

LICENSE AGREEMENT
(Alameda 25 “Triangle Parcel” Water Quality Facility)

THIS LICENSE AGREEMENT (“Agreement”) is entered into, as of the Effective Date, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation and home rule city of the State of Colorado (“City”) and the **COLORADO DEPARTMENT OF TRANSPORTATION**, a division of the State of Colorado (“Licensee”), collectively, “the Parties.”

1. Agreement. Upon the Commencement Date (defined below), the City grants a revocable and non-exclusive license (“License”) to Licensee for use in conjunction with Licensee’s design and construction of transportation improvements including, but not limited to, pathways, storm sewer, and a water quality detention facility on a portion of land shaped like a triangle and bordered by West Alameda Avenue, South Platte River Road and South Lipan Street (“Project”). The License area is legally described and depicted on Exhibit A attached hereto and incorporated herein by this reference (“License Area”).

2. Retained Rights of City. The City retains the right of possession and the rights of use, occupancy, and control of the License Area, but such use, occupancy and control shall not unreasonably interfere with the exercise of the License as granted and conditioned in this Agreement.

3. Use and Condition of License Area. The City grants the Licensee (i) access, (ii) construction work areas/work sites, (iii) storage of materials and equipment and (iv) construction of facilities, on, over and across the following License Area in furtherance of the Project. Together with full right and authority to Licensee, its successors, assigns, licensees and its and their contractors, agents, employees and invitees, to enter upon the License Area with machinery, trucks, materials, tools and other equipment which may be useful or required in the construction, alteration, maintenance or repair by Licensee of utility improvements, located or to be located, on real property owned by Licensee, or on property that is subject to an easement for the benefit of Licensee. As a condition of the License, Licensee shall be responsible for all damage caused to the License Area by Licensee that is not the result of normal wear and tear. The License Area shall be in its “as is” condition as of the date of the commencement of the License. The City shall have no obligation to maintain, repair or replace the License Area or any appurtenances thereto. Upon expiration of the Term (hereinafter defined) or earlier revocation by the City pursuant to Section 6 of this Agreement, the City will have an option to cause Licensee and its contractors to return the License Area to the condition existing as of the Commencement Date (hereinafter defined) free from all construction debris and in a condition as nearly as practicable to its original condition, taking into consideration the nature of the work being performed.

4. Term. This Agreement shall commence as of the Effective Date (the “Commencement Date”) and shall end three (3) years from the Effective Date. The City’s Director of the Division of Real Estate (“Director”) is authorized to extend the term of this Agreement.

5. Improvements. Licensee or its contractors may construct certain improvements in the License Area if such improvements have been approved by the City’s Executive Director of the Department of Transportation & Infrastructure.

6. Revocation & Termination. The City has the right to revoke the License, and terminate this Agreement, for a violation of the terms, conditions, warranties and covenants of this Agreement by Licensee that remains uncured thirty (30) days after written notice of such violation is delivered by the City to Licensee.

7. Costs & Fees. The fee for exercise of the License herein granted and other rights and obligations under this Agreement shall be Ten Dollars and 00/100 (\$10.00), payable concurrently with the execution of this Agreement by Licensee.

8. Permits & Compliance. The Licensee shall comply with all applicable laws, rules, regulations, and requirements relating to the License. The Licensee shall provide copies of any use permits upon the request of the Director. Nothing in this Agreement shall relieve Licensee from complying with other regulatory requirements applicable to the License.

9. Damage to City Property. Any real or personal property of the City damaged or destroyed by the Licensee that is not a result of normal wear and tear shall be promptly repaired or replaced by Licensee to the satisfaction of the Director. For failure or refusal by the Licensee to comply with this paragraph, the City shall have the right to seek recovery of actual damages, costs, expenses, and reasonable attorneys' fees from the Licensee by any means available under the law.

10. 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 License or other aspects of this Agreement.

11. Insurance. At all times during the term of this Agreement, including any renewals or extensions, Licensee shall maintain such insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et. seq ("CGIA"). This obligation shall survive the termination of this Agreement. Licensee shall require its contractors performing work in the License Area to obtain insurance appropriate for the work being performed on a public project. For Commercial General Liability, the Licensee's contractors shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

12. Indemnification. Licensee shall cause its contractors to release, indemnify and save harmless the City, its officers, agents, and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify, and save harmless the City, its officers, agents, and employees from any and all claims, damages, suits, costs, expenses, liability, actions, penalties, or proceedings of any kind or nature, including without limitations worker's compensation claims, of or by anyone, which with respect to any of the foregoing in any way results, from, or arises out of, directly or indirectly, Licensee's use or occupancy of any portion of the License Area.

13. 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 use of the License Area under this Agreement and are not due to the actions or omissions of the City's officers, agents or employees. It is expressly understood and agreed that the City is relying upon, and has not waived, the monetary limitations (presently \$350,000 per person, \$990,000 per occurrence) and all other rights, immunities and protection provided by the CGIA.

14. 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: Colorado Department of Transportation
2828 W. Howard Place
Denver, Colorado 80204
Attention: Nancy Terry

City: Mayor
1437 Bannock Street, Room 350
Denver, Colorado 80202

Director
Division of Real Estate
201 West Colfax Avenue, Department 1010
Denver, Colorado 80202

City Attorney's Office
201 West Colfax Avenue, Department 1207
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 it is actually received.

15. Compliance with Laws. All persons or entities utilizing the License Area pursuant to this Agreement 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.

16. Applicable Law; Venue. This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado and the United States of America. Venue for any legal action relating to this Agreement shall lie solely in the District Court in and for the City and County of Denver

17. Amendment. This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect whatsoever, unless embodied in writing in the same formality as this Agreement. Any representations made by any officer, agent or employee of the

respective parties unless included in this Agreement are null and void and of no effect. No subsequent notation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties in the same formality as this Agreement.

18. Severability. The promises and covenants contained in this Agreement are several in nature. Should any provision of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Agreement. However, if the license is deemed invalid or unenforceable, the Agreement shall terminate.

19. Exhibits. All exhibits attached to this Agreement are incorporated in this Agreement by reference. To the extent there is a conflict or inconsistency between the language of this Agreement and any exhibit, the language of this Agreement shall control.

20. Third Party Beneficiaries. It is expressly understood and agreed upon 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 the Licensee, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person of this Agreement, 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 Agreement shall be deemed to be an incidental beneficiary only.

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

22. Conflict of Interest by City Officers. The 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 Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

23. No Construction against the Drafting Party. The Parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of this Agreement were prepared by a particular party.

24. Electronic Signatures and Electronic Records. Licensee consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature under this Agreement, 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 this 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 this 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.

25. Authority. The persons who affixed the signatures hereto on behalf of the Licensee attest and affirm they have authority to execute this Agreement on behalf of Licensee.

26. Execution. This Agreement shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver. The Effective Date of this Agreement shall be the date it is fully executed by all signatories of the City and County of Denver.

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Signatures on following pages.

Contract Control Number:
Contractor Name:

FINAN-202159657-00
Colorado Department of Transportation

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:

Contract Control Number:
Contractor Name:

FINAN-202159657-00
Colorado Department of Transportation

DEPARTMENT OF TRANSPORTATION
STATE OF COLORADO

By: _____

See attached
signature page

Name: Stephen Harelson, P.E.

Title: Chief Engineer

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Contract Control Number: FINAN-202159657-00
Contractor Name: Colorado Department of Transportation

DEPARTMENT OF TRANSPORTATION
STATE OF COLORADO

By: Stephen Harelson Digitally signed by Stephen Harelson
Date: 2021.08.30 16:49:19 -06'00'

Name: Stephen Harelson, P.E.

Title: Chief Engineer

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

