

REVOCABLE LICENSE AGREEMENT FOR WATER MONITORING WELLS

THIS REVOCABLE LICENSE AGREEMENT ("**Agreement**") is made and entered into this ____ day of _____, 2019 ("**Effective Date**"), by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality, whose address is 7887 East 60th Avenue, Commerce City, Colorado 80022 ("**City**"), and SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT, ACTING BY AND THROUGH ITS SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT ACTIVITY ENTERPRISE, a quasi-municipality of the County of Adams, State of Colorado, whose address is 6595 E. 70th Avenue, Commerce City, Colorado 80037-0597, ("**Licensee**").

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. The City grants to the Licensee and its contractors, successors, and assigns, a revocable license for the non-exclusive right to enter, re-enter, occupy, and use the two (2) City-owned land parcels described in **Exhibits A and B** ("**Properties**"), which exhibits are attached and incorporated into this Agreement, to construct two (2) water monitoring wells, consisting of a 2-inch casing diameter monitoring well flush mounted with ground level, in the identified locations (or such other locations as approved by the City, in writing), ("**Wells**"), subject to the conditions contained in this Agreement ("**License**"). The Licensee shall have the right to enter on the Properties to construct, repair, remove, replace, reconstruct, inspect, improve, and maintain the Wells. Before commencing any construction on the Properties, the Licensee shall obtain all necessary permits and approvals required by the Commerce City Revised Municipal Code.

2. The Licensee will cause its contractor to perform public and private utility locates prior to drilling. The Licensee shall coordinate the dates of construction with the City and will notify the City at least one (1) week before the anticipated drilling date. The Licensee shall complete all drilling and installation activities within no longer than five (5) working days per Well. All material excavated during drilling will be disposed of offsite. After construction of the Wells is complete, the Licensee may periodically access the Wells to collect data. The Licensee will notify the City at least twenty-four (24) hours before performing other work or monitoring activities.

3. The Licensee shall maintain the Wells in good condition and in accordance with applicable law (including permitting, construction, and abandonment according to Colorado Division of Water Resources regulations).

4. The Licensee shall restore the Properties to their substantially original conditions, or as close as reasonably possible to such condition, including the removal of any material and debris as necessary, upon completion of any work under this License. The Licensee shall repair damages caused on the Properties or adjoining lands (including concrete, irrigation systems, vegetation and turf grass, soil settling, and erosion) arising out of the construction or reconstruction, maintenance and repair of the Wells when caused by the exercise of the rights or obligations of the Licensee under this Agreement. The Licensee shall perform any repair or restoration work in accordance with applicable City specifications and standards. If such damages are not restored by the Licensee, the Licensee shall reimburse the City for its out of pocket costs to repair such damages, subject to appropriation of funds for such purpose.

5. The Licensee shall pay or cause to be paid all costs for work done by or on behalf of the Licensee or any of its designees, contractors, or assigns occupying or doing work on or adjacent to the Properties. The Licensee shall keep the Properties free and clear of any mechanic's liens and other liens on account of work done or performed on behalf of the Licensee.

6. The Licensee shall comply with all applicable laws, ordinances and regulations, including but not limited to all applicable regulatory, environmental and safety requirements at the Licensee's sole cost and expense.

7. The Licensee shall cause all contractors and subcontractors performing work on or about the Properties to take all necessary safety measures with respect to the construction and maintenance activities. Before commencing any work in the Properties, the Licensee will secure and maintain general liability insurance coverage in an amount no less than one million and 00/100s dollars (\$1,000,000.00). The City shall be named as an additional insured.

8. The Licensee shall responsible for any and all damages to persons or property caused by or arising from the actions or omissions of the Licensee, its employees, agents, or representatives, in the exercise of the Licensee's rights under this Agreement. The Licensee shall require that its contractors agree to indemnify and hold harmless the City, its elected and appointed officials and its employees, agents and representatives (the "**Indemnified Parties**") from any and all alleged or actual claims and liability, including without limitation reasonable attorney fees and expenses, arising from or relating to the actions or omissions of the Licensee, its employees, agents, or representatives, in the exercise of the Licensee's rights under this Agreement, unless such claim or action results from the negligence or willful misconduct of any of the Indemnified Parties. The provisions set forth in this Section shall survive the satisfaction, expiration or termination of this Agreement.

9. The City retains the right to the undisturbed full use and occupancy of the Properties insofar as such use and occupancy is consistent with and does not impair the Licensee's use of the License except as authorized by this Agreement. The City reserves the right to grant easements and additional licenses within the Properties and to perform any acts it deems necessary within the Properties so long as such acts are not inconsistent with and do not unreasonably interfere with this License or Licensee's use of the License and/or the Wells, subject to the terms of this Agreement. The City may install temporary or removable and replaceable objects such as lights, mailboxes, signs, fences, shrubs, plants, and flowers on the Properties in areas that do not interfere with the use or purpose of the License.

10. The License and this Agreement will terminate by the provision of written notice by first class mail to the other party terminating the License and this Agreement at least six (6) months before the date of termination. Upon termination of this License and Agreement for any reason, the Licensee shall abandon the Wells and restore the Properties to their substantially original condition by the date of termination.

11. The License is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Properties, whether or not of record. The use of the word "grant" shall not imply any warranty on the part of the City with respect to the License or the Properties.

12. Except for routine communications, written notices required under this Agreement and all other correspondence between the parties will be directed to the following and will be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City:

Tony Jaramillo
Park Development Supervisor
City of Commerce City
7887 E. 60th Ave
Commerce City, CO 80022

If to Licensee:

Tricia Williams
Water Resources Engineer
South Adams County Water and Sanitation District
6595 E. 70th Ave
Commerce City, CO 80037

The parties may agree to delivery of notices via electronic mail.

13. Any remedy set forth herein for breach of this Agreement or the License shall be in addition to any other remedy available to the City in law or in equity.

14. No term or condition of this Agreement will be construed or interpreted as an express or implied waiver of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq.

15. If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

16. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties.

17. Notwithstanding any other term or condition of this Agreement, all obligations of the parties to this Agreement, including all or any part of any payment or reimbursement obligations, whether direct or contingent, shall only extend to payment of monies duly and lawfully appropriated and encumbered for the purpose of this Agreement through that party's legally required budgeting, authorization, and appropriation process. Further, neither party, by this Agreement, creates a multiple fiscal year obligation or debt either within or without this Agreement. The parties, by this Agreement, do not bind future legislatures to make such appropriations.

18. This Agreement contains the entire agreement between the parties relating to the rights granted and the obligations assumed by this Agreement. Any oral representations or modifications concerning this Agreement or its subject matter shall be of no force or effect except in a subsequent modification in writing, signed by the party to be charged.

[Remainder of this page intentionally left blank – signature page(s) follow(s).]

IN WITNESS WHEREOF, the undersigned have set their hands effective the day and year first above written.

CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, MMC, City Clerk

APPROVED AS TO FORM:

Brian M. Swann, Assistant City Attorney

**SOUTH ADAMS WATER AND SANITATION
DISTRICT, ACTING BY AND THROUGH ITS
SOUTH ADAMS COUNTY WATER AND
SANITATION DISTRICT ACTIVITY
ENTERPRISE**

By: _____

Name: _____

Its: _____

Exhibit A
Proposed Location of Olive Park Well



Exhibit B
Proposed Location of Leyden Park Well

