

GVW0926R

TYPE OF RECORD:

PERMANENT

CATEGORY OF RECORD:

EASEMENT

NAME OF PROPERTY  
OWNER OR GRANTOR:

GRAND VALLEY WATER USERS  
ASSOCIATION

PURPOSE:

THE IRRIGATION AND DRAINAGE  
EASEMENT FOR 26 ROAD  
RECONSTRUCTION PROJECT

CITY DEPARTMENT:

PUBLIC WORKS AND PLANNING

YEAR:

2009

EXPIRATION DATE:

NONE

DESTRUCTION DATE:

NONE

**AGREEMENT**  
**(26 Road Reconstruction Project)**

This AGREEMENT is entered into effective August 7, 2009, by and between **GRAND VALLEY WATER USERS ASSOCIATION**, 1147-24 Road, Grand Junction, Colorado 81505 (“Association”) and the **CITY OF GRAND JUNCTION, COLORADO**, 250 N. 5<sup>th</sup> Street, Grand Junction, CO 81501 (“City”).

**RECITALS**

A. The City has constructed a project known as the 26 Road Reconstruction Project (“Project”). The Project involved work on and improvements to a portion of 26 Road between G Road and G-1/2 Road in Grand Junction, Colorado.

B. The Grand Valley Project is a federal reclamation project owned by the United States of America, Department of Interior, Bureau of Reclamation (“Reclamation”) and operated and maintained by the Association pursuant to a contract between the Association and Reclamation.

C. Lateral 7 is one of the features of the Grand Valley Project. Lateral 7 crosses under 26 Road in a siphon (the “Original Siphon”) in the area of the Project. Reclamation has an existing easement for the Siphon as it crosses 26 Road (the “Original Siphon Easement”).

D. The City replaced and relocated the Original Siphon and the Original Siphon Easement as part of the Project. The Association agreed to allow the Original Siphon and the Original Siphon Easement to be relocated on the terms and conditions set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. Replacement and Relocation of Siphon and Easement. The City and the Association hereby agree that the replacement and relocation of the Original Siphon and the Original Siphon Easement shall be subject to the following terms and conditions:

A. The new location of the Original Siphon Easement shall be the location described on Exhibit A and illustrated on Exhibit B, attached hereto and incorporated herein by reference. The Original Siphon Easement, when relocated to the location described and illustrated on Exhibits A and B, shall be referred to herein as the “Relocated Siphon Easement.” The Original and Relocated Siphon Easements are located on the right of way for 26 Road, which right of way is owned in fee simple title by the City.

B. The City has constructed a new Siphon (the “Relocated Siphon”) within the Relocated Siphon Easement. The Relocated Siphon was constructed according to plans prepared by the City and approved in advance by the Association. The Relocated Siphon was constructed at or near the centerline of the Relocated Siphon Easement.

C. The City removed and disposed of the Original Siphon during the construction of the Project.

D. The City has connected the Relocated Siphon to Lateral 7 on the east side of 26 Road in the manner set forth in Paragraph 3.A., below. The City capped the Relocated Siphon at or near the west right of way line for 26 Road and then connected Lateral 7 to it in the manner set forth in Paragraph 3.B., below.

E. The work described above was substantially completed by March 20, 2009 (the "Completion Date"). Effective as of the Completion Date, the Original Siphon Easement shall be deemed to be relocated to the Relocated Siphon Easement. The Relocated Siphon Easement shall be perpetual and nonexclusive.

2. Purposes of Relocated Siphon Easement. The Relocated Siphon Easement is for the use and benefit of Reclamation, the Association and their successors and assigns, and represents a continuation and relocation of the rights held by United States and Association in connection with the Original Siphon Easement. The Relocated Siphon Easement is for the purposes of construction, reconstruction, operation, repair and maintenance of irrigation and drainage facilities related to the Grand Valley Project and for other purposes allowed by applicable law relating to federal reclamation projects. Reclamation and the Association shall have all rights and privileges regarding the Relocated Siphon Easement as they enjoyed at the location of the Original Siphon Easement.

3. Connection of Relocated Siphon. The City is required by Paragraph 1.D. of this Agreement to connect the Relocated Siphon to Lateral 7 on the east side of 26 Road and allow the connection on the west side of 26 Road. The following provisions apply to such connections:

A. The real property on the east side of 26 Road adjacent to the Project is proposed to be developed as a subdivision currently known as Jacobson's Pond Subdivision and will be referred to herein as the "Jacobson's Pond Property." The City has connected the Siphon to Lateral 7 on the Jacobson's Pond Property according to plans approved in advance by the Association. Such connection involved the relocation of a portion of the existing easement for Lateral 7 on the Jacobson's Pond Property. The City, the Association and the owner of the Jacobson's Pond Property have entered into a separate agreement with respect to this relocation.

B. The real property on the west side of 26 Road adjacent to the Project is proposed to be developed as a subdivision currently known as Ruby Ranch Subdivision and will be referred to herein as the "Ruby Ranch Property." The development of the Ruby Ranch Property will involve the relocation of the existing easement for Lateral 7 on the Ruby Ranch Property. The Association and the owner of the Ruby Ranch Property have entered into a separate agreement with respect to this relocation. The owner of the Ruby Ranch Property has relocated and connected Lateral 7 to the Relocated Siphon pursuant to the separate agreement between the Association and

the owner of the Ruby Ranch Property. The City cooperated and coordinated with the owner of the Ruby Ranch Property in making such connection.

4. Ownership of Facilities; Warranty.

A. The Relocated Siphon and all other facilities related to the Relocated Siphon and Lateral 7 constructed by the City under this Agreement shall belong to and be owned by the Association. The City hereby conveys all of its right, title and interest in such facilities to the Association, free and clear of all liens, encumbrances and adverse claims, which conveyance is effective as of the Completion Date.

B. The City warrants the construction and performance of the work performed by it or under its direction pursuant to Paragraphs 1 and 3, above, against defects in material, workmanship or performance for a period of one year following the Completion Date. If any work or material is found to be defective during such period, or if the Relocated Siphon and other work constructed by the City or at its direction do not adequately deliver irrigation and tail water into and through the Relocated Siphon, the City upon written notice from the Association, will correct the defective or non-performing work in a reasonable time period at no cost to the Association. If the City does not correct the defective or non-performing work within a reasonable time period, the Association may correct it or cause it to be corrected, and the City shall pay to the Association on demand all costs, direct or indirect, incurred by the Association to correct the defective or non-performing work.

5. Maintenance and Repair of Relocated Siphon.

A. The City shall be responsible for maintaining and repairing the Relocated Siphon in the right of way for 26 Road, as shown on Exhibit A, at its cost and expense. The following procedures shall apply to such maintenance and repair work:

i. If the Association determines that maintenance or repair of the Relocated Siphon is needed, it shall give written notice thereof to the City, describing the maintenance or repair work that it believes should be performed.

ii. If the City does not agree that some or all of the maintenance or repair work is necessary, it shall give written notice to the Association within ten working days after the Association's notice is given, stating the reasons that the City believes the work is not necessary. In such case, the City and the Association shall promptly meet to discuss the work and attempt in good faith to resolve the issues relating to the proposed work. If the parties cannot resolve the issues relating to the proposed work in a reasonable time, the Association shall have the right to perform the work. The Association shall coordinate the work with the City to minimize the disruptions to 26 Road. The Association shall be entitled to commence an action against the City in the courts of Mesa County, Colorado, to obtain reimbursement for the costs of performing the work.

iii. If the City agrees that the maintenance or repair work is necessary, the City shall perform the necessary maintenance or repairs within a reasonable time period and in coordination with the Association to minimize disruptions to the Association's use of the Relocated Siphon. If the City does not perform the maintenance or repair work within a reasonable time period, the Association may perform it or cause it to be performed, and the City shall pay to the Association on demand all reasonable costs, direct or indirect, incurred by the Association to perform the work. For purposes of this Paragraph, the City shall be deemed to have agreed that the maintenance or repair work is necessary if the following two conditions are met:

a. The City fails to timely give the written notice required by Paragraph 5.A.ii., and

b. The Association thereafter gives one additional written notice to the City describing the maintenance or repair work that it believes should be performed and the City fails to give written notice to the Association within five working days after the Association's additional notice is given, stating the reasons that the City believes the work is not necessary.

iv. The City may also determine on its own that maintenance or repair work is necessary. In such case, the City shall give written notice to the Association of the work it intends to perform, and shall perform such work in coordination with the Association to minimize disruptions to the Association's use of the Relocated Siphon.

v. In case of an emergency, the City shall be entitled to perform such work as is needed to alleviate the emergency without giving notice to the Association. The City shall inform the Association as soon as reasonably possible after learning of the emergency. If the City does not or cannot timely respond to the emergency after being informed of the emergency, then the Association shall be entitled to perform such work as is reasonably needed to alleviate the emergency. If the City performs the work, the City shall give written notice to the Association as soon as reasonably possible thereafter of the work performed. If the Association performed some or all of the work, the City shall promptly reimburse the Association for the costs incurred by the Association in performing the work. If the City believes that the costs incurred by the Association to perform the work are not reasonable, the City and the Association shall promptly meet to discuss the work and attempt in good faith to resolve the issues relating to the cost of the work. If the parties cannot resolve such issues in a reasonable time, the City shall nevertheless reimburse the Association for such costs, and the City shall be entitled to commence an action against the Association in the courts of Mesa County, Colorado, to obtain reimbursement for the portion of the costs it asserts were excessive. For purposes of this Paragraph, an emergency shall be defined as either (i) the inability of the Relocated Siphon to carry all of the water then flowing in Lateral 7 from the east side to the west side of 26 Road because of the relocated Siphon's failure to operate as designed, or (ii) any other situation or occurrence of a serious nature related to the Relocated Siphon's failure to operate as designed, developing suddenly or unexpectedly and requiring immediate action necessary to protect public health, safety and welfare.

B. Subject to the provisions of Paragraph 4.B., the Association shall be responsible for maintaining and repairing the facilities constructed by or at the direction of the City on the Jacobson Pond Property and the Ruby Ranch Property.

6. Responsibility for Easement Activities. Reclamation and the Association shall not be responsible for nor have any obligation to compensate City or its successors or assigns for damages related to or arising out of the Association's reasonable use of the Relocated Siphon Easement, the operation of the facilities in the Relocated Siphon Easement, or from other activities of the Association in the Relocated Siphon Easement. Without limiting the generality of the foregoing, Reclamation and the Association shall not be obligated to repair, restore, or pay for repairing or restoring, any streets, roads, sidewalks, curbs, gutters or other improvements within the Relocated Siphon Easement that are damaged by the Association's reasonable activities within the Relocated Easement.

7. Indemnification. In connection with the Project, the City requested that the running of irrigation water through the Original Siphon be discontinued for the remainder of the 2008 irrigation season. In order to accomplish this, the City, with the Association's consent, constructed a temporary pipeline on the Jacobson's Pond Property from Lateral 7 to an existing pond. Irrigation water in Lateral 7 was diverted into that temporary pipeline and discharged into the existing pond. Overflow from the pond then spilled into a drainage channel below the pond. The City hereby agrees to indemnify and defend the Association and Reclamation and hold the Association and Reclamation harmless from, against and in respect of any and all claims, demands, losses, costs, expenses, damages, judgments, and deficiencies, including without limitation interest, penalties and attorneys' fees, that the Association and/or Reclamation shall incur or suffer and which arise or result from or relate to the diversion of irrigation water from Lateral 7 into the pond on the Jacobson's Pond Property and the spilling or overflow of water from the pond.

8. Binding Effect. The rights and duties set forth in this Agreement shall run with the land and shall be binding on and shall inure to the benefit of the parties to this Agreement, their respective heirs, successors, or assigns.

9. Notices. All notices or other communications required or permitted under this Agreement shall be in writing, and shall be personally delivered or by certified mail, postage prepaid, return receipt requested, addressed to the parties as follows:

To the Association:	Grand Valley Water Users Association Attention: Manager 1147 24 Road Grand Junction, CO 81505
---------------------	--

To the City:                                 City of Grand Junction  
  Attention: Utility Engineer  
  250 N. 5<sup>th</sup> Street  
  Grand Junction, CO 81501

Such notice or other communication shall be deemed given (i) upon receipt if delivered personally or (ii) three business days after mailing if by certified mail. Notice of change of address shall be given by written notice in the manner detailed above.

10.    Miscellaneous Provisions.

A.       In the event of legal proceedings under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs in addition to all other damages and remedies available at law.

B.       This Agreement shall be governed under, and construed pursuant to, the laws of the State of Colorado.

C.       Failure of either party to enforce any provision of this Agreement shall not act as a waiver to prevent enforcement of the same provisions at some later time.

D.       Each party warrants and represents to the other that such party has taken all actions necessary to make this Agreement a valid obligation binding upon the party, and that all requirements of any applicable charter, ordinance, statute, or constitutional provision regarding the approval and execution of this Agreement have been met.

E.       The paragraph headings are for convenience only and the substantive portions hereof control without regard to the headings.

F.       This Agreement shall be modified by writing only, which writing must be executed by the parties hereto in order to be effective.

G.       This Agreement was produced as a result of negotiations between the parties and should not be construed against either party as the drafter of this Agreement.

H.       This Agreement shall be effective on the last date it is signed by the parties.

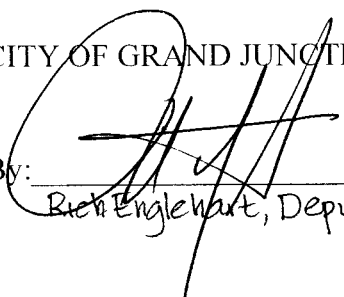
I.       This Agreement may be executed in counterparts, all of which taken together shall be considered one instrument.

IN WITNESS THEREOF, each party to the Agreement has caused it to be executed as of the date set forth above.

CITY:

CITY OF GRAND JUNCTION, COLORADO

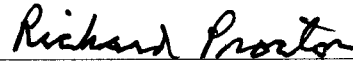
By:

  
Rich Englehart, Deputy City Manager

ASSOCIATION:

GRAND VALLEY WATER USERS ASSOCIATION

By:

  
Richard Proctor, Manager



STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of August, 2009, by Rich Englehart as Deputy City Manager of the City of Grand Junction, Colorado.

WITNESS my hand and official seal.  
My commission expires:



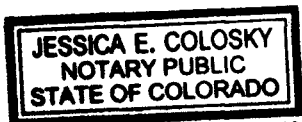
**My Commission Expires 04/28/2012**

Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of July, 2009, by Richard Proctor, the Manager of Grand Valley Water Users Association.

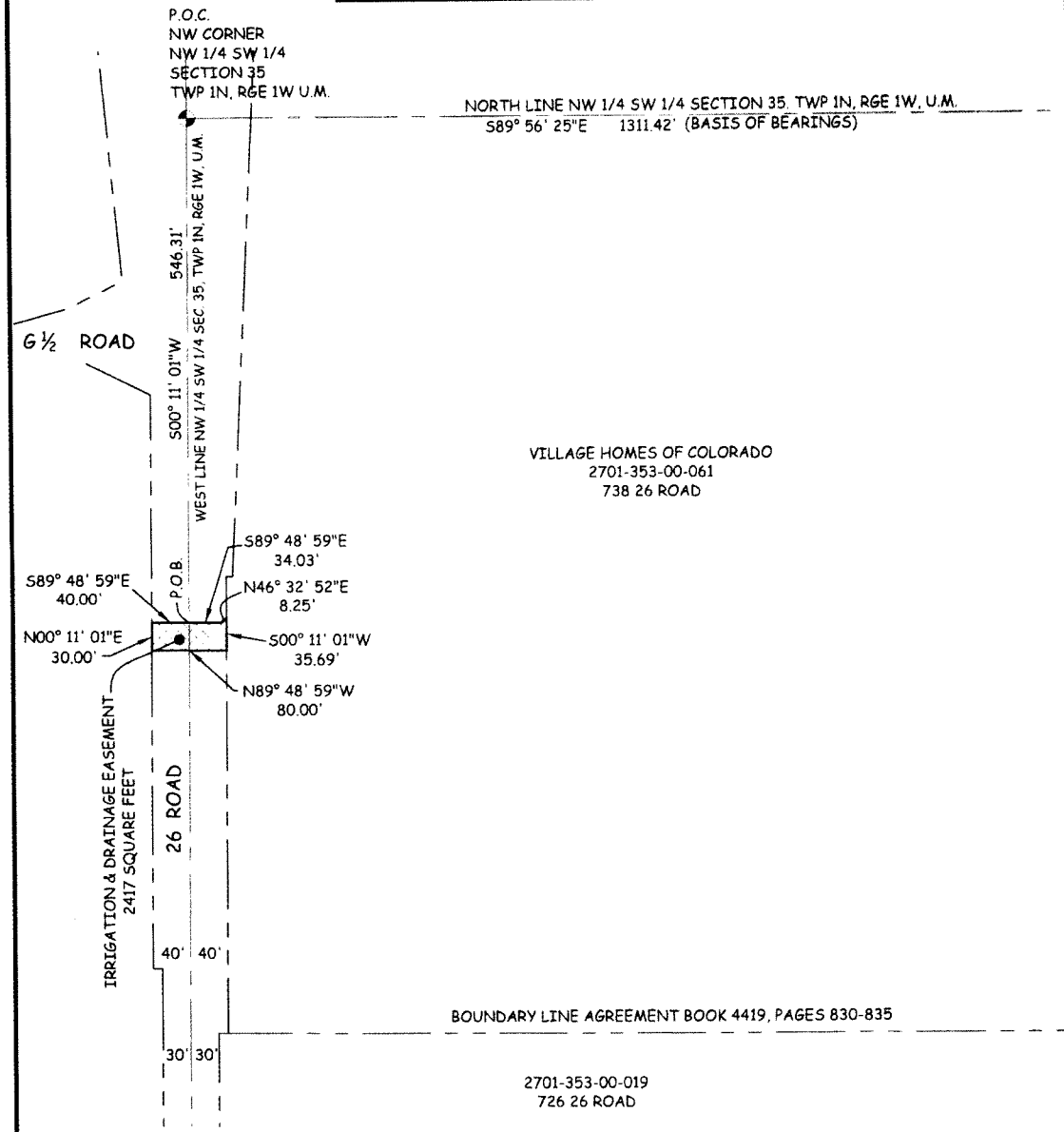
WITNESS my hand and official seal.  
My commission expires:



**My Commission Expires 05/25/2010  
County of Mesa**

Notary Public

# EXHIBIT "A"



**ABBREVIATIONS**

- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING
- R.O.W. RIGHT OF WAY
- SEC. SECTION
- TWP. TOWNSHIP
- RGE. RANGE
- U.M. UTE MERIDIAN

The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder. This sketch does not constitute a legal survey, and is not intended to be used as a means for establishing or verifying property boundary lines.

DRAWN BY: TLP  
 DATE: 7-30-08  
 SCALE: 1" = 150'  
 APPR. BY: PTK

*IRRIGATION & DRAINAGE EASEMENT*

*THE CITY OF GRAND JUNCTION  
 WITHIN 26 ROAD RIGHT OF WAY*



EXHIBIT B

30' Irrigation and Drainage Easement from The City of Grand Junction  
To  
The Grand Valley Water Users Association

A certain parcel situated in the Northwest Quarter of the Southwest Quarter (NW 1/4 SW 1/4) of Section 35 and the Northeast Quarter of the Southeast Quarter (NE 1/4 SE 1/4) of Section 34, Township One North, Range One 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 NW 1/4 SW 1/4 of said Section 35 and assuming the North line of the NW 1/4 SW 1/4 of said Section 35 to bear S89°56'25"E with all bearings contained herein relative thereto; thence S00°11'01"W along the West line of the NW 1/4 SW 1/4 of said Section 35 a distance of 546.31 feet to the Point of Beginning; thence S89°48'59"E a distance of 34.03 feet; thence N46°32'52"E a distance of 8.25 feet to a point on the Easterly right of way of 26 Road; thence S00°11'01"E along the Easterly right of way of said 26 Road a distance of 35.69 feet; thence N89°48'59"W a distance of 80.00 feet to a point on the Westerly right of way of 26 Road; thence N00°11'01"E along the Westerly right of way of 26 Road a distance of 30.00 feet; thence S89°48'59"E a distance of 40.00 feet returning to the West line of the NW 1/4 SW 1/4 of said Section 35 and the Point of Beginning.

Said parcel contains 2,417 square feet, more or less, as described.

Prepared by:  
Tony Pollack  
250 N. 5<sup>th</sup> street  
Grand Junction, CO 81501