

MCI97RRD

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: MAYS CONCRETE INCORPORATED

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: 2399 RIVER ROAD

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1999

EXPIRATION DATE: PERMANENT

DESTRUCTION DATE: PERMANENT

SCHEDULE A

PARCEL 1

A parcel of land situated in the NE 1/4 NE 1/4 of Section 8, Township 1 South, Range 1 West, Ute Principal Meridian described as follows:
Commencing at the Northeast Corner of said Section 8, thence South 00°12'28" East (Basis of Bearings) 1313.29 feet along the East line of said Section 8 to the Southeast Corner of said NE 1/4 NE 1/4, the True Point of Beginning of Parcel 1, thence South 89°47'32" West 900.4 feet more or less along the South line of said NE 1/4 NE 1/4 to a point on the North bank of the Colorado River, thence North 42°55'28" West 136.6 feet more or less along said North bank, thence North 00°19'47" West 374.7 feet more or less to the Mesa County Road right-of-way, thence along said right-of-way North 47°30'31" East 17.00 feet, thence South 42°29'29" East 180.95 feet, thence 235.69 feet along the arc of a 283.00 foot radius curve to the left, the chord of which bears South 66°20'58" East 228.93 feet through a central angle of 47°42'59", thence North 89°47'32" East 218.63 feet, thence 278.43 feet along the arc of a 283.00 foot radius curve to the left, the chord of which bears North 61°36'26" East 267.33 feet through a central angle of 56°22'13", thence North 33°25'19" East 353.71 feet to the East line of said Section 8, thence South 00°12'28" East 680.78 feet along said East line to the Point of Beginning,
EXCEPT that portion conveyed to Mesa County as shown in instrument recorded May 15, 1991 in Book 1837 at Page 479,

PARCEL 2:

A parcel of land situated in the NE 1/4 NE 1/4 of Section 8, Township 1 South, Range 1 West, Ute Principal Meridian as follows:
Commencing at a point on the South line of River Road and West line of Mesa County Road right-of-way which is South 00°12'28" East 567.46 feet and North 56°34'41" West 29.97 feet from the Northeast Corner of said Section 8, thence along said Mesa County Road right-of-way South 33°25'19" West 407.87 feet, thence 213.50 feet along the arc of a 217.00 foot radius curve to the right, the chord of which bears South 61°36'26" West 204.99 feet through a central angle of 56°22'13", thence South 89°47'32" West 218.63 feet, thence 180.72 feet along the arc of a 217.00 foot radius curve to the right, the chord of which bears North 66°20'58" West 175.54 feet through a central angle of 47°42'59", thence North 42°29'29" West 180.95 feet, thence North 47°30'31" East 17.00 feet, thence 68.61 feet along the arc of a 93.24 foot radius curve to the right not tangent to the previous course, the chord of which bears North 21°24'38" West 67.07 feet through a central angle of 42°09'42", thence nontangent North 11°58'22" East 43.36 feet, thence South 85°27'21" East 105.17 feet, thence North 85°20'49" East 115.60 feet, thence North 73°08'44" East 117.90 feet, thence North 60°35'35" East 120.02 feet, thence North 49°26'17" East 122.52 feet, thence North 37°38'29" East 108.74 feet, thence North 29°35'36" East 54.28 feet to the said South line of River Road, thence along said South line South 56°34'41" East 342.48 feet to the Point of Beginning,

PARCEL 3:

A parcel of land situated in the NE 1/4 NE 1/4 of Section 8, Township 1 South, Range 1 West, Ute Principal Meridian described as follows:
Commencing at the intersection of the North line of said Section 8 and the South line of River Road which is South 89°54'36" West (Basis of Bearings) 855.78 feet from the Northeast Corner of said Section 8, thence along said South line of River Road South 56°34'41" East 424.85 feet, thence along Mesa County Road right-of-way South 36°07'24" West 54.17 feet, thence South 29°20'39" West 91.76 feet, thence South 37°07'31" West 78.09 feet, thence South 48°56'04" West 80.10 feet, thence South 58°22'56" West 83.07 feet, thence South 72°14'38" West 85.30 feet, thence South 83°28'56" West 95.71 feet, thence North 13°14'42" West 43.70 feet, thence North 00°19'47" West 70.00 feet, thence North 04°22'53" West 240.60 feet, thence North 00°19'47" West 40.12 feet, thence North 33°25'19" East 192.31 feet to the Point of Beginning,

ALL IN MESA COUNTY, COLORADO.

IMPROVEMENTS AGREEMENT

(Site Plan)

1. **Parties:** The parties to this Improvements Agreement ("the Agreement") are Mays Concrete, Inc., ("the Developer") and **THE CITY OF GRAND JUNCTION, Colorado** ("the City").

THEREFORE, for valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is recorded.

RECITALS

The Developer seeks permission to develop property within the City, which property is more particularly described on Exhibit "A" attached and incorporated by this reference ("the Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements and limiting the harmful effects of substandard development. The purpose of this Agreement is to protect the City from the cost of completing improvements itself and is not executed for the benefit to materialmen, laborers, or others providing work, services or materials to the Developer. The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer will design, construct and install, at its own expense, those improvements listed on Exhibit "B" attached and incorporated by this reference. The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.
4. **Security:** To secure the performance of its obligations under this Agreement (except its obligations for warranty under paragraph 6), the Developer will enter into an agreement which complies with either option identified in paragraph 28, or other written agreement between the City and the Developer.

5. **Standards:** The Developer will construct the Improvements according to the standards and specifications required by the City Engineer or as adopted by the City.

6. **Warranty:** The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of twelve (12) months from the date that the City Engineer accepts or approves, in writing, the improvements completed by the Developer.

7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within 1 year from the Effective Date of this Agreement (the "Completion Period").

8. **Compliance with Law:** The Developer shall comply with all relevant federal, state and local laws, ordinances and regulations in effect at the time of site plan/development approval when fulfilling its obligations under this Agreement.

9. **Notice of Defect:** The Developer's Engineer shall provide timely notice to the Developer, contractor, issuer of security and the City Engineer whenever inspection reveals, or the Developer's Engineer otherwise has knowledge, that an improvement does not conform to City standards and any specifications, or is otherwise defective. The Developer will have thirty (30) days from the issuance of such notice to correct the defect.

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of improvements will not be given or obtained until Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the improvements in fee simple and that there are no liens, encumbrances, or other restrictions on the improvements. Approval and/or Acceptance of any improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the improvement that is detected or which occurs after the approval and/or acceptance.

11. **Use of Proceeds:** The City will use funds deposited with it or drawn under the bank disbursement agreement entered into between the parties, only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

12. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

- a. Developer's failure to complete each portion of the Improvements in conformance with the agreed upon time schedule; the City may not declare a default until a (14) calendar day notice has been given to the Developer;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any improvement within the applicable correction period; the

City may not declare a default until a (14) calendar day notice has been given to the Developer;

- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

13. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. For improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit "B" will be prima facie evidence of the minimum cost of completion; however neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

14. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit or cash deposit to the extent of the face amount of the credit or full amount of the deposit, less ninety percent (90%) of the estimated cost (as shown on Exhibit B) of all improvements previously accepted by the City, or may exercise its rights to disbursement of loan proceeds or other funds under the disbursement agreement. The City will have the right to complete improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such improvements. Alternatively, the City may assign the proceeds of the letter of credit, the disbursement agreement, cash, or other funds or assets to a subsequent developer (or a lender) who has acquired the Development by purchase, foreclosure or otherwise, who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished improvements and provides reasonable security for the obligation. In addition, the City may also en-join the sale, transfer, or conveyance of the Development, until the Improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

15. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officer, employees and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the Development or on the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Developer against the City. The Developer is not an agent or employee of the City.

16. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed to or constitute a waiver of any other provision, nor will it be deemed to or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both City and Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.

17. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or its authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

18. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

19. **Vested Rights:** The City does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the City, if any, before the Developer is entitled to commence development or to transfer ownership of property in the Development.

20. **Third Party Rights:** No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

21. **Time:** For the purpose of computing the Abandonment and Completion Periods, and time periods for City action, such times in which war, civil disasters or acts of God occur or exist will not be included if such times prevent the Developer or City from performing its obligations under the Agreement.

22. **Severability:** If any part, term or provision of this Agreement is held by a court or courts of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term or provision was never part of the Agreement.

23. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any developer or lender who obtains the Property. However, no other act of the City will constitute a release of the original Developer from this liability under this Agreement.

24. **Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested and addressed as follows:

If to Developer:

Mays Concrete, Inc.
PO Box 4150
Grand Junction, CO 81502

If to City:

City of Grand Junction
Community Development Director
250 N. 5th Street
Grand Junction, CO 81501

25. **Recordation:** Developer will pay for any and all costs to record a copy of this Agreement in the Clerk and Recorder's Office of Mesa County, Colorado.

26. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under any applicable state law.

27. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement, whether arising out of or relating to the Agreement, letter of credit, disbursement agreement, cash deposit or any action to collect security will be deemed to be proper only if such action is commenced in Mesa County Colorado.

The Developer expressly waives his right to bring such action in, or to remove such action to, any other court whether state or federal.

28. The **improvements guarantee** required by the City Code to ensure that the improvements described in this Improvements Agreement are constructed to City standards may be in one of the following forms:

___(I) disbursement agreement between a bank doing business in Mesa County and the City, or

xx(II) a good and sufficient letter of credit acceptable to the City, or

___(III) depositing with the City cash equivalent to the estimated cost of construction of the improvements.

___(IV) other; see attached.

The Finance Department of the City may act as disbursing agent for disbursements to Developer's contractor(s) as required improvements are completed and accepted if agreed to in writing pursuant to a disbursement agreement.

Exhibit C, attached hereto and incorporated herein by this reference as if fully set forth, is the City approved and accepted guarantee for this project.

29. a. Conditions of Acceptance: The City shall have no responsibility or liability with respect to any street, or any other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvements shall have been accepted by the City.

Prior to requesting final acceptance of streets, storm drainage facilities, or other required improvements, the Developer shall furnish to the City Engineer as-built drawings in reproducible form, blue-line stamped and sealed by a professional engineer and copies of results of all construction control tests required by City specifications.

b. If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the prescribed location and shall construct the required width of pavement from the edge of gutter on the side of the street being developed to enable an initial two-way traffic operation without on-street parking.

The Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities and joints necessary to open the street or sidewalk to use.

City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501

Director of Community Development

Date

Attest:

Stephanie Nye, City Clerk

Date

Mays Concrete, Inc.

Developer

Clifton L. Mays, Sr. Pres.
Clifton L. Mays, Sr., President

3-28-97

Date

(If Corporation, to be signed by President and attested to by Secretary together with the Corporate seals)

Attest:

Clifton L. Mays, Jr. Sec.
Clifton L. Mays, Jr., Secretary

3-28-97

Date

EXHIBIT "A"

TYPE LEGAL DESCRIPTION BELOW, USING ADDITIONAL SHEETS AS NECESSARY. USE SINGLE SPACING WITH A ONE (1) INCH MARGIN ON EACH SIDE.

Please see Schedule "A" attached hereto (Two pages)

SCHEDULE A

PARCEL 1

A parcel of land situated in the NE 1/4 NE 1/4 of Section 8, Township 1 South, Range 1 West, Ute Principal Meridian described as follows:
Commencing at the Northeast Corner of said Section 8, thence South $00^{\circ}12'28''$ East (Basis of Bearings) 1313.29 feet along the East line of said Section 8 to the Southeast Corner of said NE 1/4 NE 1/4, the True Point of Beginning of Parcel 1, thence South $89^{\circ}47'32''$ West 900.4 feet more or less along the South line of said NE 1/4 NE 1/4 to a point on the North bank of the Colorado River, thence North $42^{\circ}55'28''$ West 136.6 feet more or less along said North bank, thence North $00^{\circ}19'47''$ West 374.7 feet more or less to the Mesa County Road right-of-way, thence along said right-of-way North $47^{\circ}30'31''$ East 17.00 feet, thence South $42^{\circ}29'29''$ East 180.95 feet, thence 235.69 feet along the arc of a 283.00 foot radius curve to the left, the chord of which bears South $66^{\circ}20'58''$ East 228.93 feet through a central angle of $47^{\circ}42'59''$, thence North $89^{\circ}47'32''$ East 218.63 feet, thence 278.43 feet along the arc of a 283.00 foot radius curve to the left, the chord of which bears North $61^{\circ}36'26''$ East 267.33 feet through a central angle of $56^{\circ}22'13''$, thence North $33^{\circ}25'19''$ East 353.71 feet to the East line of said Section 8, thence South $00^{\circ}12'28''$ East 680.78 feet along said East line to the Point of Beginning,
EXCEPT that portion conveyed to Mesa County as shown in instrument recorded May 15, 1991 in Book 1837 at Page 479,

PARCEL 2:

A parcel of land situated in the NE 1/4 NE 1/4 of Section 8, Township 1 South, Range 1 West, Ute Principal Meridian as follows:
Commencing at a point on the South line of River Road and West line of Mesa County Road right-of-way which is South $00^{\circ}12'28''$ East 567.46 feet and North $56^{\circ}34'41''$ West 29.97 feet from the Northeast Corner of said Section 8, thence along said Mesa County Road right-of-way South $33^{\circ}25'19''$ West 407.87 feet, thence 213.50 feet along the arc of a 217.00 foot radius curve to the right, the chord of which bears South $61^{\circ}36'26''$ West 204.99 feet through a central angle of $56^{\circ}22'13''$, thence South $89^{\circ}47'32''$ West 218.63 feet, thence 180.72 feet along the arc of a 217.00 foot radius curve to the right, the chord of which bears North $66^{\circ}20'58''$ West 175.54 feet through a central angle of $47^{\circ}42'59''$, thence North $42^{\circ}29'29''$ West 180.95 feet, thence North $47^{\circ}30'31''$ East 17.00 feet, thence 68.61 feet along the arc of a 93.24 foot radius curve to the right not tangent to the previous course, the chord of which bears North $21^{\circ}24'38''$ West 67.07 feet through a central angle of $42^{\circ}09'42''$, thence nontangent North $11^{\circ}58'22''$ East 43.36 feet, thence South $85^{\circ}27'21''$ East 105.17 feet, thence North $85^{\circ}20'49''$ East 115.60 feet, thence North $73^{\circ}08'44''$ East 117.90 feet, thence North $60^{\circ}35'35''$ East 120.02 feet, thence North $49^{\circ}26'17''$ East 122.52 feet, thence North $37^{\circ}38'29''$ East 108.74 feet, thence North $29^{\circ}35'36''$ East 54.28 feet to the said South line of River Road, thence along said South line South $56^{\circ}34'41''$ East 342.48 feet to the Point of Beginning,

PARCEL 3:

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Commencing at the intersection of the North line of said Section 8 and the South line of River Road which is South $89^{\circ}54'36''$ West (Basis of Bearings) 855.78 feet from the Northeast Corner of said Section 8, thence along said South line of River Road South $56^{\circ}34'41''$ East 424.85 feet, thence along Mesa County Road right-of-way South $36^{\circ}07'24''$ West 54.17 feet, thence South $29^{\circ}20'39''$ West 91.76 feet, thence South $37^{\circ}07'31''$ West 78.09 feet, thence South $48^{\circ}56'04''$ West 80.10 feet, thence South $58^{\circ}22'56''$ West 83.07 feet, thence South $72^{\circ}14'38''$ West 85.30 feet, thence South $83^{\circ}28'56''$ West 95.71 feet, thence North $13^{\circ}14'42''$ West 43.70 feet, thence North $00^{\circ}19'47''$ West 70.00 feet, thence North $04^{\circ}22'53''$ West 240.60 feet, thence North $00^{\circ}19'47''$ West 40.12 feet, thence North $33^{\circ}25'19''$ East 192.31 feet to the Point of Beginning,

ALL IN MESA COUNTY, COLORADO.

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL

DATE: March 25, 1997

NAME OF DEVELOPMENT: Mays Concrete, Inc.

LOCATION: 2399 River Road, Grand Junction, CO 81505

PRINTED NAME OF PERSON PREPARING: Daniel M. Roberts

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMT.
I. SANITARY SEWER				
1. Clearing and grubbing	_____	_____	_____	_____
2. Cut and remove asphalt	_____	_____	_____	_____
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	_____	_____	_____	_____
4. Sewer Services (trenching, bedding, backfill)	_____	_____	_____	_____
5. Sanitary sewer manhole(s)	_____	_____	_____	_____
6. Connection to existing manhole(s)	_____	_____	_____	_____
7. Aggregate Base Course	_____	_____	_____	_____
8. Pavement replacement	_____	_____	_____	_____
9. Driveway restoration	_____	_____	_____	_____
10. Utility adjustments	_____	_____	_____	_____
II. DOMESTIC WATER				
1. Clearing and grubbing	_____	_____	_____	_____
2. Cut and remove asphalt	_____	_____	_____	_____
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)	_____	_____	_____	_____
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	_____	_____	_____	_____
5. Connect to existing water line	_____	_____	_____	_____
6. Aggregate Base Course	_____	_____	_____	_____
7. Pavement Replacement	_____	_____	_____	_____
8. Utility adjustments	_____	_____	_____	_____
III. STREETS				
1. Clearing and grubbing	_____	_____	_____	_____
2. Earthwork (excavation, embankment const)	_____	_____	_____	_____
3. Utility relocations	_____	_____	_____	_____
4. Aggregate sub-base course (sq.yd.)	_____	_____	_____	_____
5. Aggregate base course (sq.yd.)	_____	_____	_____	_____
6. Sub-grade stabilization	_____	_____	_____	_____
7. Asphalt or concrete pavement (sq.yd.)	s.y.	902	8.10	7,306.00
8. Curb, gutter & sidewalk (linear feet)	_____	_____	_____	_____
9. Driveway sections (sq.yd.)	_____	_____	_____	_____
10. Crosspans & fillets	_____	_____	_____	_____
11. Retaining walls/structures	_____	_____	_____	_____

12. Storm drainage system				
13. Signs and other traffic control devices				
14. Construction staking				
15. Dust control				
16. Street lights (each)				

IV. LANDSCAPING

1. Design/Architecture				
2. Earthwork (top soil, fine grading, berming)	1 lot	1 lot	\$1,000.00	\$1,000.00
3. Hardscape features (walls,fencing,paving)	L.F.	2,060	5.30	10,915.00
4. Plant material and planting	1 lot	1 lot	2,060.00	2,060.00
5. Irrigation system	1 lot	1 lot	1,152.00	1,152.00
6. Other features (statues, water displays, park equipment, and outdoor furniture)				
7. Curbing				
8. Retaining walls and structures				
9. One year maintenance agreement				

V. MISCELLANEOUS

1. Design/Engineering				
2. Surveying				
3. Developer's inspection costs				
4. Quality control testing				
5. Construction traffic control				
6. Rights-of-way/Easements				
7. City inspection fees				
8. Permit fees				
9. Recording costs				
10. Bonds				
11. Newsletters				
12. General Construction Supervision				
13. Other _____				
14. Other _____				

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 22,433.00

Clayton Mays
Mays Concrete, Inc. President 3-28-97
SIGNATURE OF DEVELOPER DATE
(If corporation, to be signed by President and attested
to by Secretary together with the corporate seals.)

I have reviewed the estimated costs and time schedule shown above and, based on the plan layouts submitted to date and the current costs of construction, I take no exception to the above.

CITY ENGINEER DATE

COMMUNITY DEVELOPMENT DATE

COLORADO RIVER PARK AND TRAIL SYSTEM - MAYS PROPERTY

THIS DEED AND CONVEYANCE is made and entered into this 10th day of December, 1990, by and between Clifton L. Mays, whose legal address is 2399 River Road, Grand Junction, Colorado (hereinafter "Grantor") and Mesa County, Colorado (hereinafter "Grantee").

WHEREAS, the Grantor is the owner in fee simple, subject to existing encumbrances and easements described below, of certain real estate tracts which are situated in or near the Colorado River Park and Trail System located in Mesa County, Colorado; and

WHEREAS, the Grantee and the City of Grand Junction, Colorado have jointly and individually adopted plans for the development of hiking, bicycling, and equestrian trails for recreational and transportation uses along the Colorado River Corridor, which plans may entail, use of real estate owned by the Grantors, for the purpose of public travel and public recreation within the Colorado River Park and Trail System; and

WHEREAS, Grantor desires to cooperate in and assist the development of the Colorado River Park and Trail System by conveying to the Grantee an Interest in the use of their respective real property for the purposes stated above, subject to the conditions and covenants set forth below; and

NOW, THEREFORE,

WITNESSETH: For and in consideration of the sum of Ten Dollars (\$10.00) paid in hand by the Grantee to the Grantor, receipt of which is hereby acknowledged, and in consideration of the mutual covenants, restrictions, and conditions hereinafter described, the Grantor hereby grants, bargains, sells and conveys to the Grantee and its successors and assigns forever a perpetual right-of-way, public travel, and public recreation, on, over, under, and across the ground (hereinafter "Property") situated in Mesa County, Colorado as described in Exhibit A, B, and C which is attached hereto and incorporated herein by reference, to have and to hold said right-of-way and hereby granted into the Grantee forever.

THE GRANTOR, for itself and for its successors, lessees, representatives, trustees, receivers, assigns, and any person or party claiming under the Grantor, hereby covenants and agrees that:

1. Grantor hereby expressly agrees that for purposes of public right-of-way and recreation, a trail (hereafter "trail") (for bicycle, equestrian, and pedestrian use) and vehicular driveway may be constructed and maintained on the Property by the Grantee utilizing an asphalt, concrete, or other surface together with necessary signs, fences, barricades, markers, and other appurtenances.
2. The Grantor also covenants not to build any structure or construct any fences or obstructions to public access, public recreation, or public travel, on, or across said Property, without the consent of the Grantee.
3. The Grantor further covenants and agrees not to alter, modify, or operate any flood or drainage control devices within or adjacent to the Property which may have the effect of destroying or preventing maintenance of the trails which or may be constructed thereon. The drainage or filling of any lands adjacent to the Property shall be conducted so as not to permanently inundate, erode, or block any trails constructed within the Property.
4. The Grantor further covenants and agrees not to interfere with public access, public recreation, and public travel, upon the trail for pedestrian, bicycle, and equestrian, uses which may hereafter be constructed on the Property.
5. The Grantor further covenants to allow the Grantee reasonable ingress and egress to the Property, and access to the right-of-way, for construction, repair, reconstruction, and maintenance of said right-of-way and trails constructed on the Property.
6. The Grantor further covenants and agrees that it will not lease, grant, nor convey any other easement on, over, under, or across the Property which may interfere with the use and enjoyment thereof without first securing and written permission of the Grantee or its successors and assigns.

Recorder's Note: Poor Legibility On
Document Provided For Recording.

8. Subject to covenants, conditions, or clauses contained herein to the contrary, the Grantor shall have the right to realign the location of this perpetual right-of-way upon six months written notice to the Grantee; provided, however that the new alignment does not interfere with existing public access, public recreation, or flood control structures; that the bicycle path and any dikes or berms constructed within the original right-of-way area are first reconstructed on the new alignment utilizing substantially similar materials and techniques at no additional expense to the Grantee; and that a separate instrument covering the new right-of-way area is conveyed to the Grantee, at which time this right-of-way shall be terminated.

9. No other obligations or restrictions are hereby imposed upon the Grantor. The Grantor shall not in any way be restricted by this conveyance from carrying on existing farming practices, open space uses, or commercial activities adjacent to the Property. Grantor may utilize all of the lands surrounding and including the right-of-way in the customary manner.

10. The Grantee agrees to indemnify and hold harmless the Grantor and its successors and assigns from any claims for liability for personal injury or other damages arising out of use of the trail in conformity with this right-of-way.

11. The Grantor hereby covenants and warrants that the Grantor owns the real property described on Exhibit A, B, and C by good and perfect title subject to existing encumbrances; and that the Grantor has full right and lawful authority to sell and convey a partial interest in the same, and that the grantor will be entitled to engage in any type of improvement it deems appropriate, of whatsoever nature in the property adjoining the trail insofar as such activity does not permanently interfere with the public's use of the trail.

12. The access way to the "Junior Service League Park" (Exhibit "C") shall be used for public access to the Junior Service League Park and shall be physically confined to the area included in Exhibit "C". The aforementioned access shall be bordered by an automobile restricting cable fence to be installed by the County at its expense. The rest of the Junior Service League Park will be confined by a four-foot high sheep fence at the expense of the Grantee.

13. The aforementioned driveway (Paragraph 12) may be incorporated into any future developments of the Grantor including the Grantor's use of the driveway for access to his property.

14. Grantor may obtain encumbrances against the subject property in the future for financial purposes, however, such encumbrances shall not restrict Grantees right to continue to use the Trail.

15. All activities regarding the construction, development, maintenance, and use of the Trail shall be confined within the areas described in the trail right-of-way descriptions (Exhibit "B" & "C"). No staging, storage or access ways used by the City or County for the construction or maintenance of the parkway system shall take place on land other than that described in the trail right-of-way. A four-foot high field fence will be constructed by the Grantee along the border of the right-of-way.

16. Grantor expressly reserves the right for itself and any lessees or renters to enter upon or across the trail right-of-way as part of its operation. If the Grantor damages the trail he will repair any such damage to the satisfaction of the Grantee.

17. If it becomes necessary as part of the future development of the Grantor's property to relocate a part of the trail right-of-way, Grantor may do so, if Grantee is provided 30 days written notice and the proposed relocation is reasonable.

18. In the event of a flood or any other natural disaster, Grantor shall not be responsible in any way for any repair or maintenance of the trail. In the event of any vandalism or any damage created by persons using the trail where such damage is attributed to users of the trail, such damage will be the responsibility of the Grantee and shall not be the responsibility of the Grantor.

19. Grantor agrees to cease the placement of fill along the Colorado River and in the trail right-of-way, Grantor reserves the right to place fill

long as such fill does not block or otherwise interfere with the public use of the trail.

20. This grant of a public right-of-way is expressly conditional upon the prior resolution of the current disputes involving the location of the riverbank and obtaining appropriate U. S. Army Corps of Engineers permits.

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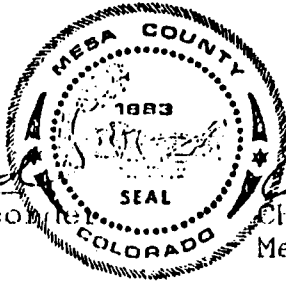
ATTEST:

[Signature]

GRANTOR:

[Signature]
CLIFTON L. MAYS, SR.

ATTEST:
(Mesa County Only)



THE BOARD OF COUNTY COMMISSIONERS

[Signature]
Mesa County Clerk and Recorder

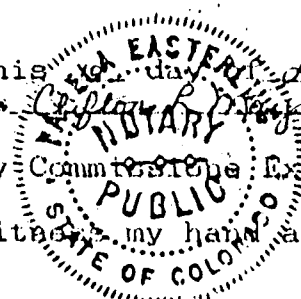
[Signature]
CHAIRMAN, ~~XXXXXXXXXX~~
Mesa County Board of County Commissioners

State of Colorado)
County of Mesa) ss.

The foregoing instrument was duly acknowledged before me this 10 day of December, 1990 by April M. Roberts and Clifton L. Mays Sr. individuals

My Commission Expires: 12-20-91

Witness my hand and official seal.



[Signature]
NOTARY PUBLIC



THE BANK
OF GRAND JUNCTION

Meese Mall
2415 F Road
Grand Junction, Colorado 81505
(303) 241-9000

THE CITY OF GRAND JUNCTION COLORADO
250 NORTH 5TH STREET
GRAND JUNCTION, COLORADO 81501-2668

IRREVOCABLE LETTER OF CREDIT NO. 111
DATED 3/28/97
EXPIRATION: 9/28/97 at the counters of Bank of Grand Junction
2415 F Road, Grand Junction, Colorado 81505

Dear Sirs:

We hereby issue our Irrevocable Letter of Credit No. 111 in your favor issued for the account of MAYS CONCRETE, INC. in the amount of TWENTY TWO THOUSAND FOUR HUNDRED THIRTY THREE AND NO/100 U.S. DOLLARS (\$22,433.00). This letter is available by your draft drawn at sight on BANK OF GRAND JUNCTION, GRAND JUNCTION, COLORADO when accompanied by the following:

Your statement signed by an authorized official of the CITY OF GRAND JUNCTION as follows: " MAYS CONCRETE, INC." has failed to construct improvements to 2399 River Road as required by the city, known as file number(s) PDR-96-245 and as per the City's Zoning and Development Code and/or plans, specifications or agreements. The monies received from this drawing are required to complete such improvements.

Partial and multiple drawings permitted.

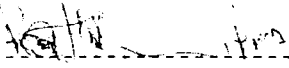
All drafts must be marked: "DRAWN UNDER BANK LETTER OF CREDIT NO. 111."

We hereby agree with the drawer of the draft(s) drawn under and in compliance with the terms of this letter of credit that the same shall be duly honored on due presentation to the drawee.

This letter of credit is to be confirmed by THE BANK OF GRAND JUNCTION, COLORADO with their charges for the account of the applicant.

Except as otherwise expressly stated herein, this credit is subject to the Uniform customs and practices for Documentary Credits (1983 revision) and to the extent it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.

Authorized signature



Authorized signature

To: Rhonda Edwards
From: Stephanie Nye
Subject: MIA DIA
Date: 3/30/99 Time: 3:42PM

Can you see if you can find the original DIA for a Mays Concrete project in 1997 at their 2399 River Road address. The cost of the improvements were \$22,433. Thanks.