

## LICENSE & AGREEMENT

**THIS LICENSE & AGREEMENT** (the “**Agreement**”), made and entered into this, effective as of the date set forth on the City’s signature page below (“**Effective Date**”), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “**City**”) and the **STATE OF COLORADO**, acting by and through its **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, AIR POLLUTION CONTROL DIVISION**, which Department and Division is located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530 (“**APCD**”).

### RECITALS

**WHEREAS**, APCD has requested, through a letter dated November 8, 2011, that it be allowed to install and operate, at its own expense, a small particular monitoring facility as defined in the Agreement (“**Facility**”) at a particular site as defined in the Agreement (“**Site**”) on the City Park Golf Course owned by the City; and

**WHEREAS**, the City has concurred to allow the installation and operation of the Facility at the Site subject to oversight and direction by its Department of Parks and Recreation (“**Parks and Recreation**”); and

**WHEREAS**, APCD acknowledges and affirms that it has the authority to bind the State of Colorado under the terms and conditions of this Agreement and will act in conformance with the terms and conditions of this Agreement;

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

1. **License for Facility:**

A. **Grant of License:** For the duration of this Agreement, the City hereby grants APCD a revocable and non-transferable license to access and utilize City property for the purpose of installing, connecting to utilities, operating, repairing, replacing and removing the Facility at the Site and for the purpose of installing and maintaining underground utility lines to the Site and related electrical systems on Site as needed for the operation of the Facility, all to be done at APCD’s own expense and subject to the terms and conditions of this Agreement.

B. **Facility:** The term “**Facility**,” as used herein, refers to the structural elements for a small particular monitoring facility to be designed and installed by APCD or on

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behalf of APCD consisting of a particulate monitor situated on a small scaffolding platform (approximately 5 feet by 5 feet) and about two to six feet high to be secured by an existing fence. The general configuration and specifications for the Facility are depicted in **Exhibit A** attached hereto and incorporated herein by reference.

C. **Site**: The Facility is to be installed on the City Park Golf Course within the fenced area of the existing weather station operated by the Museum of Nature and Science under an agreement with the City, at approximately the following longitude/latitude: 39°4.199'N; 104°56.935'W, as depicted in **Exhibit A** (the "Site").

D. **Minor Variations**: The Manager of Parks and Recreation may authorize minor changes or additions in the configuration and specifications for the Facility and in the Site for the location of the Facility, upon written request by APCD.

E. **Work**: APCD will perform or cause to be performed all work items and provide or obtain all funds necessary to satisfactorily complete and to operate the Facility in accordance with the terms and conditions of this Agreement.

F. **Property Interest**: No property interests in the enclosed area of the Site or the location of the utility lines, including any lease or easement, are hereby granted in the Site or any part of City Park Golf Course. Title to the Improvements shall be held by APCD, subject to the terms and conditions of this Agreement.

2. **Coordination and Liaison**:

A. The City's Manager of Parks and Recreation (the "**Manager**") is vested with the authority to act on behalf of the City in performing the City's obligations under this Agreement. The Manager designates the Director of Golf for Parks and Recreation (the "**Director**") to act as the authorized representative of the Manager. The City may change its authorized representative at any time by providing written notice to APCD of such change.

B. APCD shall appoint, and inform the Director, of its authorized representative under this Agreement who will be responsible for overseeing the satisfactory completion and operation of the Facility, in accordance with the terms and conditions of this Agreement. APCD may change its authorized representative at any time by providing written notice to the Director of such change.

3. **City Rights and Obligations**: The City shall have the following rights and obligations with respect to the Facility:

A. The timing, access routes, and staging areas for all installation, monitoring, repair, maintenance, and replacement work for the Facility and utilities at or near the Site shall be subject to the prior written approval of the Director or the Director's designated representative. The Director or the Director's designated representative shall have the right to supervise the work to the extent necessary to assure that the work does not substantially interfere with golf operations or the use of the golf course by golf patrons.

B. The Director shall work with APCD in the preparation of the Site for the installation and construction of the small particulate monitoring station and arrange for the relocation or removal of any minor impediments to the installation and operation of the Facility within the Site; provided, however, that the installation and operation of the Facility shall not interfere with the weather station the City has authorized the Museum of Nature and Science to operate on the City Park Golf Course near the Facility.

C. Electrical power shall be provided for the operation of the Facility through electrical systems existing on the City Park Golf Course, subject to approval of the Director and any restrictions imposed by the Director. APCD may use the existing electrical conduit running from the snack shack building to the weather station to establish an electrical supply independent of the existing weather station. Installation of this electric supply shall be performed by APCD or by a licensed contractor on behalf of APCD subject to oversight and approval by the Director. APCD shall not disrupt or alter existing electrical supply for the weather station. APCD is responsible for all termination points, connections, and electric panel upgrades that may be required for their electrical supply.

4. **APCD's Rights and Obligations**: Except as otherwise provided in this Agreement, APCD shall have sole responsibility with respect to undertaking, maintaining, and operating the Facility.

A. Before any work is commenced for the installation of the Facility and for major repairs, replacement or removal of the Facility, APCD shall submit a complete set of design/construction documents and specifications for such work ("**Documents**") to the Director for the written approval of said Documents. The Documents will be approved or disapproved, in writing, with the reasons for any disapproval being stated, within ten (10) days of receipt of a complete set of Documents. Any deficiencies in the Documents shall be remedied by APCD, to the reasonable satisfaction of the Director, prior to the commencement of work. A proposed

schedule and operational plan shall also be submitted to assist the Director in determining the best times and methods for minimizing impacts on and interference with golf operations and use of the golf course by golf patrons.

B. APCD shall be solely responsible for securing all funds necessary for the installation, maintenance, repair, replacement or removal of the Facility and for assuring that said fund are available, when needed, to pay all costs for the work including equipment and material suppliers and labor providers.

C. APCD shall at all reasonable hours ensure right of entry to any City inspector or other authorized agent of the City to the Site to conduct tests and evaluations to determine that the work performed and materials used are of good quality and in conformance with the approved Documents and building code requirements. If it is determined that the work is not being so performed, the Manager may order the cessation of the work until there is satisfactory evidence that the work conforms to the approved Documents or building code requirements.

D. The City shall not charge APCD for the City's activities under this paragraph 5, including Document review, inspections, material testing, and construction monitoring. Standard building permit fees and other fees mandated by existing ordinance or rule for construction approvals will be paid by APCD.

E. APCD shall be solely responsible for assuring that any work on or for the Facility is properly contracted and performed and that the work done and the materials used are in conformance with all applicable laws (local, state, and federal) that govern the performance of the work.

F. In addition to compliance with the above-mentioned laws and in the event that APCD hires private contractors to construct or install any part of the Improvements, APCD shall assure compliance with the following ordinances, to the extent applicable: 1) payment of prevailing wages set forth in Sections 20-76 through 20-79 of the Denver Revised Municipal Code ("DRMC"), 2) public art in Sections 20-85 through 28-90, DRMC, and 3) for small business enterprise, equal employment opportunity, and minority and women business enterprise participation that are contained in Sections 28-31 through 28-91, DRMC, as the same may be amended or recodified from time to time. No construction contracts shall be entered until APCD

has established to the City's reasonable satisfaction that these Charter and ordinance requirements have been fully and appropriately satisfied, if applicable.

G. APCD and its contractors and subcontractors shall obtain and maintain all building and other required permits and pay all permit fees and charges and applicable taxes levied by the State and the City.

H. To the extent that private contractors are retained to install, repair, replace or remove any part of the Facility, APCD or its contractors shall obtain a bond or bonds or other financial guarantee acceptable to the City Attorney, conditioned that APCD and its contractors shall promptly make payment of all amounts lawfully due to all contractors, subcontractors, and persons or entities furnishing labor or materials used in the prosecution of the work, and the contractor shall indemnify the City to the extent of all payments in connection with performing the work.

I. Any signage, other than legally prescribed warning signs, to be installed on the Site shall be subject to the prior written approval of the Director.

J. APCD agrees to remit annually, no later than February 1<sup>st</sup> of each year, to the City the amount of nine hundred and twenty-five dollars (\$925.00) to defray utility costs for the operation of the Facility during that year. This rate shall be subject to change, in accordance with fluctuating energy costs and as mutually agreed by the Director and APCD, following the first two years of the term of this Agreement.

K. APCD shall be responsible for maintaining the Facility and for assuring that the Facility is properly secured and does not present any danger or hazard to the public, City employees, or other persons who may come into proximity to the Site. Any damage to City Park Golf Course arising from or caused by any work or activities under this Agreement shall be promptly repaired by APCD at APCD's sole cost. Vegetation in and around the Site shall be restored to the same or better condition as existed prior to any work being performed on Site.

5. **Consideration.** In consideration of the use of City property licensed to APCD under this Agreement and the services to be provided by the City under this Agreement, APCD agrees that it will pay the City the amount of one hundred dollars (\$100.00) a year, to be paid on or before February 1<sup>st</sup> of each year for the duration of this Agreement.

6. **Audit.** APCD agrees that any duly authorized representative of the City shall have access to and the right to examine any directly pertinent books, documents, papers and records of APCD involving transactions related to this Agreement.

7. **Term & Revocation/Termination:**

A. The term of this Agreement shall commence on the Effective Date of this Agreement and shall run through December 31, 2012, subject to automatic one-year renewals unless terminated by written notice provided by one party to the other at least sixty (60) days prior to renewal.

B. This Agreement may be terminated, without cause and at any time, by either party upon written notice at least ninety (90) days in advance of the date of termination.

C. The City may elect to immediately revoke the License and terminate the Agreement if the Manager determines, within the Manager's reasonable discretion, that the Facility has not been properly installed, operated or maintained so that the Facility present a threat of danger to public health or safety and APCD has not undertaken prompt or sufficient measures to rectify the situation following verbal or written notice from the City.

D. Upon any termination or revocation and in the time and manner prescribed by the Director, APCD shall promptly remove the Facility and restore the Site to its original condition, to the reasonable satisfaction of the Director.

8. **Liability & Governmental Immunity:**

A. APCD agrees and affirms that the City shall have no financial liability for any acts or failure to act by APCD under this Agreement. To the extent authorized by law APCD agrees to indemnify, defend and hold harmless the City against all liability, loss and expense and against all claims and actions based upon or arising out of injury or death to persons or damage to property, caused by any acts or omissions of APCD, its successors, assigns, agents or contractors or arising out of Grantee's use of the Property. In the event that APCD contracts for any work to be performed on the Property, APCD shall require its contractors and subcontractors to indemnify, defend and hold harmless the City, its employees and agents from any and all claims, damages and liabilities whatsoever for injury or death to persons or damage to property arising from the contractors' and/or subcontractors' actions or inactions. All contractors and subcontractors shall be required to abide by and follow the provisions of this Agreement.

APCD, by execution of this Agreement containing this indemnification clause, does not waive the operation of any law concerning APCD's ability to indemnify.

B. It is expressly understood and agreed that the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protections provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

9. **No Discrimination in Employment:** In connection with the performance of work under this Agreement, the Parties agree 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, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts and subcontracts hereunder.

10. **Compliance With Environmental Requirements.** APCD shall obtain all necessary federal, state, and local environmental permits and comply with all applicable federal, state, and local environmental permit requirements relating to the installation and operation of the Facility. APCD shall comply with all applicable local, state, and federal environmental rules, regulations, statutes, laws or orders (collectively, "Environmental Requirements"), including but not limited to Environmental Requirements regarding the storage, use 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-containing soils, asbestos-containing materials, polychlorinated biphenyls (PCBs), special wastes, any petroleum products, natural gas, radioactive source material, pesticides and 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 rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

11. **Limitation on Application of Agreement:** The provisions of this Agreement are intended to govern the undertaking and operation of the Facility at the Site and shall not be construed to prohibit, limit, waive, or modify other agreements between the parties currently existing or entered in the future between the parties.

12. **Notices:** Any notices, responses, or communications given hereunder may be personally delivered or sent by first class mail, addressed to the following:

To the City:

Manager of the Department of Parks and Recreation  
City and County of Denver  
201 West Colfax Avenue, Dept. 601  
Denver, CO 80202

City Attorney  
Municipal Operations Section  
201 W. Colfax Avenue, Dept. 1207  
Denver, CO 80202

To APCD:

Gordon Pierce  
Colorado Department of Public Health and Environment  
APCD-TS-B1  
4300 Cherry Creek Drive South  
Denver, Colorado 80246

The contacts and addresses specified above may be changed by the parties at any time upon written notice to the other party.

13. **Conflict of Interest:** The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in this Agreement.

14. **No Personal Liability:** No elected official, director, officer, agent, or employee of the City shall be charged personally or held contractually liable by or to the State of Colorado under any term or provision of this Agreement or because of any breach or violation thereof or because of the execution, approval, or attempted execution of this Agreement.

16. **No Third Party Beneficiaries:** The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and APCD; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. The City and APCD expressly agree that any person other than the City and APCD receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

17. **Subject to Local Laws; Venue:** Each and every term, provision or condition herein is subject to and shall be construed in accordance with the provisions of Colorado law, the



Charter of the City and County of Denver, and the applicable ordinances, regulations, executive orders, or fiscal rules, enacted or promulgated pursuant thereto. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

18. **Agreement as Complete Integration; Amendments:** This Agreement is intended as the complete integration of all understandings between the parties, and no prior or contemporaneous addition, deletion or other amendment shall have any force or effect, unless embodied herein in writing. Amendments to this Agreement will become effective only when approved by both parties and executed in the same manner as this Agreement.

19. **Severability.** The terms and conditions contained herein are several in nature. Should any one or more of the terms or conditions be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining terms or conditions. However, if the license granted under this Agreement should be deemed invalid or unenforceable, the Agreement shall terminate subject to the terms set forth in paragraph 7 above.

20. **Appropriation:** Notwithstanding any provision of this Agreement to the contrary, the Parties agree that this Agreement is contingent upon all funds necessary for performance under this Agreement being budgeted, appropriated and otherwise made available by the respective Parties. The Parties acknowledge that this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of either Party.

21. **Execution of Agreement:** This Agreement is expressly subject to, and shall not be or become effective or binding on the City and APCD until fully executed by all required signatories of the City and APCD.

22. **Legal Authority:** The City and APCD each represent that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

23. **Counterparts of Agreement:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement, and all of which, taken together, shall constitute one and the same document.

24. **Electronic Signatures and Electronic Records:** APCD consents to the use of electronic signatures by the City. The Agreement, 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 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.

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The Signature Block Starts on the Next Page.]**

**Contract Control Number:** PARKS-201104050-00

**Contractor Name:** State of Colorado Colorado Department of Public Health and Environment

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:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** PARKS-201104050-00

**Contractor Name:** State of Colorado Colorado Department of Public Health and Environment

By: *Lisa M<sup>c</sup>Govern*

Name: *Lisa M<sup>c</sup>Govern*  
(please print)

Title: *for Executive Director*  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



## EXHIBIT A

### Drawing of the Particulate Monitor and Specifications

#### **Particulate Monitor Specifications:**

Pump  $\frac{3}{4}$ HP

Amp Draw 9 A

Fuse 15 A SloBlo

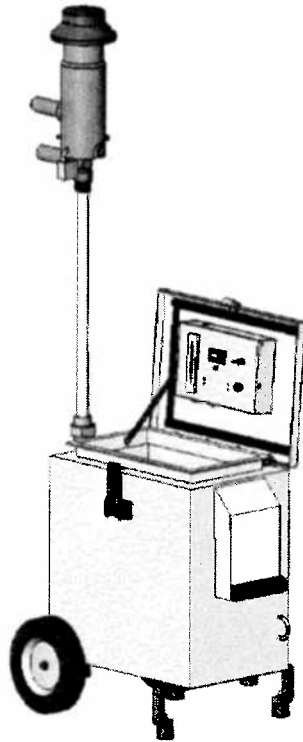
Flow Calibration Range 20-110 LPM

Maximum Flow at Sea Level 170 LPM

Weight 105 lb

Sampler Box with Pump and Elapsed Time Meter: 18"W X 18" H X 14"D

Sampler Inlet: 5'H



Particulate Monitoring Site Sketch

**City Park Golf Course  
Air Monitoring Site**

