

## F ¾ ROAD SEWER EXTENSION REIMBURSEMENT AGREEMENT

This agreement ("Agreement") is made and entered into this 16 day of NOVEMBER, 2018, by and between the City of Grand Junction, a Colorado home rule municipality ("City"), and Dr. Larry Tice and Jan Drazek, ("Developers").

### RECITALS:

The City is the manager of the Persigo Wastewater Treatment Facility ("Regional Sewer" or "System") and in such capacity controls the use of and access to the sewer facilities located within the 201 Service Area. Developers represent that they are the owner of properties as shown on Exhibit 1, attached hereto, more particularly described as 675 26 Road (2945-031-00-009 / Tice) and 685 ¼ 26 Road ( 2945-031-10-003 / Drazek) of the records of Mesa County, State of Colorado, "Property". Developers are required to dispose of its sewage waste through the System. Developers desire to recoup some of its costs incurred in construction of a sewer line extension, along with appurtenant facilities such as manholes "Improvements" from the owners of property who connect to and receive a benefit from use of the Improvements paid for and installed by the Developers. Such property owners are termed "Future Users" and are those persons who develop within the area shown on the attached Exhibit 1 and who are deemed to benefit from their connection to and use of the Improvements specifically and the System in general. More specifically the "Future Users" properties are defined as 677 26 Road (2945-031-00-029), 685 ½ 26 Road (2945-031-00-011), and 687 ½ 26 Road (2945-031-00-012).

The City has determined that it is in the best interest of the regional system to install the Improvements in a manner so that they will serve the Developers' properties and Future Users who later tie into the System. The City recognizes that Future Users will receive benefit from the Developers' construction of the Improvements because Future Users will not have to construct as long a line in order to receive sewer service.

The Developers want the City to collect payments/reimbursement from Future Users when/if such Future Users connect to the System as provided for herein, however, the City is only willing to collect money for reimbursement to the Developers if the City is not at risk, even for its own negligence and only if the City is paid as provided herein.

### NOW THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:

1. The above Recitals are intended to state the intent of the Developers and the City, 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 Developers and City agree that each is fully capable of engaging its own attorney(s) and other expert(s) to understand and negotiate the language and enforcement thereof.
2. Developers agree to construct the Improvements to serve the Property, and agree to connect to the Regional Sewer, at such location as is required by the City. The Improvements shall be constructed in accordance with the applicable engineering standards as required by the City Engineer.

3. The City accepted the sewer facilities installed along F ¾ Road and across 675 26 Road on November 2, 2017. For purposes of this Agreement, this shall be the date of **Substantial Completion** of the Improvements. Acceptance was subject to the Developers' 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 Improvements or connection to the Regional Sewer, 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; (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, groundless or otherwise without merit.
4. The Developers are entitled to be reimbursed by Future Users, identified on Exhibit #1 and Exhibit #2, for some of the reasonable and necessary costs incurred by the Developers for actual construction costs, as approved by the City Engineer, as follows:
- (a) Reimbursable costs are those costs actually paid which may include reasonable engineering fees, but not legal or other consulting fees, paid by the Developers and actually required to design, construct, and inspect the Improvements. In no event shall reimbursable costs exceed **\$53,464.67**.
- (b) For a period of twenty (20) years following the Substantial Completion of the Improvements, as evidenced by a writing from the City, or until the Developers are reimbursed for those costs set forth in (4a) above, whichever first occurs, the City agrees that it will not authorize any other person to use the Improvements unless each Future User first pays, in addition to all other applicable charges and fees, a Reimbursement Amount ("RA") which sum is calculated as follows:

$$RA = \frac{(RC)}{A} + \frac{RC \times i}{A} + B$$

where:

RC = actual reimbursable costs incurred by Developers and approved by the City Public Works Director as shown on Exhibit #2. RC= **\$53,464.67**.

i = 0.67% per month simple interest (4% annually) times the number of complete months (up to a maximum of 240 months) following the date of this agreement.

B = \$100.00 (this represents the amount to be paid to the City for administration of this agreement and will be paid by each Future User to the City).

x = multiply.



A = Number of lots/EQUs that could be served by the System as determined by the City Public Works Director. A= 5 EQUs

The reimbursement amount established by the above formula, plus any interest as provided, will be calculated and paid by each Future User (other than those users who have purchased the Developers' lots or are Developers' successors). Thus, the Developers' property and lots/EQUs created from the Property will be allowed to connect to the Improvements without payment of the amounts/charges provided for in this Agreement.

- (c) To be entitled to be reimbursed, Developers have presented to the City Public Works Director adequate documentation with adequacy determined solely by the Public Works Director so that the Public Works Director may determine the actual costs of construction.
- 6.
- (a) If the City makes any collections pursuant to this Agreement, the City shall be obligated only to mail a check to the Developers, or their properly designated assignee at the last known address of the Developers or assignee. The City has no duty or obligation to locate a proper payee.
  - (b) In the event that any claim is made or cause of action is filed by any person alleging that this Agreement is unconstitutional, unenforceable, or otherwise contrary to law, or that any interest or other money payable to the Developers hereunder from any Future User or other person is excessive, improper or is not enforceable, the City is not obligated to defend or to resist any such claim or cause of action; rather, the City may settle any such matter regarding any City interest or obligation. Developers agree that they shall be bound by any settlement of such claim or cause of action, whether or not Developers or their assigns are a party hereto if Developers has reasonable notice thereof. If the City makes any collections pursuant to this Agreement, the City shall be obligated only to mail a check to the Developers, or their properly designated assignee(s) at the last known address of the Developers or assignee(s). The City has no duty or obligation to locate a proper payee.
  - (c) Developers agrees to waive and hold the City (including its officers, employees and other agents, hereinafter "City") harmless from, and indemnify the City with respect to any claims the Developers, or Developers' heirs, successors or assigns, may have with regard to the act or failure to act of the City regarding any collection of any such fee, charge or reimbursement amount. Developers hereby waive and release the City, its officers, agents and employees from any claims or causes of action Developers may have due to the failure of the City to abide by or enforce this Agreement.
  - (d) In the event that the City fails to collect the fee from any Future User, the Developers have the right to sue such Future User. The City agrees to cooperate, without expense to the City, in any such collection efforts of the Developer.

7. Upon request from the Developers during the term of this Agreement which request shall not occur more than once every twelve months, the City shall provide an accounting. Said accounting shall consist of a listing of each RA collected during the preceding twelve months, the name and address of the remitter of said RA, the property address for which the RA was paid, a current balance of the RC, and total interest credited to the Developer's account. The City shall pay all fees collected within the preceding twelve months at the time of each accounting, less amounts paid to or retained by the City for costs of administration and less any other amounts which may be retained by the City pursuant to law or this Agreement.
8. In the event that the Developers are in default with regard to any other obligation of the Developers as it relates to this Agreement and the several rights and duties of the parties reasonably related hereto, the City shall have the right to set off any reimbursements that may be due hereunder to satisfy in whole or in part any such default, expense or cost, in addition to any other remedy which the City may have.
9. In the event that the Developers receives any RA directly from any Future User, owner or Developers of any property the Developers shall immediately notify the Utilities Director in writing of the amount collected, the name and address of the person from whom collection was made, and the property to which the collection is applicable.
10. This Agreement shall bind the signatory parties and their respective heirs, successors and assigns.
11. Upon nonperformance by the City pursuant to this Agreement, the Developers shall give written notice of default specifying the action giving cause to said default to the Utilities Director and to the City Attorney. The City shall have thirty (30) days from receipt of the later of the two notices to correct the alleged default. If the City does not correct the default within the prescribed time, Developers may sue to enforce their rights hereunder; in no event shall the Developers have a claim, no matter how it is stated, for damages or the payment of money (except for RA amounts in the possession of the City). Upon the correction of said default as provided, the Agreement shall be restored and all terms and conditions will be in full force and effect.
12. Developers may assign their rights pursuant to this Agreement; however, any such assignment shall not be effective until notice of such assignment, with the address of the assignee, is made by certified mail return receipt requested to the City, in care of the Utilities Director.
14. The Developers agree that the construction of the Improvements, and/or the acceptance by the City of the Improvements, does not waive or limit the payment by the Developers, or any successor of the Developers, 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 Developers or any user or person connected to or benefiting from the System and/or the Improvements.
15. This Agreement, together with the exhibits and attachments hereto and documents incorporated herein by reference, constitutes the entire Agreement between the parties and

no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.

16. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable law.
17. No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.



CITY OF GRAND JUNCTION

BY: [Signature]  
City Manager

Date: 11/16/2018



Attest: Wanda Winkelmann  
City Clerk

Date: 11/16/2018

DEVELOPER #1 (Cuesta Verde LLC, Dr. Larry Tice)

BY: [Signature]

Date: 11/16/18

Address: 775 26 Road, Grand Junction CO 81506

STATE OF COLORADO )  
) ss.  
COUNTY OF Mesa )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of November, 2018 by Dr. Larry Tice.

Witness my hand and official seal: [Signature]  
Notary Public

AMY M. BROWN  
NOTARY PUBLIC - STATE OF COLORADO  
Notary Identification #20154014114  
My Commission Expires 4/8/2019

My Commission expires: 4/8/2019

DEVELOPER #2 (Jan Drazek)

BY: [Signature]

Date: 11/16/18

Address: 685 1/4 26 Road, Grand Junction CO 81506

STATE OF COLORADO )  
) ss.  
COUNTY OF Mesa )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of November, 2018 by Jan Drazek

Witness my hand and official seal: [Signature]  
Notary Public

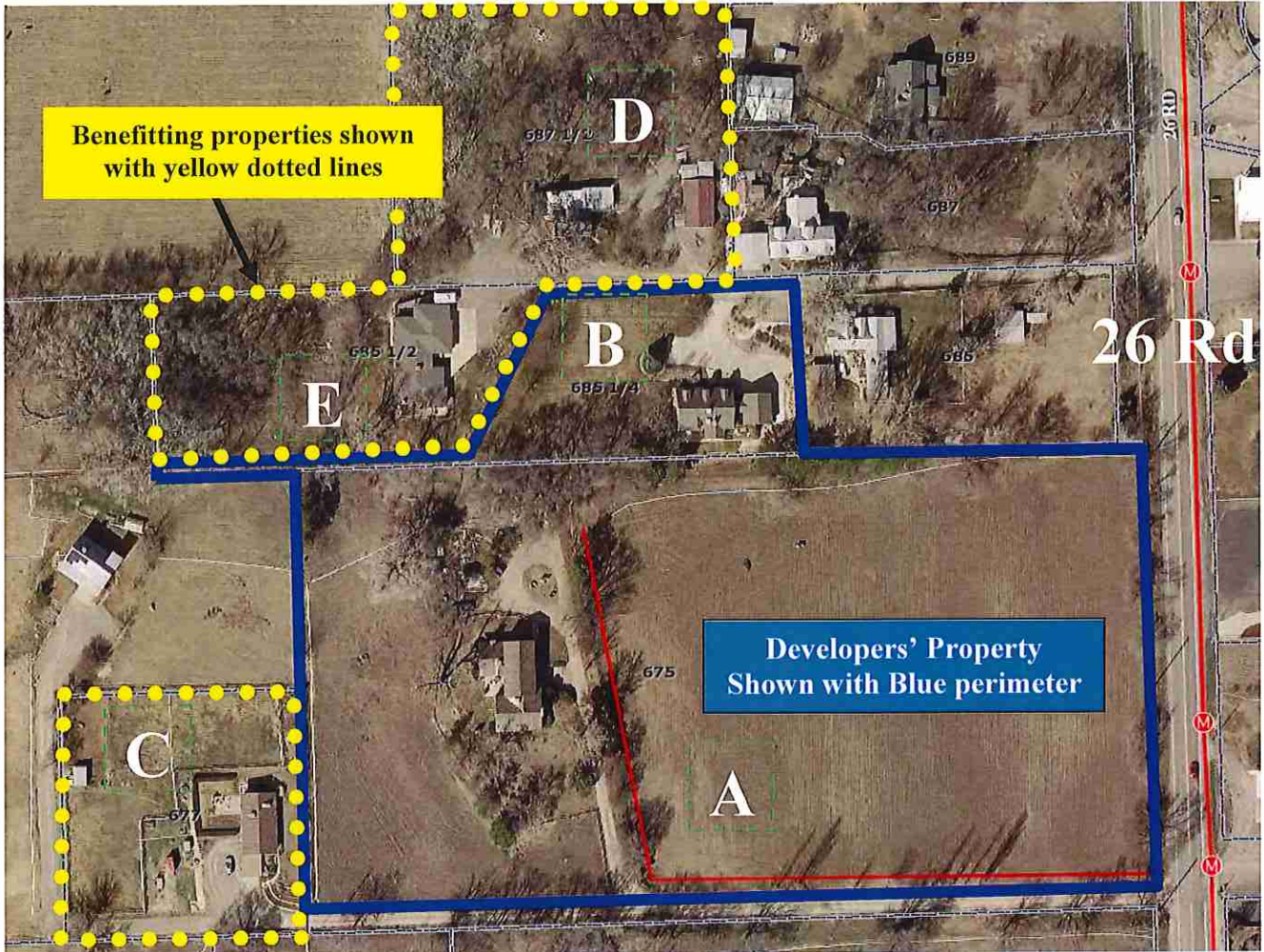
AMY M. BROWN  
NOTARY PUBLIC - STATE OF COLORADO  
Notary Identification #20154014114  
My Commission Expires 4/8/2019

My Commission expires: 4/8/2019

**Exhibit # 1**

Project: F 3/4 Road Sewer Reimbursement Agreement

Subject: Benefitting Areas



RECORDER NOTE: POOR QUALITY DOCUMENT  
PROVIDED FOR REPRODUCTION



## Exhibit # 2

Project: F ¾ Road Sewer Reimbursement Agreement  
 Subject: Summary and Allocation of Costs

This project was completed and was found to be acceptable by the City on November 2, 2017. **This reimbursement does not apply to the properties hi-lighted in Exhibit 1 in blue that make up the Developers' Property.**

					Lowest zoning
Item		Firm			Cost
Construction		Accurate Construction and Excav			\$ 53,465
Total Cost					\$ 53,465
	Address	Parcel #	Size (acres)	Zoning	Estimated EQUs
A	Developer 675 26 Rd	2945-031-00-009	6.269	R-1	1
B	Developer 685 1/4 26 Rd	2945-031-10-003	0.931	R-1	1
C	Future user 677 26 Rd	2945-031-00-029	0.993	R-1	1
D	Future user 687 1/2 26 Rd	2945-031-00-012	2.001	R-1	1
E	Future user 685 1/2 26 Rd	2945-031-00-011	1.001	R-1	1
Total Benefiting EQUs					5
<b>Cost per EQU</b>					<b>\$ 10,692.93</b>
Interest Start Date					November 2, 2017
<b>Proposed Payment Date</b>					<b>December 1, 2018</b>
Number of months					13
Interest Due (4% interest since November 2, 2017)					\$ 468.11
City Admin Fee					\$ 100.00
<b>Total Reimbursement Per EQU*</b>					<b>\$ 11,261.05</b>
<b>Plant Investment Fee as of 2018</b>					<b>\$ 4,637.00</b>
<b>Total Due for sewer hookup</b>					<b>\$ 15,898.05</b>
<b>Amount to be reimbursed</b>					<b>\$ 11,161.05</b>
<b>Amount reimbursed to Dr Tice (or assign)</b>				78.50%	\$ 8,761.42
<b>Amount reimbursed to Dr Drazek (or assign)</b>				21.50%	\$ 2,399.63