

EDWARDS METROPOLITAN DISTRICT

RESOLUTION REGARDING MANAGEMENT OF OPEN SPACE

WHEREAS, the Edwards Metropolitan District (“District”) is a quasi-municipal corporation and political subdivision of the State of Colorado; and owns certain property zoned and held for open space purposes (“District Open Space”); and

WHEREAS, the District has determined it is necessary, and in the public health, safety and welfare, to adopt a Policy which allows the public to know the guidelines under which the District Open Space will be managed; and the process for effecting any encroachments into the District Open Space; and

WHEREAS, in developing this Policy, the District has looked to those of Eagle County and commonly used conservation easements; and has attempted to incorporate the needs and desires of owners of property adjacent to District Open Space.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Edwards Metropolitan District that the following Open Space Management Policy shall direct and control the operation and maintenance of District Open Space:

1. It is the intent of the District that District Open Space be maintained as an area of land that is primarily undeveloped, natural, or pastoral in character, and which may possess such values as fish and wildlife habitat, scenic landscapes and vistas, wetlands, floodplain, or other riparian habitat; and to the extent practical, provide public access to adjacent rivers and public open space.
2. To that end, the District maintenance of the Open Space shall be minimal, allowing the property to be a true open area, generally left in its natural state. No dumping of trash or vegetation shall be allowed on District Open Space property.
3. Notwithstanding the above, the District retains the right to provide such maintenance, plant removal, trimming of vegetation and similar activities related to esthetic compatibility with adjacent private properties.
4. The District recognizes that § 38-41-101(2), C.R.S. prohibits private parties from gaining any prescriptive rights over public property.
5. District will consider suggestions of low impact and minimal encroachment into District Open Space, but reserves the right to determine if such proposed encroachment complies with the District’s stated Policy. Any determination in one instance shall not serve as a precedent or change of Policy in any other application.

6. Any encroachment allowed will be made the subject of an Encroachment License Agreement, generally in the form attached hereto as Exhibit A.
7. The process for consideration of an Encroachment is intended to place upon the Applicant the responsibility for initiating the Encroachment Agreement, and notifying the adjacent property owners by written notice, so that such adjacent property owners may forward to the District any comments prior to the District's final decision. Specifically, the process shall be conducted as follows:
 - a. The applicant contacts the District to request an Encroachment Agreement. The applicant completes the Agreement and includes the three exhibits. The applicant schedules a date to be on the District's meeting agenda. The applicant is issued a written Notice from the District that defines his encroachment request and the meeting date when the applicant's encroachment request will be reviewed by the Board.
 - b. The applicant is responsible for certifying his delivery of the written Notices to the property owners who live adjacent to the open space.
 - c. The applicant is expected to attend the designated meeting date or submit a written request explaining why the he is interested in encroaching onto the District's open space. At the hearing the Board of Directors will take any neighbors' comments into consideration and will approve or deny the applicant's encroachment request.
8. The District reserves the right to modify or authorize exceptions to this Policy at any time without notice.

ADOPTED this 17th of June, 2010, by a vote of 4 in favor and 0 opposed.

Edwards Metropolitan District

By: 

Todd Williams, Chairman

Attest: 

Becky Bultemeier, Secretary/Treasurer

EXHIBIT A

ENCROACHMENT LICENSE AGREEMENT

This Encroachment License Agreement (“Agreement”) is entered into this ____ day of _____, 20____, by and between **Edwards Metropolitan District**, a political subdivision of the State of Colorado (“District” or “Licensor”) and _____ (“Licensee” and, together with Licensor, the “Parties”).

WHEREAS, Licensor is the owner of open space property located within its boundaries in Eagle County, Colorado (“Open Space Property”), which property is more particularly depicted on Exhibit A attached hereto; and

WHEREAS, Licensee is the fee owner of real property (“Real Property”) adjacent to the Open Space Property, which property is more particularly depicted on Exhibit B attached hereto; and

WHEREAS, Licensee proposes to encroach upon Licensor’s Open Space Property for the benefit of Licensee’s Real Property by locating certain improvements thereon, the area, nature and purpose of the encroachment (“Encroachment”) being more fully described on Exhibit C attached hereto (the area of the Encroachment being referred to as the “Encroachment Area”); and

WHEREAS, Licensor generally prohibits encroachments into Licensor’s Open Space Property, but recognizes extenuating circumstances occasionally make such an encroachment appropriate; and

WHEREAS, Licensor has, in this case, determined to consent to the Encroachment upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Parties agree as follows:

1. Consent to Encroachment. Licensor hereby consents to the Encroachment as fully described on Exhibit C. Any and all rights granted to Licensee under this Agreement shall be exercised at Licensee’s sole cost, risk and expense, and shall be subject to the dominant and continuing right of Licensor to use any and all of the Encroachment Area for Licensor’s purposes; and shall further be subject to all prior deeds, easements, dedications, conditions, franchises, covenants, restrictions, encroachments and claims of title of record that may affect the Encroachment Area. Nothing contained in this Agreement shall be deemed to grant, convey, create or vest in Licensee any real property interest in the land; including, but not limited to, any fee, leasehold interest, easement, servitude or irrevocable license.

2. Use of Encroachment Area. Licensee agrees that it will utilize the Encroachment Area solely for the Encroachment purposes described on Exhibit B, and for no other purpose.

3. No Interference. All costs associated with modification, removal or damage to Licensee's Encroachment by the Licensor related to Licensor's use of the Easement (and all incremental costs initially incurred by Licensor in attempting to avoid the modification, removal or damage to Licensee's Encroachment) shall be solely the responsibility of Licensee. Licensee, in the performance and exercise of its rights under this Agreement, shall not damage or interfere in any way with the use, operation, maintenance, repair, or replacement of any facility that is owned, operated and maintained by Licensor or its assignees within the Easement. Should Licensee's Encroachment cause Licensor's use of the Easement and related facilities to be more costly, or to be interfered with or damaged, Licensee shall, within thirty (30) days of billing, pay all costs and expenses associated with Licensor's more costly use or with Licensor's repair of any damage to Licensor's facilities or removal of any interference. Under any and all circumstances, all work that is necessary to repair any damage to or remove any interference with the Licensor's facilities shall be at Licensee's sole cost and expense. Licensor, in emergency situations, may, at Licensee's sole cost and expense, repair any and all damage to and remove any and all interference with the Licensor's facilities without prior notice to Licensee. In using its Easement, Licensor agrees to make a reasonable effort to avoid damage to Licensee's Encroachment, but Licensor shall not be liable for any damage to the Encroachment. In the event Licensor incurs additional costs as a result of any efforts to avoid damage to Licensee's Encroachment, Licensee shall within thirty (30) days of billing, pay all costs and expenses associated with such efforts.

4. Compliance with Laws. Licensee shall comply with all federal, state and local laws in the exercise and performance of its rights and obligations under this Encroachment Agreement.

5. Encroachment Policy. This Encroachment Agreement is subject to the reasonable terms and conditions of any encroachment policy as it may now exist or may subsequently be amended by the Licensor at its sole discretion and without notice.

6. Indemnification and Waiver. To the extent authorized by law Licensee hereby agrees to indemnify, defend, protect and hold harmless Licensor, its officers and employees, from and against any and all claims, damages, losses, liabilities, fines, penalties, of whatsoever kind or nature, including, but not limited to reasonable attorneys' fees that are incurred by Licensor and that arise in connection with Licensee's activities that are undertaken, authorized or obligated pursuant to this Agreement. Such liability shall specifically, without limitation, extend to claims of third parties arising from the presence of the Licensee's Encroachment

7. Limitation on Licensor's Liability. Licensor shall have no liability to Licensee or third persons related to Licensee's Encroachment, including, but not limited to, damages to the Licensee's improvements resulting from Licensor's dominant use of the Encroachment Area or from the repair of Licensor facilities or the installation of any additional facilities in the future within the Easement.

8. Termination. Licensor may terminate this Agreement at any time, without notice, by recording in the County Clerk's office a notice of termination of Encroachment License Agreement if Licensor determines that the Licensee's improvements interfere with Licensor's current or prospective use of the Easement. Licensor shall endeavor, but not be obligated, to provide Licensee with thirty (30) days' notice of its intent to terminate the Agreement.

9. Successors and Assigns. The rights and obligations of this Agreement shall be appurtenant to and deemed to run with the Real Property, or until such earlier time as the Licensor terminates this Agreement or abandons the Easement. This Agreement shall be recorded against the Real Property in accordance with the laws of the State of Colorado.

10. Integrated Agreement. This Agreement contains the entire understanding between the Parties hereto with respect to the subject matter hereof. There are no representations, agreements or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein.

IN WITNESS WHEREOF, and in order to bind themselves legally to the terms and conditions of this Agreement, duly authorized representatives of the Parties have executed this Agreement as of the date first set forth above.

LICENSOR/EDWARDS
METROPOLITAN DISTRICT

By: _____
Name: _____
Its: _____

LICENSEE

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20 __, by _____ as _____ of LICENSEE.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A

(Description of Open Space Property)

EXHIBIT B

(Description of Real Property)

EXHIBIT C

(Description of Encroachment)