

PERMANENT EASEMENT AGREEMENT

This Permanent Easement Agreement ("Agreement") effective this ____ day of _____, 2016, by and between Goin Straight, LLC, a Colorado limited liability company (Grantor), whose mailing address is 117 E. Saddlewood Drive, Pueblo West, CO 81007, and the Pueblo West Metropolitan District, a Colorado Special District ("District") or ("Grantee"). Both Grantor and Grantee hereinafter may be individually referred to as "Party" and collectively referred to as "Parties."

Recitals

WHEREAS, Grantor owns real property as legally described in "**Exhibit A**" attached hereto ("Property"), in, through, over, under, and across which the Improvements (as defined in Section 1 below) will pass; and

WHEREAS, Grantee has determined that its Improvements (as defined in Section 1 below) must be constructed, installed, and maintained within the Property;

NOW, THEREFORE, in consideration of the promises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

Agreement

1. **Conveyance of Permanent Easement.** Grantor hereby grants to Grantee a perpetual, non-exclusive permanent easement to enter, occupy, and use the real property legally described in "**Exhibit B**" attached hereto, to construct, reconstruct, install, use, operate, maintain, repair, replace, and upgrade the pipeline, meters, valves, manholes, access roads or any other utility structures (including, but not limited to, communication facilities), and all necessary underground cables, wires, and appurtenances thereto, including, but not limited to, electric or other control systems, cables, wires, connections, and surface appurtenances ("Improvements") and to make any cuts and fills in the earth necessary to the performance of such work, in, on, under, through, over and across such real property ("Permanent Easement"). The surface shall be restored pursuant to paragraph 7 herein.
2. **Easement Map.** "**Exhibit C**" attached hereto is a graphic representation of the Permanent Easement. In the event of an ambiguity in Exhibit B, Exhibit C may be used to resolve said ambiguity.
3. **Ingress and Egress.** Grantee shall have the perpetual right of reasonable ingress and egress in, on, to, through, over, under, and across the Permanent Easement, as described in Exhibit B, and that portion of the Property north of the Permanent Easement with vehicles and equipment as Grantee deems appropriate for actives and uses allowed under

this Agreement. To the maximum practicable extent, Grantee shall use existing gates, roads, trails or facilities to avoid disruption of Grantor's operations on the Property.

4. **Additional Construction.** Grantee shall have the right to construct, reconstruct, install, use, operate, maintain, repair, patrol, replace, upgrade, or remove at any time or from time to time, one or more additional Improvements and appurtenances thereto within the Permanent Easement. Such right shall be perpetual, and Grantor shall not stop, hinder, or impede construction of such additional Improvements or limit the same within the Permanent Easement.
5. **Grantor's Rights Unaffected.** Except as provided in Section 6 below, Grantor shall retain the right to make full use of the Permanent Easement and the Property to the north of the same, except for such use as might endanger or interfere with the rights of Grantee in the Permanent Easement. Grantor shall only perform or permit other persons or entities to perform construction or other work within the Permanent Easement after prior written approval by Grantee and only if such construction or other work is performed in accordance with the terms of this Agreement, all applicable laws, rules and regulations, and Grantee's rules and regulations as they may be modified from time to time. Grantor reserves use of the Permanent Easement, whether longitudinal or otherwise, for installing the following: pavement, curbs, gutters, sidewalks, trails, parking areas and associated curb cuts, paved driveways, fences (except fences which cannot be reasonably removed and erected again, such as, but not limited to: stone, brick, or other masonry type fences or walls), low-height landscaping, and sprinkler systems which are capable of being reasonably located by Grantee ("Grantor's Improvements"); provided however, that the exercise of such rights, in the reasonable opinion of Grantee, does not injure or interfere with, now or in the future, any of the Grantee's rights in the Permanent Easement including, but not limited to, Grantee's rights of maintenance and reasonable access.
6. **Installations within Permanent Easement.** Grantor shall not construct or place any permanent structure or building on any part of the Permanent Easement including, but not limited to: posts, poles, fences (as allowed in Paragraph 5), dwellings, garages, barns, sheds, storage structures of any kind, lean-tos, play houses or other play structures, outbuildings, gazebos, hot tubs, swimming pools, concrete patios, decks, basketball/sports courts, retaining wall, or any edifice projections such as, but not limited to: balconies, verandas, porches, building overhangs, or bay windows. Without liability for damages, Grantee may remove any structure or building constructed or placed within the Permanent Easement. If Grantor constructs, places or permits any structure or building within the Permanent Easement, then Grantor shall reimburse Grantee for all expenses (including, but not limited to removal, court, collection, and attorneys' fees and costs if such litigation is successful pursuant to paragraph 14 below) associated with or arising from removing such structure or building. Despite anything herein to the contrary, if the Grantee approves a projection into the Permanent Easement, then the Projection Approval shall be considered Grantee's prior written consent to Grantor's encroachment into the Permanent Easement as described in that Projection Approval. Moreover, in no event shall Grantor:

- a. construct or place, longitudinally along or otherwise within the Permanent Easement any tree, underground pipeline, cable, wire, conduit, valve, stub, storm water drainage pipeline facilities or other utility or appurtenance without the prior written consent of Grantee; or
- b. change, by excavation or filling, the present grade or ground level of the Permanent Easement without the prior written consent of Grantee, which shall not be unreasonably denied. Despite anything herein to the contrary, if the Grantee approves Grantor's grading plan for the Property ("Grading Plan Approval"), then the Grading Plan Approval shall be considered Grantee's prior written consent to change the grade of the Permanent Easement as described in that Grading Plan Approval, provided that no Improvements exist within the Permanent Easement. Further, if Grantee determines that (as a result of the Grading Plan Approval) it is necessary to relocate any existing Improvements, then Grantor acknowledges that such relocation shall be at the Grantor's sole expense, regardless of the Grading Plan Approval, and Grantor shall grant to Grantee any permanent easements required for the relocated Improvements.

Grantor shall prevent the construction or alteration of landfills, wetlands, land excavations, water impoundments including storm water quality features or facilities, and other land uses within the Permanent Easement unless the prior written consent of Grantee is provided. Additionally, Grantor shall not construct any new, or alter any existing landfills, wetlands, water impoundments, and other similar uses within or near the Permanent Easement, which might, in Grantee's reasonable discretion, endanger or interfere with any Improvements, including, but not limited to, Grantee's rights of maintenance and reasonable access, without the prior written consent of Grantee.

7. **Surface Restoration to Land.** Grantee shall within a reasonable period of time replace, repair, or reimburse Grantor for the reasonable cost of replacement or repair of physical damage to Grantor's Improvements on the Property, except as modified to accommodate Grantee's improvements, whether or not within the Permanent Easement, but only if such damage is caused by Grantee's construction, reconstruction, use, operation, maintenance, repair, replacement, upgrading, additional construction as defined Paragraph 4, or removal of its Improvements. In the construction, reconstruction, installation, use, operation, maintenance, repair, replacement, upgrading, additional construction as defined in Paragraph 4, removal of its Improvements, or for any ingress on the Property by Grantee or anyone on behalf of the Grantee, Grantee shall promptly restore, replace, or repair the surface of the Property to as close to its condition immediately prior to such work as may be reasonably possible. Despite anything contained herein to the contrary, Grantee shall not be liable for damage to, nor shall it be obligated to repair or replace, any structures, buildings, or any other articles whatsoever, which are constructed, installed, or otherwise existing within the Permanent Easement in violation of the terms of this Agreement including, but not limited to, any tree(s) that interfere with the Improvements or Grantee's rights in the Permanent Easement.
8. **Maintenance of Permanent Easement.** Grantee shall have the perpetual right to cut, trim, control, and remove trees, brush, and other obstructions which injure or interfere with

the Grantee's use, occupation or enjoyment of the Permanent Easement, or Grantee's right to construct, reconstruct, install, use, operate, maintain, repair, replace, upgrade, or remove its Improvements, without liability for damages arising there from.

9. **Subjacent and Lateral Support.** Grantor shall not impair any lateral or subjacent support for the Improvements.
10. **Nature of Easement.** The Permanent Easement is perpetual and runs with the land. It also is deemed to touch and concern the land. The exercise of any rights in the Permanent Easement other than those retained by Grantor shall be within the sole discretion of Grantee and limited to rights that are delineated in paragraph 1.
11. **Warranty of Title.** Grantor specially warrants that it has good and merchantable title to the Property, and specially warrants it has the full right and lawful authority to grant the Permanent Easement. Further, Grantor warrants, promises, and agrees to defend Grantee in the exercise of Grantee's rights hereunder against any defect in title created by Grantor after Grantor received title to the Property or Grantor's right to grant the Permanent Easement.
12. **Waiver.** The failure of either Party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of either Party in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by either Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.
13. **Governing Law and Jurisdiction.** This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of litigation, this Agreement shall be enforceable by either Grantor or the Grantee. In the event of any dispute over this Agreement or its subject matter, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of Pueblo County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado and the prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees in enforcing this Agreement.
14. **Binding Effect.** 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, transfers, agents, and assigns of the Parties.
15. **No Third Party Beneficiaries.** Except as expressly provided otherwise, this Permanent Easement is intended to be solely for the benefit of the Parties and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action or other right.

16. **Severability.** The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.
17. **Incorporation of Exhibits.** All exhibits described in and attached to this Agreement are herein incorporated by reference. Grantor hereby acknowledges that Exhibits A and B must be prepared by or under the supervision of a Professional Land Surveyor licensed by the State of Colorado.
18. **Notice.** Any notice provided in accord with this Agreement, shall be in writing and shall be sent by delivery service, or mailed by certified mail, postage prepaid and return receipt requested to either Party's address as shown below or to the property owner of record ("Notice"). Such Notice shall be effective upon the date received and acknowledged by signature of the Party that receives Notice. Either Party may change its address to which any Notice is to be delivered under this Agreement by giving Notice as provided herein.

Grantee: Pueblo West Metropolitan District
109 E. Industrial Blvd.
Pueblo West, CO 81007

Grantor: Goin Straight, LLC
117 E. Saddlewood Drive
Pueblo West, CO 81007

19. **Entire Agreement.** This Agreement represents the entire agreement between the Parties and no additional or different oral representation, promise or agreement, oral or otherwise, shall be binding on any of the Parties hereto with respect to the subject matter of this instrument, unless stated in writing explicitly referring to this Permanent Easement Agreement and signed by the Parties.
20. **Goin Straight, LLC.** Although the Permanent Easement is perpetual and runs with the land and also touches and concern the land, nothing herein shall be interpreted to provide any ongoing liability of any kind or nature by Goin Straight, LLC for the actions or inactions by any successor in title. Goin Straight, LLC shall be relived of any and all obligations in regard to encumbrances or obstructions to the Property or title or hold harmless provisions once the Property is no longer in the ownership of Goin Straight, LLC, for actions or inactions occurring after Goin Straight, LLC transfers ownership of the Property.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the day and year first above written.

GRANTEE:

By: _____
Darrin K. Tangeman

STATE OF COLORADO)
) SS.
COUNTY OF PUEBLO)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Darrin K. Tangeman as District Manager for Pueblo West Metropolitan District.

Witness my hand and official seal.

My Commission Expires: _____

Notary Public

GRANTOR GOIN STRAIGHT, LLC:

By: _____
Nile G. Scott, Member

GRANTOR GOIN STRAIGHT, LLC:

By: _____
Joyce A. Scott, Member

STATE OF COLORADO)
) SS.
COUNTY OF PUEBLO)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, By Nile G. Scott and Joyce G. Scott for Goin Straight, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My Commission Expires: _____

Notary Public

EXHIBIT A

LOT 5 IN BLOCK 1 IN SOUTHERN COLORADO MEDICAL CENTER, FILING NO. 1
RECORDED MAY 1, 1998 AT RECEPTION NO. 1216941 IN PLAT BOOK S AT PAGE
512, COUNTY OF PUEBLO, STATE OF COLORADO.

EXHIBIT B

Legal description of the Permanent Easement Area

(Prepared by or under the supervision of a Professional Land Surveyor
licensed in the State of Colorado)

EXHIBIT C

Graphic Representation of the Permanent Easement in relation to the Property

RESOLUTION 2016-_____

**A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE PUEBLO WEST
METROPOLITAN DISTRICT AND GOIN STRAIGHT, LLC, RELATING TO THE
CONSTRUCTION AND OPERATION OF THE WILDHORSE REUSE PIPELINE PROJECT**

PUEBLO WEST METROPOLITAN DISTRICT

WHEREAS, the Pueblo West Metropolitan District's Board of Directors has approved a design for the construction of the Wildhorse Reuse Pipeline Project to more efficiently carry return flow water to the Arkansas River; and

WHEREAS, by way of Resolutions No. 1988 and 1991, dated October 23, 2012 and November 27, 2012 respectively, the Board of Directors for the Pueblo West Metropolitan District approved a notice of intent to acquire easements for the construction of the Wildhorse Reuse Pipeline Project; and

WHEREAS, to construct the Wildhorse Reuse Pipeline Project it is necessary to acquire temporary easements and permanent easements for the construction and maintenance of the pipeline; and

WHEREAS, the Board of Directors has reviewed the design including the alignment for the Wildhorse Reuse Pipeline Project; and

WHEREAS, the Board of Directors have previously adopted Resolutions authorizing District staff and counsel to take all steps necessary to acquire the relevant easements for the Wildhorse Reuse Pipeline Project; and

WHEREAS, the District has previously acquired permanent and temporary easements from the City of Pueblo for the construction of the Wildhorse Reuse Pipeline Project; and

WHEREAS, District staff has negotiated the purchase of a permanent easement and temporary easement from Goin Straight, LLC, the owner of record of property located in Pueblo County, Colorado, parcel #5150-59-005; and

WHEREAS, the terms of the easement acquisition are more specifically defined in the Agreement attached hereto as Exhibit A; and

WHEREAS, the District shall pay to Goin Straight, LLC, as compensation for the granting of the permanent utility easement, the sum of \$42,421.50; and

WHEREAS, the District shall pay to Goin Straight, LLC, as compensation for the granting of a temporary construction easement, the sum of \$4,713.50; and

WHEREAS, the Board of Directors of the Pueblo West Metropolitan District has reviewed the attached Agreement and believe that it is in the best interest of the District to enter into the Agreement.

THEREFORE, BE IT RESOLVED by the Board of Directors of the Pueblo West Metropolitan District that the Agreement between the District and Goin Straight, LLC, attached hereto,

regarding construction of the District's Wildhorse Reuse Pipeline Project be and hereby is approved; and

BE IT FURTHER RESOLVED by the Board of Directors of the Pueblo West Metropolitan District that the President of the District is authorized to execute the Agreement on behalf of the District and that staff and legal counsel for the District are hereby authorized to execute all remaining documents necessary to resolve this matter.

* * * * *

I hereby certify that the foregoing is a full, true and correct copy of a resolution duly passed and adopted at a regularly held meeting of the Board of Directors of the Pueblo West Metropolitan District on the ____ day of September, 2016, by the following vote:

AYES, and in favor thereof, Directors:

NOES, Directors:

ABSENT, Directors:

Secretary

(SEAL)