

RESOLUTION NO. 2123

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
APPROVING A LICENSE AGREEMENT BETWEEN THE CITY
OF GOLDEN AND NEON, INC.**

WHEREAS, NEON, Inc. desires to install instruments to collect water quality related data at the USGS stream flow gauge located on Clear Creek at Hwy 6; and

WHEREAS, the City of Golden owns the land where NEON, Inc. desires to place such instruments; and

WHEREAS, data collected by NEON, Inc. would be available to the City of Golden and improve the City's knowledge about the ecology of Clear Creek; and

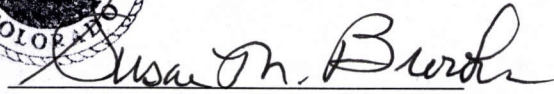
WHEREAS, City Council has considered the license agreement between the City of Golden and NEON, Inc.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:


City Council accepts the license agreement, substantially in the form attached hereto as Exhibit A. The Mayor is authorized to execute such agreement.

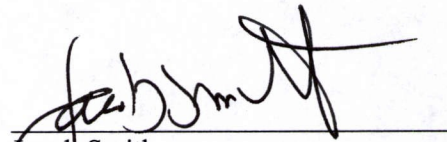
Adopted this 28th day of April, 2011.




Susan M. Brooks, MMC
City Clerk

Approved as to form:


David S. Williamson
City Attorney


Jacob Smith
Mayor

Resolution No. 2123

Page 2

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular business meeting thereof held on the 28th day of April, A.D., 2011.



ATTEST:

A handwritten signature in cursive script, reading "Susan M. Brooks", is written over a horizontal line.

Susan M. Brooks, City Clerk of the City of
Golden, Colorado

LICENSE AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 200__, the effective date of the Agreement, by and between the CITY OF GOLDEN, COLORADO, a municipal corporation organized under the laws of the State of Colorado, (the "City"), with offices at 911 Tenth Street, Golden, Colorado, and NEON, Inc. whose address is 3223 Arapahoe Ave, Suite 210, Boulder, CO 80302.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN, THE CITY AND THE LICENSEE AGREE AS FOLLOWS:

1. License. The City grants, at no fee, to The Licensee a non-exclusive revocable license to locate, Construct, operate, access, and maintain within the affected area, as depicted in Exhibit A (hereinafter referred to as "The Site") the following instruments to collect, and support the gathering of, biological, biophysical, biogeochemical, and land-use and land-management data (Improvements):

- (1) An Aquatic Unit consisting of in-stream water chemistry, flow, and level instrumentation, wind anemometer, meteorological instrumentation and other ancillary equipment and infrastructure as deemed necessary for aquatic prototyping activities.
- (2) A STREON Unit consisting of a nutrient tank, input line, recirculation chamber, flume tank, electrified experiment basket and other ancillary equipment and infrastructure as deemed necessary for STREON activities. No chemicals will be added to the stream.
- (3) A Pond Unit including a deployment buoy and associated instrumentation.

Additionally, recognizing that the knowledge learned from the Project may suggest other scientific experiments, NEON may conduct, with the City's prior consent, which will not be unreasonably withheld, additional tests on the Site using other instruments that are consistent with the project.

2. Construction. Plans for the installation and construction of the Improvements shall be submitted to and approved by the City. The design, construction and maintenance of the improvements shall be the sole responsibility of The Licensee. NEON shall have the right to make such minor changes, alterations and/or additions to the Aquatic, STREON and Pond Units, and other instruments as NEON may desire from time to time subject to the limitations on use of the Site as set forth in this Agreement. Installation of any additional infrastructure on the Site shall require prior review and approval of Site Owner, which shall not be unreasonably withheld.

3. Maintenance. The Licensee shall, at its expense, maintain the Improvements in good condition including the landscape within the above-described area.

4. General Obligations with Respect to Initial Construction and Maintenance Work.

- a. All work performed by The Licensee pursuant to this Agreement shall be done:
 - 1) In a good workmanlike manner, and
 - 2) In a timely and expeditious manner, and
 - 3) In a manner which minimizes inconveniences to the public and individuals, and

4) In accordance with all applicable codes, rules and regulations of the City.

b. Inspection -- All work performed by The Licensee within the site shall be subject to inspection by the City. The contractor performing the work shall apply for any required City permits prior to starting the work. The Licensee shall promptly perform reasonable remedial action as required by the City pursuant to the inspection.

5. Indemnification and Release. The Licensee shall indemnify, defend and save harmless the City against any and all liabilities, damages and claims that may arise by reason of the exercise of the rights granted under this agreement .

6. INSURANCE. Licensee agrees to procure and maintain in force during the term of this Agreement, at its own cost, the following coverages:

1. Workers' Compensation insurance as required the State of Colorado .

2. Commercial General or Business Liability Insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and ONE MILLION DOLLARS (\$1,000,000.00) general aggregate.

3. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for any one occurrence, with respect to each of the Licensee's owned, hired or non-owned vehicles assigned to or used in performance of the services. In the event that the Licensee's insurance does not cover non-owned automobiles, the requirements of this paragraph shall be met by each employee of the Licensee who utilizes an automobile in providing services to GOLDEN under this Agreement.

A Certificate of Insurance shall be completed by the Licensee's insurance agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City prior to commencement of any services under this Agreement. The Certificate shall identify this Agreement, and shall be provided within 30 days of the effective date of this agreement and annually (within 30 days of the anniversary date of this agreement) thereafter so long as this agreement remains in effect. The completed Certificate of Insurance shall be sent to:

City of Golden
Attn: _____
911 10th St.
Golden, CO 80401

At least 20 days prior to the effective date for any material change(s) in insurance coverage required herein, Licensee will notify the City such change, and timely take such steps that may be necessary to comply with the insurance provisions of this agreement. The City shall have the right to request and receive a certified copy of any policy and any endorsement thereto.

The parties hereto understand and agree that the City, its officer and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any

other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to the City, its officers, officials, or employees.

7. Compliance with laws. This Agreement relates only to permission to encroach onto a public right-of-way under the terms and conditions set forth. The execution of this license agreement shall not relieve The Licensee from complying with provision of the Golden Municipal Code, including compliance with zoning ordinances and subdivision regulations nor shall this Agreement be construed as approval by the City to construct the improvements contemplated by The Licensee to the extent that City approvals or permits are otherwise required by the Golden Municipal Code or statute. The execution of this license agreement, and the improvements constructed pursuant to this agreement, shall not relieve The Licensee, or otherwise be construed as a release or waiver, with respect to any obligation of The Licensee to not interfere with the subjacent lateral support of the City's right-of-way.

8. Police Power Reserved. The rights granted herein shall not limit or otherwise restrict the right of the City to exercise its police power with respect to its control of the right-of-way.

9. Term & Termination.

- a. Unless terminated earlier as provided herein, the term of this Agreement is five (5) years from the effective date of this Agreement, and subject to renewal for additional years upon further agreement of the Parties.
- b. Either party may terminate this Agreement, with or without cause, by providing the other party with 30 days written notice. Upon termination, and at the request of the City, The Licensee shall remove at its expense all Improvements located within the Site pursuant to this Agreement if the City determines, in its sole discretion, that such Improvements may, now or in the future, constitute a hazardous condition or otherwise interfere with a public use of the right of way. All property and improvements affected by such a removal shall be restored by the Licensee to substantially its former condition after said removal.

10. Assignment. The Licensee may assign any or all of its rights, duties and responsibilities set forth in this Agreement only with the prior written permission of the City.

CITY OF GOLDEN

THE LICENSEE

Jacob Smith
Mayor

By: _____
Capacity: _____

ATTEST:

Susan M. Brooks, MMC
City Clerk

Exhibit A

