**Boomerang Lateral Ditch Company**

**BORING LICENSE AGREEMENT**

1. **PARTIES.** The parties to this Agreement are the Boomerang Lateral Ditch Company, a Colorado nonprofit corporation (“Ditch Company”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Licensee”). The Ditch Company and Licensee are jointly referred to as the “Parties.”
2. **RECITALS.** The Licensee desires to obtain the permission of the Ditch Company to bore beneath the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Ditch at the location described and depicted in **EXHIBIT A**. The Ditch Company agrees to permit the construction of the Installations, subject to the terms, conditions, covenants and agreements set forth in this Agreement.

**Accordingly, in consideration of the mutual promises set forth in this Agreement, the Parties covenant and agree as follows:**

1. **CONSTRUCTION.**
   1. Pursuant to the terms of this Agreement, the Licensee is granted the license to bore the Installations beneath the Ditch pursuant to the plans and specifications approved by the Ditch Company and attached hereto as **EXHIBIT B**. The Ditch Company’s review of the plans and specifications is solely for its own benefit and creates no obligation on the Ditch Company.
   2. All portions of the Ditch’s bottoms, sides, banks and all portions of the Ditch Company’s easement shall be maintained in their original condition so the flow of the water in the Ditch runs at the original amount and velocity. Any and all fencing and other facilities appurtenant to the Ditch Company’s easement shall be maintained in the condition of such facilities and appurtenances prior to construction.
   3. The Licensee shall not spill any dirt, debris or other foreign material into the Ditch. In the event that dirt, debris or other foreign material is spilled into the Ditch, the Licensee agrees to completely clean the affected portions of the Ditch.
   4. The Licensee agrees that the bore shall proceed expeditiously and with reasonable diligence from the commencement of the bore to its completion. The bore shall be completed no later than \_\_\_\_\_\_\_\_\_\_\_\_\_\_. If bore is not completed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, then this Agreement expires and is of no force or effect.
   5. If the Licensee’s bore interrupts the Ditch Company’s water supply for any reason, the Licensee shall be responsible for all damages incurred by the Ditch Company and its shareholders. The Parties specifically agree that the Ditch Company’s shareholders are third party beneficiaries of this Agreement.
   6. Licensee is responsible, at its own expense, for obtaining all local, state and federal permits or approvals and for compliance with all local, state and federal laws and regulations including but not limited to land use and environmental laws and regulations, and specifically including the Endangered Species Act, prior to beginning the bore. Licensee shall indemnify the Ditch Company for any and all costs, damages, fines, and fees, including reasonable attorneys’ fees incurred by the Ditch Company as a result of Licensee’s failure to obtain such permits or approvals or failure to comply with all applicable laws and regulations.
2. **LICENSE FEE.** The Licensee shall pay to the Ditch Company a license fee of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_($\_\_\_\_\_\_\_\_\_\_\_) upon Licensee’s execution of this Agreement. This license fee shall be in addition to any other costs for which the Licensee is responsible pursuant to this Agreement.
3. **INSPECTION.**
   1. The Licensee shall notify the Ditch Company at least three (3) days prior to commencement of the bore for the Installations, or the replacement or repair of the Installations permitted by this Agreement. The Ditch Company is permitted to inspect the Installations or replacements and repairs of the Installations during construction. Upon completion of the bore the Ditch Company may inspect the Installations.
   2. The Ditch Company’s right to inspect the Licensee’s bore for the Installations or the repair or replacement of the Installations in no way relieves the Licensee of its liability for improper boring. The Ditch Company’s inspection is solely for the benefit of the Ditch Company and creates no obligation to the Ditch Company.
4. **REIMBURSEMENT OF EXPENSES.**
   1. The Licensee agrees to reimburse the Ditch Company (or pay directly) for all reasonable legal costs incurred by the Ditch Company in preparing, approving and enforcing this Agreement and for costs associated with billing and collecting those amounts for the Ditch Company.
   2. Costs chargeable to Licensee shall be paid within thirty (30) days of the billing date. If payment has not been received by the Ditch Company within thirty (30) days, then Licensee shall have breached this Agreement and the Ditch Company may institute legal proceedings to collect the amount due and owing. In such proceeding, the Ditch Company shall be entitled to its costs and reasonable attorneys’ fees from Licensee.
5. **MAINTENANCE**. If the Licensee’s bore is defective, then the Ditch Company may give written notice of such defective or hazardous condition to the Licensee and the Licensee shall correct such defect or hazard within ten (10) days. If Licensee fails to correct such defect or hazard within ten (10) days or such additional time as may agree by the Parties, then the Licensee shall have breached this Agreement and the Ditch Company can avail itself of all remedies including, but not limited to, correcting the defect itself and collecting the expense from the Licensee.
6. **LIABILITY AND INDEMNIFICATION.**
   1. By virtue of entering into this Agreement, the Ditch Company: (1) assumes no liability for use, operation or existence of the Licensee’s Installations; and (2) assumes no additional responsibilities or obligations related to the Licensee’s future or additional activities in the area depicted in **EXHIBIT A** which are required or permitted by this Agreement.
   2. The Licensee agrees to indemnify and to hold harmless the Ditch Company from all claims and liability for damage or injury to property or persons arising or caused directly or indirectly by the Licensee’s construction, restoration, maintenance of, or failure to maintain the Installations and the Licensee’s occupancy and use of the area described and depicted in **EXHIBIT A**.
7. **EASEMENT RIGHTS.** The License granted to the Licensee herein in no way restricts the Ditch Company’s right to the use of its easement to construct, to operate or to maintain all existing structures and facilities of the Ditch.
8. **NOTICES.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given at the address set forth below, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed to have been given when deposited in the U.S. mail.

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| --- | --- |
| **DITCH COMPANY**:  Boomerang Lateral Ditch Co  808 23rd Avenue,  Greeley, Colorado 80634-5922  FAX 970-352-2457 | **COPY TO**:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **LICENSEE:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **COPY TO**:  \_\_\_\_  \_\_\_\_  \_\_\_\_  \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |

1. **WAIVER OF BREACH.** The waiver by any party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.
2. **EXHIBITS.** All exhibits referred to in this Agreement are, by reference, incorporated in this Agreement for all purposes.
3. **BINDING EFFECT AND RECORDING.** This Agreement shall be recorded at the cost of the Licensee and shall be binding upon, the Parties, and their respective legal representatives, successors and assigns. The failure to record all or portions of **EXHIBIT B** because of the size of the documents shall not affect this Agreement.
4. **ATTORNEYS' FEES.** If any party breaches this Agreement, the breaching party shall pay all of the non‑breaching party's reasonable attorneys' fees and costs in enforcing this Agreement whether or not legal proceedings are instituted.

DATED:

|  |  |
| --- | --- |
|  | **BOOMERANG LATERAL DITCH COMPANY** |
|  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |

**STATE OF COLORADO )**

**) ss**

**COUNTY OF \_\_\_\_\_\_\_\_\_\_ )**

The foregoing instrument was subscribed and sworn to before me this \_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 , by , as of the Boomerang Lateral Ditch Company.

Witness my hand and official seal.

My commission expires: .

Notary Public

|  |  |
| --- | --- |
|  | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
|  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Manager |

**STATE OF COLORADO )**

**) ss**

**COUNTY OF \_\_\_\_\_\_\_\_\_\_ )**

The Foregoing instrument was subscribed and sworn to before me this \_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 , by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as Manager of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Witness my hand and official seal.

My commission expires: .

Notary Public

**EXHIBIT A**

**EXHIBIT B**

**Plans and Specifications**