

RECEPTION#: 2774513, at 9/19/2016 3:20:21 PM, 1 of 15

Recording: \$81.00, Doc Fee Exempt Sheila Reiner, Mesa County, CO. CLERK AND RECORDER

14 PAGE DOCUMENT

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

SEWER EASEMENT

with

City of Grand Junction

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1. PARTIES

This deed of an easement for sanitary sewer infrastructure (the “Easement”) is granted by 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 (the “State” or “CPW” or “Grantor”), located at 1313 Sherman St., Denver, Colorado 80203, to City of Grand Junction, a Colorado home rule municipality (“Grantee”) whose legal address is 250 N. 5th Street, Grand Junction, CO 81501 for the benefit of the Persigo 201 Sewer System. The Parties hereby agree to the provisions set forth in this Easement.

2. EFFECTIVE DATE

This Easement shall not be effective or enforceable until the Effective Date as defined in §4.D. The State shall not be liable to Grantee for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

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3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Contract exists pursuant to CRS §33-1-101, §33-1-104, §33-1-105, §33-9-101, §33-9-109 et seq., §33-10-101, §33-10-106, and §33-10-107, and all prior reviews and approvals have been obtained.

B. Consideration

The Parties agree that the mutual promises and covenants contained herein, and other good and valuable consideration are sufficient and adequate to support the granting of this Easement.

C. Exhibits

The following are attached hereto and incorporated by reference herein: **EXHIBIT A** (Easement Area Description) and **EXHIBIT B** (Easement Area Sketch).

D. Purpose

The purpose of this Easement is for the installation, operation, maintenance and repair of sewer facilities and appurtenances including, but not limited to, sanitary sewer lines, storm sewers, water lines, and appurtenant facilities.

E. References

All references in this Easement 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.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. CRS

"CRS" means the Colorado Revised Statutes as amended.

B. Easement

"Easement" means this Easement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Easement, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, State Fiscal Rules, and State Controller Policies.

C. Easement Area

"Easement Area" means that portion of the Property encumbered by this Easement and described in **EXHIBIT A** and depicted for illustrative purposes only in **EXHIBIT B**.

D. Effective Date

"Effective Date" is the date this Easement is approved and signed by the State and accepted by Grantee, whichever is later.

E. Improvements

"Improvements" means any and all improvements Grantee places on or about the Easement Area, whether currently existing or in the future.

F. Party or Parties

"Party" means the State or Grantee and "Parties" means both the State and Grantee.

G. Property

"Property" is Walker State Wildlife Area in Section 36, Township 1 North, Range 2 West of the Ute P.M., located in Mesa, County Colorado.

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5. TERM AND RECORDATION

The Parties' respective duties and obligations and the burdens on the Property under this Easement shall commence on the Effective Date and shall continue in perpetuity. Grantee may record this Easement in the official records of each county in which the Property is situated following the Effective Date.

6. GRANT OF EASEMENT

The State may be the owner of all or part of the Property; however, the State is not making any representations concerning its ownership of, nor warrants its title to, any of the Property or the Easement Area, and if this Easement encroaches on lands not owned or controlled by the State, Grantee is solely responsible for any such encroachment. Subject to the foregoing caveat, by this Easement the State hereby quitclaims, grants, conveys, and transfers to Grantee a perpetual easement over the Easement Area located on the Property that runs with the land. The nature, character, and extent of Grantee's rights created herein are limited to those specifically set forth in this Easement.

A. Grantee's Use

This Easement is granted solely for the purposes stated in §3.D and Grantee shall use the Easement Area only for such purpose. Grantee shall have a right of access along and upon the Property, the extent of which is limited to effectuating such purposes.

B. Construction and Maintenance

Grantee is solely responsible for the construction and maintenance of all Improvements.

C. Pre-Existing Rights

The Easement is subject to any and all previously granted easements, rights-of-way, licenses and conveyances, recorded or unrecorded. It is Grantee's sole responsibility to determine the existence of any rights, uses or installations conflicting with Grantee's use of the Easement Area. Grantee shall not interfere with any use in the Easement Area by any other party holding a senior or superior interest in the Property.

D. Reserved Rights

The State reserves all rights not specifically conveyed under this Easement, including the right to use and occupy the Property for any purpose not inconsistent with, and which does not materially interfere with, Grantee's use and enjoyment of the rights herein granted. Said rights include, but are not limited to:

i. Public Access

Continuing to allow access to CPW staff and the public for purposes consistent with CPW's mission and purpose.

ii. Additional Easements

Granting additional easements to third parties which encroach upon the Easement Area but do not unreasonably interfere with Grantee's use and enjoyment of the rights granted herein.

E. Surface Restoration

Any excavations, disturbances, or other temporary disturbances of the surface, soil, or vegetation caused by or on Grantee's behalf on or about the Easement Area shall be properly replaced, and as nearly as possible, restored and maintained by Grantee in original configuration and with similar vegetation. Specifically, but not by way of limitation, Grantee shall control noxious weeds for the first five years following any and all excavations, disturbances, or other temporary disturbances of soil. Restoration shall be performed in a timely manner as soon as practicable following completion of the

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sewer facilities construction and installation. Grantee will consult with the State with regard to seed type(s) and method(s) of re-vegetation.

7. ABANDONMENT

Grantee's failure to perform Grantee's obligations under the Easement or make use of the Easement Area for a period of one year shall constitute an abandonment of its interests under the Easement. The State, in its sole discretion, may terminate and extinguish the Easement in the event of abandonment after providing Grantee 60 days written notice. If the State so terminates and extinguishes the Easement, the State may, at its sole option, retain all Improvements without compensation to Grantee or require Grantee to remove the Improvements and restore the Easement Area and any other portions of the Property affected by the Improvements into their original condition before the Easement was granted, and Grantee shall execute and deliver to the State a document, in recordable form, acknowledging and consenting to the termination and extinguishment of the Easement.

8. GRANTEE'S REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS

Grantee makes the following specific representations and warranties, each of which was relied on by the State in granting this Easement.

A. Hazardous Substances

Grantee shall not introduce or allow introduction of any "Hazardous Substance," as defined in 42 U.S.C. §9601 (14), or hazardous or toxic material, substance, or waste, as they may be defined under relevant state or local law, or asbestos, on the Property or any of the State's adjacent real property. Grantee shall be solely responsible for all costs and expenses incurred if Grantee breaches this provision. Grantee shall make the foregoing representation in a separate writing deliverable to the State upon request by the State.

B. Independent Professional Advice

Grantee received such independent legal and financial advice regarding this Easement as Grantor deemed necessary and prudent, and based thereon, and Grantee's informed judgment, voluntarily accepted this Easement from the State.

C. Legal Authority – Grantee Signatory

Grantee possesses the legal authority to accept this Easement and its attendant obligations and has taken all actions required by its procedures, ordinances, and/or applicable laws to exercise that authority, to lawfully authorize its undersigned signatory to execute this Easement, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to accept this Easement within 15 days of receiving such request. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process in accordance with regulations and procedures established by the Colorado Secretary of State.

D. Licenses, Permits, Etc.

As of the Effective Date, Grantee shall have and at all times during the term hereof shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform its obligations under this Easement, without reimbursement by the State. Additionally, all employees,

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agents, and subcontractors of Grantee performing services under this Easement shall hold all required licenses or certifications, if any, to perform their responsibilities. Any revocation, withdrawal, or non-renewal of licenses, certifications, approvals, insurance, permits, or any such similar requirements necessary for Grantee to properly perform the terms of this Easement shall constitute a violation of this Easement.

E. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Easement or which may affect Grantee's ability to perform its obligations hereunder, Grantee 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 copies shall be delivered to the Director of CPW.

9. INSURANCE

Grantee and Grantee's agents, successors, assigns, licensees, contractors and permittees shall obtain and maintain insurance as specified herein at all times during the term of this Easement. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the State.

A. CGIA – Public Entities

If Grantee is a "public entity" within the meaning of the CGIA, Grantee shall maintain at all times during the term of this Easement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its potential liabilities under the CGIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each contract with a contractor that is a public entity, to include the insurance requirements necessary to meet such contractor's liabilities under the CGIA. If Grantee is not a "public entity" within the meaning of the CGIA, Grantee shall obtain and maintain during the term of this Easement insurance coverage and policies meeting the requirements set forth in §9.B with respect to "non-public entities".

B. Non-Public Entities

Grantee shall obtain and maintain, and require each "non-public" contractor providing goods or services in connection with this Easement, to obtain and maintain, insurance coverage substantially similar to the following:

i. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below the specified minimum limits because of claims made or paid, Grantee or Grantee's contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision. Grantee shall ensure that coverage and limits shall increase in the future to those commonly required and available in the marketplace at the time, and shall ensure that coverage and limits are at all times comparable those required in this §9.B.i.

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ii. Additional Insured

The State shall be named as additional insured on all Commercial General Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Grantee and Grantee's agents, successors, assigns, licensees, contractors, and permittees hereunder.

iii. Primacy of Coverage

Coverage required of Grantee and Grantee's agents, successors, assigns, licensees, contractors, and permittees shall be primary over any insurance or self-insurance program carried by the State.

C. Certificates

Grantee and Grantee's agents, successors, assigns, licensees, contractors, and permittees shall provide certificates showing insurance coverage required hereunder to the State within fifteen business days of the Effective Date of this Easement. In addition, upon request by the State at any other time during the term of this Easement, Grantee and Grantee's agents, successors, assigns, licensees, contractors and permittees shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions herein.

10. VIOLATIONS, REMEDIES AND RESOLUTION METHODS

A. Defined

In addition to any violations specified in other sections of this Easement, Grantees' failure to perform any of its material obligations hereunder, including, but not limited to, those in §9, is a violation of this Easement.

B. Notice

The State shall send Grantee in the manner provided in this §10 a notice detailing alleged violations of this Easement. Upon receipt thereof, Grantee shall immediately send the State a response in the manner provided in this §10 agreeing with the State or denying the alleged violations in whole or part and 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.

C. Remedies and Resolution Methods

i. Agreement

If Grantee agrees with or does not dispute the State's assertion regarding the alleged violations, Grantee shall, at Grantee's sole cost, restore the Easement Area and any other portions of the Property affected by the violations to their condition prior to the violations or to take such other action as may be reasonable or necessary to eliminate the violations and prevent their further occurrence and shall provide the State with details of its remedial plan together with a reasonably prompt time for completion thereof. The State may enforce such remedial plan via proceedings at law or in equity if Grantee fails to perform it in accordance with its terms.

ii. Dispute Meeting

If Grantee disagrees with and disputes the State's assertion regarding the alleged violations in whole or part, Grantee shall provide the State with a written explanation stating the reasons why the State's allegations are erroneous or stating why the use or activity should be permitted. Thereafter, representatives of the Parties with settlement authority shall meet as soon as possible, but not later than 60 days after the State's receipt of Grantee's response, to resolve issues. If the Parties reach agreement, they

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shall create a remedial plan together with a reasonably prompt time for completion thereof. The State may enforce such remedial plan via proceedings at law or in equity if Grantee 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 §10.C.ii fails to resolve any issues and to otherwise enforce its rights hereunder, including enforcing remedial plans created under §10.C.i and ii. Courts are specifically authorized to issue both mandatory and negative injunctions, including one requiring restoration of the Easement Area and any other portions of the Property affected to its condition before a violation occurred. If the Parties agree that an abandonment under §7 has occurred, the Parties shall execute a written, notarized acknowledgment thereof in recordable form stating that the Easement has been terminated and extinguished. If the Parties do not so agree, the State may seek appropriate judicial relief to terminate and extinguish the Easement.

iv. Costs

Grantee shall be solely responsible for the costs of remedying any violations of this Easement caused by Grantee or its agents.

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 immediate public crisis.

11. NOTICES AND REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal 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 from time to time 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
 Manager
 CO Parks & Wildlife
 711 Independent Avenue
 Grant Junction, CO 81505

with copy to

Real Estate Section
 CO Parks & Wildlife
 6060 Broadway
 Denver, CO 80216

Grantee
 Greg Lanning
 Director of Public Works and Utilities
 250 N. 5th Street
 Grand Junction, CO 81501
 gregl@gjcity.org

and

John Shaver
 City Attorney
 250 N 5th Street
 Grand Junction, CO 81501
 johns@gjcity.org

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12. LIMITATION OF LIABILITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees, is controlled and limited by the provisions of CRS §24-10-101 et seq. (the CGIA) and CRS §24-30-1501, et seq. (risk management). No term or condition of this Easement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of CGIA or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

Liability for claims for injuries to persons or property arising from the negligence of the City of Grand Junction, its departments, institutions, agencies, boards, officials, and employees, is controlled and limited by the provisions of CRS §24-10-101 et seq. (the CGIA) and CRS §24-30-1501, et seq. (risk management). No term or condition of this Easement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of CGIA or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

13. GENERAL PROVISIONS

A. Binding Arbitration Prohibited

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Easement or incorporated herein by reference shall be null and void.

B. Binding Effect

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 with the Property.

C. Captions

The captions and headings in this Easement are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.

D. Construction of this Easement

This Easement shall be liberally construed to further the purposes and intent set forth in §3.D. In the event of an ambiguity in this Easement, the rule of contract 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.

E. CORA Disclosure

To the extent not prohibited by federal law, this Easement and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

F. Corrections and Further Acts

The Parties shall perform any further acts and execute and deliver any documents, including amendments to this Easement that are reasonably necessary to (i) effectuate its purposes, (ii) to correct typographical, spelling, or clerical errors, or to (iii) correct any errors in legal in the legal description of the Property.

G. Counterparts

This Easement may be executed in multiple identical original counterparts constituting one agreement.

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H. Entire Understanding

This Easement 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 any force or effect whatsoever, unless embodied herein.

I. Joint and Several Obligations

If more than one person or entity owns this Easement at any time, the obligations imposed by this Easement shall be joint and several upon each of the owners.

J. Jurisdiction and Venue

All suits or actions related to this Easement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the county in which the Property is situated.

K. Modification

i. By the Parties

Except as specifically provided in this Easement, 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, State Fiscal Rules, and Office of the State Controller Policies.

ii. By Operation of Law

This Easement 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 Easement on the effective date of such change, as if fully set forth herein.

L. Order of Precedence

The provisions of this Easement shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Easement and its exhibits and attachments, including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the main body of this Easement, and
- ii. Exhibits

M. Severability

Provided this Easement 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 Easement in accordance with its intent.

N. Third Party Enforcement

Enforcement of this Easement 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 Easement are incidental, and do not create any enforcement rights for any third parties.

O. Waiver

Waiver of any breach or event of default under a term, provision, or requirement of this Easement, 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. Grantee hereby waives any defense of laches, estoppel, or prescription, including any

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defenses available under CRS §38-41-119. The failure of the State to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

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14. SIGNATURE PAGE

IN WITNESS WHEREOF, Grantor has executed this Easement burdening the Property as of the Effective Date.

GRANTOR: 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,

By: *Margaret Taylor-Veach*

Name: Margaret Taylor-Veach

Title: Assistant Director, Capital, Parks and Trails

STATE OF COLORADO)
)ss.
COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me the 16 day of August 2016, by Margaret Taylor-Veach as Assistant Director of Colorado Parks and Wildlife, a division of the Department of Natural Resources of the State of Colorado.

Witness my hand and official seal.

Kathryn Sanchez
Notary Public

My Commission Expires: 1/4/2020

(Seal)



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GRANTEE: ACCEPTED by City of Grand Junction

By: 

Name: GREG LANNING

Title: Public Works Director

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EXHIBIT A – Easement Area Description

PERMANENT SEWER EASEMENT

A certain parcel of land lying in the Southwest Quarter (SW 1/4) of Section 36, Township 1 North, Range 2 West of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

COMMENCING at the Northwest corner of the Southwest Quarter of the Southwest Quarter (SW 1/4 SW 1/4) of said Section 36 and assuming the West line of the SW 1/4 SW 1/4 of said Section 36 bears N 00°01'16" W with all other bearings contained herein being relative thereto; thence from said Point of Commencement, S 79°35'22" E a distance of 471.50 feet to a point being the POINT OF BEGINNING; thence from said Point of Beginning, N 35°45'59" E, a distance of 288.73 feet; thence N 74°48'55" E, a distance of 366.39 feet to a point being on the existing right of way for Interstate 70 (I-70) and the beginning of a non-tangent 3,014.80 foot radius curve, concave Northeast, whose long chord bears S 52°24'43" E with a long chord length of 31.40 foot; thence Southeasterly along said right of way and the arc of said curve, through a central angle of 00°35'48", an arc length of 31.40 feet; thence S 74°48'55" W, a distance of 376.52 feet; thence S 35°45'59" W, a distance of 279.86 feet; thence N 54°14'01" W, a distance of 25.00 feet, more or less, to the Point of Beginning.

CONTAINING 16,393 Square Feet or 0.376 Acres, more or less, as described.

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**RECORDER'S NOTE:
THE FOLLOWING PAGE(S)
ARE OVERSIZE**

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