

RESOLUTION NO. 46-24

A RESOLUTION RATIFYING THE INTERIM CITY MANAGER'S ACTIONS IN ENTERING INTO CONTRACT TO PURCHASE REAL PROPERTY LOCATED AT OR NEAR 2767 – 2773 C ½ ROAD AND INCLUDING THE ADJACENT AND UNADDRESSED PARCELS UNDER COMMON OWNERSHIP OF THE SELLERS, GRAND JUNCTION, COLORADO AND AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY TO COMPLETE THE TRANSACTION

RECITALS:

The City Council was presented the opportunity to purchase approximately 12.5 acres of property (Property) adjacent to the Colorado River. The Property is located at or near 2767-2773 C ½ Road and includes the unaddressed parcels under common ownership of the Sellers in South Grand Junction. Upon the completion of the purchase, the City of Grand Junction (City) will, among other things, have the land necessary for completing the Riverfront Trail.

In the mid-1980s, a grass roots effort began to reclaim the riverfront from the junkyards and waste that had accumulated on the banks of the Colorado River. In 1985, that effort grew into a broader community mission of the Grand Junction Lion's Club, the Western Colorado Botanical Society and others volunteering their time and talent to clean up the Riverfront. That work contributed to the formation of the Riverfront Commission and the broader goals of creating public spaces and trails along the river. In 1994 the City acquired the former Climax uranium mill site and began the process for the redevelopment of that site to include trails, public spaces, and what is now known as Las Colonias Park. In addition to the improvements to the Riverfront near Las Colonias, the City acquired property now known as Dos Rios and, has been instrumental in the construction of many miles of trail near the River to the west and north of the City.

The approximately 12.5-acre Property that is the subject of this Resolution is presently owned by Bennie and David Skinner (Sellers). The Sellers have agreed to sell the Property to the City by a General Warranty deed for total compensation of \$1,855,000. That amount assumes a life estate for Bennie Skinner valued at \$190,000 and the balance of \$1,655,000 to be paid in equal amounts (\$555,000) by Mesa County, Colorado Parks & Wildlife (CPW), and the City.

After the purchase, the City will convey a conservation and trail easement (C&TE) to CPW at no cost. The C&TE will concern approximately 5.5 acres of the Property.

The life estate will allow Bennie Skinner to continue to reside until her death in the house on the remaining 7+/- acres, which area will be described by survey. The area of the life estate and the C&TE will be separately described, and the management of the same may be determined by separate lease or other agreement. That agreement, if any, will allow CPW to commence all planning and the City to take on construction for the

future Colorado River Trail section between Las Colonias Park and CPW's Pear Park section beginning at 29 Road.

The public will not be allowed to access the Property until construction of the trail is complete. When complete, the City will assume management responsibilities for the C&TE easement area in accordance with a management plan.

With City Council's approval of this Resolution, the City and CPW will enter into a funding agreement relative to their respective participation in the acquisition of the Property. Execution of this agreement and an agreement between the City and Mesa County for funding are conditions precedent to the City's purchase of the Property. The City and Mesa County have not determined the eventual use of the 7+/- acres; however, each has committed to a *public use* of that portion of the Property, with the current consideration being that the area may be well used for workforce, affordable and/or attainable housing.

The City Council has considered the opportunity to purchase the Property on the foregoing terms and does hereby and herewith ratify the actions of the Interim City Manager in entering into the contract to purchase and authorizes the Interim City Manager to execute all necessary documents for the purchase of the real property located at or near 2767 – 2773 C ½ Road, Grand Junction, Colorado, and documents with CPW for the funding and conservation and trail easement finds that the purchase of the Property, the funding agreement and the Conservation Trail Easement to be reasonable and proper.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:


1. The foregoing Recitals are incorporated herein and in consideration of the same and as determined by the Council and as evidenced by this Resolution, the City Council hereby ratifies the Interim City Manager's actions in entering into the purchase contract for real property located at or near 2767 – 2773 C ½ Road, including the unaddressed parcels under common ownership of the Sellers. The Interim City Manager is authorized to finalize negotiations and execute all necessary documents for closing on the Property, including the Life Estate for Bennie Dick Skinner.
2. The Interim City Manager is authorized to enter into the Funding Agreement and the Conservation Trail Easement with the State of Colorado through CPW.
3. That the officers, employees, and agents of the City are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Resolution together with the attached Contract to Buy and Sell Real Estate (Contract), funding agreements, life estate and the conservation and trail easement without limitation, as may be necessary or desirable to effect the purchase of the Property as described therein.

PASSED and ADOPTED this 3rd day of July 2024.



Abram Herman
President of the City Council

ATTEST:



Selestina Sandoval
City Clerk



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

FUNDING AGREEMENT

With
City of Grand Junction

To Purchase a Fee Title
From
Bennie Dick Skinner and David Lee Skinner

1. PARTIES

This funding agreement (“Agreement”) is entered into by City of Grand Junction, a Colorado home-rule municipality (“City”), whose address is 250 North 5th Street, Grand Junction, Colorado 81501, and 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 (the “State” or “CPW”) located at 6060 Broadway, Denver, Colorado 80216. The Parties agree to the provisions set forth in this Agreement.

2. EFFECTIVE DATE

This Agreement is not effective or enforceable until the Effective Date as defined in §4.F. The State is not liable to pay or reimburse City 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 or after termination.

3. RECITALS

A. State’s Authority, Appropriation, and Approval

Authority to enter into this Agreement exists pursuant to CRS §33-1-101, §33-1-104, §33-1-105, §33-10-101, §33-10-106, §33-10-107, §33-9-101, §33-9-109 et seq., and §38-30.5-102, sufficient funds have been budgeted and appropriated; and all prior reviews and approvals have been obtained, except as provided in §9.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Property Description), **Exhibit B** (Conservation and Trail Easement), and **Exhibit C** (Life Estate).

D. City Intent

City intends to obtain from Gavin W. Skinner (Deceased), Bennie Dick Skinner and David Lee Skinner (collectively “Owners”) (see §4.H) a general warranty deed for the Property (see §4.J). City further intends to convey a Conservation and Trail Easement encumbering the Property to the State (see §9(E)).

E. Purpose

This Agreement supports the legislative policies, purposes, and uses enumerated in CRS §33-1-101, §33-1-104, §33-1-105, §33-9-101, §33-9-109 et seq., §33-10-101, §33-10-106, §33-10-107, and §38-30.5-102, as the Property possesses some or all of the values, opportunities, and characteristics listed therein which are important to the Parties, the residents of the surrounding area, and the people of the State of Colorado. City has entered or will enter into a contract with Owners for the purchase of fee title of the Property. At City’s request the State has agreed to provide funding to assist City with the purchase.

F. References

All references in this 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. Agreement

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

B. Closing and Closing Date

“Closing” means the completion or waiver of all conditions precedent contained in the Contract (see §4.C) and the contemporaneous execution of all related documents and “Closing Date” is the date on which the Closing occurs.

C. Contract

“Contract” means that document entered into between the City and Owners for the purchase of the fee title.

D. CRS

“CRS” means the Colorado Revised Statutes as amended.

E. Conservation and Trail Easement

“Conservation and Trail Easement” is the conservation and trail easement substantially in the form of the document attached as **Exhibit B**.

F. Effective Date

“Effective Date” is the date this Agreement is approved and signed by the State Controller.

G. GOCO

“GOCO” is the Great Outdoors Colorado Trust Fund.

H. Owners

“Owners” means the owners of the Property from whom City is purchasing the fee title.

I. Party or Parties

“Party” means either the State or City, and “Parties” means both the State and City.

J. Property

“Property” is the real property located in Mesa County described in **Exhibit A**.

K. Purchase Price

“Purchase Price” is the amount of money City will pay Owners to purchase the fee title.

L. Title Commitment and Title Policy

“Title Commitment” and “Title Policy” mean the current standard ALTA form(s) commonly used by a title company authorized to do business in the State of Colorado insuring City’s interest in the Property in an amount not less than the Purchase Price.

5. TERM AND EARLY TERMINATION

A. Term

The Parties’ respective duties and obligations under this Agreement shall commence on the Effective Date and shall terminate on the sooner to occur of the Closing Date or December 31, 2024; provided however, that certain duties and obligations may continue thereafter as specified herein.

B. Early Termination in the Public Interest

The State is entering into this Agreement for the purpose of carrying out the public policy of the State of Colorado as determined by its Governor, General Assembly, and/or Courts. If this Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement in whole or in part. The State shall notify City of such termination in accordance with **§14**, specifying the effective date of the termination and whether it affects all or a portion of this Agreement.

6. PURCHASE AND SALE OF PROPERTY

Subject to the provisions of this Agreement, the State shall provide City with funding in the amount set forth in **§7.A** to purchase the Property in fee title. The State’s performance under this Agreement is conditioned on City concurrently purchasing the fee title pursuant to the closing instructions provided by the State. City shall maintain a complete file of all records, communications, and other written materials, which pertain to the performance of the Agreement, including the acquisition of fee title, and shall maintain such records for a period of three years after the Closing Date. The State may audit such records at reasonable times and upon reasonable notice.

7. PAYMENT TO CITY

A. Maximum Amount Payable and Allocation

The maximum amount payable by the State to or on behalf of City is \$580,000.00 as determined by the State from available funds. Funds are allocated as follows:

- \$555,000.00 towards the Purchase Price

- Up to \$20,000.00 for due diligence reimbursement as described in §7.C and,
- Up to \$5,000.00 for closing costs and title insurance as described in §7.C.

B. Available Funds, Contingency & Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year and making payment to City beyond the State's current fiscal year is contingent upon the continuing availability of State appropriations as provided in §17.B. If GOCO are used to fund this Agreement in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Agreement during any State fiscal year shall be made only from available funds encumbered for this Agreement for such State fiscal year and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or GOCO are not fully appropriated or otherwise become unavailable, the State may terminate this Agreement without further liability, after providing notice to City in accordance with §14.

C. Direct Costs Reimbursement

Subject to the provisions of §9, the State shall reimburse City for one-third of its direct acquisition costs, including but not limited to: closing costs, title insurance, appraisal, phase I environmental site assessment, and minerals assessment. The maximum amount of costs for which the State will reimburse City is set forth in §7.A (\$25,000). The State shall reimburse City at Closing provided that City submits invoices to the State no later than 20 days prior to Closing and provides satisfactory evidence that such costs were incurred in relation to this Agreement and were paid by City; otherwise, the State shall reimburse City after Closing provided that City submits invoices to the State within 180 days after Closing.

D. Erroneous Payments

At the State's sole discretion, payments made by the State to City in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by City, may be recovered from City by deduction from subsequent payments under transactions between the State and City or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

8. LITIGATION NOTICE

A. Litigation Notice

Within five days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Agreement or which may affect City's ability to perform its obligations hereunder, City shall notify the State of such action and deliver copies of such pleadings to the State pursuant to §14.

B. Noncompliance

City's failure to provide copies of pleadings and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or exercise of any remedies provided under this Agreement, including termination.

9. PERFORMANCE CONTINGENCIES FOR THE STATE

The State's performance hereunder is contingent upon successful completion or express waiver, done in accordance with §16.P, of each of the following conditions in this §9. If one or more of these contingencies are not satisfied by Closing, and the Parties have not agreed in

writing to allow additional time for satisfaction, then this Agreement shall automatically terminate and City and the State shall be released from all further obligations and liabilities under this Agreement.

A. Approvals

Final approvals of this transaction by the following entities and persons:

- i. The Colorado State Controller;
- ii. The Division of Parks and Wildlife. The execution of this Agreement by the Division of Parks and Wildlife does not satisfy this required approval;
- iii. The Parks and Wildlife Commission, which may require more than one vote so as to consider recommendations by the Capital Development Committee of the Colorado General Assembly.

B. Appraisal and Other Due Diligence

i. Appraisal

The State ordered an appraisal completed in accordance with CRS §24-30-202(5)(b) that supports the Purchase Price and is satisfactory to and accepted by the Colorado State Controller. The appraisal shall be acceptable to any review appraiser if a review appraisal is requested by the State. Copies of all appraisals ordered by City shall be provided to the State.

ii. Contract

City shall provide the State with an executed copy of the Contract.

iii. Legal Description, Maps, and Survey

City shall cause to be prepared, without cost or expense to the State, a legal description of the Property and, if requested by State, site and area maps that are acceptable to and approved by the State. After the State's review of the legal description and the Title Commitment, the State may require a survey to resolve any discrepancies or concerns.

iv. Reports

City shall, at no cost and expense to the State, cause qualified professionals to prepare a geologist's remoteness report, and a phase I environmental assessment, and should the State deem them necessary, any additional environmental assessments on all or part of the Property if reasonably necessary to protect the interests of the State. Such reports shall be acceptable to and approved by the State.

C. Title Inspection and Review

The State's satisfaction with the title to the Property after the opportunity for physical inspection of the Property and after reviewing the documents and evidence of title thereto provided for in this §9.C. If any of the State's objections made pursuant to this provision are not rectified, then the State may terminate this Agreement by written notice and both City and the State shall be released from any further obligations.

i. Standard Title Exceptions

City shall require Owners to cause the Title Policy to delete or insure over all standard exceptions regarding mechanics' liens, parties in possession, unrecorded easements, unpaid taxes, assessments, and unredeemed tax sales prior to the year of Closing, and survey matters.

ii. Title Review - Matters of Public Record

City, without cost or expense to the State, shall promptly cause a copy of the Title Commitment together with the following documents to be delivered to the State: (a) copies of all plats, declarations, covenants, conditions, and restrictions burdening the Property, and (b) copies of other documents (or, if illegible, summaries of such documents) listed in the Additional Exceptions of Schedule B-II of the Title Commitment. As soon as practicable after Closing, City shall provide a copy of the Title Policy insuring City's interest in the Property to the State.

iii. Title Review - Matters Not Shown by the Public Records

City shall require Owners to deliver to City and the State true copies of all lease(s), survey(s), and other similar documentary information in Owners' possession pertaining to the Property, and shall require Owners to disclose in writing to City and the State all easements, liens, or other title matters not shown by the public record of which Owners have actual knowledge. The State and City shall have the right to inspect the Property to determine if any third party has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

iv. Unrecorded Burdens – City's Liability

City shall, at no cost to the State, cause Owners to discharge and/or cure any liens, charges, defects, encumbrances, claims, or causes of action (hereinafter called "burdens") existing on or before Closing and incurred by City or Owners that attach to the Property which are not of record at the time of Closing and which were not disclosed pursuant to §9.C.iii. Grantee shall reimburse the State in an amount equal to CPW's proportionate contribution to Purchase Price of any diminution in value of the City's interest in the Property if any such burdens cannot be discharged or cured. The State may bring an action to enforce this §9.C.iv if City fails or refuses to do so within a reasonable time, and City shall reimburse the State for its costs and reasonable attorney's fees incurred with regard to such action.

D. Conservation and Trail Easement

At Closing City shall convey to the State, a Conservation and Trail Easement substantially in the form of **Exhibit B** for no additional consideration from the State. The Conservation and Trail Easement shall be recorded immediately following recording of City's general warranty deed.

E. Contribution from Mesa County

Contribution from Mesa County towards the Purchase Price in an amount not less than \$555,000.00.

F. Life Estate

At Closing, City shall execute a Life Estate substantially in the form of **Exhibit C**. The Life Estate shall be recorded after the Conservation and Trail Easement.

G. Baseline Inventory Report

At Closing, City and the State shall execute a Baseline Inventory Report documenting the present conditions and conservation values of the Conservation and Trail Easement. This document will not be recorded.

H. Management Plan

At Closing, City and the State shall execute a Management Plan for the portion of the Property encumbered by the Conservation and Trail Easement, which shall describe the objectives and actions for management of the Property for the next five years after Closing. This document will not be recorded.

10. STATUS PENDING CLOSING

A. Maintenance of the Property

City shall require Owners to maintain the Property in its present condition until Closing. Specifically, but not by way of limitation, City shall prohibit the following activities on the Property: cutting, slashing, removing, destroying or wasting of any trees or plants; diking, dredging, filling or other disturbances; or disturbance of the soils or any alteration of the surface or of any vegetation thereon (with the exception of historic livestock grazing and harvesting of seasonal crops, which shall be in accordance with acceptable range management and farming standards). In the event of any such loss or damage prior to Closing, the State may, without liability, terminate this Agreement.

B. Risk of Loss

The State may elect to terminate this Agreement without liability in the event of loss or damage to the Property before closing, including, but not limited to, losses from acts of nature, such as fire, flood, and landslide.

11. CLOSING

A. Date, Time and Location

The date and time of Closing shall be at the mutual agreement of CPW, City and Owners, but not later than 5:00 p.m. on December 31, 2024 at the offices of the title company.

B. Documents and Funds Delivered

Owners shall deliver to City a properly executed general warranty deed. That portion of the Purchase Price supplied by the State may be in the form of a State warrant or electronic funds transfer, which shall be at the State's discretion. The State's payment shall be made under instructions that payment shall be returned to the State if for any reason acquisition of the Property does not occur.

12. REPRESENTATIONS AND WARRANTIES

A. Owners to City

As a condition of entering into this Agreement the State requires City to obtain from Owners the following representations and warranties in the Contract which shall be enforceable by the State as a third-party beneficiary of the Contract:

i. Compliance with Law

Owners are in compliance with the laws, orders, and regulations of each governmental department, commission, board or agency having jurisdiction over the Property in those cases where noncompliance would have a material adverse effect on the Property.

ii. Ownership of the Property

Owners are the sole and record owner in fee simple of the Property as of the Effective Date of this Agreement and at Closing City shall receive good and marketable title to the Property, subject to those matters of record revealed in the Title Commitment and those matters disclosed to City and the State.

iii. Other Agreements

Owners are not a party to, subject to, or bound by any agreement, contract, or lease of any kind relating to the Property that would conflict with Owners’ performance under the Contract other than those matters of record revealed in the Title Commitment and found acceptable to the State.

iv. Pending Actions

There are not any actions, suits, proceedings, or investigations pending or, to Owners’ knowledge, threatened, against or affecting the Property, or arising out of Owners’ actions or inactions related to the Property.

B. City to the State

City makes the following representations and warranties to the State, each of which the State relied upon in entering into this Agreement:

i. Legal Authority–City Signatory

City warrants that it possesses the legal authority to enter into this Agreement, and, if City is not a natural person, that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, to lawfully authorize its undersigned signatory to execute this Agreement, and to bind City to its terms. If the State requests, City shall provide the State with proof of City’s authority to enter into this Agreement within 15 days of receiving such request.

13. DEFAULT – TIME IS OF THE ESSENCE – REMEDIES

Time is of the essence hereof. If either Party is in default under this Agreement, the other Party shall have available to it all remedies at law and in equity.

14. NOTICES AND REPRESENTATIVES

Notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to the 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
Colorado Parks and Wildlife
Real Estate Section
6060 Broadway
Denver, Colorado 80216
Michael.downey-hodson@state.co.us

City
City of Grand Junction
City Manager
250 N. 5th Street
Grand Junction, CO 81501
andrea.phillips@gjcity.org

And copy to

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

15. LIMITATION OF CITY AND STATE LIABILITY

Liability for claims for injuries to persons or property arising from the negligence of the City and/or the State of Colorado, their departments, institutions, agencies, boards, officials, and

employees is controlled and limited by the provisions of CRS §24-10-101 et seq. (the CGIA) and/or CRS §24-30-1501, et seq. (risk management).

16. GENERAL PROVISIONS

A. Assignment

City may not assign its rights under this Agreement absent written consent of the State which may be withheld at the State's sole and absolute discretion.

B. Binding Effect

All provisions herein, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions and Headings

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

D. Digital Signatures

If any signatory signs this Agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

E. Construction Against the Drafter

In the event of an ambiguity in this Agreement, the rule of 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.

F. CORA Disclosure

To the extent not prohibited by federal law, this 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.

G. Counterparts

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

H. Entire Understanding

This 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 affect whatsoever, unless embodied herein.

I. Jurisdiction and Venue

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

J. Modification

i. By the Parties

Except as specifically provided in this 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. Modifications specifically

permitted in this Agreement shall be made in accordance with the State Controller's Policy entitled MODIFICATION OF GRANTS - TOOLS AND FORMS.

ii. By Operation of Law

This 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 Agreement on the effective date of such change, as if fully set forth herein.

K. Order of Precedence

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

- i. Colorado Special Provisions,
- ii. The remaining provisions of this Agreement,
- iii. Exhibits

L. Severability

Provided this 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 Agreement in accordance with its intent.

M. Survival of Certain Agreement Terms

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after Closing or termination hereof, shall survive such Closing or termination and shall be enforceable by the State if City fails to perform or comply as required.

N. Taxes

The City and the State are exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 et seq. and 201 et seq..

O. Third Party Enforcement - None

Enforcement of this 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 Agreement are incidental, and do not create any rights for any third parties.

P. Waiver

Waiver of any default under a term, provision, or requirement of this 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 default, provision or, requirement, or of any other term, provision, or requirement.

17. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Agreement shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. COMPLIANCE WITH LAW.

City shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

E. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and venue shall be in the county in which the Property is located. Venue shall be proper in any county in which the Property is located if it is situate in more than one county.

F. PROHIBITED TERMS.

Any term included in this Agreement that requires the State to indemnify or hold City harmless; requires the State to agree to binding arbitration; limits City's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109 C.R.S.

G. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. City has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of City's services and City shall not employ any person having such known interests.

H. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to City in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by City by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and City, or by any other appropriate method for collecting debts owed to the State.

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18. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS FUNDING AGREEMENT

Persons signing for City hereby swear and affirm that they are authorized to act on City's behalf and acknowledge that the State is relying on their representations to that effect.

<p style="text-align: center;">CITY OF GRAND JUNCTION</p> <p style="text-align: center;">_____ Signature</p> <p>By: _____ Printed Name</p> <p>Title: _____ Title</p> <p>Date: _____ Date</p>	<p style="text-align: center;">STATE OF COLORADO</p> <p style="text-align: center;">Jared S. Polis, Governor 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 Jeff Davis, Director</p> <p style="text-align: center;">_____ Signature</p> <p>By: _____ (Print Name)</p> <p>Title: _____ (Print Title)</p> <p>Date: _____</p>
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ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. City is not authorized to begin performance until such time. If City begins performing prior thereto, the State of Colorado is not obligated to pay City for such performance or for any goods and/or services provided hereunder.

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p>	
_____ <i>Signature – State Controller</i>	Printed Name: _____
Title: _____	Date: _____

EXHIBIT A

Property Description

LEGAL DESCRIPTION (As Surveyed:)

A Parcel of land described in Reception Number 2572601 located in Lots 1 and 2, Section 24, Township 1 South, Range 1 West, Ute Meridian, Mesa County, Colorado being more particularly described as follows:

Beginning at the Northeast Corner of said Lot 2, whence the Northeast Corner of said Lot 1 (a.k.a. the East 1/4 Corner) bears S89°46'01"E using the Mesa County Local Coordinate System with all other bearings herein being relative thereto;

thence S89°46'01"E along the north line of said Lot 1, a distance of 19.65 feet to the Northwest corner of a parcel of land described in Reception Number 1795805;

thence along the boundary of said Reception Number 1795805 for the following two (2) courses:

- 1) S00°13'19"W, a distance of 365.02 feet;
- 2) S84°35'35"E, a distance of 195.30 feet;

thence S76°29'23"E, a distance of 363.05 feet; thence S11°21'25"W, a distance of 531.39 feet to the centerline of the Colorado River;

thence Northwesterly along said centerline to a point N89°46'00"W, a distance of 385.00 feet and S00°14'00"W, a distance of 659.48 feet from said Northeast Corner of Lot 2;

thence N00°14'00"E, a distance of 659.48 to a point on the North line of said Lot 2; thence S89°46'00"E along said north line of Lot 2, a distance of 385.00 feet to the Point of Beginning.

Containing 12.36 Acres gross area more or less, 9.58 Acres upland area more or less as described.

EXHIBIT B

Conservation and Trail Easement

Conservation Easement

A parcel of land for the purposes of a conservation easement, being a portion of land as described in Reception Number 2572601 located in Government Lots 1 and 2, Section 24, Township 1 South, Range 1 West, Ute Meridian, Mesa County, Colorado being more particularly described as follows:

Commencing at the Northeast Corner of said Lot 2, whence the Northeast Corner of said Lot 1 (a.k.a. the East 1/4 Corner of said Section 24) bears S89°46'01"E, using the Mesa County Local Coordinate System with all other bearings herein being relative thereto; thence S34°42'58"E, a distance of 898.07 feet to a point on the Westerly line of land as described in Reception Number 1588683 and as shown on Deposit Survey 703-92 and the Point of Beginning;

thence S11°21'25"W, a distance of 256.11 feet along said Westerly line to the centerline of the Colorado River; thence along said centerline the following three (3) courses:

- 1) N65°28'26"W, a distance of 427.87 feet;
- 2) N68°34'59"W, a distance of 203.33 feet;
- 3) N73°35'48"W, a distance of 281.62 feet to a point on the East line of land as described in Reception Number 2465231; thence N00°14'00"E, a distance of 262.56 feet along said East line; thence S70°11'35"E, a distance of 544.89 feet; thence S73°30'31"E, a distance of 146.73 feet; thence S60°10'08"E, a distance of 163.97 feet; thence S71°08'53"E, a distance of 108.29 feet to the Point of Beginning.

Said Parcel of land containing 5.19 Acres more or less.

Trail Easement (Area included within the Conservation Easement. The north border for each is the same.)

A thirty foot (30') wide strip of land for the purposes of a trail easement, being a portion of land as described in Reception Number 2572601 located in Government Lots 1 and 2, Section 24, Township 1 South, Range 1 West, Ute Meridian, Mesa County, Colorado being more particularly described as follows:

Commencing at the Northeast Corner of said Lot 2, whence the Northeast Corner of said Lot 1 (a.k.a. the East 1/4 Corner of said Section 24) bears S89°46'01"E, using the Mesa County Local Coordinate System with all other bearings herein being relative thereto; thence S34°42'58"E, a distance of 898.07 feet to a point on the Westerly line of land as described in Reception Number 1588683 and as shown on Deposit Survey 703-92 and the Point of Beginning; thence S11°21'25"W, a distance of 30.26 feet along said Westerly line; thence N71°08'53"W, a distance of 115.12 feet; thence N60°10'08"W, a distance of 163.34 feet; thence N73°30'31"W, a distance of 144.09 feet; thence N70°11'35"W, a distance of 535.09 feet to a point on the East line of land as described in Reception Number 2465231; thence N00°14'00"E, a distance of 31.84 feet along said East line; thence S70°11'35"E, a distance of 544.89 feet; thence S73°30'31"E, a

distance of 146.73 feet; thence S60°10'08"E, a distance of 163.97 feet; thence S71°08'53"E, a distance of 108.29 feet to the Point of Beginning.

Said Parcel of land containing 0.66 Acres more or less.

Descriptions prepared by: Renee Beth Parent, State of Colorado – PLS No. 38266 for the City of Grand Junction, 244 N. 7th Street, Grand Junction, CO 81501

EXHIBIT C
DEED GRANTING LIFE ESTATE

This Life Estate Deed made this _____ day of _____ 2024 by and between the **City of Grand Junction, a Colorado home rule municipality**, (Grantor) whose mailing address is 250 N. 5th Street, Grand Junction, CO 81501, who is the owner of land the subject of this deed, for and in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has sold, granted and conveyed, and by these presents does hereby sell, grant and convey to **Bennie Dick Skinner**, (Grantee) to hold during her life and no longer, the real property located in Mesa County, Colorado described, to wit:

Described in Exhibit A and depicted on Exhibit B, attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the premises aforesaid, to have and to hold the property hereby conveyed unto the Grantee for and during her life subject to current taxes, all easements, rights-of-way, encumbrances, liens, covenants, conditions, and restrictions together with all improvements thereon, with Grantor retaining and reserving a 32' right-of-way along the north edge of the property which includes C ½ Road for construction, operation and maintenance for road and utility purposes, the easements, privileges, appurtenances and immunities thereunto belonging or in anywise appertaining, unto the said Grantee. Grantee shall be responsible for maintenance, repairs, all taxes, assessments, and insurance with the Grantor and its officers and employees named as additional insureds.

Executed and delivered this _____ day of _____, 2024.

GRANTOR:

City of Grand Junction, a home rule municipality

ATTEST:

Andrea Phillips, Interim City Manager

Selestina Sandoval, City Clerk

State of Colorado)
)ss
County of Mesa)

The foregoing instrument was acknowledged before me this _____ day of _____ 2024 by Andrea Phillips, Interim City Manager and Amy Phillips, City Clerk for the City of Grand Junction.

Witness my hand and official seal.

Notary Public

DEED GRANTING LIFE ESTATE

This Life Estate Deed made this _____ day of _____ 2024 by and between the **City of Grand Junction, a Colorado home rule municipality, (Grantor)** whose mailing address is 250 N. 5th Street, Grand Junction, CO 81501, who is the owner of land the subject of this deed, for and in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has sold, granted and conveyed, and by these presents does hereby sell, grant and convey to **Bennie Dick Skinner, (Grantee)** to hold during her life and no longer, the real property located in Mesa County, Colorado described, to wit:

Described in **Exhibit A** and depicted on **Exhibit B**, attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the premises aforesaid, to have and to hold the property hereby conveyed unto the Grantee for and during her life subject to current taxes, all easements, rights-of-way, encumbrances, liens, covenants, conditions, and restrictions together with all improvements thereon, with Grantor retaining and reserving a 32' right-of-way along the north edge of the property which includes C 1/2 Road for construction, operation and maintenance for road and utility purposes, the easements, privileges, appurtenances and immunities thereunto belonging or in anywise appertaining, unto the said Grantee. Grantee shall be responsible for maintenance, repairs, all taxes, assessments, and insurance with the Grantor and its officers and employees named as additional insureds.

Executed and delivered this _____ day of _____, 2024.

GRANTOR:

City of Grand Junction, a home rule municipality

ATTEST:

Andrea Phillips, Interim City Manager

_____, City Clerk

State of Colorado)
)ss
County of Mesa)

The foregoing instrument was acknowledged before me this _____ day of _____ 2024 by Andrea Phillips, Interim City Manager and Amy Phillips, City Clerk for the City of Grand Junction.

Witness my hand and official seal.

Notary Public

NOTICE: GRANTOR SHALL NOTIFY GRANTEE AND PAY A TRANSFER FEE OF ONE HUNDRED DOLLARS (\$100.00) TO GRANTEE, ANY TIME THE PROPERTY IS TRANSFERRED TO A THIRD PARTY PURSUANT TO THE REQUIREMENTS IN SECTION 11.B.

**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**

CONSERVATION EASEMENT IN GROSS

**Granted By
City of Grand Junction**

This Conservation Easement in Gross (“CE”) is granted by the City of Grand Junction, a Colorado home-rule municipality (“Grantor”), whose address is 250 North 5th Street, Grand Junction, CO 81501, to 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 “Grantee”), located at 6060 Broadway, Denver, Colorado, 80216.

RECITALS

Whereas the State is a governmental entity qualified to hold this CE under CRS §38-30.5-101 et seq., which provides for conservation easements to retain or maintain land, water, airspace, or water rights, predominantly in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest, or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity. Authority to enter into this CE exists pursuant to CRS §33-1-101, §33-1-104, §33-1-105, §33-9-101, et seq., §33-10-101, §33-10-106, §33-10-107, and §38-30.5-102; sufficient funds have been budgeted and appropriated; and all prior reviews and approvals have been obtained. And,

Whereas by this CE, Grantor intends to absolutely, irrevocably, unconditionally, without restriction, voluntarily grant, transfer, and convey to the State a real property interest pursuant to CRS §38-30.5-101 et seq., with all additional rights and interests provided under common law. Such real property interest includes a perpetual right to preserve and protect the Conservation Values (see §1.D) of the Property (see §1.K) and therefore this CE prohibits, and the Parties shall not engage in, any use that would diminish or impair the

Conservation Values or that otherwise would be inconsistent with the purposes of this CE. And,

Whereas this CE supports the legislative policies, purposes, and uses enumerated in CRS §33-1-101, §33-1-104, §33-1-105, §33-9-101, et seq., §33-10-101, §33-10-106, §33-10-107, and §38-30.5-102 as the Property possesses some or all of the values and characteristics listed herein, which are important to the Parties, the residents of the local community, and the people of the State of Colorado and which values shall be herein referred to as “Conservation Values.” In particular, the Property possesses the following Conservation Values:

i. Outdoor Recreation

The Property provides access to the general public through the Colorado River Trail which connects several city and state park lands along the Colorado River. The Property provides additional public access opportunities for low-impact outdoor recreation activities.

ii. Scenic Open Space

The Property is made up of a scenic gallery of cottonwood trees and other riparian species lining the north bank of the Colorado River. Open and scenic vistas are visible to trail users looking towards the Colorado River against the backdrop of rolling hills and mesas that surround the Grand Valley.

iii. Wildlife Habitat

The Property is made up of relatively natural habitat that is primarily riparian cottonwood gallery forests. The property lies within the area designated as critical habitat for western yellow-billed cuckoo, listed by the United States Fish and Wildlife Service as a threatened species.

iv. Connectivity

The Property enhances the connectivity of a mix of public park lands owned by Colorado Parks & Wildlife and the City of Grand Junction along the north bank of the Colorado River. And,

Whereas the Parties desire to collaborate in construction of the Colorado River Trail, which will serve as an important amenity to the people of the City of Grand Junction, Mesa County, and the State of Colorado. And,

Whereas this CE will convey a right of access to the State to allow the general public to use the Property for the Colorado River Trail and other low-impact outdoor recreation activities. And,

Whereas the following attachments and exhibits are attached hereto and incorporated by reference herein: **EXHIBIT A** (Legal Description of Property), **EXHIBIT B** (Property Map), and **EXHIBIT C** (Sample Notice of Transfer of Property Form)

Now Therefore, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration paid in this or related transactions, the receipt of which is hereby acknowledged as sufficient and adequate to support the granting of this CE, and pursuant to CRS §38-30.5-101, et seq. and with all additional rights and interests provided under common law, by this CE Grantor hereby absolutely, irrevocably,

unconditionally, without restriction, and voluntarily grants, conveys, and transfers to the State, and the State accepts, a perpetual conservation easement encumbering the Property. This CE shall run with the land and constitutes a real property interest vested in the State on the Closing Date. The term “conservation easement in gross” is used as defined in CRS §38-30.5-101, et seq. and the common law doctrine that non-adjointing easements are personal interests shall not apply whether or not the State owns any real property adjoining the Property.

1. **DEFINITIONS**

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

A. Baseline Report

“Baseline Report” means the written report, incorporated by reference herein, approved and signed by the Parties documenting the condition of the Property as of the Closing Date.

B. CE

“CE” means this Conservation Easement in Gross, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this CE, exhibits, attachments or references incorporated herein pursuant to Colorado Law and Regulations, State Fiscal Rules, and State Controller Policies.

C. Closing and Closing Date

“Closing” means the full execution of this CE. “Closing Date” is the date on which the Closing occurs.

D. Conservation Values

“Conservation Values” means those values and characteristics described as “Conservation Values” in the third Recital above.

E. CRS

“CRS” means the Colorado Revised Statutes as amended.

F. Management Plan

“Management Plan” means the plan, and any amendments thereto, detailing ongoing management of the Property.

G. Minerals

“Minerals” is to be construed in the most expansive and liberal terms and means any naturally occurring substance that can be extracted from the surface of or below the earth (specifically, in this instance, the Property), whether or not a substance is currently recognized as valuable, and includes, but is not limited to, the following: soil, sand, gravel, rock, stone, decorative stone, oil, natural gas, carbon dioxide, coalbed methane (including any and all substances produced in association therewith from coal-bearing formations), hydrocarbon, or fuel.

H. Mineral Development

“Mineral Development” means the act of extracting Minerals from the surface of or below the Property via any means including, but not limited to, the following:

- i. Surface or tunnel mining including “mining” as defined in Internal Revenue Code §170(h).
- ii. Construction of any and all roads, pipelines, structures, equipment, tanks, storage facilities, ponds, evaporation pools or pits, utility lines, or any kind and description,

and all other activities related to oil and gas operations as described in CRS §34-60-103(6.5) and in Colorado Energy and Carbon Management Commission Rule 100 - Definitions.

I. Mineral Rights

“Mineral Rights” means the right to explore for and extract Minerals from the Property by virtue of any interest in the Property, including, but not limited to, the following: any real property interest, mineral deed, mineral lease, mineral severance, mineral reservation, mining claim, or mining lease.

J. Party and Parties

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

K. Property

“Property” is the real property described in **EXHIBIT A** and depicted for illustrative purposes only in **EXHIBIT B** and includes all land, improvements, and fixtures together with all Grantor’s right, title and interest in all easements, rights of way, and appurtenant rights, and other interests therein. The Property includes the surface thereof, the subsurface below the Property to the center of the Earth, and the airspace from the surface extending 100 miles above the Property.

L. Violation

“Violation” means injury to or impairment of the Conservation Values, or a breach in whole or in part of any of the provisions of this CE.

2. TERM AND TERMINATION

A. Perpetual Term and Recording

This CE shall continue in perpetuity. Following Closing, this CE shall be promptly recorded in the official records of the county in which the Property is situated and the State may re-record it and any amendments hereto at any time as may be required to preserve its rights in this CE.

B. Termination

This CE may only be terminated or extinguished, in whole or in part, by order of a court of competent jurisdiction in accordance with State and/or federal laws. The following shall not impair the validity of this CE, nor shall any of the following be considered grounds for this CE to be amended, terminated or extinguished: **(i)** under theories of abandonment, **(ii)** for failure of the State to enforce this CE in whole or part, **(iii)** for changes in the potential economic value of any use that is prohibited by or inconsistent with this CE, **(iv)** for changes in any current or future uses of neighboring properties, **(v)** for the inability of the Grantor or Grantor’s heirs, successors or assigns to use the Property as permitted by this CE, or the unprofitability of doing so, **(vi)** due to the repeal or amendment of Section 38-30.5-101 et seq., **(vii)** for the disappearance of any species/specimens from the Property or the scientific or legal conclusion that such species is extinct, or **(viii)** for changes to the Property caused by natural disaster or other events that alter, diminish, eliminate, or otherwise negatively affect the original Conservation Values.

3. PERMITTED USES AND ACTIVITIES

Grantor may engage in or allow the following uses of the Property and activities reasonably incidental thereto, provided they are consistent with the purpose of this CE and do not change, disturb, alter, diminish, or impair the Conservation Values.

A. Recreational and Agricultural Structures

Building, renovating, remodeling, and using structures necessary for agricultural or public recreational uses allowed under this CE after receiving approval in advance in writing by the State, whose approval shall not be unreasonably withheld; provided that no structure shall be used as temporary or permanent residence. Examples of recreational and agricultural structures include, but are not limited to, sheds, lean-tos, livestock shelters, hoop houses, small greenhouses, picnic tables, fishing piers, benches, interpretive signs, and the like. Any structures constructed under this section shall be located to minimize impact to the Conservation Values. No structure may exceed a height of 20 feet above grade. Height is defined as the vertical distance from grade plane to the average height of the highest roof surface.

B. Agriculture

Grantor reserves the right to conduct any customary agricultural or horticultural uses on the Property, subject to the restrictions in this CE. The Parties agree to work together to draft provisions for permitted agricultural activities, consistent with this CE, in the Management Plan (§7).

C. Fences

Existing fences (as documented in the Baseline Report) shall be maintained and repaired in accordance with CPW wildlife friendly standards. Construction of new fences is not allowed except (i) when approved in advance in writing by State, (ii) around the perimeter of the Property, (iii) such cross-fencing as may be necessary for the control of livestock, or (iv) such fencing as may be necessary to control public access on the Property. New and replaced fencing must be installed in accordance with CPW wildlife friendly standards. Sheep-tight or woven fence shall not be used to repair or replace existing fences.

D. Public Recreational Use

Grantor hereby grants, conveys, and transfers to the State, and the State accepts, a perpetual easement for the access of the State and the public over the Property that runs with the land, which constitute a real property interest immediately vested in the State, as further provided in §6.

E. Noxious Weeds

Control of noxious weeds (undesirable plant species designated as such under CRS §§35-5.5-101, et. seq.) on the Property by chemical, biological, and mechanical means. This right shall not include the right to conduct aerial herbicide or aerial insecticide spraying operations on the Property.

F. Livestock Activities

Use of the Property for feeding, breeding, raising and managing traditional livestock. Traditional livestock excludes Game Farm Animals (see §4.H).

G. Recreational Use

Personal recreational uses such as rafting, paddling, fishing, horseback riding, cross-country skiing, bicycling, electrical assisted bicycling, or hiking, or other traditional non-motorized recreational activities. Grantor may allow the public use of the Property comparable to the remaining uses allowed on the Grantor's managed portions of the Riverfront Trail, such as electric scooters, after consultation with and written consent of the State which consent shall not be unreasonably withheld.

H. Roads and Trails

Maintenance and use of existing roads on the Property. Grantor may construct new trails for the use of the general public subject to the State's prior written consent, which whose approval shall not be unreasonably withheld.

I. Utilities

Construction, installation, maintenance, repair, removal, relocation, replacement, and use of utility mains, lines, and underground facilities for the exclusive purpose of providing utility services to other Property owned by Grantor or supplied by Grantor with the utility services. Any utility infrastructure constructed under this section shall be sited to minimize its impact to the Conservation Values and shall be buried. Any areas disturbed as a result of any utility infrastructure construction shall be re-vegetated and restored to a natural condition with native vegetation as soon as is practicable after completion; provided however, if such disturbed area is under cultivation as permitted by this CE, then re-vegetation and restoration shall be done to restore such disturbed area to its condition in the Baseline Report as reasonably determined by the State.

J. Water Infrastructure

Grantor may install water facilities, including wells, pipelines, pump stations, water tanks (closed for storage or open for stock watering), stock ponds, dams and impoundments as reasonably necessary in connection with the agricultural operations of the Property.

4. PROHIBITED AND RESTRICTED USES AND ACTIVITIES

Without limiting the generality of the foregoing, the following activities are prohibited and restricted, except as expressly allowed in this CE or in the Management Plan or with prior written approval from the State:

A. Activities Diminishing Conservation Values

Any uses or activities on the Property by Grantor or any third parties that would change, disturb, alter, diminish or impair the Conservation Values, or that would be inconsistent with the purposes of this CE.

B. Agriculture

Farming, tilling, or any type of cultivation, except as provided in §3.B.

C. Aircraft Facilities

Constructing or erecting any aircraft facilities or aircraft landing facilities.

D. Buildings, Structures, and Improvements

Constructing, placing or erecting any new buildings, structures or other improvements, including without limitation trailers, permanent camping accommodations or tent facilities, Quonset huts, mobile homes, storage sheds, enclosures of any sort, except as expressly provided in this CE.

E. Commercial or Industrial Activities

Commercial or industrial activities.

F. Easements

Granting additional easements burdening the Property for any purpose.

G. Feedlots

Establishing or operating any feedlot, which is a permanently constructed confined area or facility that is used for the purpose of engaging in the business of receiving and feeding livestock.

H. Game Farming or Game Animals

Constructing, conducting, or operating a game farm or raising or holding Game Farm Animals or alternative livestock.

Game Farm Animals include: (i) penned, enclosed, or privately-owned caribou, black bear, grizzly bear, mountain lion, white-tail deer, black-tail deer, coues deer, elk, moose, antelope, mountain sheep, mountain goat, red deer, (ii) any other cloven-hooved ungulate which is indigenous to Colorado, and (iii) any non-indigenous or exotic cloven-hooved ungulate which could interbreed with or spread disease to any cloven-hoofed ungulate indigenous to Colorado. However, Game Farm Animals do not include traditional livestock including domestic cattle, domestic sheep, domestic goats, domestic pigs, and domestic llamas and alpacas.

I. Leasing

Leasing the Property or any portion of either, if any, to any third parties for any uses, except for the following: agriculture. Grantor shall notify any lessee of the limitations on the use of the Property contained in this CE and the Management Plan.

J. Noxious, Invasive, non-Native, and Detrimental Species

Introduction of any plant or animal species designated by local, State or federal agencies as noxious, invasive, non-native, or detrimental to wildlife.

K. Recreational Activities

Recreational activities not specifically permitted in §6. Specifically and without limitation it is prohibited to develop and/or use facilities for intensive recreational activities that concentrate people in a relatively confined area for significant periods of time. Examples include, but are not limited to athletic fields, golf courses or ranges, group playgrounds, campgrounds, and outdoor amphitheatres, sports facilities and recreation centers.

L. Roads and Trails

Constructing or establishing any new roads, bridges, trails, or parking lots, except as provided in §3.H.

M. Signs

Construction or erection of any signs or billboards on the Property without advance written approval of the State, except for signs that limit access to the Property such as signs announcing “private property” or “no trespassing,” or signs used to facilitate access to the Property by the general public.

N. Storage

Storage, except of materials necessary to facilitate uses permitted under this CE.

O. Subdivision

Dividing, subdividing, partitioning, or de facto subdividing the Property into two or more parcels or interests in common, or any attempt at the same, including, but not limited to construction and use of any “condominium unit” or “time share unit”, or creation of a “common interest community” as those terms are defined in the Colorado Condominium Ownership Act. Grantor further waives any contractual, statutory or common law right to partition the Property or any portion thereof into separate or distinct parcels.

P. Topographical Changes

Excavating, grading, cutting and filling, berming or other similar topographical changes, including without limitation the movement of minerals, peat, sod or topsoil are not

permitted. Notwithstanding the foregoing, activities that are reasonably necessary in connection with the uses allowed under this CE shall be permitted, including reasonable topographical changes related to the repair, replacement, maintenance and construction of fences, structures, ponds, ditches, wells, pipelines, water system infrastructure, dams and roads and trails. Any area disturbed by any topographical changes shall be promptly reclaimed and re-vegetated.

Q. Trash, Waste, and Hazardous Materials

Disposing, dumping, discarding, leaving, abandoning, accumulating, treating, reclaiming, recycling, storing, abandoning, or otherwise depositing any waste-like materials, pollutants, contaminants, hazardous substances (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended “CERCLA”), hazardous or otherwise, including but not necessarily limited to trash, litter, garbage, junk, or solid or liquid agricultural or non-agricultural wastes, provided that Grantor may establish manure piles, spread manure and perform similar customary ranching-related activities.

R. Utility Systems

Constructing or installing any new above ground public or private utilities, including but not limited to transmission lines, antennas, radio, telephone, television, telecommunication towers, and wind, solar, geothermal, and hydro energy production systems, or constructing a commercial energy production facility, except as expressly provided by this CE.

S. Vegetation

Cutting, removing, or unnecessarily damaging any vegetation. This prohibition shall not restrict Grantor’s right to cut and remove from the Property **(i)** dead, diseased or downed vegetation that present a fire and/or safety hazard or obstruction; **(ii)** invasive non-native species; **(iii)** vegetation that obstruct ditches, wells, ponds, springs, pipelines or water system infrastructure, fences or traveled surfaces; and **(iv)** dead wood for use as fence posts, and **(v)** any additional vegetation as provided for under the Management Plan. Except on a limited and localized basis, trees may be cut only to **(i)** control insects and disease, **(ii)** to control invasive non-native species, **(iii)** to prevent personal injury and property damage, **(iv)** to remove downed trees that present fire/safety hazards or obstructs ditches, wells, ponds, springs, pipelines, or water system infrastructure, fences or traveled surfaces, and **(v)** for domestic uses on the Property such as firewood, and construction of permitted buildings and fences. Any other timber harvesting may only be conducted in accordance with a forest management plan prepared by a professional forester at Grantor’s expense and approved in writing by the State either in a separate document or by incorporation with the Management Plan.

T. Vehicles

Use of motorized vehicles except (i) on existing roads, and (ii) as used for agricultural purposes, property management or animal retrieval.

U. Water Bodies

Any change to any creek, stream, river, stream channel, riparian corridor, wetland, pond, aquifer, or lake edge (collectively “Water Bodies”), including, but not limited to removal, alteration, impairment, draining, or modification of any Water Body on the Property, unless approved in writing in advance by the State in its sole discretion. Nor shall Grantor degrade or pollute any Water Bodies on the Property. Notwithstanding the

foregoing, Grantor may establish erosion control structures on the Property in accordance with the Management Plan.

5. MINERALS

Mineral Development (as defined in §1.I) that disturbs the surface of the Property or otherwise detrimentally affects the Conservation Values is prohibited subject to the provisions of this §5.

A. Grantor

The provisions of this §5.A apply to any and all Mineral Rights that Grantor owns or controls as of the Closing Date or acquires or controls by any means at any time after the Closing Date.

i. Mineral Development

- a. Grantor shall not engage in Mineral Development of any Mineral Rights.
- b. Grantor shall not allow or consent to any third parties to engage in Mineral Development of any Mineral Rights:

ii. Transfer

Grantor shall not transfer, lease, sever, or otherwise separate Mineral Rights from the Property. Any attempts to do so shall be void ab initio.

B. Third Party

i. Future Third Party Agreements

The approval of both Parties is required to enter into any new agreements with third parties regarding any Mineral Rights or Mineral Development. The Parties shall give written notice to each other in accordance with §13 any time either Party is contacted, either formally or informally, by a third party regarding Mineral Development. The Party contacted shall give said notice to the other Party as soon as practical, but not later than 10 days after the occurrence of the contact, and shall describe in detail all material aspects of the contact, including, but not limited to, the identity of the third party and the nature of the contact. Any failure to provide such notice shall not impair the validity of this §5 or other provisions of this CE. Any third party agreement must either (1) prohibit any access to the surface of the Property or (2) must (a) limit the area(s) of disturbance to specified area(s); (b) include provisions that ensure that the proposed activities have a limited, localized impact on the Property that is not irretrievably destructive of the Conservation Values; and (c) contain a full description of the activities proposed, a description of the extent of disturbance, the location of facilities, equipment, roadways, pipelines and any other infrastructure, the proposed operation restrictions to minimize impacts to the Conservation Values, reclamation measures including and in addition to those required by law, and remedies for damages to the Property's Conservation Values. Any third party agreement that only permits subsurface access to the minerals but prohibits any access to the surface of the Property shall also prohibit any disturbance to the subjacent and lateral support of the Property and shall not allow any use that would materially adversely affect the Property's Conservation Values.

ii. Shared Influence and Control

With respect to any Mineral Rights not currently owned by Grantor, whether or not Mineral Development is currently occurring, Grantor irrevocably assigns and grants to the State the same legal rights as Grantor to influence and control impacts to the

surface of the Property from Mineral Development. Such rights include, but are not be limited to, the unilateral right to take whatever legal action the State deems necessary in order to respond to proposed Mineral Development, including bringing judicial or administrative actions. Mineral Development condemnation shall be treated pursuant to §12.G.

6. PUBLIC ACCESS

The State is granted the exclusive right to allow, regulate, administer and prohibit public access to the Property in its sole discretion.

A. Low Impact

Public access shall be limited to low-impact outdoor recreation including, but not limited to, rafting, paddling, hiking, bicycling, horseback-riding, snowshoeing, cross-country skiing, fishing, wildlife-viewing, picnicking, photographing, open space, environmental education, wildlife-viewing, temporary gatherings such as weddings/reunions, and non-commercial, outdoor recreational activities.

B. Trail Easement

The State is granted the exclusive right to construct and maintain a 30-foot wide trail on the Property that will serve as part of the planned Colorado River Trail, as demonstrated in the Baseline Report.

C. Management

With the State's advance written consent, which may be granted, withheld or conditioned in the State's sole discretion, Grantor or a third party may manage public access so long as such management is consistent with this Easement.

D. Recreation Plan

Any plan developed to facilitate public access to the Property shall enhance the outdoor recreation Conservation Value while minimizing any adverse impacts to the wildlife habitat, scenic open space, and connectivity Conservation Values. Any plan requires the State's advance written consent, which may be granted, withheld or conditioned in the State's sole discretion, and the Parties agree to incorporate any plans developed hereunder in the Management Plan (§7).

7. MANAGEMENT PLAN

In order to protect and further the Conservation Values, the Parties have developed a Management Plan for the Property. Both Parties shall keep a copy of the Management Plan and comply with its provisions. Any conflict between the provisions of this CE and those of the Management Plan shall be resolved in favor of this CE. The Parties shall review and may modify the Management Plan in accordance with its terms. Any subsequent modifications to the Management Plan shall not require a formal amendment to this CE nor shall any subsequent modification or amendment to the Management Plan be recorded; however, they shall conform to the provisions of this CE.

8. COMPLIANCE WITH ALL LAWS AND REGULATIONS

Grantor shall comply with all federal, state, and local laws and regulations having jurisdiction over the Property including the Grantor. Nothing in this CE such be construed as relieving Grantor of any responsibilities or obligations to any other governmental body,

including any other department, division or subdivision of the State established by law or agreement.

9. ENFORCEMENT AND MONITORING

In order to preserve and protect the Conservation Values and ensure compliance with the provisions of this CE, (including the provisions of the Management Plan), the State shall have the right to enter upon all parts of the Property by foot or motorized vehicle in order to inspect and enforce this CE, and to facilitate access to the Property by the general public as provided in §6. The State may prevent or enjoin Grantor from conducting any activities or uses of the Property which, in the sole discretion of the State, violate the provisions of this CE. In addition, the State may, independently or preferably in cooperation with Grantor, prevent or enjoin any third parties (whether or not the third parties were authorized by Grantor to access the Property) from conducting any activities or uses of the Property that violate the provisions of this CE. A copy of the Baseline Report is on file with both Parties. If a controversy arises after Closing regarding the condition of the Property or compliance with or Violation of any provision of this CE, then the Parties may use the Baseline Report and any other evidence to assist in resolving the disagreement in any informal or formal proceeding.

10. GRANTOR'S REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS

Grantor accepts the following obligations and makes the following specific representations and warranties, each of which was relied on by the State in purchasing this CE.

A. Covenants of Title

Grantor, for Grantor and Grantor's heirs, assigns, successors, and personal representatives, does covenant and agree to and with the State and its assigns that as of the Closing Date, Grantor is well seized of the Property, has good and absolute title, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the interest in the Property, created in this CE in the manner and form provided for in this CE, and that the Property is free and clear from all liens, taxes, assessments, encumbrances, reservations, rights-of-way, and restrictions. Grantor shall and will warrant and forever defend the interests in the Property, created in this CE in the quiet and peaceable possession and rights of the State and its assigns, against all and every person(s) or entity whose lawful claim to the whole or any part of the Property would affect the Conservation Values, the validity or perpetual nature of this CE, or diminish the value of this CE.

B. Hazardous Substances

Grantor does not know of, or have any reason to believe, any "Hazardous Substance," as defined in §42 U.S.C. 9601(14), or pollutant, contaminant, hazardous or toxic material, substance, or waste, as they may be defined under relevant Federal, State or local law, or asbestos, is located on the Property and Grantor has not received notice of any violation or alleged violation of any law, rule, or regulation regarding such substances. The conveyance of this CE from Grantor to the State is not intended to relieve Grantor of any obligation or liability Grantor would incur under relevant federal or State law concerning such substances as an owner of the Property. In particular, the provisions of this CE shall not be interpreted to make the State an "owner of" or "responsible party for" the Property for purposes of any federal or State environmental law or regulation, including, but not

limited to, CERCLA. Grantor shall make the foregoing representation in a separate writing deliverable to the State upon request by the State.

C. Independent Professional Advice

Grantor received such independent legal and financial advice regarding this CE as Grantor deemed necessary and prudent, and based thereon, and upon Grantor's informed judgment, Grantor voluntarily granted this CE to Grantee.

D. Legal Authority – Grantor Signatory

Grantor possesses the legal authority to enter into this CE and, if not a natural person, Grantor has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, to lawfully authorize its undersigned signatory to execute this CE, and to bind Grantor to its terms.

E. Notification and Actions

i. Litigation

In addition to any other notification obligations Grantor has under this CE, Grantor has an affirmative obligation to notify the State about litigation within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this CE or which may affect Grantor's ability to perform its obligations hereunder, Grantor 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 such copies shall be delivered to the Director of CPW.

ii. Third Party Uses and Actions

Grantor shall attempt to prevent or halt, and shall notify the State of, any uses of or activities on the Property by third parties that would be a Violation of this CE, and any uses or activities disallowed by this CE. In the event the Grantor is unable to halt such uses or activities, the State, in its sole discretion, may independently contact third parties to prevent or halt such disallowed uses or activities and Grantor shall cooperate with the State in halting such uses or activities.

F. Preservation, Restoration, and Maintenance Costs

Grantor shall maintain the Property in a manner consistent with the Conservation Values. Grantor shall bear all costs and liabilities of any kind related to the preservation, ownership, restoration, operation, upkeep, and maintenance of the Property, including weed control and eradication.

11. STATE INTEREST AND RIGHTS

This CE constitutes a real property interest pursuant to CRS §38-30.5-101 et seq., with all additional rights and interests provided under common law, immediately vested in the State, and the State shall have attendant interests and rights, including the following:

A. Development Rights and Subdivision

Grantor conveys to the State all present and future development rights deriving from, based upon, related to, or attributable to the Property in any way except those expressly reserved to Grantor in this CE, and such rights shall be held by the State in perpetuity to fulfill the purposes of this CE, and to ensure such rights are forever released, terminated, and extinguished as to Grantor, and may not be used on or transferred off of the Property to any other property adjacent or otherwise or used for the purpose of calculating permissible development uses of the Property or any other property. Development and

subdivision rights related to the Property are subject to the provisions of this §11.A and §4.O and any action taken or conveyance made by Grantor or Grantor's assigns, heirs, successors and transferees in violation of this §11.A and §4.O are null and void.

B. Transfer of Property

Grantor shall provide the State notice of any conveyance of interests in all or any portion of the Property including, but not limited to, leases, surface use agreements, rights-of-way, and access agreements. Such notice shall be provided to the State not less than 45 days prior to the date of such transfer. Any such conveyance shall state that it is subject to the terms and conditions of this CE. Any time the Property, or a portion thereof is transferred by Grantor to any third party, Grantor shall notify Grantee within five (5) business days after closing using the form in **EXHIBIT C**, along with a copy of the new ownership deed, and shall pay a transfer fee of one hundred dollars (\$100.00) ("Transfer Fee") to the State to be used for purposes consistent with the State's mission.

Notwithstanding the foregoing, Grantor shall not be obligated to pay the Transfer Fee for any transfer of the Property to a trust or foundation or other estate planning vehicle in which the beneficiaries thereof are related to the principals of Grantor. The State reserves the right to record a notice of transfer fee in the official real property records of Mesa County, Colorado. This provision is intended to run with the land for perpetuity, and to touch and concern the Property burdened by this CE.

12. REMEDIES AND RESOLUTION OF VIOLATIONS

A. Notice

The State shall send Grantor a notice detailing alleged Violations of this CE in the manner provided in §13. Upon receipt thereof, Grantor shall immediately 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 and shall, within 10 days after receipt of such notice from the State, send the State in the manner provided in §13 a response agreeing with the State or denying the alleged Violations in whole or in part.

B. Remedies and Resolution Methods

The State shall have all remedies available to it in law and in equity, such as actions for damages and injunctive relief, including, but not limited to, those set forth in CRS §38-30.5-108. The Parties shall resolve Violations as follows:

i. Agreement

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

ii. Dispute Meeting

If Grantor disputes all or any part of the State's assertion of alleged Violations, Grantor shall provide the State with a written explanation of Grantor's dispute and a statement as to why the use or activity should be permitted. Thereafter,

representatives of the Parties shall meet as soon as possible, but not later than 60 days after the State's receipt of Grantor's response, to resolve the issues. If the Parties reach agreement that a Violation has occurred, they shall create a remediation plan together with a reasonably prompt time for completion thereof. The State may enforce such remediation plan via proceedings at law or in equity if Grantor 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 §12.C.i or ii fails to resolve the identified Violation and the State may otherwise enforce its rights hereunder, including enforcing remedial plans created under §12.C.i or ii. Courts are authorized to issue both mandatory and negative injunctions, including requiring restoration of the Property to its condition before a Violation occurred.

iv. Irreparable Harm

If, in the State's opinion, an ongoing or imminent Violation is likely to irreparably violate this CE the State shall give notice of that opinion to Grantor and thereafter may, in its sole discretion, take appropriate legal action without resorting first to a meeting of the Parties, including, as may be necessary, seeking a temporary restraining order.

v. Third Party Actions and Costs

Grantor shall be solely responsible for the costs of remedying any Violations of this CE caused by Grantor or by any third parties authorized by Grantor to access the Property, including, but not limited to, guests, invitees, lessees, agents, contractors, and subcontractors.

C. Natural Disasters

Natural disasters, including, but not limited to, fire, flood, drought, plague, earthquake, storm, and tornado may adversely affect the Conservation Values and the Property. If such natural disasters occur the following applies:

i. Grantor Actions

a. Assistance

Grantor may but is not required to assist the State in its efforts under §12.C.i.a and b.

b. Disaster Emergency Actions

Grantor may take prudent actions during natural disasters to prevent, abate, or mitigate significant injury to the Property. Grantor shall, to the extent reasonably possible under the circumstances as they exist during natural disasters, attempt to act in a manner causing the least possible detriment to the Conservation Values.

ii. State Actions

a. Disaster Emergency Actions

The State may access the Property during the natural disaster to attempt to prevent and mitigate harm to the Conservation Values.

b. Post Disaster Remediation

The State may access the Property after a natural disaster to assess and to the extent possible, remediate damage to the Conservation Values and/or identify new

conservation values. The State shall give Grantor reasonable advance notice of its access and remediation plans and efforts.

c. Costs

Actions taken by the State under §12.C.ii.a and b. are at its sole discretion and cost and are subject to availability of personnel, means, and funding.

d. Actions Against Grantor

The State shall not take action against Grantor for injury to or change to the Property resulting from natural disasters or from any prudent action taken by Grantor under emergency conditions during natural disasters to prevent, abate, or mitigate significant injury to the Property.

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 an immediate public crisis.

E. Extinguishment and Proceeds

If a subsequent unexpected change in the conditions surrounding the Property can make impossible or impractical the continued use of the Property for the conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if the restrictions are extinguished, whether in whole or in part, by judicial proceeding and all of the Grantee's proceeds from a subsequent sale or exchange of the Property are used by the Grantee in a manner consistent with the conservation purposes. Each party shall promptly notify the other party in writing when it first learns of such change in conditions. In the event of a termination or extinguishment, in whole or in part, Grantor shall be obligated to provide to Grantee an amount equal to the full fair market value of the CE that is taken or extinguished at the time of the termination or extinguishment, as determined by a qualified appraiser. Grantor shall not voluntarily accept proceeds equal to less than the full fair market value of the affected property unrestricted by this CE without the approval of Grantee. Grantee shall use its proceeds in a manner consistent with the conservation purposes of this CE.

13. NOTICES AND REPRESENTATIVES

Notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to the 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

Colorado Parks and Wildlife
Real Estate Section
6060 Broadway
Denver, CO 80216

With a copy to:
James M. Robb – Colorado River State
Park

Grantor

City of Grand Junction
c/o City Manager
250 North 5th Street
Grand Junction, CO 81501

With a copy to:
City Attorney
250 N. 5th Street

14. LIMITATION OF LIABILITY

Liability for claims for injuries to persons or property arising from the negligence of the Grantor and/or Grantee, their departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of CRS §24-10-101 et seq. (the “CGIA”) and/or CRS §24-30-1501, et seq. (“Risk Management”). No term or condition of this CE shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the CGIA or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended. This paragraph is applicable to Grantor as long as Grantor is the City of Grand Junction. It is not applicable to Grantor’s heirs, successors, or assigns.

15. GENERAL PROVISIONS

A. Binding Arbitration Prohibited

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

B. Binding Effect – Perpetual Application

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 in perpetuity with the Property.

C. Captions

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

D. Construction of this CE

This CE shall be liberally construed to effect the Purposes of the CE and the policy and purpose of C.R.S. §38-30.5-101 *et seq.* If any provision in this CE is found to be ambiguous, an interpretation consistent with ensuring continuation of the Purposes of the CE that would render the provision valid shall be favored over any interpretation that would render it invalid. The common law rules of disfavoring restrictions on the use of real property and construing restrictions in favor of the free and unrestricted use of real property shall not apply to interpretations of this CE or to disputes between the Parties concerning the meaning of particular provisions of this CE. If Grantor files for either a federal or state tax benefit, then this CE is intended to create a “qualified real property interest” for “conservation purposes”, as defined in Section 170(h) of the Internal Revenue Code, and shall be interpreted consistently with such intention. If any provision necessary to qualify the interest hereby granted as a “qualified real property interest” for “conservation purposes” is missing from this CE, such provision shall be deemed incorporated herein to the extent necessary to cause the interest hereby granted to be so qualified.

E. CORA Disclosure

To the extent not prohibited by federal law, this CE 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. Counterparts

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

G. Entire Understanding

This CE 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 force or effect, unless embodied herein.

H. Further Acts

The Parties shall perform any further acts and draft, execute, and deliver any documents reasonably necessary to **(i)** effectuate this CE's purposes and intent, **(ii)** to correct typographical, spelling, or clerical errors, or to **(iii)** correct any errors in the legal description of the Property and make any boundary adjustments related thereto.

Corrective acts under this **§15.H** are not an amendment to this CE, but effectuate the original intent of the Parties.

I. Joint and Several Obligations

The burdens of this CE shall encumber the Property in perpetuity regardless of how the ownership of the Property may be divided or held at any time in the future. If more than one owner owns the Property at any time, the obligations imposed by this CE shall be joint and several upon each of the owners.

J. Jurisdiction and Venue

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

K. Modification

i. By the Parties

The Parties recognize that circumstances may arise in which an amendment of this CE would be desirable. Except as specifically provided in this CE, 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 and Regulations, Colorado Division of Parks and Wildlife Policies, State Fiscal Rules, and Office of the State Controller Policies. Modifications inconsistent with the Conservation Values, that would affect the perpetual nature of this CE, or that would otherwise negatively affect the qualifications of this CE under any applicable law, including CRS §38-30.5-101 et seq. and I.R.C. §170(h) are prohibited. All modifications shall be recorded in the county in which the Property is situated.

ii. By Operation of Law

This CE 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 CE on the effective date of such change as if fully set forth herein.

L. Negation of Trusts and Third Party Interests

The Parties intend that this CE, create a real property interest pursuant to CRS §38-30.5-101 et seq., with all additional rights and interests provided under common law; therefore, the provisions contained herein are for the use and benefit of the Parties alone, and when entering into this CE the Parties did not intend to create a restricted gift or any

type of trust, including, but not limited to a charitable trust. The right to engage in any termination, amendment, or enforcement actions related to this CE, judicial or otherwise, including but not limited to, those found in §2.C, §15.L, or §15.S, is exclusively reserved to the Parties without involvement of any third parties.

M. Permissions

Any permission granted by the State to carry out a proposed use or activity does not constitute consent to any subsequent use or activity of the same or similar nature.

N. References

All references in this CE 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.

O. Severability

Provided this CE 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 CE in accordance with its intent.

P. Subsequent Transfers

Grantor shall incorporate by reference the terms and conditions of this CE in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property by specifically referencing or attaching a copy of this CE. Grantor shall provide written notice to the State of the Grantor's intent to transfer any interest at least 45 days prior to the date of such transfer.

Q. Taxes

The Grantee is exempt from Federal, State and local government taxes. Grantor, the City of Grand Junction is also exempt from Federal, State and local government taxes. Heirs, successors or assigns of the City of Grand Junction are not exempt simply by this paragraph.

R. Third Party Enforcement

Enforcement of this CE 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 CE are incidental and do not create any enforcement rights for any third parties.

S. Waiver

Waiver of any breach or event of default under a term, provision, or requirement of this CE, 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. Grantor hereby waives any defense of laches, estoppel, or prescription, including any defenses available under CRS §38-41-119. The failure of either Party to perform any act required by this paragraph shall not impair the validity of this CE or limit its enforceability in any way.

16. ASSIGNMENT AND CONTINUITY

- A. This CE is transferable by Grantee provided that: (i) the Grantee requires as a condition of the transfer, that the conservation purposes which the contribution was originally intended to advance continue to be carried out; (ii) the transfer is restricted to an

organization that, at the time of the transfer, is an eligible grantee under Treasury Regulations Section 1.170A – 14(c)(1), is a qualified organization under I.R.C. § 170(h) and authorized to hold conservation easement under C.R.S. §§ 38-30.5-101, et seq. and C.R.S. § 12-15-104, et seq. and is certified to hold conservation easements for which a state tax credit is claimed by the State of Colorado’s Division of Conservation during the year of such transfer; and (iii) the qualified organization agrees to assume the responsibility imposed on Grantee by this Deed. Grantee shall notify and consult with Grantor in advance of any proposed transfers and such transfer must be approved in advance in writing by the Grantor, whose approval shall not be unreasonably withheld. If Grantee ever ceases to exist, a court with jurisdiction is authorized to transfer this Easement pursuant to (i), (ii), and (iii) above.

- B.** Upon Assignment by Grantee in compliance with the applicable portions of this Section 16, the Parties shall record an instrument completing the assignment in the records of the county in which the Property is located. Assignment of the Easement shall not be construed as affecting the Easement’s perpetual duration and shall not affect the Easement’s priority against any intervening liens, mortgages, easements, or other encumbrances.

17. NOTIFICATION ON RESERVED RIGHTS

Without limiting Grantee’s specific rights to notification pursuant to the Easement, Grantor agrees to notify Grantee, in writing, before exercising any reserved right that may have an adverse impact on the Conservation Values associated with the qualified real property interest created by this Easement.

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18. SIGNATURE PAGE

IN WITNESS WHEREOF, Grantor has executed this Conservation Easement in Gross effective as of the Closing Date.

GRANTOR: City of Grand Junction, a Colorado home-rule municipality,

By: _____
Andrea Phillips, Interim City Manager

STATE OF COLORADO)
)ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me the _____ day of _____, 2024, by Andrea Phillips, Interim City Manager of City of Grand Junction, a Colorado home-rule municipality.

Witness my hand and official seal.

Notary Public

(Seal)

GRANTEE: ACCEPTED by the STATE OF COLORADO, JARED S. POLIS, GOVERNOR

By: _____
Travis Black, Northwest Regional Manager

The Department of Natural Resources for the use and benefit of the Division of Parks and Wildlife and the Parks and Wildlife Commission

EXHIBIT A (Legal Description of Property)

Conservation and Trail Easement

Conservation Easement

A parcel of land for the purposes of a conservation easement, being a portion of land as described in Reception Number 2572601 located in Government Lots 1 and 2, Section 24, Township 1 South, Range 1 West, Ute Meridian, Mesa County, Colorado being more particularly described as follows:

Commencing at the Northeast Corner of said Lot 2, whence the Northeast Corner of said Lot 1 (a.k.a. the East 1/4 Corner of said Section 24) bears S89°46'01"E, using the Mesa County Local Coordinate System with all other bearings herein being relative thereto; thence S34°42'58"E, a distance of 898.07 feet to a point on the Westerly line of land as described in Reception Number 1588683 and as shown on Deposit Survey 703-92 and the Point of Beginning;

thence S11°21'25"W, a distance of 256.11 feet along said Westerly line to the centerline of the Colorado River; thence along said centerline the following three (3) courses:

- 1) N65°28'26"W, a distance of 427.87 feet;
- 2) N68°34'59"W, a distance of 203.33 feet;
- 3) N73°35'48"W, a distance of 281.62 feet to a point on the East line of land as described in Reception Number 2465231; thence N00°14'00"E, a distance of 262.56 feet along said East line; thence S70°11'35"E, a distance of 544.89 feet; thence S73°30'31"E, a distance of 146.73 feet; thence S60°10'08"E, a distance of 163.97 feet; thence S71°08'53"E, a distance of 108.29 feet to the Point of Beginning.

Said Parcel of land containing 5.19 Acres more or less.

Trail Easement (Area included within the Conservation Easement. The north border for each is the same.)

A thirty foot (30') wide strip of land for the purposes of a trail easement, being a portion of land as described in Reception Number 2572601 located in Government Lots 1 and 2, Section 24, Township 1 South, Range 1 West, Ute Meridian, Mesa County, Colorado being more particularly described as follows:

Commencing at the Northeast Corner of said Lot 2, whence the Northeast Corner of said Lot 1 (a.k.a. the East 1/4 Corner of said Section 24) bears S89°46'01"E, using the Mesa County Local Coordinate System with all other bearings herein being relative thereto; thence S34°42'58"E, a distance of 898.07 feet to a point on the Westerly line of land as described in Reception Number 1588683 and as shown on Deposit Survey 703-92 and the Point of Beginning; thence S11°21'25"W, a distance of 30.26 feet along said Westerly line; thence N71°08'53"W, a distance of 115.12 feet; thence N60°10'08"W, a distance of 163.34 feet; thence N73°30'31"W, a distance of 144.09 feet; thence N70°11'35"W, a distance of 535.09 feet to a point on the East line of land as described in Reception Number 2465231; thence N00°14'00"E, a distance of 31.84 feet along said East line; thence S70°11'35"E, a distance of 544.89 feet; thence S73°30'31"E, a

distance of 146.73 feet; thence S60°10'08"E, a distance of 163.97 feet; thence S71°08'53"E, a distance of 108.29 feet to the Point of Beginning.

Said Parcel of land containing 0.66 Acres more or less.

Descriptions prepared by: Renee Beth Parent, State of Colorado – PLS No. 38266 for the City of Grand Junction, 244 N. 7th Street, Grand Junction, CO 81501

