

## KIT CARSON COUNTY EASEMENT TERMS AND CONDITIONS

These Kit Carson County Easement Terms and Conditions are incorporated in, and become a part of, and are effective as of the date and year written (“Effective Date”) on the corresponding Kit Carson County Easement (“Agreement”) between Kit Carson County (“Grantor”) and the respective Grantee (“Grantee”) (Grantor and Grantee the “Parties” and each a “Party”).

### TERMS AND CONDITIONS

Now therefore, for and in consideration of the covenants set forth in the Agreement and these Terms, and for other good and valuable consideration, the receipt and adequacy of which the Parties acknowledge, the Parties agree:

- 1) **Recorded Agreement.** The Parties agree that nothing contained in these Kit Carson County Easement Terms and Conditions shall in any manner change the provisions of the Easement Agreement and, if there is a conflict with the provisions of the Agreement and these Terms and Conditions, the Agreement shall prevail.
- 2) **Easement.** Subject to the conditions and terms of the Agreement, Grantor grants Grantee, its successors and assigns, as of the Effective Date, a non-exclusive easement across, on, over, through and under that part of the property as shown in the Agreement’s attached Exhibit A (“Property” and/or “Easement”). Grantee accepts the Easement in its “as is” condition with all faults. Grantor makes no, and Grantee affirms that Grantor has made no, representations or warranties, express or implied, of any kind whatsoever with regard to the title or condition of the Property or of the Easement or their fitness or suitability for any particular use. Grantee acknowledges it is solely responsible for performing its own due diligence and for becoming fully familiar with the title, encumbrances and condition of the Property and of the Easement and any applicable restrictions, uses, or other conditions that might affect their use. Grantee acknowledges and agrees Grantor may not possess complete fee simple title in the Property and that to the extent Grantor does not have such rights (e.g. if one or more adjoining landowner(s) own(s) interest(s) in the Property) that Grantee must, by arrangements separate from this Agreement, secure any additional rights Grantee requires from those parties that hold such rights. Grantee will not grant any third-party any sublease or subeasement of its rights under this Agreement.
- 3) **Term.** The term of the Easement starts on the Effective Date and will continue in perpetuity unless terminated as provided for herein (“Term”); provided, however, the Agreement will terminate if construction is not started on or before the date that is twelve months after the Effective Date.
- 4) **Dominant estate.** Grantee acknowledges the Property is for public transportation purposes and that Grantor’s use and benefit of the Property for public transportation purposes including, when necessary, requiring relocation, protection or modification of any facility to accommodate public transportation uses as such uses may change from time to time is necessary and in the public interest, and Grantor’s property interests will at all times constitute the dominant estate whether or not this is in derogation of the common law.
- 5) **Construction and operations.**
  - a) **Compliance.** Grantee will at all times during (and as applicable after) the Term comply with all local, state, and federal laws, orders, regulations, rules, and statutes applicable to Grantee’s operations, but with not less than the industry-standard level of care applicable to operations of the type authorized in this Agreement. To the extent of any conflict between this Agreement, such industry standard, and/or any such laws, orders, regulations, and rules, the more restrictive requirement will apply.
  - b) **Conduct of work and operations.** All Grantee work under this Agreement will be performed, and the facility operated, repaired, and maintained, in not less than good order, condition and repair in accordance with current applicable industry standards and when boring under roads is possible, it shall always be used and all lines shall be buried to a minimum depth of three feet from the lowest part of the right away unless stated otherwise.

- c) **Dust control.** During construction, Grantee will take appropriate measures to mitigate dust associated with the construction, particularly considering the proximity of the construction area to businesses and homes.
- d) **Emergencies; spills and releases; and claims.**
  - i) Grantee will give Grantor immediate notice of any emergency situation, and Grantee will provide Grantor with contact information for (and maintain up-to-date information for) an individual Grantor may contact in the case of an emergency; provided, however, Grantor is not obligated to monitor Grantee's operations and will not be responsible for advising Grantee of any emergency (or of any other situation).
  - ii) As and when reported to the applicable agency or commission, Grantee will give Grantor written notice of any spill or release on the Property and upon Grantor's request (which may be in the nature of a blanket request requiring the provision of all pertinent documents) will provide Grantor with copies of all spill/release-related reports and filings Grantee provides any such agency or commission.
  - iii) Grantee will give Grantor notice of any allegation or claim of any biological, environmental, or wildlife violation and upon Grantor's request (which may be in the nature of a blanket request requiring the provision of all pertinent documents) will provide Grantor with copies of all documents related to such allegation(s)/claim(s) Grantee provides any agency or commission investigating such matters.
- e) **Garbage.** All Grantee refuse, trash and waste, (including cans, paper, etc.) will be contained in enclosed receptacles and removed from the Property.
- f) **Gates and fences.** Grantee will not locate any gates or fences on the Property without Grantor's prior written approval.
- g) **Hazardous Materials and oil.** If oil or any Hazardous Material (defined below) used on or in connection with Grantee's operations results in damage, destruction or contamination of the Property, any of Grantor's other property, or any property of third parties, Grantee will indemnify, defend and hold Grantor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value, damages for loss or restriction of use, and sums paid in settlement of claims, attorney fees, consultant fees and expert fees) which arise during or after the Term as a result of such contamination. This indemnification of Grantor by Grantee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of oil or Hazardous Material present in the soil or ground water. If the presence of any oil or Hazardous Material on the Property or Grantor's other property or on any third party property caused or permitted by Grantee results in any contamination, Grantee will promptly take all actions at Grantee's sole expense as are necessary to return the affected area to the condition existing prior to the introduction of such oil or Hazardous Material. The term "Hazardous Material" means any hazardous or toxic substance, material or waste, which is now regulated or which may later become regulated by any local governmental authority, the State of Colorado, or the United States Government.
- h) **Liens and claims.** Grantee will not suffer or permit to be enforced or filed against the Property any lien arising out of any construction, repair, restoration, replacement or improvement associated with Grantee's exercise of its rights under this Agreement.
- i) **Relocation.** At any time after the Effective Date, Grantor may for public purposes require Grantee to relocate all or part of the facility to another location, at Grantee's sole cost and expense. The determination of the need for relocation as set forth in this Section will be made based on Grantor's reasonable judgment.

6) **Indemnity.** Grantee assumes all liability arising directly or indirectly from Grantee's use, occupation or control of the Property, the Easement, and/or the Facility. This assumption includes, but is not limited to, liability for all personal injuries (including death) and environmental and property damage and destruction caused by or arising out of Grantee's operations, or caused by or arising out of operations conducted by any party at the direction of Grantee, with the exception of any injuries, damage, or destruction caused by the gross negligence or intentional misconduct of Grantor. Grantee agrees to defend, indemnify and hold harmless Grantor from and against all liability, damages, expenses, claims and judgments arising under this Agreement and for which Grantee has by this Agreement assumed liability.

7) **Miscellaneous.**

a) **Amendment.** No part of this Agreement may be amended or modified in any way except in a writing executed by authorized representatives of both Parties.

b) **Assignment.** This Agreement will bind the Parties and their assigns and successors. Grantee will give Grantor notice of any assignment of this Agreement, including the name and address of the new Grantee and the name and contact information for the new Grantee's contact person. Assignment will not relieve the assignor from its obligations under this Agreement that accrued before the assignment, and moreover the assignee will be jointly and severally liable with the assignor for any pre-assignment obligations under the Agreement.

c) **Attorney's fees.** The prevailing Party in any dispute related to this Agreement will be entitled to recover its actual, reasonable legal costs and fees from the other Party.

d) **Binding effect.** This agreement binds the Parties and their respective administrators, assigns, executors, heirs, and successors.

e) **Breach.** Grantor will give Grantee notice of any breach of this Agreement. Grantee will have thirty (30) days after receipt of such notice to cure such breach, or if such breach is not susceptible of cure within such period, such additional time as may be necessary provided Grantee commences cure within such thirty (30) day period and diligently prosecutes such cure thereafter until completion, failing which Grantor may (i) terminate this Agreement or (if applicable) the part to which the breach applies and/or (ii) require damages or specific performance and/or (iii) as applicable cure the breach and invoice Grantee for the costs incurred plus reasonable overhead for effecting such cure. Termination will not preclude Grantor from recovering damages and/or other amounts due from Grantee or from requiring Grantee's compliance with the requirements of this Agreement that survive termination. Grantor's receipt and acceptance and/or acknowledgment of any payment from or action by Grantee will not be construed as a waiver of any breach or default of this Agreement, whether the breach or default is known or unknown.

f) **Dispute resolution.** The Parties will attempt amicable resolution of any disputes related to this Agreement. If amicable resolution fails, as either Party determines in its discretion, then the Parties agree to the exclusive jurisdiction and venue of the courts in Kit Carson County, Colorado for the resolution of any such disputes. The prevailing Party in any such action will be entitled to recover its actual, reasonable attorney fees and costs. The Parties waive their right to trial by jury.

g) **Entire agreement.** This Agreement, which includes any attached addenda, exhibits, and/or schedules, is the entire agreement between the Parties relating to its subject matter; it supersedes all contemporaneous or prior agreements, discussions, or understandings between the Parties, written and oral.

h) **Law.** Colorado law governs this Agreement.

i) **No other covenants, representations, or warranties.** The Parties make no covenants, representations, or warranties except as expressly set forth in this Agreement. Each Party disclaims any other covenants, representations, or warranties by the other Party.

- j) **No third-party beneficiaries.** Except as may be expressly set forth in this Agreement, this Agreement is intended solely for the benefit of the Parties, and nothing in it will be construed to create any duty to, any liability to, or any benefit for any person not a party to it.
- k) **No waiver.** No failure by a Party to exercise and no delay in exercising any right, power or privilege under this Agreement will operate as a waiver, nor will any single or partial exercise of any right or privilege preclude further exercise of the same right or the exercise of any other right under this Agreement. A waiver on one or more occasions of any of the provisions of this Agreement will not be deemed a continuing waiver.
- l) **Notice.** All notices or other communications required or permitted under this Agreement (except for notices of emergencies or related to day-to-day issues or where email notice is stated to suffice), will be in writing, personally delivered, delivered by reputable overnight courier, or sent by registered or certified mail, return receipt requested, and postage prepaid, addressed to the Parties at the Party's last known address. Notices personally delivered will be deemed given on the day delivered. Notices by overnight courier will be deemed given on the first business day after mailing. Notices mailed will be deemed given on the third business day after mailing. Notices of change of address will be given by written notice in the manner described in this section.
- m) **Relationship of the Parties.** This Agreement does not constitute either Party as the agent, employee, legal representative, joint venturer, or partner of the other Party.
- n) **Release.** Grantee will record a release of its interest under this Agreement as and when (as applicable) all or part of the Agreement is terminated.
- o) **Reservation of other rights.** All rights not expressly granted Grantee are reserved to Grantor.
- p) **Severability.** If any term of this Agreement is finally held to be illegal, invalid, or void, all other parts will remain in effect; provided, however, the Parties will enter negotiations concerning such term for the purpose of achieving conformity with the requirements of any applicable law and the intent of the Parties.

[End of Terms & Conditions]