

VAN005TH

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF AGENCY OR CONTRACTOR: DEAN VANGUNDY

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: SETTLEMENT AGREEMENT  
DATED MARCH 13, 2000 REGARDING WATERLINE RECPLACEMENT AND RELOCATION ALONG  
THE EAST SIDE OF SOUTH 5<sup>TH</sup> STREET

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 2000

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

## SETTLEMENT AGREEMENT

This Agreement is dated this 13 of March, 2000 between the City of Grand Junction, a home rule municipality, ("City") and Dean VanGundy ("VanGundy"), Grand Junction, Colorado.

### Recitals.

VanGundy is an owner of several lots and parcels within the City on which he operates a recycling business (hereinafter the "Property"). As part of the reconstruction of the viaduct for US Highway 50 by the Colorado Department of Transportation, the City caused to be replaced and relocated its water lines along the east side of South 5<sup>th</sup> Street ("City waterline"). The intention was that the City waterline would be entirely located within the public right-of-way. However, a portion of the City waterline was constructed east of the western boundary of one or more of the VanGundy lots and encroaches into the Property without the consent or permission of VanGundy.

In addition, when the City's 1996 water line replacement work was being performed, VanGundy personally observed that the City's contractor permanently disconnected several then functioning water and sewer service lines from several of the VanGundy lots. Such service has been cut off continuously since 1996. The City's records do not reflect such service.

Further, the parties have discussed other land exchanges and the possibility of VanGundy moving his operation to a location acquired by the City so that his property could eventually be redeveloped and perhaps reconveyed. The current City master plan contemplates that uses such as VanGundy's be located in areas other than the south downtown, and not near a major entrance to the City.

Now therefore:

### THE CITY AGREES:

1. To pay VanGundy \$17,000.00 within ten (10) working days of execution hereof.
2. City agrees to give full force, effect and credit to whichever option, as described below herein, is elected by VanGundy.
3. If VanGundy so elects, upon notice, on or before May 1, 2000, the City shall, at no cost to VanGundy, reestablish one ¾" water and one sewer connection to one lot to be named by VanGundy. If, VanGundy does not so elect by May 1, 2000, the City shall pay VanGundy \$3,150, which sum represents the cost of one water and one sewer plant investment fee plus the estimated cost to physically connect the water and sewer service.

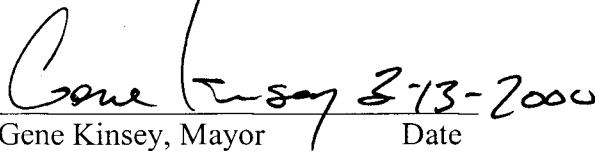
VANGUNDY AGREES:

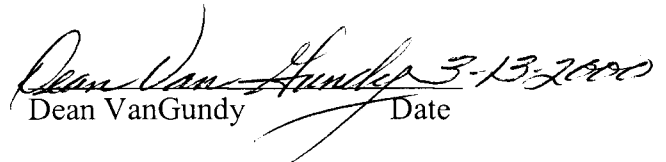
- A. To give notice of option elected on or before May 1, 2000. Said notice shall be certified and directed to the Utility Manager of the City.
- B. By Deed of Easement, the form of which is attached as **Exhibit 2**, VanGundy shall convey from his bundle of rights a perfected right-of-way for the City waterline along a portion of his western boundary. The legal description is as provided on **Exhibit 1**. VanGundy shall execute and deliver this instrument to the City for recording within twenty (20) working days of execution hereof.
- C. VanGundy agrees to hold harmless the City from any claims or cause of action of his heirs, successors or assigns arising out of or relating to above described waterline and/or utility services which occurred or arose prior to the execution hereof. To this end, VanGundy shall execute a Release, the form of which is attached as **Exhibit 3**, within ten (10) working days of execution hereof, releasing the City, its agents, employees, contractor, officers and agents, from all claims by him for damages however stated, known or unknown, related to:
- (1) the installation of, maintenance of and/or use and/or operation of the City waterline described in paragraph B and on Exhibit 1; and
  - (2) the disconnection of any utility services to any of the lots or parcels owned by VanGundy to the date of execution hereof.

PARTIES AGREE:

The rule of construction whereby ambiguities are construed against the drafter does not apply in these circumstances since the parties agree that each has had legal counsel involved in preparing and reviewing this instrument and negotiating the terms hereof.

CITY OF GRAND JUNCTION:

  
Gene Kinsey, Mayor                      Date 3-13-2000

  
Dean VanGundy                      Date 3-13-2000

STATE OF COLORADO    )  
                                  )ss.  
COUNTY OF MESA        )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of March, 2000  
by Gene Kmsey, Mayor

Witness my hand and official seal:

Stephanie Hye  
Notary Public

My Commission expires: 10-10-02

STATE OF COLORADO    )  
                                  )ss.  
COUNTY OF MESA        )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of March, 2000  
by Dean Van Gundy.

Witness my hand and official seal:

Stephanie Hye  
Notary Public

My Commission expires: 10-10-02

EXHIBIT 1  
(Legal Description of Water Line Deed of Easement)

Background. The attached survey by Nichols locates the center of the City water line. The easement granted by Van Gundy to the City should be, under optimal conditions, twenty feet wide, centered on the center of the in-place water line. However, the existing wall/structure which is part of the State's highway viaduct is too close.

Rather than spend the money to generate a metes and bounds description of the easement, the parties agree to describe the easement as follows, which is a burden on the western boundary of Lots 1 through 13, inclusive, Block 2, South 5<sup>th</sup> Street Subdivision, Grand Junction (the Van Gundy property), described as follows:

A twenty foot wide easement centered on the water line described in the Nichols survey which is attached hereto and made a part of this exhibit by this reference;

However, to the extent that the distance from said wall/viaduct is less than ten feet (due east) to the west of the centerline of the water line, the eastern boundary of the easement shall be twenty feet east of the existing wall/viaduct.

## Exhibit 2

### Deed of Easement

#### PERMANENT WATER LINE EASEMENT

This Permanent Non-Exclusive Water Line Easement is granted this \_\_\_ day of March, 2000, by Dean VanGundy ("VanGundy"), whose address is 1018 S. 5<sup>th</sup> Street, Grand Junction, Colorado 81501, to the City of Grand Junction, a Colorado home rule municipal corporation whose legal address is 250 N. 5<sup>th</sup> Street, Grand Junction CO 81501 (the "City") for the purposes set forth below. In consideration of the sum of Seventeen Thousand Dollars (\$17,000.00) and other good and valuable consideration, VanGundy hereby conveys to the City this Non-Exclusive Easement for the purposes set forth below, on, through, over, under and across that certain parcel of real property, which parcel is more particularly described in attached **Exhibit A** (hereinafter the "Easement Property") and is hereby incorporated by this reference. VanGundy expressly acknowledges the receipt and sufficiency of the referenced consideration.

The purpose of this Easement shall include and be limited to the right of the City to use said Easement property for the purposes of installing, constructing, reconstructing, maintaining, enlarging, repairing, using, operating and removing any and all pipes, lines, casings, valves or any other appurtenances or fixtures necessary for the transportation of water.

To have a limited right of entry onto the Easement Property only at such times as deemed necessary by the city for any of the above referenced purposes.

The Easement Property shall remain in the ownership of VanGundy and may be used by VanGundy for any and all lawful purposes not inconsistent with the purposes set forth in this easement, including but not limited to set back, density, open space purposes or installation of non-conflicting subsurface utility lines subject only to the limitation that no permanent structures or improvements shall be placed on or within the easement; provided further:

if in maintaining, repairing, operating or reconstructing the water line and facilities the City trespasses on VanGundy's property outside of the easement, the City shall be obligated to pay VanGundy \$100.00 for each day, or part of a day, that the City so trespasses up to a total of \$500.00 and thereafter if VanGundy delivers by certified mail notice of such trespass and the money penalties to the City Attorney, Manager or Mayor, then City shall be obligated to pay, beginning with the next complete business day after the notice, an additional \$100.00 per day, or part of a day, of any continuing trespass; in no event shall the City be obligated to pay more than \$5,000 pursuant to this provision.

The City agrees that after it has exercised its right to use this Easement in any manner that disturbs the surface of the Easement Property that it will restore said surface to the condition in which it was in prior to the entry upon the Easement Property by the City. The right to use this Easement shall belong to the City, it's officers, agents, employees, contractors and all others acting by or behalf of the City. VanGundy agrees that no building, structure or other above or below ground obstruction that may interfere with the purposes for which this Easement is granted may be placed, erected, installed or permitted upon the Easement Property. This Easement shall be for the benefit of and be binding upon the parties hereto, their respective successors, assigns, heirs, and devisees.

CITY OF GRAND JUNCTION:

Gene Kinsey 3-13-2000  
Gene Kinsey, Mayor Date

Dean VanGundy 3-13-2000  
Dean VanGundy Date

STATE OF COLORADO )  
 )ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of March, 2000 by Dean VanGundy.

Witness my hand and official seal:

Stephanie Nye  
Notary Public

My Commission expires: 10-10-02

STATE OF COLORADO )  
 )ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of March, 2000 by Gene Kinsey, Mayor.

Witness my hand and official seal:

Stephanie Nye  
Notary Public

My Commission expires: 10-10-02

Exhibit 3

MUTUAL RELEASE

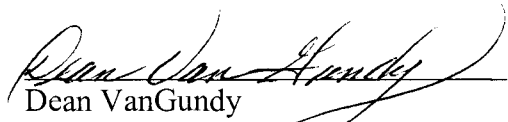
KNOW ALL MEN BY THESE PRESENTS that Dean VanGundy (hereinafter "VanGundy") of 1018 S. 5<sup>th</sup> Street, Grand Junction, CO 81501, for and in the consideration of the sum of Seventeen Thousand Dollars (\$17,000.00) hereby releases and forever discharges the City of Grand Junction, it's City Council, it's officers, officials, it's employees, agents and/or assigns from all manner of action, causes of action, suits, claims and other demands whatsoever in law or equity related to:

- 1) The installation of, maintenance of and/or use and/or operation of the City water line described in paragraph C of the Settlement Agreement herein; and
- 2) The disconnection of any utility service to any of the lots or parcels owned by VanGundy as of the date of execution hereof.

This Release is intended to terminate any further liability of the City of Grand Junction associated with the referenced waterline and utility service disconnection.

This Agreement shall bind the heirs, successors and assigns of VanGundy.

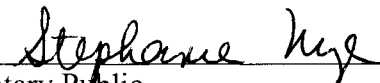
IN WITNESS WHEREOF, VanGundy has executed this Mutual Release this 13<sup>th</sup> day of March, 2000.

  
Dean VanGundy

STATE OF COLORADO    )  
  )ss.  
COUNTY OF MESA        )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of March, 2000 by Dean VanGundy.

Witness my hand and official seal:

  
Notary Public

My Commission expires: 10-10-02