

STATE OF COLORADO
acting by and through the
Department of Natural Resources,
for the use and benefit of the Division of Parks and Wildlife
and the Parks and Wildlife Commission

TEMPORARY ACCESS AGREEMENT

with

City of Grand Junction

1. PARTIES

This Temporary Access Agreement for construction of sanitary sewer infrastructure (the "Access Agreement") is granted by the State of Colorado acting by and through the Department of Natural Resources, for the use and benefit of the Division of Parks and Wildlife and the Parks and Wildlife Commission ("State" or "CPW" or "Grantor"), located at 6060 Broadway, Denver, Colorado 80216, to the City of Grand Junction, a Colorado home rule municipality ("Grantee") whose legal address is 250 North 5th Street, Grand Junction, Colorado 81501. The Parties hereby agree to the provisions set forth in this Access Agreement.

2. EFFECTIVE DATE

This Access Agreement shall not be effective or enforceable until the Effective Date as defined in §4.D. The State shall not be liable to Grantee for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Contract exists pursuant to CRS §33-1-101, §33-1-104, §33-1-105, §33-9-101, §33-9-109 et seq., §33-10-101, §33-10-106, and §33-10-107, and all prior reviews and approvals have been obtained.

B. Consideration

The Parties agree that the mutual promises and covenants contained herein, and other good and valuable consideration are sufficient and adequate to support the granting of this Access Agreement.

C. Exhibits

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Access Area Description) and **Exhibit B** (Access Area Map).

D. Purpose

The purpose of this Access Agreement is for reasonable ingress and egress over a temporary access road across the Property for the purpose of constructing and installing sewer facilities and appurtenances including, but not limited to, sanitary sewer lines, storm sewers, water lines, and appurtenant facilities.

E. References

All references in this Access Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits, or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. CRS

“CRS” means the Colorado Revised Statutes as amended.

B. Access Agreement

“Access Agreement” means this Access Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Access Agreement, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, State Fiscal Rules, and State Controller Policies.

C. “Access Area” means that portion of the Property encumbered by this Access Agreement and described in **EXHIBIT A** and depicted for illustrative purposes only in **EXHIBIT B**.

D. Effective Date

“Effective Date” is the date this Access Agreement is approved and signed by the State and accepted by Grantee, whichever is later.

E. Improvements

“Improvements” means any and all improvements Grantee places on or about the Access Area, whether currently existing or in the future.

F. Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

G. Property

“Property” is Walker State Wildlife Area in Section 36, Township 1 North, Range 2 West of the Ute P.M., located in Mesa County, Colorado.

5. TERM AND RECORDATION

The Parties’ respective duties and obligations and the burdens on the Property under this Access Agreement shall commence on the Effective Date and shall continue until March 31, 2023. Grantee may record this Access Agreement in the official records of each county in which the Property is situated following the Effective Date.

6. GRANT OF ACCESS

The State may be the owner of all or part of the Property; however, the State is not making any representations concerning its ownership of, nor warrants its title to, any of the Access Area or the Property, and if this Access Agreement encroaches on lands not owned or controlled by the State, Grantee is solely responsible for any such encroachment. Subject to the foregoing caveat, by this Access Agreement the State hereby grants to Grantee temporary

access over the Access Area located on the Property. The nature, character, and extent of Grantee's rights created herein are limited to those specifically set forth in this Access Agreement.

A. Grantee's Use

This Access Agreement is granted solely for the purposes stated in §3.D, and Grantee shall use the Access Area only for such purpose. Grantee shall have a right of access along and upon the Property, the extent of which is limited to effectuating such purposes.

B. Construction and Maintenance

Grantee is solely responsible for the construction and maintenance of all Improvements.

C. Pre-Existing Rights

The Access Agreement is subject to any and all previously granted easements, rights-of-way, licenses and conveyances, recorded or unrecorded. It is Grantee's sole responsibility to determine the existence of any rights, uses or installations conflicting with Grantee's use of the Access Area. Grantee shall not interfere with any use in the Access Area by any other party holding a senior or superior interest in the Property.

D. Reserved Rights

The State reserves all rights not specifically granted under this Access Agreement, including the right to use and occupy the Property for any purpose not inconsistent with, and which does not materially interfere with, Grantee's use and enjoyment of the rights herein granted. Said rights include, but are not limited to:

i. Public Access

Continuing to allow access to CPW staff and the public for purposes consistent with the CPW's mission and purpose.

ii. Additional Access

Granting additional access to third parties within the Access Area but do not unreasonably interfere with Grantee's use and enjoyment of the rights granted herein.

E. Surface Restoration

Any excavations, disturbances, or other temporary disturbances of the surface, soil, or vegetation caused by or on Grantee's behalf on or about the Access Area shall be properly replaced, and as nearly as possible, restored and maintained by Grantee in original configuration and with similar vegetation. Specifically, but not by way of limitation, Grantee shall control noxious weeds for the first five years following any and all excavations, disturbances, or other temporary disturbances of soil. Restoration shall be performed within twelve (12) months of ground disturbance. Grantee will consult with the State with regard to seed type(s) and method(s) of re-vegetation.

7. ABANDONMENT

Grantee's failure to perform its obligations under the Access Agreement or make use of the Access Area for a period of one year shall constitute an abandonment of its interests under the Access Agreement. The State, in its sole discretion, may terminate and extinguish the Access Agreement in the event of abandonment after providing Grantee 60 day's written notice. If the State so terminates and extinguishes the Access Agreement, the State may, at its sole option, retain all Improvements without compensation to Grantee or require Grantee to remove the Improvements and restore the Access Area and any other portions of the Property affected by the Improvements into their original condition or as reasonably near to the original condition as feasible before the Access Agreement was granted, and Grantee shall

execute and deliver to the State a document, in recordable form, acknowledging and consenting to the termination and extinguishment of the Access Agreement.

8. GRANTEE'S REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS

Grantee makes the following specific representations and warranties, each of which was relied on by the State in granting this Access Agreement.

A. Hazardous Substances

Grantee shall not introduce or allow introduction of any "Hazardous Substance," as defined in 42 U.S.C. §9601 (14), or hazardous or toxic material, substance, or waste, as they may be defined under relevant state or local law, or asbestos, on the Property or any of the State's adjacent real property. Grantee shall be solely responsible for all costs and expenses incurred if Grantee breaches this provision. Grantee shall make the foregoing representation in a separate writing deliverable to the State upon request by the State.

B. Independent Professional Advice

The Parties received such independent legal and financial advice regarding this Access Agreement as the Parties deemed necessary and prudent, and based thereon, and Grantee's informed judgment, voluntarily accepted this Access Agreement from the State.

C. Legal Authority – Grantee Signatory

Grantee possesses the legal authority to accept this Access Agreement and its attendant obligations and has taken all actions required by its procedures, ordinances, and/or applicable laws to exercise that authority, to lawfully authorize its undersigned signatory to execute this Access Agreement, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to accept this Access Agreement within 15 days of receiving such request. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process in accordance with regulations and procedures established by the Colorado Secretary of State.

D. Licenses, Permits, Etc.

As of the Effective Date, Grantee shall have and at all times during the term hereof shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform its obligations under this Access Agreement, without reimbursement by the State. Additionally, all employees, agents, and subcontractors of Grantee performing services under this Access Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. Any revocation, withdrawal, or non-renewal of licenses, certifications, approvals, insurance, permits, or any such similar requirements necessary for Grantee to properly perform the terms of this Access Agreement shall constitute a violation of this Access Agreement.

E. Litigation Notification

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Access Agreement or which may affect Grantee's

ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Director of CPW.

9. INSURANCE

Grantee and Grantee's agents, successors, assigns, licensees, contractors and permittees shall obtain and maintain insurance as specified herein at all times during the term of this Access Agreement. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the State.

A. CGIA – Public Entities

If Grantee is a "public entity" within the meaning of the CGIA, Grantee shall maintain at all times during the term of this Access Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its potential liabilities under the CGIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each contract with a contractor that is a public entity, to include the insurance requirements necessary to meet such contractor's liabilities under the CGIA. If Grantee is not a "public entity" within the meaning of the CGIA, Grantee shall obtain and maintain during the term of this Access Agreement insurance coverage and policies meeting the requirements set forth in **§9.B** with respect to "non-public entities".

B. Non-Public Entities

Grantee shall obtain and maintain, and require each "non-public" contractor providing goods or services in connection with this Access Agreement, to obtain and maintain, insurance coverage substantially similar to the following:

i. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** \$1,000,000 each occurrence; **(b)** \$1,000,000 general aggregate; **(c)** \$1,000,000 products and completed operations aggregate; and **(d)** \$50,000 any one fire. If any aggregate limit is reduced below the specified minimum limits because of claims made or paid, Grantee or Grantee's contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision. Grantee shall ensure that coverage and limits shall increase in the future to those commonly required and available in the marketplace at the time, and shall ensure that coverage and limits are at all times comparable those required in this **§9.B.i**.

ii. Additional Insured

The State shall be named as additional insured on all Commercial General Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Grantee and Grantee's agents, successors, assigns, licensees, contractors, and permittees hereunder.

iii. Primacy of Coverage

Coverage required of Grantee and Grantee's agents, successors, assigns, licensees, contractors, and permittees shall be primary over any insurance or self-insurance program carried by the State.

C. Certificates

Grantee and Grantee's agents, successors, assigns, licensees, contractors, and permittees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Access Agreement. In addition, upon request by the State at any other time during the term of this Access Agreement, Grantee and Grantee's agents, successors, assigns, licensees, contractors and permittees shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions herein.

10. VIOLATIONS, REMEDIES AND RESOLUTION METHODS

A. Defined

In addition to any violations specified in other sections of this Access Agreement, Grantee's failure to perform any of its material obligations hereunder, including, but not limited to, those in §9, is a violation of this Access Agreement.

B. Notice

The State shall send Grantee in the manner provided in this §10 a notice detailing alleged violations of this Access Agreement. Upon receipt thereof, Grantee shall immediately send the State a response in the manner provided in this §10 agreeing with the State or denying the alleged violations in whole or part and cease and desist from any use or activity that could increase or expand the alleged violations until they are finally resolved by agreement of the Parties or by decree of a court of competent jurisdiction.

C. Remedies and Resolution Methods

i. Agreement

If Grantee agrees with or does not dispute the State's assertion regarding the alleged violations, Grantee shall, at Grantee's sole cost, restore the Access Area and any other portions of the Property affected by the violations to their prior condition or as reasonably feasible to the condition prior to the violations or to take such other action as may be reasonable or necessary to eliminate the violations and prevent their further occurrence and shall provide the State with details of its remedial plan together with a reasonably prompt time for completion thereof. The State may enforce such remedial plan via proceedings at law or in equity if Grantee fails to perform it in accordance with its terms.

ii. Dispute Meeting

If Grantee disagrees with and disputes the State's assertion regarding the alleged violations in whole or part, Grantee shall provide the State with a written explanation stating the reasons why the State's allegations are erroneous or stating why the use or activity should be permitted. Thereafter, representatives of the Parties with settlement authority shall meet as soon as possible, but not later than 60 days after the State's receipt of Grantee's response, to resolve issues. If the Parties reach agreement, they shall create a remedial plan together with a reasonably prompt time for completion thereof. The State may enforce such remedial plan via proceedings at law or in equity if Grantee fails to perform it in accordance with its terms.

iii. Legal Proceedings

The State may, in its sole discretion, exercise any or all remedies available at law or in equity, including those available at common law, concurrently or consecutively, to enforce its rights hereunder if any meeting pursuant to §10.C.ii fails to resolve any issues and to otherwise enforce its rights hereunder, including enforcing remedial plans created under §10.C.i and ii. Courts are specifically authorized to issue both mandatory and negative injunctions, including one requiring restoration of the Access Area and any other portions of the Property affected to its condition before a violation occurred. If the Parties agree that an abandonment under §7 has occurred, the Parties shall execute a written, notarized acknowledgment thereof in recordable form stating that the Access Agreement has been terminated and extinguished. If the Parties do not so agree, the State may seek appropriate judicial relief to terminate and extinguish the Access Agreement.

iv. Costs

Grantee shall be solely responsible for the costs of remedying any violations of this Access Agreement caused by Grantee or its agents.

D. Public Safety

Notwithstanding anything to the contrary herein, the State need not provide advance notice or a cure period and may immediately take action if it is necessary to preserve public safety or to prevent immediate public crisis.

11. NOTICES AND REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

State
Area Wildlife Manager
CO Parks & Wildlife
711 Independent Avenue
Grant Junction, CO 81505

Grantee
Randi Kim
Utilities Director
250 N. 5th Street
Grand Junction, CO 81501
randik@gjcity.org

with copy to
Real Estate Section
CO Parks & Wildlife
6060 Broadway
Denver, CO 80216

and
John Shaver
City Attorney
250 N 5th Street
Grand Junction, CO 81501
johns@gjcity.org

12. LIMITATION OF STATE LIABILITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees, is controlled and limited by the provisions of CRS §24-10-101 et seq. (the CGIA) and CRS §24-30-1501, et seq. (risk management). No term or condition of this Access Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of CGIA or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

13. GENERAL PROVISIONS

A. Binding Arbitration Prohibited

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Access Agreement or incorporated herein by reference shall be null and void.

B. Binding Effect

All provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns; and shall continue as a servitude running with the Property.

C. Captions

The captions and headings in this Access Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.

D. Construction of this Access Agreement

This Access Agreement shall be liberally construed to further the purposes and intent set forth in §3.D. In the event of an ambiguity in this Access Agreement, the rule of contract construction that ambiguities shall be construed against the drafter shall not apply and the Parties hereto shall be treated as equals and no Party shall be treated with favor or disfavor.

E. CORA Disclosure

To the extent not prohibited by federal law, this Access Agreement and the performance measures and standards under CRS §24-106-107, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

F. Corrections and Further Acts

The Parties shall perform any further acts and execute and deliver any documents, including amendments to this Access Agreement that are reasonably necessary to (i) effectuate its purposes, (ii) to correct typographical, spelling, or clerical errors, or to (iii) correct any errors in legal in the legal description of the Property.

G. Counterparts

This Access Agreement may be executed in multiple identical original counterparts constituting one agreement.

H. Entire Understanding

This Access Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

I. Joint and Several Obligations

If more than one person or entity owns this Access Agreement at any time, the obligations imposed by this Access Agreement shall be joint and several upon each of the owners.

J. Jurisdiction and Venue

All suits or actions related to this Access Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the county in which the Property is situated.

K. Modification

i. By the Parties

Except as specifically provided in this Access Agreement, modifications hereof shall not be effective unless agreed to by the Parties in a written amendment hereto, properly executed and approved in accordance with applicable Colorado State Law, State Fiscal Rules, and Office of the State Controller Policies.

ii. By Operation of Law

This Access Agreement is subject to such modifications as may be required by changes in Federal or Colorado State Law, or their implementing regulations. Any such required modification shall be automatically incorporated as part of this Access Agreement on the effective date of such change, as if fully set forth herein.

L. Order of Precedence

The provisions of this Access Agreement shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Access Agreement and its exhibits and attachments, including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the main body of this Access Agreement, and
- ii. Exhibits

M. Severability

Provided this Access Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Access Agreement in accordance with its intent.

N. Third Party Enforcement - None

Enforcement of this Access Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Access Agreement are incidental, and do not create any enforcement rights for any third parties.

O. Waiver

Waiver of any breach or event of default under a term, provision, or requirement of this Access Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement. Grantee hereby waives any defense of laches, estoppel, or prescription, including any defenses available under CRS §38-41-119. The failure of the State to perform any act

required by this paragraph shall not impair the validity of this Access Agreement or limit its enforceability in any way.

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GRANTEE: ACCEPTED by City of Grand Junction

DocuSigned by:

By:

Randi M. Kim

Name:

7FE7DB91C80143B...
Randi M. Kim

Title:

Utilities Director

Date:

January 3, 2022 | 10:48 AM MST

Exhibit A

Temporary Access Area

A Temporary Access Area located within a parcel of land described in Reception Number 1048446 and lying in the SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 36, Township 1 North, Range 2 West of the Ute Meridian, Mesa County, Colorado and being more particularly described as follows:

Commencing at the South $\frac{1}{16}$ corner common to said Section 36 and Section 35, Township 1 North, Range 2 West of the Ute Meridian and assuming the west line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36 bears $S0^{\circ}01'15''E$ with all other bearings contained herein being relative thereto; thence $S81^{\circ}04'21''E$ a distance of 1533.66 feet to a point on the east line of a Temporary Sewer Access Area being the Point of Beginning;

Thence $S37^{\circ}19'57''E$ a distance of 100.00 feet;

Thence $N52^{\circ}40'06''E$ a distance of 61.25 feet;

Thence $S85^{\circ}02'52''E$ a distance of 61.98 feet;

Thence $N86^{\circ}45'13''E$ a distance of 80.15 feet;

Thence $S79^{\circ}19'04''E$ a distance of 155.36 feet;

Thence $S73^{\circ}19'52''E$ a distance of 175.50 feet to the beginning of a curve;

Thence easterly a distance of 200.77 feet along the curve concave to the north, having a radius of 345.00 feet, a central angle of $33^{\circ} 20' 33''$ and a chord which bears $N89^{\circ}59'52''E$ 197.95 feet distant;

Thence $N73^{\circ}19'35''E$ a distance of 80.31 feet to the beginning of a curve;

Thence easterly a distance of 40.60 feet along the curve concave to the south, having a radius of 95.00 feet, a central angle of $24^{\circ} 29' 17''$ and a chord which bears $N85^{\circ}34'14''E$ 40.29 feet distant;

Thence $S82^{\circ}11'07''E$ a distance of 61.07 feet;

Thence $S72^{\circ}08'10''E$ a distance of 40.76 feet;

Thence $S89^{\circ}19'32''E$ a distance of 71.32 feet;

Thence $S82^{\circ}00'20''E$ a distance of 211.53 feet to the beginning of a curve;

Thence easterly a distance of 172.84 feet along the curve concave to the south, having a radius of 465.00 feet, a central angle of $21^{\circ} 17' 47''$ and a chord which bears $S71^{\circ}21'26''E$ 171.84 feet distant;

Thence $S60^{\circ}42'33''E$ a distance of 212.58 feet;

Thence $S49^{\circ}37'50''E$ a distance of 166.32 feet;

Thence $S46^{\circ}01'31''E$ a distance of 423.43 feet;

Thence S49°41'48"E a distance of 72.95 feet;

Thence S51°07'28"E a distance of 158.47 feet;

Thence S48°08'08"E a distance of 139.19 feet;

Thence S45°43'17"E a distance of 114.32 feet;

Thence S37°07'09"E a distance of 72.27 feet to a point on the south line said Section 36;

Thence S89°40'01"E along said south line Section 36 a distance of 46.56 feet to a point on the northeasterly line of said parcel of land described in Reception Number 1048446;

Thence N43°09'31"W along said northeasterly line a distance of 102.88 feet;

Thence S49°05'48"W a distance of 6.12 feet;

Thence N45°43'17"W a distance of 116.43 feet;

Thence N48°08'08"W a distance of 140.13 feet;

Thence N51°07'28"W a distance of 158.74 feet;

Thence N49°41'48"W a distance of 72.06 feet;

Thence N46°01'31"W a distance of 423.42 feet;

Thence N49°37'50"W a distance of 168.89 feet;

Thence N60°42'33"W a distance of 214.52 feet to the beginning of a curve;

Thence northwesterly a distance of 180.27 feet along the curve concave to the south, having a radius of 485.00 feet, a central angle of 21° 17' 47" and a chord which bears N71°21'26"W 179.23 feet distant;

Thence N82°00'20"W a distance of 212.81 feet;

Thence N89°19'32"W a distance of 68.86 feet;

Thence N72°15'52"W a distance of 39.49 feet;

Thence N82°11'07"W a distance of 63.53 feet to the beginning of a curve;

Thence westerly a distance of 49.15 feet along the curve concave to the south, having a radius of 115.00 feet, a central angle of 24° 29' 17" and a chord which bears S85°34'14"W 48.78 feet distant;

Thence S73°19'35"W a distance of 80.31 feet to the beginning of a curve;

Thence westerly a distance of 189.13 feet along the curve concave to the north, having a radius of 325.00 feet, a central angle of 33° 20' 33" and a chord which bears S89°59'52"W 186.47 feet distant;

Thence N73°19'52"W a distance of 176.74 feet;

Thence N79°20'32"W a distance of 158.84 feet;

Thence S86°45'13"W a distance of 80.97 feet;

Thence N85°02'52"W a distance of 30.17 feet;

Thence N37°19'57"W a distance of 105.64 feet to a point on said easterly line of a Temporary Sewer Access Area;

Thence S52°40'10"W along said easterly line a distance of 97.18 feet to the Point of Beginning, said parcel being 65145 Square Feet or 1.50 Acres more or less.

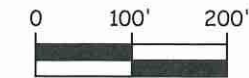
Authored by: Renee B. Parent, CO LS38266
City Surveyor
City of Grand Junction
333 West Avenue, Building C
Grand Junction, CO 81501



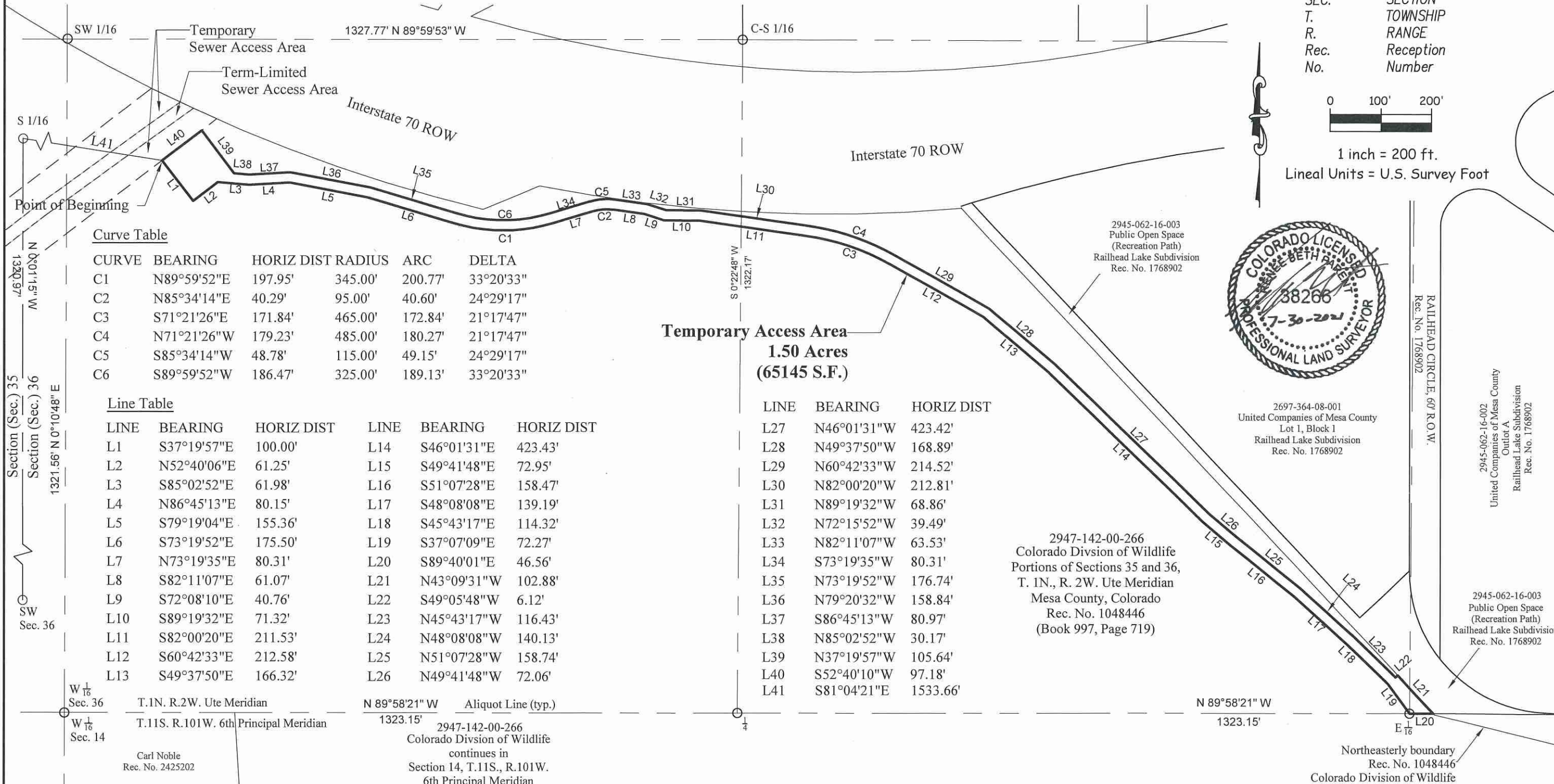
Exhibit B Temporary Access Area with City of Grand Junction

ABBREVIATIONS

P.O.C. POINT OF COMMENCEMENT
 P.O.B. POINT OF BEGINNING
 R.O.W. RIGHT OF WAY
 SEC. SECTION
 T. TOWNSHIP
 R. RANGE
 Rec. Reception
 No. Number



1 inch = 200 ft.
 Lineal Units = U.S. Survey Foot



Curve Table

CURVE	BEARING	HORIZ DIST	RADIUS	ARC	DELTA
C1	N89°59'52"E	197.95'	345.00'	200.77'	33°20'33"
C2	N85°34'14"E	40.29'	95.00'	40.60'	24°29'17"
C3	S71°21'26"E	171.84'	465.00'	172.84'	21°17'47"
C4	N71°21'26"W	179.23'	485.00'	180.27'	21°17'47"
C5	S85°34'14"W	48.78'	115.00'	49.15'	24°29'17"
C6	S89°59'52"W	186.47'	325.00'	189.13'	33°20'33"

Line Table

LINE	BEARING	HORIZ DIST	LINE	BEARING	HORIZ DIST
L1	S37°19'57"E	100.00'	L14	S46°01'31"E	423.43'
L2	N52°40'06"E	61.25'	L15	S49°41'48"E	72.95'
L3	S85°02'52"E	61.98'	L16	S51°07'28"E	158.47'
L4	N86°45'13"E	80.15'	L17	S48°08'08"E	139.19'
L5	S79°19'04"E	155.36'	L18	S45°43'17"E	114.32'
L6	S73°19'52"E	175.50'	L19	S37°07'09"E	72.27'
L7	N73°19'35"E	80.31'	L20	S89°40'01"E	46.56'
L8	S82°11'07"E	61.07'	L21	N43°09'31"W	102.88'
L9	S72°08'10"E	40.76'	L22	S49°05'48"W	6.12'
L10	S89°19'32"E	71.32'	L23	N45°43'17"W	116.43'
L11	S82°00'20"E	211.53'	L24	N48°08'08"W	140.13'
L12	S60°42'33"E	212.58'	L25	N51°07'28"W	158.74'
L13	S49°37'50"E	166.32'	L26	N49°41'48"W	72.06'

Temporary Access Area
1.50 Acres
(65145 S.F.)

LINE	BEARING	HORIZ DIST
L27	N46°01'31"W	423.42'
L28	N49°37'50"W	168.89'
L29	N60°42'33"W	214.52'
L30	N82°00'20"W	212.81'
L31	N89°19'32"W	68.86'
L32	N72°15'52"W	39.49'
L33	N82°11'07"W	63.53'
L34	S73°19'35"W	80.31'
L35	N73°19'52"W	176.74'
L36	N79°20'32"W	158.84'
L37	S86°45'13"W	80.97'
L38	N85°02'52"W	30.17'
L39	N37°19'57"W	105.64'
L40	S52°40'10"W	97.18'
L41	S81°04'21"E	1533.66'



2697-364-08-001
 United Companies of Mesa County
 Lot 1, Block 1
 Railhead Lake Subdivision
 Rec. No. 1768902

2947-142-00-266
 Colorado Division of Wildlife
 Portions of Sections 35 and 36,
 T. 1N., R. 2W. Ute Meridian
 Mesa County, Colorado
 Rec. No. 1048446
 (Book 997, Page 719)

2945-062-16-002
 United Companies of Mesa County
 Outlot A
 Railhead Lake Subdivision
 Rec. No. 1768902

2945-062-16-003
 Public Open Space
 (Recreation Path)
 Railhead Lake Subdivision
 Rec. No. 1768902

The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder and monuments as shown. This sketch does not constitute a legal boundary survey, and is not intended to be used as a means for establishing or verifying property boundary lines.

DRAWN BY R.B.P. 7-30-21
 CHECKED BY L.C. & K.H.



Department of Public Works
 333 West Avenue, Building C
 Grand Junction, CO 81501

Tiara Rado Force Main Project
 Portion of SW 1/4 and SE 1/4 Section 36, Township 1 North (T.1N.),
 Range 2 West (R.2W.), Ute Meridian, Mesa County, Colorado

SHEET NO. 1
 OF 1

STATE OF COLORADO
acting by and through the
Department of Natural Resources,
for the use and benefit of the Division of Parks and Wildlife
and the Parks and Wildlife Commission

TEMPORARY SEWER ACCESS AGREEMENT

with

City of Grand Junction

1. PARTIES

This temporary sewer access agreement for construction of sanitary sewer infrastructure (the “Access Agreement”) is granted by the State of Colorado acting by and through the Department of Natural Resources, for the use and benefit of the Division of Parks and Wildlife and the Parks and Wildlife Commission (“State” or “CPW” or “Grantor”), located at 6060 Broadway, Denver, Colorado 80216, to the City of Grand Junction, a Colorado home rule municipality (“Grantee”) whose legal address is 250 North 5th Street, Grand Junction, Colorado 81501. The Parties hereby agree to the provisions set forth in this Access Agreement.

2. EFFECTIVE DATE

This Access Agreement shall not be effective or enforceable until the Effective Date as defined in §4.D. The State shall not be liable to Grantee for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Contract exists pursuant to CRS §33-1-101, §33-1-104, §33-1-105, §33-9-101, §33-9-109 et seq., §33-10-101, §33-10-106, and §33-10-107, and all prior reviews and approvals have been obtained.

B. Consideration

The Parties agree that the mutual promises and covenants contained herein, and other good and valuable consideration are sufficient and adequate to support the granting of this Access Agreement.

C. Exhibits

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Access Area Description) and **Exhibit B** (Access Area Map).

D. Purpose

The purpose of this Access Agreement is for the construction and installation of sewer facilities and appurtenances.

E. References

All references in this Access Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits, or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. CRS

“CRS” means the Colorado Revised Statutes as amended.

B. Access Agreement

“Access Agreement” means this Access Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Access Agreement, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, State Fiscal Rules, and State Controller Policies.

C. “Access Area” means that portion of the Property encumbered by this Access Agreement and described in **EXHIBIT A** and depicted for illustrative purposes only in **EXHIBIT B**.

D. Effective Date

“Effective Date” is the date this Access Agreement is approved and signed by the State and accepted by Grantee, whichever is later.

E. Improvements

“Improvements” means any and all improvements Grantee places on or about the Access Area, whether currently existing or in the future.

F. Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

G. Property

“Property” is Walker State Wildlife Area in Section 36, Township 1 North, Range 2 West of the Ute P.M., located in Mesa County, Colorado.

5. TERM AND RECORDATION

The Parties’ respective duties and obligations and the burdens on the Property under this Access Agreement shall commence on the Effective Date and shall continue until March 31, 2023. Grantee may record this Access Agreement in the official records of each county in which the Property is situated following the Effective Date.

6. GRANT OF ACCESS

The State may be the owner of all or part of the Property; however, the State is not making any representations concerning its ownership of, nor warrants its title to, any of the Access Area or the Property, and if this Access Agreement encroaches on lands not owned or controlled by the State, Grantee is solely responsible for any such encroachment. Subject to the foregoing caveat, by this Access Agreement the State hereby grants to Grantee temporary access over the Access Area located on the Property. The nature, character, and extent of

Grantee's rights created herein are limited to those specifically set forth in this Access Agreement.

A. Grantee's Use

This Access Agreement is granted solely for the purposes stated in §3.D, and Grantee shall use the Access Area only for such purpose. Grantee shall have a right of access along and upon the Property, the extent of which is limited to effectuating such purposes.

B. Construction and Maintenance

Grantee is solely responsible for the construction and maintenance of all Improvements.

C. Pre-Existing Rights

The Access Agreement is subject to any and all previously granted easements, rights-of-way, licenses and conveyances, recorded or unrecorded. It is Grantee's sole responsibility to determine the existence of any rights, uses or installations conflicting with Grantee's use of the Access Area. Grantee shall not interfere with any use in the Access Area by any other party holding a senior or superior interest in the Property.

D. Reserved Rights

The State reserves all rights not specifically conveyed under this Access Agreement, including the right to use and occupy the Property for any purpose not inconsistent with, and which does not materially interfere with, Grantee's use and enjoyment of the rights herein granted. Said rights include, but are not limited to:

i. Public Access

Continuing to allow access to CPW staff and the public for purposes consistent with the CPW's mission and purpose.

ii. Additional Access

Granting additional access to third parties within the Access Area but do not unreasonably interfere with Grantee's use and enjoyment of the rights granted herein.

E. Surface Restoration

Any excavations, disturbances, or other temporary disturbances of the surface, soil, or vegetation caused by or on Grantee's behalf on or about the Access Area shall be properly replaced, and as nearly as possible, restored and maintained by Grantee in original configuration and with similar vegetation. Specifically, but not by way of limitation, Grantee shall control noxious weeds for the first five years following any and all excavations, disturbances, or other temporary disturbances of soil. Restoration shall be performed within twelve (12) months of ground disturbance. Grantee will consult with the State with regard to seed type(s) and method(s) of re-vegetation.

7. ABANDONMENT

Grantee's failure to perform its obligations under the Access Agreement or make use of the Access Area for a period of one year shall constitute an abandonment of its interests under the Access Agreement. The State, in its sole discretion, may terminate and extinguish the Access Agreement in the event of abandonment after providing Grantee 60 day's written notice. If the State so terminates and extinguishes the Access Agreement, the State may, at its sole option, retain all Improvements without compensation to Grantee or require Grantee to remove the Improvements and restore the Access Area and any other portions of the Property affected by the Improvements into their original condition or as reasonably near to the original condition as feasible before the Access Agreement was granted, and Grantee shall

execute and deliver to the State a document, in recordable form, acknowledging and consenting to the termination and extinguishment of the Access Agreement.

8. GRANTEE'S REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS

Grantee makes the following specific representations and warranties, each of which was relied on by the State in granting this Access Agreement.

A. Hazardous Substances

Grantee shall not introduce or allow introduction of any "Hazardous Substance," as defined in 42 U.S.C. §9601 (14), or hazardous or toxic material, substance, or waste, as they may be defined under relevant state or local law, or asbestos, on the Property or any of the State's adjacent real property. Grantee shall be solely responsible for all costs and expenses incurred if Grantee breaches this provision. Grantee shall make the foregoing representation in a separate writing deliverable to the State upon request by the State.

B. Independent Professional Advice

The Parties received such independent legal and financial advice regarding this Access Agreement as the Parties deemed necessary and prudent, and based thereon, and Grantee's informed judgment, voluntarily accepted this Access Agreement from the State.

C. Legal Authority – Grantee Signatory

Grantee possesses the legal authority to accept this Access Agreement and its attendant obligations and has taken all actions required by its procedures, ordinances, and/or applicable laws to exercise that authority, to lawfully authorize its undersigned signatory to execute this Access Agreement, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to accept this Access Agreement within 15 days of receiving such request. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process in accordance with regulations and procedures established by the Colorado Secretary of State.

D. Licenses, Permits, Etc.

As of the Effective Date, Grantee shall have and at all times during the term hereof shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform its obligations under this Access Agreement, without reimbursement by the State. Additionally, all employees, agents, and subcontractors of Grantee performing services under this Access Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. Any revocation, withdrawal, or non-renewal of licenses, certifications, approvals, insurance, permits, or any such similar requirements necessary for Grantee to properly perform the terms of this Access Agreement shall constitute a violation of this Access Agreement.

E. Litigation Notification

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Access Agreement or which may affect Grantee's

ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Director of CPW.

9. INSURANCE

Grantee and Grantee's agents, successors, assigns, licensees, contractors and permittees shall obtain and maintain insurance as specified herein at all times during the term of this Access Agreement. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the State.

A. CGIA – Public Entities

If Grantee is a "public entity" within the meaning of the CGIA, Grantee shall maintain at all times during the term of this Access Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its potential liabilities under the CGIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each contract with a contractor that is a public entity, to include the insurance requirements necessary to meet such contractor's liabilities under the CGIA. If Grantee is not a "public entity" within the meaning of the CGIA, Grantee shall obtain and maintain during the term of this Access Agreement insurance coverage and policies meeting the requirements set forth in §9.B with respect to "non-public entities".

B. Non-Public Entities

Grantee shall obtain and maintain, and require each "non-public" contractor providing goods or services in connection with this Access Agreement, to obtain and maintain, insurance coverage substantially similar to the following:

i. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below the specified minimum limits because of claims made or paid, Grantee or Grantee's contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision. Grantee shall ensure that coverage and limits shall increase in the future to those commonly required and available in the marketplace at the time, and shall ensure that coverage and limits are at all times comparable those required in this §9.B.i.

ii. Additional Insured

The State shall be named as additional insured on all Commercial General Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Grantee and Grantee's agents, successors, assigns, licensees, contractors, and permittees hereunder.

iii. Primacy of Coverage

Coverage required of Grantee and Grantee's agents, successors, assigns, licensees, contractors, and permittees shall be primary over any insurance or self-insurance program carried by the State.

C. Certificates

Grantee and Grantee's agents, successors, assigns, licensees, contractors, and permittees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Access Agreement. In addition, upon request by the State at any other time during the term of this Access Agreement, Grantee and Grantee's agents, successors, assigns, licensees, contractors and permittees shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions herein.

10. VIOLATIONS, REMEDIES AND RESOLUTION METHODS

A. Defined

In addition to any violations specified in other sections of this Access Agreement, Grantee's failure to perform any of its material obligations hereunder, including, but not limited to, those in §9, is a violation of this Access Agreement.

B. Notice

The State shall send Grantee in the manner provided in this §10 a notice detailing alleged violations of this Access Agreement. Upon receipt thereof, Grantee shall immediately send the State a response in the manner provided in this §10 agreeing with the State or denying the alleged violations in whole or part and cease and desist from any use or activity that could increase or expand the alleged violations until they are finally resolved by agreement of the Parties or by decree of a court of competent jurisdiction.

C. Remedies and Resolution Methods

i. Agreement

If Grantee agrees with or does not dispute the State's assertion regarding the alleged violations, Grantee shall, at Grantee's sole cost, restore the Access Area and any other portions of the Property affected by the violations to their prior condition or as reasonably feasible to the condition prior to the violations or to take such other action as may be reasonable or necessary to eliminate the violations and prevent their further occurrence and shall provide the State with details of its remedial plan together with a reasonably prompt time for completion thereof. The State may enforce such remedial plan via proceedings at law or in equity if Grantee fails to perform it in accordance with its terms.

ii. Dispute Meeting

If Grantee disagrees with and disputes the State's assertion regarding the alleged violations in whole or part, Grantee shall provide the State with a written explanation stating the reasons why the State's allegations are erroneous or stating why the use or activity should be permitted. Thereafter, representatives of the Parties with settlement authority shall meet as soon as possible, but not later than 60 days after the State's receipt of Grantee's response, to resolve issues. If the Parties reach agreement, they shall create a remedial plan together with a reasonably prompt time for completion thereof. The State may enforce such remedial plan via proceedings at law or in equity if Grantee fails to perform it in accordance with its terms.

iii. Legal Proceedings

The State may, in its sole discretion, exercise any or all remedies available at law or in equity, including those available at common law, concurrently or consecutively, to enforce its rights hereunder if any meeting pursuant to §10.C.ii fails to resolve any issues and to otherwise enforce its rights hereunder, including enforcing remedial plans created under §10.C.i and ii. Courts are specifically authorized to issue both mandatory and negative injunctions, including one requiring restoration of the Access Area and any other portions of the Property affected to its condition before a violation occurred. If the Parties agree that an abandonment under §7 has occurred, the Parties shall execute a written, notarized acknowledgment thereof in recordable form stating that the Access Agreement has been terminated and extinguished. If the Parties do not so agree, the State may seek appropriate judicial relief to terminate and extinguish the Access Agreement.

iv. Costs

Grantee shall be solely responsible for the costs of remedying any violations of this Access Agreement caused by Grantee or its agents.

D. Public Safety

Notwithstanding anything to the contrary herein, the State need not provide advance notice or a cure period and may immediately take action if it is necessary to preserve public safety or to prevent immediate public crisis.

11. NOTICES AND REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

State
Area Wildlife Manager
CO Parks & Wildlife
711 Independent Avenue
Grant Junction, CO 81505

Grantee
Randi Kim
Utilities Director
250 N. 5th Street
Grand Junction, CO 81501
randik@gjcity.org

with copy to
Real Estate Section
CO Parks & Wildlife
6060 Broadway
Denver, CO 80216

and
John Shaver
City Attorney
250 N 5th Street
Grand Junction, CO 81501
johns@gjcity.org

12. LIMITATION OF STATE LIABILITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees, is controlled and limited by the provisions of CRS §24-10-101 et seq. (the CGIA) and CRS §24-30-1501, et seq. (risk management). No term or condition of this Access Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of CGIA or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

13. GENERAL PROVISIONS

A. Binding Arbitration Prohibited

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Access Agreement or incorporated herein by reference shall be null and void.

B. Binding Effect

All provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns; and shall continue as a servitude running with the Property.

C. Captions

The captions and headings in this Access Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.

D. Construction of this Access Agreement

This Access Agreement shall be liberally construed to further the purposes and intent set forth in §3.D. In the event of an ambiguity in this Access Agreement, the rule of contract construction that ambiguities shall be construed against the drafter shall not apply and the Parties hereto shall be treated as equals and no Party shall be treated with favor or disfavor.

E. CORA Disclosure

To the extent not prohibited by federal law, this Access Agreement and the performance measures and standards under CRS §24-106-107, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

F. Corrections and Further Acts

The Parties shall perform any further acts and execute and deliver any documents, including amendments to this Access Agreement that are reasonably necessary to (i) effectuate its purposes, (ii) to correct typographical, spelling, or clerical errors, or to (iii) correct any errors in legal in the legal description of the Property.

G. Counterparts

This Access Agreement may be executed in multiple identical original counterparts constituting one agreement.

H. Entire Understanding

This Access Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

I. Joint and Several Obligations

If more than one person or entity owns this Access Agreement at any time, the obligations imposed by this Access Agreement shall be joint and several upon each of the owners.

J. Jurisdiction and Venue

All suits or actions related to this Access Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the county in which the Property is situated.

K. Modification

i. By the Parties

Except as specifically provided in this Access Agreement, modifications hereof shall not be effective unless agreed to by the Parties in a written amendment hereto, properly executed and approved in accordance with applicable Colorado State Law, State Fiscal Rules, and Office of the State Controller Policies.

ii. By Operation of Law

This Access Agreement is subject to such modifications as may be required by changes in Federal or Colorado State Law, or their implementing regulations. Any such required modification shall be automatically incorporated as part of this Access Agreement on the effective date of such change, as if fully set forth herein.

L. Order of Precedence

The provisions of this Access Agreement shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Access Agreement and its exhibits and attachments, including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the main body of this Access Agreement, and
- ii. Exhibits

M. Severability

Provided this Access Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Access Agreement in accordance with its intent.

N. Third Party Enforcement - None

Enforcement of this Access Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Access Agreement are incidental, and do not create any enforcement rights for any third parties.

O. Waiver

Waiver of any breach or event of default under a term, provision, or requirement of this Access Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement. Grantee hereby waives any defense of laches, estoppel, or prescription, including any defenses available under CRS §38-41-119. The failure of the State to perform any act

required by this paragraph shall not impair the validity of this Access Agreement or limit its enforceability in any way.

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GRANTEE: ACCEPTED by City of Grand Junction

DocuSigned by:
Randi M. Kim
By: _____
7FE7DB91C80143B...
Name: **Randi M. Kim** _____
Title: **Utilities Director** _____
Date: **January 3, 2022 | 10:48 AM MST** _____

Exhibit A

Temporary Sewer Access Area A

A Temporary Sewer Access Area located within a parcel of land described in Reception Number 1048446 and lying in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, Township 1 North, Range 2 West of the Ute Meridian, Mesa County, Colorado and being more particularly described as follows:

Commencing at the South $\frac{1}{16}$ corner common to said Section 36 and Section 35, Township 1 North, Range 2 West of the Ute Meridian and assuming the west line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36 bears $S0^{\circ}01'15''E$ with all other bearings contained herein being relative thereto; thence $S85^{\circ}26'39''E$ a distance of 1555.37 feet to a point on the south Right-of-Way line of Interstate 70 being the Point of Beginning;

Thence northwesterly a distance of 62.34 feet along said south Right-of-Way line of Interstate 70 being the arc of a curve concave to the northeast having a radius of 3014.80 feet, a central angle of $01^{\circ} 11' 05''$ and a chord which bears $N64^{\circ}31'27''W$ 62.34 feet distant;

Thence $S52^{\circ}40'06''W$ a distance of 941.89 feet;

Thence $N37^{\circ}19'54''W$ a distance of 82.00 feet;

Thence $S52^{\circ}40'06''W$, for a distance of 144.00 feet;

Thence $S37^{\circ}19'54''E$ a distance of 99.09 feet to the beginning of a non-tangent curve concave to the southeast having a radius of 700.00 feet, a central angle of $10^{\circ} 32' 55''$ and a chord which bears $S34^{\circ}42'20''W$ 128.70 feet distant;

Thence southwesterly along said curve, a distance of 128.88 feet to a point of reverse curvature;

Thence southwesterly a distance of 169.50 feet along the arc of said curve concave to the northwest having a radius of 575.00 feet, a central angle of $16^{\circ} 53' 22''$ and a chord which bears $S37^{\circ}52'33''W$ 168.88 feet distant;

Thence $S46^{\circ}19'14''W$ a distance of 94.34 feet;

Thence $S43^{\circ}40'46''E$ a distance of 21.68 feet to a point of cusp on a non-tangent curve concave to the south having a radius of 47.00 feet, a central angle of $98^{\circ} 44' 37''$ and chord which bears $N69^{\circ}42'28''E$ 71.34 feet distant;

Thence northerly along said curve, a distance of 81.00 feet;

Thence $N46^{\circ}19'14''E$ a distance of 28.86 feet to the beginning of a curve;

Thence northeasterly a distance of 184.31 feet along the curve concave to the northwest, having a radius of 625.00 feet and a central angle of $16^{\circ} 53' 48''$ and a chord which bears $N37^{\circ}52'20''E$ 183.65 feet distant to a point of reverse curvature;

Thence northeasterly a distance of 259.75 feet along the arc of said curve concave to the southeast having

a radius of 650.00 feet, a central angle of 22° 53' 48" and a chord which bears N40°52'20"E 258.03 feet distant;

Thence N52°19'14"E a distance of 622.07 feet;

Thence N54°13'11"E a distance of 342.48 feet to the Point of Beginning, said parcel being 84495 Square Feet or 1.94 Acres more or less.

Temporary Sewer Access Area B

A Temporary Sewer Access Area located within a parcel of land described in Reception Number 1048446 and lying in the SW ¼ SW ¼ and SE ¼ SW ¼ of Section 36, Township 1 North, Range 2 West of the Ute Meridian, Mesa County, Colorado and being more particularly described as follows:

Commencing at the South 1/16 corner common to said Section 36 and Section 35, Township 1 North, Range 2 West of the Ute Meridian and assuming the west line of said SW ¼ SW ¼ Section 36 bears S0°01'15"E with all other bearings contained herein being relative thereto; thence S85°26'39"E a distance of 1555.37 feet to a point of the south Right-of-Way line of Interstate 70; thence southeasterly a distance of 28.52 feet along said south Right-of-Way line of Interstate 70 being the arc of a curve concave to the northeast having a radius of 3014.80 feet, a central angle of 0° 32' 31" and a chord which bears S64°31'51"E 28.52 feet distant to the Point of Beginning;

Thence continuing southeasterly a distance of 50.39 feet along said south Right-of-Way line of Interstate 70 being the arc of a curve concave to the northeast having a radius of 3014.80 feet, a central angle of 0° 57' 27" and a chord which bears S66°02'56"E 50.39 feet distant;

Thence S52°40'06"W a distance of 997.87 feet to the beginning of a curve;

Thence southwesterly a distance of 233.20 feet along the curve concave to the southeast, having a radius of 575.00 feet, a central angle of 23° 14' 14" and a chord which bears S41°02'59"W 231.61 feet distant to a point of reverse curvature;

Thence southwesterly a distance of 206.34 feet along the arc of said curve concave to the northwest having a radius of 700.00 feet, a central angle of 16° 53' 22" and a chord which bears S37°52'33"W 205.60 feet distant;

Thence S46°19'14"W a distance of 43.87 feet;

Thence N44°51'58"W a distance of 24.39 feet to the beginning of a non-tangent curve concave to the west having a radius of 47.00 feet, a central angle of 37° 41' 25" and a chord which bears N11°12'25"W 30.36 feet distant;

Thence northerly along said curve, a distance of 30.92 feet;

Thence N46°19'14"E a distance of 28.07 feet to the beginning of a curve;

Thence northeasterly a distance of 191.69 feet along the curve concave to the northwest, having a radius of 650.00 feet, a central angle of 16° 53' 48" and a chord which bears N37°52'20"E 190.99 feet distant to

a point of reverse curvature;

Thence northeasterly a distance of 249.76 feet along the arc of said curve concave to the southeast having a radius of 625.00 feet, a central angle of $22^{\circ} 53' 48''$ and a chord which bears $N40^{\circ}52'20''E$ 248.10 feet distant;

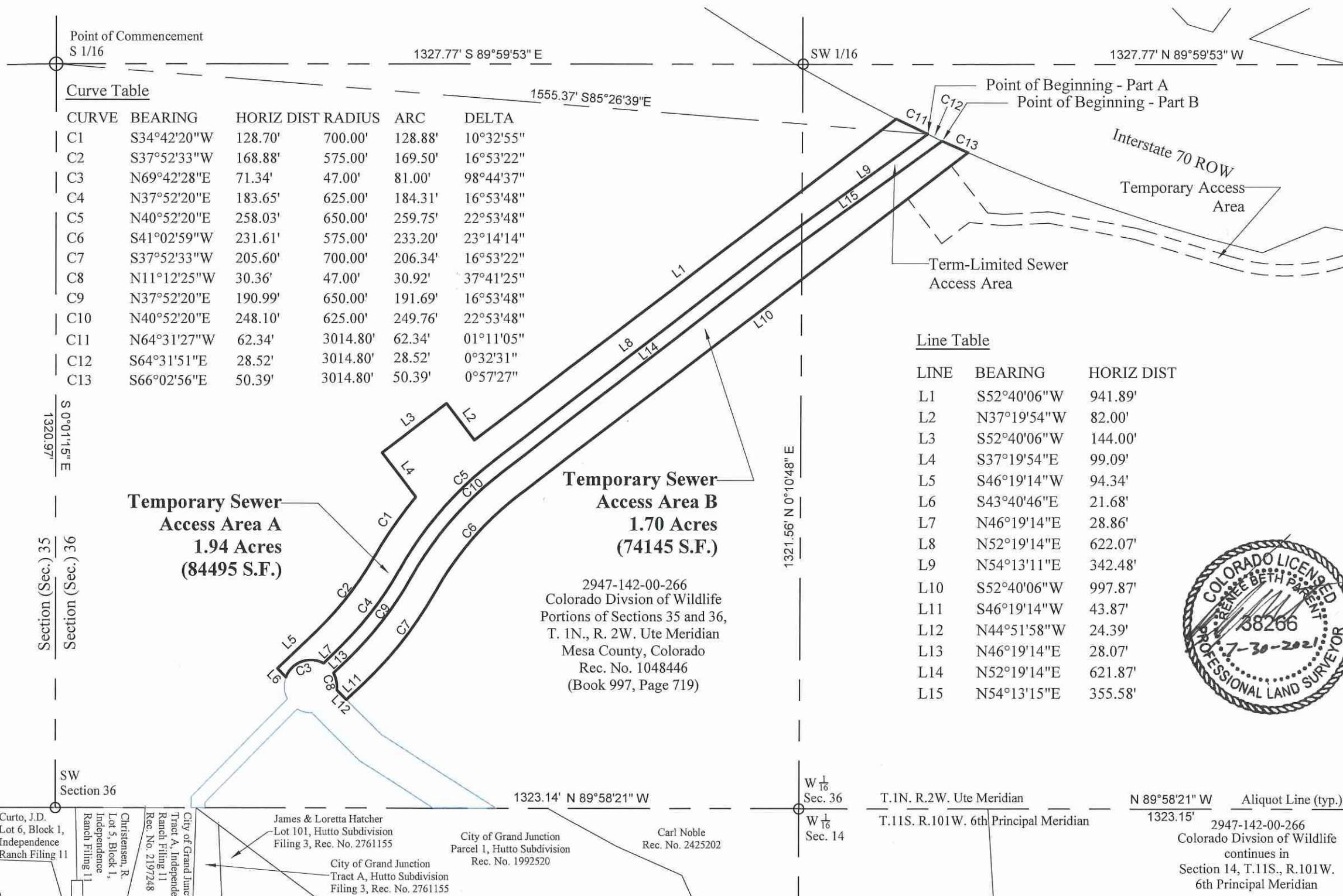
Thence $N52^{\circ}19'14''E$ a distance of 621.87 feet;

Thence $N54^{\circ}13'15''E$ a distance of 355.58 feet to the Point of Beginning, said parcel being 74145 Square Feet or 1.70 Acres more or less.

Authored by: Renee B. Parent, CO LS38266
City Surveyor
City of Grand Junction
333 West Avenue, Building C
Grand Junction, CO 81501



Exhibit B Temporary Sewer Access Area with City of Grand Junction



Curve Table

CURVE	BEARING	HORIZ DIST	RADIUS	ARC	DELTA
C1	S34°42'20"W	128.70'	700.00'	128.88'	10°32'55"
C2	S37°52'33"W	168.88'	575.00'	169.50'	16°53'22"
C3	N69°42'28"E	71.34'	47.00'	81.00'	98°44'37"
C4	N37°52'20"E	183.65'	625.00'	184.31'	16°53'48"
C5	N40°52'20"E	258.03'	650.00'	259.75'	22°53'48"
C6	S41°02'59"W	231.61'	575.00'	233.20'	23°14'14"
C7	S37°52'33"W	205.60'	700.00'	206.34'	16°53'22"
C8	N11°12'25"W	30.36'	47.00'	30.92'	37°41'25"
C9	N37°52'20"E	190.99'	650.00'	191.69'	16°53'48"
C10	N40°52'20"E	248.10'	625.00'	249.76'	22°53'48"
C11	N64°31'27"W	62.34'	3014.80'	62.34'	01°11'05"
C12	S64°31'51"E	28.52'	3014.80'	28.52'	0°32'31"
C13	S66°02'56"E	50.39'	3014.80'	50.39'	0°57'27"

Line Table

LINE	BEARING	HORIZ DIST
L1	S52°40'06"W	941.89'
L2	N37°19'54"W	82.00'
L3	S52°40'06"W	144.00'
L4	S37°19'54"E	99.09'
L5	S46°19'14"W	94.34'
L6	S43°40'46"E	21.68'
L7	N46°19'14"E	28.86'
L8	N52°19'14"E	622.07'
L9	N54°13'11"E	342.48'
L10	S52°40'06"W	997.87'
L11	S46°19'14"W	43.87'
L12	N44°51'58"W	24.39'
L13	N46°19'14"E	28.07'
L14	N52°19'14"E	621.87'
L15	N54°13'15"E	355.58'

ABBREVIATIONS

P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING
R.O.W.	RIGHT OF WAY
SEC.	SECTION
T.	TOWNSHIP
R.	RANGE
Rec.	Reception
No.	Number



1 inch = 200 ft.
Lineal Units = U.S. Survey Foot

The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder and monuments as shown. This sketch does not constitute a legal boundary survey, and is not intended to be used as a means for establishing or verifying property boundary lines.

DRAWN BY R.B.P. 7-30-21
CHECKED BY L.C. & K.H.



Department of Public Works
333 West Avenue, Building C
Grand Junction, CO 81501

Tiara Rado Force Main Project
Portion of SW 1/4 Section 36, Township 1 North (T.1N.), Range 2 West (R.2W.), Ute Meridian, Mesa County, Colorado

SHEET NO. 1
OF 1

STATE OF COLORADO
acting by and through the
Department of Natural Resources,
for the use and benefit of the Division of Parks and Wildlife
and the Parks and Wildlife Commission

TERM-LIMITED SEWER ACCESS AGREEMENT

With

City of Grand Junction

1. PARTIES

This term-limited sewer access agreement for sanitary sewer infrastructure (the “Access Agreement”) is granted by the State of Colorado acting by and through the Department of Natural Resources, for the use and benefit of the Division of Parks and Wildlife and the Parks and Wildlife Commission (“State” or “CPW” or “Grantor”), located at 6060 Broadway, Denver, Colorado 80216, to the City of Grand Junction, a Colorado home rule municipality (“Grantee”) whose legal address is 250 North 5th Street, Grand Junction, Colorado 81501. The Parties hereby agree to the provisions set forth in this Access Agreement.

2. EFFECTIVE DATE

This Access Agreement shall not be effective or enforceable until the Effective Date as defined in §4.D. The State shall not be liable to Grantee for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Contract exists pursuant to CRS §33-1-101, §33-1-104, §33-1-105, §33-9-101, §33-9-109 et seq., §33-10-101, §33-10-106, and §33-10-107, and all prior reviews and approvals have been obtained.

B. Consideration

The Parties agree that the mutual promises and covenants contained herein, the payment of \$8,200.00 paid by Grantee to the State, and other good and valuable consideration are sufficient and adequate to support the granting of this Access Agreement.

C. Exhibits

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Access Area Description) and **Exhibit B** (Access Area Map).

D. Purpose

The purpose of this Access Agreement is for the installation, operation, maintenance and repair of sewer facilities and appurtenances including, but not limited to, sanitary sewer lines, storm sewers, water lines, and appurtenant facilities.

E. References

All references in this Access Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits, or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. CRS

“CRS” means the Colorado Revised Statutes as amended.

B. Access Agreement

“Access Agreement” means this Access Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Access Agreement, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, State Fiscal Rules, and State Controller Policies.

C. “Access Area” means that portion of the Property encumbered by this Access Agreement and described in **EXHIBIT A** and depicted for illustrative purposes only in **EXHIBIT B**.

D. Effective Date

“Effective Date” is the date this Access Agreement is approved and signed by the State and accepted by Grantee, whichever is later.

E. Improvements

“Improvements” means any and all improvements Grantee places on or about the Access Area, whether currently existing or in the future.

F. Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

G. Property

“Property” is Walker State Wildlife Area in Section 36, Township 1 North, Range 2 West of the Ute P.M., located in Mesa County, Colorado.

5. TERM AND RECORDATION

The Parties’ respective duties and obligations and the burdens on the Property under this Access Agreement shall commence on the Effective Date and shall continue for a term of ninety-nine (99) years. Grantee may record this Access Agreement in the official records of each county in which the Property is situated following the Effective Date.

6. GRANT OF ACCESS

The State may be the owner of all or part of the Property; however, the State is not making any representations concerning its ownership of, nor warrants its title to, any of the Access Area or the Property, and if this Access Agreement encroaches on lands not owned or controlled by the State, Grantee is solely responsible for any such encroachment. Subject to the foregoing caveat, by this Access Agreement the State hereby grants to Grantee term-limited access for a period of ninety-nine years (99) over the Access Area located on the

Property. The nature, character, and extent of Grantee's rights created herein are limited to those specifically set forth in this Access Agreement.

A. Grantee's Use

This Access Agreement is granted solely for the purposes stated in §3.D, and Grantee shall use the Access Area only for such purpose. Grantee shall have a right of access along and upon the Property, the extent of which is limited to effectuating such purposes.

B. Construction and Maintenance

Grantee is solely responsible for the construction and maintenance of all Improvements.

C. Pre-Existing Rights

The Access Agreement is subject to any and all previously granted easements, rights-of-way, licenses and conveyances, recorded or unrecorded. It is Grantee's sole responsibility to determine the existence of any rights, uses or installations conflicting with Grantee's use of the Access Area. Grantee shall not interfere with any use in the Access Area by any other party holding a senior or superior interest in the Property.

D. Reserved Rights

The State reserves all rights not specifically conveyed under this Access Agreement, including the right to use and occupy the Property for any purpose not inconsistent with, and which does not materially interfere with, Grantee's use and enjoyment of the rights herein granted. Said rights include, but are not limited to:

i. Public Access

Continuing to allow access to CPW staff and the public for purposes consistent with the CPW's mission and purpose.

ii. Additional Access

Granting additional access to third parties within the Access Area but do not unreasonably interfere with Grantee's use and enjoyment of the rights granted herein.

E. Surface Restoration

Any excavations, disturbances, or other temporary disturbances of the surface, soil, or vegetation caused by or on Grantee's behalf on or about the Access Area shall be properly replaced, and as nearly as possible, restored and maintained by Grantee in original configuration and with similar vegetation. Specifically, but not by way of limitation, Grantee shall control noxious weeds for the first five years following any and all excavations, disturbances, or other temporary disturbances of soil. Restoration shall be performed within (12) months of ground disturbance. Grantee will consult with the State with regard to seed type(s) and method(s) of re-vegetation.

7. ABANDONMENT

Grantee's failure to perform its obligations under the Access Agreement or make use of the Access Area for a period of one year shall constitute an abandonment of its interests under the Access Agreement. The State, in its sole discretion, may terminate and extinguish the Access Agreement in the event of abandonment after providing Grantee 60 day's written notice. If the State so terminates and extinguishes the Access Agreement, the State may, at its sole option, retain all Improvements without compensation to Grantee or require Grantee to remove the Improvements and restore the Access Area and any other portions of the Property affected by the Improvements into their original condition or as reasonably near to the original condition as feasible before the Access Agreement was granted, and Grantee shall

execute and deliver to the State a document, in recordable form, acknowledging and consenting to the termination and extinguishment of the Access Agreement.

8. GRANTEE'S REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS

Grantee makes the following specific representations and warranties, each of which was relied on by the State in granting this Access Agreement.

A. Hazardous Substances

Grantee shall not introduce or allow introduction of any "Hazardous Substance," as defined in 42 U.S.C. §9601 (14), or hazardous or toxic material, substance, or waste, as they may be defined under relevant state or local law, or asbestos, on the Property or any of the State's adjacent real property. Grantee shall be solely responsible for all costs and expenses incurred if Grantee breaches this provision. Grantee shall make the foregoing representation in a separate writing deliverable to the State upon request by the State.

B. Independent Professional Advice

The Parties received such independent legal and financial advice regarding this Access Agreement as the Parties deemed necessary and prudent, and based thereon, and Grantee's informed judgment, voluntarily accepted this Access Agreement from the State.

C. Legal Authority – Grantee Signatory

Grantee possesses the legal authority to accept this Access Agreement and its attendant obligations and has taken all actions required by its procedures, ordinances, and/or applicable laws to exercise that authority, to lawfully authorize its undersigned signatory to execute this Access Agreement, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to accept this Access Agreement within 15 days of receiving such request. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process in accordance with regulations and procedures established by the Colorado Secretary of State.

D. Licenses, Permits, Etc.

As of the Effective Date, Grantee shall have and at all times during the term hereof shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform its obligations under this Access Agreement, without reimbursement by the State. Additionally, all employees, agents, and subcontractors of Grantee performing services under this Access Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. Any revocation, withdrawal, or non-renewal of licenses, certifications, approvals, insurance, permits, or any such similar requirements necessary for Grantee to properly perform the terms of this Access Agreement shall constitute a violation of this Access Agreement.

E. Litigation Notification

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Access Agreement or which may affect Grantee's

ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Director of CPW.

9. INSURANCE

Grantee and Grantee's agents, successors, assigns, licensees, contractors and permittees shall obtain and maintain insurance as specified herein at all times during the term of this Access Agreement. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the State.

A. CGIA – Public Entities

If Grantee is a "public entity" within the meaning of the CGIA, Grantee shall maintain at all times during the term of this Access Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its potential liabilities under the CGIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each contract with a contractor that is a public entity, to include the insurance requirements necessary to meet such contractor's liabilities under the CGIA. If Grantee is not a "public entity" within the meaning of the CGIA, Grantee shall obtain and maintain during the term of this Access Agreement insurance coverage and policies meeting the requirements set forth in §9.B with respect to "non-public entities".

B. Non-Public Entities

Grantee shall obtain and maintain, and require each "non-public" contractor providing goods or services in connection with this Access Agreement, to obtain and maintain, insurance coverage substantially similar to the following:

i. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below the specified minimum limits because of claims made or paid, Grantee or Grantee's contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision. Grantee shall ensure that coverage and limits shall increase in the future to those commonly required and available in the marketplace at the time, and shall ensure that coverage and limits are at all times comparable those required in this §9.B.i.

ii. Additional Insured

The State shall be named as additional insured on all Commercial General Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Grantee and Grantee's agents, successors, assigns, licensees, contractors, and permittees hereunder.

iii. Primacy of Coverage

Coverage required of Grantee and Grantee's agents, successors, assigns, licensees, contractors, and permittees shall be primary over any insurance or self-insurance program carried by the State.

C. Certificates

Grantee and Grantee's agents, successors, assigns, licensees, contractors, and permittees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Access Agreement. No later than 15 days prior to the expiration date of any such coverage, Grantee and Grantee's agents, successors, assigns, licensees, contractors and permittees shall deliver to the State certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Access Agreement, Grantee and Grantee's agents, successors, assigns, licensees, contractors and permittees shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions herein.

10. VIOLATIONS, REMEDIES AND RESOLUTION METHODS

A. Defined

In addition to any violations specified in other sections of this Access Agreement, Grantee's failure to perform any of its material obligations hereunder, including, but not limited to, those in §9, is a violation of this Access Agreement.

B. Notice

The State shall send Grantee in the manner provided in this §10 a notice detailing alleged violations of this Access Agreement. Upon receipt thereof, Grantee shall immediately send the State a response in the manner provided in this §10 agreeing with the State or denying the alleged violations in whole or part and cease and desist from any use or activity that could increase or expand the alleged violations until they are finally resolved by agreement of the Parties or by decree of a court of competent jurisdiction.

C. Remedies and Resolution Methods

i. Agreement

If Grantee agrees with or does not dispute the State's assertion regarding the alleged violations, Grantee shall, at Grantee's sole cost, restore the Access Area and any other portions of the Property affected by the violations to their prior condition or as reasonably feasible to the condition prior to the violations or to take such other action as may be reasonable or necessary to eliminate the violations and prevent their further occurrence and shall provide the State with details of its remedial plan together with a reasonably prompt time for completion thereof. The State may enforce such remedial plan via proceedings at law or in equity if Grantee fails to perform it in accordance with its terms.

ii. Dispute Meeting

If Grantee disagrees with and disputes the State's assertion regarding the alleged violations in whole or part, Grantee shall provide the State with a written explanation stating the reasons why the State's allegations are erroneous or stating why the use or activity should be permitted. Thereafter, representatives of the Parties with settlement authority shall meet as soon as possible, but not later than 60 days after the State's receipt of Grantee's response, to resolve issues. If the Parties reach agreement, they

shall create a remedial plan together with a reasonably prompt time for completion thereof. The State may enforce such remedial plan via proceedings at law or in equity if Grantee fails to perform it in accordance with its terms.

iii. Legal Proceedings

The State may, in its sole discretion, exercise any or all remedies available at law or in equity, including those available at common law, concurrently or consecutively, to enforce its rights hereunder if any meeting pursuant to §10.C.ii fails to resolve any issues and to otherwise enforce its rights hereunder, including enforcing remedial plans created under §10.C.i and ii. Courts are specifically authorized to issue both mandatory and negative injunctions, including one requiring restoration of the Access Area and any other portions of the Property affected to its condition before a violation occurred. If the Parties agree that an abandonment under §7 has occurred, the Parties shall execute a written, notarized acknowledgment thereof in recordable form stating that the Access Agreement has been terminated and extinguished. If the Parties do not so agree, the State may seek appropriate judicial relief to terminate and extinguish the Access Agreement.

iv. Costs

Grantee shall be solely responsible for the costs of remedying any violations of this Access Agreement caused by Grantee or its agents.

D. Public Safety

Notwithstanding anything to the contrary herein, the State need not provide advance notice or a cure period and may immediately take action if it is necessary to preserve public safety or to prevent immediate public crisis.

11. NOTICES AND REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

State

Manager
CO Parks & Wildlife
711 Independent Avenue
Grant Junction, CO 81505

with copy to
Real Estate Section
CO Parks & Wildlife
6060 Broadway
Denver, CO 80216

Grantee

Randi Kim
Utilities Director
250 N. 5th Street
Grand Junction, CO 81501

randik@gjcity.org

and

John Shaver
City Attorney
250 N 5th Street
Grand Junction, CO 81501

johns@gjcity.org

12. LIMITATION OF STATE LIABILITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees, is controlled and limited by the provisions of CRS §24-10-101 et seq. (the CGIA) and CRS §24-30-1501, et seq. (risk management). No term or condition of this Access Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of CGIA or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

13. GENERAL PROVISIONS

A. Binding Arbitration Prohibited

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Access Agreement or incorporated herein by reference shall be null and void.

B. Binding Effect

All provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns; and shall continue as a servitude running with the Property.

C. Captions

The captions and headings in this Access Agreement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.

D. Construction of this Access Agreement

This Access Agreement shall be liberally construed to further the purposes and intent set forth in §3.D. In the event of an ambiguity in this Access Agreement, the rule of contract construction that ambiguities shall be construed against the drafter shall not apply and the Parties hereto shall be treated as equals and no Party shall be treated with favor or disfavor.

E. CORA Disclosure

To the extent not prohibited by federal law, this Access Agreement and the performance measures and standards under CRS §24-106-107, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

F. Corrections and Further Acts

The Parties shall perform any further acts and execute and deliver any documents, including amendments to this Access Agreement that are reasonably necessary to (i) effectuate its purposes, (ii) to correct typographical, spelling, or clerical errors, or to (iii) correct any errors in legal in the legal description of the Property.

G. Counterparts

This Access Agreement may be executed in multiple identical original counterparts constituting one agreement.

H. Entire Understanding

This Access Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

I. Joint and Several Obligations

If more than one person or entity owns this Access Agreement at any time, the obligations imposed by this Access Agreement shall be joint and several upon each of the owners.

J. Jurisdiction and Venue

All suits or actions related to this Access Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the county in which the Property is situated.

K. Modification

i. By the Parties

Except as specifically provided in this Access Agreement, modifications hereof shall not be effective unless agreed to by the Parties in a written amendment hereto, properly executed and approved in accordance with applicable Colorado State Law, State Fiscal Rules, and Office of the State Controller Policies.

ii. By Operation of Law

This Access Agreement is subject to such modifications as may be required by changes in Federal or Colorado State Law, or their implementing regulations. Any such required modification shall be automatically incorporated as part of this Access Agreement on the effective date of such change, as if fully set forth herein.

L. Order of Precedence

The provisions of this Access Agreement shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Access Agreement and its exhibits and attachments, including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the main body of this Access Agreement, and
- ii. Exhibits

M. Severability

Provided this Access Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Access Agreement in accordance with its intent.

N. Third Party Enforcement - None

Enforcement of this Access Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Access Agreement are incidental, and do not create any enforcement rights for any third parties.

O. Waiver

Waiver of any breach or event of default under a term, provision, or requirement of this Access Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement. Grantee hereby waives any defense of laches, estoppel, or prescription, including any defenses available under CRS §38-41-119. The failure of the State to perform any act

required by this paragraph shall not impair the validity of this Access Agreement or limit its enforceability in any way.

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GRANTEE: ACCEPTED by City of Grand Junction

DocuSigned by:
Randi M. Kim
Name: **Randi M. Kim**
Title: **Utilities Director**
Date: **January 3, 2022 | 10:48 AM MST**

Exhibit A

Term-Limited Sewer Access Area

A Term-limited Sewer Access Area located within a parcel of land described in Reception Number 1048446 and lying in the SW ¼ SW ¼ and SE ¼ SW ¼ of Section 36, Township 1 North, Range 2 West of the Ute Meridian, Mesa County, Colorado and being more particularly described as follows:

Commencing at the South 1/16 corner common to said Section 36 and Section 35, Township 1 North, Range 2 West of the Ute Meridian and assuming the west line of said SW ¼ SW ¼ Section 36 bears S0°01'15"E with all other bearings contained herein being relative thereto; thence S85°26'39"E a distance of 1555.37 feet to a point on the south Right-of-Way line of Interstate 70 being the Point of Beginning;

Thence S54°13'11"W a distance of 342.48 feet;

Thence S52°19'14"W a distance of 622.07 feet to the beginning of a curve;

Thence southwesterly a distance of 259.75 feet along the curve concave to the southeast, having a radius of 650.00 feet, a central angle of 22° 53' 48" and a chord which bears S40°52'20"W 258.03 feet distant, to a point of reverse curvature;

Thence southwesterly a distance of 184.31 feet along the arc of said curve concave to the northwest having a radius of 625.00 feet, a central angle of 16° 53' 48" and a chord which bears S37°52'20"W 183.65 feet distant;

Thence S46°19'14"W a distance of 28.86 feet to the beginning of a non-tangent curve concave to the southeast having a radius of 47.00 feet, a central angle of 147° 16' 39" and a chord which bears S45°26'23"W 90.19 feet distant;

Thence northwesterly and southeasterly along said curve a distance of 120.81 feet;

Thence S44°32'10"W a distance of 243.59 feet;

Thence S1°55'55"W a distance of 20.14 feet to point on the south line of said SW ¼ SW ¼ Section 36;

Thence S89°58'21"E along said south line SW ¼ SW ¼ Section 36 a distance of 25.01 feet;

Thence N1°55'55"E a distance of 9.56 feet;

Thence N44°32'10"E a distance of 233.04 feet to the beginning of a non-tangent curve concave to the north having a radius of 47.00 feet, a central angle of 33° 53' 34" and a chord which bears S76°00'52"E 27.40 feet distant;

Thence southeasterly along said curve a distance of 27.80 feet;

Thence S44°51'58"E a distance of 120.20 feet;

Thence S57°27'59"E a distance of 156.29 feet to a point on said south line SW ¼ SW ¼ Section 36;

Thence S89°58'21"E along said south line SW ¼ SW ¼ Section 36 a distance of 111.65 feet;

Thence N57°27'59"W a distance of 243.82 feet;

Thence N44°51'58"W a distance of 111.27 feet to the beginning of a non-tangent curve concave to the west having a radius of 47.00 feet, a central angle of 37° 41' 25" and a chord which bears N11°12'25"W 30.36 feet distant;

Thence northerly along said curve a distance of 30.92 feet;

Thence N46°19'14"E a distance of 28.07 feet to the beginning of a curve;

Thence northeasterly a distance of 191.69 feet along the curve concave to the northwest, having a radius of 650.00 feet, a central angle of 16° 53' 48" and a chord which bears N37°52'20"E 190.99 feet to a point of reverse curvature;

Thence northeasterly a distance of 249.76 feet along the arc of said curve concave to the southeast having a radius of 625.00 feet, a central angle of 22° 53' 48" and a chord which bears N40°52'20"E 248.10 feet distant;

Thence N52°19'14"E a distance of 621.87 feet;

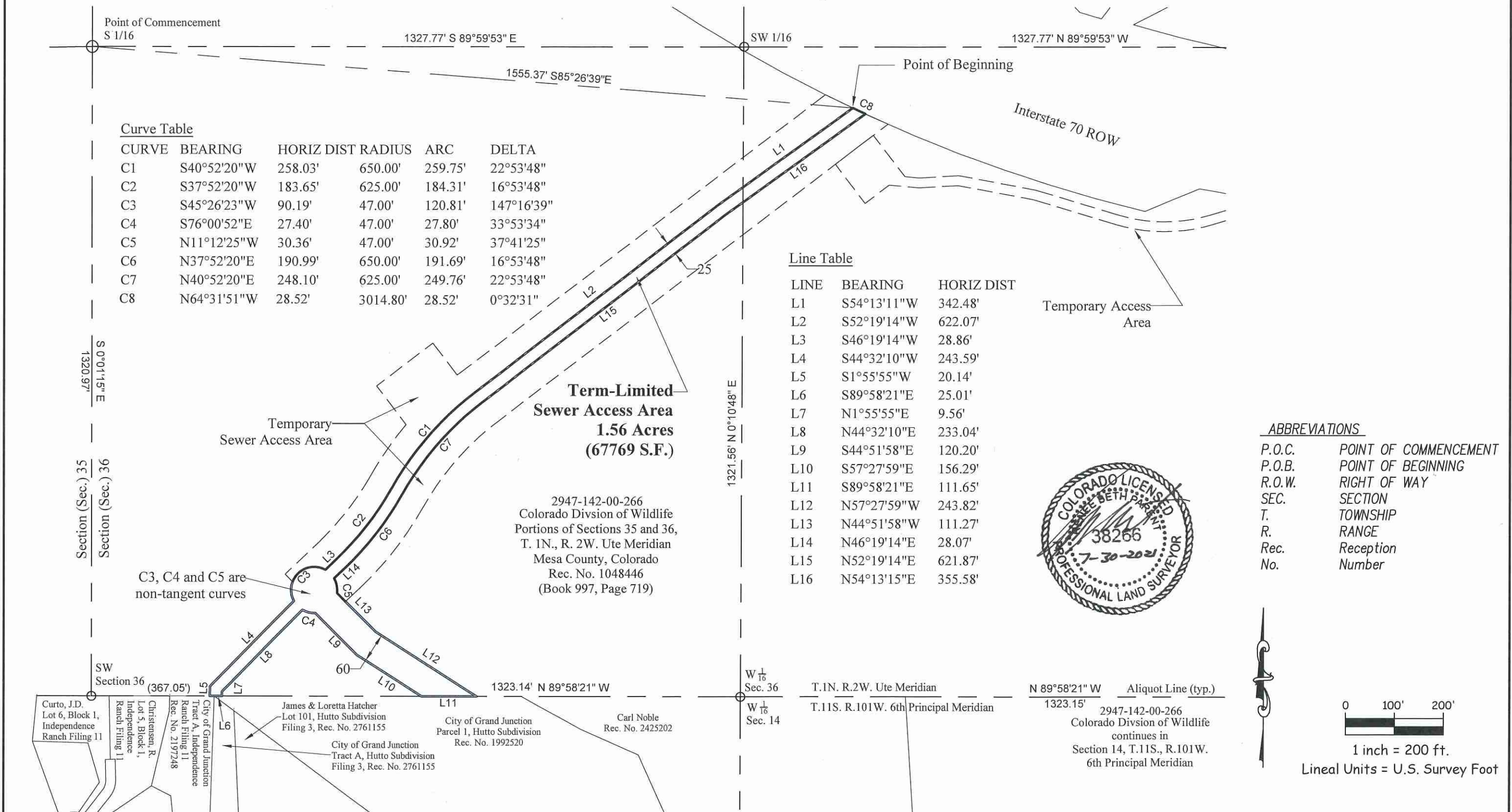
Thence N54°13'15"E a distance of 355.58 feet to a point of said south Right-of-Way line of Interstate 70;

Thence northwesterly a distance of 28.52 feet along said south Right-of-Way line of Interstate 70 being the arc of a curve concave to the northeast having a radius of 3014.80 feet, a central angle of 0° 32' 31" and a chord which bears N64°31'51"W 28.52 feet distant to the Point of Beginning, said parcel being 67769 Square Feet or 1.56 Acres more or less.

Authored by: Renee B. Parent, CO LS38266
City Surveyor
City of Grand Junction
333 West Avenue, Building C
Grand Junction, CO 81501



Exhibit B Term-Limited Sewer Access Area with City of Grand Junction



Curve Table

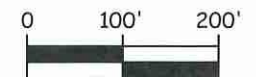
CURVE	BEARING	HORIZ DIST	RADIUS	ARC	DELTA
C1	S40°52'20"W	258.03'	650.00'	259.75'	22°53'48"
C2	S37°52'20"W	183.65'	625.00'	184.31'	16°53'48"
C3	S45°26'23"W	90.19'	47.00'	120.81'	147°16'39"
C4	S76°00'52"E	27.40'	47.00'	27.80'	33°53'34"
C5	N11°12'25"W	30.36'	47.00'	30.92'	37°41'25"
C6	N37°52'20"E	190.99'	650.00'	191.69'	16°53'48"
C7	N40°52'20"E	248.10'	625.00'	249.76'	22°53'48"
C8	N64°31'51"W	28.52'	3014.80'	28.52'	0°32'31"

Line Table

LINE	BEARING	HORIZ DIST
L1	S54°13'11"W	342.48'
L2	S52°19'14"W	622.07'
L3	S46°19'14"W	28.86'
L4	S44°32'10"W	243.59'
L5	S1°55'55"W	20.14'
L6	S89°58'21"E	25.01'
L7	N1°55'55"E	9.56'
L8	N44°32'10"E	233.04'
L9	S44°51'58"E	120.20'
L10	S57°27'59"E	156.29'
L11	S89°58'21"E	111.65'
L12	N57°27'59"W	243.82'
L13	N44°51'58"W	111.27'
L14	N46°19'14"E	28.07'
L15	N52°19'14"E	621.87'
L16	N54°13'15"E	355.58'

ABBREVIATIONS

P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING
R.O.W.	RIGHT OF WAY
SEC.	SECTION
T.	TOWNSHIP
R.	RANGE
Rec.	Reception
No.	Number



1 inch = 200 ft.
Lineal Units = U.S. Survey Foot

The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder and monuments as shown. This sketch does not constitute a legal boundary survey, and is not intended to be used as a means for establishing or verifying property boundary lines.

DRAWN BY R.B.P. 7-30-21
CHECKED BY L.C. & K.H.



Department of Public Works
333 West Avenue, Building C
Grand Junction, CO 81501

Tiara Rado Force Main Project
Portion of SW 1/4 Section 36, Township 1 North (T.1N.), Range 2 West (R.2W.), Ute Meridian, Mesa County, Colorado

SHEET NO. 1
OF 1

Certificate Of Completion

Envelope Id: E9A9F5C38F804937A356154E71473711	Status: Completed
Subject: Please DocuSign: Temporary Access Agreements	
Source Envelope:	
Document Pages: 47	Signatures: 3
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Enabled	Karen Meyer
Time Zone: (UTC-07:00) Mountain Time (US & Canada)	karen.meyer@state.co.us
	IP Address: 165.127.34.84

Record Tracking

Status: Original 12/29/2021 2:23:57 PM	Holder: Karen Meyer karen.meyer@state.co.us	Location: DocuSign
Security Appliance Status: Connected	Pool: FedRamp	
Storage Appliance Status: Connected	Pool: DNR	Location: DocuSign

Signer Events

Signature	Timestamp
<p>Kim Rogers kimberly.rogers@state.co.us CPW Real Estate Section Manager DNR Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>Completed</p> <p>Using IP Address: 165.127.34.84</p> <p>Sent: 12/29/2021 2:39:54 PM Viewed: 12/29/2021 2:40:45 PM Signed: 12/29/2021 2:41:03 PM</p>

<p>Randi M. Kim randik@gjcity.org Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 1/3/2022 10:46:04 AM ID: 2828943b-a4df-41a0-a1b1-7a5ddd3675ef</p>	<p>DocuSigned by: <i>Randi M. Kim</i> 7FE7DB91C80143B...</p> <p>Sent: 12/29/2021 2:41:07 PM Viewed: 1/3/2022 10:46:04 AM Signed: 1/3/2022 10:48:43 AM</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.204.116.131</p>
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In Person Signer Events

Signature	Timestamp
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Editor Delivery Events

Status	Timestamp
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Agent Delivery Events

Status	Timestamp
--------	-----------

Intermediary Delivery Events

Status	Timestamp
--------	-----------

Certified Delivery Events

Status	Timestamp
--------	-----------

Carbon Copy Events

Status	Timestamp
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<p>Zach Sears zachary.sears@state.co.us DNR Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<div style="border: 2px solid blue; padding: 5px; display: inline-block; font-weight: bold; color: blue;">COPIED</div> <p>Sent: 1/3/2022 10:48:47 AM</p>
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Witness Events

Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	12/29/2021 2:39:54 PM
Certified Delivered	Security Checked	1/3/2022 10:46:04 AM
Signing Complete	Security Checked	1/3/2022 10:48:43 AM
Completed	Security Checked	1/3/2022 10:48:47 AM

Payment Events	Status	Timestamps
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