

## TEMPORARY CONSTRUCTION EASEMENT

THIS AGREEMENT, is made and entered into by and between B&M Equipment Company, LLP, a Colorado limited liability partnership, whose address is 7901 Highway 85, Commerce City, Colorado 80022 ("**Owner**"), and the County of Adams, State of Colorado, a body politic, whose address is 4430 South Adams County Parkway, Brighton, Colorado 80601 ("**County**");

WITNESS, that for other good and valuable considerations, the receipt and sufficiency of which is hereby confessed and acknowledged, Owner does hereby grant unto County and its contractors, a temporary construction easement (the "**Easement**") over the following property, to wit:

**Easement Area.** The legal description as set forth in **Exhibit "A"** attached hereto and incorporated herein by this reference, which is a legal description of a portion of property which is owned by Owner and referred to herein as the "**Easement Area**" on which County intends to construct and install a stormwater drainage pipe (the "**Stormwater Pipe Improvements**") for the Dahlia Storm Drain Outfall Project (the "**Outfall Project**").

**Purpose of Easement.** This Easement is for the purpose of County's construction of the Stormwater Pipe Improvements in the Easement Area, as well as for pedestrian and vehicular ingress and egress to, from and within the Easement Area to the extent necessary to construct the Outfall Project (the "**Easement Activities**"). The Easement Activities and any and all work related to the same, the Stormwater Pipe Improvements and the Outfall Project shall be done at the sole cost and expense of County.

**Term.** Irrespective of the date of execution in the signature pages that follow, the Easement will begin on the date County enters the Easement Area to commence the Easement Activities and will terminate at the conclusion of the Easement Activities or on November 1, 2020, whichever is sooner (the "**Easement Term**"). At the end of the Easement Term, all rights granted under the Easement are released and the Easement Area shall be considered free and clear of this Easement.

**Compliance with Applicable Laws.** In further consideration of the granting of the Easement, it is hereby agreed that the construction of the Stormwater Pipe Improvements shall be done in a good, workmanlike manner and in accordance with sound engineering and construction practices and all applicable federal, state, county and municipal laws, rules, regulations, orders, permits, requirements and approvals (collectively, "**Applicable Laws**").

In connection with the Easement Activities and County's and its contractors' entry upon the Easement Area, County shall comply with, and shall ensure that all of its contractors comply with, any and all Applicable Laws including, without limitation, any Applicable Laws pertaining to environmental regulation, contamination, cleanup or disclosure ("**Environmental Laws**") and any Applicable Laws pertaining to substances, materials or waste, the generation, handling, storage, treatment or disposal of which is regulated by any Environmental Laws as a "hazardous waste," "hazardous material," "hazardous substance," "pollutant" or "contaminant" and,

including, without limitation, petroleum products and byproducts, PCBs and asbestos ("Hazardous Materials").

County shall perform, at its sole cost and expense, any and all environmental remediation or cleanup which is necessary as a result of County's violation of the foregoing obligations.

**No Liens.** County shall not cause or permit any liens or encumbrances to attach to or encumber all or a portion of the Easement Area or other adjacent property owned by Owner as a result of construction of the Outfall Project including, without limitation, the Stormwater Pipe Improvements or any other Easement Activities.

**Obligation to Protect from Damage.** Except to the extent necessary in order to construct the Stormwater Pipe Improvements, County shall protect the Easement Area from damage caused in whole or in part by acts or omissions of County or its contractors and clean, cure, repair and correct any such damage to any elements of the Easement Area.

**Obligation to Restore.** Upon the expiration of the term, County shall restore the Easement Area to the condition of the same, or as close thereto as possible, which existed immediately prior to County's entry thereon. County shall utilize the Easement and perform the Easement Activities in such a manner so as to avoid any material interruption of or interference with property which is adjacent to the Easement Area and owned by Owner.

**Liability Insurance.** During the Term, County shall obtain and maintain in full force and effect, and cause its contractors to obtain and maintain in full force and effect, commercially reasonable liability insurance with respect to the Easement Area and Easement Activities in commercially reasonable types and amounts, considering the nature of the Easement Activities.

**Liability.** County shall be solely liable for any and all claims, demands, costs, losses, liabilities and expenses caused by County or its contractors in connection with, arising under, or related to, the Easement Activities, the Easement or County's and its contractors entry upon, and use of, the Easement Area. The provisions of this paragraph shall survive the expiration of the term.

**No Recording.** County and Owner acknowledge and agree that in no event shall the Easement or any memorandum or evidence thereof be recorded.

**No Other Beneficiaries.** Nothing contained herein is intended as a dedication, grant or reservation to the general public, public at large, or any member of the general public, or any third-party, it being understood that the Easement is for the exclusive benefit of County and its contractors.

**No Oral Amendments or Waivers.** The Easement may not be amended, nor will any breach or default be deemed waived hereunder, except by a written instrument signed by County and Owner.

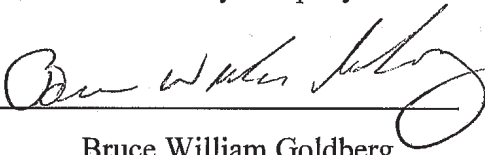
**Severability.** In the event any clause, sentence or any portion of the terms, conditions, covenants and provisions of the Easement are deemed illegal, null or void by a court of competent

jurisdiction, the remaining portions of the Easement shall remain in full force and effect.

**Descriptive Headings.** The descriptive paragraph headings included herein are for reference purpose only and shall not affect the meaning or interpretation of the text of this Easement.

*[Signature pages and Exhibit A follow]*

B & M Equipment Company, LLP  
a Colorado limited liability company

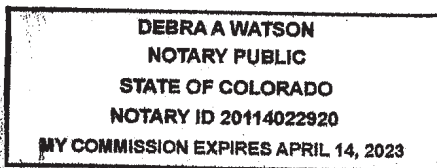
By:   
Name: Bruce William Goldberg  
Title: Partner  
Date: \_\_\_\_\_


STATE OF Colorado       )  
                                      ) §  
COUNTY OF Adams       )

The foregoing instrument was acknowledged before me this 28th day of May,  
2020, by Bruce William Goldberg as Partner of B&M Equipment Company, LLP, a Colorado  
limited liability partnership.

Witness my hand and official seal.

My commission expires: April 14, 2023



  
Notary Public

Board of County Commissioners  
Adams County, Colorado

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

ATTEST:  
Clerk and Recorder

Approved as to form:

\_\_\_\_\_  
Clerk/Deputy Clerk

\_\_\_\_\_  
Adams County Attorney's Office

**EXHIBIT "A"**  
**TEMPORARY CONSTRUCTION EASEMENT**  
**FROM B & M EQUIPMENT COMPANY**  
**TO**  
**THE COUNTY OF ADAMS, STATE OF COLORADO**

Legal Description

Being a portion of Lot 5 Block 1 as shown in Gold Acres Industrial Park, a Subdivision recorded on July 27, 1993 in File No. 17 Map No. 154 Reception No. B1160643 and all of the parcel of land being a portion of the vacated right-of-way of East 78<sup>th</sup> Avenue as recorded on January 10, 1992 in Book 3854 Page 866, both of the records in the Office of the Clerk and Recorder of Adams County, Colorado, located in the North Half of the Northeast Quarter of Section 31, Township 2 South, Range 67 West of the 6<sup>th</sup> Principal Meridian, being more particularly described as follows:

Commencing at the North One-Quarter Corner of said Section 31, from which the East One-Sixteenth Corner between Section 30 and said Section 31, bears North 89°52'00" East, a distance of 1,315.52 feet; thence South 06°00'50" East, a distance of 1,307.77 feet to most Southwesterly Corner of said Lot 5 Block 1 and the Point of Beginning:

Thence along the Northwest line of said Lot 5 Block 1, the following four (4) courses and distances:

Thence North 42°52'20" East, a distance of 242.31 feet;

Thence North 81°31'50" East, a distance of 64.00 feet;

Thence North 42°52'20" East, a distance of 299.90 feet;

Thence perpendicular from said Northwest line, South 47°07'40" West, a distance of 5.00 feet to point on a line 5.00 feet parallel and Southeasterly of Northwest line of said Lot 5 Block 1;

Thence along a line 5.00 feet parallel and Southeasterly of Northwest line of said Lot 5 Block 1 the following three (3) courses and distances:

Thence South 42°52'20" West, a distance of 301.65 feet;

Thence South 81°31'50" West, a distance of 64.00 feet;

Thence South 42°52'20" West, a distance of 235.84 feet to a point on the Southeast line of said Lot 5 Block 1, said line being coincident the Northerly line of said vacated right-of-way of East 78<sup>th</sup> Avenue;

Thence along the Northerly, Southeasterly, Southerly, and Northwesterly lines of said vacated right-of-way of East 78<sup>th</sup> Avenue the following five (5) courses and distances:

Thence North 89°32'38" East, a distance of 20.59 feet;

Thence South 42°52'20" West, a distance of 41.24 feet;

Thence South 89°32'34" West, a distance of 96.20 feet;

Thence North 42°52'20" East, a distance of 41.24 feet;

Thence North 89°32'38" East, a distance of 68.73 feet to the Point of Beginning.

Containing: 5,905 square feet or 0.140 acres, more or less.

Legal description prepared by:

Ian Cortez, PLS  
Colorado Professional  
Land Surveyor No. 32822  
For and on behalf of:  
Adams County, Colorado

Exhibit "B" attached and hereby made a part thereof.

