

**TOWN OF MEAD, COLORADO
RESOLUTION NO. 26-R-2021**

**A RESOLUTION OF THE TOWN OF MEAD, COLORADO, RATIFYING
THE TOWN MANAGER'S APPROVAL OF CERTAIN LICENSE
AGREEMENTS WITH THE BAUGH LATERAL DITCH AND RESERVOIR
COMPANY**

WHEREAS, the Town of Mead entered into that certain Subdivision Improvement Agreement- Red Barn Subdivision Final Plat Filing No. 2, dated February 8, 2021 ("SIA"), between the Town and 13-32 Development LLC ("Developer"); and

WHEREAS, pursuant to the SIA, Developer will install certain road and storm water infrastructure, which, upon final acceptance by the Town as contemplated in the SIA, will be owned and maintained by the Town ("Crossing Improvements"); and

WHEREAS, the Crossing Improvements cross ditch improvements owned and maintained by Baugh Lateral Ditch and Reservoir Company ("Company"); and

WHEREAS, the Company has granted the Town licenses to access and maintain the Crossing Improvements following final acceptance of the Crossing Improvements by the Town pursuant to the terms of the SIA, specifically:

- (1) License Agreement (road crossings), a copy of which was recorded on May 26, 2021 at Reception No. 4719265 in the Weld County property records; and
- (2) License Agreement (storm water crossings), a copy of which was recorded on May 26, 2021 at Reception No. 4719264 in the County records

(together the "License Agreements"); and

WHEREAS, the License Agreements are attached to this Resolution as **Exhibit 1** and are incorporated herein by reference; and

WHEREAS, following review and approval of the License Agreements as to form by the Town Attorney, the Town Manager executed the License Agreements on May 26, 2021; and

WHEREAS, the Board of Trustees desires to ratify the Town Manager's approval of the License Agreements.

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Town of Mead, Weld County, Colorado, that:

Section 1. The aforementioned recitals are hereby fully incorporated herein and adopted as findings and determinations by the Board of Trustees.

Section 2. License Agreements Ratified. The Board of Trustees hereby ratifies and approves the License Agreements as attached hereto as Exhibit 1.

Section 3. Effective Date. This resolution shall become effective immediately upon adoption.

Section 4. Repealer. All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 5. Certification. The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 14TH DAY OF JUNE, 2021.

ATTEST:

By 
Mary E. Strutt, MMC, Town Clerk



TOWN OF MEAD

By 
Colleen G. Whitlow, Mayor

Attachment(s):

EXHIBIT 1 – License Agreements

EXHIBIT 1

License Agreements

[Attached.]



LICENSE AGREEMENT

Baugh Lateral Ditch and Reservoir Company and Town of Mead (Road Crossings)

1. **PARTIES.** The parties to this License Agreement (the “**Agreement**”) are the **Baugh Lateral Ditch and Reservoir Company**, a Colorado mutual ditch company and nonprofit corporation (the “**Company**”) and the **Town of Mead**, a Colorado municipal corporation (the “**Town**”). The Company and the Town are singularly referred to as a “**Party**” and jointly referred to in this Agreement as the “**Parties.**”

2. **RECITALS.** The Company owns and operates the Baugh Lateral Ditch (the “**Ditch**”) including a portion in the southwest quarter of Section 24 and southeast quarter of Section 23, Township 2 North, Range 68 West of the 6th P.M., Town of Mead, County of Weld, Colorado, near the intersection of Weld County Road 9.5 and State Highway 66 (the “**Property**”). 13-32 Development LLC (the “**Developer**”) is seeking to develop the Property and, in order to facilitate the development of the Property, Developer and the Company entered into an agreement to pipe the Ditch (the “**Pipeline**”) across the Property (the “**Relocation Agreement**”) recorded in the Weld County real estate records with reception number 4710748 The Company owns an easement for the Pipeline across the Property (the “**Pipeline Easement**”) pursuant to the Easement Agreement recorded in the Weld County real estate records with reception number 4705899. The Company and Developer have also entered into a License Agreement for Road Crossings to permit the installation of three road crossings (the “**Road Crossings**”) over the Pipeline and in the Pipeline Easement (the “**Road Crossings Agreement**”) recorded in the Weld County real estate records with reception number 4710751. Upon completion of the installation of the Road Crossings by Developer or Century Land Holdings, LLC, a Colorado limited liability company, as a permitted assignee of Developer under the terms of the Road Crossings Agreement, and final acceptance of the Road Crossings by the Town, the Town requires that it enter into a separate license agreement with the Company for the operation and maintenance of the Road Crossings. Accordingly, the Parties agree as follows.

3. **CONDITION PRECEDENT.** As a condition precedent to the effectiveness of this Agreement the Town must issue a final acceptance of the Road Crossings installed on the Property in accordance with the terms and conditions set forth in that certain the Subdivision Improvement Agreement - Red Barn Subdivision Final Plat Filing No. 2, dated February 8, 2021, between the Town and the Developer. Notice of the final acceptance of the Road Crossings by the Town must be provided in writing to the Company at the addresses provided in paragraph 7 below. If the Town accepts the Road Crossings one or two at a time, it will give notice of the phased final acceptance of the Road Crossing(s) and this Agreement shall take effect as to those Road Crossing(s) finally accepted by the Town but shall not take effect on the Road Crossing(s) not finally accepted by the Town.

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4. MAINTENANCE.

4.1. All maintenance, repair and replacement obligations associated with the Pipeline are the responsibility of the Developer, as set forth in Section 8 of the Relocation Agreement. Further, Section 16 of the Relocation Agreement contemplates that the continuing maintenance obligations associated with the Pipeline will be assigned to the Red Barn Metropolitan District following the "Completion" of the Pipeline (as defined in Section 6.c. of the Relocation Agreement). Following the effective date of this Agreement, the Town agrees to maintain, repair, and replace the Road Crossings as they go over the Pipeline so as not to require the Company to maintain, repair or replace the Road Crossings.

4.2. In the event of an emergency that necessitates immediate repairs or maintenance of any of the Road Crossings to maintain or restore proper functioning of the Pipeline, the Company or the Town may conduct such emergency repairs and maintenance immediately, giving notice to the other Party as soon as practicable to the contacts identified below. Emergency repairs and maintenance by the Company shall only be authorized under this Agreement when there is an unexpected occurrence that necessitates immediate repairs or maintenance to prevent, mitigate, or remedy injury to persons or damage to property, which such repairs or maintenance cannot be timely performed by the Town. If the Company conducts emergency work authorized under this section, the Town shall reimburse the Company for reasonable costs, fees or expenses related to such emergency repairs and maintenance (the "Company Costs"), unless such emergency was caused by the Company or its agent. The Company understands and acknowledges that the Town will look to the Red Barn Metropolitan District to reimburse or advance any and all Company Costs paid by the Town under this paragraph 4.2, if any, to the Town in accordance with the terms and conditions of that certain First Amendment to Intergovernmental Agreement by and between the Town and the Red Barn Metropolitan District ("First Amendment"). Nothing in this Agreement shall prohibit the Town from seeking the payment of Company Costs from the Red Barn Metropolitan District under the applicable terms of the First Amendment.

EMERGENCY CONTACTS:

Company:	Allan Carlson: 970-381-1807 and to Tara Schutter: 303-710-9108
Town:	Erika Rasmussen: 970-805-4185 and to Bo Hurtado: 720-291-1253

5. **EASEMENT RIGHTS.** This license granted to the Town herein in no way restricts the Company's right to the use of the Pipeline Easement to construct, operate, or maintain all existing structures and facilities of the Pipeline.

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6. **CONSIDERATION.** As consideration for entering into this Agreement, the Company will be paid a one-time fee of three thousand dollars (\$3,000.00) ("License Fee"). The License Fee shall be paid to the Company prior to recordation of this Agreement in the Weld County property records. Nothing in this Agreement shall prohibit the Town from requiring that the Developer pay the License Fee.

7. **NOTICES.** Any written notice required or permitted by this Agreement shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, hand delivered, or sent via e-mail, addressed to the Party to whom such notice is intended to be given at the address set forth below. Such notice shall be deemed to have been given when deposited in the U.S. mail or when the e-mail is sent.

THE COMPANY:

The Baugh Lateral Ditch and Reservoir Company
c/o Jill Baty
P.O. Box 148
Johnstown, CO 80534
Email: ditchoffice@aol.com

COPY TO:

Jeffrey J. Kahn
Lyons Gaddis
P.O. Box 978
Longmont, CO 80501
Email: jkahn@lyonsgaddis.com

THE TOWN:

Town of Mead
Attn: Town Manager
441 Third Street
P.O. Box 626
Mead, Colorado 80542
Email: hmigchelbrink@townofmead.org

COPY TO:

Michow Cox & McAskin LLP
Attn: Mead Town Attorney
6530 S. Yosemite Street, Suite 200
Greenwood Village, Colorado 80111
Email: marcus@mcm-legal.com

Any person or Party may change their addresses for the purpose of receiving written notice or may change the Emergency Contacts in paragraph 4.2 by notice given as set forth in this paragraph.

8. **WAIVER OF BREACH.** The waiver by either Party to this Agreement or a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

9. **INTEGRATION AND AMENDMENT.** This Agreement represents the entire Agreement between the Parties, and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by both Parties.

10. **BINDING EFFECT.** This Agreement is binding upon the Parties and their successors and assigns.

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11. RECORDATION. This Agreement will be recorded upon execution by both Parties with the Weld County Clerk and Recorder at the Town's expense.

12. GOVERNMENTAL IMMUNITY. The Town, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended ("CGIA"), or otherwise available to the Town and its officers or employees. Presently, the monetary limitations of the CGIA are set at three hundred eighty-seven thousand dollars (\$387,000) per person and one million ninety-three thousand dollars (\$1,093,000) per occurrence for an injury to two or more persons in any single occurrence where no one person may recover more than the per person limit described above.

13. ANNUAL APPROPRIATION. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the Town hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

14. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

Signature Pages Follow

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The Baugh Lateral Ditch and Reservoir Company

Date: 5-25-21

By: R. Selich


Print Name: Randy P. Selich

Title: President

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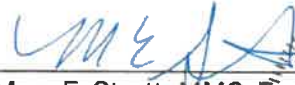



Town of Mead

By: 
Helen Migchelbrink, Town Manager

Date: 5/26/21, 2021

ATTEST:


Mary E. Strutt, MMC, Town Clerk



The seal is circular with a dotted border. The outer ring contains the text "TOWN OF MEAD" at the top and "WELD COUNTY, COLORADO" at the bottom, separated by a star on the right. In the center, the word "SEAL" is written in a large, bold, serif font, with a horizontal line and a small decorative element below it.

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LICENSE AGREEMENT

Baugh Lateral Ditch and Reservoir Company and Town of Mead
(Storm Water Crossing)

1. **PARTIES.** The parties to this License Agreement (the “**Agreement**”) are the **Baugh Lateral Ditch and Reservoir Company**, a Colorado mutual ditch company and nonprofit corporation (the “**Company**”) and the **Town of Mead**, a Colorado municipal corporation (the “**Town**”). The Company and the Town are singularly referred to as a “**Party**” and jointly referred to in this Agreement as the “**Parties.**”

2. **RECITALS.** The Company owns and operates the Baugh Lateral Ditch (the “**Ditch**”) including a portion in the southwest quarter of Section 24 and southeast quarter of Section 23, Township 2 North, Range 68 West of the 6th P.M., Town of Mead, County of Weld, Colorado, near the intersection of Weld County Road 9.5 and State Highway 66 (the “**Property**”). 13-32 Development LLC (the “**Developer**”) is seeking to develop the Property and, in order to facilitate the development of the Property, Developer and the Company entered into an agreement to pipe the Ditch (the “**Pipeline**”) across the Property (the “**Relocation Agreement**”) recorded in the Weld County real estate records with reception number 4710748. The Company owns an easement for the Pipeline across the Property (the “**Pipeline Easement**”). pursuant to the Easement Agreement recorded in the Weld County real estate records with reception number 4705899. The Company and Developer have also entered into a License Agreement for Storm Water Crossing to permit the installation of a storm water pipe (the “**Storm Water Crossing**”) under the Pipeline and in the Pipeline Easement (the “**Storm Water Agreement**”) recorded in the Weld County real estate records with reception number 4710758. Upon completion of the installation of the Storm Water Crossing by Developer or Century Land Holdings, LLC, a Colorado limited liability company, as a permitted assignee of Developer under the terms of the Storm Water Agreement, and final acceptance of the Storm Water Crossing by the Town, the Town requires that it enter into a separate license agreement with the Company for the operation and maintenance of the Storm Water Crossing. Accordingly, the Parties agree as follows.

3. **CONDITION PRECEDENT.** As a condition precedent to the effectiveness of this Agreement the Town must issue a final acceptance of the Storm Water Crossing installed on the Property in accordance with the terms and conditions set forth in that certain Subdivision Improvement Agreement - Red Barn Subdivision Final Plat Filing No. 2, dated February 8, 2021, between the Town and the Developer. Notice of the final acceptance of the Storm Water Crossing by the Town must be provided in writing to the Company at the addresses provided in paragraph 7 below.

4. **MAINTENANCE.**

4.1. All maintenance, repair and replacement obligations associated with the Pipeline are the responsibility of the Developer, as set forth in Section 8 of the Relocation Agreement. Further, Section 16 of the Relocation Agreement contemplates that the continuing maintenance obligations associated with the Pipeline will be assigned to the Red Barn Metropolitan District following the “**Completion**” of the

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Pipeline (as defined in Section 6.c. of the Relocation Agreement). The Town agrees to maintain, repair, and replace the Storm Water Crossing as they go over the Pipeline so as not to require the Company to maintain, repair or replace the Storm Water Crossing.

4.2. In the event of an emergency that necessitates immediate repairs or maintenance of any of the Storm Water Crossing to maintain or restore proper functioning of the Pipeline, the Company or the Town may conduct such emergency repairs and maintenance immediately, giving notice to the other Party as soon as practicable to the contacts identified below. Emergency repairs and maintenance by the Company shall only be authorized under this Agreement when there is an unexpected occurrence that necessitates immediate repairs or maintenance to prevent, mitigate, or remedy injury to persons or damage to property, which such repairs or maintenance cannot be timely performed by the Town. If the Company conducts emergency work authorized under this section, the Town shall reimburse the Company for reasonable costs, fees or expenses related to such emergency repairs and maintenance (the "Company Costs"), unless such emergency was caused by the Company or its agent. The Company understands and acknowledges that the Town will look to the Red Barn Metropolitan District to reimburse or advance any and all Company Costs paid by the Town under this paragraph 4.2, if any, to the Town in accordance with the terms and conditions of that certain First Amendment to Intergovernmental Agreement by and between the Town and the Red Barn Metropolitan District ("First Amendment"). Nothing in this Agreement shall prohibit the Town from seeking the payment of Company Costs from the Red Barn Metropolitan District under the applicable terms of the First Amendment.

EMERGENCY CONTACTS:

Company: Allan Carlson: 970-381-1807
and to
Tara Schutter: 303-710-9108

Town: Erika Rasmussen: 970-805-4185
and to
Bo Hurtado: 720-291-1253

5. EASEMENT RIGHTS. This license granted to the Town herein in no way restricts the Company's right to the use of the Pipeline Easement to construct, operate, or maintain all existing structures and facilities of the Pipeline.

6. CONSIDERATION. As consideration for entering into this Agreement, the Company will be paid a one-time fee of three thousand dollars (\$3,000.00) ("License Fee"). The License Fee shall be paid to the Company prior to the recordation of this Agreement in the Weld County property records. Nothing in this Agreement shall prohibit the Town from requiring that the Developer pay the License Fee.

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7. **NOTICES.** Any written notice required or permitted by this Agreement shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, hand delivered, or sent via e-mail, addressed to the Party to whom such notice is intended to be given at the address set forth below. Such notice shall be deemed to have been given when deposited in the U.S. mail or when the e-mail is sent.

THE COMPANY:

The Baugh Lateral Ditch and Reservoir Company
c/o Jill Baty
P.O. Box 148
Johnstown, CO 80534
Email: ditchoffice@aol.com

COPY TO:

Jeffrey J. Kahn
Lyons Gaddis
P.O. Box 978
Longmont, CO 80501
Email: jkahn@lyonsgaddis.com

THE TOWN:

Town of Mead
Attn: Town Manager
441 Third Street
P.O. Box 626
Mead, Colorado 80542
Email: hmigchelbrink@townofmead.org

COPY TO:

Michow Cox & McAskin LLP
Attn: Mead Town Attorney
6530 S. Yosemite Street, Suite 200
Greenwood Village, Colorado 80111
Email: marcus@mcm-legal.com

Any person or Party may change their addresses for the purpose of receiving written notice or may change the Emergency Contacts in paragraph 4.2 by notice given as set forth in this paragraph.

8. **WAIVER OF BREACH.** The waiver by either Party to this Agreement or a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

9. **INTEGRATION AND AMENDMENT.** This Agreement represents the entire Agreement between the Parties, and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by both Parties.

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12. **GOVERNMENTAL IMMUNITY.** The Town, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary

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limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended ("CGIA"), or otherwise available to the Town and its officers or employees. Presently, the monetary limitations of the CGIA are set at three hundred eighty-seven thousand dollars (\$387,000) per person and one million ninety-three thousand dollars (\$1,093,000) per occurrence for an injury to two or more persons in any single occurrence where no one person may recover more than the per person limit described above.

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Signatures on Following Page

The Baugh Lateral Ditch and Reservoir Company

Date: 5-25-21

By: Randy C. Sekeh

Print Name: Randy C. Sekeh

Title: President



Town of Mead

By: 
Helen Migchelbrink, Town Manager

Date: 5/26/21

Attest: 
Mary E. Strutt, MMC, Town Clerk

