

FRS95WIL

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: EASEMENT

NAME OF AGENCY OR CONTRACTOR: OLIVER E. FRASCONA, AUTHORIZED  
AGENT FOR WILLOW RIDGE, A COLORADO LIMITED LIABILITY COMPANY

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: SANITARY  
SEWER EASEMENT THRU WILLOW RIDGE SUBDIVISION ON REDLANDS

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1992

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

WILLOW RIDGE SEWER EASEMENT AND SERVICE AGREEMENT  
Book 2192 Page 855

In consideration of the recitals below and the promises and agreements stated, the City and the Owner have entered into this Agreement. All terms in this Agreement are contractual in nature and not mere recitals.

1. **Parties:** The parties to this Agreement are Willow Ridge LLC., a Colorado Limited Liability Company ("Owner") and the City of Grand Junction, Colorado ("City"), collectively the "Parties".

2. **Recitals:** The Owner is in the process of filing the necessary documents to form Willow Ridge, L.L.C. with the Secretary of State for the State of Colorado and a deed conveying the Property to Willow Ridge, L.L.C. The Owner's predecessor in title is Oliver E. Frasca, majority owner of Willow Ridge, L.L.C. The Owner owns, and is in the process of platting, a proposed subdivision known as Willow Ridge. The legal description of the proposed land to be subdivided is provided in that deed recorded in Book 2092, Page 33-54 in the land records of the Mesa County Clerk and Recorder.

Upon the petition of certain property owners adjacent to Willow Ridge ("Mays Owners"), the City has formed a special improvement district as part of the annexation of Mays Subdivision to the City, herein known as the "District," to provide for the installation of sewer service to the owners of most of the lots within the Mays Subdivision. To minimize the costs of installation of the sewer service to the Mays Owners, an easement across Willow Ridge is required.

This Agreement will serve to locate the necessary easement and allocate expenses between the District and Owner for the sewer service that will serve lots within the District and Willow Ridge.

3. **Effective Date:** The effective date of this Agreement shall be the date indicated for the last signatory. Construction of the sewer improvements, generally described on the attached Exhibit A -- "Willow Ridge Final Plan/Plat dated September 25, 1995 prepared by Rolland Engineering", shall commence on the earlier of a) thirty days of the recordation of the final plat of the Willow Ridge Subdivision, or b) as determined by the City in conjunction with the sewer improvements by the District, and shall be completed within six months of commencement unless delayed for reasons beyond the control of the Parties. Completion of the improvements within the time provided is a material term of this Agreement.

4. **Agreement Not Dependent Upon District:** Except for the City's duty to construct the sewer improvements, this Agreement shall be effective whether or not the lots within the District are assessed and otherwise obligated to pay for the construction of sewer lines and improvements. The mutual promises, covenants, and obligations contained in this Agreement are authorized by the City

and the Owner in pursuance of the City's ordinances, policies and regulations.

5. **Owner Obligation:** The Owner acknowledges and agrees that, by granting an easement ("Easement") the description of which is contained on Exhibit A and will be incorporated into the Final Plan/Plat, Owner and Owner's assigns will receive the benefit of the proximity to and availability of sewer service provided by the District without being liable for any portion of the costs of installation and construction of the sewer line and associated "Y's".

6. **Temporary Easement:** In addition to the granting of the perpetual Easement by the recordation of the final plat of the Willow Ridge Subdivision for the installation of sewer facilities and improvements, the Owner further grants to the City, the District and the Contractors, agents, officers and employees of each, the right of ingress, egress and all associated rights of inspection, examination, excavation and exploration of the design, and construction, of the sewer facilities along, over, within and across Willow Ridge. The temporary easement commences upon signature of this Agreement and shall expire upon the recordation of the final plat.

7. **Owner Indemnity:** The Owner hereby agrees to indemnify the City, the District and the Contractors, agents, officers and employees of each with respect to, and hold the City, the District and the Contractors, agents, officers and employees of each, harmless from and against: any and all claims, demands, liabilities, fines, costs, penalties, losses and expenses, including but not by way of limitation, lost profits, suspension or cancellation of the construction of sewer improvements, environmental restoration and remediation and/or attorneys fees, arising or resulting from or suffered, sustained or incurred by the City or the District as a direct or indirect result of the discovery and/or management, incidental or otherwise, of hazardous, toxic or other regulated substances in, on, below or around the Easement. The term "hazardous substance" includes the meaning set forth in 42 U.S.C. 9601, et. seq. and includes those substances and materials defined as hazardous waste in 42 U.S.C. 6903, et. seq. or in any State statute, local ordinance as in any rule or regulation promulgated, administered or enforced by any governmental agency or authority pursuant thereto. The provisions of this paragraph shall survive any merger, enforcement of any provision of or termination of this Agreement.

8. **Fees and Charges:** The Owner, and each subsequent owner, successor and assign, of a lot and other land within Willow Ridge, shall be legally obligated to pay any and all lawfully adopted charges and fees such as sewer rents, charges and fees, including but not necessarily limited to, monthly recurring charges, plant investment fees and the cost of connection of any lot or structure to the main lines from the "Y" connections, as shown on Exhibit A,

but no portion of the construction costs on sewer lines, including all associated "Y's", shown on Exhibit A. If payment does not occur as required, the City has the right to discontinue service together with enforcing any and all other legal and equitable remedies, including those provided by the City Code, that it may possess.

9. **City Obligation:** The City shall install, or cause to be installed by its contractor, an 8 inch sewer line and associated "Y" connections for each of the 14 lots, that run through and within Willow Ridge. The City shall return the surface of the property after installation to a similar or substantially similar condition as existed prior to installation. The sewer line will generally commence at the south edge of Willow Ridge where it adjoins Colorado Highway 340 and proceed north-westerly, for a total of approximately 945 lineal feet of line, covering "Lines A,B,C,D,E & F" and manholes "1A, through 1F", all as more particularly shown and described on Exhibit A on file with the City. The Owner shall pay the reasonable charges incurred by Owner for the field observation of the Owner's Engineer, Rolland Engineering, of the installation.

10. **Owner Not in District:** The described sewer improvements shall be installed in accordance with the process pertaining to the District and without cost, contribution or assessment from the Owner except as provided herein. Willow Ridge is not nor shall it be considered as a part of the District.

11. **Sewer Service:** The City shall provide sewer service to Willow ridge on an equitable basis consistent with that provided to other customers of the sewer system. The Owner, and Owner's heirs, successors and assigns shall be solely responsible for the cost of installation and maintenance of service lines which connect with the "Y's" on the main line. The City does not warrant, either expressly or impliedly, the proper functioning of the sewer, sewer system, or that sewer service will be trouble-free. City warrants that the sewer lines shall be constructed in a good and workman-like manner in accordance with all applicable governmental and municipal rules and regulations in effect at the time of installation and that the prime contractor shall guarantee the installation for a period of at least one year from completion.

12. **Amendment:** The Parties to this Agreement may amend or modify it only by written instrument executed on behalf of the City by the City Manager or his designee and by the Owner or his designee. Such amendment or modification shall be properly acknowledged and notarized before it may be effective.

13. **Venue:** Venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement, improvements, or any action arising thereunder will be deemed to be proper only if such action is commenced in Mesa County.

14. **Attorney Fees:** Notwithstanding anything herein to the contrary, in the event of a breach of this Agreement the non-breaching party shall be entitled to an award of the reasonable attorney fees incurred by the non-breaching party to enforce the terms of this Agreement.

16. **Address/Notice:** The addresses of the Parties hereto are:

Willow Ridge, L.L.C.  
Oliver E. Frasca  
1910 Stony Hill Road  
Boulder, CO 80303

City of Grand Junction  
Office of the City Attorney  
250 North 5th Street  
Grand Junction, CO 81501

Notice shall be given to the addresses shown, until notice of a change of address has been delivered.

**Willow Ridge, LLC.,** a Colorado  
Limited Liability Company

by: [Signature]  
Oliver E. Frasca,  
authorized agent

Date: October 12, 1995

**City of Grand Junction**

By: [Signature]  
Mark K. Achen, City Manager

Date: October 18<sup>th</sup>, 1995

Attest:

[Signature]  
Stephanie Nye, City Clerk



EXHIBIT A

Exhibit A consists of a Final Plan & Plat of Willow Ridge dated September 25, 1995 and prepared by Rolland Engineering of Grand Junction.

Exhibit A may viewed in the office of Community Development in Grand Junction City Hall, 250 North 5th Street, Grand Junction, Colorado 81501.