

OMI98KAH

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: EASEMENT

NAME OF AGENCY OR CONTRACTOR: ORCHARD MESA IRRIGATION DISTRICT BY HERMAN
BEARD

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: EASEMENT FOR KANNAH CREEK
FLOWLINE ON ORCHARD MESA

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1998

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

PERPETUAL EASEMENT AGREEMENT

THIS PERPETUAL EASEMENT AGREEMENT is made and entered into this 16th day of January, 1998 by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and the Orchard Mesa Irrigation District, hereinafter referred to as "the District".

RECITALS

A. The District represents that it is the owner of the following described real property situate in the County of Mesa, State of Colorado:

The South 1/2 of the North 1/2 of the Southeast 1/4 of the Northwest 1/4 of Section 31, Township 1 South, Range 1 East of the Ute Meridian,

hereinafter referred to as "the District Property".

B. For over 85 years, the City has owned, operated, maintained and repaired an eighteen inch diameter water pipeline commonly known as the Kannah Creek Flowline ("the Flowline") that is one of the primary domestic and fire protection water supply lines for the City and its residents.

C. It appears that the City does not possess a recorded instrument granting an easement for the installation, operation, maintenance and repair of the Flowline on, along, over, under, through and across the District Property. Notwithstanding the absence of a recorded easement, the District has actual knowledge of the location, condition, depth and use of the Flowline.

D. The City and the District have acknowledged that the statutory prerequisites for establishing an easement through prescriptive use have been satisfied as it pertains to the existence of the Flowline on, along, over, under, through and across the District Property and that a prescriptive easement ("the Prescriptive Easement") could construed be as a blanket easement and operate to burden the entire District Property and cause this District undue hardship.

E. The City and the District have acknowledged that it would be in the best interest of both parties to replace the Prescriptive Easement with an easement that is limited to only twenty-five (25) feet in width along the Flowline.

NOW, THEREFORE, based on the recitals above and the mutual promises below, the parties hereto agree as follows:

1. The Recitals, as stated above, are agreed upon between the parties.
2. The City agrees that the easement herein granted by the District to the City shall serve as the only operative easement with respect to the Flowline and the District Property. The City agrees to execute and record a separate notice releasing the Prescriptive Easement.

3. For and in consideration of the City releasing the Prescriptive Easement, the receipt and sufficiency of which is hereby acknowledged, the District does hereby grant and convey to the City, its successors and assigns forever, a twenty-five (25) foot wide Perpetual Easement for the installation, operation, maintenance and repair of the Flowline, together with the right of ingress and egress for the City and its workers and equipment, on, along, over, under, through and across the limits of the District Property described on Exhibit "A" attached hereto and incorporated herein by reference. The Perpetual Easement herein granted shall include the right to survey, construct, install, operate, maintain, repair and replace the Flowline, the right to remove objects interfering with the use and operation of the Flowline, including the removal of structures and landscape materials, and the trimming of trees and bushes.

4. The City agrees that the work and act of installing, maintaining and repairing the Flowline shall be performed with due care using commonly accepted standards and techniques, taking precautions for the protection of persons and property.

5. The District and the District's successors and assigns shall have the right to utilize those portions of the District Property which are not encumbered by the Perpetual Easement herein granted for any lawful purpose which is not inconsistent with the rights herein granted; provided, however, that the District covenants and agrees, on behalf of itself and on behalf of its successors and assigns, as follows:

(a) Vehicular access (either temporary or perpetual) over and across the Perpetual Easement shall not occur or be allowed to occur without the prior written consent of the City, which consent may be withheld by the City for any reason;

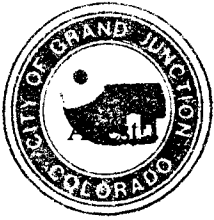
(b) The installation of any fence or other mechanical barrier which may serve to hinder or impede the City's ingress and egress on, along, over, under, through and across the Perpetual Easement shall not occur or be allowed to occur without the prior written consent of the City, which consent may be withheld by the City for any reason;

(c) The District shall not cause any action to occur which may cause damage to the Flowline or otherwise interfere with the construction, reconstruction, installation, alteration, maintenance, repair, inspection and operation of the Flowline or any replacement(s) to the Flowline.

(d) The District and the District's successors and assigns shall indemnify the City, its officers, employees and agents and hold the City, its officers, employees and agents harmless from any liability, damage, injury, loss or claim to persons or property resulting from a break or rupture in the Flowline, even if such break or rupture occurs as a result of the City giving prior written consent for the purposes set forth in paragraphs 5(a) and 5(b) above. The District and the District's successors and assigns shall not, however, be required to indemnify or hold the City harmless in the event of the gross negligence of the City.

6. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective parties and upon their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.



The City of Grand Junction,
a Colorado home rule municipality

Stephanie Nye
Stephanie Nye, City Clerk

Mark K. Achen
Mark K. Achen, City Manager

Attest:

Orchard Mesa Irrigation District

Barry Fuller
Secretary

Thomson
President

State of Colorado)
)ss.
County of Mesa)

The foregoing instrument was acknowledged before me this 16th day of January, 1998, by Mark K. Achen as City Manager and attested to by Stephanie Nye as City Clerk of the City of Grand Junction, a Colorado home rule municipality.

My commission expires: 2/28/98
Witness my hand and official seal.

Jim Woodmansee
Notary Public



State of Colorado)
)ss.
County of Mesa)

The foregoing instrument was acknowledged before me this 16th day of January, 1998, by Larry Fuller as Secretary and attested to by Hermon Beaud as President of the Orchard Mesa Irrigation District.

My commission expires: 9-18-2001
Witness my hand and official seal.

Debra L. Brant
Notary Public

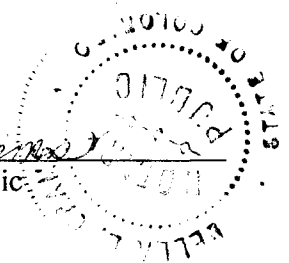


EXHIBIT "A"

A twenty-five (25.0) foot wide Perpetual Easement for the installation, operation, maintenance and repair of a water pipeline, the side lines of said Perpetual Easement being parallel with and 12.5 feet on either side of the following described center line, to wit:

Commencing at the Mesa County Survey Marker set for the Northeast Corner of the Southeast 1/4 of the Northwest 1/4 (SE1/4 NW1/4) of Section 31, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, and considering the line between the Northeast Corner of of said SE1/4 NW1/4 and the Center 1/4 Corner of said Section 31 to bear S 00°08'47" E with all bearings contained herein being relative thereto; thence S 00°08'47" E along the East line of said SE1/4 NW1/4 a distance of 330.59 feet to the Northeast Corner of the South 1/2 of the North 1/2 of the Southeast 1/4 of the Northwest 1/4 (S1/2 N1/2 SE1/4 NW1/4) of said Section 31; thence S 89°56'23" W along the North line of said S1/2 N1/2 SE1/4 NW1/4 a distance of 264.24 feet to the **True Point of Beginning** of said center line;

thence S 62°48'06" E along said center line a distance of 263.71 feet to a point which is the intersection of said center line with the West line of that certain Road right-of-way described in Book 2 at Page 21 in the office of the Mesa County Clerk and Recorder, said point being the **Point of Terminus** of said center line,

the side lines of said Perpetual Easement to be shortened or lengthened to intersect North and East boundary lines of the District Property.

NOTICE OF RELEASE OF EASEMENT

RECITALS

A. Since October 20, 1911, the City of Grand Junction, a Colorado home rule municipality, has owned, operated, maintained and repaired an eighteen inch diameter water pipeline commonly known as the Kannah Creek Flowline ("the Flowline") that is one of the primary domestic and fire protection water supply lines for the City and its residents.

B. Since October 20, 1911, the Flowline has existed and operated on, along, over, under, through and across the following described real property owned by the Orchard Mesa Irrigation District ("the District Property") situate in the County of Mesa, State of Colorado, to wit:

The South 1/2 of the North 1/2 of the Southeast 1/4 of the Northwest 1/4 of Section 31, Township 1 South, Range 1 East of the Ute Meridian.

C. By Agreement dated January 16, 1998, between the City of Grand Junction and the Orchard Mesa Irrigation District, the City agreed to release an existing Prescriptive Easement that could be construed as a blanket easement and operate to burden the entire District Property and cause this District undue hardship.

NOW, THEREFORE, NOTICE IS HEREBY GIVEN THAT, with respect to the District Property and conditioned upon the terms and conditions of that certain agreement dated January 16, 1998, between the City of Grand Junction and the Orchard Mesa Irrigation District being fully effective and the City receiving the benefits of said Agreement in perpetuity, be it known that:

- 1. The City hereby releases the District Property from the Prescriptive Easement established for the installation, operation, maintenance and repair of the Flowline.
2. The Perpetual Easement granted and conveyed to the City of Grand Junction by the Orchard Mesa Irrigation District in accordance with that certain Agreement dated January 16, 1998, between the City and said District shall serve as the only operative easement with respect to the Flowline and the District Property.

Dated this 16th day of January, 1998.

By: [Signature]
Gregory O. Trainor, Utilities Manager
of the City of Grand Junction