

LUM04WHT

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **CONTRACT**

NAME OF CONTRACTOR: JOSEPH A. LUMBARDY TRUST AND THE
MOZELLE LUMBARDY TRUST, UNAWEEP LAND, LLC, CUTTING FRUIT
TRACTS HOMEOWNERS ASSOCIATION, INC. AND CALLOW CREEK
HOMEOWNERS ASSOCIATION, INC.

SUBJECT/PROJECT: WHITEWATER CREEK IRRIGATION RIGHTS,
WHITEWATER CREEK NON-IRRIGATION RIGHTS AND WHITEWATER CREEK
WATER RIGHTS

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 2004

EXPIRATION DATE: NONE - PERPETUAL TERM - EFFECTIVE ON
THE LAST DATE IT IS SIGNED BY ANY OF THE PARTIES, AND SHALL
REMAIN EFFECTIVE IN PERPETUITY

DESTRUCTION DATE: NONE

PUBLIC WORKS
& UTILITIES

February 11, 2004

Ms. Stephanie Tuin
City Clerk
250 5th Street
Grand Junction, CO 81501

RE: AGREEMENT by and between the JOSEPH A. LUMBARDY TRUST and the MOZELLE LUMBARDY TRUST, UNAWEEP LAND, LLC, CUTTING FRUIT TRACTS HOMEOWNERS ASSOCIATION, INC, and CALLOW CREEK HOMEOWNERS ASSOCIATION, INC. and the CITY OF GRAND JUNCTION, COLORADO

Dear Stephanie:

Enclosed is a fully executed agreement regarding water rights referenced above.

Copies of this agreement have been distributed according to the list indicated below.

Should you have questions, please contact me.

Sincerely,



Greg Trainor
Utility Manager

Enclosure

CC: Estate of Al Lumbardy c/o Mozelle Lumbardy; Don Lumbardy; Oscar Massey; Cutting Fruit Tracts Homeowners Association c/o Rick Nelson; Callow Creek Homeowners Association, Inc. c/o Kenneth Snyder; Terry Franklin, City of Grand Junction; Mark Hermunstad, Attorney at Law; Rich Livingston, Attorney at Law

AGREEMENT

This AGREEMENT is entered into effective ~~July 23~~ ^{January 4}, 200~~3~~, by and between the **JOSEPH A. LUMBARDY TRUST and the MOZELLE LUMBARDY TRUST** ("Lumbardys"), **UNAWEEP LAND, LLC** ("Massey"), **CUTTING FRUIT TRACTS HOMEOWNERS ASSOCIATION, INC. and CALLOW CREEK HOMEOWNERS ASSOCIATION, INC.** (collectively, the "Homeowners Associations"), and the **CITY OF GRAND JUNCTION, COLORADO** (the "City").

RECITALS

A. Each of the parties to this Agreement owns or administers real property located in the Whitewater Creek basin. The City owns real property that is highest on Whitewater Creek, which property is described on Exhibit A, attached hereto and incorporated herein by reference (the "City Property"). The Lumbardys own property (the "Lumbardy Property") located below the City Property. The Lumbardy Property is described on Exhibit B, attached hereto and incorporated herein by reference. Massey owns property (the "Massey Property") located below the Lumbardy Property. The Massey Property is described on Exhibit C, attached hereto and incorporated herein by reference. The Homeowners Associations were created with respect to subdivisions (the "Subdivisions") located below the Massey Property. The Subdivisions are described on Exhibit D, attached hereto and incorporated herein by reference.

B. The parties to this Agreement own and/or use most of the adjudicated water rights whose source is Whitewater Creek or its tributaries. The parties' water rights that are adjudicated for irrigation purposes are listed in order of priority on Exhibit E, attached hereto and incorporated herein by reference. The water rights listed on Exhibit E may be referred to herein as the "Whitewater Creek Irrigation Rights." The City, Massey and the Lumbardys also own several water rights that are adjudicated for stockwatering and other purposes. Three of these water rights are listed in order of priority on Exhibit F, attached hereto and incorporated herein by reference. The water rights listed on Exhibit F may be referred to herein as the "Whitewater Creek Non-Irrigation Rights." All of the water rights listed on Exhibits E and F may be referred to herein as the "Whitewater Creek Water Rights." When individual water rights are discussed in this Agreement, they may be referred to by their water rights numbers as shown on Exhibits E and F.

C. Certain disputes have arisen between Lumbardy, Massey and the Homeowners Associations concerning the ownership and use of the Whitewater Creek Water Rights.

D. The parties desire to resolve their disputes on the terms set forth in this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Perpetual Term. This Agreement shall be effective on the last date it is signed by any of the parties, and shall remain effective in perpetuity.

2. Use of Whitewater Creek Irrigation Rights.

(a) As shown on Exhibit E, the Lumbardys, Massey, and the Homeowners Associations own various Whitewater Creek Irrigation Rights adjudicated to the Brandon Ditch (Water Right Nos. 2, 10, 13, and 15), the River View Ditch (Water Right No. 5), the Shropshire Ditch (Water Right No. 7), and the Ira Vincent Ditch (Water Right Nos. 11, 14, and 16). These water rights are all decreed for irrigation purposes and divert from various places on Whitewater Creek and/or its tributaries. The parties agree that water under Water Right Nos. 2, 5, 7, 10, 11, 13, 14, 15, and 16 will be diverted and used by the Lumbardys, and Massey, as hereafter set forth in this Paragraph 2, regardless of the adjudicated priority of such rights. The provisions of this Paragraph 2 only apply during the irrigation season of each year.

(b) Water under the senior water right adjudicated to the Brandon Ditch (Water Right No. 2) is diverted from Whitewater Creek and transported through a natural draw called Lockhart Draw. At times when water is available under the other Whitewater Creek Irrigation Rights owned by the Lumbardys or Massey (Water Right Nos. 5, 7, 10, 11, 13, 14, 15 and 16), such water may also be transported through Lockhart Draw. Additional water arises in and flows in Lockhart Draw. A splitter box (the "Splitter Box") is located in Lockhart Draw near the eastern boundary of the Lumbardy Property. The latitude-longitude and GPS coordinates of the Splitter Box are as follows: N39°00'15.3" W108°21'29.5"; GPS 12S 0728769 UTM 4320360. The Splitter Box divides the water transported through and arising in Lockhart Draw into two equal portions. One portion goes to the Lumbardy Property, where it is utilized for agricultural purposes. The other portion continues from the Splitter Box to Whitewater Creek, for use by Massey. The Lumbardys have a headgate located at the downstream end of their branch of the Splitter Box (the "Lumbardy Headgate"), and they also have a measuring weir (the "Lumbardy Weir") in the ditch a short distance down-ditch from the Lumbardy Headgate.

(c) The parties agree that during the irrigation season of each year, water transported through and arising in Lockhart Draw will be divided between Lumbardys and Massey as follows:

i. During the spring run-off period of each irrigation season, water diverted under or available to any of the Whitewater Creek Irrigation Rights owned by the Lumbardys or Massey (Water Right Nos. 2, 5, 7, 10, 11, 13, 14, 15 and 16) and transported through Lockhart Draw, and the additional water that arises in Lockhart Draw, will be divided at the Splitter Box, so that one-half of such water shall flow to the Lumbardy Property for use thereon and one-half shall be allowed to continue to flow down to Whitewater Creek for use on the Massey Property. For

purposes of this agreement the spring run-off period shall be deemed to have ended as of the date each year that the City begins administration of the Brandon Ditch headgate.

ii. After the spring run-off is over, water diverted under the senior water right adjudicated to the Brandon Ditch (Water Right No. 2) and transported through Lockhart Draw, and the additional water that arises in Lockhart Draw, will be divided at the Splitter Box, so that one-half of such water shall flow to the Lumbarly Property for use thereon and one-half shall be allowed to continue to flow down to Whitewater Creek for use on the Massey Property.

iii. After the spring run-off is over, water available to any of the other Whitewater Creek Irrigation Rights owned by the Lumbarlys or Massey (Water Right Nos. 5, 7, 10, 11, 13, 14, 15 and 16), above and beyond the amounts specified in Paragraph 2.c.ii, above, shall not be split at the Splitter Box, but shall go to satisfy such other water rights in order of priority. The party claiming water under one of these other Whitewater Creek Irrigation Rights after spring run-off is over shall be responsible for installing any necessary headgates, weirs and other measuring devices in Lockhart Draw or other appropriate locations to properly measure the water claimed by that party.

(d) The Lumbarlys and Massey both use Lockhart Draw to transport water released from upstream reservoirs for their benefit. Any such reservoir water transported through Lockhart draw shall not be split between the Lumbarlys and Massey pursuant to Paragraph 2.c., above, but shall be allowed to flow to the party for whom the release was made.

(e) The City owns a pipeline known as the Purdy Mesa Flow Line, which is used to transport water to the City's water treatment plant. The Purdy Mesa Flow Line runs through the Callow Creek Estates and Cutting Fruit Tract Subdivisions. The City shall, at its cost and expense, on or before March 15, 2004, install three taps on the Purdy Mesa Flow Line at locations mutually acceptable to the City and both Homeowners Associations ("HOA"). Callow Creek Estates Homeowners Association shall receive one (1) tap and Cutting Fruit Tract Homeowners Association shall receive two (2) taps. Each Homeowners Association shall be entitled to the delivery of water from the Purdy Mesa Flow Line from April 1 to October 31 of each year. Each Homeowners Association shall be responsible for installing, at their cost and expense, such facilities as are necessary to transport water from the taps provided by the City on the Flow Line to the place(s) of use in the Subdivisions. The Homeowners Associations shall be entitled to the delivery of water from the Purdy Mesa Flow Line, at no charge, from April 1 to October 31 of each year up to $\frac{1}{2}$ cfs \pm for a total of 16,295,000 gallons each per irrigation year. If either Homeowners Association needs additional water during such times, it shall be entitled to purchase water from the City, for delivery from the Flow Line, at the City's then-existing "cemetery water rate" (currently \$0.60 per thousand gallons).

The facilities necessary to transport water from the taps to the place(s) of use will have backflow prevention installed to the satisfaction of the City.

Once installed by each Homeowners Association, the water transport facility from the City meters at the taps on the Purdy Mesa Flowline to the place(s) of use in the Subdivisions will be maintained by each Homeowners Association.

Water supplied under this Agreement, from April 1 to October 31, is untreated and does not meet the drinking water standards as defined by the Safe Drinking Water Act and the Colorado Primary Drinking Water Regulations. As such, it is intended for outside watering uses only and not for providing drinking water for humans. Violation of this provision, the evidence of which would be the connection of these facilities, either directly or indirectly, to homes, residences, or to ponds and cisterns designed for storing and transporting water, either directly or indirectly, for human drinking water, or other in home purposes, will result in the immediate, unnoticed, disconnection of the taps by the City.

Prior to any disconnection of a tap by the City of Grand Junction, the applicable HOA will be given the opportunity to correct the offending condition. To that end, the applicable HOA will give written notice to any member or non-member who has misused the irrigation water. Simultaneously, such HOA will give notice to the City of Grand Junction of the alleged misuse. Any homeowner found in violation of the irrigation water provided for in this Agreement will have his or her connection to the irrigation water disconnected with proof of the disconnection given to the City of Grand Junction. Any process that is provided prior to a disconnection shall be in accordance with the Callow Creek Homeowners Association CC&R's.

Upon execution hereof, the Homeowners Associations shall transfer and assign to Massey all right, title and interest they have in and to Whitewater Creek Irrigation Rights.

(f) The current Splitter Box is not level, and it is in need of repair. Massey and the Lumbardys agree that it would be beneficial to redesign and rebuild the Splitter Box so that it works properly for the purposes specified in this Agreement. Massey and the Lumbardys agree that promptly after this Agreement is executed, they will jointly request that the Natural Resources Conservation Service ("NRCS") design an appropriate splitter box. Massey and the Lumbardys shall thereafter install the new Splitter Box in accordance with the plans developed by the NRCS. Massey and the Lumbardys each will bear one-half of the costs of designing and installing the new Splitter Box. Massey and the Lumbardys agree that the new Splitter Box shall be installed at a time mutually agreed upon. All costs of maintaining, repairing or replacing the Splitter Box in the future shall be shared one-half by Massey and one-half by the Lumbardys. The parties hereto will cooperate with the NRCS and use their best efforts to have the Splitter Box designed to include a measuring device to address the distribution of the Whitewater Creek Irrigation Rights after spring run-off in accordance with this Agreement.

(g) The Lumbardys shall maintain the Lumbardy Headgate and the Lumbardy Weir in good and operable condition, at their cost and expense. Any other headgates, weirs or other

measuring devices installed by any party pursuant to the terms of this Agreement shall be maintained in good and operable condition, at the cost and expense of the party who installed them.

(h) The parties to this Agreement agree that they will not place an administrative call on Whitewater Creek utilizing any of the water rights identified on Exhibit E to the extent that such call would defeat or interfere with the equal division of the Whitewater Creek Irrigation Rights and the gain from Lockhart Draw between Lombardy and Massey as described in Paragraphs 2(c)(i) and 2(c)(ii), above.

3. Use of Whitewater Creek Non-Irrigation Rights.

(a) The provisions of this Paragraph 3 only apply during the non-irrigation season of each year.

(b) Lumbardys agree to subordinate the Brandon Ditch (Lumbardy) water right (Water Right No. 20 on Exhibit F) to the City's Brandon Ditch (GJ) water right (Water Right No. 22 on Exhibit F), on the following terms and conditions:

i. The City shall purchase and install five (5) stock water tanks on the Lumbardy Property. The tanks shall be of a size and type approved by the Lumbardys, and shall be in locations approved by the Lumbardys.

ii. The City intends to construct a new pipeline (the "Somerville Diversion Pipeline") from the City Property to its existing Kannah Creek Flow Line in the near future. When it does so, it shall construct a pipeline from the Somerville Diversion Pipeline to the stock water tanks on the Lumbardy Property, in a location approved by the Lumbardys. The cost of installing the pipeline from the Somerville Diversion Pipeline to the stock water tanks on the Lumbardy Property shall be paid by the City. This pipeline to the above-referenced stock water tanks will have backflow prevention installed to the satisfaction of the City. Once installed, the pipeline from the City meter at the tap on the Somerville Diversion Pipeline to the stock tanks will be maintained by Lumbardy.

iii. The City shall provide water from the Somerville Diversion Pipeline, without charge, to fill the stock water tanks on the Lumbardy Property and to keep them full during the non-irrigation season. The stock water tanks and the water in those tanks shall be used by the Lumbardys to provide water to livestock kept on their property, and for no other purpose. Water supplied under this agreement, during the non-irrigation season, is untreated and does not meet the drinking water standards as defined by the Safe Drinking Water Act and the Colorado Primary Drinking Water Regulations. As such, it is intended for the watering of livestock only and not for providing drinking water for humans. Violation of this provision, the evidence of which would be the connection of these stock tap service lines to homes, residences, or to cisterns designed for

storing water for domestic drinking water purposes, will result in immediate, unnoticed, disconnection of the taps by the City.

iv. The subordination of the Brandon Ditch (Lumbardy) water right (Water Right No. 20) to the City's Brandon Ditch (GJ) water right (Water Right No. 22) shall not be effective unless and until the City complies with the requirements of Paragraphs 3.b.i., 3.b.ii., and 3.b.iii., above. Upon compliance with such requirements, Water Right No. 22 shall be administered as being senior in priority to Water Right No. 20, provided, however, that if the City should ever fail to fill or refill the stock water tanks as required by Paragraph 3.b.iii., above, the subordination shall be suspended and ineffective for the period in which the City fails to meet such obligations.

(c) Massey agrees to subordinate the Brandon Ditch (Massey) water right (Water Right No. 21 on Exhibit F) to the City's Brandon Ditch (GJ) water right (Water Right No. 22 on Exhibit F), on the following terms and conditions:

i. The City shall purchase and install 7 stock water tanks on the Massey Property. The tanks shall be of a size approved by Massey, and shall be in locations approved by Massey.

ii. The City shall construct a pipeline from either the Kannah Creek Flow Line or the Somerville Diversion Pipeline to the stock water tanks on the Massey Property, in a location approved by Massey. The cost of installing the pipeline from the Kannah Creek Flow Line or the Somerville Diversion Pipeline to the stock water tanks on the Massey Property shall be paid by the City. This pipeline to the above-referenced stock water tanks will have backflow prevention installed to the satisfaction of the City. Once installed, the pipeline from the City meter at the tap on the Somerville Diversion Pipeline to the stock tanks will be maintained by Massey.

iii. The City shall provide water from the Kannah Creek Flow Line or the Somerville Diversion Pipeline, without charge, to fill the stock water tanks on the Massey Property and to keep them full during the non-irrigation season. The stock water tanks and the water in those tanks shall be used by Massey to provide water to livestock kept on his property, and for no other purpose. Water supplied under this agreement, during the non-irrigation season, is untreated and does not meet the drinking water standards as defined by the Safe Drinking Water Act and the Colorado Primary Drinking Water Regulations. As such, it is intended for the watering of livestock only and not for providing drinking water for humans. Violation of this provision, the evidence of which would be the connection of these stock tap service lines to homes, residences, or to cisterns designed for storing water for domestic drinking water purposes, will result in immediate, unnoticed, disconnection of the taps by the City.

iv. The subordination of the Brandon Ditch (Massey) water right (Water Right No. 21) to the City's Brandon Ditch (GJ) water right (Water Right No. 22) shall not be

effective unless and until the City complies with the requirements of Paragraphs 3.c.i., 3.c.ii., and 3.c.iii., above. Upon compliance with such requirements, Water Right No. 22 shall be administered as being senior in priority to Water Right No. 21, provided, however, that if the City should ever fail to fill or refill the stock water tanks as required by Paragraph 3.c.iii., above, the subordination shall be suspended and ineffective for the period in which the City fails to meet such obligations.

(d) Until the subordinations provided in Paragraphs 3.b. and 3.c. become effective, Water Right No. 20 and Water Right No. 21 shall be administered in their decreed priorities, senior to the priority of Water Right No. 22.

(e) The subordinations provided in Paragraphs 3.b. and 3.c. shall only apply when Water Right No. 22 is diverted at its currently-decreed point of diversion. The subordinations shall terminate if the point of diversion of Water Right No. 22 is moved, unless the City, Massey, and Lumbardy agree in writing that the subordination applies at the new point of diversion.

(f) Nothing in this Paragraph 3 shall prevent Massey or the Lumbardys from diverting such water as may be present in Lockhart Draw, Whitewater Creek or other water sources and using that water for stock watering or other beneficial uses, so long as they do not place a call against Water Right No. 22 when the subordinations set forth above are in effect. Any such water that flows or arises in Lockhart Draw above the Splitter Box shall be divided at the Splitter Box so that one-half flows to the Lumbardys and one-half flows down to Whitewater Creek for use by Massey.

4. Case No. 98CW178.

(a) On December 10, 1998, Oscar Massey and Janice Massey filed an Application for Change of Water Right in Case No. 98CW178, District Court, Water Division 4 (the "Massey Change Case"). The Application in the Massey Change Case sought to change the point of diversion for three separate priorities decreed to the Ira Vincent Ditch (Water Right Nos. 11, 14, and 16 on Exhibit E) in the total amount of 2.65 c.f.s. from a point on Lockhart Draw to a point on Whitewater Creek. A decree was subsequently entered, granting the Application. Thereafter, the Lumbardys filed a petition for a reconsideration of the decree, and the Court has entered an order reopening the decree. The Lumbardys and Oscar and Janice Massey (by their signatures at the end of this Agreement) agree to the following resolution of the issues raised by the Lumbardys' petition for reconsideration in the Massey Change Case: The Lumbardys and Oscar and Janice Massey agree that Water Right No. 14 is owned by the Lumbardys. Accordingly, the decree in the Massey Change Case shall be amended to state that the change of water rights is denied with respect to Water Right No. 14, and Water Right No. 14 shall be deleted from the provisions of the decree. The decree in the Massey Change Case shall be further amended to state that the change of water rights is granted with respect to Water Right Nos. 11 and 16. The Lumbardys and Oscar and Janice Massey shall file a joint stipulation with the court in the Massey Change Case, requesting the court to amend the decree to implement the above agreement.

(b) Massey shall have the right to seek future changes to the point of diversion of the Shropshire Ditch Water Right (Water Right No. 7 on Exhibit E) to the point on Whitewater Creek claimed for the Ira Vincent Ditch in the Massey Change Case. The City and Lombardy will not object to such change in point of diversion.

5. Contact Persons. Each of the parties to this Agreement shall appoint one person to be the contact person for that party for matters arising under this Agreement. Any party may change their contact person by giving notice of the change to the other parties. The contact persons initially appointed are the following:

<u>Party</u>	<u>Contact Person</u>
Lumbardys	Don Lombardy
Massey	Oscar Massey
Cutting Fruit Tracts Homeowners Association	*** <i>Max M. Freed</i>
Callow Creek Homeowners Association	Charlotte Stubbs
City of Grand Junction	Greg Trainor

6. Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be personally delivered with receipt taken therefor, or sent by certified mail, postage prepaid and return receipt requested, directed to the party intended at the address set forth below, or at such other addresses as may be designated by notice given to the other parties in the manner set forth above, and shall be effective upon receipt (if personally delivered) or three business days after mailing (if mailed):

TO LUMBARDYS:	*** <i>2500 Whitewater Creek Road Whitewater, CO 81527</i>
TO MASSEY:	14011 Hwy 141 Whitewater, CO 81527
TO CITY:	250 N. 5 th Street Grand Junction, CO 81501
TO HOMEOWNERS ASSOCIATIONS:	P. O. Box 135 Whitewater, CO 81527

7. Other Provisions.

(a) For purposes of this Agreement, the "irrigation season" shall be considered to begin on the first day in the spring of a year that any party to this Agreement can reasonably begin to irrigate that party's property for the production of crops, and shall continue to the last day in the fall of that year that irrigation water can reasonably be applied to any party's property for the production of crops. The irrigation season in the area of the parties' properties generally runs from approximately April 1 to October 31 of each year, although the parties recognize that the irrigation season can and will vary annually based on climatic variations and other factors. As used herein, the "non-irrigation season" is that period of time each year that is outside of the irrigation season. If a dispute arises concerning whether the irrigation season has commenced or ended, or whether the spring runoff has concluded, the parties shall request an opinion from the Division Engineer and shall abide by any opinion given by the Division Engineer.

(b) As used in this Agreement, the term "Division Engineer" shall mean the Division Engineer for Water Division 4, appointed pursuant to Section 37-92-202, C.R.S. If the statutory scheme for administration of water rights should change in the future, the term "Division Engineer" shall be deemed to refer to the state official responsible for the administration of water rights in the Whitewater Creek basin of Mesa County, Colorado. The parties hereto agree this Agreement may be administered by the Division Engineer.

(c) If any party seeks to change any of the Whitewater Creek Water Rights, other than a change in point of diversion of the Shropshire Ditch as discussed in paragraph 4(b) above, any other party may object to such change if such party reasonably believes that the change will adversely affect such party's rights under this Agreement or defeat or interfere with any of the provisions of this Agreement. The parties agree that the Whitewater Creek Water Rights cannot be changed unless the changes can be made without adversely affecting any party's rights under this Agreement and without defeating or interfering with any of the provisions of this Agreement. Any court considering such a change shall be entitled to impose such terms and conditions as are necessary to prevent injury to the other parties to this Agreement and to their water rights.

(d) If any party defaults in its performance under this Agreement, or if it is necessary for any party to take any action to enforce the terms of this Agreement, the prevailing party or parties shall be entitled to recover from the other party or parties all reasonable costs incurred by the prevailing party, including without limitation court costs and attorneys' fees, regardless of whether actual litigation or court proceedings are involved.

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

(f) All provisions of this Agreement shall apply to and bind the parties hereto and their agents, heirs, successors and assigns.

(g) This Agreement was produced as a result of negotiations between the parties and should not be construed against any party as the drafter of this Agreement.

(h) This Agreement supersedes any and all prior agreements, written and oral, between the parties and constitutes the complete and entire agreement of the parties.

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

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

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

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

WHEREFORE, the parties have executed this Agreement as of the date set forth above.

“LUMBARDYS”

THE JOSEPH A. LUMBARDY TRUST and the
MOZELLE LUMBARDY TRUST

By: Mozelle Lumbardy Attorney in fact
Joseph A. Lumbardy, Trustee
Date: Jan. 16, 2004

By: Mozelle Lumbardy
Mozelle Lumbardy, Trustee
Date: Jan. 16, 2004

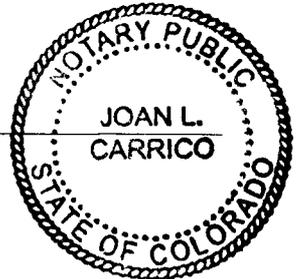
By: Donald A. Lumbardy
Donald A. Lumbardy, Trustee
Date: Jan 16, 2004

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 8th day of December, 2003, by Unawep Land, LLC, by Oscar Massey, Manager.

WITNESS my hand and official seal.
My commission expires:

Joan L Carrico
Notary Public



My Commission Expires 10/24/2006

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

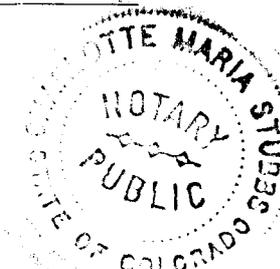
The foregoing instrument was acknowledged before me this 28 day of December, 2003, by Cutting Fruit Tracts Homeowners Association, Inc., by Rick Nelson, its President.

WITNESS my hand and official seal.
My commission expires:

Pat Stull
Notary Public

My Commission Expires 02/18/2007

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

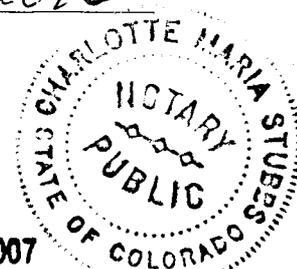


The foregoing instrument was acknowledged before me this 18 day of December, 2003, by Callow Creek Homeowners Association, Inc., by Kenneth W. Snyder, its President.

WITNESS my hand and official seal.
My commission expires:

Charlotte M. Stuess
Notary Public

My Commission Expires 02/18/2007



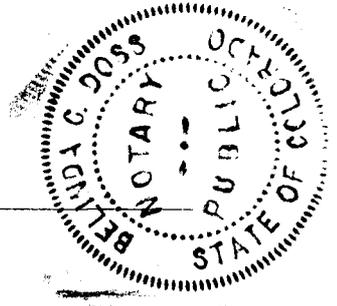
STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 23rd day of January, 2003, by City of Grand Junction, by KELLY ARNOLD, its CITY MANAGER.

WITNESS my hand and official seal.
My commission expires:

My Commission Expires
10/10/2006

Belinda J. Doss
Notary Public



The undersigned, by their signatures below, hereby agree to the provisions of Paragraph 4 of the above agreement.

Oscar Massey
Oscar Massey

Janice Massey
Janice Massey

Date: 1-12, 2003⁴

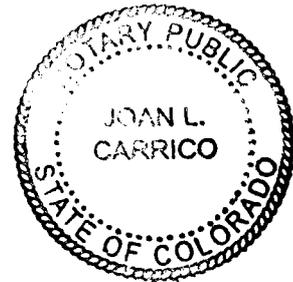
Date: 1-12-04, 2003

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 12th day of January, 2003, by Oscar Massey and Janice Massey.

WITNESS my hand and official seal.
My commission expires:

Joan L. Carrico
Notary Public



My Commission Expires 10/24/2006

EXHIBIT A

Pages 1 through 3

Legal description of property commonly known as Somerville Ranch, owned by the City of Grand Junction, Colorado. Copy of Title Documents – January, 1990.

Pages 4 through 7

Legal description of lands exchanged between the City of Grand Junction and the United States Bureau of Land Management. Portions of land removed from and added to property known as Somerville Ranch. Amendment to Agreement to Initiate A Land Exchange Between City of Grand Junction, Colorado and Bureau of Land Management – December, 1999.

SCHEDULE A—Continued

The land referred to in this policy is situated in the State of Colorado, County of
Mesa, and is described as follows:

PARCEL 1:

Lots 42, 43, 44 and 45 in Whitewater, according to the recorded plat thereof EXCEPT that part conveyed to Department of Highways, State of Colorado in Book 773 at Page 274.

TOWNSHIP 1 SOUTH, RANGE 2 EAST OF THE UTE MERIDIAN

- Section 9: Beginning at the Southwest corner of the E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$,
thence North 0°29' West 3.14 chains,
thence North 76°53' East 3.35 chains,
thence North 04°17' East 2.85 chains,
thence North 0°34' East 1.60 chains,
thence North 42°04' East 2.24 chains,
thence North 80°46' East 2.43 chains,
thence North 14°43' West 2.06 chains,
thence North 72°12' West 3.43 chains,
thence North 42°04' West 2.34 chains,
thence North 0°15' East 4.32 chains,
thence North 85°36' West 2.09 chains,
thence South 80°29' East to the Northeast corner of
said SE $\frac{1}{4}$ SW $\frac{1}{4}$,
thence South to the Southeast corner of said SE $\frac{1}{4}$ SW $\frac{1}{4}$,
thence West to Beginning.
- Section 10: SE $\frac{1}{4}$ NE $\frac{1}{4}$.
- Section 17: That part of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ lying South of the Orchard
Mesa Canal No. 2, EXCEPT the East 330 feet thereof.
- Section 20: NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.
- Section 28: SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.

TOWNSHIP 2 SOUTH, RANGE 2 EAST OF THE UTE MERIDIAN

- Section 10: S $\frac{1}{2}$ SE $\frac{1}{4}$.
- Section 11: S $\frac{1}{2}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$.

PARCEL 2:TOWNSHIP 2 SOUTH, RANGE 1 EAST OF THE UTE MERIDIAN

- Section 1: NW $\frac{1}{4}$ SW $\frac{1}{4}$.
- Section 12: SW $\frac{1}{4}$ NE $\frac{1}{4}$.

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SCHEDULE A—Continued

TOWNSHIP 1 SOUTH, RANGE 2 EAST OF THE UTE MERIDIAN

- Section 11: The N $\frac{1}{2}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$.
 Section 12: The NW $\frac{1}{4}$ SW $\frac{1}{4}$.
 Section 13: The NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$
 EXCEPT Beginning at the Southeast corner of the N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 13,
 thence South 577 feet,
 thence North 88° West 529 feet,
 thence North 40° West 585 feet,
 thence North 19° West 131 feet,
 thence North 72° East 300 feet,
 thence South 105 feet to the Southwest corner of said N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$,
 thence East 660 feet to Beginning.
- Section 20: The S $\frac{1}{2}$
 EXCEPT the SW $\frac{1}{4}$ SW $\frac{1}{4}$,
 AND EXCEPT the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.
- Section 21: The E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$.
 Section 22: The S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$.
 Section 23: The E $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{3}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$.
 Section 26: The N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$.
 Section 27: ALL
 EXCEPT the NE $\frac{1}{4}$ NE $\frac{1}{4}$,
 AND EXCEPT the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$.
- Section 28: The NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$
 and the S $\frac{1}{2}$,
 EXCEPT the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.
- Section 29: The SE $\frac{1}{4}$ NE $\frac{1}{4}$.
 Section 33: The N $\frac{1}{2}$ NE $\frac{1}{4}$.
 Section 34: ALL,
 EXCEPT the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$.
- Section 35: The S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$.
 Section 36: The SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the SW $\frac{1}{4}$.

TOWNSHIP 2 SOUTH, RANGE 2 EAST OF THE UTE MERIDIAN

- Section 1: The SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$.
 Section 2: The NE $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$.
 Section 4: The S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{3}{4}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.
 Section 8: The NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$.

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SCHEDULE A—Continued

Section 9: The NE $\frac{1}{4}$ SE $\frac{1}{4}$.
 Section 10: The S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$.
 Section 11: The NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$.
 Section 12: The N $\frac{1}{2}$.
 Section 17: The W $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$.

TOWNSHIP 11 SOUTH, RANGE 97 WEST OF THE SIXTH PRINCIPAL MERIDIAN

Section 19: The S $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and Lot 4.
 Section 20: The S $\frac{1}{2}$ SW $\frac{1}{4}$.
 Section 25: The S $\frac{1}{2}$,
 EXCEPT the S $\frac{1}{2}$ SE $\frac{1}{4}$ and $\frac{1}{2}$ of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ lying North and East of a diagonal line running from the Northwest corner to the Southeast corner of said SE $\frac{1}{4}$ SW $\frac{1}{4}$.
 Section 26: The SE $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$.
 Section 27: The W $\frac{1}{2}$ and SE $\frac{1}{4}$.
 Section 28: The S $\frac{1}{2}$.
 Section 29: The N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ and W $\frac{1}{2}$.
 Section 30: The E $\frac{3}{4}$.
 Section 31: The NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$.
 Section 32: The E $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ and W $\frac{1}{2}$.
 Section 33: The N $\frac{1}{2}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$.
 Section 34: ALL.
 Section 35: ALL.

TOWNSHIP 12 SOUTH, RANGE 98 WEST OF THE SIXTH PRINCIPAL MERIDIAN

Section 14: Lots 2 and 3

PARCEL 3

Right to reasonable ingress and egress across all of Section 36, EXCEPT N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ in Township 11 South, Range 97 West of the 6th P.M. to other property owned by Midwest Resources, Inc. and to reasonable access to the reserved water rights as reserved in Quit Claim Deed recorded July 23, 1984 in Book 1502 at page 995.

ALL IN MESA COUNTY, COLORADO

AMENDMENT TO
AGREEMENT TO INITIATE A LAND EXCHANGE BETWEEN
CITY OF GRAND JUNCTION, COLORADO
AND
BUREAU OF LAND MANAGEMENT, GRAND JUNCTION RESOURCE AREA
Serial No. COC-59085

INTRODUCTION:

This AMENDMENT to the Agreement to Initiate a Land Exchange is made this 1st day of DECEMBER, 1999, pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended. This agreement is between the City of Grand Junction, Colorado (Proponent) and the Bureau of Land Management, Grand Junction Resource Area (BLM).

PAGE ONE, INTRODUCTION, PARAGRAPH THREE, is hereby amended to read: In summary, the Proponent would obtain ownership of approximately 448.08 acres of public land located adjacent to existing City property in the Grand Mesa slopes area. The Proponent would convey to the BLM 519.76 acres of land adjoining existing BLM administered lands in the same vicinity. The lands involved in this exchange proposal are described as follows:

<u>Selected Public Lands:</u>	<u>Offered Private Lands:</u>
T. 2 S., R. 2 E. Sec. 1: SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 10: NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 15: W $\frac{1}{2}$ NW $\frac{1}{4}$,	T. 1 S., R. 2 E. Sec. 10: SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 11: N $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 12: NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 13: NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, (Less 10.24 Acres)
T. 12 S., R. 97 W. Sec. 30: Lots 11, 13, 14,	T. 2 S., R. 1 E. Sec. 1: NW $\frac{1}{4}$ SW $\frac{1}{4}$
T. 12 S., R. 98 W. Sec. 12: Lot 13 Sec. 13: Lot 4, Sec. 14: Lot 5, Sec. 25: SE $\frac{1}{4}$ SE $\frac{1}{4}$,	T. 2 S., R. 2 E. Sec. 4: Portion of Lot 3, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$.

PAGE TWO, DESCRIPTION OF LANDS OR INTEREST IN LANDS BEING CONVEYED: The map referenced in this paragraph as "Exhibit A", is replaced with the "Exhibit A" attached to this document.

PAGE TWO, EXCHANGE PROCESSING STEPS, ADD NEW PARAGRAPH SIX: The selected public lands will be conveyed subject to deed restrictions precluding future residential or commercial development, and requiring maintenance of the property in a natural condition. In addition, the exchange will contain provisions to ensure the roads located on the selected public lands in Sec. 1, T. 2 S., R. 2 E., and Secs. 12, 13, and 14, T. 12 S., R. 98 W., and the trail located on the selected public lands in Sec. 10, T. 2 S., R. 2 E., as illustrated on "Exhibit B" (attached), will remain open to public use. These restrictions and provisions shall constitute perpetual covenants running with the land.

PAGE THREE, CLOSING: PARAGRAPH TWO, SENTENCE THREE, Is hereby amended to read: The appraisal indicates the offered City property is valued at \$20,000 more than the selected BLM administered lands.

All other terms and conditions of the original Agreement To Initiate a Land Exchange dated 16 April, 1999 remain as originally written.

IN WITNESS WHEREOF, the parties have executed this agreement in duplicate as of the last date shown below.

PROPOSANTS

BY: Mark Achen

City Manager

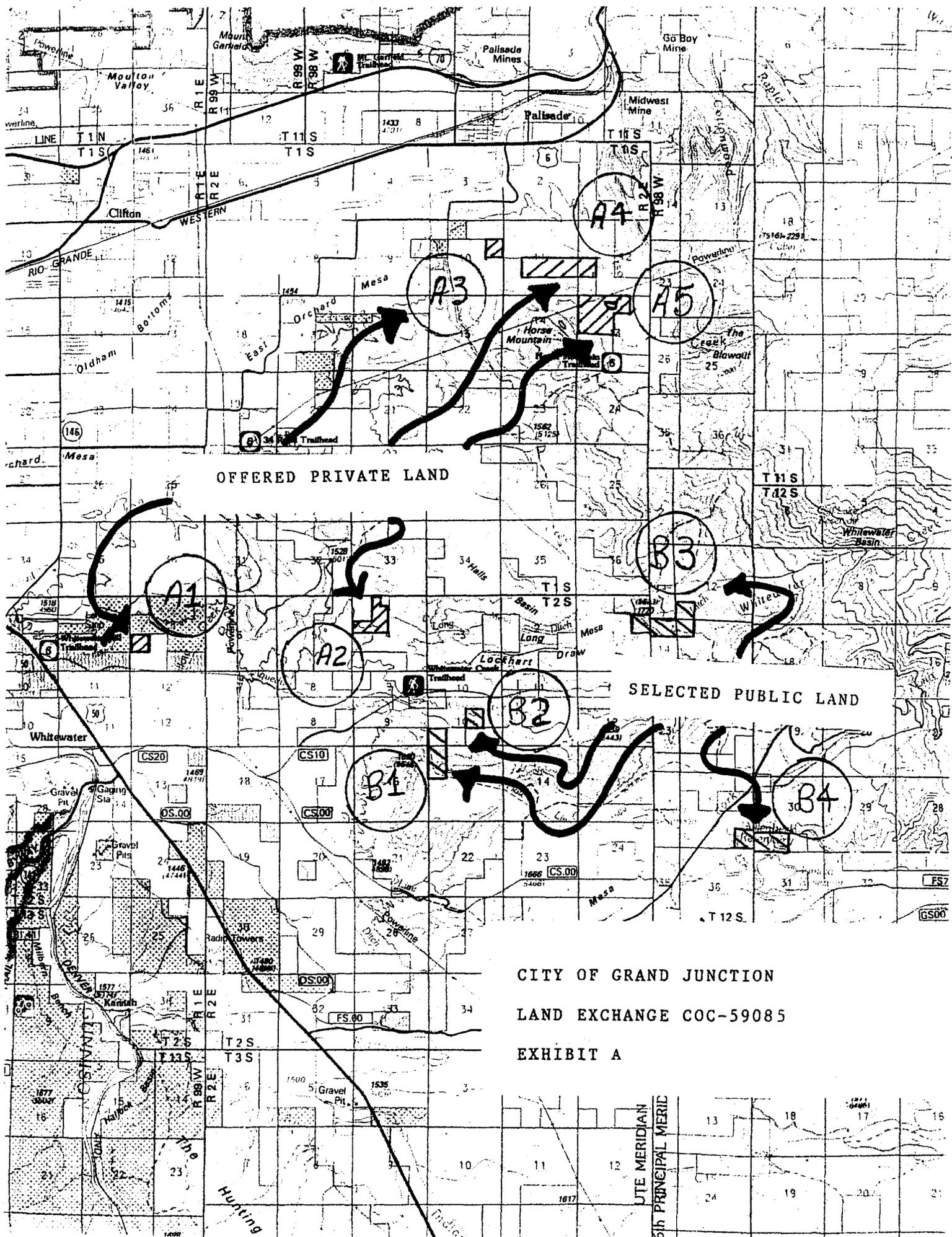
Date: 12/14/99

BUREAU OF LAND MANAGEMENT

BY: Mani M. AKK

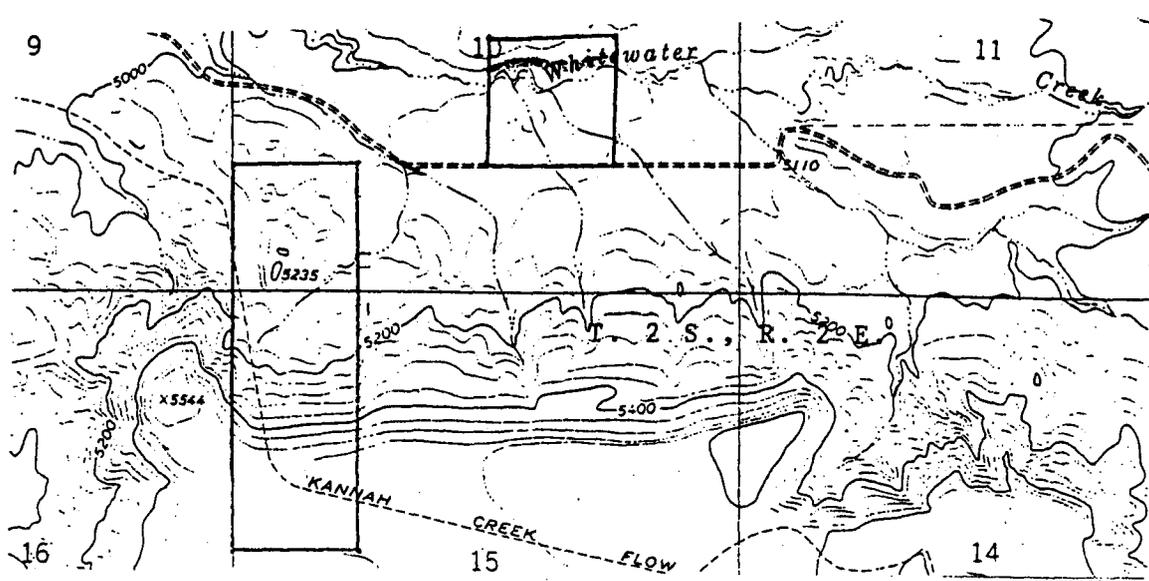
Acting Field Manager

Date: 10/15/99

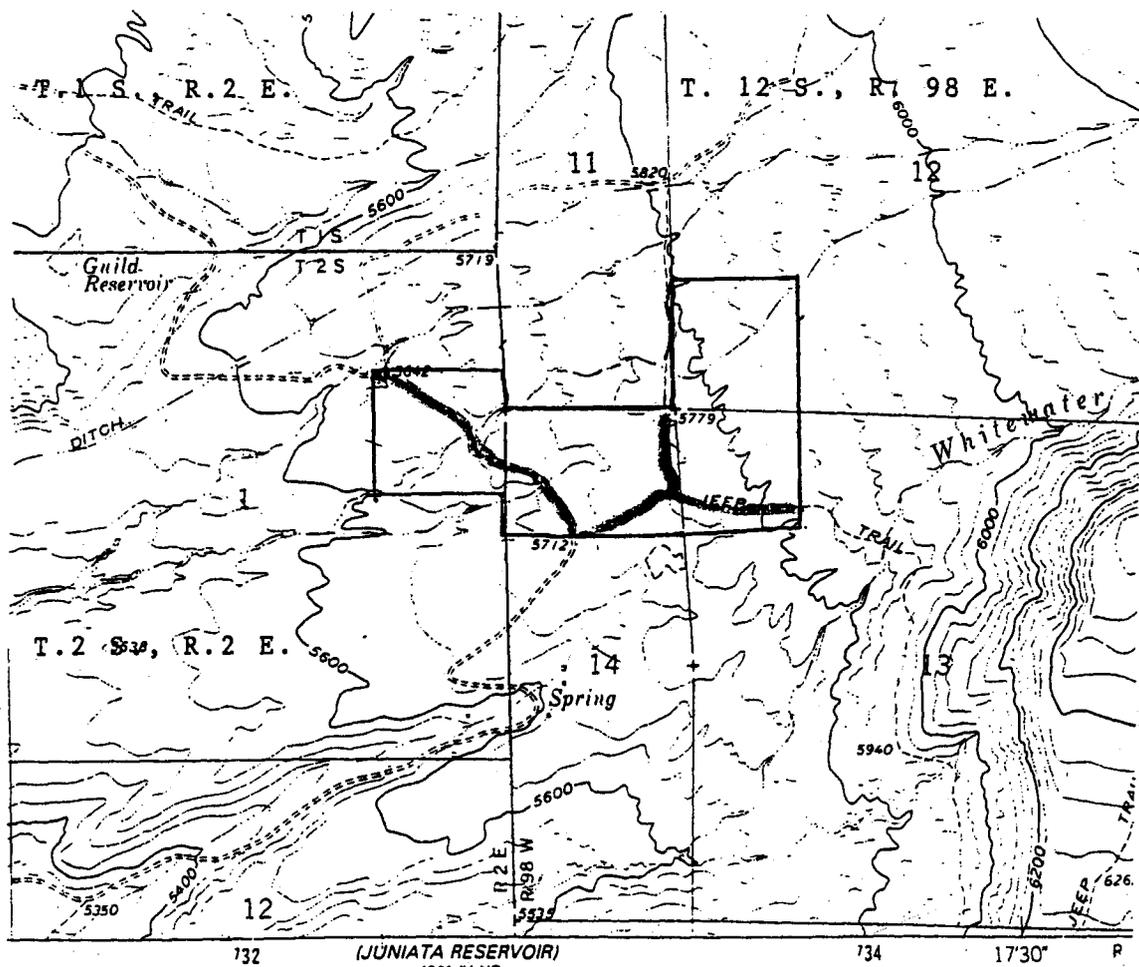


CITY OF GRAND JUNCTION
 LAND EXCHANGE COC-59085
 EXHIBIT A

16th PRINCIPAL MERIDIAN	13	18	17	16
	24	19	20	21

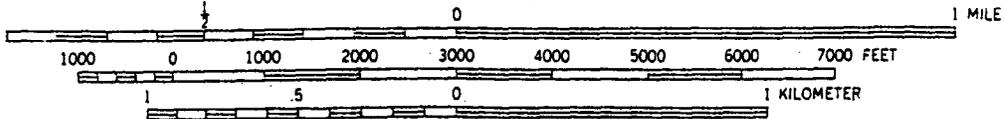


Trail easement in Sec 10, T. 2 S., R. 2 E.



(JUNIATA RESERVOIR)
4381 IV NE

SCALE 1:24000



CONTOUR INTERVAL 40 FEET

DOTTED LINES REPRESENT 20 FOOT CONTOURS

Road easements located in Sec. 1, T. 2 S., R. 2 E.
and Secs. 12, 13, 14, T. 12 S., R. 98 W.

EXHIBIT A page 7 of 7

EXHIBIT "B"
(Lumbardy Property)

SW1/4 NW1/4 and NW1/4 SW1/4 of Section 2; SE1/4 NE1/4 and NE1/4 SE1/4 of Section 3; SW1/4 SE1/4 and SE1/4 SW1/4 of Section 4; the N1/2 NE1/4 and the NE1/4 NW1/4 of Section 9; the N1/2 NW1/4 of Section 10; all in Township 2 South, Range 2 East, Ute Meridian; AND the S1/2 SW1/4 and SW1/4 SE1/4 of Section 3 and SE1/4 SE1/4 of Section 4, all in Township 2 South, Range 2 East, Ute Meridian; TOGETHER with all water and water rights, ditches and ditch rights appurtenant thereto

EXHIBIT "C"

Mesa County, Colorado

Township 2 South, Range 2 East of the Ute Meridian

Section 7: S $\frac{1}{2}$ SE $\frac{1}{4}$

Section 8: W $\frac{1}{2}$ SW $\frac{1}{4}$; NE $\frac{1}{4}$ SW $\frac{1}{4}$

EXCEPT road right of way conveyed to Mesa County by instrument recorded January 28, 1981 in Book 1295 at Page 750.

EXHIBIT "D"

Mesa County, Colorado

Cutting Fruit Tracts Subdivision
Callow Creek Subdivision

EXHIBIT E

WATER RIGHT NO.	WATER RIGHT NAME	AMOUNT	OWNER
1	Ewers Ditch	0.53 c.f.s.	City
2	Brandon Ditch	1.6 c.f.s.	Lumbardys (50%) Massey (50%)
3	Pioneer of Whitewater Ditch	3.55 c.f.s.	City
4	Orchard Mesa Ditch	0.36 c.f.s.	City
5	River View Ditch	0.72 c.f.s.	Massey
6	Gulch Ditch	0.36 c.f.s.	City
7	Shropshire Ditch	3.0 c.f.s.	Massey (1/3) - Homeowners Associations(2/3)
8	Cliff Lake Res.	70.8 AF	City
9	Ada Supply Ditch	3.6 c.f.s.	City
10	Brandon Ditch (1 st Enl.)	2.34 c.f.s.	Massey
11	Ira Vincent Ditch	1.0 c.f.s.	Massey
12	Somerville Res. #1	837 AF	City
13	Brandon Ditch (Pettingill Enl.)	5.0 c.f.s.	Lumbardys
14	Ira Vincent Ditch (Pettingill Enl.)	0.5 c.f.s.	Lumbardys
15	Brandon Ditch	2.5 c.f.s.	Massey
16	Ira Vincent Ditch	1.15 c.f.s.	Massey
17	Brandon Ditch	3.8 c.f.s.	City
18	Brandon Ditch	24.8 c.f.s.	City
19	Somerville Ranch Irr. Sys.	3.0 c.f.s.	City

EXHIBIT F

WATER RIGHT NO.	WATER RIGHT NAME	AMOUNT	OWNER
20	Brandon Ditch (Lumbardy)	1.0 c.f.s.	Lumbardys
21	Brandon Ditch (Massey)	1.0 c.f.s.	Massey
22	Brandon Ditch (GJ)	15.0 c.f.s.	City