

SGH05LFT

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	SGH COMPANY, LLC.
SUBJECT/PROJECT:	LIFT STATION SPY GLASS RIDGE FILING 1 & 2
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2005
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

**SGH COMPANY, LLC LIFT STATION**

This agreement is made and entered into this 8<sup>th</sup> day of October 2005, by and between the City of Grand Junction, a Colorado home rule municipality ("City"), and SGH Company, LLC, a Colorado Limited Liability Company ("Developer").

2279705 BK 4011 PG 274-280  
10/07/2005 04:36 PM  
Janice Ward CLK&REC Mesa County, CO  
RecFee \$35.00 SurChg \$1.00

RECITALS:

Developer represents that it is the owner of property with a street address of 215 27 Road, Grand Junction, Colorado 81503 (Mesa County tax assessor numbers 2945-264-00-038, 2945-264-00-043, 2945-264-00-046, and 2945-351-00-128), more particularly described as set forth in the attached Exhibit A in the County of Mesa, State of Colorado, hereafter referred to as the Property. Developer is presently subdividing the Property. Developer is creating lots for residential use.

The City is the manager of the Persigo Wastewater Treatment Facility ("regional sewer" or "System") and in such capacity controls the use of and tapping into the sewer facilities located within the 201 Service Area. The Property is located within the 201 Service Area. Any development of a lot for residential use shall require the disposal of any sewage waste through the System.

Pursuant to the City's policy, it is preferred that development is to be designed to be served by gravity sewer. Exceptions to the policy must be approved by the Public Works and Utilities Director ("Director"). It has been determined that gravity sewer is not an option for this Property due to the topography of the Property. As part of the City's approval of Developer's subdivision, Developer is required to construct a lift station along with appurtenant facilities ("Lift Station").

Orchard Mesa Sanitation District ("OMSD") is the sanitation district in which the Property has been included. OMSD does not want ownership of the Lift Station. The City has agreed that it will take ownership in accordance with the terms of this Agreement.

THE PARTIES HAVE AGREED AS FOLLOWS:

1. The above Recitals are intended to state the intent of the parties, and shall constitute substantive terms of this agreement. In addition, the Recitals shall form a basis to construe the several provisions hereof in the event that there is an ambiguity or the intent of the parties is otherwise unclear. Any rule such that any ambiguities shall be construed against the drafter shall not apply to this agreement; the parties agree that each is fully capable of engaging its own attorneys and other experts to understand and negotiate the language hereof.
2. Developer agrees to construct the Lift Station to serve its development, and agrees to connect such Lift Station with the System, at such location as is required by the City. The Lift Station shall be designed, inspected, constructed and approved in accordance with the engineering standards then applicable for the System, as required by the City Engineer. Developer shall pay all costs for the design, inspection, and construction of the Lift Station. As determined by the City Engineer, the Lift Station shall incorporate either an additional wet well or an emergency diesel generator to provide emergency power in case of an outage. Construction of the Lift Station shall begin on or before the recording of a

plat that includes a lot that needs the Lift Station for development purposes. Developer shall provide all perpetual easements to the City for the benefit of the System for ingress/egress access to the Lift Station and perpetual easements for the installation, operation, maintenance and repair of the Lift Station as determined necessary by the City.

3. One year following substantial completion of construction and approval by the City of the as-built drawings and the Lift Station, whichever is later, as determined by the City Engineer, and provided that the Lift Station is in operating condition, free from defects and not needing repair nor having been repaired within the last year, except for normal routine maintenance, and has been built in accordance with City requirements, the Developer may request in writing that the City accept transfer of title of the Lift Station.

The City agrees that it will accept a warranty deed for no consideration to all real property interests needed to perpetually own, operate and maintain the Lift Station if: (1) the Lift Station is then in operating condition, free from defects and not needing repair nor having been repaired within the last year except for normal routine maintenance; (2) the Lift Station has been constructed in accordance with the standards set by the City Engineer; (3) the proposed document(s) warranting title are approved by the City Attorney and are not subject to any liens or encumbrances except as are approved by the City Attorney; (4) all necessary easements have been granted; and (5) the Developer warrants and agrees to hold harmless and indemnify the City that the interests in land, *e.g.* easements and fee title, and facilities are free from any environmental contamination and any hazardous or other regulated or dangerous substances. The City may require proof of such matters in writing, including a report and both field and analytical work from a qualified environmental scientist. Developer shall also supply evidence acceptable to the City that such rights-of-way or other property interests are free from hazardous, toxic and other regulated materials and substances.

(b) Except for normal routine maintenance, if there are any repairs or other construction changes or improvements required, the one-year period referred to shall be extended so it runs from the last repair, construction or other change to the Lift Station (this shall be referred to as "Final Acceptance"). Upon initial acceptance the City shall be responsible for the normal routine maintenance of the Lift Station. The Developer shall warrant the Lift Station for one year following initial acceptance by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Lift Station as repaired and/or replaced, shall comply with the City Engineer's construction plans, City standards and specifications at the end of the warranty period. The Developer shall warrant each repair and/or replacement made under the warranty period for one year following the initial acceptance. Upon Final Acceptance, the City shall thereafter own, operate and maintain the Lift Station.

(c) The transfer to, acceptance and Final Acceptance by, the City of the Lift Station shall only be for those portions of the Lift Station which are not service lines and are not structures/improvements appurtenant to service lines.

(d) City agrees to permit the Developer the nonexclusive use of any easements obtained in the name of the City for the purposes of the construction of the Lift Station, but

only so long as Developer complies with the requirements and conditions of the City Engineer.

(e) The offer to transfer to, and acceptance by, the City shall constitute Developer's agreement to forever: (1) hold harmless and indemnify the City, its officers, agents and employees from and with respect to any and all claims arising out of this agreement and/or the construction of the Lift Station or connection to the regional system, excepting only causes of action or claims resulting from the sole misconduct of the City; (2) hold harmless from and indemnify the City for all reasonable attorneys' fees incurred by the City, or the value thereof, including experts, fees and costs; and (3) with respect to the matters provided for in, or reasonably arising out of, this Agreement, indemnify and hold harmless the City, from claims by the Developer, any successor of the Developer, and any third party, whether or not any such claim or cause of action is frivolous.

4. The Developer shall obtain any required prior approvals in the name of the City at no cost to the City, as deemed necessary by the City Engineer, for the construction, repair and maintenance of the Lift Station.
5. The Developer, its successor and assigns, including all future lot owners of property within the Property shall be assessed the present value of the cost of replacement in twenty-five years of the pumps and long term maintenance for a fifty year period of the Lift Station. The assessment is Two Hundred Forty-eight Thousand Four Hundred dollars (\$248,400.00). The Developer shall provide the City with a Development Improvements Agreement ("DIA") specifically for the assessment securing the \$248,400.00 for a period of ten (10) years. The assessment shall be paid to the City at the time the Developer or the then property owner or the property owner's builder obtains sewer clearance for the building permit. The assessment shall be paid with the plant investment fee for the System. Developer agrees that the assessment shall be a covenant running with the land. If the full assessment is not collected within ten (10) years from the date of the signing of this Agreement by all parties, then the Developer shall pay the remainder of the assessment.
6. The Property has been approved by the City through the preliminary plat approval process by the Grand Junction Planning Commission for the development of 225 lots. The assessment shall be collected from the first 225 lots, tracts, or parcels to develop requiring sewer service. The assessment shall be \$1,104.00 for each.
7. This Agreement shall bind the signatory parties and their respective heirs, successors and assigns.
8. The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. The City may not unreasonably withhold its approval but any unapproved assignment is void.
9. The Developer agrees that the construction of the Lift Station, and the possible acceptance in the future by the City of said Lift Station, does not waive or limit the payment by the Developer, or any successor of the Developer, of any costs, fees or charges (e.g., plant investment fees, trunk extension fees, inspection fees, monthly sewer service charges)

which the City is now, or may be in the future, entitled to charge or collect from the Developer or any user or person connected to or benefiting from the Lift Station.

- 10. This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement or to transfer ownership of the Property being developed.
- 11. If there are any matters relating to the enforcement of this Agreement which are not addressed by this Agreement or are omitted by oversight of any party, then each party agrees that they will proceed in good faith to amicably resolve any dispute concerning this Agreement and/or the relationship that is created, that each party will negotiate in good faith, prior to initiating arbitration, to resolve the dispute as most expeditiously and amicably as practicable.
- 12. Any controversy or claim arising out of or relating to this Agreement, or to any claimed breach of it, shall be settled by arbitration pursuant to §13-22-201, *et seq.*, C.R.S.; and judgment upon the award rendered by the arbitrator may be entered into the appropriate court in Mesa County, Colorado. The City shall choose the arbitrator. Developer specifically waives its right to bring the action in any other court.

CITY OF GRAND JUNCTION

BY: [Signature]  
City Manager

Date: 10-04-05

Attest: Stephanie Turin  
City Clerk

Date: 10/4/05



DEVELOPER: SGH Company, LLC

BY: David G. Behrhorst

Date: 9/20/05

David G. Behrhorst

Address: 1280 Ute Avenue, #32, Aspen, COL 81611

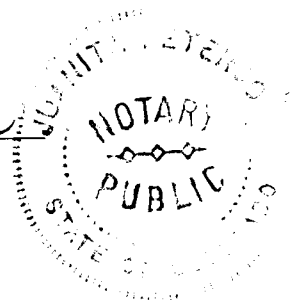
STATE OF COLORAD :  
: ss  
COUNTY OF MESA :

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of October, 2005, by Kelly Arnold, City Manager for the City of Grand Junction.

Witness my hand and official seal.

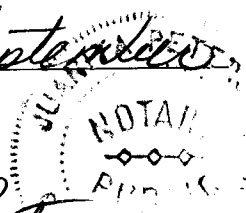
My commission expires 10-10-2005

Quanta Peterson  
Notary Public



STATE OF COLORAD :  
: SS  
COUNTY OF MESA :

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of September, 2005, by David G. Behrhorst, Manager for SGH Company, LLC.



Witness my hand and official seal.  
My commission expires 10-10-2005

Quanta Peterson  
Notary Public

Not a party to this Agreement, but in agreement that the City shall own the Lift Station.

Orchard Mesa Sanitation District

By: \_\_\_\_\_

Attest: \_\_\_\_\_

Date: \_\_\_\_\_



EXHIBIT A

**PARCEL 1:** The N1/2 NE1/4 of Section 35, Township 1 South, Range 1 West of the Ute Meridian;

**EXCEPT** tract conveyed to County of Mesa for road right of way by instrument recorded January 29, 1979 in Book 1184 at Page 787;

**EXCEPT** a parcel of land situated in the N1/2 NE1/4 of Section 35, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado; said parcel being more particularly described as follows:

Beginning at #5 rebar and aluminum cap at the Center-North one sixteenth corner of said Section 35;

Thence along the West line of the N1/2 NE1/4 of said Section 35, North 00°12'07" West, a distance of 390.85 feet;

Thence South 47°07'41" East, a distance of 576.87 feet to the South line of the N1/2 NE1/4 of said Section 35;

Thence along said South line, North 89°46'40" West, a distance of 421.40 feet to the Point of Beginning.

**PARCEL 2:** The SW1/4 SE1/4 and the West 3/4 of the SE1/4 SE1/4 of Section 26, Township 1 South, Range 1 West of the Ute Meridian;

**AND** Beginning at a point which bears South 00°23'04" East a distance of 799.47 feet from the Center East Sixteenth of Section 26, Township 1 South, Range 1 West of the Ute Meridian

Thence South 53°00'25" East along the boundary of Mesa View Subdivision, a distance of 322.43 feet to a #4 rebar with cap marked NHPQ;

Thence South 47°22'59" East along the boundary of Mesa View Subdivision, a distance of 485.16 feet to the South line of the NE1/4 SE1/4 of said Section 26;

Thence along said South line North 89°53'55" West a distance of 611.05 feet to the Southwest corner of the NE1/4 SE1/4 of said Section 26;

Thence North 00°23'07" West along the West line of the NE1/4 SE1/4 of said Section 26 to the point of beginning.

**PARCEL 3:** The East 1/4 of the SE1/4 SE1/4 of Section 26, Township 1 South, Range 1 West of the Ute Meridian.

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This description was prepared by:  
Dennis R. Shellhorn  
Colorado P.L.S. 18478  
529 25 1/2 Road, Suite 210  
Grand Junction, Colorado

NOTICE: Any rewriting or retyping of this description must NOT include this preparation information. Lack of an original seal indicates this document is not the original.



**SGH COMPANY, LLC LIFT STATION  
MODIFICATION AGREEMENT**

This Modification Agreement is made and entered into effective NOVEMBER 30, 2006, by and between the **CITY OF GRAND JUNCTION, a Colorado home-rule municipality** ("City") and **SGH COMPANY, LLC, a Colorado limited liability company** ("Developer").

**RECITALS**

A. City and Developer entered into that certain Lift Station Agreement which was recorded at Book 4011, Page 274-280, Mesa County Records, on October 7, 2005 ("Agreement").

B. The Agreement provided, at paragraph 5, for payment by the Developer, its successors and assigns, the sum of \$248,400 over a ten (10) year term to cover future repair and replacement of the lift station, such ten (10) year term to commence October 4, 2005.

C. The parties wish to amend and modify the Agreement to provide that the commencement date for the ten (10) year term set forth in paragraph 5 of the Agreement should be the date the lift station is placed in service.

**COVENANTS AND AGREEMENTS**

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows:

1. Paragraph 5 of the Agreement is amended by deleting the last sentence of said paragraph and inserting the following:

"If the full assessment is not collected within ten (10) years of April 15, 2007, then the Developer shall pay the remainder of the assessment."

2. All other terms and conditions of the Agreement not expressly amended herein shall remain in full force and effect.





**SGH COMPANY LLC AND CITY OF GRAND JUNCTION, FOR THE  
PERSIGO WASTEWATER TREATMENT FACILITY  
LIFT STATION AGREEMENT – FIRST MODIFICATION**

This First Modification Agreement is made and entered into effective FEBRUARY 22, 2017, by and between the **CITY OF GRAND JUNCTION**, a Colorado home-rule municipality (“City”) and **SGH COMPANY, LLC**, a Colorado limited liability company (“Developer”).

**RECITALS**

A. City and Developer entered into that certain Lift Station Agreement which was recorded at Book 4011, Page 274-280, Mesa County Records, on October 7, 2005 (“Agreement”). A copy of that Agreement is attached and incorporated by this reference.

B. The Agreement provides, at paragraph 5, for payment by the Developer, its successors and assigns, the sum of \$248,400.00 over a ten (10) year term (“Payment Obligation”) to cover future repair and replacement of the lift station, such ten (10) year term to commence October 4, 2005.

C. The parties wish to amend and modify the Agreement to provide for an extension to December 31, 2019 of the Payment Obligation and termination of the Agreement.

**COVENANTS AND AGREEMENTS**

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows:

1. The Agreement is amended to extend the Payment Obligation arising out of and under the Agreement to December 31, 2019; the balance due under the Agreement being \$ 143,520 as of FEBRUARY 21, 2017.

2. All other terms and conditions of the Agreement not expressly amended herein shall remain in full force and effect.

3. Other amendment(s) shall become effective only if made in writing by the parties and with similar formality as this Modification Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Modification Agreement as of the date first set forth above.

“CITY”

CITY OF GRAND JUNCTION, a Colorado home-rule municipality



By: Greg Caton  
Greg Caton  
City Manager

ATTEST:  
Stephanie Tuin  
Stephanie Tuin  
City Clerk

“DEVELOPER”

SGH COMPANY, LLC, a Colorado limited liability company  
By: David G. Behrhorst  
David G. Behrhorst, Manager

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF MESA        )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of March, 2017, by the City of Grand Junction, a home-rule municipality, by Greg Caton, the City Manager, and the Stephanie Tuin, the City Clerk.

Witness my hand and official seal.

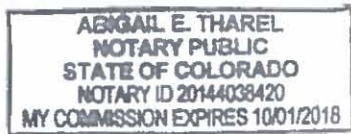
Janet Harrell  
Notary Public

JANET HARRELL  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID #20144027406  
My Commission Expires July 11, 2018

STATE OF COLORADO )  
COUNTY OF Pitkin ) ss.

The foregoing instrument was acknowledged before me this 22<sup>ND</sup> day of FEBRUARY, 2017, by SGH Company, LLC, a Colorado limited liability company, by David G. Behrhorst, Manager.

Witness my hand and official seal.



Abigail E. Tharel  
Notary Public