

REVOCABLE LICENSE AND AGREEMENT

THIS LICENSE is granted by the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”) to **SCHOOL DISTRICT NO. 1 IN CITY AND COUNTY OF DENVER AND THE STATE OF COLORADO**, whose address is 1860 Lincoln Street, Denver, Colorado 80203 (the “Licensee”), individually “Party” and jointly “the Parties”.

RECITALS

A. City and Licensee own and maintain adjacent properties, specifically, Veterans’ Park, a Denver designated park (the “Park”), and All City Stadium, a Denver Public School facility, on which limited mutual use has occurred between the Parties.

B. Some use has resulted in damage and other unauthorized encroachments and uses of the Park for the benefit of Licensee.

C. Licensee intends to perform certain improvements to the east side parking lot (the “Parking Lot”) on its property, which as designed, will continue to encroach upon a portion of the Park.

D. City and Licensee, in an effort to achieve mutual cooperation in the use of the properties, agree to the terms and conditions of this License and Agreement (“License”) for the use and maintenance of the Parties’ respective land for the benefit of the Parties and the general public during and after completion of the intended improvements to the Parking Lot; and for the construction and improvements to the Park.

E. In conjunction with its Parking Lot improvement project, Licensee will design and construct a pedestrian walk as described in Sections 5(A) and 5(B), below, and shall restore and rehabilitate certain park land as described in Section 5(C), below (collectively the “Work”), each to be consistent with Department of Parks and Recreation (“DPR”) standards, requirements and specifications, which will connect Licensee’s existing walk to the Park.

NOW THEREFORE, in consideration of the above, and the mutual promises and covenants contained herein, the City and Licensee agree as follows:

1. **Grant, Term, and Scope of the License.** The City grants to the Licensee, its contractors, subcontractors, agents and invitees, subject to the terms and conditions in this License, a non-exclusive revocable license for the construction and installation of Licensee’s improvements to its Parking Lot and continued use as described in Section 4.A. The land to which this License applies is set forth in **Exhibit A**, attached and incorporated by this reference (“Licensed Area”).

2. **Revocation and Retained Rights of City.** The City retains the absolute right to revoke the License for any reason. Revocation shall be in writing signed by the Executive Director of the Department of Park and Recreation (“Director”). The City reserves the right to own and

occupy the Licensed Area in any manner that does not unreasonably interfere with the exercise of the rights granted to Licensee by this License.

3. **Coordination and Liaison.** The Director shall designate a project manager for the purposes of design and construction of the pedestrian walk and restoration of park land only (“Project Manager”).

4. **Use of Licensed Area.** As a condition of the License, Licensee shall use the Licensed Area as follows:

A. **Use.** The Licensed Area shall only be used for the construction and installation of improvements to the Parking Lot as depicted in **Exhibit A**, and for use as a portion of an access driveway into Licensee’s completed Parking Lot (“Use”). No other rights of use or disposal inconsistent with this License are granted by this License.

B. **Approval of the Work.** Prior to commencement of any part of the Work or construction of the Parking Lot, Licensee shall provide written notice of commencement to the Project Manager. Licensee shall provide periodic updates regarding the Work to allow the Project Manager to inspect the Parking Lot improvement affecting the Licensed Area and the Work.

C. **TCAP; Other Permits.** Prior to commencement of any portion of the Work or construction of the Parking Lot, Licensee shall obtain all necessary federal, state, and local permits for such portion of Work, including but not limited to a Temporary Construction Access Permit, issued by DPR. Licensee shall comply with all applicable laws, rules, or regulations of the City. Nothing in this License shall relieve Licensee from complying with other regulatory requirements applicable to the Work.

D. **Damage or Injury.** The City shall not be responsible or liable for injuries to persons or damage to property when such injuries or damage are caused by or result from the Licensee’s construction of the Parking Lot, the Work, or Use under the terms of this License and are not due to the sole negligence of the City.

5. **Conditions of License; Design and Construction of Pedestrian Walk; Restoration of Park Land.** As further condition of this License, Licensee shall design and construct as follows:

A. **Pedestrian Walk.** In consideration of the License granted related to the construction of Parking Lot improvements and Use, Licensee shall design, develop and construct, subject to the requirements of this License, an eight-foot (8’) wide pedestrian walk along the eastern curb of Licensee’s parking lot, which shall comply with DPR design requirements and specifications, within and through those portions of the Park set forth in the design drawings approved by the Project Manager (“Pedestrian Walk”). DPR’s standards and specifications related to the design and construction of the Pedestrian Walk shall be provided to

Licensee, and are hereby incorporated by reference into this License, including any subsequent changes or modifications. Licensee shall construct the Pedestrian Walk, entrance road and any other required appurtenances consist with DPR requirements, subject to DPR approval.

B. Design and Construction. Licensee shall assure that the proposed design and specifications of the Pedestrian Walk, and any subsequent proposed material changes thereto and any proposed material changes have been or are fully and accurately completed and timely submitted for review and approval by the Project Manager. If not previously submitted, reviewed and approved, or if Licensee makes substantive modifications to previously approved designs and specification, Licensee shall submit the designs and specifications, or modified design and specifications not later than thirty (30) calendar days before any work is scheduled to commence. Project Manager shall review and either approve or provide comment no later than fifteen (15) days after receipt. All reviews are to be coordinated through the Project Manager, and comments following reviews will be directed to Licensee. Any deficiencies in the designs or specifications shall be remedied by the Licensee to the reasonable satisfaction of the Project Manager. In order to assure that the approvals for the designs and specifications are timely and fully attained and the designs and specifications are appropriately implemented, the Licensee shall include the Project Manager in critical steps in the preparation and evaluation of the design and specifications, including design and construction meetings, site visits, and plan and document review processes. Failure to request approval of designs and specifications or to remedy deficiencies or unacceptable changes in conformance with the written rejections by the Project Manager or failure to proceed in accordance with the designs and specifications as approved by the Project Manager shall entitle DPR to cease or restrict the work as deemed appropriate until such approval is obtained or the deficiency or unapproved work is corrected. Once the designs and specifications are finalized and approved, Licensee shall provide the Project Manager of the construction schedule. Licensee is required to obtain all City required permits and approvals.

C. Restoration of Park Land. Also in consideration of granting of this License, Licensee, at its sole cost, shall also restore that portion of the Park previously utilized by Licensee for vehicle parking, depicted in **Exhibit A** ("Restoration"). DPR and Project Manager shall provide Licensee the DPR standards and requirements, which are hereby incorporated by reference into this License, including any subsequent changes or modifications, for the tilling, seeding and rehabilitation for the Restoration, which requires a three (3) year establishment period for native vegetation. This portion of the Park shall no longer be utilized by the Licensee, and the portion shall not be utilized for any part of the Parking Lot work or construction of the Pedestrian Walk. DPS shall remain responsible for any additional work (at the City's direction and oversight), or the costs thereof, related to the Restoration through the entire establishment period. City shall periodically inspect the restored area and provide Licensee written confirmation of satisfactory establishment. This written confirmation shall discharge any further obligation by Licensee for Restoration.

D. Permits and Approvals. At its own expense, Licensee shall be responsible for obtaining and maintaining, or causing to be obtained and maintained, all required permits, licenses or other governmental authorizations and approvals necessary to perform any part of the Work, including any TCAPs, and shall, at all times during design and construction, ensure or

cause to be ensured compliance with all Applicable Laws pertaining to such permits, licenses or other governmental authorizations and approvals.

E. Inspection; Testing. Licensee shall, at all reasonable hours, ensure right of entry to the Project Manager, any City inspector, or other authorized agent of the City to inspect the Work site and progress of the Work and to conduct tests and evaluations to determine that the work performed and materials used are of good quality and in conformance with the approved designs and specification. If it is determined that the Work is not being so performed, the Project Manager may order the cessation of the Work until there is satisfactory evidence that the Work conforms to the approved plans and specifications.

F. Warranties. Licensee shall obtain, exercise and enforce warranties and guarantees for all work it contracts for the Pedestrian Walk, for a period of no less than one (1) year, and shall designate the City as an additional express beneficiary for enforcing all warranties and guarantees. These obligations shall survive the expiration or termination of this License.

G. Taxes. Licensee and its contractors shall pay all applicable taxes, including sales and use taxes and occupational privilege taxes, levied by the State and the City that may be applicable. Upon request by the City, an itemized and certified statement, including the names and addresses of the suppliers, the amount of such taxes owed or paid, and the dates of payment, shall be furnished to the City. These obligations shall survive the expiration or termination of this License.

H. Liens and Debts. Licensee shall not permit any mechanic's or materialman's liens or any other liens to be imposed and remain for more than ninety (90) days upon any City property, or any part thereof, by reason of any part of the Work or labor performed or materials or equipment furnished by any person or legal entity to or on behalf of the Licensee, either pursuant to C.R.S. § 38-26-107 or by any other authority. The Licensee shall promptly pay when due all bills, debts and obligations incurred in connection with this License and shall not permit the same to become delinquent. Licensee shall not permit any lien, mortgage, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City under this License or to any City property on which the Work is undertaken. These obligations shall survive the expiration or termination of this License.

H. Delay. If, for any reason, the Work (Pedestrian Walk and/or Restoration) is delayed or halted while in process for more than ten (10) calendar days, Licensee shall take reasonable measures to protect the site and improvements from weather damage, erosion, vandalism and other similar threats and to protect public safety on and around the site.

I. Environmental Requirements. Licensee and its construction contractor(s) and subcontractor(s) shall obtain all federal, state, and local environmental permits necessary for the work to be performed and shall comply with all applicable federal, state, and local environmental permit requirements applicable to the work. The Assignee and its construction contractor(s) and subcontractor(s) 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(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) 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. These obligations shall survive the expiration or termination of this License.

J. Notice of Completion. The Licensee shall provide the Project Manager with written notification of final completion of the Work in order that the City may inspect all improvements as constructed and verify that the improvements have been constructed in accordance with the approved designs and specification and with this License without any material deviations, and the Work is at final completion. Upon determination that the requirements set forth have been fully satisfied, the Project Manager will arrange to issue a written letter accepting the improvements. As may be necessary, Licensee may provide separate notices of completion for the Work.

K. Lien Releases. Licensee shall provide the Project Manager with complete, final and unconditional waivers or releases of all lien and claim rights from each contractor, subcontractor, and supplier for all labor, equipment, and materials used or furnished by each for the work.

6. Termination. In the event this License is canceled, terminated or revoked by either party, the Licensee shall at its sole expense remove the improvements installed in the Licensed Area and shall restore the Licensed Area to the extent required by the Director; or Licensee shall reimburse the City the funds contributed by the City under Section 7(A), below.

7. Cost of Design and Construction. The Parties shall fund the Work performed under this License as follows:

A. City shall contribute an amount not to exceed **THIRTY-EIGHT THOUSAND DOLLARS AND ZERO CENTS (\$38,000.00)** toward the cost of design and construction of the Pedestrian Walk. City shall transmit payment within sixty (60) days after receipt of an invoice acceptable to the City. Licensee may submit its invoice after full and complete execution of this License. Licensee shall contribute the remaining cost of the Pedestrian Walk not to exceed **THIRTY THOUSAND DOLLARS AND ZERO CENTS (\$30,000.00)**. City shall bear no further obligation to pay additional funds toward the design and construction of the Pedestrian Walk, except that City and Licensee, subject to mutual assent of both Parties, shall equally contribute toward any additional cost of the design and construction for the Pedestrian Walk or any ramps that may be needed to provide accessible access to for the Pedestrian Walk. Licensee shall be solely responsible for the cost of design and construction of the Parking Lot and for any appurtenances or other adjacent components to the Pedestrian Walk, including but not limited to

entrances or entrance roads, curbs or gutters, drainage, or restoration of the Park or any other City property required as a result of construction and improvements to the Parking Lot and construction of the Pedestrian Walk.

B. It is expressly understood and agreed that the obligation of the City for all or any part of its performance or payment obligation hereunder, whether direct or indirect, shall extend only to the payment of funds duly and lawfully appropriated by the City Council for the purpose of this License, and paid into the Treasury of the City. In the event the City Council of the City fails to annually appropriate sufficient funds to pay for the City's necessary costs to fulfill its obligations under this License for any City fiscal year, then the City shall consult with DPS concerning any reduction in any scope of work before any reduction is implemented. The reduction of said work shall not constitute a default under this License.

C. Notwithstanding any other provision of this License to the contrary, the City and Licensee acknowledge and agree that (i) neither Party, by this License, irrevocably pledges present cash reserves for payments in future fiscal years, and (ii) this License is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of either Party.

8. **Maintenance.** DPS shall remain responsible for all maintenance and operation of the Licensed Area. Once the work for the Pedestrian Walk is completed and accepted by DPR, DPR shall remain responsible for maintenance and operation, and any and all rights available under any warranties issued covering the Pedestrian Walk shall continue in effect until their expiration. As directed and specified by the City, DPS shall remain responsible for maintenance of the Restoration until final established is accepted in accordance with Section 5(C), above.

9. **Damage to City Property.** Any property of the City damaged or destroyed by Licensee incident to construction of the Parking Lot, and the Work and Use under this License, shall be promptly repaired or replaced by Licensee to the satisfaction of the Project Manager. The Director may, at his/her option, in lieu of such repair or replacement, require Licensee to pay to the City in an amount sufficient to compensate for the loss sustained by the City for any damage that may result from any location, maintenance, alterations, repair, replacement, operation, removal and remediation in connection with the Work and Use.

10. **Insurance.**

A. Unless other insurance requirements or obligations are provided for by a duly authorized amendment to this License, Licensee shall secure and maintain statutory worker's compensation and any liability insurance Licensee deems appropriate. The specific terms and amounts of each required coverage will be determined in the sole discretion of the Licensee for their respective coverages. Licensee shall also be responsible for payment of any deductibles for their coverage.

B. Unless other insurance requirements or obligations are provided for by a duly authorized amendment to this License, Licensee shall secure and maintain property insurance for the property it owns or leases and retains, which shall include the Licensed Area. The specific terms and amounts of the property coverage will be determined in the sole discretion of

Licensee. Licensee shall be responsible for payment of any deductibles for its property coverage; however, nothing in this paragraph shall obligate Licensee to pay such deductible amounts unless the amount is appropriated and made available in accordance with Licensee's laws and standards. Licensee shall retain the option of discharging this obligation by means of self-insurance.

C. Licensee shall require the contractor(s) and any subcontractor(s) retained to construct the Pedestrian Walk and for Restoration to retain insurance coverage substantially in the form specified in **Exhibit B**. Deviations from the specified requirements shall require the prior written approval of both the City and Licensee.

D. The amount of insurance or self-insurance coverage retained by either Party or the decision not to obtain or retain insurance or self-insurance coverage by either Party shall not obligate the other Party to provide such insurance or to incur or pay any liability which is the responsibility of the Party with inadequate or no insurance or self-insurance coverage.

11. **Liability.**

A. Licensee 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 of Licensee or its officers, employees, contractors and agents in connection with the subject matter of this License. City 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 the City, or its officers, employees, contractors and agents in connection with the subject matter of this License.

B. Nothing in this Section 11 or any other provision of this License shall be construed as a waiver, express or implied, of the notice requirements, defenses, immunities and limitations the City or Licensee may have under the Colorado Governmental Immunity Act (§§ 24-10-101, C.R.S., et. seq.), as amended or may be amended or replaced or supplemented by another statute providing immunity or similar protections to governmental entities. Likewise, except as otherwise expressly provided in this License, nothing in this License shall be deemed to be an assumption or acceptance of liability, or a waiver or release of any rights, privileges or protections, by Licensee or the City under federal, state or local law or regulation or under common law.

12. **Notices.** All notices required to be given to the City or Licensee shall be in writing and sent by certified mail, return receipt requested, to:

Licensee: **School District No. 1**
Terrance Carroll
Office of General Counsel
1860 Lincoln Street, Suite 1230
Denver, Colorado 80202

City: Mayor

City and County of Denver
1437 Bannock Street, Room 350
Denver, Colorado 80202

Executive Director of Parks and Recreation
201 W. Colfax Avenue, Dept. 601
Denver, Colorado 80202

Denver City Attorney
1437 Bannock Street, Room 353
Denver, Colorado 80202

Any party may designate in writing from time to time the address of substitute or additional persons to receive such notices. The effective date of service of any such notice is the date on which mailed or personally delivered.

13. **Compliance with Laws.** To the extent applicable, all persons or entities utilizing the Licensed Area pursuant to this License shall observe and comply with the applicable provisions of the Charter, ordinances, and rules and regulations of the City and with all applicable Colorado and federal laws.

14. **Severability.** The promises and covenants contained in this License are several in nature. Should any one or more of the provisions of this License be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of the License.

15. **Nondiscrimination.** In connection with the performance of Work under this License, Licensee 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, gender identity or gender expression, age, military status, sexual orientation, marital status, or physical or mental disability, and further agrees to insert this provision in all subcontracts hereunder.

16. **Non-waiver.** No Party shall be excused from complying with any provision of this License by the failure of the other Party to insist upon or to seek compliance. No assent, expressed or implied, to any failure by a Party to comply with a provision of this License shall be deemed or taken to be a waiver of any other failure to comply by said Party.

17. **Entire License.** This License is the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other modification shall have any force or effect, unless embodied in this License in writing.

18. **Amendments.** No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendment to this License properly executed by the parties. No oral representation by any officer or employee of the City at variance with the terms and conditions of this License or any written amendment to this License

shall have any force or effect nor bind the City. This License and any amendments to it shall be binding upon the Parties and their successors and assigns.

19. **Authority.** Licensee represents and warrants that the person signing this License has the authority to execute and deliver this License on behalf of Licensee.

20. **Third-Party Contracts.** The Licensee has no authority to bind the City on any contractual matters. The City shall have no liability or financial obligation to or for any contractor, subcontractor, supplier, or other person or entity with which the Licensee contracts or has a contractual arrangement with respect to the Work or other aspects of any design, construction or other work contemplated by this License.

21. **Appropriation.** All obligations of the City under and pursuant to this License are subject to prior appropriations of monies expressly made by the City Council for the purposes of this License and paid into the Treasury of the City.

22. **Conflict of Interest by City Officers.** Licensee represents that to the best of its information and belief no officer or employee of the City is either directly or indirectly a party to or in any manner interested in this License except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

23. **No Personal Liability.** No elected official, director, officer, agent, or employee of the City shall be charged personally or held contractually liable under any term or provision of this License or because of any breach thereof or because of its or their execution, approval, or attempted execution of this License.

24. **Third-Party Beneficiaries.** It is expressly understood and agreed upon that enforcement of the terms and conditions of this License, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Licensee, and nothing contained in this License shall give or allow any such claim or right of action by any other or third person on such License, including but not limited to subcontractors, subconsultants, and suppliers. It is the express intention of the City and Licensee that any person other than the City or the Licensee receiving services or benefits under this License shall be deemed to be an incidental beneficiary only.

25. **Electronic Signatures and Electronic Records.** Licensee consents to the use of electronic signatures by the City. The License, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the License 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 License 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.

(SIGNATURE PAGES TO FOLLOW)

Contract Control Number:

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:

By _____

By _____

By _____



Contract Control Number: PARKS-201841898-00

Contractor Name: SCHOOL DISTRICT # 1

By: M. L. T. V. J. 06/29/2018

Name: Michael O'Keefe
(please print)

Title: Deputy COO
(please print)

Approved As To Form: JDC
General Counsel
Denver Public Schools

ATTEST: [if required]

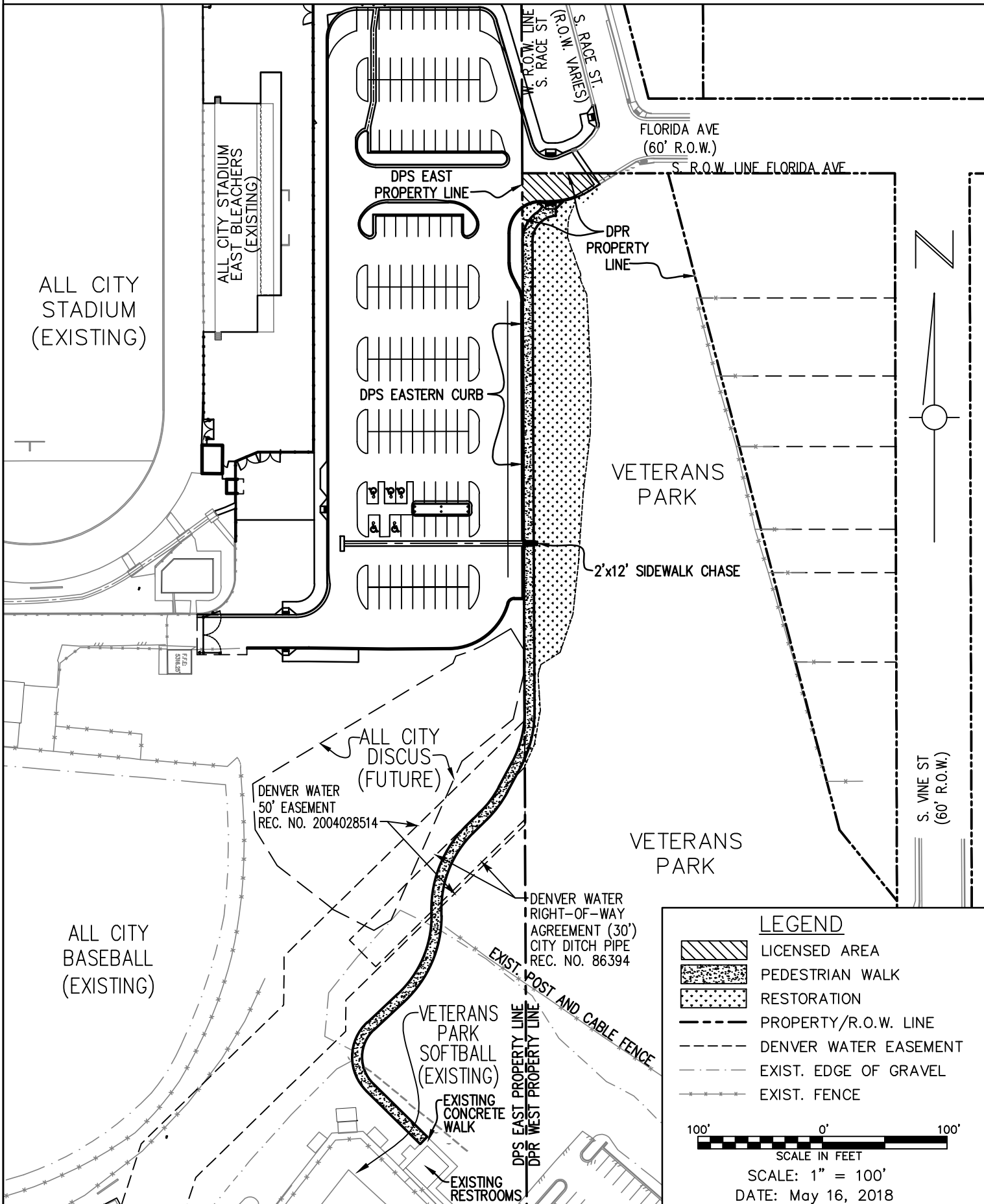
By: _____

Name: _____
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Title: _____
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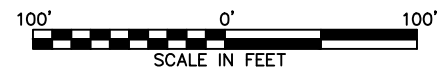


REVOCABLE LICENSE AND AGREEMENT EXHIBIT A



LEGEND

- LICENSED AREA
- PEDESTRIAN WALK
- RESTORATION
- PROPERTY/R.O.W. LINE
- DENVER WATER EASEMENT
- EXIST. EDGE OF GRAVEL
- EXIST. FENCE



SCALE: 1" = 100'
DATE: May 16, 2018

EXHIBIT B
CONSTRUCTION CONTRACTOR'S INSURANCE REQUIREMENTS

(1) **General Conditions:** Contractor agrees 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 the City and County of Denver, as and where specified by the City, and to Four Mile Historic Park, Inc. ("FMHP") (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 the City and County of Denver, its elected and appointed officials, employees and volunteers and FMHP and its 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 the City and County of Denver and FMHP

(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 the City and County of Denver and FMHP, as a material representation upon which the City and FMHP 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 the City and County of Denver and FMHP (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. (Design Professionals Only)

(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. The City and County of Denver, FMHP, Contractor, and sub-contractors shall be Additional Named Insureds under the policy. Policy shall remain in force until acceptance of the project by the City and County of Denver. (Construction Contractor Only)

(12) Additional Provisions:

- (a) For Commercial General Liability, the policy must provide the following:
 - (i) That this Contractor Agreement is an Insured Contract under the policy;
 - (ii) Defense costs are outside the limits of liability;
 - (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
 - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City and County of Denver or FMHP
- (b) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided, whichever is earlier.
- (c) Contractor shall advise the Notification Parties in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

