

**EASEMENT AGREEMENT**  
(Distributor Performance Non-Exclusive)

**THIS EASEMENT AGREEMENT**, effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is made between

\_\_\_\_\_, hereafter called "Grantor", (whether grammatically singular or plural) and  
\_\_\_\_\_ hereinafter called "Distributor," whose legal address is

**WITNESSETH:**

For good and valuable consideration, the receipt and sufficiency whereof are acknowledged, Grantor hereby grants to the Distributor, its successors and assigns, a permanent non-exclusive right to enter, reenter, occupy and use the property situate in the County of \_\_\_\_\_, State of Colorado, and more fully described on Exhibit \_\_\_\_\_ attached hereto and incorporated herein by reference (the "Property") to construct, lay, install, inspect, monitor, maintain, repair, renew, substitute, change the size of, replace, remove, and operate one or more underground water pipelines and all underground and surface appurtenances thereto, including electric or other related control systems, underground cables, wires and connections and surface appurtenances in, through, over and across the Property. By way of example and not by way of limitation, the parties intend to include within the terms "pipelines" and "appurtenances" the following: mains and conduits, valves, vaults, manholes, hydrants, control systems, ventilators, and the like, of such size and capacity as necessary or required by the Distributor.

**IT IS HEREBY MUTUALLY CONVENANTED AND AGREED** by and between the parties as follows:

1. The Distributor shall have and may exercise the right of ingress and egress in, to, over, through and across the Property for any purpose needful for the full enjoyment of any other right of occupancy or use provided for herein.

2. Grantor shall neither cause nor permit the parking or storage of vehicles or other goods or equipment, or the construction or placement of any structure or building, street light, power pole, yard light, mailbox or sign, temporary or permanent, or the planting of any tree, woody plant or nursery stock, of any kind, on any part of the Property. Where paved roadways are installed on all or any part of the surface of the Property they shall be installed and maintained by Grantor on and over the entire width thereof, with no planters, islands or median structures. The lateral edges of the Property shall be clearly delineated by permanent surface features approved in advance by the Distributor. Any prohibited use or installation located on the Property as of or after the date of this Agreement, including utility installations not conforming to Paragraph 11 (eleven) hereof, may be removed by the Distributor at Grantor's expense without liability for damages arising therefrom.

3. The Grantor, for itself, its successors and assigns, shall provide to the Distributor any information within its possession about past and currently existing Environmental Contamination in the easement area. Such information shall include but not be limited to environmental studies, reports, samples, agreements, liens, letters and any remediation work that has been done or is ongoing to clean the area or is planned to occur. If contaminated soils exist in the easement area upon the effective date of this Agreement, for which  
(DISTRIBUTOR PERFORMANCE NON-EXCLUSIVE – REV 11/2011)

the Grantor or its successors or assigns are responsible under applicable state or federal laws, the Grantor, at Grantor's sole expense, shall take Corrective Action to clean the contamination to the full width of the easement area and a depth of at least twelve (12) feet from finished grade or to two (2) feet below the bottom of the water line as 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. Grantor shall provide documents verifying Corrective Action to the Distributor prior to the installation of pipeline facilities.

4. 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 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 area; (2) any Corrective Action in the easement area; (3) any Environmental Contamination in the easement area 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.

5. As used in this Agreement, "Corrective Action" shall refer to risk assessment, active remediation, passive remediation, voluntary cleanup, investigation and/or monitoring of Environmental Contamination.

6. As used in this Agreement, "Environmental Contamination" means the presence within the easement area 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.

7. Fences existing as of the date hereof which are disturbed or destroyed by the Distributor in the exercise of its rights hereunder shall be replaced by the Distributor to their original condition as nearly as may reasonably be done. Grantor shall not, however, construct or install new fencing across or within the Property without the written approval of the Distributor.

8. All pipelines installed within the Property shall be laid not less than four and one-half (4½) feet below the surface of the adjacent ground.

9. The Distributor shall have and exercise the right of subjacent and lateral support to whatever extent is necessary or desirable for the full, complete and unmolested enjoyment of the rights herein granted. Grantor shall neither take nor permit any action which would impair the lateral or subjacent support for any water pipelines or appurtenances or cause the earth cover over any water pipeline within the Property to be less than four and one-half (4 ½) feet or more than ten (10) feet, measured vertically from the top of the pipeline. Grantor shall not modify the earth cover over a Distributor water pipeline without advance written authorization from the Distributor, which shall provide for full payment or reimbursement to the Distributor of all costs of adjusting Distributor facilities made necessary by such modification.

10. After any construction or other operations by the Distributor which disturb the surface of the Property, the Distributor will restore the general surface of the ground, including paving and authorized appurtenances, as nearly as may reasonably be done to the grade and condition it was in immediately prior to construction, except as necessarily modified to accommodate Distributor facilities. Topsoil shall be replaced in cultivated and agricultural areas, and any excess earth resulting from installations by the Distributor shall be removed from the Property at the sole expense of the Distributor. For a period of one year following disturbance of the surface of the Property by the Distributor, the Distributor will maintain the surface elevation and quality of the soil by correcting any settling or subsiding that may occur as a result of the work done by the Distributor.

11. Service lines from adjacent properties receiving service from Distributor facilities in the Property, and other public utilities such as sanitary sewer, storm sewer, gas, electric, telephone, and TV cable lines, may be installed in the Property, *provided* that they do not interfere with the Distributor's rights herein granted. Public utilities which cross the Property shall cross at approximately right angles, and utilities which parallel the Distributor's facilities shall not be located closer than ten (10) feet thereto. Except for utilities as herein authorized and for roadways, all surface and subsurface uses of the Property, including fences, must be approved in writing by the Distributor before installation.

12. Grantor retains the right to the undisturbed use and occupancy of the Property insofar as such use and occupancy are consistent with and do not impair any grant or covenant herein contained.

13. The Distributor is acquiring its rights in the Property in order to insure to it a dominant easement for the exercise of the Distributor's functions. The exercise of any rights in the Property other than those expressly retained by Grantor shall be within the discretion of the Distributor. The Distributor may permit and authorize such other uses of the Property not reserved in Grantor as will not impair the Distributor's dominant rights, upon payment of reasonable compensation to the Distributor and upon such terms, limitations and conditions as the Distributor shall find reasonably necessary to protect its dominant right of occupancy without undue or unnecessary injury to or impairment of the estate retained by the Grantor.

14. If the Distributor, by written instrument, abandons or releases its rights herein granted and ceases to use the same, all right, title and interest of the Distributor hereunder shall cease and terminate, and the Grantor or its successors in title shall hold the Property, as the same may then be, free from the rights so abandoned or released and shall own all material and structures of the Distributor so abandoned or released, but nothing herein shall be construed as working a forfeiture or abandonment of any interest derived hereunder and not owned by the Distributor at the time of the termination of the Distributor's rights.

15. Grantor warrants that it has full right and lawful authority to make the grant herein contained, and promises and agrees to defend the Distributor in the exercise of its rights hereunder against any defect in title or in Grantor's right to make said grant, subject to general taxes for the year this instrument is recorded, and subject further to easements, encumbrances, exceptions, limitations, restrictions and reservations contained in instruments of record prior to the date of this Agreement.

16. 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 and assigns of the parties hereto.

17. This writing constitutes the whole agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto with respect to the subject matter of this instrument. Any special provisions added hereto which conflict with printed provisions set forth above shall control and supersede such conflicting printed provisions.

SPECIAL PROVISIONS:

**IN WITNESS WHEREOF**, the parties hereto have executed the within Agreement as of the day and year first above written.

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The within and foregoing instrument was acknowledged before me by \_\_\_\_\_  
\_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and official seal.           My commission expires: \_\_\_\_\_.

{ S E A L }

\_\_\_\_\_  
Notary Public

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
President