

# EASEMENT AGREEMENT

Strike inapplicable language; modify the highlighted as needed

THIS EASEMENT AGREEMENT (“Agreement”) is made between (“Grantor”) and (“Distributor”), a municipal corporation of the State of Colorado. Each party to this Agreement may be referred to individually as “Party,” and collectively as “Parties.” The Parties agree as follows:

1. GRANT OF EASEMENT: For and in consideration of the sum of \_\_\_\_\_ and other good and valuable consideration, the receipt and sufficiency whereof is acknowledged by the Grantor, the Grantor grants to the Distributor, its successors and assigns, the sole, exclusive, and permanent right to enter, re-enter, occupy, and use the property located in the County of \_\_\_\_\_ and State of Colorado described in the attached **Exhibit A** (hereinafter referred to as the “**Easement**”) to construct, install, inspect, monitor, maintain, repair, substitute, change the size of, replace, remove, enlarge, and operate one or more water pipelines and all underground and surface appurtenances, collectively “**Facilities**,” in, through, over, and across the Easement. By way of example and not by way of limitation, the parties intend to include (i) mains and conduits within the term “**pipeline(s)**,” and (ii) valves, vaults, manholes, hydrants, electric and other related control systems, underground cables, wires and connections, ventilators, and the like within the term “**appurtenance(s)**.”

2. EXHIBITS: The following Exhibits are attached to and incorporated in this Agreement:  
**Exhibit A – Legal Description and Parcel Map**

In the event the survey, the legal description in Exhibit A, and/or the drawing attached to Exhibit A are found to be inaccurate, the Grantor will comply with the Distributor’s request to execute, acknowledge, initial, and/or deliver to the Distributor any documentation the Distributor deems necessary to correct such inaccurate documents to fulfill the purposes of this Agreement.

3. DISTRIBUTOR’S RIGHT OF ACCESS: The Distributor shall have the right of ingress and egress in, through, over, and across the Easement in any manner and for any purpose necessary for the full enjoyment of the right of occupancy and use provided in this Agreement. In addition, the Distributor shall have the right to access the Easement through the adjoining land of the Grantor; however, the Distributor’s use of the adjoining land shall not interfere unreasonably with the Grantor’s use and enjoyment of it. The Distributor shall have the right to construct and maintain a roadway, as needed in the opinion of the Distributor, along the Easement to allow the Distributor, its agents, contractors, invitees, and anyone else authorized by the Distributor, vehicular, equipment, and other access.

4. NO DEDICATION: No right of access by the general public to any portion of the Easement is conveyed by this Agreement.

5. SLOPE: Due to variations in topography, the Easement and the pipe(s) may take on an uphill or downhill direction having a slope of greater than 4 percent; however, sloping within the Easement across its width may not exceed 4 percent in any direction to ensure stability of maintenance equipment and vehicles.

6. PROHIBITED OBSTRUCTIONS: Except as expressly identified in this Agreement, the Easement shall be free of obstacles throughout the Easement. The Grantor shall not construct, place, plant, or allow any of the following, whether temporary or permanent, on any part of the Easement: structure, building, fence, retaining wall, overhang, street light, power pole, yard light, mail box, sign, or trash receptacle; shrub, tree, woody plant, or nursery stock; or any other obstruction of any kind (collectively referred to as

“**Prohibited Obstructions**”). The Distributor may, without notice to the Grantor, remove any Prohibited Obstructions situated on the Easement without liability for damages and at the sole expense of the Grantor.

7. PROHIBITED ACTIONS: The Grantor shall not stop, limit, hinder, or interfere with the construction, maintenance, repair, replacement, removal, enlargement, or operation of the Facilities within the Easement.

8. ENVIRONMENTAL CONTAMINATION:

8.1. Corrective Action: The Grantor, for itself, its successors and assigns, shall provide to the Distributor any information within its possession or control about past and currently existing Environmental Contamination in the Easement. Such information shall include, but not be limited to, environmental studies, reports, samples, agreements, liens, letters, citations, notices, and any remediation work that has been done or is ongoing to clean the area or is planned to occur. If contaminated soils, for which the Grantor or its successors or assigns may be responsible under applicable state or federal laws, exist in the Easement on the effective date of this Agreement, then the Grantor, at Grantor’s sole expense, shall take Corrective Action to clean the contamination to the full width of the Easement and to (i) a depth of at least 12 feet from the finished grade or (ii) 2 feet below the bottom of the water pipeline(s), as may be determined by the Distributor. Contamination shall be cleaned to the appropriate state and federal standards set forth by the U.S. Environmental Protection Agency and Colorado Department of Public Health and Environment or to the standards of Corrective Action plans for the property currently approved by the U.S. Environmental Protection Agency and Colorado Department of Public Health and Environment. The Grantor shall provide documents verifying Corrective Action to the Distributor prior to the installation of Facilities.

8.2. Indemnification: To the extent it legally may, and as long as the Distributor did not cause Environmental Contamination, the Grantor, for itself, its successors and assigns, shall indemnify and hold harmless the Distributor against any liability, damages, costs, expenses, causes of action, claims, losses, settlements, fines and penalties, and reasonable attorneys’ fees claimed against the Distributor relating to (1) the existence, mitigation, or remediation of Environmental Contamination in the Easement; (2) any Corrective Action in the Easement; (3) any Environmental Contamination in the Easement that occurs or is discovered after conveyance of the Easement; or (4) the occurrence, disturbance, or movement of existing contaminated soils resulting directly or indirectly from any work conducted by the Distributor in exercise of the Distributor’s functions.

8.3. Definitions:

i. “**Corrective Action**” means risk assessment, active remediation, passive remediation, voluntary cleanup, investigation, and/or monitoring of Environmental Contamination.

ii. “**Environmental Contamination**” means the presence within the Easement of any hazardous material, including, but not limited to, any substances defined as or included in the definition of “**hazardous substance**,” “**hazardous material**” or “**toxic substances**” in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement of governmental authority regulating, relating to or imposing liability or standard of conduct concerning any hazardous, toxic or dangerous substance or material, as now or at any time hereafter in effect, and in the regulations adopted, published, and/or promulgated pursuant to said laws.

9. INSTALLATION: The Grantor shall be responsible for the initial installation of the water pipeline(s) within the Easement at Grantor's sole expense. The water pipeline(s) shall be installed in accordance with the Distributor's then-current Engineering Standards.

10. SURFACE RESTORATION:

10.1. After construction of any water pipeline(s) by the Distributor, the general surface of the ground, except as it may have been necessarily modified to accommodate the appurtenances, shall be restored, as nearly as reasonable, to the grade and condition existing immediately prior to construction. Topsoil shall be replaced in cultivated and agricultural areas, and any excess earth resulting from installations by the Distributor shall be removed from the Easement at the sole expense of the Distributor.

10.2. For a period of one year following completion of construction by the Distributor that involves disturbance of the surface of the ground, the Distributor shall 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 Distributor.

10.3. If the Distributor or its agents disturb or destroy any fencing existing at the time of this Agreement's execution, then the Distributor shall repair or replace such fencing as nearly as reasonable to its original condition. However, the Grantor shall not construct any new fencing across or within the Easement.

11. SUBJACENT AND LATERAL SUPPORT; EARTH COVER:

11.1. The Distributor shall have the right of subjacent and lateral support to whatever extent is necessary or desirable for the full, complete and undisturbed enjoyment of the rights described in this Agreement. The Grantor shall take no action that would impair the earth cover over, or the lateral or subjacent support for, any of the Facilities within the Easement.

11.2. The Denver Water Engineering Standards require no less than 4½ feet and no more than 10 feet of earth cover, measured vertically from the top of any pipeline(s). Deviation from this requirement shall be permitted only upon prior, written permission from the Distributor and Denver Water. If such permitted deviation undertaken by the Grantor requires any alterations, repairs or replacements to any pipeline(s), such alteration, repair or replacement shall be at the Grantor's expense.

12. GRANTOR'S RETAINED INTERESTS: The Grantor has retained the right to the undisturbed use and occupancy of the Easement insofar as such use and occupancy is consistent with and does not impair any grant contained in this Agreement.

13. DOMINANT EASEMENT: The Distributor shall have a dominant right of occupancy of the Easement for the exercise of the Distributor's functions, and the exercise of any rights in the Easement other than those retained by the Grantor shall be within the discretion of the Distributor.

14. ABANDONMENT:

14.1. The Distributor may commence the exercise of its rights to use the Easement immediately, or it may postpone the exercise of all or some part of its rights under this Agreement to some future time, which shall not constitute abandonment.

14.2. If the Distributor abandons use and operation of the Facilities laid pursuant to this Agreement, such abandonment shall not constitute abandonment of the Distributor's rights under this Agreement.

15. WARRANTY OF TITLE: The Grantor represents and warrants that the Grantor has full right and lawful authority to make the grant contained in this Agreement. The Grantor shall defend the Distributor in the exercise of the Distributor's rights under this Agreement against any defect in the Grantor's title to the land involved or the Grantor's right to make the grant contained in this Agreement.

16. NOTICES: The Parties shall contact the persons listed below, or other persons that may be designated by the Distributor from time to time, for all matters related to administration of this Agreement. All notices, requests, demands, information and other communications required or permitted to be provided under this Agreement shall be in writing and shall be deemed to have been given and effective: (a) when delivered personally to the other party or (b) seven days after posting in the United States mail, first-class postage prepaid, properly addressed as follows.

If to the Distributor:

with a copy to:

If to the Grantor:

with a copy to:

17. GENERAL PROVISIONS:

17.1. Successors and Assigns: This Easement and each and every one of the benefits and burdens of this Agreement are covenants running with the land and shall inure to the benefit and be binding upon the respective legal representatives, heirs, devisees, executors, administrators, successors and assigns of the Parties, and any subsequent owners of title to any part of the land upon which the Easement is located. The Distributor may transfer and delegate any or all of the rights granted and obligations imposed by this Agreement without any prior consent of or notice to the Grantor.

17.2. Perpetual Duration – No Merger: No merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in any portion of the property upon which the Easement is located to the Distributor, or its successors or assigns. It is the express intent of the Parties that this Easement not be extinguished by, merged into, modified, or otherwise deemed affected by any other interest or estate in any portion of the property upon which the Easement is located now or hereafter held by the Distributor or its successors or assigns.

17.3. Construction: This Agreement shall not be construed more strictly against one Party than another merely because it may have been prepared by counsel for one of the Parties.

17.4. Venue and Governing Law: For the resolution of any dispute arising from this Agreement, venue shall be in the courts of \_\_\_\_\_, the State of Colorado. This Agreement shall be governed by and construed under the laws of the State of Colorado, without regard to its conflict of laws principles.

17.5. No Attorneys' Fees and Costs: Express as otherwise specifically provided in this Agreement, if there is any litigation, mediation, arbitration or other dispute resolution proceedings arising out of or related to this Agreement, each Party shall pay for its own attorney(s)' and other professional(s)' fees, costs and expenses.

17.6. Severability: If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of that provision and the rest of this Agreement shall remain in full force and effect.

17.7. No Waiver: The failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the Agreement's provisions, and, notwithstanding such failure, no Party shall be thereby released from any obligations under the Agreement.

17.8. Non-Business Days: Except as otherwise specifically provided in this Agreement, all periods of time set forth in this Agreement shall be calendar days, not business days. If any date for any obligation under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in the Colorado Rule of Civil Procedure 6, then the relevant date shall be extended automatically until the next business day.

17.9. Headings: The headings contained in this Agreement are included solely for convenience, are not intended to be full or accurate descriptions of the content thereof, and shall not be considered part of this Agreement or affect its interpretation.

17.10. Governmental Immunity Act: The parties understand and agree that the Distributor is relying upon, and has not waived, the monetary limitations of \$350,000 per person, \$990,000 per occurrence, and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as it may be amended from time to time.

17.11. Article X of the Charter: This Agreement is made under and conformable to the provisions of the Charter of the City and County of Denver, which control the operation of the Denver Municipal Water System, consisting of Article X of the Charter. Insofar as applicable, the Charter provisions are incorporated herein and made a part hereof and shall supersede any apparently conflicting provision otherwise contained in this Agreement.

17.12. Entire Agreement: This Agreement constitutes the entire agreement between the Distributor and the Grantor and replaces all prior written or oral agreements and understandings. The terms of this Agreement may not be changed, waived, modified or varied in any manner whatsoever unless in writing signed by all Parties.

17.13. Counterparts and Originals: A copy of the Agreement may be executed by each Party, separately, and may be delivered by mail or electronic copy, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

17.14. Representation of Authority of Signatories: Each individual executing this Agreement on behalf of the Grantor represents and warrants that the execution and delivery of this Agreement and

all related documents have been duly authorized by the Grantor for which the individual is signing and that the individual has the legal capacity to execute and deliver this Agreement and thereby bind the Grantor.

17.15. Effective Date: This Agreement shall become effective on the date it is signed by the Distributor's authorized representative.

18. SPECIAL PROVISIONS: To the extent that any special provisions listed below or attached are in conflict with any other provisions of this Agreement, the special provisions shall control and supersede any such conflicting provisions.

Special Provisions:

SIGNATURES FOLLOW ON THE NEXT PAGE