

PUBLIC RIGHT OF WAY LICENSE AGREEMENT
Pronghorn Meadows Circle and Sonoran Drive (APN 5329401062)

THIS PUBLIC RIGHT-OF-WAY LICENSE AGREEMENT (“Agreement”), is made this ____ day of August, 2020, between EL PASO COUNTY BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY COLORADO, whose street address is 200 South Cascade Avenue, Colorado Springs, CO 80903 (hereinafter “Licensor”), and Ralph E. Weil and Janice L. Weil, whose address is 3690 Pronghorn Meadows Circle Colorado Springs, Colorado, 80922 (collectively “Licensees”). The Licensor and the Licensees may be singularly referred to herein as the Party or collectively referred to herein as the Parties.

RECITALS:

WHEREAS, Licensees own real property located in El Paso County, Colorado with an address of 3690 Pronghorn Meadows Circle Colorado Springs, Colorado, 80922 (“the Property”); and

WHEREAS, Licensor owns those certain rights-of-way known as Pronghorn Meadows Circle and Sonoran Drive, which rights-of-way have improved roads which abut the Property; and

WHEREAS, Licensees had a fence and landscaping constructed, and it has been determined that the fence and landscaping are located within the in the County rights-of-way; and

WHEREAS, Licensor, as a convenience to Licensees, consents to allow the Licensees to use portion of the Pronghorn Meadows Circle and Sonoran Drive rights-of-way for the purposes of installation, maintenance, repair and replacement of fence and landscaping; and

WHEREAS, Licensee is required to obtain all necessary permits and pay all fees prior to performing any work in the Licensor’s right-of-way.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The Parties incorporate the above-stated Recitals into this Agreement as if fully stated herein.

2. Description and Use of the Licensor’s Premises: Licensor hereby grants to Licensees a License for the installation, maintenance and repair of the existing fence and landscaping as they exist on the Commencement Date of this Agreement (“the Improvements”) within portions of Licensor’s rights-of way known as Pronghorn Meadows Circle and Sonoran Drive, as depicted on Exhibit A, attached hereto and incorporated herein by reference (the “Licensed Premises”). As this Agreement only creates a license, each Party’s rights and

obligations stated hereunder are exclusively contractual. Thus, each Party agrees and understands that this Agreement does not create a real property interest of any kind or nature, or any type of possessory estate or possessory interest in the Licensed Premises. The entire Licensed Premises shall be for the use of Licensees, their employees, agents, servants and invitees for any lawful purposes associated with the installation, maintenance and lawful use of the Improvements.

3. Term and Commencement of Use: The License shall commence on the date first written above, hereinafter referred to as the Commencement Date, and it shall continue until the Licensor requires the Licensed Premises for other public purposes, or unless sooner terminated in whole or in part by either Party as more fully set forth in Paragraph 5 below.

4. Additional License Terms:

a. Utilities. The Licensees are responsible to ensure no damage occurs to existing utility and other installations that may be present on the right of way during installation, maintenance or repair of the Improvements. Licensor reserves the right to issue work in the right of way permits allowing installation of utilities in the Licensor's public right of way. The Licensees shall not interfere with these installations, which will take precedence over any Improvements, now in place or installed in the future. If any utility installation damages all or any portion of the permitted Improvements within the Licensed Area, Licensor shall have no liability to the Licensees for such damages.

b. Damage. The Licensees are responsible for reimbursing Licensor for the repair of any damage to pavement, fences, signs, delineators, guardrails, landscape plantings of the Licensor, or any other right of way improvements resulting from the Licensees' operations. The Licensees shall hold Licensor, its elected officials, appointees, officers, and employees free and harmless from all risk of injury or damage to Licensees, property of Licensees, and Licensees' agents, employees, assigns and successors or others which may result from debris, foreign objects, or chemical contamination resulting from normal maintenance activities performed by Licensor. The Licensees are responsible for reimbursing Licensor for the repair and re-survey of any damage and disturbance to any survey monuments resulting from activities within the Licensed Premises by the Licensees.

c. Licensor's Need for Right of Way. Licensor will not replace or relocate any Improvements placed within the right of way or the Licensed Premises if Licensor has to remove Improvements, in whole or in part, for any reason including, but not limited to safety, maintenance, or construction.

d. Work in the Right of Way Permit. Prior to any major construction, operation, or maintenance activities within the Licensed Premises, the Licensees shall obtain a Work in the Right of Way Permit from the El Paso County Department of Public Works in accordance with the El Paso County Engineering Criteria Manual. A new work in the Right of Way Permit will be required whenever the previous Work in the Right of Way Permit has expired or for each new activity not identified in the then current Work in the Right of Way Permit.

e. Maintenance of Improvements. As the Improvements will be a part of Licensor's public right of way, the Licensees are expected to maintain the Improvements in an acceptable manner. Upon notice of any deficiency in the Improvements, either: a) by Licensor; or b) by their own observation; or c) by any other means, the Licensees shall take action as soon as possible, but not later than fifteen (15) working days after the mailing date of written notice from Licensor to correct the deficiency and to protect the safety of the traveling public. In the event the Licensees, for any reason, do not or cannot correct the deficiency within fifteen (15) working days of written notice as contemplated above, or demonstrate that action satisfactory to cure such default has been commenced and will be completed in a timely manner, or otherwise demonstrated that no deficiency exists, Licensor reserves the right to correct the deficiency and to bill the Licensees for such work. Licensees shall pay any such bill within thirty (30) days after receipt. Under these circumstances, Licensor shall only correct the deficiency to the extent it affects use of the right of way and/or the public's health, safety, and welfare.

f. Maintenance of Right of Way. As part of its normal maintenance, repair and snow removal operations, Licensor may drive across or work adjacent to the Improvements. Though Licensor shall take reasonable care when doing so, Licensor shall not be responsible to Licensee for any damage to the Improvements that may occur in the course of maintenance, repair or snow removal operations. Licensor will not provide snow removal within the Licensed Premises. Some snow may be left in front of the Licensed Premises during normal snow removal activities.

g. Natural Disasters. Licensor shall not be liable to Licensees in the event of an emergency, such as a fire, flood, or other natural cause which damages the Licensed Premises or the Improvements. In the event the Licensed Premises are damaged due to a natural disaster, it shall be the sole responsibility and cost of Licensees to return the Licensed Premises to its original condition.

5. Termination:

a. Termination by Licensor. Licensor at any time and 1) for any valid public purpose, as determined at Licensor's sole discretion, or 2) upon violation of any term of the License by Licensees, shall be entitled to terminate the License on all or part of the Licensed Premises by giving at least 30 days' prior written notice to Licensees. In addition, the El Paso County Engineer shall have the authority to immediately terminate the License on all or part of the Licensed Premises if he or she determines that the public health, safety or welfare is adversely affected by the License. Upon such termination, Licensor may direct Licensees to remove all or a portion of the Improvements from the Licensed Premises at Licensees' sole expense, and the Licensees shall restore the Licensed Premises to its original condition to the extent reasonably practicable, ordinary wear and tear excepted.

b. Termination by Licensee. Licensees at any time shall be entitled to terminate the License on all or part of the Licensed Premises by giving at least 30 days' prior written notice to Licensor. Upon termination by the Licensees of the License on all or part of the Licensed Premises, and if requested by Licensor, the Licensees shall remove the Improvements

within the 30-day notice period at their own expense and restore the Licensed Premises to its original condition to the extent reasonably practicable, ordinary wear and tear excepted.

c. Effect of Termination. Upon termination of the License on all or part of the Licensed Premises by either Party, Licensees shall not be entitled to the payment of any compensation or just compensation under any cause of action at law or in equity for the retaking of the Licensed Premises or removal or relocation of the Improvements. If the License is terminated on only a portion of the Licensed Premises, Licensor and Licensees shall retain their respective rights and obligations under this Agreement with respect to the remaining portions of the Licensed Premises, and Licensees shall not have any further rights or obligations with respect to any part of the Licensed Premises for which the License has been terminated.

6. Condition of the Licensed Premises, Obligation to Make Repairs, Obligation to Remain in Compliance with Laws: Licensees agree and understand that they commence their use of the Licensed Premises "AS IS" and without any warranties of any kind or nature, including without any warranties as to the state of Licensor's title to the Licensed Premises. It shall be the Licensees' sole obligation to maintain and make any necessary repairs to the Improvements and the Licensed Premises, and to do so in full compliance with the requirements of the El Paso County Department of Public Works and any and all other applicable state, federal, or local laws, regulations, and ordinances.

7. Indemnification/Hold Harmless: The Licensees shall indemnify and hold the Licensor and its heirs, successors and/or assigns harmless from and against any and all damages, loss, cost, expense, liabilities of any kind or nature as a result of, or in connection with, Licensees', their contractors', agents', or employees' activities on the Licensed Premises, failure to comply with the terms of this Agreement, or failure to maintain the Licensed Premises in a safe condition. Nothing in this section shall be deemed to waive or otherwise limit the defense available to Licensor pursuant to the Colorado Governmental Immunity Act, §§24-10-101, C.R.S., *et seq.* or as otherwise provided by law.

8. Assignment: Licensees shall not assign or otherwise transfer this License or Agreement or any right or obligation hereunder without the prior written consent of the Licensor, which consent shall not be unreasonably withheld, conditioned, or delayed. Should the Licensor agree to such assignment, Licensor and Licensees hereby expressly agree that the intent of such benefit to said successors in title is not to create an easement in the Licensed Premises, but rather, a License. Licensor and Licensees, both for themselves and for their successors in title, agree that this License is terminable at the will of the Licensor as set forth in Paragraph 5 above.

9. Construction: The rule of strict construction does not apply to this instrument. This License shall be given a reasonable construction in light of the intention of the Licensor to confer on Licensees a usable right to maintain and repair, the Improvements described herein.

10. Right to Inspect: Licensor may enter upon the Licensed Premises at any time and without notice to inspect the condition of the Licensed Premises.

11. Remedies: The Parties hereby agree that if any dispute cannot be resolved by mutual agreement of the Parties, such dispute may be resolved at law or in equity.

12. No Third Party Beneficiaries: This Agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages or to bring any legal action or other proceeding against any Party hereto for any breach or other failure to perform this Agreement.

13. Entire Agreement: This Agreement, together with all exhibits attached hereto, constitute the entire agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties hereto.

14. Binding: Licensees and Licensor hereby agree that the covenants, stipulations, and conditions as stated in this Agreement shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of Licensor and Licensees in the event the Licensor agrees to an assignment of the Agreement.

15. Authority: The undersigned hereby acknowledge and represent that they have legal authority to bind the Party for whom they are executing this Agreement.

16. Applicable Law: The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this Agreement. The Parties understand and agree that, in the event of any litigation that may arise under this Agreement, jurisdiction and venue shall lie in the District Court of El Paso County, Colorado.

17. Execution: This Agreement, including facsimile copies of this Agreement, may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In the event facsimile copies of this Agreement are executed, the original signatures shall be compiled and attached to form the original Agreement.

18. Recording: This Agreement shall be recorded by the County in the records of the El Paso County Clerk and Recorder's Office.

IN WITNESS WHEREOF, Licensor and Licensees have executed this Agreement as of the day and year first above written.

ATTEST:

LICENSOR:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____
Chuck Broerman
County Clerk and Recorder

By: _____
Mark Waller, Chair

APPROVED AS TO FORM:

By: _____
County Attorney's Office

STATE OF COLORADO)
) S.S.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this _____ day of August, 2020,
by Mark Waller, as Chair of the Board of County Commissioners of El Paso County, Colorado,
and as attested to by Chuck Broerman, County Clerk and Recorder.

WITNESS my hand and official seal.

My Commission Expires: _____.

Notary Public

LICENSEES:

RALPH E. WEIL

STATE OF COLORADO)
) S.S.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this _____ day of August, 2020,
by Ralph E. Weil.

WITNESS my hand and official seal.

My Commission Expires:_____.

Notary Public

JANICE L. WEIL

STATE OF COLORADO)
) S.S.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this _____ day of August 2020,
by Janice L. Weil.

WITNESS my hand and official seal.

My Commission Expires:_____.

Notary Public