

## PERMANENT UTILITY EASEMENT

This Permanent Utility Easement ("Easement Agreement") is executed and delivered as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the Grantor, the CITY OF BRIGHTON, a Colorado home rule municipality having its address at 500 South 4<sup>th</sup> Avenue, Brighton, Colorado 80601 ("CITY"), and Grantee, the METRO WASTEWATER RECLAMATION DISTRICT, 6450 York St. Denver, Colorado 80229, a metropolitan sewage disposal district duly organized under the laws of the State of Colorado ( "DISTRICT"), as follows:

WHEREAS, the CITY is a Colorado home rule municipality that owns certain real property in Adams County, Colorado real property (identified as Adams County Assessor parcel #0156906300039 and located at 301 Kuner Road), which property is located to the west of Kuner Road and north of the City's waste water treatment plant and also north of certain real property currently owned by TMP Ventures (identified as Adams County Assessor parcel #0156906319001 and located at 221 Kuner Road) (the "City Property"), and the City is authorized, *inter alia*, to grant and convey this permanent utility easement to the DISTRICT; and

WHEREAS, the DISTRICT is a political subdivision of the State of Colorado, existing under and by virtue of the laws of the State of Colorado, and is authorized, *inter alia*, to acquire easements in real property necessary to the public functions and operations of the DISTRICT; and the DISTRICT desires to acquire from the CITY certain rights of use and occupancy for a portion of the Property as provided herein; and

WHEREAS, specifically, the DISTRICT requires a permanent utility easement (the "Easement") across a portion of the City's Property described above , to provide for the ongoing maintenance, repair, use, and operation by the DISTRICT, in perpetuity, of one or more public sanitary sewer pipelines, meter and meter vault, and related improvements and appurtenances (the "Improvements"), which Improvements are also conveyed and sold to the DISTRICT. The Easement conveyed hereby is described in **Exhibit A**, attached hereto and incorporated herein by referenced. This Easement is to be used with and is for the benefit of the DISTRICT's adjacent and existing permanent easement for its SPI sanitary sewer facilities.

NOW, THEREFORE, in consideration of the foregoing Recitals which are part of this Easement Agreement, and for the mutual covenants herein exchanged, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY hereby grants, bargains, sells, conveys, transfers and assigns to the DISTRICT and its contractors, agents, successors and assigns, the permanent Easement, as described in **Exhibit A**, for purposes of inspecting, operating, maintaining, using, cleaning, repairing, replacing and updating the Improvements, together with such related rights and privileges as are reasonably necessary and convenient for the full use and enjoyment of the foregoing rights and purposes, and all of the CITY's right, title and interest in the Improvements.

FURTHER, the Parties hereto mutually covenant and agree as follows:

1. The DISTRICT shall exercise the rights and privileges granted hereunder with due care and in a workmanlike and diligent manner. During any construction, maintenance or repair activity, the DISTRICT shall use reasonable efforts to minimize the actual surface area of the Property to be excavated and disrupted; shall locate and protect any existing underground or above-ground utility lines, improvements, or other appurtenances; shall provide conspicuous construction safety fencing around any excavated area; and, within a commercially reasonable time after any such activity, shall clear the Easement and surrounding area of any construction debris, restore the surface contours of the Easement as nearly as possible to those existing before such construction (accounting for the Improvements), re-vegetate and/or re-pave the surface of the Easement as appropriate (accounting for the Improvements), restore any pre-existing improvements or landscaping, and replace and properly compact any disturbed soils.

2. CITY shall not locate or place within the Easement any permanent structure or other permanent improvement, such as would materially obstruct the area of the Easement or unreasonably interfere with the DISTRICT's access to or its construction, operation, maintenance, and repair of the Improvements, or such as would unreasonably interfere with the DISTRICT's rights provided herein. Except for underground utilities that cross the pipeline Improvements at substantially ninety degrees (90°) or which are spaced at least ten feet (10') apart from any Improvements, the CITY shall seek and obtain the written consent of the DISTRICT prior to installing or allowing the installation of any permanent structure or other permanent improvement, including underground utilities, on, in, over or under the property encumbered by the Easement.

3. At all times during any entry, access, construction, maintenance, or repair activity on the Property, the DISTRICT shall cause and require its construction contractors to obtain and maintain insurance policies and certificates, in such amounts and types of insurance coverage as are required for CITY public construction contracts, and such policies and certificates shall name and endorse the CITY as additional insured. The DISTRICT shall not suffer or permit any mechanic's lien to be filed against the Property by reason of any work, labor, services, materials or improvements supplied for the Improvements, by anyone claiming by, through or under the DISTRICT or any of its contractors for the Improvements.

4. In connection with any construction, maintenance, or repair activity, the DISTRICT shall locate and protect all underground utilities and shall compact, and if necessary import suitable fill material as necessary for the Improvements. The DISTRICT shall design, construct, operate, maintain and repair the Improvements in accordance with State and local permits and other requirements, and in a manner so as to minimize erosion, subsidence, damage or undue disturbance to the Property. The DISTRICT shall promptly repair and restore at the DISTRICT's expense any damage or disruption caused to the Property by such construction, maintenance or repair activity (accounting for the Improvements).

5. The DISTRICT shall have and may exercise the right of subjacent and lateral support for all improvements located within the Easement, to whatever extent is reasonably necessary or desirable for the full and complete enjoyment of the rights hereinabove described. The DISTRICT shall also have and may exercise the right to construct, maintain, use and access an all-weather roadway (a gravel path of sufficient width for the DISTRICT'S vehicles) on the surface of the Easement described in Exhibit A, and also on the surface of a parcel of land immediately

adjacent to the Easement, and extending beyond and off of the Easement to the south and east, along the southernmost thirty feet (30') of that portion of the City's servient parcel described in a quit claim deed dated October 22, 2008 and recorded on November 5, 2008 at Reception No. 2008000087517 (Adams County Assessor Parcel # 0156906300039), and continuing to the south and east of said servient parcel, to provide access to the Easement and the Improvements from Kuner Road.

6. The CITY and DISTRICT are relying on, and do not waive or intend to waive by any provision of this Easement Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24- 10-101 et seq., as amended from time to time, or any other limitation or defense otherwise available to the Parties under Colorado law. The Parties acknowledge that the Easement and Improvements are intended to serve public sanitary sewer utility purposes.

7. This Easement Agreement embodies the entire agreement between the CITY and the DISTRICT relating to the subject matter hereof, and shall extend to and bind the Property, the Parties, and their respective officers, employees, administrators, representatives, agents, successors and assigns.

8. This Easement Agreement shall be deemed to have been made in Adams County, Colorado and shall be construed in accordance with the laws of Colorado. The terms and provisions of this Easement Agreement may not be modified or amended, except by a written instrument executed by the Parties with the same formality as this Easement Agreement.

9. This Easement Agreement shall be recorded by the DISTRICT at its expense in the real property records of Adams County, Colorado, and shall attach to and run with the Property for so long as the DISTRICT operates, maintains and repairs the Improvements in the Easement, according to the terms of this Easement Agreement. Unless expressly abandoned by the DISTRICT in writing, the Easement and the rights and privileges granted to the DISTRICT therein are intended to be perpetual for the DISTRICT's public sanitary sewer utility purposes.

10. This Easement Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Electronic or scanned signatures shall be treated as originals.

11. Neither Party intends hereby, to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of the Parties' obligations pursuant to this Easement Agreement requiring budgeting and appropriation of funds, are subject to annual budgeting and appropriations.

IN WITNESS WHEREOF, the Parties have set their hands and seals.

**SIGNATURES APPEAR ON FOLLOWING PAGE**

GRANTOR:  
City of Brighton

GRANTEE:  
Metro Wastewater Reclamation District

By: \_\_\_\_\_

Philip Rodriguez, City Manager

ATTEST:

By: \_\_\_\_\_

District Manager

ATTEST:

By: \_\_\_\_\_

Natalie Hoel, City Clerk

By: \_\_\_\_\_

District Secretary

**EXHIBIT A**

**LEGAL DESCRIPTION OF EASEMENT**

**Drexel, Barrell & Co.**



**Engineers/Surveyors**

**Boulder  
Colorado Springs  
Greeley**

1800 38<sup>th</sup> Street  
Boulder, CO 80301-2620

303.442.4338  
303.442.4373 Fax

MAY 18, 2018

**LEGAL DESCRIPTION**

A TRACT OF LAND LOCATED IN THE SW1/4 OF SECTION 6, T1S, R66W OF THE 6<sup>TH</sup> P.M., COUNTY OF ADAMS, STATE OF COLORADO.

COMMENCING AT THE SOUTHWEST CORNER OF THE NW1/4 OF THE SW1/4 OF SAID SECTION 6, FROM WHENCE THE W1/4 CORNER OF SAID SECTION 6 BEARS N00°29'21"W, THENCE THE FOLLOWING THIRTEEN (13) COURSES:

1. N00°29'21"W, 53.27 FEET;
2. N38°14'12"E, 148.48 FEET;
3. N35°51'57"E, 592.95 FEET;
4. N22°05'39"E, 588.41 FEET;
5. N03°47'52"E, 120.61 FEET;
6. N07°23'37"W, 25.34 FEET;
7. S73°06'35"E, 20.67 FEET;
8. EASTERLY 21.50 FEET ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTH, THE ARC OF SAID CURVE HAVING A RADIUS OF 1507.30 FEET, A CENTRAL ANGLE OF 00°49'02" AND BEING SUBTENDED BY A CHORD THAT BEARS S71°54'12"E, 21.50 FEET;
9. S00°45'39"E, 23.00 FEET;
10. N89°52'45"E, 12.15 FEET;
11. S03°47'52"W, 86.74 FEET;
12. S67°48'08"E, 75.96 FEET;
13. S22°11'52"W, 51.99 FEET TO THE TRUE POINT OF BEGINNING;

THENCE THE FOLLOWING SIX (6) COURSES;

1. N22°11'52"E, 30.00 FEET;
2. S68°40'05"E, 249.93 FEET;
3. S47°45'17"E, 102.64 FEET;
4. S42°14'43"W, 30.00 FEET;
5. N47°45'17"W, 97.11 FEET;
6. N68°40'05"W, 244.84 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 10,417 SQUARE FEET OR 0.239 ACRES

LEGAL DESCRIPTION PREPARED BY:  
MATHEW E. SELDERS  
DREXEL, BARRELL & CO.  
1800 38TH STREET  
BOULDER, CO 80301  
(303) 442-4338



ADDITIONAL LEGAL DESCRIPTION FOR ACCESS COMPONENT OF PERMANENT UTILITY EASEMENT:

And, for purposes of access only, as described in paragraph 5 of the Permanent Utility Easement, a parcel of land immediately adjacent to the Easement, and extending beyond and off of the Easement to the south and east, along the southernmost thirty feet (30') of that portion of the City's servient parcel described in a quit claim deed dated October 22, 2008 and recorded on November 5, 2008 at Reception No. 2008000087517 (Adams County Assessor Parcel # 0156906300039), and continuing to the south and east to Kuner Road and the adjacent curb-cut.

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