



**PUBLIC RIGHT OF WAY LICENSE AGREEMENT
MAYBERRY, COLORADO SPRINGS – FILING 3**

THIS PUBLIC RIGHT-OF-WAY LICENSE AGREEMENT (“Agreement”), is made this 14TH day of NOVEMBER, 2023, 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 MAYBERRY COLORADO SPRINGS METROPOLITAN DISTRICT #1, a quasi-municipal organization, whose mailing address is 614 North Tejon Street, Colorado Springs, CO 80903 (“Licensee”). The Licensor and the Licensee may be singularly referred to herein as the Party or collectively referred to herein as the Parties.

RECITALS

WHEREAS, Licensee plans to develop on the Property legally described in Exhibit A, attached hereto and incorporate herein by reference, a subdivision to be known as MAYBERRY, COLORADO SPRINGS Filing 3; and

WHEREAS, Licensor will own certain public rights-of-way dedicated by plat known as Mayberry, Colorado Springs Filing 3; and

WHEREAS, Licensee wishes to install and maintain public smart network streetlights within the public rights-of-way in order to provide a safe multimodal, pedestrian friendly development; and

WHEREAS, Licensor, as a convenience to Licensee, consents to allow Licensee to use portions of the dedicated public rights-of-way identified above for the purposes of installation, maintenance, repair and replacement of smart network streetlights (the “Improvements”); 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 Licensee a License for the installation, maintenance, repair, and replacement of the Improvements within portions of Licensor’s rights-of way as shown by the fixture locations depicted on Exhibit B, attached hereto and incorporated herein by reference (the “Licensed Premises”). If the Improvements include any lighting fixtures or features, other than streetlights,

the use of such lighting must immediately cease upon written direction of the County Engineer and may not resume until written permission is granted. 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 Licensee, its employees, agents, servants and invitees for any lawful purposes associated with the maintenance and lawful use of the Improvements. The Improvements shall be owned by Licensee.

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 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. Licensee is responsible to ensure no damage occurs to existing utility and other installations that may be present on the right of way during installation, construction, 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. Licensee 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 Premises, Licensor shall have no liability to Licensee for such damages.

b. Damage. Licensee is responsible for reimbursing Licensor for the repair of any damage to fences, signs, delineators, guardrails, landscape plantings of Licensor, or any other right of way improvements resulting from Licensee's operations. Licensee shall hold Licensor, its elected officials, appointees, officers, and employees free and harmless from all risk of injury or damage to Licensee, property of Licensee, and Licensee's 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. Licensee is 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 Licensee.

c. Licensor's Need for Right of Way. Licensor will not replace or relocate any Improvements placed within the public 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. At the time Licensor's construction or maintenance operations begin, this License will be suspended. The License may be reinstated for the remaining term upon completion of the construction.

d. Work in the Right-of-Way Permit. Prior to any major construction, operation, and/or landscaping activities within the Licensed Premises, Licensee 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 in the then current Work in the Right-of-Way Permit.

e. Provision of Utilities. If the Improvements are connected to any utilities, e.g. water or electricity, Licensee shall be responsible for complying with all rules and paying all rates and costs established by the utility providers.

f. Maintenance of Improvements. As the Improvements will be a part of Licensor's public right-of-way, Licensee is expected to maintain the Improvements in an acceptable manner. Upon notice of any deficiency in the Improvements, either: a) by Licensor; or b) by its own observation; or c) by any other means, Licensee 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 Licensee, for any reason, does 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 Licensee for such work. Licensee 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.

g. 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 Licensed Premises. 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.

h. Natural Disasters. Licensor shall not be liable to Licensee 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 Licensee to return the Licensed Premises and, if it so elects, the Improvements, to their original condition. If Licensee chooses not to replace or repair the Improvements and instead wishes to terminate the License Agreement, the provisions of paragraph 5.b. below apply.

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 Licensee, 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 Licensee. 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 Licensee to

remove all or a portion of the Improvements from the Licensed Premises at Licensee's sole expense, and Licensee shall restore the Licensed Premises to its original condition to the extent reasonably practicable, ordinary wear and tear excepted.

b. Termination by Licensee. Licensee 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 Licensee of the License on all or part of the Licensed Premises, and if requested by Licensor, Licensee shall remove the Improvements within the 30-day notice period at its 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, Licensee 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 Licensee shall retain their respective rights and obligations under this Agreement with respect to the remaining portions of the Licensed Premises, and Licensee 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: Licensee agrees and understands that it commences its 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 Licensee's 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: Licensee shall indemnify and hold 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, Licensee's, its 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 defenses available to Licensor or Licensee pursuant to the Colorado Governmental Immunity Act, §§24-10-101, C.R.S., *et seq.* or as otherwise provided by law.

8. Assignment: Licensee shall not assign or otherwise transfer this License or Agreement or any right or obligation hereunder without the prior written consent of Licensor, which consent shall not be unreasonably withheld, conditioned, or delayed. Should Licensor agree to such assignment, Licensor and Licensee 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 Licensee, both for themselves and for their successors in title, agree that this License is terminable at the will of Licensor as set forth in Paragraph 5 above.

Evidence of any such assignment or termination shall be recorded by the County in the records of the El Paso County Clerk and Recorder's Office.

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 Licensor to confer on Licensee a usable right to construct, maintain, repair, and replace 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, constitutes 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: Licensee 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 Licensee 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.

EXHIBIT A
MAYBERRY, COLORADO SPRINGS FILING NO. 3
Subdivision Boundary Description

A tract of land being part of Tract M and all of Tract P, MAYBERRY, COLORADO SPRINGS FILING NO. 1, a subdivision of land in the North Half of Section 14, Township 14 South, Range 63 West of the 6th Principal Meridian, in the County of El Paso, State of Colorado, the plat of said subdivision recorded December 23, 2020 as Reception Number 220714655 in the Office of the El Paso Clerk and Recorder,
AND

All of Tracts A, B, C and D, MAYBERRY, COLORADO SPRINGS FILING NO. 2, a subdivision of land in the North Half of said Section 14, the plat of said subdivision recorded March 10, 2021 as Reception Number 221714698 in said Clerk and Recorder's Office,
AND

That part of Springs Road Right-of-Way lying South of the most southerly South line of said Tract A extended westerly and that part of Village Main Street Right-of-Way lying South of said Tract B, East of the East line of said Atchison Way extended northerly,

All together more particularly described as follows:

Commencing at the North Quarter-corner of said Section 14 monumented by a found rebar with a 2 inch aluminum cap marked "U.P. & E. PLS 11624 1999" in a monument box, from whence the Northeast corner of said Section 14, monumented by a found 3/4 inch square bar in a monument box, bears South 89° 44' 50" East as shown on said plats, a distance of 2606.58 feet, being the North line of the Northeast Quarter of said Section 14, and all bearings herein are relative thereto; thence South 89° 44' 50" East 1303.29 on said North line; thence South 00° 21' 12" East 39.54 feet to a 5/8 inch rebar with a yellow, broken, illegible cap found on the Northeast corner of said Tract D and the POINT OF BEGINNING of the tract of land herein described; Thence continuing South 00° 21' 12" East 2594.09 feet on the East line of said Tract D, being coterminous with the East line of the West Half of said Northeast Quarter, to a 3/4 inch rebar with a 2-1/2 inch aluminum cap marked "RAMPART PLS 38560 2019" found on the Southeast corner of said Tract D, also being the Southeast corner of said West Half; Thence North 89° 36' 00" West 1308.58 feet on the South line of said Tract D and the South line of said Tract C, being coterminous with the South line of said West Half, to a 3/4 inch rebar with a 2-1/2 inch aluminum cap marked "RAMPART PLS 38560 2019" found on the Southwest corner of said Tract C, also being the Center corner of said Section 14; Thence North 00° 14' 20" West 836.81 feet on the West line of said Tract C, being coterminous with the West line of said Northeast Quarter, to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the intersection of said West line with the Southeast line of said Tract M; Thence South 47° 51' 33" West 344.76 feet on said Southeast line to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the beginning of a tangent curve concave southeasterly; Thence southwesterly on said curve continuing on said Southeast line an arc length of 97.30 feet, said curve having a radius of 580.00 feet, a chord bearing of South 43° 03' 13" West, a chord distance of 97.19 feet and an interior angle of 09° 36' 43", to a 5/8 inch rebar with an orange plastic cap marked "PLS 38560" found on the most southerly corner of said Tract M; Thence North 44° 17' 33" West 418.36 feet on the westerly line of said Tract M to a 5/8 inch rebar with an orange plastic cap marked "PLS 38560" found on the beginning of a tangent curve concave northeasterly; Thence northwesterly and northerly on said curve continuing on said westerly line an arc length of 559.57 feet, said curve having a radius of 750.00 feet, a chord bearing of North 22° 55' 07" West, a chord distance of 546.68 feet and an

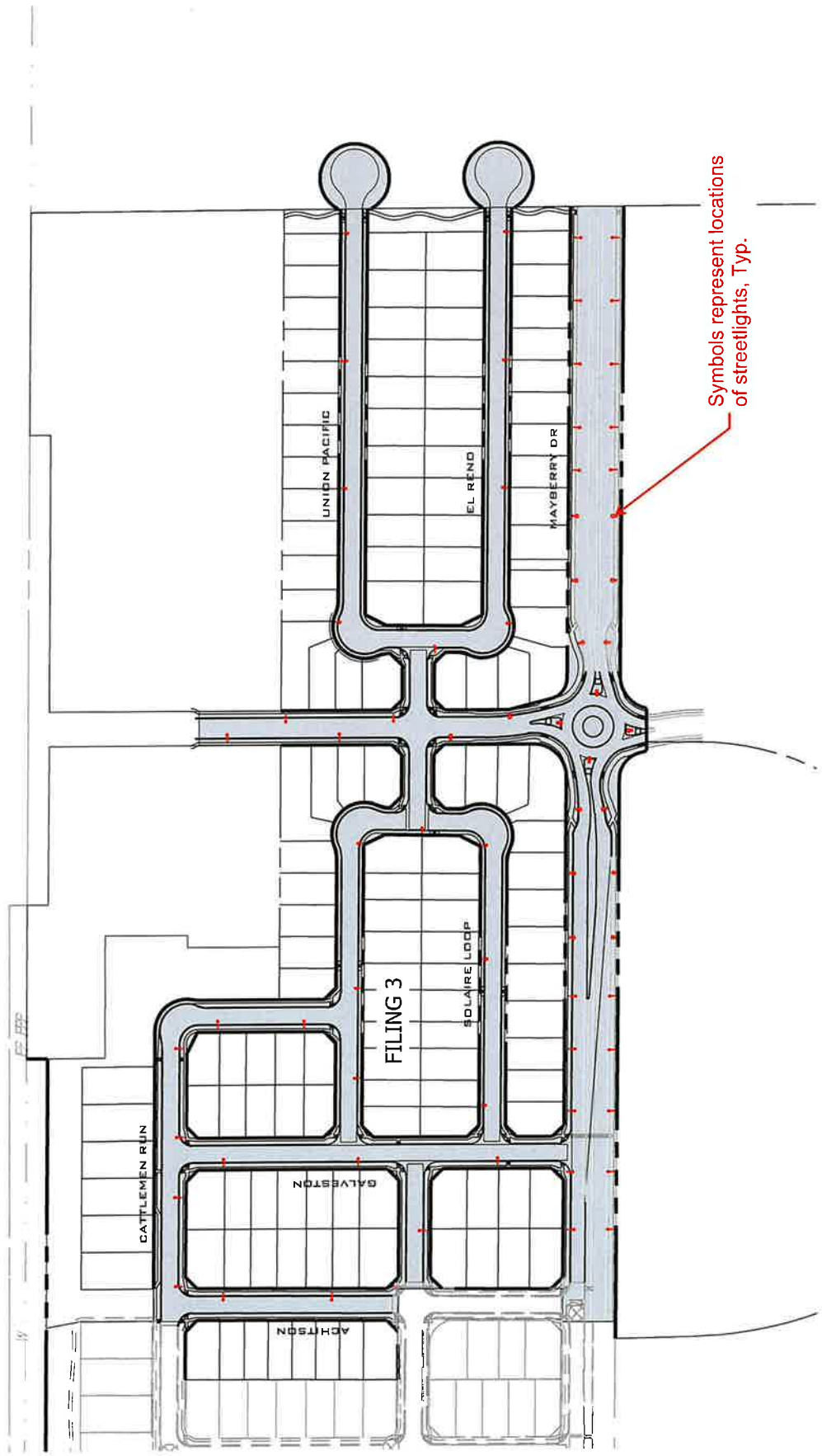
interior angle of $42^{\circ} 44' 52''$, to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the point of tangency; Thence North $01^{\circ} 32' 41''$ West 153.70 feet continuing on said westerly line of said Tract M to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the intersection of said westerly line with the South Right-of-Way line of Mayberry Drive established by the plat of said MAYBERRY, COLORADO SPRINGS FILING NO. 1; Thence South $89^{\circ} 28' 59''$ East 31.78 feet on said South Right-of-Way line, being coterminous with said westerly line, to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the Southeast corner of said Mayberry Drive; Thence North $00^{\circ} 20' 22''$ East 100.00 feet continuing on said westerly line of Tract M to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the South Right-of-Way line of Atchison Way established by the plat of MAYBERRY, COLORADO SPRINGS FILING NO. 1A, said plat recorded July 22, 2022 as Reception Number 222714990 in said Clerk and Recorder's office; Thence South $89^{\circ} 28' 59''$ East 62.00 feet on said South-Right-of-Way line to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the Southeast corner of said Atchison Way Right-of-Way; Thence North $00^{\circ} 20' 22''$ East 310.00 feet on the East Right-of-Way line of said Atchison way and its northerly extension, being 2.97 feet West of (as measured perpendicular to) the most northerly East line of said Tract M, to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the intersection of said northerly extension with the South line of said Tract B; Thence North $89^{\circ} 28' 59''$ West 172.00 feet on said South line of Tract B to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the Southwest corner of said Tract B; Thence on the line segments of the westerly line of said Tract B the following 4 courses and distances: 1) North $00^{\circ} 20' 22''$ East 401.73 feet to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on a corner of said westerly line of Tract B; 2) Thence South $89^{\circ} 28' 59''$ East 110.00 feet to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on a corner of said westerly line of Tract B; 3) Thence North $00^{\circ} 20' 22''$ East 196.27 feet to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on a corner of said Westerly line of Tract B; 4) Thence North $10^{\circ} 04' 50''$ West 66.13 feet to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the Northwest corner of said Tract B; Thence South $89^{\circ} 28' 59''$ East 507.84 feet on the North line of said Tract B to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the most northerly Northeast corner of said Tract B; Thence on the northerly and easterly line segments of said Tract B the following 5 courses and distances: 1) South $00^{\circ} 14' 20''$ East 107.84 feet to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on a corner of said Tract B; 2) Thence South $89^{\circ} 44' 49''$ East 230.82 feet to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on a corner of the westerly line of Lot 1, said MAYBERRY, COLORADO SPRINGS FILING NO. 2; 3) Thence South $00^{\circ} 00' 00''$ East 154.51 feet to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set at a point on the North line of Lot 2, said MAYBERRY, COLORADO SPRINGS FILING NO. 2; 4) Thence North $89^{\circ} 28' 59''$ West 23.35 feet to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the Northwest corner of said Lot 2; 5) Thence South $00^{\circ} 00' 00''$ East 173.74 feet to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the Southwest corner of said Lot 2; Thence South $89^{\circ} 28' 59''$ East 445.91 feet on the most easterly segment of the North line of said Tract B, being coterminous with the South lines of said Lot 1 and Lot 3, said MAYBERRY, COLORADO SPRINGS FILING NO. 1, and its easterly extension, to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the Southwest corner of said Tract A, also being a point on the East Right-of-Way line of Springs Road established by the plat of said MAYBERRY, COLORADO SPRINGS FILING NO. 1; Thence North $00^{\circ} 00' 00''$ East 435.02 feet on the West line of said Tract A, being coterminous with said East Right-of-Way line, to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591"

set on the Northwest corner of said Tract A, said corner also being the Southwest corner of "Tract No. 3" of the South Right-of-Way line of State Highway 94 established by a warranty deed recorded December 23, 2020 as Reception No. 220211233 in said Clerk and Recorder's Office; Thence South 89° 29' 00" East 521.29 feet on the South line of said "Tract No. 3" and said South Right-of-Way line to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the Southeast corner of said "Tract No. 3", being common with the Northeast corner of said Tract A and being a point on the West line of said Tract D; Thence North 00° 00' 00" East 40.00 feet on said West line to a 5/8 inch rebar with a red plastic cap marked "R&R ENG PLS 34591" set on the Northwest corner of said Tract D; Thence South 89° 28' 49" East 418.15 feet on the North line of said Tract D to the POINT OF BEGINNING, said tract containing 4,610,811 square feet or 105.85 acres, more or less.

EXHIBIT B

FOR PUBLIC RIGHT OF WAY LICENSE AGREEMENT MAYBERRY, COLORADO SPRINGS - FILING 3

CD-94



Symbols represent locations of streetlights, Typ.



SUBJECT PROPERTY			
DATE	04/04/23	PROJ NAME	MAYBERRY FILING NO. 3
PROJ NUMBER	MC22110	SHEET NO	1 of 1
DGN	LAO	CHK	CJD



0 50' 100'
SCALE: 1" = 500'