

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made as of September ____, 2021 between **DEVELOPMENT AUTHORITY OF COLUMBUS, GEORGIA**, a public body corporate and politic (“Authority”), **COLUMBUS, GEORGIA**, a consolidated city-county government of the State of Georgia (“Columbus”), and **LIBERTY UTILITIES**, a Georgia corporation (“Liberty”).

BACKGROUND

CBA is the owner of certain property commonly referred to as a portion of Muscogee Technology Park, described in that certain Quitclaim Deed from Columbus to CBA, recorded in Deed Book 10745, Page 141 in the Office of the Clerk of Superior Court of Muscogee County, Georgia, a copy of which is attached hereto as Exhibit “A” and by reference incorporated herein (“CBA Property”). CBA leases the CBA Property to Columbus pursuant to a Lease Agreement recorded in Deed Book 10745, Page 155, as amended (“the Lease Agreement”). CBA’s ownership and the tenancy of Columbus is subject to the right of the Authority to request the release and transfer of portions of the CBA Property in support of economic development in Columbus, Muscogee County, Georgia.

Liberty has requested that Columbus permit Liberty to use a certain portion of the CBA Property, for use as a “lay-down” area for Liberty’s construction of its nearby infrastructure. During discussions, the Authority and Liberty have determined that the best way to support Liberty’s expansion plans is to permit Liberty the use of Parcel 9 as a lay-down area for construction materials, as shown on the drawing attached hereto as Exhibit “C” and incorporated herein by reference (“Use Property”).

IN CONSIDERATION of the background set forth above, the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

- 1. DEFINITIONS.** Defined terms are set forth in Exhibit A.
- 2. GRANT OF LICENSE.** Columbus, hereby grants to Liberty, at the request of the Authority an exclusive license for the benefit of Liberty to use the Use Property for the Permitted Uses beginning the date hereof and expiring at midnight on December 31, 2021. The License shall be exclusive, but subject to termination or limitation as hereinafter set forth. This License is exclusive to Liberty and shall be non-assignable by Liberty, either in whole or in part.
- 3. TERMINATION OR SUSPENSION.**

A. By CBA/Columbus. As soon as Liberty completes its constructions, Liberty shall notify Columbus and terminate this Agreement. If Liberty fails to notify Columbus, Columbus may nevertheless terminate the Agreement upon completion by Liberty of its construction project. This Agreement shall terminate no later than December 31, 2021.

B. By Licensee. Liberty may terminate this License at any time by Notice to Columbus.

4. LIMITATIONS.

(a) This License does not and shall not be deemed to include any right, permission or license to Liberty to construct any permanent improvements on the Use Property. The use is limited strictly to the depositing of construction materials during Liberty's project construction on other properties during the term.

(b) Columbus and the Authority may continue to market the Use Property to potential economic development opportunities so long as such marketing does not materially adversely affect the use of the Use Property by Liberty.

(c) This License is granted to Liberty subject to any terms and conditions of the Lease Agreement, and Liberty will not use the Use Property in any way which causes it to be in violation of the Lease Agreement.

5. HOLD HARMLESS. Liberty and the Authorized Persons release the Authority, CBA and Columbus from any and all loss, damages, claims, or other liability of any kind arising out of their use of the Use Property under this License, and agree to hold harmless and defend the Authority, CBA and Columbus from any and all claims, demands, costs, damages, causes of action, and expenses (including reasonable attorney fees) arising out of or related to Liberty's use of this License, except for CBA's, the Authority's or Columbus's gross negligence, provided, however, that the gross negligence of one party shall not affect the indemnification of the other parties. All use by Liberty and the Authorized Persons pursuant to this License is at the sole risk of Liberty. Liberty shall provide proof of liability insurance acceptable to the City naming the City and CBA as additional insureds.

6. MISCELLANEOUS.

A. This Agreement shall be personal to Liberty and shall not run with the land and shall not inure to the benefit of Liberty's successors and assigns.

B. Each Party shall execute any additional documents and take any additional actions as may be necessary or appropriate to carry out all of the terms of this Agreement.

C. This Agreement shall be governed by the laws of the State of Georgia.

D. This Agreement may not be amended, altered or modified except by an instrument in writing and signed by the parties.

E. The exhibits referred to in and attached to this Agreement are incorporated herein in full by such reference.

F. When any time period is provided for in this Agreement as a number of days, it shall mean calendar days unless the number of days is ten (10) or less, in which case it shall be Business Days. If a time period ends on a day that is not a Business Day, it shall be extended until the next Business Day.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

**Signed, sealed and delivered
in the presence of:**

LIBERTY UTILITIES

Witness

By: _____
Name: _____
Title: _____

(COMPANY SEAL)

Notary Public

Commission Expiration Date: _____, 20__
Notary Seal:

Contact Information

Address:
Tel:
Fax:
Email:

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

Signed, sealed and delivered in the presence of: **DEVELOPMENT AUTHORITY OF COLUMBUS, GEORGIA**

Witness

By: _____
Name: _____
Title: _____

Notary Public
Commission Expiration Date: _____, 20____
Notary Seal:

Attest: _____
Name: _____
Title: _____

(CORPORATE SEAL)

Contact Information

Address:
Tel:
Fax:
Email:

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

Signed, sealed and delivered in the presence of: **COLUMBUS, GEORGIA**

Witness

By: _____
Name: Isaiah Hugley
Title: City Manager

Notary Public
Commission Expiration Date: _____, 20__

Attest: _____
Name: Sandra Davis
Title: Clerk of Council

Notary Seal

Approved as to form:

Clifton Fay, City Attorney

Contact Information

Address:
Tel:
Fax:
Email:

[END OF SIGNATURES]

**EXHIBIT A
TO
LICENSE AGREEMENT**

DEFINITIONS

“Agreement” shall mean this License Agreement, as amended.

“Approve” (or a variation thereof) means an express approval in a Notice signed by the approving Person. An Approval shall be obtained by a Person’s requesting it from another Person by Notice. The Notice shall include all relevant information, including plans, drawings, budgets, projections, legal documents and other information as may be reasonably expected by the Person whose Approval is requested. The Approval shall not be unreasonably withheld, unless this Agreement expressly states the Approving Person may grant or withhold the Approval in its sole discretion. The failure to respond to a Notice requesting an Approval within fifteen (15) days shall be deemed to constitute a decision to Approve. If the Person whose Approval is requested does not grant its Approval, it shall state the reasons for not Approving.

“Authorizations” means all authorizations, approvals, agreements, permits and licenses (including, but not limited to, zoning changes, zoning approvals, air and property rights, master plan approvals, site plan approvals, and certificates of occupancy) from all Governmental Authorities and other third parties, required from time to time to develop, improve, operate, use, finance, and transfer the Property.

“Authorized Persons” means Liberty, its successors and assigns, and their respective tenants, guests, agents, employees, contractors, customers, and other invitees.

“Business Day” means any day other than a Saturday, a Sunday or other day on which commercial banks are authorized or required to close under the Laws of the state in which the License Area is located.

“Contact Information” means, with respect to a Party, its address, telephone number, fax number and email address. Each Party’s Contact Information is set forth on its signature page.

“Governmental Authority” means the United States of America, the state, county and municipality in which the Property is located, and any agency, authority, court, department, commission, board, bureau or instrumentality of any of them, having jurisdiction or applicability to the License Area.

“Licensor” has the meaning set forth on page one hereof.

“Indemnify” (or any variation thereof) means to hold harmless from, indemnify and defend

against, and pay promptly upon demand therefor, any and all claims, demands, actions, causes of action, losses, expenses (including, without limitation, attorneys' fees at both trial and appellate levels), costs (including, without limitation, court costs at both trial and appellate levels), damages and all liabilities arising out of or incurred in connection with, an identified circumstance, incident, condition, relationship, time period or other matter.

“Law” has the same meaning as Requirement of Governmental Authority.

“Maintenance” includes maintenance, repairs and replacement.

“Notice” means a written notice, sent by fax, by email, or by depositing it with the United States Postal Service or any official successor thereto, certified or registered mail, return receipt requested, with adequate postage prepaid, or with any recognized overnight delivery service which provides a receipt, such as United Parcel Service or Federal Express, addressed to the appropriate Person. Each Notice shall be effective upon being so sent or deposited, but the time period in which a response to any Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice. Rejection or other refusal by the addressee to accept or the inability to deliver because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. Each Party may change its Contact Information by giving Notice thereof to the other Parties.

“Permitted Uses” means Liberty and its agents, employees, invitees engineers, or representatives, with the Authority's full cooperation, at the Company's sole cost and expense, shall have the privilege of going upon the Use Property as needed to inspect, examine, test, place a construction trailer and other equipment and machinery on the Property, and undertake such additional actions as the Company deems reasonably necessary and appropriate consistent with the proposed use of the Use Property as a “lay-down” area for construction materials, including the deposit of gravel or paving materials, at all reasonable times and from time to time. Such privilege shall include the right to make soil tests, borings, percolation tests, and other tests to obtain information necessary to determine surface and subsurface conditions, as well as any other tests deemed reasonably necessary by Liberty (collectively the “Work”). Liberty hereby agrees to indemnify and hold the Authority, CBA and Columbus harmless from any liens, claims, liabilities, and damages, and costs incurred through the exercise of such privilege, and such agreement by the Company shall survive the termination of this Agreement.

“Person” means an individual, partnership, limited liability company, corporation, trust, unincorporated association, joint stock company or other entity or association.

“Plans” means plans and specifications in reasonable detail for the construction of the Permitted Improvements, including but not limited to a site plan, landscaping plan, utilities plan, and a drainage plan.

“Requirement of Governmental Authority” means any law, ordinance, rule, regulation,

determination, order or other requirement of any kind or type of any Governmental Authority.

**EXHIBIT B
TO
LICENSE AGREEMENT**

Legal Description of Liberty Property

All that tract or parcel of land being Parcel 9 of Muscogee Technology Park, Columbus, Muscogee County, Georgia, as shown on the drawing attached hereto as Exhibit "C".

**EXHIBIT C
TO
LICENSE AGREEMENT**

Use Property