

## 23 Road Trunk Line Extension Agreement

This agreement ("Agreement") is made and entered into this \_\_\_ day of January 2020, by and between the City of Grand Junction, a Colorado home rule municipality ("City"), and CD113/114 Park Plaza and Grand Junction, Limited Partnership, a Delaware limited partnership ("Developer").

### RECITALS:

The City is the manager of the Persigo Wastewater Treatment Facility ("Regional Sewer" or "System") and in such capacity controls the use of and access to the sewer facilities located within the sewer service area. Developer represents that it is the owner of property as shown on Exhibit 1, attached hereto, more particularly described as Mosaic Subdivision (Lot 1, Mosaic Subdivision situated in the E ½ NE ¼ of Section 31, Township 1N, Range 1W of the Ute Principal Meridian in the City of Grand Junction, County of Mesa) in the records of Mesa County, State of Colorado, "Property" which is within the sewer service area. The Developer's plan contemplates 500 to 650 residential units and 30 commercial units at a density greater than 3 units/acre ("Development.") Developer is required to dispose of its sewage waste through the System.

The City has established a separate fund within the operation of the System for the purpose of financing trunk lines and collecting fees and charges for the extension of trunk lines. The fund is known as the "Sewer Trunk Line Extension Fund" or "Extension Fund." The Extension Fund serves to collect sufficient fees from development to recover trunk line construction costs and finance further trunk line projects on a self-sustaining basis.

Each year as a part of the annual sewer system budget the City determines which trunk line projects will be considered for construction during the budget year. The 23 Road Trunk Line Extension Project as shown in Exhibit 2 ("Project") is eligible for the Extension Fund based upon the criteria set forth in the Sewer Trunk Line Extension Policy ("Policy.") The Policy is incorporated by reference as if fully set forth.

As established by the Policy the City and the Developer have agreed that the Developer will pay the City for a proportionate share of the cost to install the Project, which when constructed will be available to serve the Development. The parties' initial agreement as evidenced by the attached letter, is confirmed and memorialized in this document. In accordance therewith the City had engineering design plans prepared for construction of the Project (Exhibit 3). The City advertised an Invitation for Bid for the Project and the low bidder was MA Construction ("Contractor.") The City intends to enter into a contract with the Contractor, which contract is premised in part on this Agreement and the Developer's commitment to partially fund the Project and pay connection fees as described herein.

THEREFORE, AND TO CONFIRM THE PARTIES UNDERSTANDING AND AGREEMENT DO HEREBY ACKNOWLEDGE AND AGREE AS FOLLOWS:

1. The above Recitals are intended to state the intent of the parties and shall constitute substantive terms of this Agreement. In addition, the Recitals shall form a basis to construe the several provisions hereof in the event that there is an ambiguity or the intent of the parties is otherwise unclear. Any rule such that any ambiguities shall be construed against the drafter shall not apply to this Agreement; the parties agree that each is fully capable of engaging its own attorneys and

other experts to understand and negotiate the language hereof. The parties agree that there is adequate consideration for the making and enforcement of this agreement.

2. The City agrees to construct the Project to generally serve the Development (Mosaic subdivision) as the project is shown and described in approved preliminary plans on file with the City File #PLD 2017-562 inter alia. The City further agrees to connect the Project, upon full and complete satisfaction of this Agreement and any and all applicable regulations, with the Regional Sewer at such location as is determined by the City. The Project and its connection to the Regional Sewer shall be constructed in accordance with the engineering standards then applicable and as required by the City Utilities Director.

3. The City shall obtain any required prior approvals in the name of the City as deemed necessary by the City Utilities Director, for the construction, repair and maintenance of the Project.

4. The Developer will pay \$84,000.00 (eighty-four thousand dollars) prior to the City awarding a contract to the Contractor for construction of the Project. The payment to the City shall be in cash, certified check or electronic fund transfer. Within 30 days of completion of the Project the Developer agrees to pay an additional payment, if any is required such that the Developer will have paid 15% of the total, final project cost, which amount may be greater than the payment required prior to the award of the construction contract.

5. The Developer will provide at its sole cost a payment and performance bond in the principal sum of \$308,000.00 (three hundred eight thousand dollars) ("Bond") payable to the City to insure the Developer's commitment to the Project. The form and term of the Bond must be reviewed and approved by the City Attorney. If the Developer pays the City all costs for the construction of the Project, the City will release the Bond within 30 days of payment to the City.

6. In addition, upon final acceptance of construction of the Project, the City shall be entitled to be paid by the Developer for its reasonable and necessary costs incurred for construction, construction administration and oversight, as approved by the City Utility Engineer. Costs are generally assumed as follows:

(a) Reimbursable costs are those costs actually paid which include reasonable engineering fees, legal or other consulting fees, paid by the City and actually required to design, construct and inspect the Project. In no event shall reimbursable costs exceed the actual costs incurred by the City. Once the reimbursable costs have been approved by the City Utilities Director, the reimbursement amount established based on actual costs incurred as described above, will be determined and paid by the Developer within thirty (30) days of mailing of an invoice by the City to the Developer at the addresses shown herein. The Developer's property/lots will not be allowed to connect to the Project without payment of all costs provided for in this Agreement. The total amount of engineering, construction administration and oversight reimbursement costs ("Soft Costs") shall not exceed \$100,000 above the amount of the Project construction contract. The total amount of construction cost ("Hard Costs"), as the same may be increased by City approved work change order(s) for the Project, shall be paid by the Developer in the full and actual amount without markup.

(b) The City shall keep adequate documentation that the City Utilities Director will use to determine the actual costs of construction. The Developer shall pay based on those costs.



That documentation may be inspected by the Developer with written advance notice to the City Utilities Director.

(c) The Developer agrees that the construction of the Project by the City does not waive or limit the payment by the Developer, or any successors of the Developer, of any costs, fees or charges (e.g., plant investment fees, trunk extension fees, inspection fees, monthly sewer service charges) which the City is now, or may be in the future, entitled to charge or collect from the Developer or any user or person connected to or benefiting from the System.

(d) In accordance with the System policy the following fees shall be assessed to all platted lots and other properties, including but not limited to the Development, within the trunk line basin:

(i) Subdivision Development Density Extension Fee per Lot (2020 rate\*\*)<sup>1</sup>

1 Unit/Acre or less	\$1,306
>1 <3 Units/Acre	\$1,176
≥ 3 Units/Acre	\$871

And

(ii) New Construction Density Extension Fee per EQU\* (2020 rate\*\*) <sup>2</sup>

1 Unit/Acre or less	\$3,047
>1 <3 Units/Acre	\$2,610
≥ 3 Units/Acre	\$1,740

(e) The Developer may at any time prior to the completion of construction of the Project pay the City its cost of construction or it may pay trunk line extension fees in accordance with the System policy and as provided by this Agreement.

(f) The Developer may petition the Persigo Board to revise the Sewer Trunk Line Extension Policy such that the Subdivision Development Density Extension Fee and New Construction Density Extension Fee ("Policy") for the Project equals \$560,000.00 or the total project costs, whichever is greater plus interest at a rate and for a term determined by the Persigo Board. In the absence of a revision of the Policy by the Board, the payment terms as provided herein shall control. The City agrees to schedule a meeting of the Persigo Board by June 30, 2020 to consider revision of the Sewer Trunk Line Extension Policy.

7. If the Developer fully pays the City its total cost of construction of the Project prior to the completion of the Project, the Developer may, as it determines, not to exceed \$560,000.00 or the total

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<sup>1</sup> The development of any platted lot or the platting of any land within any basin in which the 23 Road Trunk Line Extension has been funded and constructed by the sewer trunk line extension fund shall be charged an extension fee in accordance with the current rate structure, and,

<sup>2</sup> Any building permit requiring a sewer clearance and connection to any public sewer line within the trunk line basin will also require payment of an extension fee.

\* Equivalent Residential Unit – As defined by GJMC 13.04.010.

\*\*Rates are subject to 2% annual escalation.

Project costs, whichever is greater, collect the costs of system expansion from a benefited property(ies) in the basin served by the Project when the property(ies) receives the benefit of connecting to the System as it is expanded by the Project.

8. In the event of a dispute arising out of or under this Agreement that cannot be resolved by the parties, the parties agree that they shall proceed, in good faith, to mediation. The parties will jointly appoint a mediator acceptable to both parties and will share equally in the cost of mediation. Mediation shall be a precondition to the commencement of any litigation. Venue for all dispute resolution (mediation and litigation) shall be in Mesa County, Colorado and jurisdiction shall be in State Court.

9. All notices to be given with respect to this Agreement shall be in writing, either hand delivered or by U.S. Mail, postage prepaid, to the following:

CD113/114 Park Plaza and Grand Junction, Limited Partnership  
c/o Taurus of Texas Holdings, LLC  
Douglas H. Gilliland  
9285 Huntington Square  
North Richland Hills, Texas 76182

City of Grand Junction  
City Utilities Director  
250 N. 5<sup>th</sup> Street  
Grand Junction, CO 81501

IN WITNESS WHEREOF the parties have duly executed this Agreement and affixed their seals as of the date set forth above.

CITY OF GRAND JUNCTION, a Colorado  
Home rule municipality,

by: \_\_\_\_\_ date: \_\_\_\_\_

Greg Caton  
City Manager

ATTEST:

\_\_\_\_\_  
Wanda Winkelmann  
City Clerk

CD113/114 Park Plaza and Grand Junction, Limited Partnership, a Delaware limited partnership with full authority to act for and bind the same:

by: \_\_\_\_\_ date: 1-24-20

Name \_\_\_\_\_ Title \_\_\_\_\_

by: \_\_\_\_\_ date: \_\_\_\_\_

Name

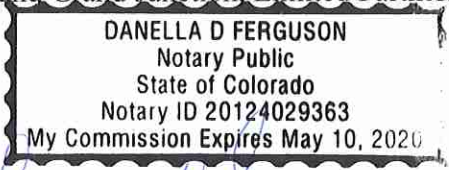
Title

STATE OF COLORADO  
COUNTY OF MESA

The foregoing instrument was acknowledged before me this 24 day of January, 2020, by Gilliland Douglas Hudson of CD113/114 Park Plaza and Grand Junction, Limited Partnership, a Delaware limited partnership.

My commission expires: 4/10/2020

Witness my hand and official seal.



Danella D Ferguson  
Notary Public

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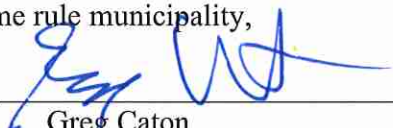
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c/o Taurus of Texas Holdings, LLC  
Douglas H. Gilliland  
9285 Huntington Square  
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City of Grand Junction  
City Utilities Director  
250 N. 5<sup>th</sup> Street  
Grand Junction, CO 81501

IN WITNESS WHEREOF the parties have duly executed this Agreement and affixed their seals as of the date set forth above.

CITY OF GRAND JUNCTION, a Colorado  
Home rule municipality,

by:   
Greg Caton  
City Manager

date: 1/27/2020

ATTEST:   
Wanda Winkelmann  
City Clerk



CD113/114 Park Plaza and Grand Junction, Limited Partnership, a Delaware limited partnership with full authority to act for and bind the same:

by: \_\_\_\_\_ date: \_\_\_\_\_  
Name Title  
by: \_\_\_\_\_ date: \_\_\_\_\_



Name

Title

STATE OF COLORADO  
COUNTY OF MESA

The foregoing instrument was acknowledged before me this \_\_\_\_ day of January, 2020, by \_\_\_\_\_ of CD113/114 Park Plaza and Grand Junction, Limited Partnership, a Delaware limited partnership.

My commission expires: \_\_\_\_\_

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public