

LICENSE AGREEMENT
PERMISSION TO USE CITY REAL PROPERTY

This License Agreement, entered into on the _____ day of _____, 2024, is between the CITY OF GLENDALE, an Arizona municipal corporation, (“City”) and Mountain States Contracting (MSC), an Arizona corporation (“Licensee”).

PURPOSE

Licensee desires to use certain City-owned real property, more particularly described on the attached Exhibits “A” and “B” by this reference incorporated herein (“Property”). The Property consists of two locations. The first is located in 147th Avenue approximately one-quarter mile north of its intersection with Northern Avenue and is a part of the City’s public roadway system. The second is located across the 143rd Avenue Drainage Channel immediately downstream of Northern Parkway. The channel is owned and maintained by the City of Glendale. The use of the Property by Licensee will enable Licensee to operate and maintain two at-grade private railroad crossings. The railroad crossings were approved by the Arizona Corporation Commission in May 2024 at Docket No. RR-21275A-23-0305. Per the subject order, Mountain States Contracting shall maintain the crossings in accordance with Arizona Administrative Code (A.A.C.) R14-5-104.

TERMS AND CONDITIONS

City grants this License subject to the following terms and conditions:

1. This License is not intended to represent permission granted in perpetuity. Licensee may terminate this License by giving sixty (60) days’ advance written notice to the City of its intent to terminate. The City may terminate this License by giving one hundred eighty (180) days’ advance written notice to the Licensee of its intent to terminate.
2. This License is personal to the Licensee and may not be transferred or assigned in any manner, without the prior written approval of the City.
3. All improvements made by Licensee to the Property pursuant to the terms of this License are subject to, and must be in compliance with, all applicable state and federal codes, ordinances and laws, including the Americans With Disabilities Act, and constructed in conformance with the City’s approved design standards.
4. The costs associated with constructing, operating, and maintaining any improvements made pursuant to this License, costs associated with relocation of the improvements if so requested by the City, and the cost of permits, inspection services, and applicable administrative fees related thereto, shall be borne entirely by Licensee.
5. Licensee acknowledges that the City uses the Property as public right of way, agrees to use the Property “as is”, and agrees that its right under this License shall not interfere with use of the Property by the City or the public. Licensee is responsible for obtaining any necessary permits prior to performing any work on the Property, and for payment of inspection fees according to the City’s development fee schedule established by ordinance.

6. Licensee shall not permit any liens, mechanics, suppliers or any other kind of lien, to be placed or remain on the Property.
7. Whenever Licensee disturbs the surface or subsurface of any City-owned property, public right of way, adjoining public property, or any public improvements located thereon or thereunder, Licensee shall promptly and at its own expense, restore, repair or replace the same to the satisfaction of the City. Nothing in this License Agreement shall operate to relieve or waive Licensee's responsibility for the installation and operation of its Rail Crossings.
8. If such restoration, repair or replacement of the surface, subsurface or any structure thereon or thereunder is not completed in a reasonable time or if such restoration, repair or replacement does not meet the City's satisfaction, the City may perform the necessary restoration, repair or replacement, and the cost of performing any such work, including the cost of inspection or supervision, shall be paid by the Licensee within thirty (30) days after receipt of the City's invoice.
9. All work performed by Licensee on or within public rights of way shall be properly safeguarded for prevention of accidents and shall not create any hazard or source of danger to any person or vehicle using said right of way. Licensee shall provide and maintain sufficient barriers, danger signals, lanterns, detours, signs and shall take such other measure or precautions as the City shall direct or as commonly used to prevent such accidents or hazards. Notwithstanding the language of Paragraph 1 herein, the City may terminate this License if the hazard for danger continues unabated for a period often (10) days,
10. Licensee shall be responsible for any and all liability for any injury or damage to Licensee's employees, contractors or agents while using said Property in any manner or arising out of the use or exercise of this License.
11. The City shall not bear any cost of relocation of existing facilities, irrespective of the function served, where the City facilities or other facilities occupying the Licensed Area or right-of-way in close proximity to the Licensed Area, are already located and the conflict between the Licensee's potential Rail Crossings and existing facilities can only be resolved expeditiously, as determined by the City, by the movement of the existing City or other permitted facilities.
12. The City shall not bear any cost of relocation of Licensee's Rail Crossings, where in the City's discretion, relocation is reasonable and necessary in connection with City right-of-way repairs, improvements or other capital projects affecting the Licensed Area. City shall provide Licensee no less than ninety (90) days advance notice of a requirement to relocate. If the City becomes aware of a potential delay involving the Licensee's relocation, the City shall notify the Licensee within thirty (30) days of becoming aware of the potential delay. The Licensee may object in writing to the determination of relocation to the City within ten (10) days of receipt of the notice to relocate. The City shall consider the objection and respond in writing to Licensee within thirty (30) days of receipt of the objection. The City's determination is final.

13. The Licensee shall, at its sole expense, provide a certificate of insurance showing commercial general liability coverage with limits of not less than One Million Dollars (\$1,000,000) for personal injury or death and not less than Five Hundred Thousand Dollars (\$500,000) for property damage, per each occurrence. The certificate of insurance must name the City of Glendale as an additional insured for all work performed by the Licensee within, or on, City of Glendale rights-of-way or property. Claims made policies are not acceptable. The insurance company writing the policy must be licensed by the Arizona Department of Insurance and have a BEST rating of not less than A. The Licensee insurance coverage shall be primary insurance and non-contributory with respect to all other available sources. The City shall be an additional insured to the full limits of liability purchased by Licensee even if limits of liability are in excess of those required of the Licensee. The form of the policy must be acceptable to the City before License will be issued. Further, Licensee agrees to indemnify, defend and hold harmless the City of Glendale and its officers and employees from all suits, actions, claims and damages, including attorney's fees and costs, of any character or nature, including personal injury, death or property damage, incurred in whole or in part during its operation of trains or as a result of any work performed by, or on behalf of Licensee under this License. Licensee's indemnity and defense obligations under this paragraph shall apply only to the extent that such suit, action, claim and/or damage is caused by any work performed by, or on behalf of Licensee. Failure of City to request and/or failure of the Licensee to provide ongoing proof of insurance as provided herein shall not waive the requirement to maintain coverage compliance throughout the term of the license.
14. Notwithstanding the language of Paragraph 1, and except as otherwise provided in Paragraph 10 for a danger or hazard, the City may terminate this License for any non-compliance or failure to perform any obligation due under this License if, after receiving City's written notice of such breach of this License, Licensee fails to "cure" or abate such non-compliance within 30 days. If the non-compliance remains unabated at the conclusion of this 30-day "cure" period, the City may retake possession of the Property and may seek any and all other remedies available to it under Arizona law.
15. Any amendments to this License must be in writing and signed by both parties. Arizona law shall be applied to the interpretation and enforcement of this License. In the event that any term or provision of this License is declared by a court of competent jurisdiction to be invalid or illegal for any reason, this License shall be interpreted as if such invalid or illegal provision were not a part hereof.

(Signature page follows)

IN WITNESS WHEREOF, MOUNTAIN STATES CONTRACTING, INC., an Arizona corporation, has caused this License Agreement to be executed by its duly authorized representative, this 3rd day of JULY, 2024.

By: [Signature]

Its: PRESIDENT

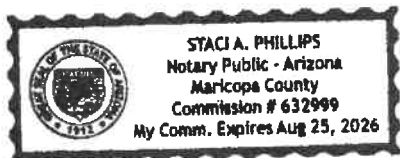
Exempt Pursuant to A.R.S.§11-1134 (A)(3)

STATE OF ARIZONA)
) ss.
County of Maricopa)

This instrument was acknowledged before me this 3rd day of July, 2024 by Vern Van de Loo, the President of Mountain States Contracting, Inc., an Arizona corporation, who acknowledged that he executed this instrument for the purposes therein contained.

[Signature]
Notary Public

My commission expires:
August 25, 2026



IN WITNESS WHEREOF, CITY OF GLENDALE, an Arizona municipal corporation, has caused this License Agreement to be executed by its duly authorized representative, this _____ day of _____, 2024.

Kevin R. Phelps
City Manager

ATTEST:

Julie K. Bower, City Clerk (Seal)

APPROVED AS TO FORM:

Michael D. Bailey, City Attorney

Exempt Pursuant to A.R.S.§11-1134 (A)(3)

STATE OF ARIZONA)
) ss.
County of Maricopa)

This instrument was acknowledged before me this _____ day of _____, 2024 by Kevin R. Phelps, City Manager for the City of Glendale, who acknowledged that he executed this instrument for the purposes therein contained.

Notary Public

My commission expires:

EXHIBIT “A”

EXHIBIT "A"
NESTLE DYNASTY
RAIL CROSSING LICENSE AGREEMENT
LEGAL DESCRIPTION

A parcel of land situate within the Southeast quarter of Section 32 and the Southwest quarter of Section 33, Township 3 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at the Southeast corner of said Section 32, monumented by a 3 inch Brass cap in hand hole, from which the South Quarter corner of said Section 32, monumented by a 3 inch Brass cap in hand hole, bears North 89°00'56" West, 2641.83 feet as the Basis of Bearings;

Thence North 00°02'43" West, 1300.66 feet along the easterly line of the Southeast quarter of said Section 32 to the **POINT OF BEGINNING**;

Thence leaving said easterly line, North 89°58'46" West, 25.18 feet to the westerly Right of Way line of 147th Avenue as shown on the Map of Dedication of "Nestle Dynasty" recorded at Book 1757 of Maps, Page 33, Maricopa County Recorder's office;

Thence along said westerly Right of Way line, North 00°02'43" West, 70.00 feet;

Thence leaving said westerly Right of Way line, South 89°58'46" East, 70.00 feet to the easterly Right of Way line of said 147th Avenue;

Thence along said easterly Right of Way line, South 00°02'43" East, 70.00 feet;

Thence leaving said easterly Right of Way line, North 89°58'46" West, 44.82 feet to the **POINT OF BEGINNING**.

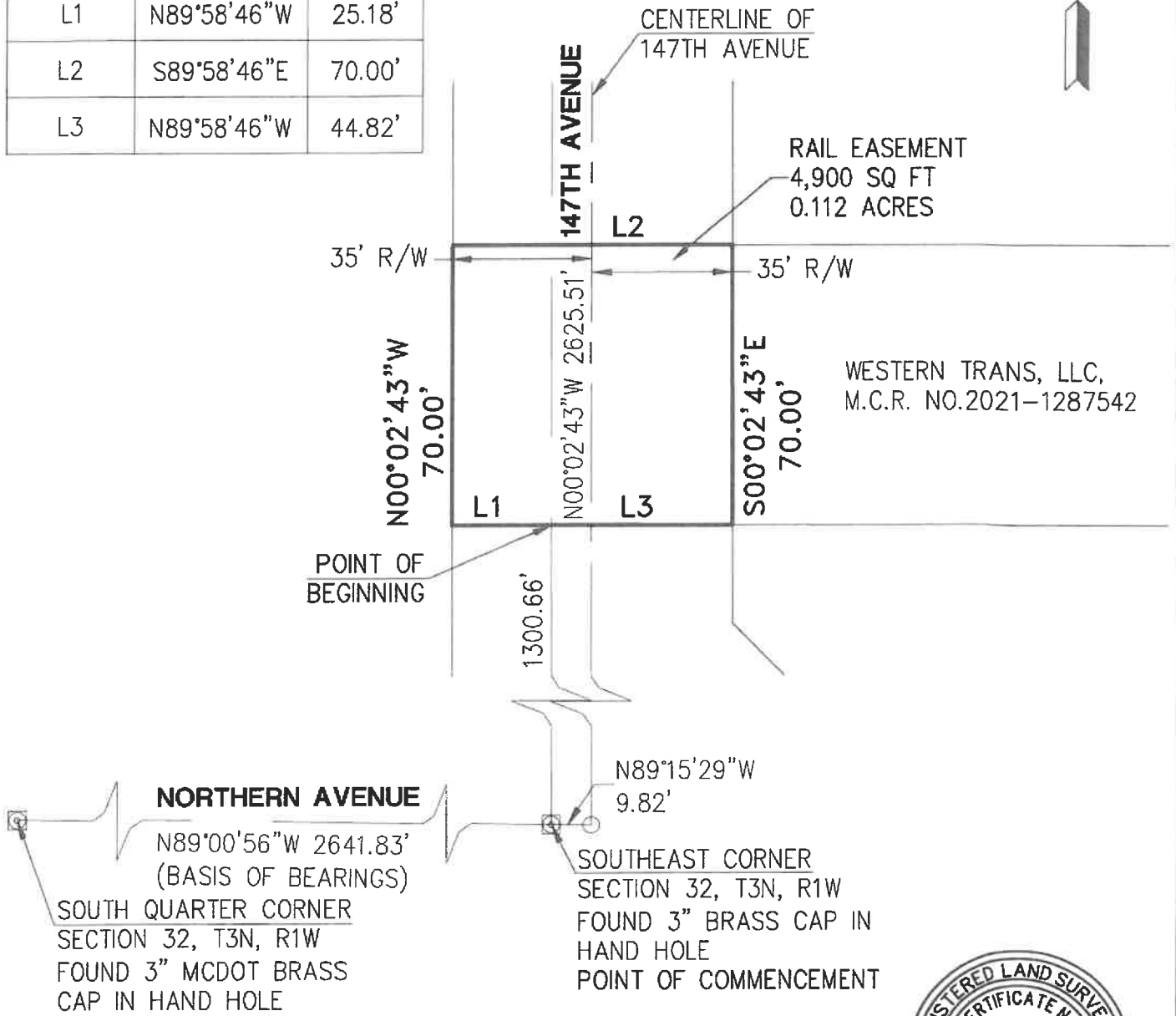
The above described parcel contains a computed area of 4,900 sq. ft. (0.1124 acres) more or less and being subject to any easements, restrictions, rights-of-way of record or otherwise.

The description shown hereon is not to be used to violate any subdivision regulation of the state, county and/or municipality or any land division restrictions.

Prepared by: HILGARTWILSON, LLC
2141 E. Highland Avenue, Suite 250
Phoenix, AZ 85016
Project No. 1033
Date: May 2024



LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L1	N89°58'46"W	25.18'
L2	S89°58'46"E	70.00'
L3	N89°58'46"W	44.82'



PROJ.NO.:	1033
DATE:	MAY 2024
SCALE:	N.T.S.
DRAWN BY:	JDL/JK
CHECKED BY:	DMS

NESTLE DYNASTY
 RAIL CROSSING LINCENSE AGREEMENT
 GLENDALE, ARIZONA

EXHIBIT

HILGARTWILSON
 2141 E. HIGHLAND AVE., STE. 250
 PHOENIX, AZ 85016
 P: 602.490.0535 / F: 602.368.2436

EXHIBIT “B”

EXHIBIT "B"
NESTLE DYNASTY
143RD AVENUE RIGHT OF WAY
LEGAL DESCRIPTION

A portion of the Southwest quarter of Section 33, Township 3 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at the South Quarter corner of said Section 33, marked by a found brass cap in hand hole, from which the Southwest corner, marked by a found 3 inch Maricopa County Highway Department brass cap in hand hole, thereof bears North 89°15'29" West, 2631.20 feet;

Thence North 00°10'50" East, 2218.68 feet along the easterly line of said Southwest quarter to the **POINT OF BEGINNING**;

Thence leaving said easterly line, South 12°47'19" West, 49.76 feet to the beginning of a tangent curve, concave northwesterly, having a radius of 638.80 feet;

Thence southwesterly along said curve to the right, through a central angle of 17°12'16", an arc length of 191.82 feet to a point of non-tangency and to the westerly line of the easterly 80.00 feet of said Southwest quarter;

Thence along said westerly line, North 00°10'50" East, 189.80 feet to the beginning of a non-tangent curve, concave northwesterly, having a radius of 568.80 feet, the center of which bears North 76°50'09" West;

Thence northeasterly along said curve to the left, through a central angle of 00°22'32", an arc length of 3.73 feet to a non-tangent line;

Thence North 12°47'19" East, 362.68 feet to the easterly line of said southwest Quarter;

Thence along said easterly line, South 00°10'50" West, 320.69 feet to the **POINT OF BEGINNING**.

The above described parcel contains a computed area of 22,044 sq. ft. (0.5061 acres) more or less.

Subject to any easements, restrictions, rights-of-way of record or otherwise.

The description shown hereon is not to be used to violate any subdivision regulation of the state, county and/or municipality or any land division restrictions.

Prepared by: HILGARTWILSON, LLC
2141 E. Highland Avenue, Suite 250
Phoenix, AZ 85016
Project No. 1033
Date: June 2024



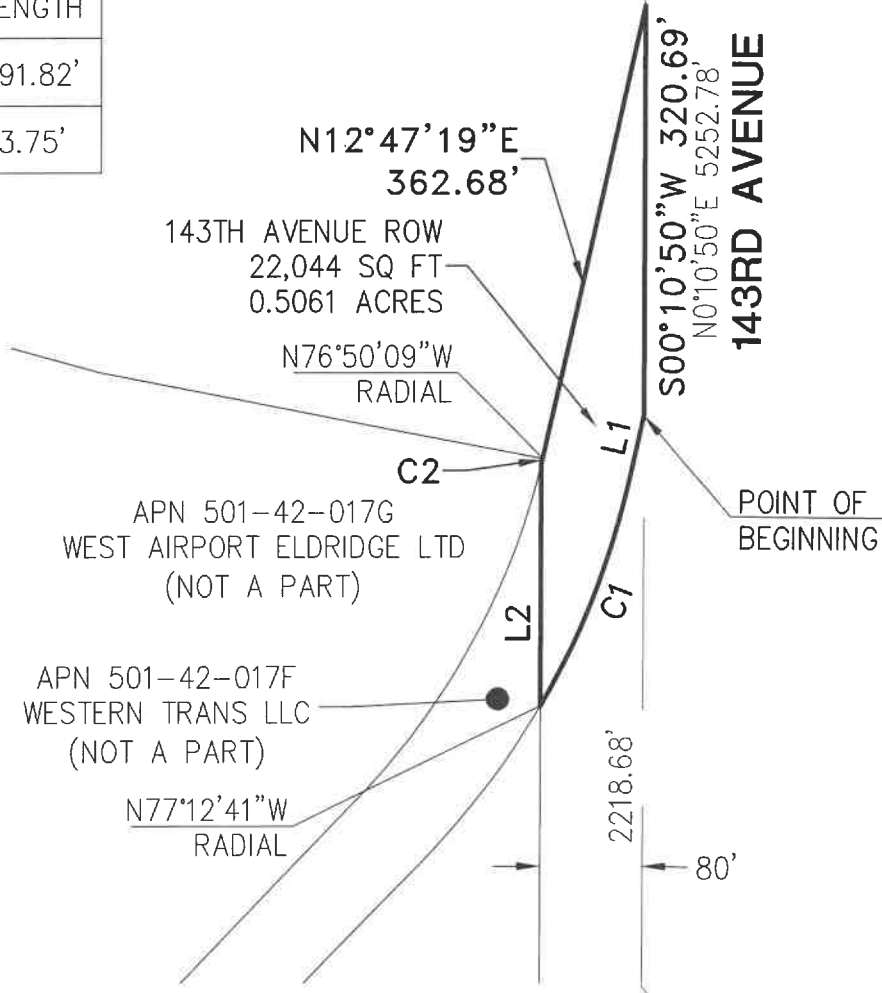
NORTH QUARTER CORNER
SECTION 33, T3N, R1W
FOUND 3" MCDOT BRASS CAP
IN HAND HOLE, STAMPED T3N,
R1W, 28, 33, RLS 26411, 2009

**NORTHERN
PARKWAY**

2713.41'

LINE TABLE		
LINE NO.	DIRECTION	LENGTH
L1	S12°47'19"W	49.76'
L2	N00°10'50"E	189.80'

CURVE TABLE			
CURVE NO.	RADIUS	DELTA	LENGTH
C1	638.80'	17°12'16"	191.82'
C2	568.80'	0°22'41"	3.75'



NORTHERN AVENUE

SOUTHWEST CORNER (BASIS OF BEARINGS)
SECTION 33, T3N, R1W
FOUND 3" MCHD BRASS
CAP IN HAND HOLE

SOUTH QUARTER CORNER
SECTION 33, T3N, R1W
FOUND BRASS CAP IN
HAND HOLE
POINT OF COMMENCEMENT

PROJ.NO.:	1033
DATE:	JUN 2024
SCALE:	N.T.S.
DRAWN BY:	JK
CHECKED BY:	DMS

NESTLE DYNASTY
143RD AVENUE ROW
GLENDALE, ARIZONA

EXHIBIT

HILGARTWILSON
2141 E. HIGHLAND AVE., STE. 250
PHOENIX, AZ 85016
P: 602.490.0535 / F: 602.368.2436