

ACCESS & USE LICENSE AGREEMENT

This **ACCESS & USE LICENSE AGREEMENT** (“**Agreement**”) is entered, as the date set forth on Denver’s signature page below (the “**Effective Date**”), by and between the **CITY AND COUNTY OF DENVER**, a home rule city and municipal corporation (“**Denver**”) and **THE CITY OF GLENDALE**, a Colorado home-rule municipal corporation (“**Glendale**”) (together, the “**Parties**”).

RECITALS

- A. Glendale has requested that Denver authorize the installation of utility facilities within Denver-owned property, which is under the maintenance responsibility of Denver’s Department of Parks and Recreation (“**DPR**”), located within the City’s “Cherry Creek Greenway”, and within the Glendale City limits (the “**Denver Property**”), State of Colorado.
- B. In order to provide improved water service to its residents, Glendale intends to install an underground water line, (the “**Water Line**”), by means of boring and trenching (“**Installation**”). The Water Line is intended to be approximately situated as shown in the attached **Exhibit A**, incorporated in this Agreement by this reference.
- C. Glendale has demonstrated to Denver’s satisfaction that the proposed location of the Installation, as depicted on the 4 Mile District Final Development Plan dated November 22, 2023 (“**Development Plan**”), is the most feasible and functional, and the least intrusive under the circumstances, in order to allow Glendale to provide water services.
- D. The Water Line will be installed by Glendale as prescribed in this Agreement.
- E. Denver concurs with this proposed Installation of the Water Line provided that the Installation is performed with as minimal disruption as may be practical and reasonable to the users of the Denver Property, including but not limited to uses of the DPR managed trail and associated facilities; and that the Denver Property is restored or repaired to Denver’s satisfaction.
- F. The area within the Denver Property where the Water Line is intended to be located is fifteen (15) feet on either side of the water pipe centerline as stated in the legal description and corresponding drawing attached to this Agreement as shown in the attached **Exhibit A** (the “**Licensed Area**”).
- G. By this Agreement, Denver grants a license for the access and use of the Licensed Area for the Water Line Installation, and the long-term operation of the Water Line, as well as access and use of the Licensed Area, as approved by Denver, for future maintenance, repair, upgrade, and replacement of the Water Line (collectively, the “**Operation**” or “**Operations**”).

NOW, THEREFORE, in consideration of the above premises and the terms and conditions of this Agreement as set out below, Denver and Glendale agree as follows:

All of the recitals above are hereby confirmed and incorporated herein as part of the Agreement.

1. **LICENSE.** Glendale and its employees, elected officials, representatives, agents, consultants and contractors (hereinafter referred to collectively as “**Glendale**”) are hereby licensed access onto, and the use of, the Licensed Area for:
 - A. the purpose of exercising Glendale’s Licensed Rights, as defined below;
 - B. the installation of Glendale’s Water Line;
 - C. the repair or Restoration (as defined below) work, at Glendale’s sole expense, of any Denver property affected by Glendale’s Installation or Operation by promptly removing any obstructions placed by Glendale and repairing or restoring the Denver Property to a condition that meets applicable Denver and DPR standards, as approved by DPR. If weather or other conditions do not permit satisfactory repair or Restoration, Glendale may, with Denver’s prior written approval, temporarily repair or restore the affected Denver Property, provided such temporary repair or Restoration is at Glendale’s sole expense and provided further, Glendale promptly undertakes and completes the required repair or Restoration when the weather or other conditions no longer prevent the repair or Restoration work; and
 - D. the Operation of the Water Line in the Licensed Area after Installation and any needed repair or Restoration, which licensed access and use shall continue unless revoked as provided in this Agreement (together, the “**Licensed Rights**”); and
 - E. unless otherwise stated or required, Glendale’s Licensed Rights, including access allowed hereunder, apply and are limited to the Licensed Area. Glendale is required to obtain any other right of access in, to, over and through other Denver or non-Denver property it may need. Denver does not by this Agreement warrant any action or activity of any other Denver agency or regulatory or governmental entity, including any action that may require Glendale to redesign or relocate the Water Line; and
 - F. maintenance and repair for the Water Line performed by Glendale after completion of the Installation may require Glendale or Glendale’s contractors to obtain a Temporary Construction and Access Permit (“**TCAP**”), or other Denver permit or permission as may be required by the work; and
 - G. this Agreement and the Licensed Rights shall provide Glendale access for Installation and any other related or required work for one (1) year from the execution of this Agreement to allow for the completion of Glendale’s Installation. Glendale shall provide Denver reasonable notice if it anticipates the Installation including any repair or Restoration will not be completed within one (1) year. Completion of the Installation within the time set forth in this subsection is a material condition of this Agreement. Glendale’s failure to complete the Installation within the time, Glendale’s abandonment of the incomplete Installation,

or any change to the Development Plan, shall be grounds for Denver to revoke the Agreement and require Glendale to remove the Installation at Glendale's cost. Glendale shall provide Denver prior notice of any material change of the Development Plan that affects Installation of the Water Line or Denver Property within thirty (30) days of the change. Notwithstanding, at the written request of Glendale, an extension of the Agreement may be approved and granted by Denver, which shall require execution of an amendment or new agreement in the same manner as this Agreement, including approval by Denver's City Council. This Agreement otherwise provides Glendale a License for the continued maintenance and Operation of the Installation as set forth herein.

This License shall remain in effect for the duration of Glendale's use and operation of the Water Line, subject to the terms and conditions herein. Glendale acknowledges, concedes and agrees that the exercise of these Licensed Rights by Glendale shall be in accordance with, and subject to, the terms and conditions set forth in this Agreement. This Agreement does not authorize Glendale to enter upon, or make any use of, any property other than the Licensed Area and for only those purposes identified as the Licensed Rights. The Licensed Rights are not transferable and are non-exclusive, except as set forth in Section 4.F.

2. **DENVER RETAINED RIGHTS.** Denver retains the right to use, occupy, enjoy, grant other interests, and in all other ways govern and control the Licensed Area and any adjacent Denver Property and other Denver-owned property. Notwithstanding the foregoing, Denver shall not require Glendale to remove the Water Line from the Licensed Area; or to relocate the Water Line; or to otherwise modify, reconfigure, or change the Water Line within the Licensed Area unless extenuating circumstances or other burdens to any Denver land arise, or unless made necessary by other requirements, law, regulation, order, ordinance or mandated use of other Denver land. Denver agrees to use reasonable efforts in the design of Denver projects to avoid causing Glendale to relocate its Water Line; however, Denver does not and cannot by this Agreement warrant that relocation of the Water Line will not be required by other Denver departments or agencies or other government or authority. In the event relocation of Glendale's Water Line cannot be avoided, and relocation requires modification of the Water Line within the Licensed Area, then Glendale shall modify, adjust, or relocate all or any portion of its Water Line within a reasonable timeframe that Denver designates to an alternative location in Denver's sole discretion. Denver hereafter agrees to use reasonable efforts to ensure that Denver's plans for the Licensed Area, if any, do not interfere with Glendale's use of the Licensed Area or rights granted herein. Denver will consult with Glendale's engineers to the extent practicable if it appears to Denver that interference between Denver's project (if any) and Glendale's Water Line may occur within the Licensed Area. Any removal, relocation or modification shall occur at no cost to Denver. Denver retains the right to control, monitor, and establish procedures applicable to Glendale's use of the Licensed Area. Denver retains the right, in Denver's sole discretion, to impose and require additional terms or conditions, including charging to Glendale costs or expenses incurred by Denver, should Glendale fail to comply with this Agreement and the DPR Executive Director does not elect to revoke the Licensed Rights as provided below. Glendale shall provide copies of as-built drawings and surveys of the completed Water Line, and shall provide evidence of completion, or

copies thereof, within ninety (90) days of completion of the Installation or upon request from Denver.

3. **FEE; COSTS.** As consideration for the License and the rights thereunder, Glendale shall pay an amount not to exceed **ONE THOUSAND SEVEN HUNDRED SEVENTY-FOUR DOLLARS AND ZERO CENTS (\$1,774.00)** ("Fee"). The Fee shall be paid to Denver by no later than thirty (30) calendar days after execution of this Agreement. Glendale or such other party as determined by Glendale, but not Denver, shall be liable for all costs and expenses associated with the Installation, Operations, and any other repair, Restoration, or activity licensed under this Agreement.

4. **BASIC TERMS & CONDITIONS.**

- A. Compliance with Laws. Glendale shall obtain, keep in effect, comply with, and provide copies to the Denver Rep (as defined below) as directed by the Denver Rep, all notices, permits, licenses, consents, permissions, and approvals required by any governmental or quasi-governmental entity prior to commencing the Installation or any other Operations within the Licensed Area. Notwithstanding Glendale's Licensed Rights under this Agreement, Glendale hereby acknowledges that for any access needed prior to the Effective Date, or for any access for contractors, consultants, or other parties not included under this Agreement, and if so required by the Denver Rep (as defined below), Glendale shall obtain in advance and comply with a DPR TCAP, or other Denver permit or permission as may be required by the work and before conducting any activity on or about the Licensed Area. Any required manifest, approval, license or permit related to Glendale's activities under this Agreement shall be issued in Glendale's or its designee's name under Section 4.F. Glendale hereby acknowledges and agrees that it is bound by and shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, and policies, and the terms and conditions set forth in any plans Denver may require and approve, and all other applicable plans, specifications, permits, permissions, consents, and approvals required for or applicable to the Operations within the Licensed Area, including requirements affecting use and access of non-Denver land.

- B. No Fee Ownership, Lease or Easement. Nothing in this License creates or recognizes any real property rights, including fee ownership, lease or easement rights, on the part of Glendale in or to the Licensed Area, Denver Property or any other Denver-owned property, but instead grants Glendale permission for the uses described and as limited herein. Glendale shall solely own and remain solely responsible for the Water Line including all operations, costs, and liabilities related to the Water Line.

- C. Revocation.

- i. Denver retains the right in its sole discretion and consistent with the Denver City Charter, Ordinance, Executive Orders, and rules, regulations, policies

and procedures including but not limited to DPR Rules and Regulations, to revoke or suspend the Licensed Rights granted under this Agreement, including revocation for failure to complete the Installation within the time allotted, abandonment of the Installation, or for any change to the Development Plan.

ii. Along with any other grounds for revocation under this Agreement, Denver further retains the right to revoke the License in the case of one or any of the following:

- a. One (1) year after execution of this Agreement Glendale has failed to complete the Installation of the Water Line; or
- b. Glendale has partially installed the Water Line and one (1) year after the last date of construction has failed to complete the Installation; or
- c. Glendale abandons or otherwise fails to operate or use the Water Line one (1) year after the last date of operation.

iii. Denver will provide Glendale a Notice of Revocation (“**Notice**”) indicating the grounds for revocation of the License. If the reason for the Notice is curable, as reasonably determined by Denver, upon receipt of such Notice, Glendale shall have thirty (30) business days, or such longer time as specified by Denver, to cure the violation and to demonstrate to Denver’s satisfaction that the violation has been cured. Denver shall only send a Notice in good faith and for reasonable cause. However, with respect to any violation that is not reasonably curable within thirty (30) business days, Glendale agrees to act in good faith and cooperate with Denver to reach a mutually acceptable resolution of the issue within sixty (60) business days of delivery of the Notice. If Glendale completes its cure requirements within sixty (60) business days after receipt of the Notice, then the Notice shall be null and void with respect to this Agreement and this Agreement shall not be considered abandoned or terminated and shall remain in full force and effect. If the violation is not curable, as determined by Denver, then Glendale shall have three hundred sixty-five (365) calendar days for the removal and relocation of the Water Line and all its appurtenances from the Licensed Area, and for the Restoration of the Licensed Area as required herein. The requirements of this subsection C. do not apply to other administrative, regulatory, legal, governmental or other orders or requirements affecting the Licensed Area and Water Line outside of Denver’s control or jurisdiction.

D. Denver Representative. A DPR employee, a Denver representative, or a private contractor (“**Denver Rep**”) will be assigned by Denver to be Glendale’s contact for coordination and oversight of the Installation and any related repair or Restoration work and related activities of Glendale under this Agreement, notifications under this Agreement, and in the event of an emergency. The Denver Rep may be changed, or other Denver Reps added at any time upon written notice to Glendale.

Any future Operations work, after completion of the Installation and any repair or Restoration, shall also be subject to coordination with and oversight by a Denver Rep assigned. Denver will provide the address and contact information for the Denver Rep in writing to Glendale for notice purposes under Section 15. In the event any Denver Rep changes, Denver shall notify Glendale in writing at the address listed under Section 15 below.

- E. Direction by Denver Representative. Glendale shall develop and implement appropriate schedules, plans and protocols necessary for the Installation work and any future Operations within the Licensed Area and provide the Denver Rep with said schedules, plans and protocols prior to the commencement of said work. Glendale shall provide no less than fifteen (15) calendar days prior written notice in accordance with Section 15 of this Agreement to the Denver Rep before accessing the Denver Property to start the Installation work or to conduct any future Operations within the Licensed Area. Glendale shall install the Water Line by trenching or boring, or both, as Glendale may determine. Glendale shall maintain continuity of trail operations via a detour on site and shall restore trail operations in accordance with DPR's specifications and standards after Installation. Glendale shall take all reasonable measures to keep the Denver Rep informed of the progress of the Installation and other Operations work and related activities, and any emergencies, in accordance with this Agreement and to comply with the directions and requirements of the Denver Rep, including any order to suspend work or to cease and desist in any unauthorized activities. All Installation or Operations work shall be performed to the reasonable satisfaction of the Denver Rep.

i. Water Line Material. Glendale shall use a rigid material for the Water Line. The material shall either be specified by DPR or shall be material as approved by Glendale.

ii. Soil Erosion Control. Glendale is solely responsible for all soil erosion requirements subject to Glendale's soil and erosion requirements (if any), and subject to any State or federally issued or other applicable permits. Glendale shall provide copies of any soil erosion control standards, specifications, or permits to DPR upon request.

- F. Contractors. All contractors, subcontractors, consultants, suppliers, laborers and agents retained or authorized by Glendale to perform the Installation or other Operations, or to undertake any activities on or about the Licensed Area or Denver Property, shall be regarded as being "**Glendale**" under this Agreement, as applicable or appropriate based on the portion of the Licensed Rights being performed by such party, and shall be subject to the terms and conditions of this Agreement, and shall be identified (by name, address, telephone number, and email address) in a prior written notice in accordance with Section 15 to the Denver Rep, and this contact list shall be updated as needed; however at no time shall any contractors, subcontractors, consultants, suppliers, laborers and agents retained or authorized by Glendale be regarded as Glendale employees. At no time shall

Glendale be regarded as working for Denver in any capacity nor shall they be regarded in any manner as being employees or contractors of Denver. Notice to a Denver department or agency shall not constitute notice to any other Denver department or agency unless Denver or that noticed department or agency otherwise informs Glendale.

- G. Liability for Damages. Glendale shall be solely responsible for its own activities on and use of the Licensed Area, with regard to compensation or restitution for injuries to persons or damage to or loss of property belonging to persons arising from or related to the Installation or Operations work or other actions of Glendale involving the Water Line, the Licensed Area, Denver Property, or other Denver-owned property.
- H. Improvements and Restoration. Except as may be required to perform work, Glendale shall not damage, destroy or harm any improvements on or about the Licensed Area, Denver Property, or other Denver-owned property. At the completion of the Installation, Glendale shall and is solely responsible to promptly repair, replace or restore said damaged, destroyed or harmed improvements to a condition similar to or better than that which existed prior to the commencement of the Installation or Operations work as required in accordance with DPR's Planning, Design and Construction division's Design Standards and Specifications (collectively, "**Restoration**"). The Design Standards and Specifications shall be provided to Glendale. DPR's Design Standards and Specification further requires a maintenance and establishment period of three (3) years, or until the DPR specifications for establishment are met, for the installation of vegetation, landscaping and soil; and further requires a warranty for the native vegetation, also for three (3) years. The maintenance period and warranty shall commence upon substantial completion of Glendale's work. Such maintenance is typically performed by the contractor performing the construction work.
- I. Utilities. Glendale shall be solely responsible for locating and taking appropriate measures to protect all overhead, above ground, or underground utilities, including without limitation gas, electrical, sewer, water, telephone, and cable, during the Installation or Operations work and any related activities on or about the Licensed Area, Denver Property, or other Denver-owned property arising under this Agreement. Glendale shall arrange for the timely and complete location of all utilities in accordance with law; shall take all necessary precautions to avoid damage to, or injury from, such utilities; and shall be liable for all damages resulting from any contact with or destruction of such utilities. The Denver Rep will provide, upon request, any drawings or other documents Denver may have regarding the existence of such utilities on or about the Licensed Area or the Denver Property, but Denver expressly disclaims the reliability or accuracy of any such drawings or documents it may provide to Glendale.
- J. Emergency. Written notice requirements are waived in the event of any emergency situation requiring immediate access or activities on or about the Licensed Area or

the Denver Property, such as a major on-site accident, contamination exposure, utility damage, and security breaches. In the event of such an emergency, Glendale shall provide verbal notice to the Denver Rep as soon as feasible (or, if the Denver Rep is not available after three (3) tries within eight (8) hours, call 3-1-1 and leave a message regarding the nature of the emergency and contact information and then follow up with written notice to the Denver Rep within twenty-four (24) hours of such emergency. Glendale shall be responsible for timely notifying and cooperating with the appropriate governmental authorities, as required by law, in the event of an emergency. Glendale shall comply with all emergency response personnel instructions regarding Glendale's actions being taken or intended to be taken on Denver Property relating to any emergency response on Denver Property.

K. Personal Property. No equipment, vehicles, temporary structures, road base, excess soil and rocks, chemicals, signs, barriers, materials, supplies, construction debris and waste brought on site or generated by Glendale on site ("**Personal Property**") shall be stored on Denver Property outside of the Licensed Area. Storage outside of the Licensed Area is allowed only by permission from owners of other entities or agencies holding jurisdiction over those areas and cannot be granted by this Agreement. Glendale shall take reasonable measures to secure its Personal Property from public access or tampering and for the protection of public health and environment. Denver assumes no liability for public misconduct, theft or vandalism of the Personal Property. Upon the completion of any work, Glendale shall promptly remove from the Licensed Area all Personal Property and shall do so in compliance with federal, state and local regulatory requirements, standards, and guidelines. Alternatively, if Glendale should fail to remove the Personal Property as provided herein, and such failure continues for a period of thirty (30) consecutive days following notice to Glendale by Denver, then Denver may perform such removal and Glendale shall promptly reimburse Denver for all reasonable costs incurred by Denver.

L. Environmental Requirements for Licensed Area.

(1) Hazardous Materials. With respect to Glendale's use of the Licensed Area under this Agreement, Glendale accepts the Licensed Area "as is," with all existing physical and environmental conditions. Glendale shall be solely liable for all costs and expenses associated with any Hazardous Materials, as defined below, that Glendale brings onto the Licensed Area. Glendale shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders applicable to the work (collectively, "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term "**Hazardous Materials**" shall mean asbestos, asbestos-contaminated soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903 of

the Resource Conservation and Recovery Act, any hazardous substance as defined at 42 U.S.C. § 9601 of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any guidelines issued and rules or regulations promulgated pursuant to such statutes, or any other applicable federal or state statute. The obligations set out in this paragraph shall survive the expiration or revocation of this Agreement.

(2) Glendale Responsibility and Liability. Glendale shall (i) assume all liability for proper manifesting and management of all waste and, in particular, Hazardous Materials generated or uncovered by Glendale in the course of exercising the rights herein granted; (ii) use best efforts to minimize the volume of Hazardous Materials associated with exercising the rights herein granted on or about the Licensed Area, and shall properly and lawfully handle, containerize, manage and lawfully dispose of all such Hazardous Materials and other waste; (iii) will not take any action with respect to such Hazardous Materials that may cause any alteration in the chemical, physical or biologic nature or characteristics of the Hazardous Materials while the Hazardous Materials are on or about the Licensed Area; and (iv) remove all Hazardous Materials and other waste associated with exercising the rights herein granted from the Licensed Area. All such environmental obligations stated above for the Installation and Restoration work shall be completed promptly upon completion of exercising the rights herein granted. Denver shall not own or be responsible for and does not take legal title to any of the Hazardous Materials and other waste associated with the work.

(3) Soils Management. Soil excavated during the Installation or Restoration which contains Hazardous Materials must be removed from Denver Property and legally disposed as specified above. Excavated soil which does not contain Hazardous Materials or other waste may be reused as backfill or re-grading on Denver Property provided there are no field indications of contamination such as odors, staining, or organic vapor meter readings above background. Otherwise, any soil brought on Denver Property by Glendale for fill or grading purposes must be free of Hazardous Materials and other waste. Determinations as to the existence of Hazardous Materials and other waste shall be made by the Denver Rep in consultation with Denver's Department of Public Health & Environment.

(4) Denver Property and Other Denver-Owned Property. If during the Installation, Restoration, or Operations, or any other activity associated with this Agreement, Hazardous Materials are brought on to or exposed on the Licensed Area or the Denver Property, Glendale shall be subject to the provisions of sub-section 4.L. and any requirements and directives of Denver's Department of Public Health & Environment and other federal and state agencies and shall be solely liable for any costs and expenses for remedial actions and damages related to such Hazardous Materials.

(5) Notice of Environmental Condition Delay. In the event Glendale encounters Hazardous Materials which negatively impact the Installation schedule, Glendale shall notify Denver in writing within fifteen (15) calendar days of the discovery of the Hazardous Materials creating the delay (“**Delay Notice**”). The Delay Notice shall include the type of Hazardous Materials, and the estimated delay expected to comply with the terms of subsection 4.L.

5. **RECREATIONAL ACCESS; TRAFFIC CONTROL**. In addition to all other general terms and conditions set forth in this Agreement, and in the event that the Installation or Operation work shall require that portions of any bike, pedestrian, or recreational trail or access to any part of such Denver Property is closed for more than twenty-four (24) continuous hours, Glendale shall prepare a detour plan which must be approved by the Denver Rep prior to Glendale implementing the detour plan (“**Traffic Control**”). All Traffic Control measures, including barricades, signs, and flagging, are subject to changes required by the Denver Rep if the Denver Rep finds any of them to be inadequate with any required changes being at the sole cost and expense of Glendale.
6. **INSURANCE**. The insurance required by Glendale’s contractors and consultants is set forth in **Exhibit B**.
7. **CONTRACTOR DEFENSE AND INDEMNIFICATION**. Glendale shall require its contractors to indemnify Denver as substantially follows:
 - A. Glendale’s contractor shall defend, indemnify, and hold harmless Denver, its appointed and elected officials, employees and agents, and Glendale and its members, officials and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from or relating to the exercise of this Agreement, any work performed or activities undertaken, or financial liability incurred by the contractor in relation to this Agreement, and the occupancy or use of any portion of the Denver Property that are due to the negligence or fault of the contractor or the contractor’s agents, representatives, subcontractors or suppliers (“**Claims**”). This indemnity and duty to defend shall be interpreted in the broadest possible manner to indemnify and protect Denver and Glendale for any acts or omissions of the contractor, either passive or active, irrespective of fault, including Denver’s and Glendale’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of Denver or Glendale.
 - B. The contractor’s duty to defend and indemnify Denver and Glendale shall arise at the time written notice of the Claim is first provided to Denver or Glendale regardless of whether claimant has filed suit on the Claim. The contractor’s duty to defend and indemnify Denver and Glendale shall arise even if Denver or Glendale is the only party sued by claimant and/or claimant alleges that Denver’s or Glendale’s negligence or willful misconduct was the sole cause of claimant’s damages.

- C. The contractor will defend any and all Claims which may be brought or threatened against Denver or Glendale and will pay on behalf of Denver or Glendale any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of Denver or Glendale shall be in addition to any other legal remedies available to Denver or Glendale and shall not be considered Denver's or Glendale's exclusive remedy.
 - D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the contractor under the terms of this indemnification obligation. The contractor shall obtain, at its own expense, any additional insurance that it deems necessary for Denver's and Glendale's protection.
 - E. This defense and indemnification obligation shall survive the expiration or revocation of this Agreement.
8. **LIABILITY.** Glendale shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses and attorney fees, incurred as a result of any action or omission of Glendale in connection with exercising the rights granted under this Agreement. To the extent authorized by law and except as otherwise provided in this Agreement, Denver shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees, incurred as a result of any act or omission by Denver, or its officials, officers, employees, and agents in connection with the matters under this Agreement. Glendale and Denver are each responsible for its own negligence and that of their officials, officers, employees, and agents, to the extent provided in the Governmental Immunity Act, C.R.S. §24-10-101, *et seq.* No official, officer, employee, or agent of either party shall be charged personally, or held contractually, liable to the other party or its officials, officers, employees, or agents, under any term or condition of this Agreement or for any breach, default, or violation under this Agreement.
9. **REMEDIES.** In addition to revocation of the Agreement and other remedies and rights to relief that may be set forth in this Agreement, the Parties shall have all remedies available at law or in equity against each other.
10. **GOVERNMENTAL APPROVALS AND CHARGES.** Glendale shall obtain and maintain, at its sole cost, and comply with all permits or licenses (federal, state, or local) required for exercising the rights herein granted. Glendale shall pay promptly all taxes, excises, license fees, and permit fees and charges of whatever nature applicable to exercising the rights herein granted and shall not permit any of said taxes, excises or license or permit fees to become delinquent or to fail to pay any penalties or fines assessed with respect to exercising the rights herein granted. Denver shall not be liable for the payment of fees, charges, taxes, late charges, penalties or fines of any nature related to the work.
11. **LIENS & OTHER ENCUMBRANCES.** Denver shall notify its contractors and subcontractors that mechanic's or materialman's liens or any other liens shall not be imposed upon Denver Property for amounts due any worker for labor performed or

materials or equipment furnished either pursuant to C.R.S. § 38-26-107 or by any other authority, or due to any other claim with respect to the work. Denver shall promptly pay when due all bills, debts and obligations incurred in connection with the work performed under this Agreement and shall not permit the same to become delinquent. If any lien, judgment, execution, or adjudication of bankruptcy results which may impair the rights of Denver to the Denver Property, Glendale shall notify Denver of such, and Glendale shall reasonably assist Denver in resolving the encumbrance.

12. **GOVERNMENTAL IMMUNITY.** Nothing in any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations Denver and Glendale may have under the Colorado Governmental Immunity Act (§24-10-101, C.R. S., et. seq.) or to any other defenses, immunities, or limitations of liability available to Denver and Glendale against third parties by law.
13. **[RESERVED]**
14. **APPROPRIATION.** It is understood and agreed that any obligations of either Party including obligations for payment hereunder, if any, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council or Glendale's authorizing body, encumbered for the purposes of this Agreement and paid into the Treasury of Denver or Glendale. Both Parties acknowledge that (i) neither Party by this Agreement irrevocably pledges present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of Denver or Glendale.
15. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of the work under this Agreement, the Parties agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, protective hairstyle, or physical or mental disability; and the Parties further agree to insert the foregoing provision in all approved contracts and subcontracts hereunder.
16. **NOTICES.** Except for notice under Section 4.E. and 4.F., all notices required to be given to Denver or Glendale hereunder shall be in writing and provided by personal delivery or sent by certified mail, return receipt requested, and electronic notice to:

Denver:

Executive Director
Department of Parks and Recreation
201 West Colfax Avenue, Department 601
Denver, Colorado 80202
Jolon.Clark@denvergov.org

Director
Division of Real Estate, Department of Finance
201 West Colfax Avenue, Department 1010
Denver, Colorado 80202
Lisa.Lumley@denvergov.org

Iris Foster
Division of Real Estate, Department of Finance
201 West Colfax Avenue, Department 1010
Denver, Colorado 80202
Iris.Foster@denvergov.org

with copies to the Denver Rep. and to:

City and County of Denver
City Attorney's Office
201 West Colfax Avenue, Department 1207
Denver, Colorado 80202

Glendale:

City Manager – City of Glendale
Attn: Chuck Line
950 South Birch Street
Glendale, Colorado 80246
cline@glendale.co.us

City of Glendale
Attn: Director of Public Works
601 South Elm Street
Glendale, Colorado 80246
PublicWorksAdmin@glendale.co.us

Either Party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered to Glendale or Denver. Daily communications and coordination between the Denver Rep and

the representative of Glendale and its contractor may be telephone or email, if and as agreed by these representatives in writing.

17. **ENTIRE AGREEMENT.** This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire agreement of the Parties. The Parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.
18. **SEVERABILITY.** If any term or provision of this Agreement is held by a court of law (following all legal rights of appeal or the expiration of time therefore) to be illegal or unenforceable or in conflict with any law of the State of Colorado or the Denver City Charter or the Denver Revised Municipal Code, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid; provided, however, if the invalidated term or provision was a critical or material consideration of either Party in entering this Agreement, the Parties shall work together, in good faith, to come up with an amendment to this Agreement that substantially satisfies the previously intended consideration while being in compliance with applicable law and the judgment of the court.
19. **AMENDMENT.** Except as otherwise expressly provided in this Agreement, this Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.
20. **NO ASSIGNMENT.** Neither Party shall assign its rights or delegate its duties hereunder, with the exception of contracting and subcontracting as provided in this Agreement, without the prior written consent of the non-assigning Party.
21. **HOME RULE.** Notwithstanding any provision in this Agreement, Denver and Glendale each retain their rights under the Colorado Constitution as a home rule municipality under State of Colorado law.
22. **AUTHORITY TO EXECUTE.** The persons signing for the respective Party represents that he or she has the complete authority to sign on behalf of and bind that Party.
23. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** The Parties consent to the use of electronic signatures by Denver. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties in the manner specified by the Parties. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

Contract Control Number:
Contractor Name:

FINAN-202582371-00
CITY OF GLENDALE COLORADO

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

EXHIBIT A
Land Description
Sheet 1 of 2

A UTILITY PIPE LYING WITHIN THE CHERRY CREEK CHANNEL, LYING WITHIN THE NORTHWEST QUARTER (NW 1/4) OF SECTION 18, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO, THE CENTER LINES OF SAID PIPES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

WATER PIPE CENTER LINE

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER (NW 1/4), FROM WHENCE THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER (NW 1/4) BEARS NORTH 00°19'33" WEST A DISTANCE OF 2646.35 FEET, WITH ALL BEARINGS HEREIN RELATED THERETO; THENCE NORTH 48°30'12" EAST, 1398.82 FEET TO A POINT OF INTERSECTION OF THE EAST LINE OF LOT 1 OF CREEKSIDE WITH THE NORTH LINE OF SAID CHERRY CREEK CHANNEL; THENCE ALONG SAID NORTH LINE OF SAID CHERRY CREEK CHANNEL, SOUTH 64°59'30" EAST, 652.27 FEET TO THE POINT OF BEGINNING;

THENCE LEAVING SAID NORTH LINE, SOUTH 00°00'00" EAST, 28.66 FEET TO A POINT; THENCE SOUTH 22°30'00" WEST, 21.55 FEET TO THE POINT OF TERMINUS.



Frank M. Zwolinski, P.L.S.
 Colorado License #38060
 For and on behalf of Power Surveying Company, Inc.
 303-702-1617



DRAWING BY: FMZ	DATE: 01-22-2025
PROJECT NO.	501-21-397

EXHIBIT A

Illustration

Sheet 2 of 2

FOUND 3-1/4" DIAM. ALUM. CAP IN RANGE BOX, PLS 11434 (ACCEPTED AS NW COR SEC. 18, T. 4S., R. 67W., 6th P.M.)

Parcel

Parcel

S. CLERMONT STREET

Lot 1 of Creekside

Parcel

N00°19'33"W 2646.35'(M)

W. LINE NW1/4 SEC 18, T. 4S., R. 67W., 6th P.M.

Lot 3 of Creekside

S64°59'30"E 652.27'

POINT OF BEGINNING (WATER PIPE CENTER LINE)

N48°30'12"E 1398.82'

S00°00'00"E 28.66'

CHERRY CREEK CHANNEL
Ord. 46, Series of 1935

CENTER LINE OF WATER PIPE

S22°30'00"W 21.55'

POINT OF TERMINUS

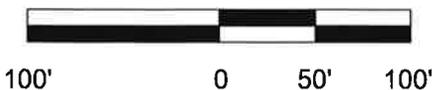
Parcel

Parcel

POINT OF COMMENCEMENT
FOUND 3-1/4" DIAM. ALUM. CAP IN RANGE BOX, PLS 11434 (ACCEPTED AS W 1/4 COR SEC. 18, T. 4S., R. 67W., 6th P.M.)



SCALE: 1" = 100'



Established 1948

6911 BROADWAY
Denver, CO 80221

PH. 303-702-1617
FAX. 303-702-1488
www.powersurveying.com

DRAWING BY: FMZ
PROJECT NO.

DATE: 01-22-2025
501-21-397

EXHIBIT B
CONTRACTOR'S INSURANCE REQUIREMENTS

(1) **General Conditions:** Glendale's contractors and consultants ("Contractor") agree to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Contractor Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for at least three (3) years after the expiration or termination of the Contractor Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to Denver ("Denver"), as and where specified by Denver, and the City of Glendale ("Glendale") (the "Notification Parties") in the event any of the required policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the Notification Parties. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Notification Parties by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s). If any policy is in excess of a deductible or self-insured retention, the Notification Parties must be notified by Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Contractor Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Contractor. Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Contractor Agreement.

(2) **Proof of Insurance:** Contractor shall provide a copy of this Contractor Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Contractor Agreement prior to placement of coverages required under this Contractor Agreement. Contractor certifies that the certificate of insurance, preferably an ACORD certificate, complies with all insurance requirements of this Contractor Agreement. The acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Contractor Agreement shall not act as a waiver of Contractor's breach of this Contractor Agreement or of any of the rights or remedies under this Contractor Agreement. Additional proof of insurance, including but not limited to policies and endorsements, may be required.

(3) **Additional Insureds:** For Commercial General Liability, Auto Liability and Contractors Pollution Liability, Contractor and subcontractor's insurer(s) shall include Denver, its elected and appointed officials, employees and volunteers, and Glendale's officials, officers, employees and volunteers as additional insured.

(4) **Waiver of Subrogation:** For all coverages required under this Contractor Agreement, Contractor's insurer shall waive subrogation rights against Denver and Glendale.

(5) **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Contractor Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors and subconsultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request.

(6) **Workers' Compensation/Employer's Liability Insurance:** Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to Denver and Glendale, as a material representation upon which Denver and Glendale are relying, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the

term of this Contractor Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Contractor Agreement.

(7) **Commercial General Liability**: Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

(8) **Business Automobile Liability**: Contractor shall maintain Business Automobile Liability, or its equivalent, with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Contractor Agreement. If transporting wastes, hazardous material, or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Contractors Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

(9) **Contractors Pollution Liability**: Contractor shall maintain limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include bodily injury; property damage including loss of use of damaged property; defense costs including costs and expenses incurred in the investigation, defense or settlement of claims; and clean up costs. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by Denver and Glendale (Construction Contractor Only).

(10) **Professional Liability (Errors & Omissions)**: Contractor shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

(11) **Builders' Risk or Installation Floater**: Contractor shall maintain limits equal to the completed value of the project. Coverage shall be written on an all risk, replacement cost basis including coverage for soft costs, flood and earth movement, if in a flood or quake zone, and, if applicable, equipment breakdown including testing. Denver, Glendale, Contractor, and sub-contractors shall be Additional Named Insureds under the policy. Policy shall remain in force until acceptance of the project by Denver (Construction Contractor Only).

(12) **Additional Provisions**:

(a) For claims-made coverage:

(i) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to Denver or Glendale, whichever is earlier.

(b) Contractor shall advise Denver and Glendale in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.