enterprise, Colorado Springs Utilities, whose address is P.O. Box 1103, Colorado Springs,
Colorado 80947-1015 ("Grantee"). Both Grantor and Grantee hereinafter are individually referred to as
"Party" and collectively referred to as "Parties."

Recitals

- A. Grantor owns the real property described in "**Exhibit A**" attached hereto ("Property"), in, through, over, under, and across which the Improvements (as defined in Section 1 below) will pass; and
- B. Grantee has determined that such Improvements must be constructed, installed, and maintained within the Property along a certain utilities corridor;

NOW, THEREFORE, in consideration of the promises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

Agreement

1. **Conveyance of Permanent Easement.** Grantor hereby grants to Grantee a perpetual, non-exclusive permanent easement to enter, occupy, and use the real property described in the legal description attached hereto as "**Exhibit B**" ("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 (including, but not limited to, fiber optic 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 such real property.
2. **Easement Map.** "**Exhibit C**" attached hereto is a graphic representation of the Permanent Easement. In the event of an ambiguity in Exhibit B, Exhibit C may be used to resolve said ambiguity.
3. **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.
4. **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.
5. **Grantor's Rights Unaffected.** Except as provided in Section 6 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 the terms of this

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Agreement, 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. Approvals by the City or Grantee of Development Plans encompassing the Property shall constitute written approval of the location of Grantor's Improvements depicted therein.

6. **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 Grantee'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 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.

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7. **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, Grantee 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 this Agreement including, but not limited to, any tree(s) that interfere with the Improvements or Grantee's rights in the Permanent Easement.
8. **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.
9. **Subjacent and Lateral Support.** Grantor shall not impair any lateral or subjacent support for the Improvements.
10. **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, including but not limited to, use of the Grantee's Improvements by third parties so long as such third-party use does not further encumber Grantor's Property.
11. **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.
12. **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 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 Grantor's Improvements, or the Improvements to the extent arising from or due to Grantor's action(s) or failure(s) to act.
13. **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.

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- 14. Governing Law and Jurisdiction.** This Agreement 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 this Agreement or its subject matter, 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.
- 15. Binding Effect.** 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, transfers, agents, and assigns of the Parties.
- 16. 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.
- 17. Severability.** 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.
- 18. Incorporation of Exhibits.** All exhibits described in and attached to this Agreement are herein incorporated by reference and must be prepared by or under the supervision of a Professional Land Surveyor licensed by the State of Colorado.
- 19. Notice.** Any notice provided in accord with this Agreement, shall be in writing and shall be sent by delivery service, or mailed by certified mail, postage prepaid and return receipt requested to either Party's address as shown below or to the property owner of record ("Notice"). Such Notice shall be effective upon the date received and acknowledged by signature of the Party that receives Notice. Either Party may change its address to which any Notice is to be delivered under this Agreement by giving Notice as provided herein.
- Grantee:**
Colorado Springs Utilities:
Utilities Development Services
P.O. Box 1103, Mail Code 1812
Colorado Springs, CO 80947-1812
- Grantor:**
Entity Name:
Attention:
Address:
City, State, Zip:
- 20. Entire Agreement.** This Agreement represents the entire agreement between the Parties and no additional or different oral representation, promise or agreement, oral or otherwise, shall be binding on any of the Parties hereto with respect to the subject matter of this instrument, unless stated in writing explicitly referring to this Permanent Easement Agreement and signed by the Parties.

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IN WITNESS WHEREOF, the representatives of each Party hereto certify that, by their execution of this Agreement, they are duly authorized to commit their organization to this Agreement in its entirety. The Parties hereto have executed this Agreement effective as of the day and year first above written.

GRANTOR:

By:

Print Names:

STATE OF

)

COUNTY OF

) SS.

)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,

by _____

_____.

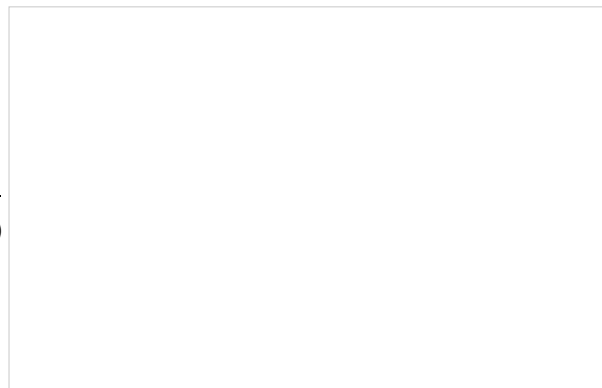
Owners

Witness my hand and official seal.

Notary Public: _____

My Commission Expires: _____

(SEAL)



GRANTEE:

CITY OF COLORADO SPRINGS, on behalf of its enterprise,
COLORADO SPRINGS UTILITIES

By: _____

Title: _____

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JOINDER AND CONSENT OF HOLDER OF DEED OF TRUST

(Entity Name) _____, a,
(Entity Description or State of Incorporation) _____ as
holder of a Deed of Trust from Grantor, _____, dated
_____, and recorded among the real property records of El Paso County, Colorado at
Reception No. _____, hereby joins in the aforesaid Permanent Easement Agreement for
the sole purpose of expressing its consent thereto and of binding, subjecting and subordinating the
aforesaid Deed of Trust and its interests in any portion of the Property to the terms thereof.

(Holder of Deed of Trust)

By: _____

Name: _____

Title: _____

STATE OF _____)
COUNTY OF _____) SS.
_____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,

by _____ as _____
Name Title

of _____
Entity

Witness my hand and official seal.

Notary Public: _____

My Commission Expires: _____

(SEAL)

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ACKNOWLEDGEMENT BY LESSEE

(Lessee Name) _____,

(Lessee Address) _____, is the present lessee of the Property described in the aforesaid Permanent Easement Agreement.

(Lessee Name)_____ hereby acknowledges
that it currently leases the Property from Grantor,_____,
and that the granting of the Permanent Easement described above by Grantor is consistent with its lease
agreement with Grantor dated _____.

By: _____

Name: _____

Title: _____

STATE OF)
) SS.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,

by _____ as _____
Name Title

of the _____ a corporation/partnership/other:

Witness my hand and official seal.

Notary Public: _____

My Commission Expires: _____

(SEAL)