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TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: EASEMENT

NAME OF AGENCY OR CONTRACTOR: MARY E. HERITAGE

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: AGRMT DTD APRIL 17, 2000
FOR KANAH CREEK FLOWLINE

PARCEL NO. 2943-324-00-031

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 2000

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

AGREEMENT AND GRANT OF EASEMENT

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THIS AGREEMENT is made and entered into this 17TH day of APRIL, 2000, by and between Mary E. Heritage, whose address is 2411 Grand Avenue, Apartment A, Grand Junction, Colorado 81501, hereinafter referred to as the "Owner", and the City of Grand Junction, a Colorado home rule municipality, whose address is 250 North 5th Street, Grand Junction, Colorado 81501, hereinafter referred to as the "City".

Recitals.

A. The Owner represents that she is the owner of that certain real property in the County of Mesa, State of Colorado, being more particularly described as follows:

Beginning at a point which is S 89°36'00" W 480.0 feet and N 00°01'00" E 25.0 feet from the Southeast corner of the Northwest ¼ of the Southeast ¼ of Section 32, Township 1 South, Range 1 East of the Ute Meridian; thence N 00°01'00" E 152.8 feet; thence N 89°36'00" E 152.37 feet; thence S 00°01'51" E 152.8 feet; thence S 89°36'00" W 152.5 feet to the Point of Beginning,

also known by Mesa County Tax Schedule Number 2943-324-00-031 and hereinafter referred to as the "Owner's Property".

B. The City owns, operates, maintains and repairs a high pressure water pipeline commonly known as the Kannah Creek Flowline (the "Flowline"). The Flowline is a primary supply line that conveys the source domestic and fire protection water for the City and its inhabitants. The Flowline has been located upon the Owner's Property for a period of more than 89 years.

C. The instrument whereby the City acquired a perpetual easement allowing the original installation of the Flowline through and across the Owner's Property (the "Original Easement") provides a center line description of the easement across the Owner's Property but fails to prescribe a width of said easement; therefore, the Original Easement encumbers the entirety of the Owner's Property and restricts the Owner's ability to beneficially use the Owner's Property.

D. At the request of the Owner, the City has agreed to release the Original Easement and replace the Original Easement with an easement that is limited to a width of twenty-five (25) feet, subject to the terms, covenants, conditions and restrictions set forth in this Agreement.

NOW, THEREFORE, in consideration of the recitals above and the terms, covenants, conditions and restrictions as hereinafter provided, the Owner and the City agree as follows:

1. Release of Original Easement. For and in consideration of the Grant of Perpetual Easement made by the Owner in paragraph 2 below, in addition to the several other conditions contained herein, the City hereby releases and relinquishes any and all interest it has or may have in and to the Original Easement. The City agrees that the Perpetual Easement granted and conveyed in paragraph 2 shall serve as the only operative easement with respect to the Flowline and the Owner's Property.

2. Grant of Perpetual Easement.

2.1 For and in consideration of the Release of Original Easement made by the City in paragraph 1 above, the receipt and sufficiency of which is hereby acknowledged, the Owner hereby grants and conveys to the City, its successors and assigns, a twenty-five (25) foot wide Perpetual Easement (the

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“Perpetual Easement”) for the installation, operation, maintenance, repair and replacement of the Flowline, the boundaries of said Easement being located fifteen (15.0) feet left and ten (10.0) feet right of the following described center line:

Commencing at the Southeast Corner of the Northwest ¼ of the Southeast ¼ (NW¼ SE¼) of Section 32, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, and considering the south line of the NW¼ SE¼ of said Section 32 to bear S 89°36'00” W with all bearings contained herein being relative thereto; thence S 89°36'00” W along the south line of the NW¼ SE¼ of said Section 32 a distance of 480.00 feet; thence leaving the south line of said NW¼ SE¼, N 00°01'00” E a distance of 25.00 feet to the southwest corner of the Owner’s Property; thence N 00°01'00” E along the west boundary line of the Owner’s Property a distance of 106.00 feet to the Point of Beginning of the center line of said Easement; thence leaving the west boundary line of the Owner’s Property and along said center line, S 81°04'32” E a distance of 154.29 feet to a point on the east boundary line of the Owner’s Property, said point being the Point of Terminus of said center line,

the sidelines of said Easement to be extended or shortened to terminate at the boundary lines of the Owner’s Property,

TO HAVE AND TO HOLD unto the said City, its successors and assigns, including the right of ingress and egress to survey, construct, install, operate, maintain, repair and replace the Flowline situate therein, together with the right to remove objects interfering with the use, operation, maintenance, repair and replacement of said Flowline, including the removal of structures and landscape materials, including the trimming or removal of trees and bushes.

2.2 The Owner hereby covenants with the City that she has good title to the aforescribed premises; that she has good and lawful right to grant this Easement; that she will warrant and forever defend the title and quiet possession thereof against the lawful claims and demands of all persons whomsoever.

3. Agreements, Covenants, Duties and Obligations of and by the Owner. The Owner hereby agrees and covenants, on behalf of the Owner and on behalf of the Owner’s heirs, successors and assigns, as follows:

3.1 The Owner shall not allow nor permit to be allowed any vehicular access over and across the Perpetual Easement, either temporary or perpetual, without the prior written consent of the City, which consent may be withheld for any reason.

3.2 The Owner shall not erect, construct or install, nor permit to be erected, constructed or installed, any structures or any other item or fixtures which may be detrimental to the Flowline or which may act to impede or prevent reasonable ingress and egress for workers and equipment to, on, along, over, under, through and across the Easement area.

3.3 The Owner and the Owner’s heirs, successors and assigns shall indemnify the City, its officers, employees and agents, and hold the City, its officers, employees and agents harmless from any and all liabilities, damages, injuries, losses or claims to persons or property resulting from: the existence of the Flowline; the City’s activities to operate, maintain, repair and replace the Flowline; the City’s exercise of the City’s rights to use and occupy the Perpetual Easement and to remove objects interfering therewith; any break or rupture in the Flowline, even if such break or rupture occurs as a result of the City giving prior written consent for the purposes set forth in paragraph 3.1 above.

3.4 The Owner hereby releases the City and agrees to forever hold the City, its officers, employees and agents, harmless from any claims the Owner could state with regard to "takings" or inverse condemnation, however stated, as a result of the Flowline and the Perpetual Easement.

4. Enforcement, Partial Invalidity, Governing Law.

4.1 In the event the City uses its Attorney or engages an attorney to enforce the City's rights hereunder, the Owner agrees to pay any and all attorney fees, plus costs, including the costs of any experts.

4.2 The invalidity of any portion of this Agreement shall not affect the validity of any other provision contained herein. In the event any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision(s).

4.3 This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce any covenant or agreement contained herein shall be in Mesa County, Colorado.

5. Total Agreement; Applicable to Successors. This Agreement contains the entire agreement between the parties. All representations made by any person, unless included herein, are null and void and of no effect. This Agreement may not be changed, altered or modified except by a written instrument subsequently executed by both parties. This Agreement and the duties, obligations, terms and conditions hereof apply to and shall be binding upon the respective heirs, successors and authorized assigns of both parties.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year first above written.

Owner:

For the City of Grand Junction, a Colorado home rule municipality

Mary E. Heritage
Mary E. Heritage

Gregory O. Trajnor
Gregory O. Trajnor, Utilities Manager

State of Colorado)
)ss.
County of Mesa)

The foregoing instrument was acknowledged before me this 11th day of April, 2000, by Mary E. Heritage.

MY COMMISSION EXPIRES DEC. 2, 2000

My Commission Expires: _____

Witness my hand and official seal.

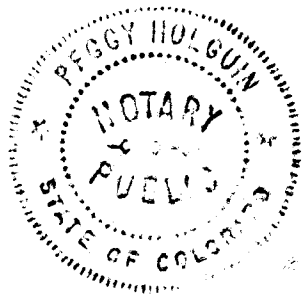


State of Colorado)
)ss.
County of Mesa)

The foregoing instrument was acknowledged before me this 17TH day of APRIL, 2000, by Gregory O. Trainor, Utilities Manager for the City of Grand Junction, a Colorado home rule municipality.

My Commission Expires: 3.3.01

Witness my hand and official seal.



Peggy Holguin
Notary Public