

LICENSE AGREEMENT
AND
CONFIRMATION, GRANT, AND CONVEYANCE
OF DITCH RIGHT-OF-WAY AND EASEMENT

THIS AGREEMENT (the "Agreement"), made this _____ day of _____, _____, between **The Rocky Mountain Water Company**, a Colorado Corporation **d/b/a The Wannamaker Ditch Company** (the "Licensor"), whose address is PO Box 4030, Golden, Colorado 80402, and _____ (the "Licensee"), whose address is _____, _____ (the "Lienholder"), whose address is _____, is executing this Agreement to acknowledge that it has subordinated its lien in the Licensee's Property to the lien of this Agreement. _____ and _____ [*insert party names here*] may hereinafter be individually referred to as a "Party" and collectively referred to as "Parties."

RECITALS

1. Licensor's Property. Licensor is the owner and operator of an existing ditch system, commonly known as the Wannamaker Ditch ("Ditch"), that includes rights-of-way and easements ("Right-of-Way and Easement") to inspect, use, operate, maintain, and repair the Ditch (collectively, the "Ditch System"), depicted generally on the attached Exhibit ___. Licensor also uses the rights-of-way and easements to divert, control, transport, carry, and deliver water and to inspect, use, operate, maintain, and repair the Ditch System.

2. Licensee's Property. Licensee is the owner of certain land and property more particularly described as follows:

[INSERT OR ATTACH LEGAL DESCRIPTION]

located in _____ County, Colorado, upon which a portion of Licensor's Ditch System, Right-of-Way and Easement are located, as depicted on the attached Exhibit ___.

The street address of Licensee's Property is:

The _____ County Assessor's Office currently identifies Licensee's Property by Parcel/Schedule No. _____.

3. Installation, Construction, Maintenance, and Use of Structures ("Improvements"). Licensee desires to (1) relocate and/or confirm the nature and location of a portion of Licensor's existing Ditch System on Licensee's Property; (2) confirm Licensor's right-of-way and easement on Licensee's Property for its Ditch System; and (3) install, construct, maintain, and use certain structure(s) associated with Licensor's Ditch System on Licensee's Property and briefly described as follows:

[INSERT DESCRIPTION OF STRUCTURES]

In consideration of the promises and mutual covenants in this Agreement, as well as other good and valuable consideration, the Parties agree as follows:

AGREEMENT

4. Confirmation of Lessor's Right-of-Way and Easement. Licensee hereby and confirms Lessor's constitutional and statutory right-of-way under COLO. CONST. ART. XVI, § 7 and C.R.S. § 37-86-102 across the Licensee's Property for the purpose of a) transporting, carrying, and delivering water; (b) ingress and egress to the Ditch (whether pedestrian or vehicular); and (c) inspecting, using, constructing, maintaining, operating, replacing, repairing, and modifying that part of Lessor's Ditch, ditch structures, and Ditch System located on the Property.

5. Grant of Right-of-Way and Easement. Licensee grants, bargains, sells, conveys, assigns, and warrants and will forever defend unto Lessor, its successors and assigns, a perpetual, non-exclusive right-of-way and easement for the ditch, canal, lateral, or other structure on Licensee's Property that is used to transport, carry, and deliver water. The right-of-way and easement is _____ (____) feet in width, _____ (____) feet on the _____ side and _____ (____) on the _____ side of a line described as follows and as depicted on the attached Exhibit ____:

[INSERT LEGAL DESCRIPTION]

TOGETHER WITH all singular rights, privileges, hereditaments, appurtenances, and easements thereunto belonging to in any way pertaining to the use, operation and enjoyment of the right-of-way and easement confirmed and granted under this Agreement.

The right-of-way and easement confirmed under paragraph 4 and the right-of-way and easement granted under paragraph 5 are collectively defined as the Right-of-Way and Easement.

6. Restrictions on Licensee's Use of Right-of-Way and Easement. Licensee shall not take any action or cause or permit its agents, employees, or contractors to take any action that inhibits the flow of water through the Ditch System. Licensee agrees not to construct or place any fence, building, or other structure (except as specifically allowed under this Agreement) within the Right-of-Way and Easement. Licensee agrees not to plant any shrub or tree on any part of the Right-of-Way and Easement. Licensee agrees not to make or permit any use of the Right-of-Way and Easement that would impair, impede, or interfere with Lessor's access to, access along, or full free use and exercise of its Ditch System or the Right-of-Way and Easement. Licensee agrees that if Licensee or any heir, successor, or assign of Licensee places or allows any obstruction within the Ditch System or Right-of-Way and Easement, Lessor may immediately remove the obstruction without any liability for damages arising from the removal of the obstruction.

7. License. Lessor, without warranting the right, title or privilege, hereby grants Licensee a license, revocable in whole or part, for the privilege of relocating a portion of Lessor's ditch located on Licensee's Property and constructing the above described Improvement(s) provided that (1) such relocation does not unreasonably interfere with the flow of water through the Ditch System; and (2) Licensee constructs the above-described Improvement(s) in accordance with engineering plans and specifications to be prepared and submitted to Lessor by Licensee subject to the following terms and conditions:

- a. Plans and Specifications.** Licensee shall hire a licensed professional engineer to prepare engineering plans and specifications for the purpose of relocating that part of the Lessor's Ditch System on the Licensee's Property and constructing the above-described structure(s) and/or constructing any Improvements within the Ditch or Right-of-Way and Easement. Licensee shall provide the engineering plans and specifications to Lessor for approval. Before Licensee may commence any construction work, Lessor must provide Licensee with written approval of the engineering plans and specifications. The engineering plans and specifications are incorporated by reference into this Agreement as Exhibit ____.
- b. Costs and Liability.** Licensee shall pay all costs associated with the relocation of the Ditch System and the construction, repair, and replacement of the Improvements. Licensee agrees that Lessor shall have no liability for (1) the relocation of the Ditch System or for the construction, maintenance, use, existence, or removal of any Improvement covered by this Agreement; (2) any damage caused to any structure covered by this License Agreement arising out of the operation and maintenance of Lessor's Ditch System; and (3) any damage to the person or property of others that may result from Licensee's construction of any of the Improvements covered by this License Agreement, and Licensee expressly agrees to bear such liability.
- c. Supervision.** All construction work related to the relocation of the Ditch System and the construction of the above-described structure(s) shall be performed under the supervision of a licensed professional engineer and in accordance with the engineering plans and specifications approved by Lessor. At Lessor's request, Licensee shall supply Lessor with "as constructed" drawings.
- d. Commencement and Timing of Work.**
 - i. Licensee shall not commence any construction on the Ditch System or within the Right-of-Way and Easement or any construction that might affect Ditch System operations without first notifying Lessor and obtaining Lessor's consent to the commencement and scheduling of such work. Such work may only take place during the non-irrigation season between November 1 and March 31.

- ii. Prior to beginning any construction activity necessary to complete any such Improvements contemplated under this License Agreement, Licensee shall provide Licenser with a schedule of all anticipated construction work, including start and finish dates, which schedule may be modified by Licensee with prior notice to Licenser. Licensee shall organize, commence, conduct, and complete all construction and maintenance activities with all necessary speed and diligence and in such a fashion as to avoid any interference with ditch operation or the full and free flow of water through the ditch. Licensee agrees to immediately level off any and all excavations made and to immediately repair any damage to the ditches, canals, laterals, embankments, fences, roads or other improvements of Licenser at Licensee's sole cost to satisfaction of Licenser.
- e. **Inspection and Completion.** Licensee shall notify Licenser immediately upon completion of any work permitted under this License Agreement and, within thirty (30) days of the completion of such work, shall provide as-built plans with full topographical information to Licenser. Licenser shall have the right to inspect any relocation of the Ditch System or any construction, installation, or removal of any structure by Licensee to ensure that the relocation is performed in accordance with the approved engineering plans and specifications and will not interfere with the full free flow of water through, or otherwise impair operation or use of, the Ditch System and Right-of-Way and Easement. Should Licenser determine, in Licenser's sole discretion, that Licensee's activities are in any manner inconsistent with the approved engineering plans and specifications, Licenser shall notify Licensee of the observed deficiencies and, if Licensee does not promptly cure the deficiencies to conform to the approved plans and specifications, Licenser shall be entitled to (1) revoke this License Agreement and (2) complete the construction of any Improvements in accordance with Paragraph 11 hereof, at Licensee's cost and expense.
- f. **Mechanic's Liens.** Licensee agrees that all design, engineering, construction and installation or other work permitted under this Agreement is solely for the benefit of Licensee and Licensee's property. Licensee has no authority to create any lien for labor or material on or against Licenser's property, water rights or Ditch System. Licensee agrees to notify all materialmen, suppliers, contractors or laborers that they must look only to Licensee for payment and that Licensee has no authority whatsoever to bind Licenser or Licenser's property for any costs, charges, or expenses incurred by the work performed hereunder.
- g. **Construction of Improvements.** Licensee agrees to perform all work and to construct any Improvement permitted by this Agreement in a workmanlike manner and with materials that will safely perform the purpose for which the

structure is installed. Licensee agrees to construct any structure permitted by this Agreement that encloses, bridges, or provides crossing over Licenser's Ditch System and Right-of-Way and Easement (if any) in a workmanlike manner and with material that will safely support and carry any weights, loads, or traffic that may at any time or in any manner be placed on the structure and that will ensure that the structure does not interfere with the full free flow of water through the Ditch System. Licensee shall restore to its pre-construction condition any portion of Licenser's Ditch System or the Right-of-Way and Easement that is disturbed by Licensee's construction, including but not limited to any restoration work necessary to (1) allow carriage of water as occurred prior to construction activities and (2) preserve the integrity and function of property, including the Licensee's Property, the Ditch System, and properties adjacent to the Ditch System.

8. Maintenance and Repair of Structures. Licensee owns and shall continue to own and bear full responsibility for the use, operation, maintenance, and if necessary, removal of any crossing or structure permitted under this Agreement. Licensee agrees to ensure that any structure permitted under this Agreement does not interfere with the full free flow of water through the Ditch System. Licensee agrees at all times to make, keep, and maintain any structure permitted under this Agreement in a good and safe condition. Licensee agrees to maintain any Improvement permitted under this Agreement so that it will safely support and carry any weights, loads, or traffic that may at any time or in any manner be placed on the structure. Licensee agrees to repair any deterioration, break, leak and/or damage to any structure permitted under this Agreement at Licensee's own expense. Licensee agrees that if by reason of any deterioration, break, leak or damage in or to any structure of Licensee, damage or injury is directly or indirectly caused Licenser, then Licensee will, with all due diligence, repair and place the property, Ditch System, and Right-of-Way and Easement of Licenser in the same condition as it was prior to the damage or injury and will pay any and all monetary damages sustained or incurred by Licenser, its stockholders, or its water users. Licensee agrees that it will restore any portion of Licenser's Ditch System or the Right-of-Way and Easement that is disturbed by Licensee's repair and maintenance activities to the same condition as it was prior to the repairs or maintenance. Other than maintenance and repairs that this paragraph requires, Licensees shall not make any alterations or modifications to either the structures permitted under this Agreement, the Right-of-Way and Easement, or the Ditch System without the prior written consent of Licenser.

9. Licensee's Failure to Act. In the event Licensee fails or refuses to promptly carry out or perform any covenant, duty, or obligation to be performed by Licensee under any paragraph of this Agreement, including the completion, maintenance, repair, replacement, or removal of any Improvements authorized herein, Licenser shall have full right, power and authority, but not the obligation, to perform the same at Licensee's cost and expense without releasing Licensee from any liability under this Agreement. Licensee agrees that it will reimburse Licenser for such costs and expenses within fifteen days of written demand from Licenser. Licensee agrees that, within fifteen days of written demand from Licenser, it will reimburse Licenser for any costs and

expenses incurred by Licensor in undertaking Licensee's obligations under this License Agreement.

10. Debris. Licensee agrees to continuously and at all times keep that portion of Licensor's Ditch System, and Right-of-Way and Easement covered by this Agreement, free and clear of all debris, of every kind and nature whatsoever, so that use of the Right-of-Way and Easement and the full and free flow of water in the Ditch System shall not be interfered with at any time, including times of heavy rain or abnormally high water in the ditch caused in any manner whatsoever, and so that no damage can or will result to Licensor, Licensor's Ditch System, or to the person or property of others by the escape or overflow of water or in any manner whatsoever. Licensee agrees to continuously and at all times take whatever steps are necessary to prevent the escape or overflow of water, in any manner whatsoever, from the structures on Licensee's Property so that no damage can or will result to Licensor, Licensor's Ditch System, or to the person or property of others. If the escape or overflow of water causes any damage to Licensor, Licensor's Ditch System, or to the person or property of others, Licensee agrees that it shall be solely responsible for such damage.

11. Enclosure Grating. Licensee agrees that when, if ever, a grate, slat or lattice is required or should be installed, now or in the future, on the upstream side of any structure covered by this Agreement, Licensee shall bear full responsibility for the installation or failure to install such grate, slat or lattice, and if installed, for the design, construction, repair and maintenance of the grate, slate, or lattice. Licensee shall ensure that the grate, slate, or lattice does not interfere in any way with the full and free flow of water in the Ditch System. Licensee agrees that for any grate, slat or lattice required, now or in the future, on any structure covered by this Agreement, Licensee agrees to install, keep and maintain the grate, slat, or lattice free and clear of all debris of any kind and nature whatsoever.

12. Indemnification. Licensee agrees that in the event any penalty, loss, injury or damage is caused to Licensor or any other person or persons or their property in any manner whatsoever arising out of the relocation of the Ditch System and Right-of-Way and Easement, and/or the construction, maintenance, use, existence or removal of the Improvement (if any) covered by this Agreement, whether by failure of Licensee to fully carry out and perform any covenant or agreement to be carried out and performed by Licensee or otherwise, Licensee agrees to indemnify and hold Licensor and its successors or assigns harmless from any claims, damages, liabilities, injuries, demands, settlements, judgments, awards, penalties, taxes, fees, fines, liens, losses, or other obligations whatsoever, including, but not limited to, actual damages, court costs, attorneys fees, and any other cost and expenses of any kind or nature whatsoever (collectively, "Claims") incurred directly or indirectly by Licensor as a result of the design, construction, maintenance, use, existence or removal (if necessary) of any Improvement, performance of maintenance and repair obligations as described in Paragraph 8, the transmission of Licensee's water through the Ditch System, any failure of Licensee's Improvements that may result from Licensor's routine use and maintenance of the Ditch and Ditch System, and/or any breach by Licensee of its covenants, representations and warranties set forth in this Agreement. This Paragraph 12 shall survive termination of this Agreement.

13. Ditch Modifications. Licensee agrees that Lessor may enlarge, deepen, add to, or otherwise change or relocate its Ditch System within the Right-of-Way or Easement. If in the future Lessor should desire to enlarge, deepen, add to or otherwise change or relocate its Ditch System within the Right-of-Way and Easement, or to do any other thing incident to the operation and maintenance of its Ditch System, Right-of-Way and Easement, then Licensee agrees at Licensee's expense, with all due diligence, to change remove, relay and/or reconstruct any crossing or structure (if any) hereunder so as to comply with such plans and specifications as Lessor may prescribe as being necessary to permit the proper maintenance and operation of Lessor's Ditch System as altered by Lessor.

14. Term. The License and privileges herein granted Licensee for the use and maintenance of the Improvements and/or crossing under this Agreement shall continue for so long and only so long as Licensee, its successors and assigns comply with the provision hereof. In the event that Licensee fails to fully perform the covenants and agreements to be performed hereunder, Lessor may provide written notice to Licensee of Licensee's default. In the event that Lessor declares a default by Licensee, Licensee shall be allowed a period of fifteen (15) days within which to cure said default. Should Licensee fail to cure said default within the timeframe set forth in this Paragraph 14, this License may be immediately revoked and terminated and the task performed by Lessor at Lessor's sole election. Lessor agrees to give Licensee written notice of its election to Licensee addressed as set forth in Paragraph 15. Lessor's election to terminate this Agreement and performance of Licensee's task or removal of any crossing or structure hereunder shall not relieve Licensee of any liability hereunder for the costs and expenses to Lessor of Licensee's breach of this Agreement or the costs and expense of removal. If requested by Lessor, Licensee shall, within thirty (30) days from receipt of such notice, remove any Improvement installed by Licensee as described above and shall restore any portion of the Ditch System affected by such removal to its original condition. This Paragraph 14 shall survive termination of this Agreement.

15. Notice. All notices, consents, or other instruments or communications provided for under this License Agreement shall be in writing, shall be addressed to the party to be notified, and may be served by: (1) delivering the same in person to such party; (2) by registered or certified mail to the address provided herein; or (3) by email delivery. Notice given in accordance herewith shall be effective upon delivery to the address (or email address) of the addressee. The contact information provided below may be updated by either Party to this License Agreement by following the procedures set forth in this Paragraph 14.

To Lessor:

Wannamaker Ditch Company
Attn:
Address: P.O. Box 4030
Golden, CO 80401
Email:

To Licensee:

16. Covenants Run With Land. The covenants, terms and conditions of this Agreement are intended to run with the land and shall be binding upon and inure to the benefit of the parties to this Agreement and their respective agents, heirs, executors, administrators, personal representatives, successors and assigns.

17. Recitals and Exhibits. The Recitals listed above and all exhibits referenced in this Agreement are hereby incorporated into this Agreement.

18. Entire Agreement. This Agreement, together with any other instruments or agreements referred to herein, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and there are no other representations, warranties, or agreements (whether written or oral) between the Parties except those contained in this Agreement.

19. Modification or Amendment. This Agreement may not be amended or modified except by an agreement in writing signed by the party against whom the enforcement of any modification or amendment is sought.

20. Lienholder and Subordination. Lienholder holds a [describe lien (deed of trust, etc.)] encumbering Licensee's Property. The Deed of Trust was recorded on _____ (in Book _____, Page _____) (at Reception No. _____), of the records of _____ County, Colorado. Lienholder subordinates the priority and superiority of its lien to the lien of this Agreement, confirms Licenser's constitutional and statutory right-of-way and the easement granted under this Agreement, and agrees not to challenge the priority of this Agreement.

21. Recording. Either party may record this Agreement with the Clerk and Recorder of _____ County, Colorado.

22. Governing Law. This Agreement shall be governed by the laws of the State of Colorado.

23. Venue and Jurisdiction. The Parties agree that any action to enforce this Agreement shall be brought in the District Court for _____ County, Colorado, with all Parties hereto hereby agreeing and stipulating that such Court has jurisdiction over them and over such an action.

24. Attorney Fees. In the event of any judicial or other adversarial proceeding among the Parties concerning this Agreement, the substantially prevailing party in such a proceeding, shall be entitled to recover all of its reasonable attorney fees and other costs, in addition to any other relief to which it may be entitled.

THE WANNAMAKER DITCH
COMPANY

By:

[Enter Name]

Title:

Date:

[ENTER NAME OF LICENSEE]

By:

[Enter Name]

Date:

[ENTER NAME OF LIENHOLDER]

By:

[Enter Name]

Title:

Date:

STATE OF COLORADO)

) ss.

County of _____)

The foregoing instrument was acknowledged before me this ____ day of
_____, 20_____, by [name], the [title] of The Wannamaker Ditch Company, as Lessor
under this Agreement.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

STATE OF COLORADO)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by [INSERT NAME OF LICENSEE] as Licensee under this Agreement.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

STATE OF COLORADO)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by [name], the [title] of _____, as Lienholder under this Agreement.

WITNESS my hand and official seal.

My commission expires:

Notary Public