

TSI95CVS

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: THOMAS & SUN, INCORPORATED

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: CANYON VIEW SUBDIVISION,  
FILING NO. 2

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1995

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

**DEVELOPMENT IMPROVEMENTS AGREEMENT**

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are Thomas & Sun, 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 which is not sooner than recordation of the plat

**RECITALS**

1716391 01:58 PM 05/05/95  
MONIKA TODD CLK&REC MESA COUNTY CO

The Developer seeks permission to develop property within the City to be known as Canyon View Subdivision, Filing 2, 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 in the development and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the development or for the benefit of the purchasers or users of the development. 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 on-site and off-site 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 shall 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 the improvements completed by the Developer.

7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within one 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 final 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 approved in the development application 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 the 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 approval and/or acceptance.

11. **Use of Proceeds:** The City will use funds deposited with it or drawn pursuant to any written 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 fourteen (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 fourteen (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 the 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, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security 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 improvements 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 improvements disbursement agreement, the escrowed collateral, 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 enjoin the sale, transfer, or conveyance of lots within 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 officers, 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 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 or constitute a waiver of any other provision, nor will it be deemed 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 his 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 under the improvements disbursement agreement 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 his 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: Thomas & Sun, Inc.  
321 Quail Drive  
Grand Junction, CO. 81503

If to City: City of Grand Junction  
 Community Development Director  
 250 N. 5th Street  
 Grand Junction, Colorado 81501

25. **Recordation:** Developer will pay for 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 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, improvements disbursements agreement, or cash escrow agreement 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 the improvements agreement are constructed to City standards may be in one of the following forms:

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

       (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.

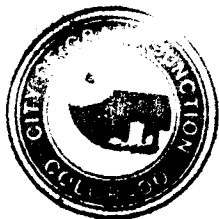
The Finance Department of the City will disburse any deposit or any portion thereof, with no more than three checks, at no charge. If disbursements are made in excess of three checks, the developer will be charged \$100 per transaction for every transaction in excess of three.

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 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 in computer disk form and copies of results of all construction control tests required by City specifications.

- b. Phased Development: 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 standard location and shall construct the required width of pavement from the edge of gutter on his side of the street to enable an initial two-way traffic operation without on-street parking. That Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities necessary to open the street to traffic.



Stephanie Nye 4/6/95  
Stephanie Nye Date  
City Clerk

TD James R. Tunni 4/5/95  
Director of Community Development Date  
City of Grand Junction  
250 North 5th Street  
Grand Junction, CO 81501

Thomas & Sun Inc.  
Thomas, Pres 3-17-95  
Developer (Seal) Date

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



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

\*\*\*\*\*

EXHIBIT A

see Schedule A

POLICY NO. 06 010 60 2356  
ORDER FILE NO. 93-8-55

SCHEDULE A

AMOUNT  
\$345,044.00

DATE OF POLICY  
May 11, 1994 at 11:37 a.m.

DO NOT REMOVE  
FROM OFFICE

NAME OF INSURED

THOMAS & SUN, INC., A COLORADO CORPORATION

214 94

BOOK 2143 PAGE 240

1. The estate or interest in the land described herein and which is covered by this policy is:

IN FEE SIMPLE

2. The estate or interest referred to herein is at Date of Policy vested in:

THE INSURED

3. The land referred to in this Policy is described as follows:

Commencing at a Mesa County Survey Monument at the Southeast Corner of Tract 37, Section 35, Township 11 South, Range 101 West of the 6th Principal Meridian, County of Mesa, State of Colorado, and with all bearings herein being relative to North 00°17'47" West between Mesa County Survey Monument at the West one-quarter corner and Northwest Corner of Section 19, Township 1 South, Range 1 West of the Ute Meridian, thence along the East line of said Tract 37, North 00°17'47" West a distance of 1953.46 feet, thence South 89°42'13" West, a distance of 30.00 feet to the Point of Beginning, thence South 00°17'47" East, a distance of 1145.96 feet, thence North 87°11'34" West, a distance of 678.21 feet, thence South 00°21'59" East, a distance of 846.11 feet to a rebar and cap on the South line of said Tract 37, thence along the South line of said Tract 37, South 89°35'29" West, a distance of 706.23 feet, thence North 00°20'31" West, a distance of 1318.33 feet, thence North 00°57'47" West, a distance of 638.45 feet, thence North 89°42'13" East, a distance of 1390.88 feet to the Point of Beginning,

Mesa County, Colorado.

CONTINUED NEXT PAGE

**EXHIBIT "B"****BOOK 2143 PAGE 241**

DATE: 12/27/94  
 NAME OF DEVELOPMENT: **CANYON VIEW SUBDIVISION PHASE II**  
 LOCATION: TRACT 37, T. 11 S., R. 101 W. OF THE 6TH P.M.  
 GRAND JUNCTION, COLORADO  
 PRINTED NAME OF PERSON PREPARING James E. Langford

**CONSTRUCTION COST ESTIMATE:**

		Units	Quantity	Unit Price	Total Price
<b>I.</b>	<u>Sanitary Sewer:</u>				
	1 8-inch PVC Sewer	LF	1367	16.00	21872.00
	2 San. Sew. Manholes	EA	8	1,250.00	10000.00
	3 4-inch single family service	EA	19	450.00	8550.00
	3 Off-site Sharing	EA	19	675.00	12825.00
					<b>Sub-total Sanitary Sewer: 53247.00</b>
<b>II.</b>	<u>Domestic Water:</u>				
	1 8" Waterline	LF	1298	14.50	18821.00
	2 Fire Hydrant Assemblies	EA	3	1,150.00	3450.00
	3 8" Gate Valve and Boxes	LS	4	550.00	2200.00
	4 8" Bends or Tees	EA	2	175.00	350.00
	5 Service assemblies (tap, line & valve)	EA	19	400.00	7600.00
					<b>Sub-total Domestic Water: 32421.00</b>
<b>III.</b>	<u>Streets</u>				
	1 Clearing and Grubbing	LS	1.81	825.00	1493.25
	1 Excavation	CY	4145	1.75	7253.75
	2 Embankment	CY	930	2.25	2092.50
	3 7" Class-6	CY	1013	15.50	15701.50
	4 3" Asphalt	TON	596	25.50	15198.00
	5 6.5' Mountable curb, gutter & sidewalk	LF	2241	16.00	35856.00
	6 Street/Stop sign combination	EA	1	200.00	200.00
	7 CDOT Type 3 Barricade	EA	2	650.00	1300.00
	8 11'x14' Concrete Mail Box Pad	LS	1	975.00	975.00
					<b>Sub-total Streets: 80070.00</b>
<b>IV.</b>	<u>Stormwater Drainage</u>				
	1 Retention Basin "A"	CY	3950	1.50	5925.00
	2 Retention Basin "B"	CY	1980	1.50	2970.00
	3 Double Curb opening inlet	EA	1	1,600.00	1600.00
	4 Stormsewer Manhole	EA	1	950.00	950.00
	5 24" Storm Sewer Outfall	LF	201	40.00	8040.00

6 CDOT Type "C" Inlet	EA	1	1,050.00	1050.00
7 24" Flared end Section with Riprap	LS	1	650.00	650.00
Sub-total Stormwater Drainage:				21185.00

V. Irrigation Water	Units	Quantity	Unit Price	Total Price
1 6" PVC Irrigation Line	LF	1098	9.00	9882.00
2 2" PVC Irrigation Line	LF	151	6.50	981.50
3 6" Gate Valve & Box	EA	1	500.00	500.00
4 2" Gate Valve and Box	EA	1	450.00	450.00
5 2" Service Risers	LF	19	175.00	3325.00
Sub-total Irrigation Water:				15138.50

VI. MISCELLANEOUS:	Units	Quantity	Unit Price	Total Price
1 Construction Inspection (by Consultant)	LS	1	8,500.00	8500.00
2 Construction Inspection (by City)	LS	1	1,000.00	1000.00
3 Construction Surveys	LS	1	7,450.00	7450.00
4 Quality Control Testing	LS	1	4,500.00	4500.00
5 street light				
Sub-total Miscellaneous:				21450.00

*Jan*  
5 street light

TOTAL ESTIMATED COST OF IMPROVEMENTS: -223511.50

*Thomas & Son Inc*  
*Don Thomas, Pres*

*Jan* 2000.00  
225,511.50 *Jan*  
3-15-95

SIGNATURE OF DEVELOPER

DATE

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, take no exception to the above.

*J. Don Newton*  
CITY ENGINEER

*4-5-95*  
DATE

*Jerry R. Turner*  
COMMUNITY DEVELOPMENT

*4/5/95*  
DATE

**DISBURSEMENT AGREEMENT  
(Improvements Guarantee)**

**DEVELOPER:** THOMAS & SUN, INC., a Colorado Corporation  
321 QUAIL DRIVE  
GRAND JUNCTION, COLORADO 81503

**BANK:** BANK OF COLORADO - WESTERN SLOPE  
200 GRAND AVENUE, P.O. BOX 968  
GRAND JUNCTION, COLORADO 81502

**PROPERTY:** LOT 1 IN BLOCK 3 OF CANYON VIEW SUBDIVISION  
MESA COUNTY, COLORADO

**DISBURSEMENT  
AMOUNT:**

~~\$223,511.50~~ \$225,511.50  
A/CUC 5-28-95 A/CUC 5 April 95

This Agreement is entered into by and between Thomas & Sun, Inc., a Colorado Corporation (the "Developer"), Bank of Colorado - Western Slope (the "Bank"), and the City of Grand Junction, Colorado (the "City").

**RECITALS**

Developer has been required by the City to construct certain improvements to Lot 1 in Block 3 of Canyon View Subdivision, Mesa County, Colorado (the "Improvements") in accordance with the Zoning and Development Code, Improvements Agreement and subdivision approval.

The Bank has agreed to loan funds to the Developer for construction of the improvements.

The City Engineer has approved an estimate of the costs of the Improvements, and that amount or an amount not to exceed ~~\$223,511.50~~ \$225,511.50 whichever is greater, shall be referred to as the "Funds".

The parties desire to secure the performance of the Developer's obligations and that the funds are disbursed only to pay for the Improvements.

NOW, THEREFORE, THE PARTIES AGREE:

1. Bank shall dedicate or set aside the funds on behalf of Developer and for the City's benefit within forty-eight hours of execution of this Disbursement Agreement. Bank warrants that the funds are to be held in trust solely to secure Developer's

*28th about 4.5.95*  
Dated this ~~7th~~ day of March, 1995.

BANK OF COLORADO - WESTERN SLOPE

By: *[Signature]*  
Stephen C. Love, Vice President

THOMAS & SUN, INC., a Colorado Corporation

By: *[Signature]*  
John M. Thomas, President

CITY OF GRAND JUNCTION

By: *[Signature]* 4/5/95  
Director of Community Development

*TD*

**RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE**  
**Grand Junction Community Development Department**

This memorandum relates to certain recorded Improvements Agreements and Guarantees. The agreements are by and between Thomas & Sun, Inc. (Developer) and the City of Grand Junction (City) pertaining to Canyon View Subdivision. The necessary data pertaining to each of the filings for this project follows:

**Book 3122 Page 641**

File #	Date	Book	Page	Total Cost	Disbursement Amount	Filing
PDR-1994-214	4/1/95	2143	231 - 242	\$345,044.00	\$221,511.50	#2
FPP-96-28	4/2/96	2230	752	\$278,047.00	\$275,035.00	#3
RZP-96-179	9/3/96	2291	187	\$259,059.00	\$259,059.00	#4
FPP-96-265	2/25/97	2316	598 - 610	\$311,205.00	\$311,205.00	#5
FPP-1997-141	9/9/97	2387	95	\$209,578.00	\$209,578.00	#6
FPP-1999-097	6/8/97	2601	170 - 185	\$284,310.36	\$284,310.36	#7

Whereas, Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of an Improvements Agreement and Guarantee, and

Whereas, the City of Grand Junction and all other agencies possessing regulatory authority over the Project and/or the improvements have inspected the Improvement and have accepted the same.

NOW THEREFORE, officials of the City of Grand Junction and other officials duly representing their agencies, possessing and representing by their signatures, affixed thereto, that they possess sufficient authority to accept improvements and release the portion of the guarantee pertaining to the improvements under their jurisdiction, do accept, sign and release said improvements agreement and guarantee.

CITY OF GRAND JUNCTION:

By: City Engineer *[Signature]* Date: 7-30-02  
 City Utilities Manager: *[Signature]* Date: 7/30/02  
 Fire Marshall: *[Signature]* Date: 7-30-02

UTE WATER:

By: *[Signature]* Date: 30 Jul 02

In accordance with the above signatures, I hereby certify that the Improvements Agreement & Guarantee and the recording evidencing the agreement and guarantee, at Book SEE ABOVE, Page \_\_\_\_\_ of the Mesa County land records, have been completed and accepted and in accordance with the provisions of the Grand Junction Zoning and Development Code are hereby released, subject to the required warranty period.

Director of ~~Community~~ Development *[Signature]* Date: 7/30/02

The foregoing instrument was executed before me this 30<sup>th</sup> day of July, 2002 (year) by *[Signature]*, Director of ~~Community~~ Development for the City of Grand Junction, Colorado. *[Signature]*

Witness my hand & official seal.

Notary Public *[Signature]*

My commission expires My Commission Expires 5/6/06



Commencing at the Southeast corner of Section 26, Township 11 South, Range 101 West of the 6th Principal Meridian from whence the East Quarter corner of said Section 26 bears North 00°22'30" West 2643.15 feet and all bearings contained herein to be relative thereto;  
thence South 00°02'22" East 57.12 feet along the East line of Section 35, Township 11 South, Range 101 West of the 6th Principal Meridian to the true point of beginning;  
thence continuing South 00°02'22" East 617.08 feet along the East line of said Section 35;  
thence South 89°18'00" West 1419.28 feet;  
thence North 00°46'00" West 691.60 feet to the South Quarter corner of said Section 26;  
thence North 90°00'00" West 665.60 feet along the South line of said Section 26;  
thence North 00°27'00" West 125.00 feet;  
thence North 36°14'00" East 192.00 feet;  
thence North 30°11'00" East 34.57 feet;  
thence South 36°59'58" East 20.00 feet;  
thence along the arc of a curve to the right with a central angle of 13°56'36" whose radius is 365.55 feet and whose long chord bears North 81°45'02" East 270.08 feet;  
thence South 69°30'00" East 679.56 feet;  
thence along the arc of a curve to the left with a central angle of 37°10'50" whose radius is 495.17 feet and whose long chord bears South 88°05'23" East 315.72 feet;  
thence along the arc of a curve to the right with a central angle of 13°56'36" whose radius is 365.55 feet and whose long chord bears North 84°31'21" East 88.74 feet;  
thence South 85°29'50" East 37.81 feet;  
thence along the arc of a curve to the left with a central angle of 30°15'29" whose radius is 420.06 feet and whose long chord bears North 79°31'15" East 219.27 feet;  
thence North 60°26'55" East 80.02 feet;  
thence South 00°00'00" West 225.99 feet;  
thence North 90°00'00" East 321.08 feet to the true point of beginning.  
EXCEPT that parcel as conveyed to Redlands Water and Power Company in instrument recorded October 26, 1971, in Book 965 at Page 822.  
AND EXCEPT that parcel as conveyed to Mesa County in instrument recorded March 5, 1990, in Book 1778 at Page 749.  
TOGETHER WITH an easement for underground utilities as reserved in instrument recorded March 5, 1990, in Book 1778 at Page 750.

Exhibit A-2 (Filing 8)

A replat of lot 1, block 3, Canyon View Phase II and lot 8, block 3,  
Canyon View Phase VII, Mesa County, Colorado

~~Exhibit A-3 (Filing 8)~~

~~A replat of lot 1, block 3, Canyon View Phase II and lot 8, block 3,  
Canyon View Phase VII, Mesa County, Colorado~~



# Funding Approval/Agreement

Title I of the Housing and Community Development Act (Public Law 930383)

U.S. Department of Housing and Urban Development  
Office of Community Planning and Development  
Community Development Block Grant Program

HI-00515R of 20515R

1. Name of Grantee (as shown in item 5 of Standard Form 424) City of Grand Junction	3. Grantee's 9-digit Tax ID Number 84-600059	4. Date use of funds may begin (mm/dd/yyyy) 09/01/2002
2. Grantee's Complete Address (as shown in item 5 of Standard Form 424) 250 North Fifth Street Grand Junction, CO 81501	5a. Project/Grant No. 1 B-02-MC-08-0013	6a. Amount Approved \$494,000
	5b. Project/Grant No. 2	6b. Amount Approved
	5c. Project/Grant No. 3	6c. Amount Approved

**Grant Agreement:** This Grant Agreement between the Department of Housing and Urban Development (HUD) and the above named Grantee is made pursuant to the authority of Title I of the Housing and Community Development Act of 1974, as amended, (42 USC 5301 et seq.). The Grantee's submissions for Title I assistance, the HUD regulations at 24 CFR Part 570 (as now in effect and as may be amended from time to time), and this Funding Approval, including any special conditions, constitute part of the Agreement. Subject to the provisions of this Grant Agreement, HUD will make the funding assistance specified here available to the Grantee upon execution of the Agreement by the parties. The funding assistance specified in the Funding Approval may be used to pay costs incurred after the date specified in item 4 above provided the activities to which such costs are related are carried out in compliance with all applicable requirements. Pre-agreement costs may not be paid with funding assistance specified here unless they are authorized in HUD regulations or approved by waiver and listed in the special conditions to the Funding Approval. The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and actions, as specified and required in regulations issued by the Secretary pursuant to Section 104(g) of Title I and published in 24 CFR Part 58. The Grantee further acknowledges its responsibility for adherence to the Agreement by sub-recipient entities to which it makes funding assistance hereunder available.

U.S. Department of Housing and Urban Development (By Name) Guadalupe M. Herrera	Grantee Name Kelly Arnold
Title Director, Office of Community Planning and Development	Title City Manager
Signature <i>Guadalupe M. Herrera</i>	Signature <i>Kelly Arnold</i>
Date (mm/dd/yyyy) OCT 07 2002	Date (mm/dd/yyyy) 10/14/02

7. Category of Title I Assistance for this Funding Action (check only one) <input checked="" type="checkbox"/> a. Entitlement, Sec 106(b) <input type="checkbox"/> b. State-Administered, Sec 106(d)(1) <input type="checkbox"/> c. HUD-Administered Small Cities, Sec 106(d)(2)(B) <input type="checkbox"/> d. Indian CDBG Programs, Sec 106(a)(1) <input type="checkbox"/> e. Surplus Urban Renewal Funds, Sec 112(b) <input type="checkbox"/> f. Special Purpose Grants, Sec 107 <input type="checkbox"/> g. Loan Guarantee, Sec 108	8. Special Conditions (check one) <input type="checkbox"/> None <input checked="" type="checkbox"/> Attached	9a. Date HUD Received Submission (mm/dd/yyyy) 07/17/2002	10. check one <input checked="" type="checkbox"/> a. Orig. Funding Approval <input type="checkbox"/> b. Amendment Amendment Number	
		9b. Date Grantee Notified (mm/dd/yyyy) OCT 07 2002		
9c. Date of Start of Program Year (mm/dd/yyyy) 09/01/2002				
11. Amount of Community Development Block Grant				
	FY (yyyy)	2002	FY (yyyy)	FY (yyyy)
a. Funds Reserved for this Grantee				
b. Funds now being Approved		\$494,000		
c. Reservation to be Cancelled (11a minus 11b)				

12a. Amount of Loan Guarantee Commitment now being Approved NA	12b. Name and complete Address of Public Agency NA
Loan Guarantee Acceptance Provisions for Designated Agencies: The public agency hereby accepts the Grant Agreement executed by the Department Housing and Urban Development on the above date with respect to the above grant number(s) as Grantee designated to receive loan guarantee assistance, and agrees to comply with the terms and conditions of the Agreement, applicable regulations, and other requirements of HUD now or hereafter in effect, pertaining to the assistance provided it.	12c. Name of Authorized Official for Designated Public Agency NA
	Title NA
	Signature Date (mm/dd/yyyy) NA

**HUD Accounting use Only**

Batch	TAC	Program	Y	A	Reg	Area	Document No	Project Number	Category	Amount	Effective Date (mm/dd/yyyy)	F
	153											
	176											
			Y									
			Y									

Date Entered PAS (mm/dd/yyyy)	Date Entered LOCCS (mm/dd/yyyy)	Batch Number	Transaction Code	Entered By	Verified By
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**13. (b) Special conditions:**

**E. O. 12372 - SPECIAL CONTRACT CONDITIONS**

1. Notwithstanding any provision of the Grant Agreement, no funds provided under this agreement may be obligated or expended for the planning or construction of water or sewer facilities until receipt of written notification from HUD of the release of funds on completion of the review procedures required under the Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and HUD's implementing regulations at 24 C.F.R. Part 52. The recipient shall also complete the review procedures required under E.O. 12372 and receive written notification from HUD of the release of funds before obligating or expending any funds provided under this agreement for any new or revised activity for the planning or construction of water or sewer facilities not previously reviewed under E.O. 12372 and implementing regulations.

RECIPIENT COPY

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>	ASSISTANCE ID NO.			DATE OF AWARD <b>AUG 22 2002</b>	
		PRG	DOC ID	AMEND#		MAILING DATE
		X - 98877501 - 0			New	<b>AUG 29 2002</b>
					PAYMENT METHOD: Reimbursement	
RECIPIENT TYPE: Municipal		Send Payment Request to: R8 Finance Office, 8TMS-F				
RECIPIENT: City of Grand Junction 250 N. 5th Street Grand Junction, CO 81501-2668 EIN: 84-6000592		PAYEE: City of Grand Junction 250 N. 5th Street Grand Junction, CO 81501-2668				
PROJECT MANAGER Eileen List 250 N. 5th Street Grand Junction, CO 81501-2668 E-Mail: Phone: 970-256-4149		EPA PROJECT OFFICER Bruce Zander 999 18th Street, Suite 300, 8EPR-EP Denver, CO 80202-2466 E-Mail: Zander.Bruce@epa.gov Phone: 303-312-6846		EPA GRANT SPECIALIST Joyce Brame Grants, Audits & Procurements, 8TMS-G E-Mail: Brame.Joyce@epa.gov Phone: 303-312-6367		
PROJECT TITLE AND DESCRIPTION Special Studies - TMDL Selenium Water Quality Trading Proposal Study, Lower Colorado River						
BUDGET PERIOD 09/01/2002 - 09/01/2003		PROJECT PERIOD 09/01/2002 - 09/01/2003		TOTAL BUDGET PERIOD COST \$75,000.00	TOTAL PROJECT PERIOD COST \$75,000.00	
NOTE: The Agreement must be completed in duplicate and the Original returned to the appropriate Grants Management Office listed below, within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA. Receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the Recipient subsequent to the document being signed by the EPA Award Official, which the Award Official determines to materially alter the Agreement, shall void the Agreement.						
OFFER AND ACCEPTANCE						
The United States, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers Assistance/Amendment to the <u>City of Grand Junction</u> for <u>100.00</u> % of all approved costs incurred up to and not exceeding <u>\$75,000</u> for the support of approved budget period effort described in application (including all application modifications) cited in the Project Title and Description above, signed <u>08/01/2002</u> included herein by reference.						
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE			
ORGANIZATION / ADDRESS Environmental Protection Agency, Region 8 999 18th Street, Suite 300 Denver, CO 80202-2466			ORGANIZATION / ADDRESS U.S. EPA, Region 8 999 18th Street, Suite 300 Denver, CO 80202-2466			
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY						
SIGNATURE OF AWARD OFFICIAL 		TYPED NAME AND TITLE Wayne Anthofer, Director		DATE <b>AUG 22 2002</b>		
This agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2) the recipient agrees (a) that the award is subject to the applicable provisions of 40 CFR Chapter 1, Subchapter B and of the provisions of this agreement (and all attachments), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.						
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION						
SIGNATURE 		TYPED NAME AND TITLE Cindy Enos-Martinez, Mayor		DATE		

# EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 75,000	\$ 75,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 75,000	\$ 75,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.606 - Surveys - Studies - Investigations - Spec	Clean Air Act: Sec. 104	40 CFR PART 31

Fiscal									
Site Name	DCN	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	LGR054	2002	B	08L1	20301B	4141	-	-	75,000
									75,000

## Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$0
2. Fringe Benefits	\$0
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$75,000
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$75,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient 0.00 % Federal 100.00 %.)	\$75,000
12. Total Approved Assistance Amount	\$75,000
13. Program Income	\$0

## Administrative Conditions

1. The recipient will comply with the following: (1) all applicable provisions of 40 CFR Parts 29, 31, 34, and 35 (if applicable), OMB Circulars A-87, A-102, and A-133 and (2) any terms and conditions set forth in this assistance agreement or any assistance agreement.
2. The Project Work Plan is the work plan for this award. Performance will be evaluated consistent with the Policy on Performance Based Assistance dated May 31, 1985.
3. The recipient agrees to ensure that all requisitions for conference, meeting, convention, or training space funded in whole or in part with Federal funds comply with the Hotel and Motel Fire Safety Act of 1990.
4. Pursuant to EPA Order 1000.25, dated January 24, 1990, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to the Agency. This requirement does not apply to Standard Forms. These forms are printed on recycled paper as available through the General Services Administration.
5. The recipient must submit an annual Financial Status Report within 90 days after the grant year, and must submit a final report within 90 days after the expiration or termination of grant support in accordance with 40 CFR Part 31.41(b).
6. In accordance with OMB Circular A-21, A-87, or A-122, as appropriate, the recipient agrees that it will not use project funds, including the Federal and non-Federal share, to engage in lobbying the Federal Government or in litigation against the United States. The recipient also agrees to provide the information mandated by EPA's annual appropriations acts for fiscal year 2000, 2001 and fiscal year 2002 (PL 106-74, §426, PL 106-377, §424 and PL 107-73, §424 respectively) which require as follows: 'A chief executive officer of any entity receiving funds under this Act shall certify that none of these funds have been used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.' The recipient may satisfy this certification requirement in any reasonable manner. The certification must be submitted to EPA after all grant funds have been expended.
7. In accordance with EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance programs, the recipient agrees to:
  - (a) Accept the applicable FY 1999 or 2000 "fair share" goals negotiated with EPA by the Colorado Department of Public Health and Environment as follows:

	MBE	WBE
Construction	5.6%	3.3%
Supplies	5.2%	3.3%
Services	5.8%	3.2%
Equipment	5.2%	3.3%

If the recipient does not want to rely on the applicable State's MBE/WBE goals, the recipient agrees to submit proposed MBE/WBE goals based on availability of qualified minority and women-owned businesses to do work in the relevant market for construction, services, supplies and equipment. "Fair share" objectives must be submitted to Maurice Velasquez within 30 days of award and approved by EPA no later than 30 days thereafter.

- (b) Ensure to the fullest extent possible that at least the FY1999/2000 "fair share" objective of Federal funds for prime contractors or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged

individuals, women and historically black colleges and universities.

- (c) Include in bid documents "fair share" objectives of 1999/2000 fair share percentage [see a) above] and require all of its prime contractors to include in their bid documents for subcontracts the negotiated fair share percentages.
- (d) Follow the six affirmative steps stated in 40 CFR 30.44(b) 40 CFR 31.36(e), 35.3145(d), or 35.6580, as appropriate.
- (e) For assistance awards for continuing environmental programs and assistance awards with institutions of higher education, hospitals and other non-profit organizations, submit an EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" to the EPA Award Official by October 30 of each year. Other program reports must be submitted to the award official within 30 days of the end of the Federal fiscal quarter (January 30, April, July 30 and October 30).
- (f) In the event race and/or gender neutral efforts prove to be inadequate to achieve a fair share objective for MBE/WBEs, the recipient agrees to notify EPA in advance of any race and/or gender conscious action it plans to take to more closely achieve the fair share objective.

### **Programmatic Conditions**

1. The recipient must submit an annual Performance/Progress Report within 90 days after the reporting period and a final report within 90 days after the expiration or termination of grant support in accordance with 40 CFR Part 31.40 (b) (2).