

License Agreement for Ditch Crossing

1. Parties. The parties to this License Agreement (hereinafter "Agreement" or "License Agreement") are the Town of Erie ("Town") and the St. Vrain Valley School District ("Licensee"). The Town and the Licensee may hereinafter be referred to as the "Parties," collectively, or "Party," individually.
2. Recitals. The Licensee desires to obtain the permission of the Town to construct two crossings across the Leyner-Cottonwood Ditch ("Ditch") for the following purposes: to connect a solar array to a meter at Red Hawk Elementary School and maintain the same and a culvert in order to cross the ditch. The Licensee owns the property at the location described in **Exhibit A**. The Town owns the segment of the Ditch that the Licensee desires to cross, evidenced by the Agreement between the Leyner-Cottonwood Consolidated Ditch Company and the Town of Erie dated February 20, 2007. Accordingly, in consideration of the mutual promises set forth in this Agreement, the Parties covenant and agree as follows:

3. Construction.

3.1 Pursuant to the terms of this Agreement, the Licensee is granted the license to construct the following facilities that cross the Ditch: (1) Place one ____ inch steel pipe by directional bore at a minimum depth of not less than four (4) feet under the bottom of the Ditch; and (2) permanent crossing for maintenance and repair. As part of installing the permanent crossing, Licensee shall remove the existing culvert in close proximity to the permanent crossing as shown in **Exhibit B**. These facilities shall be hereafter referred to as the "Installation," which shall be constructed pursuant to the plans and specifications attached hereto as **Exhibit B**. Any revision to said plans and specifications must be approved by the Town in writing prior to construction. The Town's review of the plans and specifications is solely for its own benefit and creates no obligation on the Town.

3.2 All portions of the Ditch, including bottoms, sides, banks, and all affected portions of the Town's property surrounding the Ditch that are disturbed by the Licensee's Installation shall be restored to their original condition to the extent reasonably practical so the carrying capacity of the Ditch is not adversely affected by the Installation. Any and all fencing and other facilities appurtenant to the Town's property shall be replaced in a condition at least equal to the condition of such facilities and appurtenances prior to construction.

3.3 The Licensee shall not spill dirt, debris, or other foreign material into the Ditch. In the event that dirt, debris, or other foreign material is spilled into the Ditch,

the Licensee agrees to completely remove all such dirt, debris, or other foreign material following construction.

3.4 The Installation shall be completed six (6) months after written approval is received. If the installation is not completed by that date, this Agreement expires and is of no force or effect. The Licensee shall notify the Town at least forty-eight (48) hours prior to commencement of the Installation. All work performed under this License Agreement shall be done in a competent manner and is subject to inspection by the Town. Licensee understands that construction must occur when the Ditch is not expected to be used for carrying and delivering water for a sufficient period of time to allow construction of the Installation to be completed, without interruption of water deliveries. In the event that the Ditch unexpectedly begins running water during construction, all work shall cease and the ditch shall be restored to carry water until such time as the water ceases to flow.

3.5 Licensee shall require any contractor constructing the Installation to agree in writing to pay as liquidated damages \$7,500 per day to the Town for any day that the Ditch cannot deliver water which is available, in the event that said construction interrupts said deliveries for any reason.

3.6 Licensee shall bear the entire cost of the Installation, including all construction, maintenance, operation, repair and replacement costs.

3.7 Licensee shall be solely responsible for obtaining all necessary permits for the work contemplated hereunder. Licensee shall present all final permits to the Town's Public Works Director prior to construction.

4. Other Property Interests. This License Agreement applies only to the property rights that are owned by the Town in the Ditch, including any easements or other property rights appurtenant to the Ditch. Licensee must separately obtain any additional easements, licenses, or other agreements from any other owner of other interests in the real property crossed by the Installation as may be necessary.

5. License Fee. The Licensee shall pay to the Town a license fee of \$1,000.00 upon execution of this License Agreement and prior to the commencement of construction of the Installation. This license fee shall be in addition to any other costs for which the Licensee is responsible pursuant to this License Agreement.

6. Inspection.

6.1 The Licensee shall notify the Town at least ten (10) days prior to commencement of any replacement or repair of the Installation permitted by this

Agreement, except for emergency repairs pursuant to ¶8 of this Agreement. The Town is permitted to inspect the Installation or replacements or repairs during construction. Upon completion of the Installation or replacements or repairs, the Town may inspect the Installation, replacement or repairs and shall notify the Licensee of any defects in the Installation. The Licensee shall correct any such defects within ten (10) days, or at the first available construction opportunity, after receiving notice. The Licensee shall provide the Town with as-built drawings of the Installation within 60 days after construction is completed.

6.2 Licensee agrees to pay the Town its reasonable costs for its inspection of the Installation, replacements, or repairs.

6.3 The Town's right to inspect the Licensee's Installation or replacement of the Installation in no way relieves the Licensee of its liability for improper installation. The Town's inspection is solely for the benefit of the Town and creates no obligation to the Town.

7. Reimbursement of Expenses. The Licensee agrees to reimburse the Town for all reasonable engineering and legal costs incurred by the Town in preparing and approving this Agreement and the costs of inspection as described in ¶6. Costs chargeable to the Licensee shall be paid within thirty (30) days of the billing date. If payment has not been received by the Town within said thirty (30) days, this License shall immediately terminate.

8. Maintenance.

8.1 Licensee specifically agrees and pledges to maintain, repair and replace the Installation so as not to require the Town to maintain, repair or replace it. If Licensee fails to properly maintain, repair or replace any portion of the Installation for which it is responsible after ten (10) days' notice of the need for same, the Town may, at its own option, conduct its own maintenance, repair or replacement, and Licensee shall reimburse the Town for the cost of such work within thirty (30) days. In the event Licensee fails to maintain, repair or replace the Installation, it shall be held liable for any loss, damage or injury to the Town. If the Town conducts its own maintenance, repair or replacement, it does not waive the right to hold Licensee liable for damages caused by Licensee's failure to maintain, repair or replace.

8.2 In the event of an emergency, Town or Licensee may conduct maintenance or repair immediately, giving notice to the other party as soon as possible at the emergency contacts identified in ¶13. If the Town conducts emergency work, it shall be reimbursed for the cost of the work. Under no circumstances shall the Town be

responsible or held liable for damages to the Installation resulting from maintenance or repair to the Ditch.

9. Water Loss. The Licensee agrees that the Installation will not increase carriage or transit loss over the loss that occurred historically. The Licensee agrees to compact earth materials so that such additional water losses will not occur. If the Licensee's Installation increases carriage or transit loss in the Ditch, the licensee agrees to repair the construction to prevent such additional loss.

10. Liability and Indemnification.

10.1 By virtue of entering into this agreement, the Town: (1) assumes no liability for use, operation, or existence of the Licensee's Installation; and (2) assumes no additional responsibilities or obligations related to the Licensee's future or additional activities in the area described in **Exhibit A** that are required by this Agreement.

10.2 To the extent permitted by Colorado law, the Licensee agrees to indemnify and hold harmless the Town from all claims and liability for damage or injury to property or persons arising or caused directly or indirectly the Licensee's construction, restoration, maintenance of, or failure to maintain, the Installation and the Licensee's occupancy and use of the area located in **Exhibit A**. By reviewing and approving the plans and specifications attached as **Exhibit A**, the Town does not warrant that such plans and specifications or the structures depicted in them are free of defects or hazards and does not assume any obligation or risk of any kind whatsoever as a result of its review and approval.

11. No Restriction on Town's Rights. The License granted to the Licensee herein in no way restricts the Town's right to the use of its easement to construct, operate, or maintain all existing structures and facilities of the Ditch.

12. No Right to Take Water. No water shall be taken from the Ditch by virtue of this License Agreement.

13. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given at the address set forth below, or at such other address as has been previously furnished in writing to the other Party or Parties. Such notice shall be deemed to have been given when deposited in the U.S. mail.

TOWN:

Town of Erie
Public Works Director
645 Holbrook St.
PO Box 750
Erie, CO 80516
tfessenden@erieco.gov

COPY TO:

Paul Zilis
Vranesh and Raisch, LLP
1720 14th Street, Suite 200
Boulder, CO 80302
pjz@vrlaw.com

LICENSEE:

COPY TO:

14. Waiver of Breach. The waiver by any party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party.
15. Recording. This Agreement shall be recorded in the records of the Clerk and Recorder of Boulder County, Colorado, at the cost of the Licensee.
16. Exhibits. All exhibits referred to in this Agreement are, by reference incorporated in this Agreement for all purposes.
17. Assignment. This License shall not be assigned by the Licensee without the prior approval in writing of the Town.
18. Binding Effect. This License Agreement shall be binding upon the successors and assigns of the respective Parties hereto. The obligations and benefits of this Agreement shall specifically run with the land described in **Exhibit A**.
19. Attorneys' Fees. If any party breaches this Agreement, the breaching party shall pay all of the non-breaching party's reasonable attorneys' fees and costs in enforcing this Agreement whether or not legal proceedings are instituted.
20. Modification. This License Agreement may be modified only by the signed, written agreement of both Parties and their successors in interest.

By: _____

By: _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____ as _____.

Notary Public

By: _____

By: _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, as _____.

My commission expires: _____.