



DENVER
THE MILE HIGH CITY

Department of Public Works
Permit Operations and Right of Way Enforcement
201 W. Colfax Avenue, Dept. 507
Denver, CO 80202
P: 720-865-2782
F: 720-865-3280
www.denvergov.org/pwprs

REQUEST FOR ORDINANCE TO APPROVE AN EASEMENT

TO: Karen Walton, City Attorney's Office

FROM: Robert J. Duncanson, P.E.
Manager 2, Development Engineering Services

PROJECT NO: 2011-0210-09

DATE: November 8, 2011

SUBJECT: Request for an Ordinance to approve an easement with a provision authorizing the Manager of Public Works to terminate the legal description of the easement area from the existing storm facility area to the relocated storm facility area without further City Council action. The easement is in Denargo Market Subdivision Filing No. 1 and runs east/west abutting the east side of Denargo Street.

NOTE: Request for an ordinance to accept an easement for existing storm facilities. The developers of Denargo Market plan to abandon or remove the storm facilities when a suitable replacement facility has been constructed in another area. This ordinance approves the easement with a provision authorizing the Manager of Public Works to terminate the legal description of the easement area from the existing storm facility area to the relocated storm facility area without further City Council action.

It is requested that the above subject item be placed for City Council approval at the next earliest date.

This office has investigated the request of Denargo Market L.P. and Denargo Holdings LLC for acceptance of an easement. Said easement is intended to be temporary in nature and it has been requested that the easement be written and approved by City Council with a provision authorizing the Manger of Public Works to terminate the legal description of the easement area from the existing storm facility area to the relocated storm facility area without further City Council action.

This matter has been checked by this office and has been coordinated with the Division of Real Estate; Comcast Corporation; Councilperson Montero; CPD: Planning Services; Denver Water Board; Fire Department; Metro Wastewater Reclamation District; Office of Telecommunications; PW: DES Engineering, and DES Survey; Qwest Corporation; and Xcel Energy, all of whom have returned our questionnaires indicating their agreement to accept said easement.

As a result of the investigations, it has been determined that there is no objection to the easement.

Therefore, you are requested to initiate Council action to accept said easement with a provision authorizing the Manager of Public Works to terminate the legal description of the easement are from the existing storm facility area to the relocated storm facility area without further City Council action

A copy of the proposed easement is attached.

RJD:VLH 

cc: Asset Mgmt. Steve Wirth
City Council, Gretchen Williams
Councilperson Montero and Aides
Department of Law, Karen Aviles
Department of Law, Karen Walton
Department of Law, Arlene Dykstra
Public Works, Christine Downs
Public Works, Stacie Loucks
Public Works, Alba Castro
Public Works Survey-Paul Rogalla
Project File **2011-0210-09**

Property Owner:
Denargo Market, L.P.
301 Congress Ave., Suite 500
Austin, TX 78701

Property Owner:
Denargo Holdings, L.L.C.
301 Congress Ave., Suite 500
Austin, TX 78701

Agent:
Kaydee Myers
Otten Johnson
950 17th St Ste 1600
Denver, Co 80202

ORDINANCE/RESOLUTION REQUEST

Please email requests to Daelene Mix at daelene.mix@denvergov.org by **NOON on Monday**.

**All fields must be completed.*
Incomplete request forms will be returned to sender which may cause a delay in processing.*

Date of Request: November 8, 2011

Please mark one: Bill Request or Resolution Request

1. Has your agency submitted this request in the last 12 months?

Yes No

If yes, please explain:

2. Title: (Include a concise, one sentence description – please include name of company or contractor and contract control number - that clearly indicates the type of request: grant acceptance, contract execution, amendment, municipal code change, supplemental request, etc.)

Request for an Ordinance to approve an easement with a provision authorizing the Manager of Public Works to terminate the legal description of the easement area from the existing storm facility area to the relocated storm facility area without further City Council action. The easement is in Denargo Market Subdivision Filing No. 1 and runs east/west abutting the east side of Denargo Street.

3. Requesting Agency: PW Right of Way Engineering Services

4. Contact Person: (With actual knowledge of proposed ordinance/resolution.)

- Name: Vanessa Herman/Joel Schmidt
- Phone: 720-913-0719/720-865-3122
- Email: vanessa.herman@denvergov.org/joel.schmidt@denvergov.org

5. Contact Person: (With actual knowledge of proposed ordinance/resolution who will present the item at Mayor-Council and who will be available for first and second reading, if necessary.)

- Name: Stacie Loucks
- Phone: 720-865-8720
- Email: Stacie.loucks@denvergov.org

6. General description of proposed ordinance including contract scope of work if applicable:

Request for an ordinance to accept an easement for existing storm facilities. The developers of Denargo Market plan to abandon or remove the storm facilities when a suitable replacement facility has been constructed in another area. This ordinance approves the easement with a provision authorizing the Manager of Public Works to terminate the legal description of the easement area from the existing storm facility area to the relocated storm facility area without further City Council action.

****Please complete the following fields:** (Incomplete fields may result in a delay in processing. If a field is not applicable, please enter N/A for that field.)

- a. Contract Control Number: N/A
- b. Duration: unknown
- c. Location: Denargo Market Subdivision Filing No 1
- d. Affected Council District: Montero
- e. Benefits: N/A
- f. Costs: N/A

To be completed by Mayor's Legislative Team:

SIRE Tracking Number: _____

Date Entered: _____

7. **Is there any controversy surrounding this ordinance? (Groups or individuals who may have concerns about it?) Please explain.**

None

To be completed by Mayor's Legislative Team:

SIRE Tracking Number: _____

Date Entered: _____



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EXECUTIVE SUMMARY

Project Title: 2011-0210-09, Denargo Market, Request to accept an Easement

Description of Proposed Project: Approve an easement with a provision authorizing the Manager of Public Works to terminate the legal description of the easement area from the existing storm facility area to the relocated storm facility area without further City Council action. The easement is in Denargo Market Subdivision Filing No. 1 and runs east/west abutting the east side of Denargo Street.

Explanation of why the public right-of-way must be utilized to accomplish the proposed project: This is a request to have an easement over private property and to have the PW Manager to have the power to relinquish in the future.

Has a Temp MEP been issued, and if so, what work is underway: N/A

What is the known duration of an MEP: N/A

Will land be dedicated to the City if the vacation goes through: N/A

Will an easement be placed over a vacated area, and if so explain: N/A

Will an easement relinquishment be submitted at a later date: No

Additional information: Request for an ordinance to accept an easement for existing storm facilities. The developers of Denargo Market plan to abandon or remove the storm facilities when a suitable replacement facility has been constructed in another area. This ordinance approves the easement with a provision authorizing the Manager of Public Works to terminate the legal description of the easement area from the existing storm facility area to the relocated storm facility area without further City Council action.



After recording, please return to:
City and County of Denver
1437 Bannock Street, Room 353
Denver, CO 80202
Attention: Karen Aviles

EASEMENT

This EASEMENT ("Easement"), is made this ___ day of _____, 2011 by DENARGO MARKET L.P., a Delaware limited partnership ("Grantor"), whose legal address is 301 Congress Avenue, Suite 500, Austin, Texas 78701, Attention: M. Timothy Clark, to the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado ("City") whose legal address is 1437 Bannock Street, Denver, Colorado 80202.

RECITALS:

- A. Grantor is the owner of certain property commonly known as Denargo Market ("Grantor's Property") in Denver, Colorado.
- B. The City has an existing stormwater sewer line ("Existing Line") through portions of Grantor's Property.
- C. The City has requested that Grantor grant to the City an easement for the Existing Line and necessary surrounding property ("Existing Line Property") within Grantor's Property.
- D. Upon development of Grantor's Property, the Existing Line will be removed and a new line ("Relocated Line") will take its place in a different location within Grantor's Property for which the City already has an easement.
- E. This Easement will provide that when the Existing Line is removed and replaced by the Relocated Line, the Manager of Public Works of the City will terminate this Easement.
- F. Grantor desires to grant this Easement as more specifically set forth below.

WITNESSETH:

For and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant and convey to the City, a permanent, non-exclusive easement ("Easement") to locate, install, construct, inspect, operate, maintain, repair, remove, replace, relocate and reconstruct facilities for stormwater and related purposes, including related underground and surface facilities and appurtenances thereto ("Public Improvements"), into, within, over, upon, across, through and under the following described parcel of land ("Easement Property"):

See Exhibit A attached hereto and incorporated herein.

Grantor hereby warrants and covenants that Grantor has full right and lawful authority to grant the Easement and has fee simple title to the Easement Property.

The interest granted to City herein shall specifically include any after-acquired rights of Grantor in the Easement Property, to the extent of the Easement rights herein stated.

If ingress to and egress from the Easement Property from and to a public road or highway is not available, Grantor grants to City the right of ingress to and egress from the Easement Property over and across adjacent land owned by Grantor by means of roads and lanes thereon, if such exist, otherwise by such route or routes as shall occasion the least practicable damage and inconvenience to Grantor.

Grantor further grants to City the right from time to time to trim and to cut down and clear away any and all trees, brush and other obstructions now or hereafter on the Easement Property which now or hereafter in the reasonable determination of City's Manager of Public Works may be a hazard to the location, installation, construction, inspection, operation, maintenance, repair, removal, replacement, relocation or reconstruction of the Public Improvements, or may interfere with the exercise of City's rights hereunder.

Grantor releases the City from any and all claims for damages arising in any way or incident to the location, installation, construction, inspection, operation, maintenance, repair, removal, replacement, relocation and/or reconstruction by the City, or its agents, of the Public Improvements across the Easement Property and from the exercise by the City of any rights under this Easement ("Claims") unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City.

Except as otherwise provided herein, Grantor, its successors and assigns, reserves the right to fully use and enjoy the Easement Property, so long as such use and enjoyment shall not interfere with the location, installation, construction, inspection, operation, maintenance, repair, removal, replacement, relocation and reconstruction of the Public Improvements installed or permitted to be installed by City on the Easement Property. Grantor covenants and agrees that, effective as of the date of this Easement, the Grantor shall not erect, install, place or permit any building, structure, wall, fence, tree, or other below- or above- ground obstruction upon the Easement Property.

Grantor shall not be responsible for the restoration of landscaping, irrigation systems, pavement and sidewalks due to the City's activities under this Easement. The City shall restore any such landscaping, irrigation systems, pavement and sidewalks disturbed due to the City's activities under this Easement to a condition similar to what it was prior to the City's activities, except as necessarily modified to accommodate the Public Improvements.

In the event the terms of this Easement are violated, such violation shall immediately be corrected by Grantor upon receipt of written notice from the City's Manager of Public Works or, if Grantor does not correct the violation within the time designated in such notice, the City may elect to correct or eliminate such violation at the Grantor's expense. The Grantor shall promptly

reimburse the City for all costs and expenses incurred by the City in enforcing the terms of this Easement.

The provisions of this Easement shall inure to the benefit of and bind the successors and assigns of the Grantor and City. All covenants stated in this Easement shall apply to and run with the land.

Upon the removal of the Existing Line and the construction of the Relocated Line by Grantor, and the acceptance of the Relocated Line by the Manager of Public Works of the City, the Manager of Public Works of the City shall execute and record a document relinquishing its rights under and terminating this Easement and shall take such other actions necessary to accomplish such termination, without further City Council approval.

[remainder of this page intentionally blank; signature page follows]

IN WITNESS WHEREOF, Grantor has executed this Easement as of the day and year first above written.

GRANTOR:

DENARGO MARKET L.P.,
a Delaware limited partnership

By: Cypress Denargo GP, LLC,
a Delaware limited liability company
its general partner

By: *M. Timothy Clark*
Name: M. Timothy Clark
Title: President

STATE OF TEXAS)

) ss.

COUNTY OF Texas)

The foregoing instrument was acknowledged before me this 19th day of Sept, 2011, by M. Timothy Clark, as President of Cypress Denargo GP, LLC, a Delaware limited liability company, as general partner of Denargo Market, L.P. a Delaware limited partnership.

Witness my hand and official seal.

Jessica C. Villarreal

Notary Public

My Commission expires: 12/29/2014

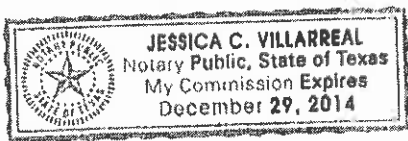


EXHIBIT A
Easement Property
LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PART OF LOT 1, BLOCK 1, DENARGO MARKET SUBDIVISION FILING NO. 1, PER THE PLAT RECORDED AT RECEPTION NO. 2009018921 ON FEBRUARY 17, 2009 IN THE RECORDS OF THE CITY AND COUNTY OF DENVER, COLORADO CLERK AND RECORDER'S OFFICE, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, SAID CITY, COUNTY AND STATE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN BEING MONUMENTED AS SHOWN HEREON AND BEARING SOUTH 89°59'53" WEST.

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 27;

THENCE ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 27, SOUTH 89°59'53" WEST, A DISTANCE OF 903.75 FEET TO THE EASTERLY RIGHT OF WAY LINE OF DENARGO STREET AS DEDICATED BY ORDINANCE NO. 278 OF SERIES 2001;

THENCE DEPARTING SAID NORTH LINE, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, SOUTH 00°01'41" EAST, A DISTANCE OF 189.89 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING SAID EASTERLY RIGHT-OF-WAY LINE, SOUTH 73°45'11" EAST, A DISTANCE OF 207.59 FEET;

THENCE SOUTH 89°29'10" EAST, A DISTANCE OF 34.73 FEET TO THE WEST BOUNDARY OF A 30 FEET WIDE UTILITY EASEMENT AS DEDICATED BY SAID DENARGO MARKET SUBDIVISION FILING NO. 1;

THENCE ALONG SAID WEST BOUNDARY, SOUTH 00°01'41" EAST, A DISTANCE OF 30.00 FEET;

THENCE DEPARTING SAID WEST BOUNDARY, NORTH 89°29'10" WEST, A DISTANCE OF 39.16 FEET;

THENCE NORTH 73°45'11" WEST, A DISTANCE OF 202.98 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF SAID DENARGO STREET;

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE, NORTH 00°01'41" WEST, A DISTANCE OF 31.25 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.166 ACRES (7,266 SQ. FT.), MORE OR LESS.



DALE C. RUSH
COLORADO LICENSED PROFESSIONAL LAND SURVEYOR P.L.S. 33204
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.

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9/02/2011
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ILLUSTRATION TO EXHIBIT A

