

CITY DITCH CROSSING AGREEMENT

Littleton Nichols Avenue Roadway Improvements

This City Ditch Crossing Agreement (“Agreement”) is effective as of the ___ day of _____, 2024 and is between the City of Englewood, a Colorado municipal corporation (“City”) and the City of Littleton, a Colorado municipal corporation (“Licensee”).

RECITALS

- A. The City owns a right-of-way for the City Ditch (“City Ditch Right-of-Way”), a carrier ditch, located on City of Littleton owned property, within the boundaries of the City of Littleton; and
- B. The City is authorized to manage the City Ditch Right-of-Way and otherwise regulate the installation of devices/structures within the City Ditch Right-of-Way pursuant to applicable law, its authority over public right-of-way, and its other governmental powers and authority; and
- C. Licensee desires to construct Nichols Avenue roadway improvements over the City Ditch Right-of-Way (“Licensee Project”), which is described in Exhibit A ; and
- D. Licensee desires to utilize the City Ditch Right-of-Way as described above; and
- E. Licensee agrees to secure the appropriate licenses and other permits required by applicable law for the proposed use; and
- F. Licensee agrees that the Licensee Project will not interfere with or endanger the City Ditch or any related lateral or subjacent support to said City Ditch; and
- G. The City is willing to grant Licensee permission to use the City Ditch Right-of-Way for the Licensee Project, subject to the terms and conditions described herein and other applicable law; and
- H. The City, without any warranty of its title or interest whatsoever, hereby authorizes Licensee to install, construct, operate, maintain, repair and replace the Licensee Project and its crossing of the City Ditch Right-of-Way pursuant to this Agreement and applicable law.

NOW, THEREFORE AND IN CONSIDERATION of mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. Definitions

Affiliate means any person or entity controlling, controlled by, or under the common control with Licensee.

Claim(s) means and includes allegations, assessments, taxes, impositions, proceedings, liabilities, obligations, losses, claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment, penalties, fines, damages, suits, actions, payments, judgments, demands, expenses and costs, including, but not limited to, attorney's fees incurred through all appeals.

Facilities means anything installed by Licensee in the City Ditch Right-of-Way under this Agreement. The term "Facilities" includes any Licensee infrastructure that has been previously constructed over the City Ditch Right-of-Way.

Hazardous Substance means any substance, chemical or waste that is identified as hazardous or toxic in any applicable federal, state or local law or regulation, including but not limited to petroleum products and asbestos.

Parties collectively mean the City of Englewood and Licensee.

Public Emergency means any condition which, in the opinion of City officials, poses an immediate threat to the lives or property of the citizens of Englewood or others caused by any natural or man-made disaster, including but not limited to, storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills, etc.

Public Utility Easement or PUE means an easement or other real property right that is granted, dedicated, reserved, or otherwise conveyed for the use of utility facilities, regardless of the language used in creating such right, and regardless of the inclusion of other authorized uses.

Use Area means the portions of the City Ditch Right-of-Way designated on a Site Plan or other plan (as defined in Exhibit B) that Licensee is allowed to use and/or occupy pursuant to this Agreement.

SECTION 2. Permission to Use City Ditch Right-of-Way

2.1 The City shall have the right to maintain, install, repair, remove or relocate the City Ditch or any other of its facilities or installations within the City Ditch Right-Of-Way, at any time and in such manner as the City deems necessary or convenient. The City shall notify the Licensee at least thirty (30) days prior to commencement of any maintenance, installation, repair, removal, or relocation activities that may impact the Licensee's Facilities or require closure of the Licensee's Facilities. Except as specifically authorized in writing, Licensee shall not interfere with, obstruct, modify, or otherwise in any way impact the City's use of City Ditch.

2.2 Subject to the provisions of this Agreement and applicable law, City hereby grants to Licensee permission to use designated portions of the City Ditch Right-of-Way, as further described in Exhibit A attached hereto, subject to and conditioned upon Licensee's full, timely, complete and faithful performance of all obligations to be performed or required hereunder by Licensee, and Licensee hereby accepts the terms and conditions of this Agreement. It is the responsibility of Licensee to determine if the Use Area is within the City Ditch Right-of-Way, through a title report or other means. If the Use Area does not fall under the jurisdiction of the City, it is Licensee's sole responsibility to secure the land rights to site its Facilities in the Use Area.

2.3 Licensee can use the approved portions of the City Ditch Right-of-Way for the installation of Licensee's Facilities as described herein and shall conduct no other activity at or from those designated portions of the City Ditch Right-of-Way beyond the authority granted by this Agreement.

2.4 All other uses of the City Ditch Right-of-Way under this Agreement are prohibited. Should Licensee seek to use the City Ditch Right-of-Way for other purposes, it must enter into a separate agreement with the City to do so.

2.5 The authority to install Facilities in the City Ditch Right-of-Way granted herein authorizes Licensee only to install such Facilities and does not authorize Licensee to install or construct any other facilities not expressly provided for in this Agreement.

2.6 Licensee shall comply with all applicable laws as amended from time to time, including but not limited to, Colorado and federal law in the exercise and performance of its rights and obligations under this Agreement.

2.7 [Intentionally Omitted]

2.8 This Agreement authorizes Licensee, its agents, and contractors and no other person, to construct, operate, manage, and maintain the Facilities and associated equipment in the City Ditch Right-of-Way. This Agreement does not authorize a customer of Licensee to operate, manage or maintain Licensee's equipment in the City Ditch Right-of-Way.

2.9 Licensee shall not be required to obtain City Permits or pay any fees for the work described herein that may otherwise be applicable.

SECTION 3. Non-Exclusive Rights/Priority Rights

3.1 Unless otherwise agreed to in writing by both Parties, this license is exclusive to the Parties and the City may not grant permissions or privileges within the City Ditch Right-of Way, subject to this Agreement, to any other person, firm or corporation given the Parties' significant and critical facilities within the Use Area.

3.2 Any and all rights granted to Licensee under this Agreement, which shall be exercised at Licensee's sole cost and expense, shall be subject to the prior and continuing right of City to use the City Ditch Right-of-Way exclusively or concurrently, with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title which may affect the City Ditch Right-of-Way

3.3 Any right or privilege claimed pursuant to this Agreement by Licensee for any use of any right-of-way shall be subordinate to: A) any prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity; B) any prior lawful occupancy or use thereof by any other person; C) and to any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with property rights established independently of this Agreement. The rights and privileges granted in this License shall be subject to prior agreements, licenses and/or grants, recorded or unrecorded, and it shall be the Licensee's sole responsibility to determine the existence of said documents or conflicting uses or installations.

3.4 There is hereby reserved to the City every right and power required pursuant to this Agreement that is reserved. Licensee by its execution of this Agreement agrees to be bound thereby and to comply with any lawful action of the City in its exercise of such rights or power pursuant to the City Ditch Right-of-Way. Neither the granting of any Agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any lawful governmental right or power of City.

3.5 By executing this Agreement, the City does not waive any rights that it may have against any public utility or other property owner to require that such owners obtain prior approval from the City for such uses of the City Ditch Right-of-Way, or that revenues received by any public utility or other property owner from Licensee, by virtue of Licensee's use of the City Ditch Right-of-Way be included in the computation of any use agreement fees owed by such parties to the City.

3.6 Nothing in this Agreement shall be construed to prevent the City from abandoning, altering, improving, repairing, or maintaining its facilities and/or the City Ditch Right-of-Way, subject to Section 2.1 regarding notice.

SECTION 4. Regulatory Conditions Relating to Right-of-Way Usage

4.1 For purposes of this Agreement, whenever work is done in the City Ditch Right-of-Way relating to this Agreement, Licensee agrees that it is solely responsible for the acts, errors, omissions, and any negligence of its Contractors and that the obligations of Sections 4 and 5 are imposed on both Licensee and any of its Contractors, who will be considered Licensee's agents and for whom Licensee will be responsible.

4.2 [Intentionally Omitted]

4.3 Licensee is solely and completely responsible for ensuring that its Facilities are constructed, managed, installed, operated and/or maintained in accordance with applicable law

4.4 Licensee's use of the City Ditch Right-of-Way and easements under the control of the City shall be according to plans attached herein and approved by the City as submitted, provided that such approval shall not be unreasonably withheld or delayed.

4.5 Any phases of construction and/or installation relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of said Facilities shall be subject to regulation by applicable law.

4.6 The City shall continue to have exercise of such police, regulatory and other powers within the City Ditch Right-of-Way, as it pertains to the City's facilities, as it now has or may later obtain, and Licensee may not waive the application of the same.

4.7 Clean Up. Licensee and/or its Contractor(s) shall, during installation or relocation or removal of the Facilities and upon completion of such work, remove all temporary construction materials and equipment, debris, and unused materials provided for in the work, and put the work site and the City Ditch Right-of-Way in a safe, neat and clean condition.

4.8 Graffiti Removal. Licensee shall at all times keep and maintain its Facilities free of all graffiti. City shall notify Licensee in writing if graffiti is on the Facilities. If Licensee fails to remove the graffiti within thirty (30) days after notice in writing is received, City shall have the right to remove any graffiti present. Licensee shall reimburse City for all costs directly attributable to such abatement within thirty (30) days of City's presenting Licensee with a statement of such costs.

4.9 Safety. Licensee and Licensee's Contractor(s) shall be solely and completely responsible for the conditions of any job site where the Facilities are being placed, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. Licensee's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve Licensee from compliance with these provisions.

4.10 Damage. If Licensee damages City property, Licensee shall promptly, at its own expense, and in a manner acceptable to the City, repair the damage. If Licensee fails to do so, the City may repair the damage at its own expense, and invoice for the reasonable costs of such repair. If the City damages Licensee's Facilities, the City shall promptly, at its own expense, and in a manner acceptable to the Licensee, repair the Facilities to a safe and satisfactory condition. If the City fails to do so, the Licensee may repair the damage at its own expense, and invoice for reasonable costs of such repair.

SECTION 5. Plan Approval, Permits, and Inspection

5.1 No Facilities shall be installed, constructed, replaced, located on, or attached to any property within the City Ditch Right-of-Way until this Agreement has been approved by each jurisdiction and executed. Additionally, Licensee and its Contractor(s) shall comply with all applicable law governing the City Ditch Right-of-Way. If either party wishes to impose lawful restrictions or

limitations upon, or make regulations concerning the Use Area, as it may be deemed best for public interest, safety, or welfare, the City and Licensee shall coordinate, and establish in writing, those agreed-upon restrictions and limitations.

5.2 Licensee shall submit the applicable details, plans and specifications for City review and approval prior to any and all construction work performed pursuant to the rights granted under this Agreement. Licensee and/or its Contractor(s) shall abide by all stipulations of the Agreement. If Licensee desires to change the location of any Facilities, including any related Facilities set forth herein Licensee shall apply for and obtain approval for an amendment to this Agreement prior to installation or construction.

5.3 [Intentionally Omitted]

5.4 Any new underground facilities placed in the City Ditch Right-of-Way will be constructed using industry standard horizontal directional drilling and trenching construction methods. Licensee and/or its Contractor(s) installations will be done using industry standard practices and in full compliance with this Agreement and the City of Englewood's Design and Construction Standards and Specifications, as applicable.

5.5 If Licensee desires to change the components of the Facilities that will impact the City Ditch Right-of-Way, written approval of such change must be obtained from the City.

5.6 The City shall have the right to inspect all construction or installation work performed subject to the provisions of this Agreement and to make such tests as it shall find necessary to meet City standards to ensure compliance with the terms of this Agreement and other applicable law.

5.7 Licensee shall also provide and identify a representative, such as a project manager, who shall be the contact person for the City during any construction periods. The Licensee shall provide a contact number for emergencies that occur outside of regular business hours and shall provide this contact number to the City in advance of each construction activity/permitted installation.

5.8 Whenever Licensee or its Contractors shall cause any opening or alteration to be made for any purpose in any public streets, or public places, the opening or alteration shall be completed and restored with due diligence as soon as is reasonably practicable. Licensee shall upon the completion of the opening or alteration, restore the property, improvements or landscaping disturbed by Licensee or its Contractors to a condition substantially comparable to the condition before the opening or alteration and the restoration shall be performed with due diligence within a reasonably prompt time.

SECTION 6. Maintenance/Modifications

6.1 Maintenance of all Facilities shall be performed by Licensee at Licensee's sole cost and expense.

6.2 Licensee will perform routine maintenance, repair, and installation of all Facilities in accordance with applicable law. The City grants Licensee the right of ingress and egress across

the City Ditch Right-of-Way, as is reasonably necessary, from time-to-time, to perform routine maintenance and repair of all Facilities. The Licensee shall notify the City at least thirty (30) days prior to commencement of any maintenance, repair, or installation activities and shall collaborate with the City to minimize any type of disruption or damage to the City Ditch.

6.3 Any upgrade and/or modification to the Facilities, other than a like for like replacement, will need specific approval from the City and require Licensee to submit the information required. Any approval required from the City must be obtained in writing from the City Manager or their designee.

SECTION 7. Traffic Control

7.1 Licensee shall have the full responsibility and liability for traffic control for work performed by Licensee or its Contractors.

SECTION 8. Hazardous Substances

8.1 Licensee agrees it will not produce, dispose, transport, treat, use, generate, store any Hazardous Substances on, under, about or within the area of the City Ditch Right-of-Way in violation of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601, et. seq.; the Resource Conservation and Recovery Act., 42 U.S.C. § 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; or any other federal, state, county, or local law or regulation. Licensee may not use the City Ditch Right-of-Way in a manner that would require a permit or approval related to Hazardous Substances from any governmental agency other than the City. Licensee will pay, indemnify, defend and hold City harmless against any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by Licensee pursuant to this Agreement, to the extent permitted by Colorado law, and must immediately notify City of any Hazardous Substance discovered at any time that is unlawfully present upon the City Ditch Right-of-Way. Licensee will ensure that any on-site or off-site storage, treatment, transportation, disposal or other handling of Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services.

8.2 Licensee understands the hazards presented to persons, property and the environment by dealing with Hazardous Substances.

SECTION 9. On-Call Assistance

The Parties shall be available to each other twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of the Parties' respective facilities at the phone numbers provided below. Licensee shall use reasonable efforts to respond to any issues within the time frames specified in this Agreement. Licensee shall handle or otherwise make arrangements to address any necessary problems or complaints that require a physical presence.

SECTION 10. Mapping Requirement

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10.1 Licensee shall maintain Record Drawings of its Facilities located within the City Ditch Right-of-Way and furnish a copy electronically in an electronic-compatible mapping format (in a mapping format compatible with the current City electronic mapping format as specified by the City). Upon completion of new or relocation construction of underground Facilities in the City Ditch Right-of-Way, Licensee shall create and maintain precise, up-to-date maps of all Facilities located in the City Ditch Right-of-Way and precise and verifiable horizontal and vertical location information and will make this information available to the City upon the installation of any new Facilities. Licensee will also provide surface-location marking of any of Licensee's Facilities that are located underground within the City Ditch Right-of-Way within ten (10) business days of installation.

10.2 In the event Licensee fails to supply records in the City specified format and there is a cost to the City in converting Licensee-provided files, Licensee will be responsible for the conversion costs and will pay such reasonable costs within thirty (30) days of the City invoicing the amount due.

SECTION 11. Relocation and Reconstruction

11.1 In the event that the City requires relocation of any Facilities, City shall notify Licensee as soon as practicable of the need for relocation. City shall consult with the Licensee to consider the extent of the Facilities to be relocated, proposed timelines for relocation, and alternative solutions to relocation. If alternative solutions are unavailable or not feasible, Licensee shall relocate at no expense to the City any Facilities or other encroachment installed or maintained in, on or under the City Ditch Right-of-Way, as may be necessary to facilitate improvements to the City Ditch within the Use Area.

11.2 Licensee agrees to notify the City as soon as is practicable and seek necessary approvals prior to relocating or reconstructing of any portion of its Facilities in, on or under the City Ditch Right-of-Way. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Licensee is required to make repairs that are of an emergency nature or in connection with an unscheduled disruption of the Facilities. Licensee will maintain any necessary approvals required by the City for such maintenance and emergency repairs. Licensee will notify City before the repairs and will apply for and obtain the necessary approvals in a reasonable time after notification.

SECTION 12. Damage to Public Property

12.1 Whenever the installation, use, maintenance, or relocation of any of Licensee's Facilities is required or permitted under this Agreement, and such installation, or relocation damages or disturbs the surface or subsurface of the City Ditch Right-of-Way or public property or the public improvement located thereon, therein, or thereunder, however such damage or disturbance was caused, Licensee, at its sole cost and expense, shall promptly restore the surface or subsurface of the Licensee Property and City Ditch Right-of-Way or public property and/or repair or replace the surface, subsurface and/or public improvement therein, or thereunder, in as good a condition as

before in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City.

12.2 Notwithstanding the notice provision above, in the event of a Public Emergency, the City shall have the right to immediately perform, without prior written notice to Licensee, such reasonable and necessary work on behalf of Licensee to repair and return public property to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City. The City shall provide written notice to Licensee of the repairs as soon as practicable after the work has begun. Licensee agrees that any severed or damaged portion of the City Ditch must be completely repaired or replaced. If the City needs to perform any part of the necessary repairs, work, it shall be entitled to seek payment for such repairs costs from Licensee.

12.3 Upon the receipt of a demand for payment by City, Licensee shall promptly reimburse City for such reasonable costs.

SECTION 13. Public Emergency Disruption by City

The City shall have the right, because of a Public Emergency, as it relates to the City Ditch, to alter, relocate, sever, disrupt, remove, tear out, dig-up or otherwise damage and/or destroy Facilities of Licensee if the action is deemed necessary by either the City Manager, Police Chief, City Engineer, or Director of Utilities or designee. In the event of a Public Emergency, the City shall provide notification to the Licensee of any proposed action as soon as is reasonably practicable by contacting 303-795-3863 so that the Licensee may take any action necessary to protect, preserve, modify, and/or close Licensee's Facilities. In such event, neither the City nor any agent, contractor or employee of City shall be liable to Licensee, its Contractors or its customers or their parties for any harm so caused to them or the Facilities. When practical and if possible, City will consult with Licensee in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Facilities. City shall inform Licensee of any actions taken.

SECTION 14. Public Safety

14.1 If any of Licensee's Facilities or activities present any immediate hazard or impediment to the public, to the City, to other improvements or activities within or outside of the route area(s), or to City's ability to safely and conveniently operate the City Ditch Right-of-Way or perform City's utility, public safety and/or other public health, safety and welfare functions, then Licensee shall immediately remedy the hazard, comply with City's request to secure the route area, and otherwise cooperate with City at no expense to City to remove any such hazard or impediment.

14.2 In the event that the Licensee is unable to remedy the hazard, then the City may make necessary repairs to eliminate any safety hazards, at Licensee's sole expense.

SECTION 16. Non-use/Abandonment of the Facilities

16.1 An “Abandoned Facility” means a Facility no longer in service or physically disconnected. If Licensee ceases to provide services or abandons use of any of its Facilities for more than one (1) year, the Facility shall be deemed an Abandoned Facility and Licensee shall notify the City. The City may request Licensee to remove the Facilities and to restore the public property and ROW to a reasonable condition.

SECTION 17. Contractors

17.1 The specific independent Contractors identified and used by Licensee for the construction activities to expand and extend Licensee’s Facilities and Use Area shall be provided to and approved by the City prior to commencement of any construction, such approval shall not be unreasonably withheld, delayed, conditioned or denied. Any Contractors performing construction work within the City Ditch Right-of-Way or public easements shall comply with licensing requirements applicable to Colorado contractors.

17.2 Each Contractor shall have the same obligations with respect to its work as Licensee would have if Licensee performed the work. Licensee shall be responsible for ensuring that the work of its Contractors is performed consistent with this Agreement and other applicable law, shall be responsible for acts or omissions of its Contractors under this Agreement, shall be responsible for promptly correcting acts or omissions by its Contractors, and shall implement a quality control program to ensure that the work contemplated by this Agreement is performed.

17.3 Licensee shall furnish separate certificates and endorsements for each independent Contractor. All coverages for independent Contractors shall be subject to substantially similar requirements stated herein for Licensee.

18.1 Compliance with the Immigration Reform And Control Act Of 1986. Licensee certifies that Licensee has complied with the United States Immigration Reform and Control Act of 1986. All persons employed by Licensee to perform this contract have completed and signed Form I-9 verifying their identities and authorization for employment.

SECTION 19. Payments

[INTENTIONALLY OMITTED; PAYMENT IS NOT REQUIRED UNDER THIS AGREEMENT]

SECTION 20. Indemnity

[INTENTIONALLY OMITTED]

SECTION 21. Limitation of Liability

21.1 Licensee expressly acknowledges that Licensee’s Facilities are exposed to many risks beyond the reasonable control of City, including acts of God or the public enemy, such as but not limited to, wind, rain, sleet, ice, floods, fire, riots, sabotage, expropriation or confiscation of facilities.

Except as expressly provided in this Agreement, Licensee shall assume all risk of loss to Facilities that may arise in connection with these hazards.

21.2 CITY HEREBY DISCLAIMS ANY REPRESENTATIONS AND/OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE PRESENT OR FUTURE SUITABILITY OF CITY RIGHT OF WAY AND/OR THE FACILITIES(S) FOR LICENSEE'S INTENDED PURPOSE.

21.3 Licensee acknowledges and agrees that Licensee bears all risk of loss or damage to the Facilities installed in the City Ditch Right-of-Way pursuant to this Agreement from any cause, except for the cost of repairs to damaged Facilities to the extent caused by the negligence or willful misconduct of the City and not covered by the Licensee's insurance. IN NO EVENT, HOWEVER, SHALL CITY BE LIABLE TO LICENSEE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES RESULTING FROM ANY LOSS OR DAMAGE TO LICENSEE'S FACILITIES, REGARDLESS OF WHETHER THE CITY WAS ADVISED OF, OR OTHERWISE SHOULD HAVE BEEN AWARE OF, THE POSSIBILITY OF SUCH DAMAGES, REGARDLESS OF THE LEGAL THEORY OR BASIS FOR SUCH CLAIM.

21.4 The City and its officers, agents, elected or appointed officials, employees, departments, boards and commissions, shall not be liable to Licensee or to its affiliates or customers for any interference with or disruption in the operations of Licensee's Facilities or the provision of services, or for any damages arising out of or materially related to Licensee's use of the City Ditch Right-of-Way, except to the extent of intentional misconduct or gross negligence on the part of the City, its officers, agents, elected or appointed officials, employees, departments, boards and commissions.

21.5 Licensee also agrees that it shall have no recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of or materially related to any provision or requirement of the City because of the enforcement of this Agreement.

SECTION 22. Term and Renewal

22.1 This Agreement shall be effective as of the date of recordation of the plat dedicating the real property for the Licensee Project, or the date of approval of the Agreement by the City, whichever is later (the "Effective Date"), and shall continue unless sooner terminated in accordance with the provisions of Sections 29 and 30. Neither party to this Agreement shall have rights or obligations set forth in this Agreement prior to the Effective Date.

SECTION 23. Termination by Licensee

23.1 Licensee may terminate this Agreement prior to its date of expiration by providing the City with one (1) year written notice and only upon making arrangements satisfactory with the City to remove all Licensee's Facilities from the City Ditch Right-of-Way, unless the City agrees in

writing to allow Licensee to abandon part or all of its Facilities in place. Licensee may, by written notice to the City, request an extension of the time period allowed herein, no later than one-hundred and eighty-days (180) days prior to termination so the Licensee may appropriately determine alternative solutions. If the City agrees to allow Licensee to abandon its Facilities in place, the ownership of such Facilities, including everything permitted by City to be abandoned in place, shall, at the City's option, transfer to City and Licensee shall cooperate to execute any documents necessary to accomplish such transfer within thirty (30) days of such allowance of abandonment.

23.2 Unless the City has consented to allow Licensee to abandon part or all of its Facilities in place, upon termination of this Agreement, Licensee shall remove all of its Facilities within one (1) year.

SECTION 24. Conflicts Between Applicable Law and Contracting Documents

In the event of any conflict between this Agreement and any Exhibits to this Agreement the controlling authority shall be first this Agreement; and second, any Exhibit to this Agreement.

SECTION 26. Licensee's Records

26.1 During the entire term of this Agreement, Licensee shall keep records and provide information to the City upon request relating to the status of the construction, repair, location or relocation of Licensee's Facilities.

26.2 If necessary for the City to determine Licensee's compliance with the terms of this Agreement or other applicable law, within ten (10) days of written notice by City of a request for disclosure, Licensee shall provide relevant documentation as requested by City, respond to questions, and produce relevant books and records for the City's inspection and copying. Such records shall be available to City at Licensee's most proximate place of business within Colorado. Licensee shall also require its employees, agents, and accountants to give their full cooperation and assistance in connection with City's access to such records.

SECTION 27. Penalties for Violation of Terms

27.1 The City may pursue any remedy at law, including but not limited to injunctive relief, civil trespass, and withholding other City authorizations until Licensee complies with the terms of the Agreement or the applicable law.

27.2 Such remedies are cumulative and may be pursued in the alternative.

SECTION 28. NOTICE

28.1 All notices, which shall or may be given pursuant to this Agreement and shall be effective on receipt, shall be in writing and transmitted through both email and US Mail, postage prepaid as follows:

1000 Englewood Parkway, Englewood, Colorado 80110-2373
(303) 762-2300 | www.engagewoodco.gov

CITY OF ENGLEWOOD:
City of Englewood – Utilities Department
Email: utilities@englewoodco.gov
1000 Englewood Parkway
Englewood, Colorado 80110-2373

With copies to:
Englewood City Attorney’s Office
cao@englewoodco.gov
1000 Englewood Parkway
Englewood, Colorado 80110-2373

LICENSEE:
City of Littleton
2255 W. Berry Ave
Littleton, CO 80120
Email: publicworks@littletongov.org
After-hours emergency phone: 303-795-3863

28.2 Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above.

28.3 Licensee shall notify the City within ten (10) business days of any change in mailing address.

SECTION 29. Governing Law

29.1 It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Colorado, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts located within Arapahoe County, Colorado, including federal court.

29.2 Provisions Required By Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

SECTION 30. Partial Invalidity

If any section, paragraph, subdivision, clause, phrase or provision of this Agreement shall be adjudged invalid or unenforceable, or is preempted by federal or state laws or regulations, the same shall not affect the validity of this Agreement as a whole or any part of the provisions of this Agreement other than the part adjudged to be invalid, unenforceable or preempted.

SECTION 31. Non-Waiver

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Licensee shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

SECTION 32. Force Majeure

With respect to any provision of this Agreement, the violation or non-compliance of which could result in the imposition of a financial penalty, forfeiture or other sanction upon Licensee, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, or other events, the occurrence of which was not reasonably foreseeable by Licensee and is beyond its reasonable control.

SECTION 33. Dispute Resolution

33.1 If any dispute or claim arises out of the interpretation, performance or breach of this Agreement, the Parties agree that upon the written demand of either Party, they will meet within two (2) weeks of such demand to attempt in good faith to resolve the dispute. The meeting will be attended by representatives of both Parties having the authority to resolve the dispute.

33.2 If the dispute is not resolved within a reasonable time, the disputing Parties are free to use other remedies upon mutual written consent, including mediation. Absent mutual agreement, the Parties may pursue litigation to resolve the dispute.

SECTION 34. Amendments, Modifications or Supplements

This Agreement may not be amended, modified or supplemented except by an authorized representative of each party in a written agreement signed by both Parties. The City Manager or designee shall be considered to be an authorized representative for the City.

SECTION 35. Exhibits

All Exhibits referred to in this Agreement and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this Agreement are by such reference incorporated in this Agreement and shall be deemed a part of this Agreement.

SECTION 37. Incorporation by Reference

This Agreement is made under and conformable to the provisions of Section 4-1-3-4 of Englewood Municipal Code, which provides standard contract provisions for all contractual agreements with the City. Insofar as applicable, the provisions of EMC Section 4-1-3-4 are incorporated herein and made a part hereof by this reference and shall supersede any apparently conflicting provision otherwise contained in this Agreement.

APPROVED BY THE PARTIES ON THE DATE BELOW WRITTEN:

CITY OF ENGLEWOOD, COLORADO

By: _____ Date: _____
(Director of Utilities)

By: _____
Chairman
Englewood Water and Sewer Board

**LICENSEE:
CITY OF LITTLETON, COLORADO**

By: _____ Date _____
Kyle Schlachter, Mayor

APPROVED AS TO FORM:

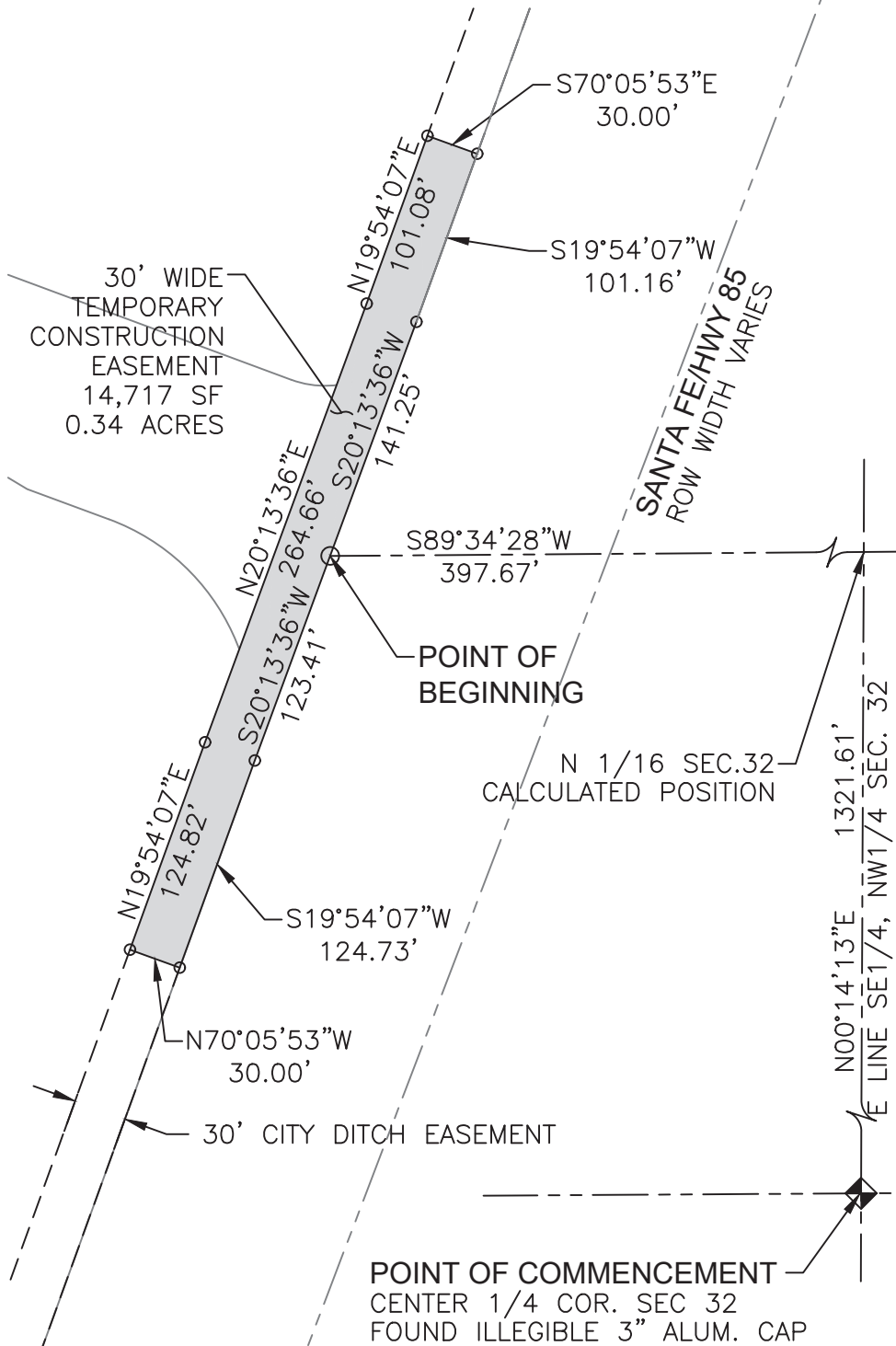
_____ Date _____
Reid Betzing, City Attorney

EXHIBIT A

Legal Description and Illustration

1000 Englewood Parkway, Englewood, Colorado 80110-2373
(303) 762-2300 | www.EnglewoodCO.gov

BASIS OF BEARINGS: N LINE NW 1/4 SEC 32, T5S, R68W, 6TH PM
 S89°29'27" W 2626.31'



COORDINATE SYSTEM IS COLORADO STATE PLANE
 CENTRAL ZONE NAD 83(2011) MODIFIED TO GROUND.

**CITY DITCH CROSSING
 AGREEMENT
 ILLUSTRATION**

Designer
 Drafter
 Checked

Littleton
 Colorado
 ENGINEERING & UTILITIES DIVISION
 2255 W. Berry Avenue
 Littleton, CO 80120 (303) 795-3865
 www.littleton.gov

INDEX OF REVISIONS	
DATE	DESCRIPTION

SHEET _____ of _____

Date
JUNE 4, 2024

A 30' wide temporary construction easement situated in Parcel 1, Santa Fe Park North Subdivision Exemption located in the Northwest Quarter of Section 32, Township 5 South, Range 68 West of the 6th Principal Meridian, City of Littleton, County of Arapahoe, State of Colorado, being more particularly described as follows:

Bearings are based on the North Line of the Northwest Quarter of Section 32 to bear South 89°29'27" West a distance of 2626.31 feet with all bearings contained herein relative thereto.

Commencing at the Center Quarter Corner of Section 32; thence North 00°14'13" East along the East Line of the Southeast Quarter of the Northwest Quarter of said Section 32, a distance of 1321.61 feet to the North Line of the Southeast Quarter of the Northwest Quarter of said Section 32; thence South 89°34'28" West along said North Line, a distance of 397.67 feet to the Point of Beginning; thence along the following nine courses:

1. South 20°13'36" West, a distance of 123.41 feet;
2. South 19°54'07" West, a distance of 124.73 feet;
3. North 70°05'53" West, a distance of 30.00 feet;
4. North 19°54'07" East, a distance of 124.82 feet;
5. North 20°13'36" East, a distance of 264.66 feet;
6. North 19°54'07" East, a distance of 101.08 feet;
7. South 70°05'53" East, a distance of 30.00 feet;
8. South 19°54'07" West, a distance of 101.16 feet;
9. South 20°13'36" West, a distance of 141.25 feet to the Point of Beginning.

Said easement contains 14,717 square feet or 0.34 acres, more or less.

**CITY DITCH CROSSING
AGREEMENT
LEGAL DESCRIPTION**

Designer
Drafter
Checked



INDEX OF REVISIONS	
DATE	DESCRIPTION

SHEET _____ of _____

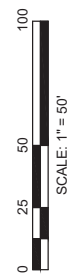
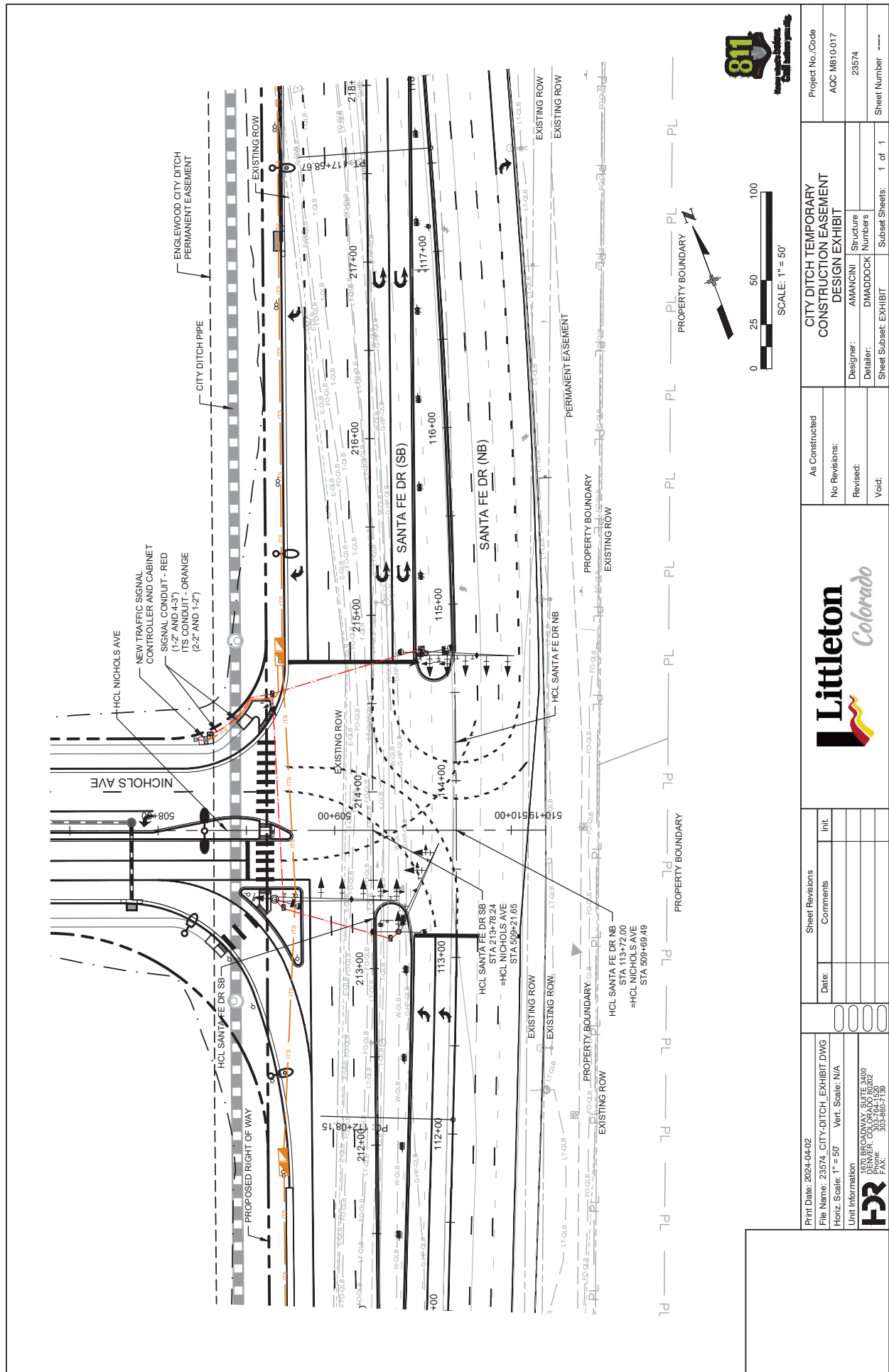
Date **JUNE 4, 2024**

EXHIBIT B

Site Plan

Providing Use Area, Equipment, and Description of Facilities

Construction of roadway, curb, gutter, sidewalk, a portion of a raised median, a portion of a raised traffic channelization porkchop, roadway striping and subsurface conduit and fiber optic lines. Such improvements are illustrated on the attached plan sheet.



Print Date: 2024-04-02 File Name: 23574_CITY-DITCH_EXHIBIT.DWG Horiz. Scale: 1" = 50' Vert. Scale: N/A		Sheet Revisions Date: _____ Init: _____ Comments: _____		As Constructed No Revisions: Revised: Void:		CITY DITCH TEMPORARY CONSTRUCTION EASEMENT DESIGN EXHIBIT		Project No./Code AGC M810-017	
Unit Information 1670 BROADWAY, SUITE 3400 DENVER, CO 80202 PHONE: 303.794.1200 FAX: 303.866.7138		Designer: AMANCINI Structure 23574 Dimadock Numbers		Sheet Subst: EXHIBIT Subst Sheets: 1 of 1		Sheet Number: ----		Sheet Number: ----	

