

## ENCROACHMENT AGREEMENT

This encroachment agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between ADAMS COUNTY, a body politic, whose address is 4430 S Adams County Parkway, Brighton, Colorado 80601 (the "County") and Pecos Logistic Park, LLLP, a Colorado limited liability limited partnership (the "Developer") whose address is 4221 Brighton Boulevard, Denver, Colorado 80216. The County and the Property Owner are collectively referred to as the "Parties".

### RECITALS

WHEREAS, the Developer is the owner of certain real property located at 5675 and 5725 Pecos Street, Denver, Colorado, hereinafter referred to as the "Property"; and,

WHEREAS, pursuant to the Subdivision Improvements Agreement between the Developer and the County, Case No. SIA2020-00004, the Developer is required to construct certain public improvements, including a traffic signal at the midway between West 56<sup>th</sup> Avenue and Cargill Drive along Pecos Street; and,

WHEREAS, the County has been diligently working to acquire the necessary right-of-way to accommodate the County's Pecos Street Improvement Project; and,

WHEREAS, the Developer is needing the right-of-way to accommodate installation of the traffic signal; and,

WHEREAS, due to delays in acquisitions for the Pecos Street Improvement Project, the traffic signal will not be able to be installed in accordance with the construction schedule contemplated in the Subdivision Improvements Agreement; and,

WHEREAS, the Developer is requesting to install a temporary traffic signal, hereinafter called the "Improvements", within the existing right-of-way of Pecos Street as shown on the attached plan.

NOW THEREFORE, the Parties hereby agree that the Improvements will be permitted to temporarily encroach onto the County's Right-of-Way, subject to the following:

- A. In the event that the County desires to construct a County project within Pecos Street that affects the Improvements, the County may elect to demolish as much of the Improvements as are needed (at the County's expense), or require the Property Owner to remove and later reinstall the Improvements (at the Property Owner's expense), to accommodate the County's project.
- B. The County shall provide the Property Owner written notice of its need to affect the Improvements at least 30 calendar days prior to disturbance of the Improvements. The County will provide the Property Owner information regarding the County's project. If the County decides to require the Property Owner to remove the Improvements, the County will specify a date by which the Improvements shall be removed. It shall be

the Property Owner's responsibility to reinstall the Improvements according to the attached plan, unless otherwise approved in writing by the County.

- C. The Improvements shall be maintained in good working order in accordance with the Adams County Development Standards and Regulations and in accordance with the approved plans, specifications, and drawings submitted to the County.
- D. If, at any time, the Developer becomes aware of the Improvements being damaged or not functioning as required, the Developer shall immediately repair the Improvements.
- E. Any damage to the Improvements as a result of the construction, operation, maintenance, repair, inspection, removal, replacement or relocation of the Improvements shall be paid for or repaired at the expense of the Developer.
- F. This Agreement creates no property interest for the Property Owner to the County's Right-of-Way except for the specific encroachment as described herein.
- G. Property Owner agrees to indemnify and hold harmless the County, its officials, officers, contractors, agents and employees from any damage occurring to, or caused by, the Improvements or for any harm caused by the Improvements to persons allowed upon the County's Right-of-Way. Nothing in this section shall be deemed to waive any of the County's privileges or immunities pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et. seq.
- H. The Developer agrees to maintain insurance of the following types and amounts:
  - i. Commercial General Liability Insurance: to include products liability, completed operations, contractual, broad form property damage and personal injury.
    - 1. Each Occurrence: \$1,000,000
    - 2. General Aggregate: \$2,000,000
  - ii. Adams County as "Additional Insured": The Developer's commercial general liability insurance policies and/or certificates of insurance shall be issued to include Adams County as an "additional insured" and shall include the following provisions:
    - 1. Underwriters shall have no right of recovery or subrogation against the County, it being the intent of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses resulting from the actions or negligence of Developer.
    - 2. A clause entitled "Other Insurance Provisions" contained in any policy including Adams County as an "additional named insured" shall not apply to Adams County.

3. The insurance companies issuing the policy or policies shall have no recourse against the County for payment of any premiums due or for any assessments under any form of any policy.
    4. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Developer.
  - iii. All insurers of the Developer must be licensed or approved to do business in the State of Colorado. Upon failure of the Developer to furnish, deliver and/or maintain such insurance as provided herein, this Agreement, at the election of the County, may be immediately declared suspended, discontinued, or terminated. Failure of the Developer in obtaining and/or maintaining any required insurance shall not relieve the Developer from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations of the Developer concerning indemnification.
  - iv. Each insurance policy herein required shall be endorsed to state that coverage shall not be suspended, voided, or canceled without thirty (30) days prior written notice by certified mail, return receipt requested, to the County.
- I. The existence of this Agreement does not render the Improvements a legal, non-conforming use of the Property or the County's Right-of-Way.
  - J. Upon removal of the Improvements by Developer, this Encroachment Agreement shall terminate.

**PROPERTY OWNER:**

Pecos Logistic Park, LLLP,  
a Colorado limited liability limited partnership

BY: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

STATE OF COLORADO )  
 )§  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ and of Pecos Logistic  
Park, LLLP, a Colorado limited liability limited partnership.

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

**COUNTY:**

Board of County Commissioners,  
County of Adams, State of Colorado

Attest:  
Josh Zygiebaum, Clerk

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

By: \_\_\_\_\_  
Deputy Clerk

Approved as to form: \_\_\_\_\_  
County Attorney's Office