

PUBLIC TRAIL EASEMENT AND AGREEMENT

THIS PUBLIC TRAIL EASEMENT AND AGREEMENT (the "**Easement**"), is entered into this 27th day of March, 2018, by and between **REDLANDS WATER AND POWER COMPANY**, a Colorado nonprofit corporation, the address of which is 2216 South Broadway, Grand Junction, Colorado 81507 (the "**Grantor**"), and the **CITY OF GRAND JUNCTION**, a Colorado Home Rule Municipality, the address of which is 250 North 5th Street, Grand Junction, CO 81521 (the "**Grantee**"), on behalf of themselves, and their successors in interest and assigns (together, the "**Parties**"). The following exhibits are attached hereto, and are incorporated into this Easement:

- Exhibit A - Description of Trail Easement
- Exhibit A-1 - Description of Temporary Construction Easement
- Exhibit B - Map of Trail Easement
- Exhibit B-1 - Map of Temporary Construction Easement

RECITALS:

- A. Grantor is the record owner of a certain 100-foot-wide strip of real property located in Mesa County lying south and east of Monument Road which is a portion of the property described in the Decree recorded on March 9, 1933 as Reception No. 274397, Mesa County, Colorado (the "**Property**"). The Property is generally depicted on the attached **Exhibit B**.
- B. Grantee is the owner of land or easements adjacent to the Public Trail Easement, across which public trails are or will be located, which are a part of the "Monument Road Trail/Bike Path").
- C. The Parties desire by this instrument: (a) to establish and to grant to Grantee a perpetual public trail easement ("**Public Trail Easement**") over and across a portion of the Property, which Public Trail Easement is described in **Exhibit A** and depicted in **Exhibit B**, both attached hereto and made a part hereof by this reference, which will provide a connecting link for the Monument Road Trail/Bike Path; (b) to establish and to grant to Grantee a temporary construction easement ("**Temporary Construction Easement**") for access from Monument Road over and across a portion of the Property to the Public Trail Easement for the purposes of constructing a trail (the "**Trail**") within the Public Trail Easement, which Temporary Construction Easement is described in **Exhibit A-1** and depicted in **Exhibit B-1**, both attached hereto and made a part hereof by this reference; and (c) to establish certain restrictions with respect to the use of this Easement.
- D. Grantor and Grantee acknowledge that certain canal facilities, including canals, canal banks and containment structures, flumes, siphons, pumps, electrical

generation facilities, access roads, headgates, culverts, spill gates, pipes and other related structures (the “**Canal Facilities**”), are located on and adjacent to the Property and underlying the Easement. It is the desire of both the Grantor and Grantee that this Easement be created and managed for the recreational enjoyment of the general public in a manner that does not cause interference with the Grantor’s operation, maintenance and repair of its Canal Facilities. This Easement does not extend to areas of inlet and outflow of the siphon and adjacent work areas.

- E. Grantee desires by this instrument: (a) to accept both the Public Trail Easement and the Temporary Construction Easement subject to the restrictions set forth herein; and (b) to assume certain responsibilities in connection therewith.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. Grant of Public Trail Easement and Temporary Construction Easement. Grantor hereby grants and conveys unto Grantee and its successors and assigns, for the use and benefit of the general public, a perpetual non-exclusive easement and right-of-way over and across the Public Trail Easement described in Exhibit A and depicted in Exhibit B, subject to the terms and conditions of this Easement. In addition, so that the Grantee may construct the Public Trail Easement, Grantor hereby grants and conveys unto Grantee and its successors and assigns a temporary construction easement described in Exhibit A-1 and depicted in Exhibit B-1, for access to the Public Trail Easement during construction and maintenance of the Trail, subject to the terms and conditions of this Easement. The parties acknowledge and agree that, notwithstanding any principal of statutory or common law to the contrary, the Grantee’s use of the Property for the purposes granted hereby is subordinate to Grantor’s dominant and superior right and obligation to operate, maintain and repair the Canal Facilities.

2. Easement “As Is”. Grantee hereby accepts this Easement and the Property in an “as is” condition, subject to the restrictions herein contained, and subject to all patent or latent defects or problems of any kind or nature. Grantor makes no warranty as to its title to the Property or its suitability for any use. Grantee accepts and assumes all risks of any defect in title or any physical defects in the Property. Such acceptance does not preclude improvement or maintenance activities within the Public Trail Easement or access from Monument Road across the Temporary Construction Easement insofar as such activities may be allowed or required by this Easement.

3. Construction and Maintenance of Trail and Improvements.

(a) The Grantee is permitted to construct, maintain, repair and replace the Trail and related improvements within the Public Trail Easement and is permitted to access the Public Trail Easement from Monument Road using the Temporary Construction Easement for such purposes, subject to the terms of this Easement.

(b) The Grantee shall prepare and submit construction and location plans for the construction of the Trail and related improvements, including supporting structures or signage, or any plans for re-construction or construction of improvements to the Public Trail Easement in the future at least thirty (30) days in advance of such construction, for the Grantor's review and approval in its sole and absolute discretion. Grantor agrees to confer in good faith with Grantee in an effort to resolve any objections to the plans by Grantor. No improvements will be installed until Grantor's objections are resolved. Grantee warrants that to the best of its knowledge, information and belief, the plans have been reviewed by a licensed professional engineer and are free from material errors or omissions, are suitable for the construction and installation of the trail improvements and that once installed, the improvements will function according to their intended purpose.

(c) The review and/or approval of the plans by Grantor, including, but not limited to, the review of the same by any consultant engaged by Grantor, is solely and only for the use and benefit of Grantor and is not intended and may not be construed or relied on as Grantor's or its consultant's warranty, certification, or representation that the plans are accurate, free from material errors or defects, or are suitable for construction of the trail improvements or provide a basis for any claim by Grantee of contributory negligence or assumption of the risk on Grantor's part.

(d) Grantee shall coordinate construction, maintenance, repair or replacement of the Trail and related improvements with Grantor so as to not unreasonably interfere with the Canal Facilities or the Grantor's operations thereof.

4. Public Trail Easement Use and Restrictions.

(a) The Public Trail Easement shall be used exclusively for non-motorized (and electric bicycles to the extent permitted by Grantee) travel by the public and for construction, maintenance, repair and replacement of the Trail by the Grantee. Grantee reserves the right to prohibit or limit public access to the Public Trail Easement during construction, times of emergency, for public safety, or as otherwise provided by Grantee's rules and regulations related to public trails, or as deemed appropriate by Grantee.

(b) Grantor reserves the right to temporarily limit or suspend access to the Public Trail Easement during maintenance and repair of the Canal Facilities, or for emergency purposes, provided that Grantor shall notify Grantee at least ten (10) days in advance of any such limitation or suspension of use, except in case of emergency, in which case notice shall be given as soon as practicable. Grantor reserves the right to excavate the surface of the Easement to access the siphon or other portions of the Canal Facilities without liability to the City for any surface disturbance, except that Grantor

shall be required to promptly return the unimproved surface of the area disturbed to its pre-existing grade, but shall have no other duty to restore the Trail and related improvements to their pre-existing condition.

(c) No motorized vehicles are permitted on the Public Trail Easement, except vehicles used by Grantor for maintenance of Canal Facilities, as provided in paragraph 4(a) above, and except equipment and vehicle used to construct, maintain and repair the Trail, emergency vehicles when necessary, and electric bicycles to the extent permitted by Grantee. No motorized vehicles are permitted on the Temporary Construction Easement, except equipment used to construct and maintain the Trail. No heavy equipment shall be allowed to cross the siphon; a trackhoe or similar light vehicle shall be used for construction of the Trail over the siphon. Maintenance equipment for blading/sweeping of the Trail is not considered heavy equipment and is permitted.

5. Public Trail Easement Care and Maintenance. Grantee hereby assumes complete responsibility for and agrees to care for and maintain the Trail and Public Trail Easement in a clean and attractive condition and in a good and safe order and repair free from hazards or dangerous conditions, at its sole cost and expense, except as otherwise provided herein. Grantee's maintenance responsibilities shall include, but not be limited to, trash and debris removal, keeping the Trail clear of rocks, vegetation and other obstructions, grooming as needed, controlling erosion and water runoff, eliminating dangerous conditions or hazards and general care and maintenance. Grantee shall coordinate maintenance and repair of the Trail with the Grantor so as to avoid interference with the Grantor's operation of its Canal Facilities. Grantee shall close the Trail to public use in the event of the condition of the Trail becomes dangerous or hazardous, regardless of how such danger or hazard is caused, until the danger or hazard is eliminated. Grantor may close the Trail if, in its opinion, the condition of the Trail becomes dangerous or hazardous and the Grantee has not either closed the Trail or eliminated the danger or hazard following reasonable notice of such condition from Grantor to Grantee. Notice shall be given in writing (which includes email) to the City of Grand Junction Public Works Director / Manager and by telephone to the City of Grand Junction Public Safety office non-emergency dispatch number, except that in the event of emergency notice shall be given by a telephone call to 911. In the event of an imminent hazard or danger to the life, health or safety of persons or property, the Grantor may close the Trail to public use without notice to the Grantee subject to Grantee's obligation to care for and maintain the Trail prior to it being re-opened.

6. Fencing, Signage and Gates. Grantee shall design and erect such signage, fencing, gates or other devices or structures at locations determined by Grantor for approval by Grantor to deter or prevent members of the public from entering or remaining on the Property or Canal Facilities outside of the Public Trail Easement.

7. Relocation of Easement. In the event the Grantor determines in its discretion that the Public Trail Easement needs to be relocated due changes in the configuration or use of the siphon or Canal Facilities, the Parties shall mutually agree upon a new alignment for the Public Trail Easement across the Property which protects

Grantor's use of the Canal Facilities and preserves the Public Trail Easement. If the Parties are not able to agree to a new alignment or location of the Public Trail Easement, then Grantor may designate the area within the Property where the Public Trail Easement shall be relocated.

8. Grantee Liable for Damage to Canal Facilities. The Grantee shall be liable for and repair or reconstruct any damage caused to the Canal Facilities resulting or arising from the Grantee's or the public's use of the Easement. By executing this Agreement, the Grantee does not agree to any indemnification, does not waive any immunity or limit liability contained in or provided by the Colorado Governmental Immunity Act; does not create a multi-year fiscal obligation if otherwise prohibited by law; and does not create any other financial obligation not supported by a current appropriation if otherwise prohibited by law.

9. Grantor's Immunity and Grantee's Obligation to Insure. The Parties expressly acknowledge that the Public Trail Easement is granted for a "recreational purpose" under C.R.S. Section 33-41-101, *et seq.*, and that Grantor is entitled to the benefits, protections and limitations on liability afforded by Colorado law governing recreational Easements, including without limitation C.R.S. Section 33-41-101, *et seq.* By granting the Public Trail Easement, Grantor shall have no obligation to repair, clear or otherwise maintain the area within the Public Trail Easement (except to return the surface of the land to its original grade after any disturbance by Grantor) or to insure or indemnify Grantee or the public for any injury, claim or damage to any person or property, whether alleged to have occurred as a result of use of the Public Trail Easement or due to the condition of the public trail.

Grantee agrees to maintain insurance to provide protection against liability from claims arising out of the construction or use of the Public Trail Easement. Such insurance shall be carried in amounts not less than the liability limits specified in C.R.S. Section 24-10-114(1), as it may be amended from time to time, and shall provide Grantor and its successors and assigns with thirty (30) days advance written notice prior to cancellation or termination. Grantee shall provide a Certificate of Insurance as verification of compliance with this requirement.

10. Enforcement.

(a) In the event of the failure or refusal of a Party to cure, or to commence curing and diligently prosecute curation activities until completion, any breach of this Easement within fourteen (14) days following written notice of such breach, then the non-breaching Party may enforce this Easement by an action for damages, specific performance or injunction as is proper in the circumstances; provided, however, in the alternative, the non-breaching Party may, without having an obligation to do so, undertake to perform the duties or activities the breaching Party failed to perform, in which event the non-breaching Party shall be entitled to recover from the breaching Party the non-breaching Party's costs and expenses incurred for the same.

(b) Notice to a Party shall be given in writing and be deemed effective upon mailing in the United States first class mail, postage prepaid, certified or return receipt requested to the Parties addresses as set forth in the first paragraph of this Easement.

(c) In the event the interpretation or enforcement of this Public Trail Easement should ever become the subject of litigation between the Parties, the prevailing party shall be entitled to an award of its reasonable costs and attorneys' fees incurred in connection therewith.

11. Binding Effect; Complete Agreement. This Easement shall run with the land and shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns forever, including all future record owners of the Property traversed by the Easement, and all future owners of this Easement. This Easement is the full and complete agreement between the Parties and may only be amended by a writing signed by the Parties and recorded in the real property records of Mesa County, Colorado.

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

GRANTOR:

REDLANDS WATER AND POWER COMPANY, a Colorado nonprofit corporation

By: Charles Mitisek Date: 3-27-18
Charles Mitisek

Its: BOARD
President

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 27 day of March, ^{MCS} March 27, 2018, by Charles Mitisek as President of Redlands Water and Power Company, a Colorado nonprofit corporation, as Grantor.

WITNESS my hand and official seal.

My commission expires: 1/29/2020



(SEAL)
[Signature]
Notary Public

GRANTEE:

CITY OF GRAND JUNCTION, A COLORADO HOME RULE MUNICIPALITY

By: *[Signature]*

Title: Mayor and President of the City Council

Attest: *W Winkelmann*
City Clerk

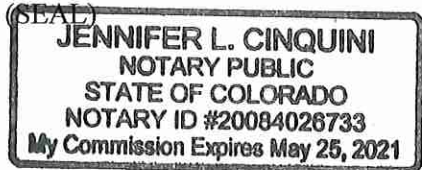


STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 28th day of March, 2018,
by *[Signature]*, as *Mayor* of the City of Grand Junction, a Colorado Home
Rule Municipality.

WITNESS my hand and official seal.

My commission expires: May 25, 2021.



Jennifer L. Cinquini
Notary Public

EXHIBIT A

DESCRIPTION OF TRAIL EASEMENT

A certain parcel of land lying in the Southwest Quarter of the Southwest Quarter (SW 1/4 SW 1/4) of Section 15, Township 1 South, Range 1 West of the Ute Principal Meridian, lying entirely within that certain 100 foot wide parcel of land as described in that certain Decree filed for record with Reception Number 274397, Public Records of Mesa County, Colorado, being more particularly described as follows:

COMMENCING at the Southeast corner of the SW 1/4 SW 1/4 of said Section 15 and assuming the South line of the SW 1/4 SW 1/4 of said Section 15 bears S 89°53'20" W with all other bearings contained herein being relative thereto; thence from said Point of Commencement, S 89°53'20" W, along the South line of the SW 1/4 SW 1/4 of said 15, a distance of 440.91 feet to a point of intersection with the West line of that certain parcel of land described with Reception Number 274397; thence N 20°52'49" W, along said West line, a distance of 110.45 feet to the POINT OF BEGINNING; thence from said Point of Beginning, continue N 20°52'49" W, along said West line, a distance of 40.77 feet; thence N 69°49'36" E, a distance of 30.00 feet; thence S 78°12'28" E, a distance of 9.33 feet; thence N 86°09'19" E, a distance of 47.22 feet; thence S 84°28'25" E, a distance of 18.99 feet, more or less, to a point on the East line of that certain 100 foot wide parcel of land; thence S 20°52'49" E, along said East line, a distance of 35.35 feet to a point being the beginning of a 76.00 foot radius non-tangent curve, concave North, whose long chord bears S 89°05'34" W with a long chord length of 40.71 feet; thence Westerly along the arc of said curve, thru a central angle of 31°04'25", an arc length of 41.22 feet to a point being the beginning of a 141.00 foot radius non-tangent curve, concave South, whose long chord bears S 76°49'53" W with a long chord length of 62.30 feet; thence Westerly along the arc of said curve, thru a central angle of 25°31'32", an arc length of 62.82 feet, more or less, to the Point of Beginning.

CONTAINING 3,868 Square Feet or 0.089 Acres, more or less, as described.

EXHIBIT A-1

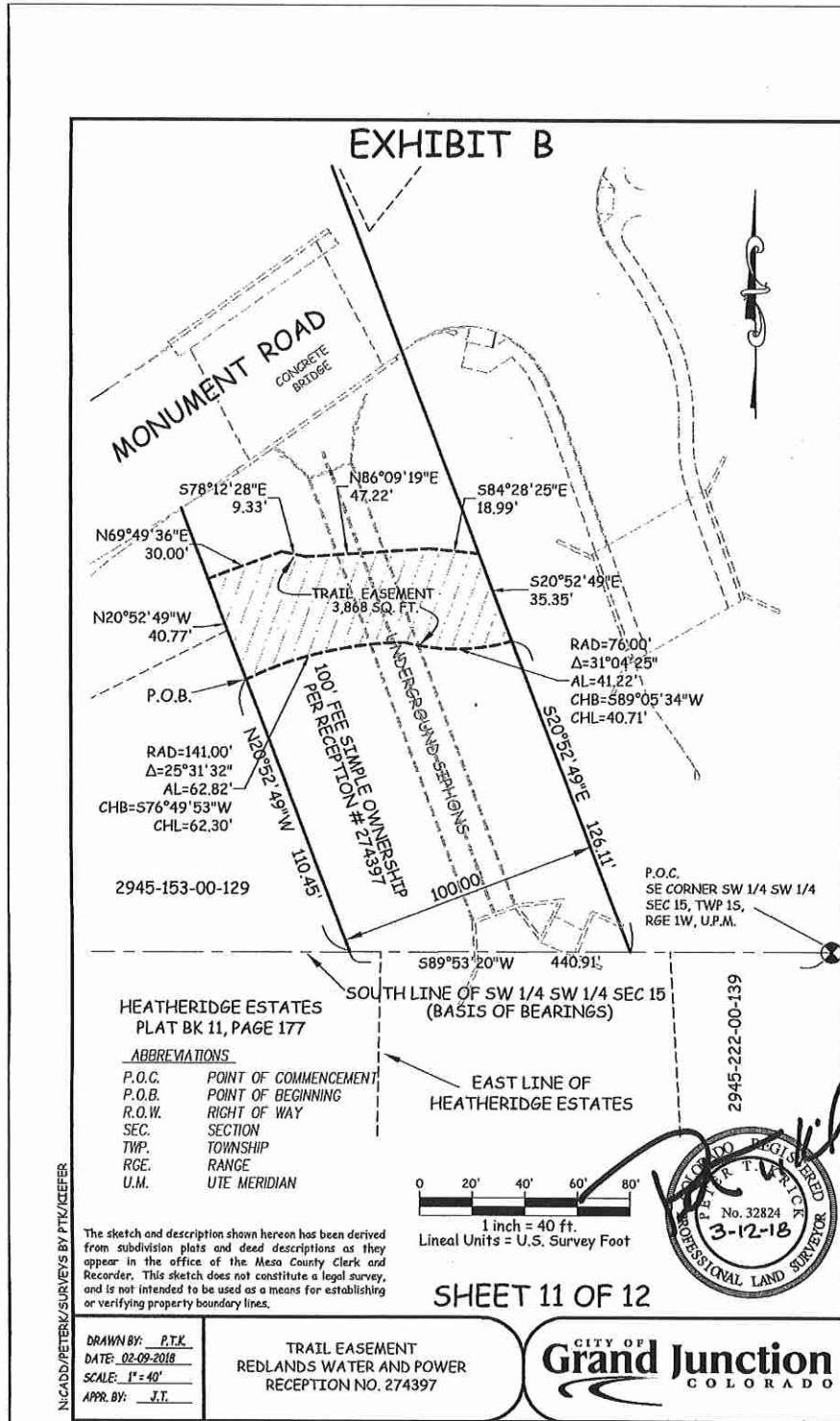
DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT

A certain parcel of land lying in the Southwest Quarter of the Southwest Quarter (SW 1/4 SW 1/4) of Section 15, Township 1 South, Range 1 West of the Ute Principal Meridian, being a Temporary Construction Easement lying entirely within that certain 100 foot wide parcel of land as described in that certain Decree filed for record with Reception Number 274397, Public Records of Mesa County, Colorado, more particularly described as follows:

COMMENCING at the Southeast corner of the SW 1/4 SW 1/4 of said Section 15 and assuming the South line of the SW 1/4 SW 1/4 of said Section 15 bears S 89°53'20" W with all other bearings contained herein being relative thereto; thence from said Point of Commencement, S 89°53'20" W, along the South line of the SW 1/4 SW 1/4 of said 15, a distance of 440.91 feet to a point of intersection with the West line of that certain parcel of land described with Reception Number 274397; thence N 20°52'49" W, along said West line, a distance of 100.00 feet to the POINT OF BEGINNING; thence from said Point of Beginning, continue N 20°52'49" W, along said West line, a distance of 74.69 feet; thence N 54°48'22" E, a distance of 103.20 feet to a point on the East line of said parcel described in that certain Decree recorded with Reception Number 274397; thence S 20°52'49" E, along said East line, a distance of 122.13 feet; thence S 81°29'08" W, a distance of 102.38 feet, more or less, to the Point of Beginning.

CONTAINING 9,841 Square Feet or 0226 Acres, more or less, as described.

EXHIBIT B
MAP OF TRAIL EASEMENT



MAP OF TEMPORARY CONSTRUCTION EASEMENT

