

RESOLUTION NO. 2020-11

NONEXCLUSIVE REVOCABLE LICENSE AGREEMENT

THIS NONEXCLUSIVE REVOCABLE LICENSE AGREEMENT is made this 16 day of June, 2020, by and between the Town of Green Mountain Falls, a Colorado municipal corporation having an address of 10615 Unit B, Green Mountain Falls Road, Green Mountain Falls, Colorado, 80819 (the "Town"), and **The Painted Bear, LLC** with an address of **10550 Ute Pass Avenue** ("Licensee").

WHEREAS, Town owns certain real property described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, Licensee desires to place certain improvements in, on, under, and/or above the Property as described and/or depicted in **Exhibit A** attached hereto and incorporated herein by this reference (the "Improvements"); and

WHEREAS, the Town is agreeable to Licensee's use of the Property for location of the Improvements subject to the terms and conditions of this Agreement, which are in accordance with the requirements of Article III of Chapter 18 of the Green Mountain Falls Municipal Code.

NOW THEREFORE, in consideration of the mutual promises and conditions herein contained, the parties covenant and agree as follows:

SECTION 1. THE LICENSE

Subject to the terms and conditions of this Agreement, the Town hereby grants Licensee a nonexclusive revocable license (the "License") allowing Licensee to use the Property solely for the Improvements.

SECTION 2. USE OF PROPERTY

1. This License is deemed to be a nonexclusive revocable license for the Improvements. This License shall not prohibit or prevent the Town from using the Property or from granting other and further rights for uses of the Property, provided such uses do not unreasonably interfere with the Improvements.

2. Licensee shall not install any improvements on the Property other than the Improvements.

3. Licensee acknowledges that its use and occupancy hereunder is of the Property in its present, as-is condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Licensee acknowledges that the Town shall have no obligation to repair, replace, or improve any portion of the Property to make such Property suitable for Licensee's Improvements.

4. Within thirty (30) days of termination of this Agreement, if directed by the Town, Licensee shall remove the Improvements and return the Property to substantially its original condition at Licensee's sole expense

SECTION 3. TERM AND TERMINATION

1. The License granted herein shall expire on December 31 of the current year, provided that Licensee shall be deemed to have requested the annual renewal of the License for each and every subsequent year and the License shall renew every year with no further notice by Licensee being required until Licensee provides written notice of Licensee's desire to not renew the License granted herein.

2. Either party may terminate the License by giving written notice to the other party specifying the date of termination, such notice to be given not less than fourteen (14) days prior to the date specified therein, except if the Town determines there is a present existing or imminent danger to the public health, safety or welfare, the License may be revoked upon less notice as determined by the Town in its sole discretion.

SECTION 4. MAINTENANCE

Licensee shall, at its own expense, keep and maintain in good repair the Improvements.

SECTION 5. DAMAGE TO PROPERTY

Licensee shall be solely responsible for all damage to the Property arising out of or resulting from the use of the Property by Licensee. Licensee shall correct and repair any damage to the Town's satisfaction within seven (7) days of notification or of Licensee's knowledge of the damage unless otherwise directed by the Town.

SECTION 6. INSURANCE

Licensee agrees to procure an insurance policy which includes and covers the Property that is the subject of this Agreement, and to name the Town as an additional insured thereon. Such insurance policy shall at a minimum include liability and property damage insurance, with a combined single limit for bodily injury and property damage in amounts no less than the limits set forth in the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as they may change from time-to-time. A Certificate of Insurance showing the Town as an additional insured thereon shall be provided to the Town within thirty (30) days of execution of this Agreement. The failure to provide the Certificate of Insurance shall be grounds for immediate revocation of this License Agreement.

SECTION 7. INDEMNIFICATION

Licensee agrees to indemnify and hold harmless the Town, its officers, employees and insurers, from and against all liability, claims and demands arising out of the existence of the Improvements on the Property. Licensee agrees to investigate, handle, respond to, and to provide

defense for and defend against any such liability with legal counsel of the Town's sole choice, claims or demands at his sole expense, or, at the option of the Town, agrees to pay the Town or reimburse the Town for the defense costs incurred by the Town in connection with any such liability, claims or demands. Licensee also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent.

SECTION 8. GOVERNMENTAL IMMUNITY

Both parties 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 from time to time amended, or otherwise available to either part, and their officers and employees.

SECTION 9. NOTICES

Any notice given pursuant to this Agreement by either party to the other shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, and addressed to the other party at the addresses first set forth above.

SECTION 10. MISCELLANEOUS

1. Agreement Binding. This Agreement shall inure to the benefit of and be binding upon the heirs, successors and assigns of the parties hereto, subject to any other conditions and covenants contained herein.

2. Governing Law and Venue. The laws of the State of Colorado and applicable federal, state and local laws, rules, regulations and guidelines shall govern this Agreement. Any action arising out of this Agreement shall be brought in a court of competent jurisdiction in El Paso County, Colorado.

3. Amendment. This Agreement may not be amended except in writing by mutual agreement of the parties, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver.

4. Headings. The headings of the sections of this Agreement are inserted for reference purposes only and are not restrictive as to content.

5. Assignment. Licensee may not assign or transfer this Agreement, except upon the express written authorization of the Town.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

[Remainder of page intentionally blank. Signatures on following page.]

TOWN OF GREEN MOUNTAIN FALLS,
COLORADO

Pat Newberry
Mayor

ATTEST:

[Signature]
Office of the Town Clerk

LICENSEE

By: Michael Fry

STATE OF COLORADO)
) ss.
COUNTY OF El Paso)

The foregoing Professional Agreement for Services was subscribed, sworn to and
acknowledged before me this 8th day of July, 2020 by
Michael Fry, as Owner of The Painted Bear, LLC.

My commission expires:

(S E A L)

Patricia A. Sprang
Notary Public

PATRICIA A. SPRANG
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20164044714
My Commission Expires November 28, 2020

PD \$200
Chk #



To: Board of Trustees
From: GMF Land Use & Planning
Date: 15 June 2020
Re: Revocable Permit Rev2020-03, 10550 Ute Pass Avenue- Septic Tank Storage in ROW and Cover

Background

The Applicant submitted a proposal for the Planning Commission's consideration at the 14 April 2020 regular meeting (staff memo, Applicant's letter, and supporting documents included). The original application was for uses beneath the surface, at the surface, and above the surface of GMF Town Right-of-Way (ROW). The Planning Commission discussed the portion of the application for the septic and landscape cover at grade but requested the Applicant return at the following meeting with a specific site plan for outdoor seating.

The Planning Commission voted unanimously on the following motion:

Recommend the Board of Trustees approve Revocable Permit Rev2020-03 for septic storage in the ROW with the lowest possible fee and the following conditions:

1. Town Clerk receives a Land Use application, signed;
2. Town Clerk receives proof of insurance;
3. The Town Clerk receives application fee, set by Resolution; and
4. A signed letter of indemnification be submitted.

The Applicants have withdrawn the above-ground seating proposal.

Discussion

The scope of the Revocable Permit 2020-03: beneath-surface use (septic tank storage) and at-surface use (safe, pedestrian-friendly septic cover with AstroTurf or low-maintenance landscaping material).

The Board, in approving a Revocable Permit application, is to do so by Resolution, which should include details on the proposed improvements and any conditions, as an attachment. Town Attorney provided a draft Resolution, compliant with Section 18, GMF Municipal Code and recommended Town Staff consider amending the Ordinance. Staff will continue to work with the Town Attorney and create a revised the application and standard procedure for a streamlined procedure.

Town Clerk received a signed application and proof of insurance, fulfilling the first two conditions. In addition, the Applicant provided a septic tank inspection report that shows the tanks are not leaking.

Conclusion

Staff recommends approval of Rev2020-03 for underground storage tanks and cover at the surface of the Town ROW to the south of 10550 Ute Pass Avenue. Recommended fee is \$200, based-on Staff time. The condition of a Letter of Indemnification is satisfied by the draft Resolution.

Approval and Conditions

The Board of Trustees considered Revocable Permit 2020-03, Resolution 2020-11, at the June 16, 2020 special meeting. The Board approved the storage tanks in the ROW and the landscaping astroturf cover at grade; Revocable Permit fee was set at \$200.00.

EXHIBIT A

EXHIBIT B