

AGREEMENT DATE: _____
(To be completed by Denver Water – Property Management)

HIGH LINE CANAL LICENSE AGREEMENT
Strike inapplicable language; modify the highlighted sections as needed

THIS LICENSE AGREEMENT (“**Agreement**”) is made between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE, a body corporate and political subdivision of the State of Colorado (“**County**”), and **Insert name** (“**Licensee**”). The term “**Licensee**” includes employees, agents, and contractors of the Licensee. The parties to this Agreement may be referred to individually as “**Party**” and collectively as “**Parties.**” The Parties agree as follows:

AGREEMENT

1. **GRANT:** The County, for itself and its successors and assigns, subject to the terms and conditions of this Agreement, authorizes the Licensee to **construct, utilize, maintain, repair, and reinstall (collectively “Work”)** **Insert description of installation** (“**Installation**”) within and across the County’s High Line Canal property at the location described on the CAD drawing **Insert drawing number** included in the attached and incorporated **Exhibit A (“Licensed Area”)**. The Licensee shall maintain a copy of this Agreement on the job site during any Work authorized by this Agreement.

2. **LICENSE FEE AND OTHER COSTS:** The Licensee shall pay a \$2,000 license fee made payable to “Arapahoe County Open Spaces” for the rights granted by this Agreement. Additionally, the Licensee shall pay a \$2,000 license fee made payable to “Denver Water” for Denver Water’s administrative work to create this Agreement.

3. **PAST RIGHTS AND CONVEYANCES:** The rights and privileges granted in this Agreement are subject to all prior agreements, licenses, leases, grants, permits, rights-of-way, reservations, and conveyances, whether recorded or unrecorded, related to the Licensed Area. The Licensee shall take extra care to familiarize itself with the limitations and reservations included in the Deed of Conservation Easement for the High Line Canal recorded against the property in the Clerk and Recorder’s Office of **Insert county name** County on June __, 2024, at Reception Number **Insert reception number**.

4. **COUNTY’S RETAINED INTERESTS:**

4.1 The County reserves unto itself, its successors and assigns, the right to make full use of the Licensed Area as may be necessary or convenient in the County’s operation and maintenance of the property. The County will make reasonable attempts not to damage the Installation(s); however, should damage occur, the County will not be responsible for any such damage.

4.2 In the event the Installation(s) interferes with the County’s use, maintenance, or operation of the property, the County in its sole discretion may require the Licensee to relocate, rearrange, modify, or remove the Installation(s) at the Licensee’s sole expense. The Licensee shall relocate, rearrange, or modify the Installation(s) within a timeframe and in compliance with the requirements that the County designates, or the Licensee may terminate this Agreement.

4.3 The Licensee agrees to indemnify, hold harmless, and defend the County against any liability, damages, costs, expenses, claims, injuries, and losses of whatever nature arising in any way out of this Agreement, including but not limited to any expenses incurred by the County as a result of damages to the County’s property or facilities, to the extent caused by any negligent act

or omission or willful misconduct of the Licensee or the Licensee's officers, subcontractors, agents, or employees.

5. DENVER WATER'S RETAINED INTERESTS:

5.1 Denver Water has reserved an easement to make full use of the Licensed Area for the purposes of constructing, extending and adding to, maintaining, conducting, operating, and permitting other water providers' use of a water works system and plant and everything necessary, pertaining, or incidental thereto.

5.2 In the event the Installation(s) interferes with Denver Water's use, maintenance, or operation of its facilities, Denver Water, in its sole discretion, may require the Licensee to relocate, rearrange, modify, or remove the Installation(s) at the Licensee's sole expense. The Licensee shall relocate, rearrange, or modify the Installation(s) within a timeframe and in compliance with the requirements that Denver Water designates, or the Licensee may terminate this Agreement.

5.3 The Licensee agrees to indemnify, hold harmless, and defend Denver Water against any liability, damages, costs, expenses, claims, injuries, and losses of whatever nature arising in any way out of this Agreement, including but not limited to any expenses incurred by Denver Water as a result of damages to Denver Water's property, to the extent caused by any negligent act or omission or willful misconduct of the Licensee or the Licensee's officers, subcontractors, agents, or employees.

6. PRE-WORK INSPECTION: The Licensee shall notify the County at least 15 days prior to the commencement of any Work so that the County may make any inspections of the Licensed Area the County deems necessary before such Work begins.

7. PRE-WORK NOTICE: The Licensee shall notify the County's Public Works and Development Department at 720-874-6500 and Denver Water's representative at xxx-xxx-xxxx during regular working hours at least 48 hours prior to commencing any Work within the Licensed Area so that the County and/or Denver Water may have an inspector present during such Work. In the event of an emergency, the Licensee shall notify the County's Public Works and Development Department at 720-874-6500.

8. PROOF OF LOCATES: Licensee shall obtain, or require its contractors and any subcontractors to obtain, proof of clear locates for all Work in connection with this Agreement in compliance with applicable law.

9. WORK PLANS AND SPECIFICATIONS: Any Work initiated under this Agreement shall be performed and completed at no expense to the County according to the plans and specifications approved by the County in writing and in compliance with all applicable County standards. The Licensee represents and warrants that initial Installation(s) authorized by this Agreement shall be constructed in accordance with the plans and specifications identified as [redacted] and dated [redacted].

9.1. Different Location. If any Installation(s) location is reasonably determined by the County to be materially different from the approximated location shown on any plans and specifications approved by the County, the County may require the Licensee to undertake corrective work at the Licensee's sole expense. If the County does not require corrective work, the County may notify the

Licensee of such determination, and this Agreement shall be deemed amended, effective as of the date of the County's notice and without further action by the Parties.

9.2. Right to Inspect. The Licensee shall notify the County upon completion of any Work; upon receipt of such notice, the County may elect to inspect such Work and require the Licensee to undertake corrective work at the Licensee's sole expense if the Work fails to conform to the approved plans and specifications; the County's applicable standards; federal, state, or local laws; or any applicable industry standards.

10. RIGHT TO SUSPEND WORK: Notwithstanding any other provision in this Agreement, the County has the right to suspend the performance of any Work under this Agreement without any liability if the County, in its sole discretion, determines that the Licensee or any of its contractors or any subcontractors failed to comply with the terms of this Agreement. The County shall not be liable for any delays in the completion of the Work that result from the suspension under this paragraph.

11. OWNERSHIP; OPERATION & MAINTENANCE OF INSTALLATION: The Licensee shall own the Installation(s). Until this Agreement is terminated, the Licensee shall ensure that the Installation(s) is operated and maintained, at no expense to the County, in good repair and in full compliance with all federal, state, and local laws, permitting requirements, and applicable industry and County standards. If the Installation(s) includes any kind of underpass, bridge, or other infrastructure capable of providing shelter, and it becomes the location of any kind of human encampment, the Licensee shall be solely financially responsible for restoring the site to its preexisting condition within 30 days of notification by the County. The Licensee shall follow the underlying jurisdiction's policies on encampment cleanups.

12. COUNTY'S ACCESS: The Licensee shall conduct all Work in such a manner that the County shall have full and complete access to the Licensed Area at all times. The Licensee shall not obstruct any access roadways or ingress to or egress from such roadways.

13. CURB CUT AND TRANSITION DETAIL: **STRIKE THROUGH THIS PARAGRAPH IF IT DOES NOT APPLY.** The Licensee shall construct and maintain all necessary, in the opinion of the County, curb cuts from the Installation(s) to any roadways and any access roads at no expense to the County. All such access roads and curb cuts shall be depicted on the plans and specifications provided to the County, shall be at locations approved in writing by the County, and shall comply with Denver Water's curb cut detail, a copy of which is attached as **Exhibit B**. The Licensee shall not obstruct County roadways or ingress to or egress from such roadways.

14. DETOURS: **STRIKE THROUGH THIS PARAGRAPH IF IT DOES NOT APPLY.** The Licensee shall take whatever steps are necessary to route traffic during any Work and provide directions through the use of signs. Any of the County's roads or acceptable alternatives must be open and accessible to the County's personnel and equipment at all times.

15. TRENCHES AND EXCAVATIONS: **STRIKE THROUGH THIS PARAGRAPH IF IT DOES NOT APPLY.** All trenches, excavations, backfill and tamping shall be in accordance with the then-current applicable Denver Water Engineering Standards and Capital Project Construction Specifications and subject to approval by the County's representative.

16. UNDERGROUND LINES: **STRIKE THROUGH THIS PARAGRAPH IF IT DOES NOT APPLY.** Underground electric power line installations shall be encased in rigid steel conduit and/or

concrete within the Licensed Area. Facilities owned by the County or Denver Water must not be included in any concrete encasement.

17. MARKER POSTS: **STRIKE THROUGH THIS PARAGRAPH IF IT DOES NOT APPLY**. The Licensee shall place two permanent marker posts, one at each end of the Installation(s) and on its centerline, to the satisfaction of the County's representative. Each permanent marker post shall be filled with concrete and installed to allow a three-foot extension above the surface of the ground. The marker posts shall extend a minimum of two feet below the surface of the ground and be encased in concrete. Each marker post shall have the type, size, and depth of the Installation clearly marked with 1½-inch stenciling.

18. SERVICE LINES: All service lines within the Licensed Area shall be installed in a manner satisfactory to the County's representative.

19. OVERHEAD CLEARANCE: **STRIKE THROUGH THIS PARAGRAPH IF IT DOES NOT APPLY**. The Licensee shall maintain a minimum overhead clearance of 25 feet over the High Line Canal. No portion of the Installation(s) shall extend below the stringers of any bridge to which it is attached.

20. ENVIRONMENTAL: The Licensee shall comply with all applicable laws and ordinances and all rules, regulations, and requirements of any governmental authority controlling environmental standards and conditions of the Licensed Area. If, as a result of the Licensee's occupancy of the Licensed Area, any such law, ordinance, rule, or regulation is violated, the Licensee shall, **if and to the extent permitted by law**, protect, save harmless, defend, and indemnify the County from and against any penalties, fines, costs, and expenses including legal fees and court costs incurred by the County, caused by, resulting from, or connected with such violation or violations. In addition, but without limiting the foregoing, the Licensee shall comply with the following:

20.1. Hazardous Material. The Licensee shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Licensed Area by the Licensee, its agents, employees, or contractors without the express written permission of the County.

20.2. Indemnification. If the Licensee breaches the obligations stated in the preceding subparagraph, or if the presence of the Hazardous Material on the Licensed Area caused or permitted by the Licensee results in contamination of the Licensed Area, or if contamination of the Licensed Area by the Hazardous Material otherwise occurs for which the Licensee is legally liable to the County, then the Licensee shall, **if and to the extent permitted by law**, indemnify, defend, and hold the County harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Licensed Area, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Licensed Area, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorney fees, consultant fees and expert fees) which arise during or after the term of this Agreement as a result of such contamination. This indemnification of the County by the Licensee, **if and to the extent permitted by law**, 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 the Hazardous Material is present in the soil or groundwater on or under the Licensed Area.

20.3. Cleanup. If the presence of any Hazardous Material on the Licensed Area caused or permitted by the Licensee results in any contamination of the Licensed Area, the Licensee shall, at its sole

expense and after obtaining the County's written approval, promptly take all actions that are necessary to clean the contamination and return the Licensed Area to the condition existing prior to the introduction of any such Hazardous Material to the Licensed Area. The clean-up of the contamination shall be in compliance with all applicable state and federal standards.

20.4. Definitions. The term "**Hazardous Material**" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local governmental authority, the State of Colorado, or the United States. The term "Hazardous Material" includes without limitation any material or substance that is (i) defined as a "hazardous substance" under appropriate state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321); (v) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601); or (vi) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. § 6991).

21. ENDANGERED SPECIES ACT: Certain County properties may contain habitat for listed "threatened" or "endangered" species under the Endangered Species Act ("**ESA**"). Licensee shall be responsible for determining the presence of such habitat and taking measures to comply with the ESA and all other applicable federal laws.

22. TREES: The Licensee shall provide means, acceptable to the County, to protect the existing trees from any damage or disruption caused by any Work. If the Work requires clearance, trimming, or complete removal of trees located within Licensed Area, the Licensee must obtain prior written permission from the County. The Licensee will be responsible for all cleanup of any trimmings and the removal of logs, branches, limbs, and other debris. The Licensee shall replace any trees and other vegetation (including re-seeding) removed or damaged due to any Work in accordance with Denver Water's tree replacement standard described in the attached and incorporated **Exhibit C**.

23. WATER FLOW AND DISCHARGE: The Licensee shall not interfere with the flow of water in the High Line Canal and shall assume all risks incident to the presence of water in the High Line Canal. The Licensee shall not discharge water into or upon any of the Licensed Area or surrounding County property. The Licensee shall provide for carriage of any water over or across the Licensed Area or County property in a manner satisfactory to the County's representative.

24. CANALS/DITCHES: **STRIKE THROUGH SUBPARAGRAPHS THAT ARE NOT APPLICABLE**

24.1. Clean Water Act. The High Line Canal between Sand Creek and the most westerly unnamed drainage located in Section 34 constitutes jurisdictional "Waters of the United States," subject to the federal Clean Water Act (33 U.S.C. § 1251 *et seq.*). The Licensee shall be responsible for complying with the federal Clean Water Act and obtaining any necessary permit(s) from the proper regulatory authority prior to conducting its activity. The Licensee shall supply the County with documentation providing that such authority has been obtained or that such permission is not required by the regulatory authority.

24.2. Recreation. The County has authorized certain recreational activities along and within the High Line Canal property. In addition to all other notices required by this Agreement, at least 48

hours prior to the commencement of any Work within the Licensed Area, the Licensee shall notify the Recreational Use Entity, **identify Recreational Use Entity here**, at **xxx-xxx-xxxx**, and the High Line Canal Conservancy, Conservation Easement holder, at 720-767-2452. All paved trails and other recreational improvements within the Licensed Area shall be restored to their pre-existing condition to the satisfaction of the Recreational Use Entity. The Licensee shall comply with all the Recreational Use Entity's requirements to ensure the safety of the general public and to minimize interference with recreational use on the Licensed Area.

24.3. Irrigation. Denver Water uses the High Line Canal as an irrigation facility. Irrigation season is from April 1st until November 1st each year, and diverted water may be flowing in the High Line Canal during this time. Additionally, water may be flowing in the canal other times during the year. No Work may be undertaken during April 1st through November 1st unless special written authorization is obtained from Denver Water's Director of Operations and Maintenance at 303-634-3400 or email SOSMetroDivision@denverwater1.onmicrosoft.com prior to the commencement of Work.

24.4. Cut-off Walls. The Licensee shall place reinforced concrete cut-off walls at locations determined by the County as shown on the plans and specifications identified in Paragraph 9 above. Each cut-off wall shall be constructed in accordance with Denver Water's then-current **Capital Projects Construction Standards 4th Edition**, as they may be updated and revised from time to time, and the excavation, forming, and steel placement of each cut-off wall shall be inspected and approved in writing by the County's representative prior to placement of concrete.

25. CLEANUP AND RESTORATION: The Licensee will use all reasonable means to prevent any loss or damage to the County or to others resulting from the construction, operation, maintenance, repair, modification, replacement, or removal of the Installation(s).

25.1. Within 21 days from the date of completion of any Work, the Licensee shall clear the Licensed Area and any other affected property of all construction debris and shall restore the Licensed Area and any other affected property and any damaged roads and fencing to the condition in which they existed as of the Effective Date as nearly as may be possible to the satisfaction of the County's representative. Restoration and clearing of the surface shall include, but not be limited to, replacement of the topsoil in cultivated and agricultural areas, removal of any excess earth resulting from the Work, and/or reseeded described in the then-current Denver Water **Capital Projects Construction Standards Section 32 91 00 Planting Preparation and Section 32 92 00 Turf and Grasses**. Restoration of the roads shall include, but is not limited to, resurfacing.

25.2. If the Licensee does not restore and clear the Licensed Area and any other affected property to the satisfaction of the County and/or within the timeframe set forth in subparagraph 25.1, the County may complete the clearing and/or perform the restoration at the sole expense of the Licensee.

25.3. Any repair or replacement of any County facilities or property, other than roads and fencing, made necessary in the opinion of the County's representative because of any Work performed pursuant to this Agreement, shall be made by the County at the sole expense of the Licensee.

25.4. Licensee's obligations under paragraph 25 shall survive termination of this Agreement.

26. NO LIENS: The Licensee shall pay for all materials joined or affixed to the Licensed Area, shall pay in full all persons who perform labor upon the Licensed Area, and shall obtain and provide to the County lien releases for all such materials and labor. The Licensee shall not permit any mechanic's or materialman's lien of any kind or nature to be enforced against the Licensed Area for any Work done and materials furnished on the Licensed Area at the instance, request, or on behalf of the Licensee.

27. APPROVAL OF CONTRACTORS: Prior to commencing any Work under this Agreement, the Licensee shall submit to the County a list of all contractors and subcontractors that will be performing the Work in connection with this Agreement; no Work may commence until the County, in its sole and absolute discretion, has approved such contractors and subcontractors in writing. The Licensee understands and agrees that only those contractors and subcontractors whose operations are covered by the insurance required by this Agreement and that have been pre-approved by the County as required by this Agreement are authorized to work upon or about the Licensed Area. The Licensee shall require its agents, employees, and all approved contractors and subcontractors performing Work pursuant to this Agreement to comply with each of the terms and conditions of this Agreement.

28. INSURANCE:

28.1. The Licensee shall purchase and maintain insurance of the kinds and in the minimum amounts specified below:

28.1.1. Workers' Compensation and Employer's Liability: For the Licensee, all contractors, and subcontractors, the Licensee shall maintain workers' compensation insurance for the performance of all Work under this Agreement in accordance with applicable state laws and employer's liability insurance. Coverage shall include a waiver of subrogation in favor of Arapahoe County.

Minimum Limits:

- Workers' Compensation – statutory limits
- Employer's Liability:
 - \$1,000,000 bodily injury for each accident
 - \$1,000,000 each employee for disease
 - \$1,000,000 disease aggregate

28.1.2. Commercial General Liability: For the Licensee, all contractors, and subcontractors, the Licensee shall maintain commercial general liability insurance covering all operations by or on behalf of the Licensee on an occurrence basis against claims for bodily injury, property damage (including loss of use), and personal injury.

Minimum Limits:

- \$1,000,000 each occurrence
- \$2,000,000 general aggregate with dedicated limits per project site
- \$2,000,000 products and completed operations aggregate

Coverages:

- Contractual Liability
- Independent Contractors
- Defense in addition to the limits of liability

- Severability of Interests Provision
- Products and completed operations coverage maintained for at least two years after completion of the project, for construction contractors only
- Additional Insured Endorsement issued to Arapahoe County, Colorado, its officers, its agents, and its employees acting in the scope of their employment

28.1.3. Automobile Liability: For the Licensee, all contractors, and subcontractors, the Licensee shall maintain business auto liability coverage covering liability arising out of any auto (including owned, hired, and non-owned autos) used in connection with this Agreement:

Minimum Limit:

- \$1,000,000 Combined Single Limit Each Accident

Coverages:

- Additional Insured Endorsement issued to Arapahoe County, Colorado, its officers, its agents, and its employees acting in the scope of their employment

28.2. The above-mentioned coverages shall be procured and maintained with insurers with an A- or better rating, as determined by Best’s Key Rating Guide. All coverages shall be continuously maintained during the term of this Agreement or as noted above to cover all liability, claims, demands, and other obligations assumed by the Licensee.

28.3. Additional Insured status required above shall be primary and non-contributory with any insurance or self-insurance carried by the County. The Licensee shall be solely responsible for any deductible losses under any policy required above.

28.4. The policies shall provide that the County will receive notice no less than 30 days prior to cancellation, termination, or non-renewal of the policies.

28.5. The Licensee shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

28.6. Failure on the part of the Licensee to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the County may immediately terminate this Agreement.

29. INSURANCE CERTIFICATES:

29.1. At the time of executing this Agreement, the Licensee shall deliver to the County Certificates of Insurance as evidence that policies providing any and all required coverages and limits are in full force and effect.

29.2. These certificates will serve as an indication to the County that the Licensee has acquired all necessary insurance; however, the County may require that certified copies of the insurance policies be submitted.

29.3. Insurance limits must be indicated on each Certificate of Insurance. Each Certificate of Insurance shall be reviewed and approved by the County prior to commencement of Work under this Agreement. The certificates shall identify this Agreement where applicable.

30. INDEMNIFICATION: **OPTION 1 PRIVATE ENTITY LICENSEE**. The Licensee expressly agrees to defend, indemnify, and hold harmless the County, its officers, agents, and employees, against any liability, loss, damage, injury, death, demand, claim, action, cause of action, or expense of whatever nature, kind, or description (including court costs and attorneys' fees), directly or indirectly arising out of, resulting from or related to (in whole or in part) this Agreement, any rights or interests granted pursuant to this Agreement, the Licensee's occupation and use of the Licensed Area, any act or omission of the Licensee, its officers, directors, members, managers, employees, contractors, or any subcontractors. The Licensee shall require all contractors and subcontractors performing Work pursuant to this Agreement to defend, indemnify, and hold harmless the County, its officers, members, managers, agents, and employees to the same extent as the Licensee is required to do so under this paragraph. The Licensee's obligations under this paragraph shall survive termination of this Agreement. **OPTION 2 GOVERNMENTAL ENTITY LICENSEE**. The Licensee shall be responsible for its own errors, acts, omissions, and negligence in connection with this Agreement. The Licensee shall also contractually require all contractors and/or subcontractors performing Work pursuant to this Agreement to defend, indemnify, and hold harmless the County, its officers, members, managers, agents, and employees against any liability, loss, damage, injury, death, demand, claim, action, cause of action, or expense of whatever nature, kind, or description (including court costs and attorneys' fees), directly or indirectly arising out of, resulting from, or related to (in whole or in part) this Agreement (including, but not limited to, Licensee's obligations in **Paragraph 20** of this Agreement), any rights or interests granted pursuant to this Agreement, occupation and use of the Licensed Area by the Licensee and such contractors and/or subcontractors, any act or omission of the Licensee and such contractors and/or subcontractors, as well as each of their officers, directors, members, managers, and employees. The Licensee's obligations under this paragraph shall survive termination of this Agreement.

31. RISK OF LOSS: All personal property, including, but not limited to, fixtures, equipment, or related materials, upon the Licensed Area will be at the risk of the Licensee only, and the County shall not be liable for any damage to or theft of such personal property.

32. NO ASSIGNMENT; NO RECORDING: The Licensee agrees and understands that privileges granted by this Agreement are personal to the Licensee, that this Agreement does not grant the Licensee any property interest in the Licensed Area, and that this Agreement shall not inure to or for the benefit of the Licensee's successors or assigns. The Licensee shall not assign this Agreement and shall not record this Agreement.

33. ABANDONMENT: If the Licensee does not use the right granted in this Agreement or its Installation(s) for a period of one year, the County may, at its election, consider the rights granted under this Agreement abandoned and terminate this Agreement by giving the Licensee 30 days' written notice.

34. TERMINATION:

34.1. The County may terminate this Agreement for any reason and at any time by giving the Licensee 30 days' written notice.

34.2. In the event of the Licensee's violation of any of the terms of this Agreement, the County may elect to terminate this Agreement or may allow the Licensee a time to correct such violation. If the violation is not cured to the satisfaction of the County within 30 days after receipt of the written notice of such violation from the County, or such longer period as the County may permit in writing, the County may elect to cure the violation at the Licensee's sole expense, without prejudice to the County's right to terminate this Agreement.

34.3. Upon termination of this Agreement for any reason, the Licensee shall have 60 days to remove its Installation(s) from the Licensed Area and restore the Licensed Area and any other affected property to the condition in which it existed as of the Effective Date. In the event the Licensee does not remove its Installation(s) within the time allowed under this paragraph and/or does not comply with the restoration obligations stated in this paragraph, the County, without incurring liability, may remove the Installation(s) and/or restore the affected property at the Licensee's sole expense.

34.4. The Licensee's obligations under this paragraph shall survive termination of this Agreement.

35. REIMBURSEMENT TERMS: All the County's invoices are due 30 days after the date of invoice. If the Licensee fails to reimburse the County within 30 days, the Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus 2.5 percent, or (ii) the maximum rate permitted by law. The Licensee's obligations under this paragraph shall survive termination of this Agreement.

36. NOTICES: Except as otherwise expressly provided in this Agreement, the Parties shall contact the persons listed below for all matters related to administration of this Agreement. All notices required or given under this Agreement shall be in writing and shall be deemed effective: (a) when delivered personally to the other Party or (b) seven days after posting in the United States mail, first-class postage prepaid, properly addressed as follows.

If to the County:

Arapahoe County Open Spaces
6934 S. Lima Street, Suite A
Centennial, CO 80112

with a copy to:

Arapahoe County Attorney's Office
5334 S. Prince Street
Littleton, CO 80120

If to Licensee:

If to Denver Water:

City and County of Denver, acting by and through its Board of Water Commissioners
Attention: Director of Engineering-Property
1600 W. 12th Avenue
Denver, CO 80204

37. GENERAL PROVISIONS:

37.1. Construction. This Agreement shall not be construed more strictly against one Party than another merely because it may have been prepared by counsel for one of the Parties.

37.2. Venue and Governing Law. For the resolution of any dispute arising from this Agreement, venue shall be in the courts of Arapahoe County, State of Colorado. This Agreement shall be governed by and construed under the laws of the State of Colorado, without regard to its conflict of laws principles.

37.3. No Attorneys' Fees and Costs. In the event there is any litigation, mediation, arbitration, or other dispute-resolution proceedings arising out of or related to this Agreement, each Party shall pay for its own attorney(s)' and other professional(s)' fees, costs, and expenses.

37.4. Severability. If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of that provision and the rest of this Agreement shall remain in full force and effect.

37.5. No Waiver. The failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the Agreement's provisions, and, notwithstanding such failure, no Party shall be thereby released from any obligations under the Agreement.

37.6. Non-Business Days. Except as otherwise specifically provided, all periods of time set forth in this Agreement shall be calendar days, not business days. If any date for any obligation under this Agreement falls on a Saturday, Sunday, or a "legal holiday" as such term is defined in Colorado Rule of Civil Procedure 6, then the relevant date shall be extended automatically until the next business day.

37.7. Headings. The headings contained in this Agreement are included solely for convenience, are not intended to be full or accurate descriptions of the content of the respective paragraph, and shall not be considered part of this Agreement or affect its interpretation.

37.8. Colorado Governmental Immunity Act. **OPTION 1 PRIVATE ENTITY LICENSEE.** The Parties understand and agree that the County is relying upon, and has not waived, the monetary limitations and all other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as it may be amended from time to time. **OPTION 2 GOVERNMENTAL ENTITY LICENSEE.** The Parties understand and agree that the Parties are relying upon, and have not waived, the monetary limitations and all other rights,

immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as it may be amended from time to time.

37.9. Entire Agreement. This Agreement constitutes the entire agreement between the County and the Licensee and replaces all prior written or oral agreements and understandings. The terms of this Agreement may not be changed, waived, modified, or varied in any manner whatsoever unless in writing signed by all Parties.

37.10. Counterparts and Originals. A copy of the Agreement may be executed by each Party separately, and may be delivered by mail or electronic copy, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

37.11. Representation of Authority of Signatories. **STRIKE THROUGH THIS PARAGRAPH IF THE LICENSEE IS A NATURAL PERSON.** Each individual executing this Agreement on behalf of the Licensee represents and warrants that the execution and delivery of this Agreement and all related documents have been duly authorized by the Licensee for which the individual is signing, and that the individual has the legal capacity to execute and deliver this Agreement and thereby bind the Licensee.

37.12. Effective Date. This Agreement shall become effective on the date it is signed by the County's Open Spaces Director.

38. SPECIAL PROVISIONS: **STRIKE THROUGH THIS PARAGRAPH IF THERE ARE NO ADDITIONAL PROVISIONS.** This Agreement is also subject to the following provisions. To the extent that any such provisions listed below are in conflict with any other provisions of this Agreement, the provisions below shall control and supersede them.

38.1. 

38.2. 

SIGNATURES FOLLOW ON THE NEXT PAGE

BOARD OF COUNTY COMMISSIONERS OF
THE COUNTY OF ARAPAHOE

By: _____
Margina Pingnot, Open Spaces Director,
on behalf of the Board of County Commissioners
pursuant to Resolution No. ____

Date: _____

LICENSEE:

By: _____

Address: