# PUBLIC RIGHT OF WAY LICENSE AGREEMENT
## WHMD Regional Water Reclamation Facility Drainage Improvements

THIS PUBLIC RIGHT-OF-WAY LICENSE AGREEMENT ("Agreement"), is made this ___ day of _____, 20___, 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 Woodmen Hills Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado, whose mailing address is 8046 Eastonville Road, Peyton, CO 80831 ("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 land use to be known as Woodmen Hills Regional Water Reclamation Facility Stormwater Improvements Project; and

WHEREAS, Licensor owns certain rights-of-way known as Stapleton Drive adjacent to the Property; and

WHEREAS, Licensee wishes to install and maintain stormwater improvements within the Stapleton Drive rights-of-way in order to comply with County stormwater requirements; and

WHEREAS, Licensor, as a convenience to Licensee, consents to allow Licensee to use portions of the Stapleton Drive rights-of-way for the purposes of installation, maintenance, repair and replacement of, but not limited to, pavement, curb & gutter, and concrete cross pan (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 known as Stapleton Drive as shown by the shaded areas 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 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 either Party 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.

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

**LICENSOR:**
BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____
Daniel Torres, P.E., Engineering Manager
Development Services, Department of Public Works
Designee of Joshua J. Palmer, P.E., County Engineer
Authorized signatory pursuant to Resolution No. 24-145

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 _____, 20____, by _____, as Engineering Manager, El Paso County Department of Public Works.

WITNESS my hand and official seal.

My Commission Expires: _____.

_____
Notary Public

**LICENSEE:**
Woodmen Hills Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____

Name: _____

Title: _____

STATE OF _____ )
) S.S.
COUNTY OF _____ )

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as _____ of Woodmen Hills Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado.

WITNESS my hand and official seal.

My Commission Expires: _____.

_____
Notary Public

**EXHIBIT A**
LEGAL DESCRIPTION OF PROPERTY

Tracts I and J, Stonebridge Filing No. 1 at Meridian Ranch as recorded at reception number 713582 of the El Paso County Clerk and Recorder's office and Tract K, Meridian Ranch Filing No. 1 as recorded at reception number 202156316 of said Clerk and Recorder's office.

**EXHIBIT B**
THE "LICENSED PREMISES"

