

## LICENSE AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_ by and between \_\_\_\_\_, whose address is \_\_\_\_\_, Loveland, Colorado, (the “Licensee”), and THE CITY OF LOVELAND, a Colorado home rule municipality, whose address is Civic Center, 500 East Third Street, Loveland, Colorado, (the “City”).

WHEREAS, the City is the owner of a certain real property commonly known as the Arkins Branch (the “Arkins Branch”) more specifically depicted on Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, the Arkins Branch was previously owned by the Burlington Northern Railroad and used for railroad purposes, and was transferred to the City in 1989 via a quit claim deed. The City now uses the Arkins Branch primarily as a utility corridor; and

WHEREAS, the Licensee is the owner of certain property located at [enter address], which property is located adjacent to the Arkins Branch (the “Licensee’s Property”); and

WHEREAS, the Licensee wishes to utilize a section of the Arkins Branch (the “Licensed Area”) for the purpose of  gardening  vehicle parking  vehicle access. The Licensed Area is more specifically described and depicted on Exhibit B, attached hereto and incorporated herein by reference; and

WHEREAS, the Loveland City Charter Section 14-2 permits the City to authorize the “temporary use or occupation of any street, alley, other public way, or City-owned place” so long as such authorization is revocable by the City “at any time and without cause;” and

WHEREAS, to the extent permitted by the Loveland City Charter, the City is willing to allow the Licensee to utilize the Licensed Area, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. License. The City hereby grants to the Licensee a license to occupy, use and maintain, subject to all terms and conditions of this Agreement, the Licensed Area described and depicted in Exhibits B, attached hereto and incorporated herein by reference, for the term set forth below in Paragraph 3. Notwithstanding the aforementioned or anything contained in Exhibits B, in no case shall the Licensed Area extend further into the Arkins Branch from the Licensed Property’s boundary with the Arkins Branch than that area approved by the City through this Agreement. The City reserves the right to adjust the Licensed Area from time to time to ensure that a minimum twenty-foot drive aisle down the center of the Arkins Branch is maintained at all times.

2. Use of Licensed Area. The Licensed Area is accepted “as is” by Licensee. The Licensed Area may be occupied and used by the Licensee solely for the purpose checked below:

*Growing and maintaining an annual garden.* Licensee may only plant annual plants and may not grow any perennial plants or trees of any kind. Licensee may place non-permanent garden boxes or fencing in the Licensed Area. Licensee acknowledges and agrees that Licensee’s use of the Licensed Area for gardening is done at Licensee’s own risk and that the City is not liable in any way for damage to garden crops or plants, fencing, garden boxes, or any other gardening amenities caused by the City’s use of the Arkins Branch, the City’s access to the Licensed Area as may be necessary for utility operations, or any actions of third parties.

*Vehicle Parking.* Licensee may park only operable, currently licensed and currently registered motor vehicles, boats, and recreational vehicles on the Licensed Area. Licensee acknowledges and agrees that the City shall have the right to immediately revoke this Agreement if a vehicle is parked on the Licensed Area which is not operable, not licensed or not registered. A vehicle shall be inoperable for purposes of this Agreement if the vehicle either (a) in the reasonable opinion of a City official, is apparently inoperative or legally inoperative due to the vehicle’s unsafe condition regarding the potential to endanger persons or property or due to the lack of required equipment as stated in the most current version of the Model Traffic Code, including but not limited to inflated tires, operable lights, operable brakes, windows, and windshields; or (b) is wrecked, dismantled, partially dismantled, discarded, or severely dilapidated.

*Vehicle Access.* Licensee and Licensee’s tenants or invitees may access the Licensed Property by entering onto the Arkins Branch. Licensee acknowledges and agrees that the City shall have no obligation to maintain the Arkins Branch in order to facilitate vehicle access or travel.

3. Term. This Agreement shall be for a term of twenty years, commencing on the day and year first above written, subject to the City’s termination rights set forth in this Agreement, City Charter, and City Code. At the expiration of the term of this Agreement, the Agreement shall be automatically renewed for additional ten year periods, on the same terms and conditions as set forth in this Agreement, unless either party, at least sixty days prior to the expiration of the initial term or any automatic renewal term, gives written notice to the other of intention not to renew this Agreement at the end of such term.

4. Policy. The Licensee acknowledges and agrees that Licensee received a copy of the City’s Policy For Use of the Arkins Branch Utility Corridor. Such Policy is subject to change from time to time in the sole discretion of the City. In the case of a conflict between the Policy and this Agreement, this Agreement shall prevail.

5. Maintenance. The Licensee shall be responsible for all maintenance of the Licensed Area, including but not limited to mowing, weed removal (as required by the Loveland Municipal Code), and snow removal.

6. Termination or Revocation.

a. Revocation. Pursuant to the City of Loveland Charter, this Agreement may be revoked by the City at any time and without cause. However, the City shall make all reasonable efforts to provide notice of termination as set forth in this Agreement.

b. Termination.

i. For Cause. If the Licensee violates any term or condition of this Agreement, the City may declare the Licensee in default. The City shall send notice to the Licensee and provide the Licensee with twenty days from the date of the notice to cure the default. If the Licensee fails to cure the default within the twenty days, this Agreement shall terminate.

ii. Without Cause. Either Party may terminate this Agreement by giving written notice to the other, specifying the date of termination, such notice to be given no less than thirty days prior to the date specified in such notice for the date of termination.

c. Removal of Licensee's Personal Property Prior to Termination. Prior to termination of this Agreement, the Licensee shall remove all personal property from the Licensed Area and return the Licensed Area to its original condition. In the event the Licensee fails to return the Licensed Area to its original condition, the City may enter onto the Licensed Area, remove any personal property or other items, and charge the reasonable and necessary costs of removal to the Licensee. In the event the Licensee shall fail to pay said costs within the thirty days after receipt of a demand for payment from the City, the City may place a lien upon the Licensee's Property to recover said costs. The City may further pursue any other remedies available to it by law to collect such costs and Licensee shall be responsible for any reasonable attorneys' fees and costs incurred by the City.

7. Utilities. The Licensee's use of the Licensed Area is subject to the City's right to use, maintain, and repair any utilities located within the Licensed Area. The Licensee's use of the Licensed Area shall not interfere with any such utilities.

8. Waiver of Claims. The Licensee waives and releases any and all claims against the City, its officers, Council members, employees, and/or agents relating in any way to or arising from this Agreement and the Licensee's use of the Licensed Area.

9. No Warranties or Representations. The City makes no warranties or representations regarding the Arkins Branch or the Licensed Area, their title or their fitness for the use described in this Agreement, and disclaims any liability and responsibility made by any person relating to the same.

10. Licensee Receives No Interest; City Can Access At All Times. The Licensee agrees and understands that the authority and permission herein granted does not invest the Licensee with any interest or estate in the Licensed Area which is the subject of this Agreement, but is a mere privilege to maintain the described encroachment on the lands of the City and the City retains possession and control of said Licensed Area, including access thereto at all times.

11. Indemnification. The Licensee shall indemnify, defend, and hold the City harmless from and against any and all liability, loss, cost, expenses, attorney's fees, damages, claims, and demands of any kind whatsoever arising from or out of the granting of this permit, the continued existence, use or maintenance of the garden on any portion of the Licensed Area or any negligent act or omission or other tortious conduct of the Licensee, their agents, invitees, or employees, in the continued existence, use, or maintenance of the garden on any portion of the Licensed Area.

12. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* and under any other applicable law.

13. Open Records. Notwithstanding anything herein to the contrary, the Licensee understands and agrees that the City is a governmental entity subject to the Colorado Open Records Act ("CORA"), and the City's compliance with CORA or any other applicable law shall not be a breach of this Agreement.

14. Notices. Written notices shall be directed as follows and shall be deemed received when hand-delivered or emailed, or three days after being sent by certified mail, return receipt requested:

If to Licensee:

[Name]

[Address]

[Address]

[Email Address]

If to the City:

City of Loveland  
Facilities Management  
105 East Fifth Street  
Loveland, CO 80537

With a copy to:

City Attorney  
City of Loveland  
500 E. Third Street, Suite 330  
Loveland, CO 80537

15. Force Majeure. No party shall be considered in default in respect to any obligation hereunder if prevented from fulfilling such obligation by reason of uncontrollable forces, which, for the purposes of this Agreement, shall mean any cause beyond the control of the party affected, including, without limitation, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, pandemic, or, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which by due diligence and foresight such party could not reasonably have been expected to avoid. Any party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

16. Waiver of Breach. The waiver by any Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision hereof.

17. Assignment. This Agreement and all rights herein conveyed to the Licensee shall not be transferred, conveyed, or assigned without the written approval of the City. In the event that the Licensee sell the Licensee's Property the Licensee shall so advise the City of the sale and of the names of the new owners for the City's records.

18. Agreement Runs With the Land. All of the grants, representations, warranties, undertakings, covenants, terms, provisions and conditions in this Agreement shall run with the land. This Agreement shall be binding upon the parties, their successors, and permitted assigns.

19. Severability. In the event any portion of this Agreement should become invalid, the remainder of the Agreement shall remain in full force and effect.

20. Entire Agreement; Modifications. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof. All prior and contemporaneous negotiations

and understandings between the parties are embodied in this Agreement, and it supersedes all prior agreements and understandings between the parties. No alteration or other modification of this Agreement shall be effective unless such modification shall be in writing and signed by the parties.

21. Counterparts. This Agreement may be executed in separate counterparts, and the counterparts taken together shall constitute the whole of this Agreement. Facsimile, scanned and other electronic signatures permitted by law, for purposes of this Agreement, shall be deemed as original signatures.

22. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado and the venue shall be in the County of Larimer, State of Colorado.

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

LICENSEE:

\_\_\_\_\_

STATE OF \_\_\_\_\_ ) ss

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was signed by \_\_\_\_\_ before me this  
\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary's official signature

S E A L

\_\_\_\_\_  
Commission expiration date

THE CITY OF LOVELAND,  
A municipal corporation

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

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney