

EASEMENT AGREEMENT
(40' Drainage and Grading Easement)

THIS EASEMENT AGREEMENT ("Agreement") is made this 19 day of Aug, 2014, by and between EL PASO COUNTY, by and through the BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, STATE OF COLORADO, a body corporate and politic and a political subdivision of the State of Colorado, hereinafter referred to as the "County" or "Grantor," and GTL, INC., a California corporation ("GTL"), and MERIDIAN SERVICE METROPOLITAN DISTRICT, a Colorado metropolitan district (the "District"), hereinafter referred to collectively as "Grantees." Grantor and Grantees may be collectively referred to herein as the Parties.

Recitals

WHEREAS, the Grantor owns real property in unincorporated El Paso County which is legally described on **Exhibit A**, attached hereto and incorporated herein by reference (the "Property"), which Property was conveyed to Grantor by GTL through a separate instrument in order to fulfill open space dedication requirements for various Meridian Ranch subdivision filings; and

WHEREAS, GTL and/or the District must install, construct, operate and maintain pipelines and other drainage facilities and conduct grading activities and maintain grading on the Property; and

WHEREAS, Grantor desires to convey an easement to Grantees for installation, construction, operation, maintenance and repair of the various drainage facilities and grading activities and maintenance on the Property.

Agreement

NOW THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Parties incorporate the above-stated Recitals into this Agreement as if fully stated herein.
2. Grant of Easement; Description of the Premises. Grantor hereby grants to Grantees and their successors and assigns a perpetual, non-exclusive easement ("Easement") in, over, across, upon, under and along that portion of the Property described in **Exhibit B**, attached hereto and incorporated by reference (the "Easement Area"), for the installation, construction and ongoing inspection, operation, maintenance, and repair of pipelines and any other drainage facilities and related appurtenances thereto, and for grading activities, including, but not limited to, construction and maintenance of grading and slopes, and related facilities and appurtenances thereto (collectively, the "Improvements").
3. Ownership of Improvements. Grantor agrees that the Improvements installed in, over, across, upon, under, and along the Easement Area shall remain the property of Grantees.

County **HTC**

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Courtesy **HTC**

4. Operation, Maintenance and Repair. It shall be Grantees' obligation to inspect, operate, maintain and make any necessary repairs to the Improvements that Grantees install in, over, across, upon, under and along the Easement Area, unless such repairs are due to the negligent or willful acts or omissions of Grantor, its employees or agents. If repairs to Improvements are required as a result of Grantor's negligent or willful acts or omissions (but not as a result of the public's negligent or willful acts or omissions), Grantees, or either of them, shall give reasonable, written notice to Grantor specifying the necessary repairs. The notice shall provide a reasonable time to make the repairs. Grantor shall make such repairs at Grantor's sole cost and expense. Should Grantor fail to make such specified repairs, Grantees, or either of them, may make such repairs and Grantor shall reimburse Grantees the actual costs and expenses, as defined below, incurred in making such repairs.

5. Rights and Obligations of Grantor. Any time Grantor determines, in the exercise of its reasonable discretion, that the Improvements are not properly cleaned, maintained and/or otherwise kept in good repair, Grantor shall give reasonable, written notice to Grantees that the Improvements need to be cleaned, maintained and/or otherwise repaired. The notice shall provide a reasonable time to correct the problem(s). Should Grantees fail to correct the specified problem(s), Grantor may so correct the specified problem(s) and Grantees shall be jointly and severally responsible for reimbursing Grantor for its actual costs and expenses incurred in correcting the specified problem(s). This Agreement does not, however, expressly impose upon Grantor a duty to so inspect, clean, repair or maintain the Improvements.

6. Definition of "Actual Costs and Expenses." The term "actual costs and expenses" shall include, but not be limited to, labor costs, tools and equipment costs, supply costs, and engineering and design costs.

7. Costs and Attorney Fees. In the event any Party initiates any litigation or engages the services of legal counsel in order to enforce the provisions of paragraphs 4 or 5 above, the prevailing Party shall be entitled to its damages and costs, including reasonable attorney fees. This paragraph applies to Grantees regardless of whether Grantor contracts with outside counsel or utilizes in-house legal counsel for the same.

8. Grantor's Use of the Premises. Grantor retains the right to access and make full use of the Property, including the Easement Area, consistent with Grantees' use of the Easement Area as permitted hereunder, for both itself and, to the extent allowed by Grantor, the public. Grantor shall not construct any structure on the Property that interferes with Grantees' use of the Easement Area. Grantor shall not plant or grow any trees, shrubs or other plants within or near the Easement Area that will impair the structural integrity of the Improvements.

9. Condition of the Property. Grantees agree and understand that they accept the Easement Area "AS IS" and without any warranties of any kind or nature, including, without limitation, any warranties as to the state of the Grantor's title to the Property. Grantees acknowledge that the Property is a public facility and that the Parties cannot completely control or be responsible for the acts of the public (excluding the Parties' respective employees, agents, and representatives) within the Property.

10. Workmanship. Grantees shall conduct all activities within the Easement Area in a neat and workmanlike manner so as not to unreasonably interfere with either Grantor's or the public's use and enjoyment of the Property, and without cost or liability to Grantor. Grantees shall take all reasonably necessary measures to protect Grantor, Grantor's employees, and the general public from its activities within the Easement Area.

11. Surface Restoration of Land. Except as the Easement Area is necessarily modified to accommodate the Improvements, Grantees shall repair any physical damage done to the Easement Area by or resulting from its actions or operations. Grantees shall promptly restore, replace, re-vegetate, or repair the surface of the Easement Area to the original condition as near as may be reasonably possible. Such restoration, including seed mixture, topsoil, and ground preparation, shall be at Grantor's reasonable direction.

12. Subjacent and Lateral Support. Neither Grantor nor Grantees shall impair the lateral or subjacent support of the Property or the Improvements located on or in the Easement Area.

13. Mechanics' and Materialmen's Liens. In no event shall Grantees allow any mechanics' or materialmen's liens to attach against the Easement Area or the Property for materials supplied or work performed at the request of, or for the benefit of, Grantees, and Grantees, to the extent expressly permitted by law, shall indemnify and hold Grantor harmless from any cost or expense incurred by Grantor to release any such mechanic's or materialmen's liens against the Easement Area or the Property.

14. Grantor Authority; Grantees' Responsibility to Obtain Other Approvals. Grantor covenants that it has the authority to grant the Easement as set forth herein. Grantees agree and understand that it is Grantees' responsibility to obtain any necessary approvals from, and/or address any applicable issues with, the following: the U.S. Army Corps of Engineers regarding wetlands impacts; the U.S. Fish and Wildlife Service regarding impacts to listed species including, but not limited to, Preble's Meadow Jumping Mouse; and the Regional Floodplain Administrator regarding floodplain issues. Grantees agree that all Improvements shall meet or exceed all El Paso County standards and be approved pursuant to the applicable El Paso County approval process.

15. Compliance with Laws and Regulations. It shall be the sole responsibility of Grantees to ensure that the Improvements comply at all times with applicable federal, state and local laws and regulations.

16. Insurance. Grantees represent and warrant to Grantor that they each carry general liability insurance and agree that, during their respective periods of use of the Easement Area, each will provide proper certificates of insurance naming Grantor as an additional insured for all work within the Easement Area, and that, during their respective periods of use of the Easement Area, Grantees' contractors will carry general liability insurance, worker's compensation insurance and automotive insurance. Prior to Grantees' first access to the Easement Area under this Agreement, Grantees will provide Grantor with the Certificates of Insurance evidencing the insurance coverage described herein.

17. Indemnification. To the extent authorized by law, each Grantee shall defend, indemnify and hold Grantor free and harmless from and against any and all liabilities, demands, claims, damages, suits, judgments and decrees, and court awards, including costs, expenses and attorney fees, on account of injuries to or death of any person or persons or damage to any property arising out of or related to such Grantee's intentional or negligent acts, errors or omissions or that of its agents, officers, servants and employees, subcontractors or assignees, whether contractual or otherwise, related to such Grantee's use of the Easement Area, the operation and maintenance of the Improvements, and during the performance of this Agreement and pursuant to its terms. Nothing in this section shall be deemed to waive or otherwise limit the defenses available to Grantor or the District pursuant to the Colorado Governmental Immunity Act or otherwise provided by law.

18. Grantor Representation. One or more Grantor representatives may be present on the Easement Area during any of Grantees' activities under this Agreement.

19. Remedies. In the event of any breach of this Agreement, the non-breaching party may pursue and obtain any and all remedies or causes of action available to it at law or in equity.

20. Waiver. The failure of any Party to insist, in any one or more instances, upon strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of any Party in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by any Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

21. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement among the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties hereto.

22. Severability. The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.

23. Binding. The Parties hereby agree that the covenants, stipulations, and conditions as stated in this Agreement shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of the Grantor and Grantees.

24. No Third Party Beneficiaries. This Agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages, or to bring any legal action or other proceeding against any party for any breach or other failure to perform this Agreement.

25. Recording; Governing Law. This Agreement shall be recorded by the Grantor in the records of the El Paso County Clerk and Recorder's Office. This Agreement is made and shall be construed under the laws of the State of Colorado.

26. Notice. Notice shall be effective when sent certified mail, return receipt requested, addressed to the following:

Grantor Board of County Commissioners
200 S. Cascade
Colorado Springs, CO 80903

With copies by US mail or email to: Amy Folsom
El Paso County Attorney
County Attorney's Office
27 East Vermijo
Colorado Springs, CO 80903
Email: amyfolsom@elpasoco.com

Tim Wolken
Director, El Paso County
Community Services Department
2002 Creek Crossing
Colorado Springs, CO 80906
Email: timwolken@elpasoco.com

GTL: GTL, Inc.
Attn: Theodore Tchang
3575 Kenyon Street, Suite 200
San Diego, CA 92110
Email: ted@techbilt.com

With a copy by US mail or email to: Jody Harper Alderman
Alderman Bernstein
101 University Blvd, Ste 350
Denver, CO 80206
Email: jha@ablawcolorado.com

District: Meridian Service Metropolitan District
In care of Community Resource Services of Colorado, LLC
7995 E. Prentice Ave., Suite 103E
Greenwood Village, CO 80111

With a copy by US mail or email to: Matthew Dalton
Spencer Fane & Grimshaw
1700 Lincoln St, Ste. 2000
Denver, CO 80203
Email: mdalton@spencerfane.com

Made and entered into as of the date first set forth above.

GRANTEES:

MERIDAN SERVICE METROPOLITAN DISTRICT:

By: *[Signature]*
Name and Title Douglas E. Woods, Director

Attest: _____

STATE OF ~~COLORADO~~ ^{CALIFORNIA})
) s.s.
COUNTY OF ~~EL PASO~~ ^{SAN DIEGO})

The foregoing instrument was acknowledged before me this 18th day of September, 2014, by Douglas E. Woods, as Director of the Meridian Service Metropolitan District.

Witness my hand and official seal.

Nancy Lane
Notary Public

My Commission Expires: July 26, 2015



GTL, INC.,
a California corporation

By: *[Signature]*
Theodore Tchang, President

STATE OF ~~COLORADO~~ ^{CALIFORNIA})
) s.s.
COUNTY OF ~~EL PASO~~ ^{SAN DIEGO})

The foregoing instrument was acknowledged before me this 18th day of September, 2014, by Theodore Tchang, as President of the GTL, Inc., a California corporation.

Witness my hand and official seal.

Nancy Lane
Notary Public

My Commission Expires: July 26, 2015



GRANTOR:

EL PASO COUNTY, COLORADO

By: Dennis Hisey
Dennis Hisey, Chair 14-313F
Board of County Commissioners
El Paso County, Colorado



ATTEST:
Wayne W. Williams
County Clerk & Recorder

APPROVED AS TO FORM:

Lori L. Seago
Office of the County Attorney

STATE OF COLORADO)
) s.s.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 19th day of August, 2014, by Dennis Hisey, as Chair of the Board of County Commissioners, and as attested to by Wayne W. Williams, County Clerk and Recorder.

Witness my hand and official seal.

Mary A. Bartelson
Notary Public

My Commission Expires: 3/12/2016



LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN SECTION 20, IN TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6TH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A 5.30 ACRE PERMANENT DRAINAGE AND GRADING EASEMENT DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 20, THENCE N89°25'43"W ON NORTH LINE OF SAID SECTION 20 A DISTANCE OF 70.01 FEET TO THE POINT OF BEGINNING;

1. THENCE S00°13'03"E A DISTANCE OF 3538.21 FEET;
2. THENCE S45°14'56"W A DISTANCE OF 1695.50 FEET;
3. THENCE S00°11'44"E A DISTANCE OF 533.79 FEET TO THE SOUTHERLY BOUNDARY OF SAID SECTION 20 AND THE SOUTHERN BOUNDARY OF MERIDIAN RANCH REGIONAL PARK;
4. THENCE N89°25'12"W ON SAID SOUTH LINE A DISTANCE OF 40.00 FEET TO THE WESTERN BOUNDARY OF MERIDIAN RANCH REGIONAL PARK;

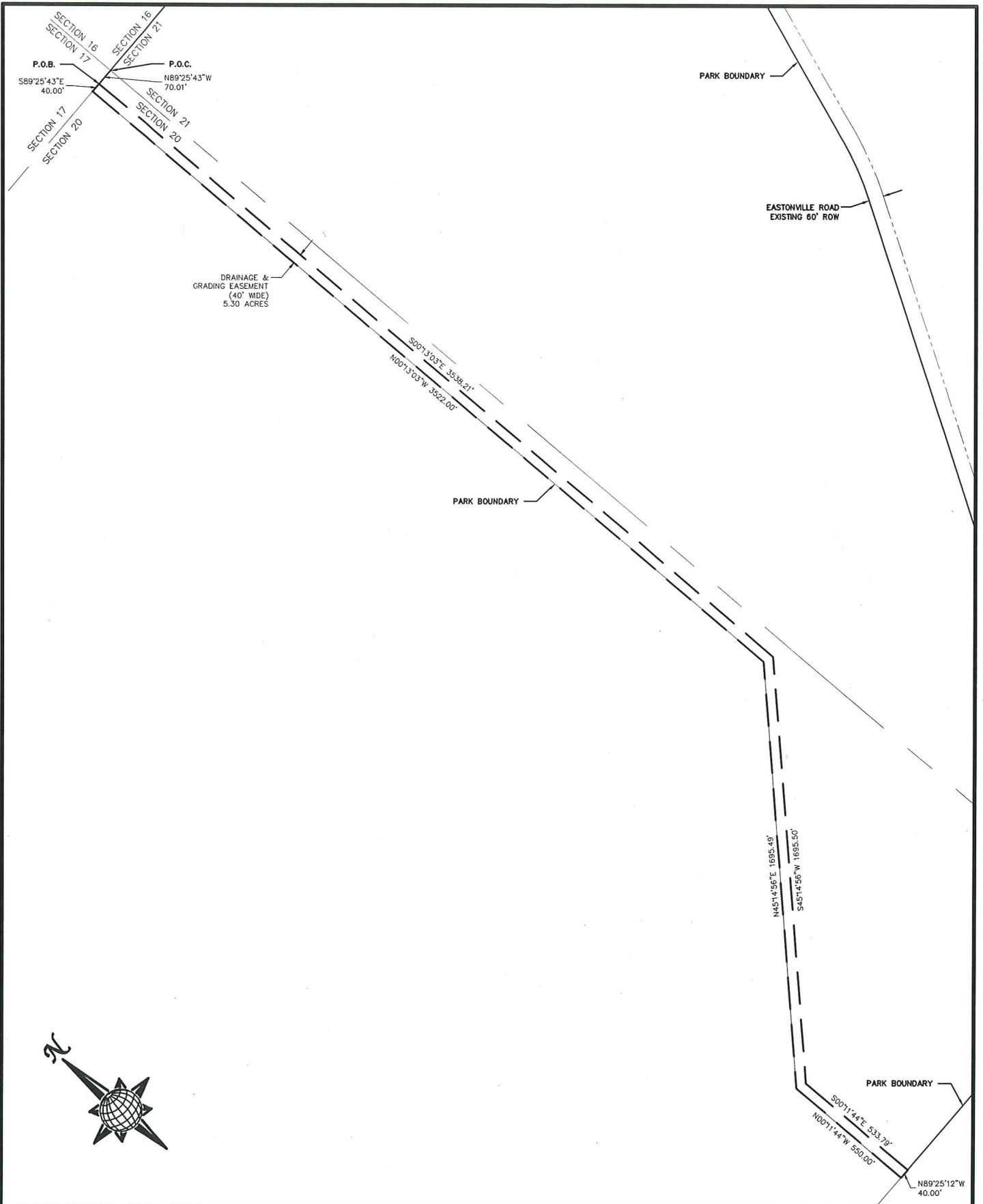
THE FOLLOWING THREE (3) COURSES ARE ON SAID WESTERN BOUNDARY OF MERIDIAN RANCH REGIONAL PARK;

5. THENCE N00°11'44"E A DISTANCE OF 550.00 FEET;
6. THENCE N45°14'56"E A DISTANCE OF 1695.49 FEET;
7. THENCE N00°13'03"W A DISTANCE OF 3522.00 FEET TO THE NORTH LINE OF SAID SECTION 20;
8. THENCE S89°25'43"E ON SAID NORTH LINE A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.

BEARINGS ARE BASED ON THE SOUTH LINE OF THE SW ¼ OF SECTION 29, TOWNSHIP 12 SOUTH, RANGE 64 WEST OF THE 6TH P.M., ASSUMED TO BEAR S89°25'42"E FROM THE SOUTHWEST CORNER OF SAID SECTION 29 (A STONE W/SCRIBED "X") TO THE SOUTH QUARTER CORNER OF SAID SECTION 29 (3.25" ALUM. CAP LS #30087).

S:\CivilProj\MSMD Projects\Regional Park\dwg\Exhibits\05 Regional Park Drainage & Grading Easement.dwg, 6/20/2014 11:36:42 AM

1	SCALE: NA	MERIDIAN RANCH REGIONAL PARK 40' DRAINAGE AND GRADING EASEMENT EXHIBIT B	TECH CONTRACTORS 12311 REX ROAD FALCON, CO 80831 TELEPHONE: 719.495.7444 FAX: 719.495.2457
	DATE: JUNE 2014		
	DRAWN: LCG		
	CHECK: RG		



2

SCALE: 1"=500'
 DATE: JUNE 2014
 DRAWN: LCG
 CHECK: RG

MERIDIAN RANCH REGIONAL PARK
 40' DRAINAGE AND GRADING EASEMENT
 EXHIBIT B

TECH CONTRACTORS
 12311 REX ROAD
 FALCON, CO 80831
 TELEPHONE: 719.495.7444
 FAX: 719.495.2457