

RESOLUTION NO. 47-24

A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH MESA COUNTY FOR THE FUNDING OF THE PURCHASE OF 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

RECITALS:

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 Colorado Riverfront Commission (now known as One Riverfront) in 1987 by the City and Mesa County with the broader goals of creating public spaces and trails along the river.

Over the years, trails have been built by both the City and Mesa County, at times in conjunction with each other, the State of Colorado, neighboring municipalities, and/or with the assistance of One Riverfront. The trails along the Colorado River extend from approximately 22 Road to the west to Las Colonias Park on the east and then from 29 Road on the west to approximately 33½ Road on the east. The final connection between the Las Colonias Park and 29 Road is needed. This purchase will complete the last area needed to complete the final connection. Mesa County is agreeing to assist in funding the purchase by 1/3 with a total payment of \$555,000.00.

The Conservation and Trail Easement consisting of approximately 5.5 acres will allow for the trail with use by the public but also additional use for other limited recreational uses that do not conflict with the purpose of the conservation easement. With the funding agreement with Mesa County, the City and the County agree to use the remaining 7+ acres for *public purposes*. The exact use of that land, either in whole or in part, has not been determined, but consideration is being given to workforce, affordable and/or attainable housing. The agreement includes terms for some reimbursement to Mesa County if the property should change ownership from the City for use for something other than a *public purpose(s)*.

Design and construction of the trail on the property purchased with the funds from this agreement will begin in 2025 with completion anticipated in 2026. When construction is complete, the City will assume management responsibilities for the Conservation and Trail Easement area in accordance with a management plan.

The City Council has considered the opportunity to purchase the real property located at or near 2767 – 2773 C ½ road and including the adjacent and unaddressed parcels under common ownership of Bennie and David Skinner and finds the purchase to be a

benefit to the public and the agreement with Mesa County to be reasonable and proper to assist in making the purchase.

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

The foregoing Recitals are incorporated herein and in consideration of the same and as determined by the Council as evidenced by this Resolution, the City Council hereby authorizes the Interim City Manager to execute the Intergovernmental Agreement attached hereto with Mesa County regarding the funding for the purchase of real property located at or near 2767 – 2773 C ½ Road, including the unaddressed parcels under common ownership of Bennie Dick Skinner and David Skinner.

PASSED and ADOPTED this 3rd day of July 2024.



Abram Herman
President of the City Council

ATTEST:


Selestina Sandoval
City Clerk

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this 9th day of JULY 2024 by and between the CITY OF GRAND JUNCTION, a Colorado home rule municipality, ("City") and MESA COUNTY, COLORADO, a political subdivision of the State of Colorado ("County.") City and County are referred to collectively as the "Parties" and individually as a "Party."

RECITALS:

The Parties have been working together for more than four decades to establish a riverfront trail to provide recreation and transportation mobility options to those who live and work within the City and County and those who visit the area. A riverfront trail is constructed along the Colorado River as far west as 20 Road and extends to just east of the Las Colonias Park in Grand Junction. The City and the County along with 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, referred to hereinafter as the "State" have been working diligently over the last year to obtain one of the last remaining areas for a trail connection between 27½ Road and 29 Road. City and County are referred to collectively as the "Parties" and individually as a "Party." City, County and State shall be referred to collectively as "Partners."

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.

The City intends to obtain from Gavin W. Skinner (deceased), Bennie Dick Skinner, and David Lee Skinner (collectively "Owners") a general warranty deed for the parcels located at 2767 C½ Road and 2773 C½ Road with parcel numbers 2945-244-00-255, 2945-244-00-203, 2945-244-00-074, and 2945-244-00-176 containing approximately 12.36 acres. Exhibit A attached hereto and incorporated herein is the legal description for the property to be obtained ("Property.") The Partners shall equally participate in the purchase of the Property.

The City shall grant a Conservation and Trail Easement to the State for approximately 5.19 acres and a life estate back to Bennie Dick Skinner in approximately 7.17 acres. The two areas do not overlap. The life estate is contemplated in the purchase price of the Property.

By the terms hereof and the signatures affixed hereto, the Parties represent that each is ready, willing and able to perform the services set forth in this Agreement with the appropriate approvals from the City Council and the County Commissioners.

NOW, THEREFORE, and in consideration of the premises and other good and valuable consideration, the Parties agree as follows:

1. The above Recitals set forth above are incorporated herein by reference and explicitly made a part of this Agreement.

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48 2. **PURCHASE PRICE AND COSTS:** County shall provide the City \$555,000.00 to purchase
49 the fee title in the Property. The County's performance under this Agreement is conditioned
50 on the City concurrently purchasing the fee title pursuant to the closing instructions agreed to
51 by the Partners. City's performance is conditioned on the County and State each providing
52 \$555,000.00 towards the purchase price of \$1,665,000.00. (The purchase price was
53 determined after an appraisal of the Property and valuation of the life estate.) Each Partner
54 shall also pay one-third of the direct acquisition's costs incurred including but not limited to:
55 closing costs, title insurance, appraisal, phase I environmental, site assessment, and mineral
56 assessment. Payment shall be made by the County at closing in the form of a cashier's
57 check.

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59 3. **AT CLOSING:**

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61 a. City shall convey to the State a Conservation and Trail Easement substantially in the
62 form of Exhibit B attached hereto. The Conservation and Trail Easement shall be
63 recorded immediately following the recording of City's general warranty deed.

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65 b. City shall execute the life estate conveyance to Bennie Dick Skinner. The life estate shall
66 be recorded after the Conservation and Trail Easement.

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68 4. **CLOSING:** The date and time of closing shall be by the mutual agreement of the Partners
69 and Owners, but no later than 5:00 PM on December 31, 2024, at the offices of the title
70 company.

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72 5. **TERM:** The Parties' respective duties and obligations under this Agreement shall
73 commence on the execution of the Agreement by both Parties and shall terminate on the
74 sooner to occur of the Closing Date or December 31, 2024, except as otherwise provided in
75 this Agreement.

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77 6. **MAINTENANCE:** City, as owner of the Property, shall be responsible for the upkeep and
78 maintenance of the Property, subject to the Conservation and Trail Easement. This provision
79 shall survive the termination of this Agreement.

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81 7. **DISPOSITION:** City will use the property for public purposes during the time of City's
82 ownership and control of the Property. If the City transfers fee simple ownership of the
83 Property or a portion of the Property to any other entity not formed or controlled by the City,
84 the transfer shall include any necessary agreement(s) or deed restriction(s) to ensure the
85 continued use of the transferred property for public purposes. If the City transfers fee simple
86 ownership to any other entity not formed or controlled by the City for any purpose other than
87 public purposes, the City shall pay to the County fifty percent of any amounts received in
88 consideration for the transfer, less the value of any improvements on the portion of the
89 Property transferred, less any costs incurred by the City to develop the Property and or
90 subdivide the Property, less maintenance costs incurred by the City for the portion of the
91 Property being transferred within the previous five years to the transfer. This provision shall
92 survive the termination of the Agreement.

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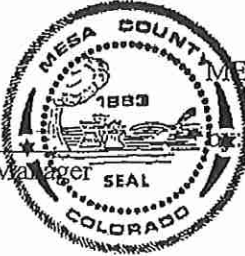
8. **TIME IS OF THE ESSENCE:** Time is of the essence hereof. If either Party is in default under this Agreement, the other Agreement shall have available to it all remedies at law and in equity.
9. **NOTICES:** Notices concerning this Agreement shall be made in writing and hand delivered to the addresses listed below:
- | | |
|--------------------------------|--------------------------|
| City of Grand Junction | Mesa County |
| City Manager | County Administrator |
| 250 North 5th Street | 544 Rood Avenue |
| Grand Junction, Colorado 81501 | Grand Junction, CO 81501 |
- with a copy to
- | | |
|--------------------------------|-------------------------------|
| Office of the City Attorney | Office of the County Attorney |
| 250 North 5th Street | 544 Rood Avenue |
| Grand Junction, Colorado 81501 | Grand Junction, CO 81501 |
10. **HEADINGS:** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
11. **ENTIRE AGREEMENT:** The Parties acknowledge and agree that the provisions contained herein constitute their best understanding of the circumstances giving rise to this Agreement; however, each Party further acknowledges and agrees that alteration(s), amendment(s), change(s) or modification(s) to this Agreement may be made but the same shall be valid only if they are contained in an instrument, which is executed by both Parties with the same formality as this Agreement.
12. **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.
13. **VENUE AND JURISDICTION:** This Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado, Mesa County, and Grand Junction; provided, that if there is a conflict between the laws, the laws of the State of Colorado shall govern. Any legal action shall be brought in the Mesa County District Court.
14. **COUNTERPARTS:** This Agreement may be executed in multiple identical original counterparts constituting one Agreement.
15. **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.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first written above.

CITY OF GRAND JUNCTION

by: Andrea Phillips
Andrea Phillips, Interim City Manager



MESA COUNTY

Bobbie Daniel
Bobbie Daniel, Chair
Board of County Commissioners

ATTEST:

by: Rahmi Gross
Mesa County Clerk to the Board

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.

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 CPW 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 and management of other vegetation on 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

Primary commercial or industrial activities are not allowed within the Property, except those related to customary agricultural and horticultural uses. Incidental commercial activities such as use of rental equipment for allowed activities, e.g. bicycle rentals, events utilizing the Property for allowed activities, e.g. trail runs, and/or activities that are allowed which may generate some commercial activities elsewhere, e.g. photography. Grantor may require permits/fees for use of the area in accordance with the purposes and terms of this CE.

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-hooved 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 amphitheaters, 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.H) 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.E.

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.B.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.B.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

Grantor
City of Grand Junction

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

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

With a copy to:
James M. Robb – Colorado River State
Park
PO Box 700
Clifton, CO 81520

With a copy to:
City Attorney
250 N. 5th Street
Grand Junction, CO 81501

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 §15.K 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
Andrea Phillips, Interim City Manager

STATE OF COLORADO)
)ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me the 7th day of August, 2024, by Andrea Phillips, Interim City Manager of City of Grand Junction, a Colorado home-rule municipality.

Witness my hand and official seal.

Jennifer L. Cinquini
Notary Public
My Commission Expires: May 25, 2025



(Seal)

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

By: _____
Kim Rogers, Real Estate Section 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

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Recording: \$133.00, Doc Fee Exempt Bobbie Gross, Mesa County, CO. CLERK AND RECORDER

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 B (Property Map)

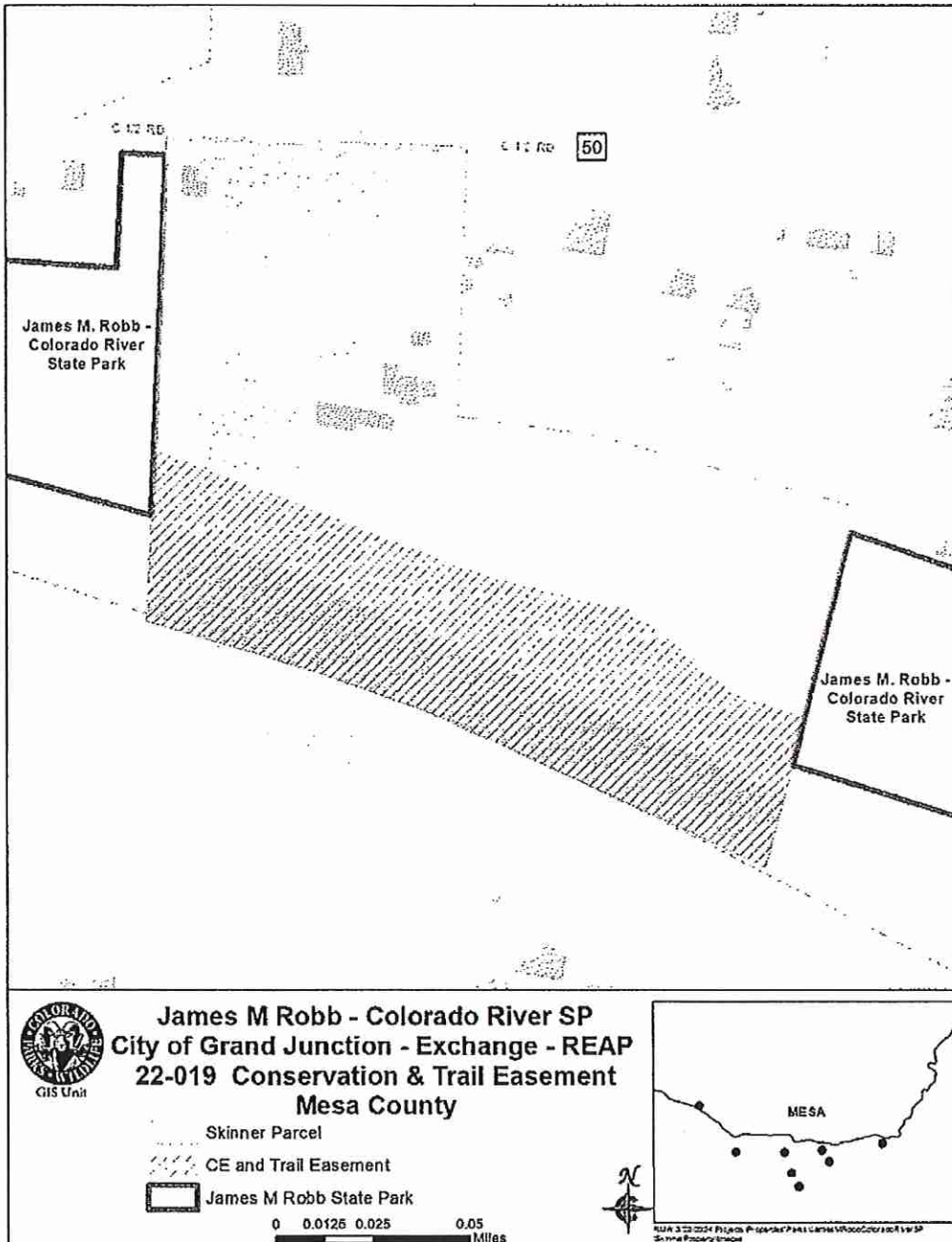


EXHIBIT C (Sample Notice of Transfer of Property Form)

To: 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 ("Grantee")

From: [Insert name of fee title owner] ("Grantor")

Pursuant to Section 12.B. of the Deed of Conservation Easement in Gross recorded on [Insert
date recorded] at Reception Number [Insert reception number] in the records of the clerk and
recorder of Mesa County, State of Colorado, Grantee is hereby notified by Grantor of the transfer
of the fee title interest in the subject Property legally described in EXHIBIT A attached hereto
effective [Insert date of closing] to [Insert name of new Grantor], who can be reached at
[Insert name, legal address, and phone number].

Also pursuant to the requirements of Section 12.B. of the aforementioned Deed of Conservation
Easement in Gross, the following are enclosed (boxes checked):

- New ownership deed
- Transfer fee of \$100.00 (check number _____)
- Transfer fee is not required under an exception in 12.B.

GRANTOR:

By: _____
Title: _____

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me the ____ day of _____,
_____, by _____ as _____ of
_____.

Witness my hand and official seal.

Notary Public
My Commission Expires: _____

(Seal)