

INFORMATION ONLY

MASTER LICENSE AGREEMENT

This **MASTER LICENSE AGREEMENT** (“Agreement”) dated as of the ____ day of _____, 2021 (the ‘Effective Date’), is between the Town of Frederick, a Colorado municipality (the “Town” or “Owner”), and the City of Thornton, a home-rule municipality (“Licensee”). Town and Licensee may be referred to in the singular sense as a “Party” or in the collective sense as the “Parties.”

Recitals

A. Licensee owns, maintains, operates and controls a water utility system serving its customers.

B. For purposes of operating its water utility system, Licensee wishes to locate, place, install, operate, control and maintain certain Facilities (as defined below) in the License Area (as defined below) in the locations detailed in Exhibit A, in connection with the operation of Licensee’s water utility system.

AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following covenants, terms, and conditions:

ARTICLE 1. LICENSE

1. Definitions. The following definitions shall apply generally to the provisions of this Agreement.

1.1 “**Town**” or “**Owner**” means the Town of Frederick, a Colorado municipality.

1.2 “**Facilities**” means engineered hydraulic components of that portion of the Licensee’s water utility system constructed in the License Area for transportation of domestic water to Licensee’s water treatment facilities, consisting of an underground water transmission pipeline, fittings, control valves, valve boxes, communication facilities solely related to the operation of the water transmission pipeline, and other related appurtenances.

1.3 “**Installation Date**” shall mean the date that the first Facilities are installed by the Licensee pursuant to this Agreement.

1.4 “**Laws**” means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the Town or other governmental agency having joint or several jurisdictions over the Parties to this Agreement.

1.5 “**License Area**” means Public Right-of-Way and any other real property, including parkland, open space, or trails, that is owned by the Town.

1.6 **“Public Right-of-Way”** means the space in, upon, above, along, across, and below the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks and bicycle lanes, including all public rights-of-way, utility easements and public service easements as the same now or may hereafter exist, and Town-owned properties, that are under the jurisdiction of the Town. This term shall not include Town parkland, open space, trails, state or federal rights of way, or any property owned by any person or entity other than the Town, except as provided by applicable Laws or pursuant to an agreement between the Town and any such person or entity.

2. Grant of License. Owner hereby grants to Licensee a revocable, non-exclusive license (“License”) to use the License Area, subject to the terms and conditions of this Agreement.

3. No Estate Created or Conveyed. It is the express intent of the Parties that the License granted herein does not create or convey an estate, interest, or claim in or to the License Area, and that the Licensee’s location, construction, and use of Facilities within the License Area does not create a license coupled with any property interest in or claim to the License Area.

4. No Franchise Granted or Conveyed. Nothing in this Agreement shall be deemed to grant a franchise or other right to utilize the License Area to construct water works or provide water utility services for the benefit of the Town, construct a gas plant or gas system or provide gas utility services, construct an electric system, or provide electric utility services, nor permit the Town to collect a franchise fee.

5. Obtaining Required Permits. If the installation, operation, maintenance or location of the Facilities in the License Area shall require any permits, including but not limited to Right-of-way Permit, Stormwater Quality Permit, and Building Permit, Licensee shall, under applicable Town ordinances, apply for the appropriate permits and pay any standard and customary permit fees. As a condition of obtaining any permit that involves digging or other excavation in the License Area, Licensee shall physically identify the horizontal and vertical locations of any other existing underground utility or other facilities in the License Area in the proximity of the proposed work area and illustrate such locations on plan and profile drawings also illustrating the proposed Facilities. Approval of such permits shall be timely and shall not be unreasonably withheld by Town.

6. Permitted Users. Licensee’s affiliates, employees, contractors, agents, and representatives (“Permitted Users”) may use the License, provided that all such uses shall be within the scope of this Agreement.

7. Scope of Use Agreement. Any and all rights expressly granted to Licensee under this Agreement, which shall be exercised at Licensee’s sole cost and expense, shall be subject to the Town’s lawful exercise of its police powers and the prior and continuing right of the Town under applicable Laws to use any and all parts of the License Area exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, leases, licenses, permits, franchises, encumbrances, and claims of title of record which may affect the License Area. Any work performed pursuant to the rights granted under this Agreement shall be subject to the reasonable prior review and approval of the Town and shall conform with applicable Laws.

ARTICLE 2. USE OF LICENSE AREA

1. Permitted Use. The License Area may be used by the Licensee for the sole and exclusive purpose of accessing, locating, constructing, installing, operating, maintaining, repairing, removing, and replacing the Facilities. Thornton shall provide to Town at least seven (7) days advance notice of any routine repairs or maintenance of the Facilities and notice within 48 hours after any emergency work on the Facilities.

1.1 No Interference. Licensee in the performance and exercise of its rights and obligations under this Agreement shall not interfere in any manner with the existence and operation of any and all public and private rights of way (except in the case where Licensee's rights are prior or superior to such private right of way), sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, cable television, and other communications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Agreement.

2. Plan and Profile. Licensee shall provide Town with plans and profiles for the construction and installation of the Facilities in the License Area consistent with Town's Design Standards and Construction Specifications for Public Improvements at least thirty (30) days in advance of any proposed construction. The Town Engineer shall review and approve the plans and profiles in writing before Licensee begins the installation of such Facilities. The Town Engineer may require modifications to such plans and specifications prior to approval thereof or issuance of any appropriate permits. Any proposed changes to the approved plans and specifications shall be submitted to the Town for review and approval in writing prior to making such changes. Such approval will be timely provided, and will not be unreasonably withheld by Town. Town Engineer's review will be limited to whether the Facilities are consistent with Town's Design Standards and Construction Specifications for Public Improvements. In addition:

2.1 Facilities shall have a minimum ten feet (10') of horizontal clearance from Town's underground water facilities existing at the time of installation of the Facilities.

3. Compliance with Plan and Profile. The Facilities shall be installed in accordance with the plans and specifications approved by the Town Engineer prior to beginning the installation of such Facilities, and any appropriate permits issued by the Town that involve digging or other excavation in the License Area.

4. Compliance with Laws. All work approved by the Town shall be completed in compliance with all Laws.

5. Restrictions on Use.

5.1 Except for the Facilities specifically authorized by Owner, Licensee shall not place, build, erect, or add any structures, facilities, improvements or other items on, under, over or across the License Area.

5.2 Any changes, expansions or alterations in any way to the Facilities shall require additional advance approval by Owner.

5.3 Licensee's use of the License Area shall be subject to all existing utility easements, if any, located on, under, or above the License Area.

5.4 Licensee acknowledges that the use hereunder is of the License Area in its present, as-is condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Licensee acknowledges that Owner shall have no obligation to repair, replace, or improve any portion of the License Area in order to make the License Area suitable for Licensee's intended uses.

5.5 Non-exclusive Use. Licensee acknowledges that this Agreement does not provide Licensee with exclusive use of the License Area and that Town shall have the right to permit other providers of utility services to install equipment or facilities in the License Area so long as such installed equipment or facilities do not impact the Facilities or Licensee's operations, maintenance, repair, replacement, removal or use of the Facilities.

6. Utility Notification Center. Prior to undertaking any work pursuant to this Agreement, Licensee shall take all actions necessary to become a tier 1 member of the Utility Notification Center of Colorado, and comply with and adhere to local procedures, customs and practices relating to the one call locator service program established in C.R.S. Section 9-1.5-101, et seq., as such may be amended from time to time.

ARTICLE 3. TERM AND TERMINATION

1. The initial term of this Agreement shall commence on the Effective Date, and shall extend for a term of ten (10) years commencing on the Installation Date, unless terminated by either Party in accordance with the provisions herein ("Initial Term"). This Agreement will automatically renew for successive (10) year terms ("Renewal Term") upon the expiration of the Initial Term and any Renewal Term, unless earlier terminated as provided herein or a written notice of non-renewal is given by either party to the other party at least thirty (30) calendar days prior to the expiration of the Term then in effect.

2. The Town may terminate this Agreement by delivering thirty (30) days advance written notice to Licensee if Licensee removes and does not replace the Facilities, abandons its use or operation of the Facilities, or otherwise abandons its use and enjoyment of the License Area pursuant to the rights granted herein.

3. Either Party may terminate this Agreement if the other Party defaults in the performance of any of its obligations hereunder and fails to cure such default within thirty (30) days following the giving of written notice by the other party ("Cure Period"), unless such Cure Period is extended by mutual agreement of the Parties.

4. In the event of termination, Licensee shall not be compensated for the cost of removal of Licensee's Facilities from the License Area.

5. Removal of Facilities Upon Termination. Upon termination of this Agreement, the Parties agree that Licensee shall cut, clean, and remove all Licensee's Facilities located in the License Area, unless such removal of Licensee's Facilities is waived by the Town in its sole discretion, in which case Licensee shall cap and structurally fill any underground pipeline installed within the License Area.

ARTICLE 4. RESERVATION OF RIGHTS

1. Owner reserves all other rights in and to the License Area, including the Town's lawful exercise of its police powers and the prior and continuing right of the Town under applicable laws to use and occupy any and all parts of the License Area exclusively or concurrently with any other person or entity for any purposes whatsoever, including without limitation, other utilities and utility crossings, irrigation systems, landscaping (except trees within fifteen (15) feet of the Facilities), vehicular and pedestrian access, or any other surface or underground improvements.

2. Should the Facilities, for any reason, impede, restrict or limit in any manner whatsoever Owner's use of the License Area, Licensee shall be responsible for any incremental cost incurred by the Town to bypass or to avoid disturbing the Facilities when designing, constructing, installing, or modifying any future Town-owned improvements within the License Area.

3. Licensee's loss of use of the Facilities arising out of or relating to the Owner's use of the License Area shall not entitle Licensee to any compensation for damages or loss from Owner, in any manner whatsoever.

ARTICLE 5. MAINTENANCE; RELOCATION AND DISPLACEMENT; DAMAGE AND RESTORATION

1 Maintenance.

1.1 Licensee agrees to take such actions, at its sole expense, as are necessary to maintain the Facilities in good and safe working condition at all times. Licensee further agrees to comply at all times with the Laws in Licensee's use and occupancy of the License Area when performing any maintenance activities.

1.2 In the exercise of its rights pursuant to this Agreement, Licensee shall avoid any damage or interference with any Town installations, structures, utilities, or improvements on, under, or adjacent to the License Area.

2. Relocation and Displacement of Facilities. Licensee understands and acknowledges that Town may require Licensee to relocate one or more of its Facilities. Licensee shall at Town's direction relocate such Facilities at Licensee's sole cost and expense not later than one hundred and eighty (180) days after receiving written notice, unless the Town grants, in writing, an extension, that the Town reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a Town facility or Public Right-of-Way; (b) because the Facilities are interfering with or adversely affecting proper operation of street lights, traffic signals, governmental communications networks or other Town property; or (c) to protect or preserve the public health or safety. In any such case, Town shall use its best efforts (but shall not be required to incur financial costs) to afford Licensee a reasonably equivalent alternate location. If Licensee shall fail to relocate any Facilities as requested by the Town within one hundred and eighty (180) days after the above-referenced notice in accordance with the foregoing provision, Town shall be entitled to relocate the Facilities at the Licensee's sole cost and expense, without further notice to the Licensee. To

the extent the Town has actual knowledge thereof, the Town will attempt promptly to inform Licensee of the displacement or removal of Facilities.

3. Damage and Restoration. If the Town's facilities in the License Area are damaged, or the License Area itself is damaged, by Licensee's use of the Facilities or from the Facilities themselves, or if removal or relocation of the Facilities, where required or permitted, causes damage to any Town facilities in the License Area or to the License Area itself, Licensee shall repair such damage at its sole cost and expense within thirty (30) days after such damage occurs or fairly and reasonably compensate Town for such damages that are incurred by Town within thirty (30) days of presentment of an invoice by Town. The degree of repair work required to be performed by Licensee under this section may include without limitation restoration or replacement. If any damage to Town facilities in the License Area is deemed, in the Town's sole determination, to require emergency repair work or poses an imminent threat to life or property, Town shall undertake best efforts to contact Licensee as soon as is reasonably practical to notify Licensee of the need for conducting emergency repairs and request that Licensee perform such repairs, but Town may take immediate action to perform any and all necessary repairs for the continued safe operation of Town facilities in License Area, for the preservation or protection of the License Area, or for the protection of the public health, safety and welfare. If Town undertakes such emergency repairs, Licensee shall fairly and reasonably compensate Town for the costs of performing any work that are incurred by Town within thirty (30) days of presentment of an invoice to Licensee by Town.

ARTICLE 6. INSURANCE

1. Coverages. Licensee shall procure and maintain or self-insure, at its own cost, a policy or policies of insurance sufficient to insure against, claims, demands, and other obligations assumed by Licensee pursuant to this Agreement. All of Licensee's contractors shall be insured pursuant to their master service contracts with Licensee. Such coverages shall include:

1.1 Worker's Compensation insurance as required by law.

1.2 Commercial General Liability insurance with minimum combined single limits of \$2,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including premises and operations, personal and advertising injury, blanket contractual liability, and products, and completed operations. The policy shall contain a severability of interest's provision, and shall include the Town and the Town's officers, employees and contractors as additional insureds to the extent of the liabilities assumed by Licensee herein.

1.3 Excess or Umbrella Liability insurance, on an occurrence basis, in excess of the Commercial General Liability insurance, with coverage as broad as such policy, with a limit of \$2,000,000.

2. Form. Such insurance shall be in addition to any other insurance requirements imposed by law. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Licensee. Licensee shall be solely responsible for any deductible losses under any policy.

3. Certificate. Prior to initial construction, Licensee shall provide to Owner a certificate of insurance or self-insurance letter as evidence that the required coverages are in full force and effect. The certificate or letter shall identify this Agreement.

ARTICLE 7. NOTICES

Any notice required or permitted under this Agreement shall be in writing and shall be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed to the following: (i) if to the Town, Attn: Town Manager, Town of Frederick, PO Box 435, Frederick, CO 80530; and (ii) if to the Licensee, Attn. City Manager, 9500 Civic Center Drive, Thornton, CO 80229 with a copy to: Attn. City Attorney, 9500 Civic Center Drive, Thornton, CO 80229. Notices mailed in accordance with the provisions of this Paragraph shall be deemed to have been given upon mailing. Notices personally delivered shall have been deemed to have been given upon delivery. Either party may change its address by giving notice thereof to the other party in the manner provided in this Article 7.

ARTICLE 8. MISCELLANEOUS

1. Record Drawings. Within ninety (90) days of completion of the close-out phase of Licensee's work package for installation of the Facilities, Licensee shall provide Owner detailed digital record drawings of such Facilities for review and acceptance in conformance with the Town's Design Standards and Construction Specifications. Record Drawings shall show the location of the Facilities with a reference distance to an existing section monument. The plan view shall also show existing surface features and known utilities within ten (10) feet of the Facilities.

2. Monumentation and Marking. Licensee shall place and maintain permanent, above-grade monumentation and marking at all locations where the Facilities enter upon the boundaries of the License Area and at changes of direction as approved by the Town Engineer. Markers shall include phone numbers to call for line locates and 24-hour emergency repair. Licensee shall install tracer wire no more than 18" above and along the entire length of the Facilities.

3. Assignment. Licensee may not assign or transfer this Agreement or any of the rights or privileges therein granted, without the prior, express written consent of the Town, which consent shall not be unreasonably withheld, conditioned, or delayed; except that such consent shall not be required for assignments to any governmental entity. Such consent, if granted by the Town, shall be conditioned upon such assignee's assumption, in writing in a form acceptable to Town, of all of Licensee's obligations set forth herein.

4. Waiver of Claims Against Town. Licensee hereby waives any and all claims which Licensee may or might hereafter have or acquire against Town for loss or damage to Licensee's Facilities or any loss or degradation of any utility services Licensee may provide arising from the use by Town, of the License Area for any purpose, except to the extent such claims are caused by the negligence of the Town, its officers, its employees, or its subcontractors.

5. Limitation of Town's Liability. To the extent permitted by law, the Town shall be liable only for the cost of repair to damaged Facilities arising from the negligence or willful misconduct of Town, its employees, agents, or contractors and shall in no event be liable for indirect or consequential damages. The Town does not waive any of the protections, immunities or limitations afforded it by the Colorado Governmental Immunity Act (C.R.S. §§ 24-10-101 et. seq.) as same may be amended from time to time.

6. Mechanics' Liens. Licensee shall not allow any mechanics' or similar liens to be filed against the License Area arising from any work done by Licensee within the License area. If any mechanics' or other liens shall be created or filed against the License Area by reason of labor performed by, or materials furnished for, the Licensee, the Licensee shall, within thirty (30) days thereafter, at the Licensee's own cost and expense, cause such lien or liens to be satisfied and discharged of record together with any Notices of Intention to File Mechanic's Lien that may have been filed.

7. Waiver. The failure of either party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

8. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties hereto and supersedes any prior agreement or understanding relating to the subject matter of this Agreement. Any such prior agreement shall be deemed to be null and void and of no further effect.

9. Modification. This Agreement may not be amended except in writing by mutual agreement of the parties, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver.

10. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

11. Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the laws of the State of Colorado, without reference to its conflicts of law principles. If suit is brought by a party to this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of Colorado, County of Weld.

12. Severability of Provisions. If any one or more of the provisions of this Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each Party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

13. Representations and Warranties. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

[Signatures and acknowledgments on following page]

The Parties have executed this **MASTER LICENSE AGREEMENT** to be effective on the Effective Date.

OWNER:

TOWN OF FREDERICK

By: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____

LICENSEE:

CITY OF THORNTON

By: _____
Mark Koleber, Thornton Water Project Director

ATTEST:

By: _____
Kristen N. Rosenbaum, City Clerk

APPROVED AS TO FORM:
Luis A. Corchado, City Attorney

By: _____
City Attorney