

**RESOLUTION
OF THE BOARD OF DIRECTORS OF
PARK MEADOWS METROPOLITAN DISTRICT,
DOUGLAS COUNTY, COLORADO**

**A RESOLUTION APPROVING LICENSE AGREEMENT BETWEEN
THE CITY OF LONE TREE AND PARK MEADOWS
METROPOLITAN DISTRICT (2009)**

WHEREAS, the Park Meadows Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"), and the City of Lone Tree, a home-rule municipal corporation of the State of Colorado (the "City"), as governmental entities, are authorized to enter into an intergovernmental agreement pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and C.R.S § 29-1-203;

WHEREAS, the District has previously entered into a License Agreement Between The City of Lone Tree and Park Meadows Metropolitan District (2008), effective April 1, 2008 (the "2008 Agreement"), authorizing the District to enter upon certain City property - roadway median improvements, rights-of-way within streets located within the City and adjacent City property - to construct, reconstruct, repair and maintain landscape improvements;

WHEREAS, such landscape improvements benefit the District's residents and property owners, and otherwise promote the public health, safety, and welfare;

WHEREAS, the District and the City wish to modify the 2008 License Agreement, and replace and supersede the 2008 License Agreement in its entirety by a License Agreement between the City of Lone Tree and Park Meadows Metropolitan District (2009) (the "Agreement"), attached hereto as Exhibit A and incorporated herein by this reference; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF PARK MEADOWS METROPOLITAN DISTRICT, DOUGLAS COUNTY, COLORADO THAT:

1. The Agreement, in the form attached hereto as Exhibit A, is hereby approved. The officers of the District are authorized to execute the Agreement, and the officers of and consultants to the District are authorized to take any actions that are necessary or appropriate for the District's performance of the terms of the Agreement.

APPROVED AND ADOPTED this 23rd day of November, 2009, by a vote of 4 for and 0 against.

PARK MEADOWS METROPOLITAN
DISTRICT, a quasi-municipal corporation
and political subdivision of the State of
Colorado

By: 
Glen E. Neidert, President

ATTEST:

By: 
Dale Norblom, Secretary

EXHIBIT A

**License Agreement Between The City of Lone Tree and
Park Meadows Metropolitan District (2009)**

01B

**LICENSE AGREEMENT
BETWEEN THE CITY OF LONE TREE
AND PARK MEADOWS METROPOLITAN DISTRICT
(2009)**

THIS LICENSE AGREEMENT (the "Agreement") is made between the City of Lone Tree, a home-rule municipal corporation of the State of Colorado (the "City"), and the Park Meadows Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"). The District and the City may be individually referred to as a "Party" and collectively as the "Parties".

RECITALS

A. Governmental entities are authorized to enter into intergovernmental agreements pursuant to provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and Section 29-1-203, C.R.S.

B. The City and the District entered into a License Agreement Between The City of Lone Tree and Park Meadows Metropolitan District (2008) on April 1, 2008 (the "2008 Agreement"). The Parties wish to modify the 2008 Agreement.

C. The District desires to provide landscape services within City rights-of-way that are located within the District. These landscape services promote the public health, safety, and welfare and will otherwise benefit District residents and property owners.

D. The City desires to grant a license to the District to provide landscape services within City rights of way.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the Parties agree as follows:

1. Modification of 2008 Agreement. The terms and provisions of this Agreement replace and supersede the terms and provisions of the 2008 Agreement in their entirety.

2. Grant of License. The City grants to the District a license over, under, and on or the surface of any City rights of way within which the District provides landscape services, and any adjacent City owned property which the District uses in connection with providing such landscape services ("License Areas"). Landscape Services include the construction, repair, maintenance, reconstruction, replacement, and/or enhancement of any Landscape Improvements, which term is defined below.

3. Exclusion. The District provides landscape services within a license area ("North Taos Trail Landscape Area") that is more specifically described in the Intergovernmental Agreement Between City of Lone Tree and Park Meadows Metropolitan District Regarding Installation and Maintenance of Landscape Improvements dated May 3, 2007 ("North Taos Trail Landscape IGA"). The terms and provisions under which the District provides landscape services to the North Taos Trail Landscape Area, which is specifically excluded from this Agreement, are specifically addressed in the North Taos Trail Landscape IGA.

4. Landscape Improvements. Landscape improvements consist of hardscape medians, trees, shrubs, flowers, ground cover and other plantings, and irrigation system facilities located within City rights-of-way (the "Landscape Improvements"). The Parties acknowledge that the Landscape Improvements conform to the City of Lone Tree Comprehensive Plan currently in effect. The Parties acknowledge that no redesign, expansion, vacation, or safety improvements within the License Areas which would require significant deletions or removal of any Landscape Improvements are contemplated in the City of Lone Tree Comprehensive Plan.

5. Use of License Areas. Use of License Areas by the District is subject to all existing easements, restrictions, and reservations of record at the Office of the Clerk and Recorder of Douglas County, Colorado, as of the date of recordation of this Agreement. All activities of the District within License Areas shall comply with applicable laws, ordinances, and regulations of the United States, State of Colorado, the City, or any other governmental entity having jurisdiction over License Areas, or the uses thereof.

6. Utility Services. The District shall pay for the cost of providing utility services, including electrical and water service to serve the Landscape Improvements within the License Areas.

7. Reconstruction and Major Alterations. The District shall not make any major alterations or additions to the existing Landscape Improvements within License Areas without the prior written approval of the City's designated representative. The District agrees to keep the Landscape Improvements in good repair and to redeliver any License Area to the City in good order and condition upon the expiration or termination of this Agreement with respect to such License Area, subject to the terms hereof.

8. Entry and Use by the City. The City reserves the right to enter upon the License Areas, at any hour of the day, for the purpose of inspecting the same, conducting surveys, and taking such other actions as it deems appropriate or necessary to protect and/or promote the public health, safety, or welfare. The City reserves the right to use the License Areas it deems necessary or appropriate in its operation of public streets, drainage, and other public infrastructure for which the

City is responsible. In addition, the City reserves the right to operate, maintain, install, repair, remove, or reconstruct any City facilities located within or affecting the License Areas, as it deems necessary or appropriate to protect and/or promote the public health, safety, or welfare. However, upon undertaking any activities that may affect the License Areas, the City will exercise its best efforts to minimize any damage to the Landscape Improvements. If practical, the City shall give the District's designated representative not less than three (3) days prior written notice of its intent to undertake activities that may affect a License Area or the Landscape Improvements located therein, to facilitate coordination between the City and the District to prevent or minimize damage to the Landscape Improvements. However, no notice need be given to the District if such activities are in connection with any emergency or if it is not otherwise practical to provide advance notice prior to undertaking such activities. In such case, the City shall inform the District's designated representative as soon as reasonably practical as to the location and extent of any damage to the Landscape Improvements of which the City has knowledge. The City shall bear the cost of restoring any damaged portions of any License Areas and Landscape Improvements (to the extent reasonably practical) to their condition prior to the activity causing such damage.

9. Notice. All notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed on behalf of the Party giving the same, and shall be deemed properly given and received, (a) when actually delivered and received in person, (b) on the next business day after deposit for delivery with a nationally recognized overnight carrier service during business hours on a business day; or (c) four (4) business days after deposit in the United States mail, by certified mail with return receipt requested. All such notices or other instruments shall be transmitted with delivery or postage charges prepaid, addressed to the Party at the address below or to such other address as such Party may designate by written notice to the other Party:

If to the City: City of Lone Tree
 Attention: Jack Hidahl, City Manager
 9220 Kimmer Drive, Suite 100
 Lone Tree, CO 80124

With copy to: White Bear & Ankele Professional Corporation
 Attn: City Attorney
 1805 Shea Center Drive, Suite 100
 Highlands Ranch, Colorado 80129

If to the District: Park Meadows Metropolitan District
 Attention: Bob Blodgett, District Manager
 c/o R.S. Wells, LLC
 8390 E. Crescent Parkway, Suite 500

Greenwood Village, CO 80111-2814

With copy to: Folkestad Fazekas Barrick & Patoile, P.C.
Attention: Ernest F. Fazekas II, District Legal Counsel
18 S. Wilcox Street, Suite 200
Castle Rock, CO 80104

Each Party may designate a representative for purposes of communication, which may be changed from time to time by such Party providing notice of such change to the other Party. The City's initial designated representative shall be the City Manager, Jack Hidahl. The District's initial designated representative shall be the District Manager, Bob Blodgett.

10. Assignment or Sub-License. The District covenants and agrees not to assign this Agreement or to enter into any sub-license for any portion of the License Area without obtaining the prior written approval of the City. Any assignment or sub-license in violation of this Agreement shall be null and void. However, the District may use contractors to provide Landscape Services within the License Areas.

11. Insurance. The Parties shall maintain the following types of insurance coverage:

(a) General Public Liability Coverage. The City and the District shall each maintain insurance coverage in the minimum amounts of \$150,000 per person and \$600,000 per occurrence or such greater amounts as may be recoverable under the Colorado Governmental Immunity Act, as set forth in C.R.S. 24-10-101, *et seq.*, as it may be amended from time to time.

(b) Automobile and/or Non-Owned/Hired Automobile Liability Coverage. The City and the District shall each maintain insurance coverage in the minimum amounts of \$1,000,000 per occurrence.

(c) Property Casualty Insurance. The City and the District agree that the District has an insurable interest in the Landscape Improvements. The District may, at its option, maintain property damage insurance equal to the replacement cost of the Landscape Improvements. If the Landscape Improvements are damaged, and repair or replacement of the damaged Landscape Improvements are covered by property damage insurance policy maintained by the District, the District shall repair or replace the damaged Landscape Improvements to their pre-existing condition up to but not to exceed the amount of the insurance proceeds received by the District, unless otherwise agreed to by the Parties. In the event that the Landscape Improvements are damaged, and to the extent that such damage is

not covered by the District's Property Casualty Insurance, or is not otherwise addressed in this Agreement, the Parties shall endeavor in good faith to reach agreement on sharing the cost of repair or replacement of damaged Landscape Improvements.

(d) Personnel Insurance. The District shall require that all of its contractors and other persons who perform services in connection with the repair, maintenance, reconstruction, or replacement of the Landscape Improvements are in compliance with all Colorado and federal laws pertaining to workman's compensation insurance, and unemployment insurance. The City shall require that all of its employees and contractors who perform services for the City that may affect or be affected by the License Area or the Landscape Improvements are in compliance with all Colorado and federal laws pertaining to workman's compensation insurance, and unemployment insurance.

(e) Insurance Certificates. Within thirty (30) days of a written request, either Party shall furnish to the other Party current certificates or memoranda of insurance showing compliance with the foregoing requirements. All policies maintained by either Party shall name the other Party as an additional insured. All such policies, certificates, and memoranda shall state that the policy or policies to which they pertain cannot be cancelled or altered with less than thirty (30) days prior written notice to both the City and the District.

12. Term. The initial term of this Agreement shall be effective as of the execution by both Parties and shall continue until December 31, 2009. This Agreement shall be subsequently renewed for successive one-year terms beginning on January 1, 2010, unless terminated in accordance with the provisions of Section 13.

13. Termination. This Agreement may be terminated by the City or the District on the following terms and conditions.

(a) Termination by the City. This Agreement may be partially terminated by the City, with respect to a License Area, upon six (6) months prior written notice to the District if the City vacates a portion of the right-of-way within any License Area, which vacation will require the removal of all or a portion of the Landscape Improvements contained therein; or the City materially redesigns a portion of street located in any License Area for safety or capacity expansion purposes, which, when implemented, will require in the removal of all or a portion of the Landscape Improvements contained therein.

(b) Termination by the District. This Agreement shall terminate at the end of the then current term, if the District's Board of Directors fails to appropriate funds for the next renewal term sufficient to permit the District to perform its responsibilities and obligations

hereunder. In such event, the District shall endeavor in good faith, to provide the City with notice of non-renewal not less than three (3) months prior to the termination of the then-current term, but in any event within a reasonable time after action resulting in a failure to appropriate. Failure to provide three (3) months notice shall not affect the validity of the non-renewal of this Agreement and its termination on December 31 of the then current year.

(c) Pre-existing Liability. Any liability or obligation, which either Party incurs under this Agreement prior to its termination date shall survive the termination of this Agreement. Upon termination of this Agreement, the District shall have no responsibility to remove any of the Landscaping Improvements or to pay the cost of removing any of the Landscaping Improvements.

14. Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of this Agreement as a whole or any part thereof other than the part declared to be invalid and there shall be substituted for the affected provision, a valid and enforceable provision as similar as possible to the affected provision.

15. Pre-Existing License Agreements. Except as set forth in the Agreement, execution of this Agreement by the Parties shall replace any existing license agreements between the Parties that pertain to any License Area that is the subject of this Agreement.

16. Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to any person other than the Parties, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms conditions, or provisions thereof, and all of the covenants, terms and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties.

17. Governmental Immunity. Both the City and the District, their officials, officers, directors, agents and employees, are relying on, and neither the City nor the District waive or intend to waive by any provision of this Agreement, any rights, immunities, and/or other protections provided by the Colorado Governmental Immunity Act, set forth in C.R.S. 24-10-101, *et seq.*, or otherwise available to the City and/or the District.

18. Consent to Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either Party to this Agreement with respect to this Agreement shall be proper only if such action is commenced in the District Court for Douglas County, Colorado. The Parties expressly waive the right to bring such action in or to remove such action to any other court, whether state or federal.

19. Force Majeure. Neither Party shall be liable for failure to perform hereunder if such failure is the result of Force Majeure and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any Force Majeure. "Force Majeure" shall mean causes beyond the reasonable control of a party such as, but not limited to, accidents, weather conditions, acts of God, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities.

20. Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon any permitted successors or assigns of the Parties.

21. Entire Agreement. This Agreement, and any agreement or document referred to herein, constitutes the entire understanding between the Parties with respect to the subject matter hereof and all other prior understandings or agreements shall be deemed merged into this Agreement.

22. Authority. Each Party represents to the other that such Party has full power and authority to execute, deliver, and perform this Agreement; that the individuals executing this Agreement on behalf of said Party are fully empowered and authorized by all requisite action to do so; that this Agreement constitutes a valid and legally binding obligation of such Party enforceable against such Party in accordance with its terms; that such execution, delivery, and performance will not contravene any legal or contractual restriction binding upon such Party; and that there is no legal action, proceeding or investigation of any kind now pending or to the knowledge of such Party threatened against or affecting such Party or the execution, delivery, or performance of this Agreement.

23. Counterparts. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one, and the same, instrument.


In witness whereof, the Parties have executed this Agreement on the dates set forth below.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

DISTRICT:

PARK MEADOWS METROPOLITAN
DISTRICT, a quasi-municipal corporation and
political subdivision of the State of Colorado

Date: 11 - 23 - 09

By: 
Glen E. Neidert, President

ATTEST:

By: 
Dale Norblom, Secretary

CITY:

CITY OF LONE TREE,
a home-rule municipal corporation
of the State of Colorado

Date: 1/5/10

By: *James D. Gunning*
James D. Gunning, Mayor

ATTEST:

By: *Jennifer Pettinger*
Jennifer Pettinger, CMC, City Clerk

