

# GIS DATA LICENSE AGREEMENT

THIS GIS Data License Agreement (“**Agreement**”) is made and entered into by and between the City and County of Denver acting by and through its Board of Water Commissioners, a municipal corporation of the State of Colorado, (“**Board**” or “**Licensor**”) and the City of Littleton (“**Licensee**”). Each party to this agreement may be referred to individually as “**Party**” and collectively as “**Parties.**”

For and in consideration of the mutual covenants, promises, terms and conditions of this Agreement, and other good and valuable consideration the receipt whereof is hereby acknowledged, the Parties agree as follows:

## 1. LICENSE:

1.1 Licensor grants Licensee a personal, non-exclusive, and non-transferrable license to use the following geographic information system digital data (including associated attributes, metadata, and databases) created, collected, formatted, maintained and owned by the Board: GIS data representing Access Openings, Backflow Preventors, Conduits, Conduit Valves, Connector Lines, Connector Valves, Firelines, Fireline Taps, Fireline Valves, Flow Meters, Hydrants, Hydrant Branches, Hydrant Extents, Hydrant Valves, Mains, Main Valves, Pipe Fittings, Process Lines, Process Valves, Pumps, Stationing Points, Taps, Meters, Denver Water Property and Planned City Pipe Projects within the City of Littleton (“**GIS Data**”).

1.2 Licensee shall use GIS Data only for the following purposes: planning, analysis and maintenance of water assets.

1.3 GIS Data will be delivered on a yearly basis via SharePoint site. and Licensor shall have no responsibility for updating the GIS Data.

1.4 Licensee shall be responsible for the actual costs incurred by Licensor in connection with this Agreement, including any costs of reproduction, compilation, and delivery of the GIS Data.

1.5 Licensor shall have no obligation to assist the Licensee in the use of the GIS Data.

2. TERM AND TERMINATION: This Agreement shall commence upon final execution and end 30 years thereafter unless sooner terminated or renewed as provided herein. Each party may terminate this Agreement upon giving the other party written notice of termination. Regardless of the date of execution or termination, this Agreement shall be in full force and effect from the date of Licensee’s receipt of any portion of the GIS Data, and for so long as any portion of the GIS Data, in any form whatsoever, remains in the possession of the Licensee or any of its employees, agents, contractors or subcontractors. Upon termination of this Agreement, Licensee must destroy all copies of the GIS Data in their possession and shall provide an affidavit of such destruction to Licensor upon request.

## 3. OWNERSHIP, USE, SECURITY:

3.1 Licensee agrees and understands that this Agreement does not constitute a sale or transfer of any title or ownership interest in the GIS Data from Licensor to Licensee. Licensee acknowledges that the development of the GIS Data required the skilled efforts of professionals in the design and compilation of the GIS Data and the end product is the result of the original work of the Licensor, the Licensor’s employees, contractors and agents. The Licensee agrees and understands that the GIS Data is the property of Licensor, and Licensor reserves all rights of ownership, title and control to the GIS Data under common law, federal

copyright law or any other law relating to confidential, copyright, and/or trade secret information. Licensee shall treat the GIS Data as it would its own confidential and proprietary information. Licensee shall keep and maintain the GIS Data in a secure manner to prevent its unauthorized use, dissemination or disclosure.

3.2. Except as is reasonably necessary to carry out use of the GIS Data authorized by the Agreement or as may otherwise be expressly required by law, Licensee shall not copy, reproduce, disseminate, transmit, license, sublicense, assign, lease, release, publish, transfer, sell, permit access to, distribute, disclose, allow interactive rights to, or otherwise make available the GIS Data, or products derived therefrom, to any other person, party or entity in any form or media, whether presently in existence or hereinafter created. Requests mandated by State and Federal regulations, such as the Colorado Open Records Act, shall be directed back to the Licensor for resolution.

3.3. Licensee shall have an ongoing and continual duty to notify its employees having access to the GIS Data of the restrictions contained in this Agreement and to take reasonable steps to ensure the compliance of such employees with said restrictions. Should Licensee's authorized use also include the distribution of the GIS Data or any part thereof to an agent, consultant, or a contractor of the Licensee, Licensee shall require such agent or a contractor to enter into a written agreement that is at least as onerous as the present one.

4. DATA PROVIDED AS-IS; NO WARRANTY: Licensee understands and agrees that Licensor is furnishing its GIS Data on an "as is" basis and that Licensor is making no representation and extends no warranties of any kind, either express or implied, including, without limitation, merchantability, fitness for a particular purpose, non-infringement, accuracy, usefulness, completeness, or timely delivery. Licensee further understands and expressly agrees that: The GIS Data was prepared by the Licensor for its internal purposes only; that GIS Data is not a legally recorded map, a survey, or a legal document, and should not be used as such; GIS Data is a unique, inherently complex, and constantly changing compilation of records, and that it is not free of errors; GIS Data should be used for reference only and should not be relied upon in any other way, including, but not limited to, its use in connection with the provision of homeland security, emergency services, legal proceedings, and final design purposes; and that any use of the GIS Data by Licensee or any third party is at the user's sole risk.

5. LIMITATION OF LIABILITY: Licensor shall not be liable to the Licensee, or to any other person, party or entity for any losses, expenses, fees, or damages of any kind, including, without limitation, any direct, indirect, special, incidental or consequential damages, in any way arising out of this Agreement, including as a result of the use or inability to use the GIS Data, failure of Licensor to deliver any of the requested GIS Data, lost revenues, loss of use of data, the cost of recovering any programs or data, or the cost of any substitute program. Licensee agrees that its sole remedy in connection with this Agreement shall be the right to terminate this Agreement.

6. INDEMNIFICATION: To the extent permitted by law, Licensee agrees to indemnify and hold harmless the Licensor from any liability, claims, loss, damages, injury, costs and attorney fees arising out of procuring, compiling, collecting, interpreting, producing, using or communicating the GIS Data.

7. GENERAL PROVISIONS:

7.1. Venue and Governing Law: For the resolution of any dispute arising from this Agreement, venue shall be in the courts of the City and County of Denver, State of Colorado. This Agreement shall be governed by and construed under the laws of the State of Colorado, without regard to its conflict of laws principles.

7.2. No third-party beneficiaries: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Licensor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement, including but not limited to contractors, employees, sureties, agents, subcontractors and sub consultants of the Licensee. It is the express intention of the Licensor that any person other than the Licensee receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

7.3. Independent status: It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of agents, partners, joint ventures or associates between the Parties hereto or as constituting one Party as the employee of the other for any purpose or in any manner whatsoever.

7.4. Rights cumulative: All remedies available to the Licensor under the terms of this Agreement or by law are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

7.5. Waiver: The waiver by either Party of any default by the other Party, or the failure by one Party to give notice to the other Party of any default, shall not constitute a waiver or any subsequent default or be deemed to be a failure to give notice with respect to any subsequent default.

7.6. Headings: The captions and headings set forth herein are for convenience of reference only, and shall not be construed to define or limit the terms and provisions hereof.

7.7. Severability: If any provision, term, or part of this Agreement, is held to be invalid, illegal, unenforceable, or in conflict with any law of the State of Colorado, the validity, legality, and enforceability of the remaining portions or provisions shall not be affected, and the rights and obligations of the Licensor shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

7.8. Notices: All notices and other communications pursuant to this Agreement shall be in writing and shall be deemed to have been given and effective: (a) when delivered personally to the other party or (b) seven days after posting in the United States mail, first-class postage prepaid, properly addressed as follows or as otherwise may be provided in writing by the Party from time to time:

If to Licensor:

City and County of Denver, acting by and through  
its Board of Water Commissioners  
Attention: GIS Manager  
1600 W. 12<sup>th</sup> Avenue  
Denver, CO 80204

with a copy to:

City and County of Denver, acting by and through  
its Board of Water Commissioners  
Attention: Office of General Counsel  
1600 W. 12<sup>th</sup> Avenue  
Denver, CO 80204

If to the Licensee:

Entity receiving data  
Title of person with signing authority  
Name of person with signing authority  
Address of entity receiving data

7.9. Agreement as complete integration; amendments: This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties and signed by the signatories of the original Agreement. This Agreement and any amendments shall be binding upon the Parties, their successors and authorized assigns.

7.10. Modification: Any alterations, variations, modifications, or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representatives of each of the Parties.

7.11. Force Majeure: In the event either Party is unable to perform any of its obligations under this Agreement because of events or effects that cannot reasonably be anticipated or controlled; natural disasters; action or decrees of governmental bodies; or other events beyond the control of the Parties, the Party who has been affected by such occurrence shall give notice to the other Party and shall do everything reasonably practicable to resume performance of its obligations under this Agreement. Upon receipt of notice, the Agreement may be immediately suspended and may remain suspended until the affected Party can resume performance. If the period of suspension exceeds sixty (60) days, then either Party may terminate this Agreement upon written notice to the other Party.

7.12. Representation of Authority of Signatories: Each individual executing this Agreement on behalf of the Licensee represents and warrants that the execution and delivery of this Agreement and all related documents have been duly authorized by the Licensee for which the individual is signing and that the individual has the legal capacity to execute and deliver this Agreement and thereby bind the Licensee.

7.13. No Assignment: Neither this Agreement nor any of the rights granted by it may be assigned or transferred by the Licensee. This restriction on assignments and transfers shall apply to assignments and transfers that may occur by operation of law, as well as by contract, merger or consolidation. Any attempted assignment or transfer in derogation of this prohibition shall be void.

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of General Counsel

CITY AND COUNTY OF DENVER,  
acting by and through its  
BOARD OF WATER COMMISSIONERS

By: \_\_\_\_\_  
John Nolte, GIS Manager

Date: \_\_\_\_\_

The undersigned verifies that he/she has read the foregoing Agreement and agrees to accept and abide by all of its terms and conditions.

**Name of person with signing authority**

By: \_\_\_\_\_  
Name of person with signing authority

Title: \_\_\_\_\_