

REPEALED MAY 3, 1995

RESOLUTION NO. 43-95

A RESOLUTION AMENDING A FLOWLINE EASEMENT

WHEREAS, the City has owned and operated an eighteen inch diameter water pipeline commonly known as the Kannah Creek Flowline; and

WHEREAS, the Kannah Creek Flowline crosses the property of James A. and Suzanne I. Hudson, such property as described in the attached easement agreement; and

WHEREAS, the Hudsons have requested that the easement for the Kannah Creek Flowline be defined as twenty-five feet in width, centered on the center of the flowline; and

WHEREAS, the purpose of the attached easement agreement is to set forth the terms, covenants and conditions to which the Hudsons agree to be bound under which the existing easement will be defined and located.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Grand Junction does hereby approve the attached easement agreement and authorize the City Manager to sign such agreement.

Adopted this 19th day of April, 1995.

/s/ R.T. Mantlo
President of the Council

ATTEST:

/s/ Stephanie Nye
City Clerk

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this _____ day of _____, 1995, between James A. Hudson Jr. and Suzanne I. Hudson (hereinafter "the Hudsons"), and the City of Grand Junction, a Colorado home rule municipality (hereinafter "the City").

RECITALS

A. Since 1912, the City has owned and operated an eighteen inch diameter water pipeline that is one of the primary domestic and fire protection water supply lines for the City and its inhabitants. Said water pipeline is commonly known as the Kannah Creek Flowline and is hereinafter referred to as "the Flowline."

B. The Hudsons represent that they are the owners of the following described real property in the County of Mesa, State of Colorado, to wit:

The North 1/4 of the Southeast 1/4 of the Northwest 1/4 of Section 31, Township 1 South, Range 1 East of the Ute Meridian, EXCEPT beginning at the Northwest Corner of the SE 1/4 of the NW 1/4 of said Section 31; thence East 310.0 feet; thence South 330.0 feet; thence West 310.0 feet; thence North 330.0 feet to the Point of Beginning, (hereinafter "the Property").

C. The Hudsons purchased the Property with the actual knowledge of the location and use of the Flowline. The Hudsons also had actual knowledge that there existed an easement (the "Existing Easement") giving the City the right to enter the Property with workers, equipment, materials and supplies to operate, maintain, replace and/or repair the Flowline on, along, over, under, through and across the Property. The Existing Easement does not contain a description of the width of said easement and therefore the Existing Easement burdens the entire Property.

D. The Hudsons desire to cause the Property to be laid out and subdivided as Cottonwood Heights Subdivision to accommodate the construction and installation of single-family residential structures and related appurtenances (hereinafter "the improvements or "any improvements"), and have requested the City define the Existing Easement as twenty-five (25) feet in width from and along the center of the Flowline.

E. The purpose of this Agreement is to set forth the terms, covenants and conditions, to which the Hudsons agree to be bound, under which the existing easement will be specifically defined and located.

NOW, THEREFORE, based on the recitals above and the mutual covenants, conditions and promises stated, which the Hudsons agree are true and binding, the parties hereto agree as follows:

1. For and in consideration of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, and for the execution of the attached Power of Attorney for Annexation, attached hereto and incorporated herein by this reference as if fully set forth, the City does hereby define, delineate and reserve for itself, its successors and assigns forever, a 25-foot wide Perpetual Easement out of the Existing Easement, for the installation, operation, maintenance, replacement and/or repair of the lines including the water pipeline commonly known as the Flowline, together with the right of ingress and egress for such purposes as, but not limited to, workers, equipment, supplies and materials on, along, over, under, through and across the following described tract or parcel of land, the side lines of said easement being parallel with and 12.5 feet on either side of the following described centerline, to wit:

Commencing at the Southeast Corner of the North 1/4 of the Southeast 1/4 of the Northwest 1/4 of Section 31, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado; thence S 89°34'59" W along the South line of the North 1/4 of the Southeast 1/4 of the Northwest 1/4 of said Section 31, with all bearings contained herein being relative thereto, a distance of 236.75 feet to the True Point of Beginning;

Thence N 62°11'12" W a distance of 74.64 feet;

Thence N 66°39'57" W a distance of 696.64 feet to the Point of Terminus,

the side lines of said easement to be shortened or lengthened to intersect with the South line of the North 1/4 of the Southeast 1/4 of the Northwest 1/4 of said Section 31 and with the North line of the North 1/4 of the Southeast 1/4 of the Northwest 1/4 of said Section 31.

TO HAVE AND TO HOLD the described easement with the appurtenances and privileges thereunto belonging unto the City, its successors and assigns forever.

2. The Hudsons, for themselves and each of them, and for their heirs, successors and assigns, hereby covenant with the City that the easement shall not be burdened or overburdened by the installation or placement of any improvements or other use which would impair the City's rights and reservations thereon. The Hudsons shall do no act or fail to prevent act(s) which might damage the Flowline including removing any support, sub-surface or otherwise or to prevent or limit the City's ingress and/or egress on, along, over, under, through and across the easement. The Hudsons, for themselves and each of them, and for their heirs, successors and assigns, further covenant with the City that they shall not cause nor allow any other action or inaction to occur which could otherwise cause damage to the Flowline or otherwise interfere with the City's construction, reconstruction, installation, alteration, maintenance, repair, inspection and operation of a line or the Flowline or any replacement(s) of a line or the Flowline.

3. The Hudsons, for themselves and for their heirs, successors and assigns jointly and severally, and each subsequent landowner and resident within the Property, hereby covenant and agree to indemnify the City, its officers, employees and agents, and to hold the City, its officers, employees and agents harmless from any and all liability relating to: any use or occupancy of the Property, or any portion thereof, by any line or the Flowline; and the existence of any line or the Flowline near or adjacent to improvements, structure(s) or uses, now existing or hereafter constructed, including damage(s) or loss(es) to persons and/or property, including death, occurring for any reason, including, but not limited to, from a break, leak or rupture in any such line or the Flowline.

4. The Hudsons hereby covenant and agree that they have no ownership rights in the Flowline, the water contained therein and transmitted thereby, and no claim or right to any taps or connections thereto.

5. The Hudsons agree that the easement and the terms thereof herein described shall be accurately delineated and described on all surveys and plats which affect the subdivision or re-subdivision of the Property, or any portion thereof.

6. The City agrees that the easement herein described is and shall become the only operative easement with respect to the Flowline and the Property unless the City specifically agrees otherwise in writing.

7. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective parties and upon their heirs, personal representatives, successors and assigns. This Agreement, the terms and conditions herein stated, including the covenants and promises of Hudsons made herein, shall constitute a burden on and shall be deemed to run with, and be a limitation on the title of, the Property and all portions thereof.

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

James A. Hudson Jr.

Suzanne I. Hudson

For the City of Grand Junction,
Colorado

Attest:

By: _____
Mark K. Achen, City Manager Stephanie Nye, City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this ____ day
of _____, 1995, by James A. Hudson Jr. and Suzanne I.
Hudson.

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this ____ day
of _____, 1995, by Mark K. Achen as City Manager and
attested to by Stephanie Nye as City Clerk of the City of Grand
Junction, a Colorado home rule municipality.

Witness my hand and official seal.

My commission expires: _____

Notary Public

POWER OF ATTORNEY

OWNER(S) JAMES A. HUDSON JR. and SUZANNE I. HUDSON
ADDRESS OF PROPERTY 174 Sunlight Drive, Grand Junction, CO 81503
TAX PARCEL # 2943-312-00-025

LEGAL DESCRIPTION OF PROPERTY The North 1/4 of the Southeast 1/4 of the Northwest 1/4 of Section 31, Township 1 South, Range 1 East of the Ute Meridian, EXCEPT beginning at the Northwest Corner of the SE 1/4 of the NW 1/4 of Section 31, thence East 310.0 feet, thence South 330 feet, thence West 310 feet, thence North 330 feet to the Point of Beginning. ALSO EXCEPT a portion Deeded to Mesa County in Book 788 at Page 242 for Road and Utility purposes, Mesa County, Colorado.

BE IT KNOWN THAT:

We do hereby designate and appoint the City Clerk of the City of Grand Junction as our Attorney in Fact granting said City Clerk full power and authority for us and in my/our stead to: sign such documents and instruments as are necessary to cause the above described land(s) to be annexed to the City of Grand Junction; and to sign any petition(s) for annexation of the described land(s) to the City, when eligible; and to do and perform any and all acts which the said City Clerk shall deem necessary, convenient, or expedient to accomplish said annexation, as fully as we might do if personally present.

The property described herein may be annexed to the City of Grand Junction in part or parts, at any time. Consent is hereby given to annex portions of tracts and parcels even if the annexation has the effect of dividing tracts or parcels into separate parts or parcels.

The authority granted by this instrument shall be a covenant running with the land(s), shall be binding upon successors in interest and shall not cease upon our death(s) or the dissolution of marriage, partnership, corporation or other form of association which may hold title or claim an interest to the property described herein.

As a further covenant to run with the land, we agree that in the event a counter-petition to a proposed annexation of the land is prepared, any signature on such petition purporting to affect the land herein described may be ignored as of no force and effect by the City under annexation requirements.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this _____ day of _____, 19__.

James A. Hudson Jr.

Suzanne I. Hudson

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this _____ day of _____, 19__ by James A. Hudson Jr. and Suzanne I. Hudson.

WITNESS my hand and official seal

My commission expires _____.

Notary Public