

# EASEMENT AGREEMENT

**THIS EASEMENT AGREEMENT**, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between:

hereinafter called “Grantor”, (whether grammatically singular or plural) and the:

hereinafter called “Distributor”.

## WITNESSETH:

For and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to the Grantor in hand paid by the Distributor, the receipt whereof is hereby acknowledged, the Grantor hereby grants to the Distributor, its successors and assigns, the permanent right to enter, re-enter, occupy and use the described property to construct, maintain, repair, replace, remove, enlarge and operate one or more water pipelines and all underground and surface appurtenances thereto, including electric or other related control systems, underground cables, wires and connections and surface appurtenances. 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, control systems, ventilators, and the like, in, through, over and across the following described parcel of land situate, lying and being in the County of \_\_\_\_\_ and State of Colorado, to-wit:

**(For Legal Description, please see Exhibit “A”, attached hereto and made a part hereof)**

**IT IS HEREBY MUTUALLY** covenanted and agreed by and between the parties hereto as follows:

1. The Distributor shall have and exercise the right of ingress and egress in, to, over, through and across the above described property for any purpose needful for the full enjoyment of any other right of occupancy or use provided for herein. The easement area shall be free of obstacles throughout the length of the easement. Due to variations in topography, the easement and the pipe may take on an uphill or downhill direction having a slope of greater than 4%; however, sloping within the easement across its width may not exceed 4% to insure stability of maintenance equipment and vehicles. A slope across the width of the easement greater than 4% may be allowed upon prior written permission of the Distributor and Denver Water.

2. The Grantor shall not construct or place any structure or building, fence, retaining wall, street light, power pole, yard light, mail box, sign, trash receptacle, temporary or permanent, or plant any shrub, tree, woody plant or nursery stock, on any part of the above described easement. Any structure or building, fence, retaining wall, street light, power pole, yard light, mail box, sign, trash receptacle, temporary or permanent, or shrub, tree, woody plant or nursery stock, of any kind situated on the above described easement as of the date of this Agreement, may be removed by the Distributor 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 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. The water pipeline and all appurtenances shall be installed in accordance with then current Distributor and Denver Water Engineering Standards.

8. 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 hereinabove described. It is specifically agreed between the parties that the Grantor shall take no action which would impair the earth cover over, or the lateral or subjacent support for any water pipeline or lines and appurtenances within the easement. Denver Water's Engineering Standards require no less than four and one-half (4½) feet and no more than ten-feet (10) of earth cover, measured vertically from the top of any pipeline or lines. Deviation from this requirement will be permitted only upon specific prior, written permission from Denver Water and the Distributor. If such modification undertaken by the Grantor requires alterations to any pipeline facility, such alteration shall be at the Grantor's expense.

9. The Grantor, at Grantor's sole expense, shall construct and maintain a private surfaced roadway over the entire easement herein described, excepting the portions that are for fire hydrants and fire hydrant "branch lines" only. Planters, islands, or medians are not permitted within the above-described easement, except as specified by Denver Water Engineering Standards and/or as specified in writing by the Distributor.

10. The Grantor retains the right to use the easement for ingress and egress, including vehicular traffic, insofar as such use and occupancy is consistent with and does not impair any grant herein contained. Parking within the easement is prohibited.

11. The Distributor agrees that other public utilities such as sanitary sewer, storm sewer, gas, and electric lines, may be installed in the above described easement as long as they do not interfere with the Distributor's rights herein granted and as long as piping crossing the waterline at the discretion of the Distributor is metallic or concrete or is encased in an acceptable material. Any piping or cable crossing the waterline must be installed in accordance with Denver Water's Engineering Standards. Any and all utilities which parallel the Distributor's facilities will not be permitted within ten-feet (10) of Distributor facilities **without prior consent from the Distributor**. The intent is to reserve for the Distributor's water lines at least twenty-feet (20) of the easement width.

12. The Grantor, at Grantor's expense, shall be solely responsible for the maintenance of streets, surfacing, curbs, and gutters within the easement, except as specified in this paragraph. When the Distributor deems it necessary to reconstruct, repair, relocate, remove, replace, enlarge, operate or in any way maintain its water mains or pipes, and appurtenances thereto, the Distributor will backfill, compact and resurface the area of excavation, to include replacement of asphalt and/or concrete pavement, curbs and gutters, damaged by the Distributor's activity, to the

grade and condition existing immediately prior to excavation, as nearly as reasonable. The Distributor will exercise all reasonable means to prevent damage to pavement, curbs and gutters which are situated within the easement but outside of the immediate area of excavation. In the event said improvements are damaged due solely to Distributor negligence, the Distributor will repair and/or replace said improvements at its expense.

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

14. If the Distributor abandons use and operation of the pipeline facilities laid pursuant to this easement, such abandonment shall not constitute abandonment of its rights under this easement.

15. The Grantor warrants that Grantor has full right and lawful authority to make the grant contained herein, and promises and agrees to defend the Distributor in the exercise of its rights hereunder against any defect in Grantor's title to the land involved or Grantor's right to make the grant contained herein.

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.

17. Unless special provisions are listed below and/or attached, the above 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 with respect to the subject matter of this instrument. To the extent that any special provisions are in conflict with any other provisions, the special provisions shall control and supersede any other terms or provisions.

#### SPECIAL PROVISIONS:

