

Resolution No. 148-99

A RESOLUTION ACCEPTING, ADOPTING AND AFFIRMING THE CONTRACT TO BUY AND SELL REAL AND PERSONAL PROPERTY BETWEEN THE CITY OF GRAND JUNCTION AND PURDY MESA LIVESTOCK WATER COMPANY AND AUTHORIZING THE MAYOR TO SIGN THE CONTRACT AS AN OFFICIAL ACT OF THE CITY OF GRAND JUNCTION

Recitals.

The City and the Purdy Mesa Livestock Water Company (PMWLC) have jointly negotiated a contract for the sale by PMLWC and purchase by the City of certain rights and interests in and relating to the Company's water treatment and distribution system. Furthermore, the Agreement provides that PMLWC shall sell to the City certain easements, rights-of-way and other real property.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

That the City Council finds and determines that the attached contract is in the public interest and furthers the interest of the City and that Mayor Gene Kinsey is hereby authorized to sign the contract between the City of Grand Junction and the Purdy Mesa Livestock Water Company.

PASSED and ADOPTED this 1st day of December, 1999.

Attest:

/s/ Stephanie Nye
City Clerk

/s/ Gene Kinsey
President of the Council

CONTRACT TO BUY AND SELL REAL AND PERSONAL PROPERTY

City of Grand Junction and Purdy Mesa Livestock Water Company

This Contract is entered into this _____ day of December, 1999, by and between the City of Grand Junction, a Colorado home rule municipality ("City"), and the Purdy Mesa Livestock Water Company, a Colorado corporation ("Company").

Recitals.

The Company owns and operates a domestic water treatment and distribution system ("Company system") which it uses to supply treated water to its customers in the Kannah Creek and Purdy Mesa areas of Mesa County, near Whitewater, Colorado. The Company and the users it serves desire a long-term, dependable supply of domestic water at a reasonable price. The City desires to provide such domestic water to the area served by the Company, while at the same time preserving and protecting its water supply and being fair to its citizens. The City Council of the City has determined that it is proper and in the public interest for the City to purchase certain assets and property from the Company. The Company has determined that it is beneficial to the Company and its stockholders to sell such assets and property to the City, so that the City will operate the water system described herein.

1. In consideration of the mutual covenants, benefits and burdens provided for, the City hereby agrees to purchase from the Company, and the Company hereby agrees to sell to the City, the easements, rights-of-way and other real property described on Exhibit 1 "**Purdy Property**" along with the improvements, appurtenances and other items of personal property described herein.
2. The purchase price shall be Three Hundred and Thirty-nine Thousand and 00/100 Dollars (\$339,000), payable in the form of "good funds" at closing. The City and the Company each agree to pay their own closing costs, according to local custom.
3. The real and personal property to be purchased by the City and to be sold by the Company is:
 - (a) all buildings and improvements thereon and all fixtures attached thereto, fencing, ponds, underground tanks used for water storage,
 - (b) the existing pipes and pipelines of whatever dimension or material along with all appurtenant facilities and mechanisms such as valves, meters, manholes, and similar equipment (hereinafter such equipment, pipes and facilities shall be referred to as "pipe") currently used to gather and distribute water to and from the existing Company treatment plant (the "treatment plant") to all of the Company's current customers. The City's ordinances relating to the City's existing distribution system define the individual customer or users service duties and ownership as being on the "house" side of the water meter. The parties agree that the meter, and all pipe and facilities which are on the treatment plant side of the meter, are part of the Property; and
 - (c) all necessary and existing rights-of-way, easements and other permission to cross, be on or under real property of any person, including customers of the

Company, which the Company has obtained, or any officer or person has obtained on behalf of the Company.

4. At closing, the Company shall execute and deliver a good and sufficient General Warranty Deed conveying the Property free and clear of:
 - (a) all indebtedness, liens and encumbrances and all taxes, including general property taxes for the year of closing;
 - (b) all liens for special improvements whether assessed or not;
 - (c) all fees and charges for utilities, association dues and water assessments;
 - (d) all claims for salaries, compensation, benefits, worker's compensation benefits or awards due by Company officers, stockholders, employees, or contractors for or relating to work or employment, including efforts of independent contractors;
 - (e) any contractor's, mechanic's or materialmen's claims relating to the Company or improvements to the Purdy System;
 - (f) any covenants, agreements, restrictions, or reversionary provisions not accepted by the City listed as exceptions in the Title Documents as set forth herein; and
 - (g) all tenancies and/or leasehold estates.
5. The City is not purchasing or assuming any liabilities, debts or obligations of the Company and the Property does not include any such liability, debt or obligation necessary to supply water to the customers of the Company.
6. Within ninety (90) days of signing of this contract the Company shall deliver to the City a current list of tap holders ("tap list"). The tap list shall be in the form as shown on the attached Exhibit 2 "**Tap List Form**," and shall identify and describe all taps in use by customers who are shareholders, all taps in use by customers who are not shareholders, and all not-in-use taps (those owned but not in use by either customers or shareholders).
7. (a) The Company represents that each tap on its System only serves one structure on one lot or parcel, with the following four exceptions, which each have one tap serving more than one structure on one parcel or lot, as indicated:

<u>Address</u>	<u>Owner</u>
4614 Highway 50, Whitewater CO 81527	Bud Bradbury: two residences 140 Whiting, Whitewater CO 81527 Rod Whiting: two residences and one show barn
151 Whiting, Whitewater CO 81527 6250 Kannah Creek Rd. 81527	Harriet Whiting: two residences Victor Jensen: one residence, one Whitewater, CO parsonage, one church

- (b) After Closing, the City will allow each of the above taps to continue to serve the identified structures until the lot, parcel or property develops or the boundaries of that portion of the lot, parcel or property, on which the structure is located have changed, whether by subdivision, boundary line change, or other split. For example, at the time of such boundary change the owner must choose which structure shall continue to be served by the existing tap and which structure or parcel must obtain a new tap. Before closing, the Company shall not allow any other taps to serve more than one structure.
- (c) Because the area served by the Purdy system is rural, the parties acknowledge that water from the System will be used for other than in-house domestic uses. Unless restricted on a basis equivalent to City residents (such as during a drought where rationing could be imposed), the parties agree that water from a residential tap can be used for the watering of lawns and gardens and for agricultural uses such as, but not limited to, livestock watering for livestock on the same lot or parcel as a structure for which a building permit is required. In addition, water service may be extended from the residence to accessory buildings and outbuildings on the same parcel or lot for agricultural purposes such as, but not limited to, stock watering. The City may require back-flow prevention devices for such out-house uses, in accordance with City ordinances and regulations.¹
8. The Company represents that the number of "taps" owned but not in use is not more than twenty five (25) which shall be referred to as the "not-in-use" taps. The precise number is likely to be closer to twenty (20). The tap list shall provide current service addresses and the mailing addresses of each owner of a tap on the tap list, and of each customer.
9. (a) Within sixty days of execution of this contract, the Company shall provide the City with maps identifying in detail the Company's best information concerning the location of each tap, meter pit, valve, fire hydrant, location and length of pipeline (including the size, date of installation, repair history, and type of material) which is necessary to deliver water to any Company customer. Along with the real property interests, this system shall be referred to herein as the "Purdy System."
- (b) The Company shall deliver copies of all existing easements and rights-of-way, whether or not recorded, to the City within ninety (90) days of signing of this contract. As soon as practicable thereafter, the City shall notify the Company if the Company needs to obtain new, different or changed easements and/or rights-of-way; shareholders shall be required to execute new easements, as provided herein. The Company shall deliver to the City such legal descriptions, as-built plans and other information as the City may reasonably require to locate and describe all pipe, appurtenances and easements and rights-of-way to be conveyed or transferred to the City from the Company. If the City rejects any easement or right-of-way, it shall indicate the basis for the rejection; the Company shall make such changes to and obtain necessary signatures of such easements and rights-of-way and shall provide copies thereof 30 days before closing.
- (c) Based on the information provided by the Company, at closing the City will provide to the Company the names and addresses of the owner of each not in use "tap" and the names and addresses of the owners of all taps.
- (d) Closing will occur at a time and location mutually agreeable to the parties. Once the City has evaluated the adequacy of the easements, rights-of-way and title of the Company, and the physical condition of the Purdy System and such easements and rights-of-way, the City will inform the Company that the

¹ Backflow prevention protects against those inadvertent situations which could contaminate people's drinking water. For example, if one were filling a pesticide sprayer tank with a hose when there was a water line break, the pesticide contents could be drawn into the drinking water system.

City intends to begin acquisition and construction of a water treatment plant sufficient to deliver treated water to the Purdy customers. The City estimates that it will take six months to acquire and construct such a water treatment plant.

- (e) Notwithstanding any other provision herein, the City will not deliver any water, and closing shall not occur until after the City has received approval from the State of Colorado for treatment facilities and such facilities are operational and provide drinking water in such quantity and quality to meet all applicable state, federal and other laws and requirements.
10. (a) After closing, the owners of each not-in-use tap shall, prior to connection to the Purdy System and at the time of connection to the system, pay to the City a \$1,000 "upgrade fee." The applicant shall also pay any costs and expenses to install required meters, pits, *etc.* At closing, the Company shall deliver to the City reasonable evidence that the Company has previously notified in writing each owner of each not-in-use tap regarding the provisions of this contract, and specifically the provisions of this paragraph.
- (b) For all taps other than the not-in-use taps identified pursuant to this Agreement, after closing and until June 30, 2003, such plant investment fee shall be \$8,500.00. For all taps other than the not-in-use taps, thereafter such plant investment fees may change from time to time, pursuant to City ordinances and resolutions.
- (c) Until closing, other than the not-in-use taps, the Company shall not allow any other "taps" or connections to the Purdy System. The only taps which the Company will allow to be connected to the System prior to Closing shall be the not-in-use taps. The Company shall be entitled to charge an activation fee and installation charges for any not-in-use taps added to the System prior to Closing and shall be entitled to retain all of such revenue, without any payment to the City. The applicant shall also pay any costs and expenses to install required meters, pits, *etc.*
- (d) The City will sell and an owner can purchase a tap under this contract if done only: concurrently with the issuance of a building permit; or for service to a structure (existing as of the date of this agreement) on a parcel created as a result of a subdivision approved by a local land use jurisdiction.
- (e) All taps to the Purdy System shall be non-refundable and non-transferable from the physical location applied for, except that the not-in-use taps will not be allocated to a physical location until initially placed in service.
- (f) Each owner or customer receiving water from the Purdy System shall pay to the City the costs of making the physical connection, on a "time and materials" basis, from the service line to the pipe of the Purdy System, including the extension of any service line or taps, installation of meters and meter pits. No customer or owner of a tap shall be entitled to maintain continued water service from the City unless such person pays to the City any such costs within thirty (30) days of billing. The City may disconnect any such tap and discontinue any service as provided by the City's ordinances relating to water supply to City residents.
- (g) Upon closing, the City's water ordinances, policies and regulations shall apply to the Purdy Mesa System unless specifically otherwise provided for herein.
11. No assignment of any not-in-use tap shall be effective until the City receives the assignor's assignment, in writing, in a form acceptable to the City. No other taps are assignable.
12. (a) Until June 30, 2003, the City agrees to only charge the following monthly rate for all Purdy Customers. This initial rate is set forth as follows:

	Gallons Per Month	Rate
(i)	0 to 3,000	\$27.50 (base rate)
(ii)	3,001 to 10,000	\$ 4.00 per 1,000 gallons, in addition to the base rate
(iii)	10,001 to 20,000	\$ 3.86 per 1,000 gallons, in addition to the base rate and (ii)

(iv)	Over 20,000	\$ 3.74 per 1,000 gallons, in addition to the base rate and (ii) and (iii)
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If the City's rate for its residents increases before closing, each dollar value shown above shall change proportionately.

- (b) On and after July 1, 2003, every person connected to the Purdy System shall pay for water at rates based on the City's operating and capital costs necessary to run the Purdy System. Not by way of limitation, such costs and expenses include personnel costs, legal, engineering, accounting, management, operating expenses, utility costs, costs of capital, debt service on borrowed funds, levels of minimum fund balances, and administrative and managerial charges equal to those charged by the City for its enterprise funds. The Purdy System water rates shall be established based on the operation of the Purdy System as an enterprise, and the assumptions on Exhibit 3, "City/Purdy Financial Plan". The method of calculation is shown on the attached spread sheet, Exhibit 3, however, the parties agree that in case of any dispute regarding rates and costs the City Council's decision shall be final. The standard of review of any such decision shall be identical to that of the City Council determining the rates to be applied to the City's residents.
 - (c) Before closing, the Company will coordinate with the City regarding the final reading of meters. The City shall have no responsibility for collecting any Company bills or accounts receivable. Should customers pay Company bills to the City, the City will forward such payments amounts to the Company at its last known address.
13. The purchase price shall include the real property, assets, physical facilities, records, and contracts described in Exhibit 1 "**Purdy Property**" and any and all other rights appurtenant thereto, including, but not limited to, all easements and other appurtenances
 14. Real and personal property taxes for the year of closing, based on the most recent levy and the most recent assessment, shall be apportioned to the date of closing and shall be considered final settlement. The Company shall be responsible for any sales, use or other taxes that may accrue because of this transaction.
 15. (a) On or before March 1, 2000, the Company shall furnish to the City, at the Company's expense, a current commitment for title insurance policy in an amount equal to the purchase price. The title commitment shall include legible copies of all instruments listed in the schedule of exceptions. The title insurance commitment and legible copies of all listed exceptions are hereinafter referred to as the "Title Documents." The Company shall deliver the title insurance policy to the City at closing and pay the premium thereon.
 - (b) On or before March 1, 2000, the Company shall furnish to the City, at the Company's expense, legible copies of all information and documents in possession of the Company regarding customer accounts and lists, rights-of-way or easement agreements, personal service contracts, notes, lease agreements and/or rental agreements, boundary surveys, geological surveys and studies, engineering studies and environmental surveys and studies, as-builts and other information regarding the location and construction of all portions of the Purdy System and all pipe owned by the Company.
 16. (a) Title shall be merchantable in the Company. Written notice by the City of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of the City and delivered to the Company within forty-five (45) working days after receipt by the City of any Title Document(s) or endorsement(s) adding new exception(s) to the title commitment. If the City does not mail its notice by the dates specified herein, the City shall be deemed to have accepted the condition of title as disclosed by the Title Document(s).
 - (b) If title is not merchantable and written notice of defect(s) is delivered by the City to the Company on or before the dates as provided herein, the Company shall use reasonable efforts to correct said

defect(s) prior to closing. If the Company is unable to correct said defect(s) on or before the date of closing, at the Company's option and upon written notice to the City on or before the date of closing, the date of closing shall be extended for a period not to exceed thirty (30) days for the purposes of correcting said defect(s). If title is not rendered merchantable as provided herein, at the City's option, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder; provided, however, the City may, at its option, waive objections to unsatisfactory title condition(s).

17. (a) The Company and the City agree that the City, its officers, employees, agents, contractors and licensees shall be permitted, commencing on January 1, 2000 and ending on August 1, 2000 or ten (10) days before closing whichever first occurs ("Inspection Period"), to have access to and make inspections of the Purdy System, and all Company facilities and property for reasonable purposes including, but not limited to, conducting boundary surveys, environmental surveys, engineering studies, appraisals, water studies and soils surveys, and for the purposes of jointly developing the Exhibit 1 "**Purdy Property.**"
 - (b) If the City determines that the physical condition of Company facilities and property is unsuitable for use by the City for reasons including, but not limited to, deteriorated physical facilities, leaking underground storage tanks, unstable soils or geology, or the existence of any toxic, hazardous and/or regulated substances or materials which are located on, under or about the property and pipes, or easement or right-of-way, the City shall notify the Company of such defect(s) in writing. The Company shall then have thirty (30) days after receipt of said notice to either reasonably correct said defect(s) or to terminate this Contract. If the Company is unable to correct said defects within said thirty (30) day period but uses reasonable efforts to correct said defects to completion, the City may, at its option, extend the date of closing for a period not to exceed thirty (30) days for the purposes of correcting said defect(s). If the Company is unable or unwilling to correct said defect(s) as provided in this paragraph, at the City's option, this contract shall be void and of no effect and neither party shall have any further rights or obligations under this Contract; provided, however, the City may, at its option, waive objection(s) to unsatisfactory physical conditions and, upon mutual consent of the parties, the parties may adjust the purchase price and the terms of this Contract.
 - (c) If written notice of any unsatisfactory physical condition(s) is not delivered by the City to the Company as set forth above, the physical condition of the Property shall be deemed to be satisfactory; provided, however, that nothing in this Contract shall prejudice or be to the exclusion of any other rights or remedies of the City which the City determines is necessary or appropriate to enforce its rights under any law, code or regulation, either now in effect or hereinafter enacted, in the event any toxic, hazardous and/or regulated substances or materials are discovered, whether or not prior to the closing, on, under or about the Property. The provisions of this paragraph shall survive the closing and transfer of title.
 - (d) The Company, and its directors and officers, by executing and authorizing this agreement represents to the City that it and they have no knowledge of any toxic, hazardous, or regulated substances, or underground storage tanks, on or within any portion of the Purdy System.
18. The Company, its records and facilities shall be conveyed to the City in its present condition, ordinary wear and tear excepted. In the event the Property shall be damaged by fire, flood or other casualty prior to closing, in an amount of not more than ten percent (10%) of the total purchase price, the Company shall be obligated to repair the same before the date of closing. In the event such damage is not or cannot be repaired within said time or if the damages exceed such sum, this contract may be terminated at the option of the City. Should the City elect to carry out this contract despite such damage, the City shall be entitled to all the credit for the insurance proceeds resulting from such damage, not exceeding, however, the total purchase price. Should any fixtures or services fail between the date of this contract and the date of possession or the date of closing, then the Company shall be liable for the repair or replacement of such fixtures or services with a unit of similar size, age and quality, or an equivalent credit. Until closing, the Company shall comply with all provisions of all applicable state and federal drinking water laws and regulations, including the Safe Drinking Water Act.

19. (a) The purpose for testing just before closing is to be certain that the System being transferred to the City complies with the state regulations and is clean and free of total coliform bacteria, fecal coliform bacteria, and *e.coli* bacteria. A microscopic particulate analysis, including *Cryptosporidium* and *Giardia* oocysts, must also be performed on treatment plant effluent. If the sampling shows the presence of bacteria or other microorganisms, the Company will undertake such flushing, chlorination, and resampling procedures as necessary and as required under the Safe Drinking Water Act, and state regulations. Because the City has the personnel and laboratory certifications, the City will assist the Company, if requested, in providing sampling bottles, advice in sampling techniques, processing samples and reporting of results. The City may also offer advice, if requested, in flushing techniques, superchlorination, and resampling if this becomes necessary.
- (b) Within the period between fifteen and ten days before closing, the Company shall deliver water quality samples to the City, from ten locations agreed upon by the City and the Company, throughout the Purdy System for testing. In the event that the City determines, based on analysis of such samples that pathogens are present anywhere in the Purdy System, the Company will flush, chlorinate or take such other measures necessary to remove the pathogens. The City will cooperate in such efforts and in taking of additional samples. The Company may have any such samples tested by the Company's independent laboratory. Closing will be delayed until flushing, chlorination, or other efforts, as confirmed by resampling, proves the absence of bacterial or other adverse conditions or presence.
20. Time is of the essence hereof. If any payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed as herein provided, there shall be the following remedies:
- (a) IF THE CITY IS IN DEFAULT, the Company may treat the Contract as canceled in which case all payments and things of value received hereunder shall be forfeited by the City and retained on behalf of the Company and the Company may sue for specific performance; notwithstanding any other provision hereof, in no event may the Company sue the City for any monetary damages, of whatever form.
- (b) IF THE COMPANY IS IN DEFAULT, the City may treat the Contract as being in full force and effect and shall have the right to specific performance. In addition, if the City, in reliance on this contract, has spent money or incurred expenses or costs, and the Company either fails to close or cannot close, the City has the right to for such damages, costs and expenses, including attorney's fees. In addition, if Company fails to deliver possession at closing or comply with all terms of this contract and the City has relied to its detriment on the terms hereof, in addition to any other remedy the City may have, the Company agrees to pay a daily possession fee of \$25.00 and agrees to pay the City's costs and attorney's fees required to evict the Company. Each of such remedies is cumulative; exercise of one remedy does not preclude exercise the full or partial exercise of another.
- (c) Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this contract, the court may award to the prevailing party all reasonable costs and expenses, including attorneys' fees.
21. After closing, the City shall provide domestic water service to the customers and area now served by the Company. The City may determine that not all of the facilities and property are suitable or desirable for water service purposes and may elect to modify, replace, sell, exchange, divide or otherwise dispose of portions of the facilities or property as it deems necessary and/or appropriate.
22. The City and the Company represent to each other that the sale and purchase of the Company, its facilities and property hereby contemplated was brought about without the

efforts of any brokers or agents and that neither party has dealt with any brokers or agents in connection with this sale and purchase. Each party agrees to defend, indemnify and hold the other harmless from any claim for real estate brokerage commissions or finder's fees asserted by any other party as a result of dealings claimed to have been conducted by the respective party.

23. Neither this agreement nor any other provision hereof shall be deemed to create rights in any third party. There shall be no third party beneficiaries of this agreement.
24. This entire contract and the City's obligation to proceed under its terms is expressly conditioned upon:
 - (a) the consent and approval of the City Council of the City of Grand Junction. If such consent and approval is not obtained on or before December 15, 1999, then this Agreement shall automatically become void and of no effect, and neither party shall have any further rights or obligations under this Agreement.
 - (b) Within ninety (90) days of signing of this contract, the Company shall deliver true copies of all documents evidencing easements and rights-of-way for every portion of the Purdy System, establishing that portions of the Purdy System are subject to recorded easements, rights-of-way or fee title, along with reasonable vehicular access to all portions of the Purdy System. The term "reasonable vehicular access" includes access at least twenty (20) feet wide for purposes of operating, repairing, constructing and reconstructing, rebuilding, replacing and maintaining a water system and the Purdy System. On or before April 1, 2000, the Company shall deliver to the City copies of fully executed and notarized Grants of Easement, in the form attached hereto as Exhibit "Purdy Easement," executed by each shareholder of the Company for the portion of the Company's water pipeline or System which crosses or lies within property owned by the shareholder. At closing, the Company will deliver the originals for recordation.
25. This contract contains the entire agreement between the parties and cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. The parties have had extensive discussions and negotiations. If a term or provision is not written in this contract, it shall not be enforceable.
26. The Company and the City each agree to rely on the advice of their own tax and legal counsel regarding this contract. Any ambiguity shall not be construed against the drafter.
27. This contract shall remain in full force and effect until January 1, 2025.

The City of Grand Junction, Colorado

Mark K. Achen, City Manager

Dated: _____

Purchaser's Address: City of Grand Junction
250 North 5th Street
Grand Junction, Colorado 81501

With a Copy to: City of Grand Junction
Attn: City Attorney

250 North 5th Street
Grand Junction, Colorado 81501

The Purdy Mesa Livestock Water Company:

President

Dated: _____

Seller's Address:
Purdy Mesa Livestock Water Company
3333 Purdy Mesa Road
Whitewater, Colorado 81527

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CONTRACT TO BUY AND SELL REAL AND PERSONAL PROPERTY

City of Grand Junction and Purdy Mesa Livestock Water Company

This Contract is entered into this 14 day of December, 1999, by and between the City of Grand Junction, a Colorado home rule municipality ("City"), and the Purdy Mesa Livestock Water Company, a Colorado corporation ("Company").

Recitals.

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1. In consideration of the mutual covenants, benefits and burdens provided for, the City hereby agrees to purchase from the Company, and the Company hereby agrees to sell to the City, the easements, rights-of-way and other real property described on Exhibit 1 "**Purdy Property**" along with the improvements, appurtenances and other items of personal property described herein.
2. The purchase price shall be Three Hundred and Thirty-nine Thousand and 00/100 Dollars (\$339,000), payable in the form of "good funds" at closing. The City and the Company each agree to pay their own closing costs, according to local custom.
3. The real and personal property to be purchased by the City and to be sold by the Company is:
 - (a) all buildings and improvements thereon and all fixtures attached thereto, fencing, ponds, underground tanks used for water storage,
 - (b) the existing pipes and pipelines of whatever dimension or material along with all appurtenant facilities and mechanisms such as valves, meters, manholes, and similar equipment (hereinafter such equipment, pipes and facilities shall be referred to as "pipe") currently used to gather and distribute water to and from the existing Company treatment plant (the "treatment plant") to all of the Company's current customers. The City's ordinances relating to the City's existing distribution system define the individual customer or users service duties

and ownership as being on the "house" side of the water meter. The parties agree that the meter, and all pipe and facilities which are on the treatment plant side of the meter, are part of the Property; and

- (c) all necessary and existing rights-of-way, easements and other permission to cross, be on or under real property of any person, including customers of the Company, which the Company has obtained, or any officer or person has obtained on behalf of the Company.
4. At closing, the Company shall execute and deliver a good and sufficient General Warranty Deed conveying the Property free and clear of:
- (a) all indebtedness, liens and encumbrances and all taxes, including general property taxes for the year of closing;
 - (b) all liens for special improvements whether assessed or not;
 - (c) all fees and charges for utilities, association dues and water assessments;
 - (d) all claims for salaries, compensation, benefits, worker's compensation benefits or awards due by Company officers, stockholders, employees, or contractors for or relating to work or employment, including efforts of independent contractors;
 - (e) any contractor's, mechanic's or materialmen's claims relating to the Company or improvements to the Purdy System;
 - (f) any covenants, agreements, restrictions, or reversionary provisions not accepted by the City listed as exceptions in the Title Documents as set forth herein; and
 - (g) all tenancies and/or leasehold estates.
5. The City is not purchasing or assuming any liabilities, debts or obligations of the Company and the Property does not include any such liability, debt or obligation necessary to supply water to the customers of the Company.
6. Within ninety (90) days of signing of this contract the Company shall deliver to the City a current list of tap holders ("tap list"). The tap list shall be in the form as shown on the attached Exhibit 2 "**Tap List Form**," and shall identify and describe all taps in use by customers who are shareholders, all taps in use by customers who are not shareholders, and all not-in-use taps (those owned but not in use by either customers or shareholders).

7. (a) The Company represents that each tap on its System only serves one structure on one lot or parcel, with the following four exceptions, which each have one tap serving more than one structure on one parcel or lot, as indicated:

<u>Address</u>	<u>Owner</u>
4614 Highway 50, Whitewater CO 81527	Bud Bradbury: two residences
140 Whiting, Whitewater CO 81527	Rod Whiting: two residences and one show barn
151 Whiting, Whitewater CO 81527	Harriet Whiting: two residences
6250 Kannah Creek Rd. Whitewater, CO 81527	Victor Jensen: one residence, one parsonage, one church

- (b) After Closing, the City will allow each of the above taps to continue to serve the identified structures until the lot, parcel or property develops or the boundaries of that portion of the lot, parcel or property, on which the structure is located have changed, whether by subdivision, boundary line change, or other split. For example, at the time of such boundary change the owner must choose which structure shall continue to be served by the existing tap and which structure or parcel must obtain a new tap. Before closing, the Company shall not allow any other taps to serve more than one structure.
- (c) Because the area served by the Purdy system is rural, the parties acknowledge that water from the System will be used for other than in-house domestic uses. Unless restricted on a basis equivalent to City residents (such as during a drought where rationing could be imposed), the parties agree that water from a residential tap can be used for the watering of lawns and gardens and for agricultural uses such as, but not limited to, livestock watering for livestock on the same lot or parcel as a structure for which a building permit is required. In addition, water service may be extended from the residence to accessory buildings and outbuildings on the same parcel or lot for agricultural purposes such as, but not limited to, stock watering. The City may require back-flow prevention devices for such out-house uses, in accordance with City ordinances and regulations.¹
8. The Company represents that the number of "taps" owned but not in use is not more than twenty five (25) which shall be referred to as the "not-in-use" taps. The precise number is likely to be closer to twenty (20). The tap list shall provide current service addresses and the mailing addresses of each owner of a tap on the tap list, and of each customer.

¹ Backflow prevention protects against those inadvertent situations which could contaminate people's drinking water. For example, if one were filling a pesticide sprayer tank with a hose when there was a water line break, the pesticide contents could be drawn into the drinking water system.

9. (a) Within sixty days of execution of this contract, the Company shall provide the City with maps identifying in detail the Company's best information concerning the location of each tap, meter pit, valve, fire hydrant, location and length of pipeline (including the size, date of installation, repair history, and type of material) which is necessary to deliver water to any Company customer. Along with the real property interests, this system shall be referred to herein as the "Purdy System."
- (b) The Company shall deliver copies of all existing easements and rights-of-way, whether or not recorded, to the City within ninety (90) days of signing of this contract. As soon as practicable thereafter, the City shall notify the Company if the Company needs to obtain new, different or changed easements and/or rights-of-way; shareholders shall be required to execute new easements, as provided herein. The Company shall deliver to the City such legal descriptions, as-built plans and other information as the City may reasonably require to locate and describe all pipe, appurtenances and easements and rights-of-way to be conveyed or transferred to the City from the Company. If the City rejects any easement or right-of-way, it shall indicate the basis for the rejection; the Company shall make such changes to and obtain necessary signatures[✓] of such easements and rights-of-way and shall provide copies thereof 30 days before closing. *if possible* *BB/MTG*
- (c) Based on the information provided by the Company, at closing the City will provide to the Company the names and addresses of the owner of each not in use "tap" and the names and addresses of the owners of all taps.
- (d) Closing will occur at a time and location mutually agreeable to the parties. Once the City has evaluated the adequacy of the easements, rights-of-way and title of the Company, and the physical condition of the Purdy System and such easements and rights-of-way, the City will inform the Company that the City intends to begin acquisition and construction of a water treatment plant sufficient to deliver treated water to the Purdy customers. The City estimates that it will take six months to acquire and construct such a water treatment plant.
- (e) Notwithstanding any other provision herein, the City will not deliver any water, and closing shall not occur until after the City has received approval from the State of Colorado for treatment facilities and such facilities are operational and provide drinking water in such quantity and quality to meet all applicable state, federal and other laws and requirements.
10. (a) After closing, the owners of each not-in-use tap shall, prior to connection to the Purdy System and at the time of connection to the system, pay to the City a \$1,000 "upgrade fee." The applicant shall also pay any costs and expenses to install required meters, pits, etc. At closing, the Company shall deliver to the City reasonable evidence that the

Company has previously notified in writing each owner of each not-in-use tap regarding the provisions of this contract, and specifically the provisions of this paragraph.

- (b) For all taps other than the not-in-use taps identified pursuant to this Agreement, after closing and until June 30, 2003, such plant investment fee shall be \$8,500.00. For all taps other than the not-in-use taps, thereafter such plant investment fees may change from time to time, pursuant to City ordinances and resolutions.
 - (c) Until closing, other than the not-in-use taps, the Company shall not allow any other "taps" or connections to the Purdy System. The only taps which the Company will allow to be connected to the System prior to Closing shall be the not-in-use taps. The Company shall be entitled to charge an activation fee and installation charges for any not-in-use taps added to the System prior to Closing and shall be entitled to retain all of such revenue, without any payment to the City. The applicant shall also pay any costs and expenses to install required meters, pits, etc.
 - (d) The City will sell and an ^{LAND} owner can purchase a tap under this contract if done only: concurrently with the issuance of a building permit; or for service to a structure (existing as of the date of this agreement) on a parcel created as a result of a ~~sub~~ ^{ADDITION} division approved by a local land use jurisdiction. *ADDITION*
 - (e) All taps to the Purdy System shall be non-refundable and non-transferable from the physical location applied for, except that the not-in-use taps will not be allocated to a physical location until initially placed in service.
 - (f) Each owner or customer receiving water from the Purdy System shall pay to the City the costs of making the physical connection, on a "time and materials" basis, from the service line to the pipe of the Purdy System, including the extension of any service line or taps, installation of meters and meter pits. No customer or owner of a tap shall be entitled to maintain continued water service from the City unless such person pays to the City any such costs within thirty (30) days of billing. The City may disconnect any such tap and discontinue any service as provided by the City's ordinances relating to water supply to City residents.
 - (g) Upon closing, the City's water ordinances, policies and regulations shall apply to the Purdy Mesa System unless specifically otherwise provided for herein.
11. No assignment of any not-in-use tap shall be effective until the City receives the assignor's assignment, in writing, in a form acceptable to the City. No other taps are assignable.
12. (a) Until June 30, 2003, the City agrees to only charge the following monthly rate for all Purdy Customers. This initial rate is set forth as follows:

	Gallons Per Month	Rate
(i)	0 to 3,000	\$27.50 (base rate)
(ii)	3,001 to 10,000	\$ 4.00 per 1,000 gallons, in addition to the base rate
(iii)	10,001 to 20,000	\$ 3.86 per 1,000 gallons, in addition to the base rate and (ii)
(iv)	Over 20,000	\$ 3.74 per 1,000 gallons, in addition to the base rate and (ii) and (iii)

If the City's rate for its residents increases before closing, each dollar value shown above shall change proportionately.

- (b) On and after July 1, 2003, every person connected to the Purdy System shall pay for water at rates based on the City's operating and capital costs necessary to run the Purdy System. Not by way of limitation, such costs and expenses include personnel costs, legal, engineering, accounting, management, operating expenses, utility costs, costs of capital, debt service on borrowed funds, levels of minimum fund balances, and administrative and managerial charges equal to those charged by the City for its enterprise funds. The Purdy System water rates shall be established based on the operation of the Purdy System as an enterprise, and the assumptions on Exhibit 3, "City/Purdy Financial Plan". The method of calculation is shown on the attached spread sheet, Exhibit 3, however, the parties agree that in case of any dispute regarding rates and costs the City Council's decision shall be final. The standard of review of any such decision shall be identical to that of the City Council determining the rates to be applied to the City's residents.
- (c) Before closing, the Company will coordinate with the City regarding the final reading of meters. The City shall have no responsibility for collecting any Company bills or accounts receivable. Should customers pay Company bills to the City, the City will forward such payments amounts to the Company at its last known address.
13. The purchase price shall include the real property, assets, physical facilities, records, and contracts described in Exhibit 1 "**Purdy Property**" and any and all other rights appurtenant thereto, including, but not limited to, all easements and other appurtenances
14. Real and personal property taxes for the year of closing, based on the most recent levy and the most recent assessment, shall be apportioned to the date of closing and shall be considered final settlement. The Company shall be responsible for any sales, use or other taxes that may accrue because of this transaction.
15. (a) On or before March 1, 2000, the Company shall furnish to the City, at the Company's expense, a current commitment for title insurance policy in an amount equal to the

purchase price. The title commitment shall include legible copies of all instruments listed in the schedule of exceptions. The title insurance commitment and legible copies of all listed exceptions are hereinafter referred to as the "Title Documents." The Company shall deliver the title insurance policy to the City at closing and pay the premium thereon.

- (b) On or before March 1, 2000, the Company shall furnish to the City, at the Company's expense, legible copies of all information and documents in possession of the Company regarding customer accounts and lists, rights-of-way or easement agreements, personal service contracts, notes, lease agreements and/or rental agreements, boundary surveys, geological surveys and studies, engineering studies and environmental surveys and studies, as-builts and other information regarding the location and construction of all portions of the Purdy System and all pipe owned by the Company.
16. (a) Title shall be merchantable in the Company. Written notice by the City of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of the City and delivered to the Company within forty-five (45) working days after receipt by the City of any Title Document(s) or endorsement(s) adding new exception(s) to the title commitment. If the City does not mail its notice by the dates specified herein, the City shall be deemed to have accepted the condition of title as disclosed by the Title Document(s).
- (b) If title is not merchantable and written notice of defect(s) is delivered by the City to the Company on or before the dates as provided herein, the Company shall use reasonable efforts to correct said defect(s) prior to closing. If the Company is unable to correct said defect(s) on or before the date of closing, at the Company's option and upon written notice to the City on or before the date of closing, the date of closing shall be extended for a period not to exceed thirty (30) days for the purposes of correcting said defect(s). If title is not rendered merchantable as provided herein, at the City's option, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder; provided, however, the City may, at its option, waive objections to unsatisfactory title condition(s).
17. (a) The Company and the City agree that the City, its officers, employees, agents, contractors and licensees shall be permitted, commencing on January 1, 2000 and ending on August 1, 2000 or ten (10) days before closing whichever first occurs ("Inspection Period"), to have access to and make inspections of the Purdy System, and all Company facilities and property for reasonable purposes including, but not limited to, conducting boundary surveys, environmental surveys, engineering studies, appraisals, water studies and soils surveys, and for the purposes of jointly developing the Exhibit 1 "**Purdy Property.**"

- (b) If the City determines that the physical condition of Company facilities and property is unsuitable for use by the City for reasons including, but not limited to, deteriorated physical facilities, leaking underground storage tanks, unstable soils or geology, or the existence of any toxic, hazardous and/or regulated substances or materials which are located on, under or about the property and pipes, or easement or right-of-way, the City shall notify the Company of such defect(s) in writing. The Company shall then have thirty (30) days after receipt of said notice to either reasonably correct said defect(s) or to terminate this Contract. If the Company is unable to correct said defects within said thirty (30) day period but uses reasonable efforts to correct said defects to completion, the City may, at its option, extend the date of closing for a period not to exceed thirty (30) days for the purposes of correcting said defect(s). If the Company is unable or unwilling to correct said defect(s) as provided in this paragraph, at the City's option, this contract shall be void and of no effect and neither party shall have any further rights or obligations under this Contract; provided, however, the City may, at its option, waive objection(s) to unsatisfactory physical conditions and, upon mutual consent of the parties, the parties may adjust the purchase price and the terms of this Contract.
- (c) If written notice of any unsatisfactory physical condition(s) is not delivered by the City to the Company as set forth above, the physical condition of the Property shall be deemed to be satisfactory; provided, however, that nothing in this Contract shall prejudice or be to the exclusion of any other rights or remedies of the City which the City determines is necessary or appropriate to enforce its rights under any law, code or regulation, either now in effect or hereinafter enacted, in the event any toxic, hazardous and/or regulated substances or materials are discovered, whether or not prior to the closing, on, under or about the Property. The provisions of this paragraph shall survive the closing and transfer of title.
- (d) The Company, and its directors and officers, by executing and authorizing this agreement represents to the City that it and they have no knowledge of any toxic, hazardous, or regulated substances, or underground storage tanks, on or within any portion of the Purdy System.
18. The Company, its records and facilities shall be conveyed to the City in its present condition, ordinary wear and tear excepted. In the event the Property shall be damaged by fire, flood or other casualty prior to closing, in an amount of not more than ten percent (10%) of the total purchase price, the Company shall be obligated to repair the same before the date of closing. In the event such damage is not or cannot be repaired within said time or if the damages exceed such sum, this contract may be terminated at the option of the City. Should the City elect to carry out this contract despite such damage, the City shall be entitled to all the credit for the insurance proceeds resulting from such damage, not exceeding, however, the total purchase price. Should any fixtures or services fail between the date of this contract and the date of possession or the date of closing, then the Company shall be liable for the

repair or replacement of such fixtures or services with a unit of similar size, age and quality, or an equivalent credit. Until closing, the Company shall comply with all provisions of all applicable state and federal drinking water laws and regulations, including the Safe Drinking Water Act.

19. (a) The purpose for testing just before closing is to be certain that the System being transferred to the City complies with the state regulations and is clean and free of total coliform bacteria, fecal coliform bacteria, and *e.coli* bacteria. A microscopic particulate analysis, including *Cryptosporidium* and *Giardia* oocysts, must also be performed on treatment plant effluent. If the sampling shows the presence of bacteria or other microorganisms, the Company will undertake such flushing, chlorination, and resampling procedures as necessary and as required under the Safe Drinking Water Act, and state regulations. Because the City has the personnel and laboratory certifications, the City will assist the Company, if requested, in providing sampling bottles, advice in sampling techniques, processing samples and reporting of results. The City may also offer advice, if requested, in flushing techniques, superchlorination, and resampling if this becomes necessary.
 - (b) Within the period between fifteen and ten days before closing, the Company shall deliver water quality samples to the City, from ten locations agreed upon by the City and the Company, throughout the Purdy System for testing. In the event that the City determines, based on analysis of such samples that pathogens are present anywhere in the Purdy System, the Company will flush, chlorinate or take such other measures necessary to remove the pathogens. The City will cooperate in such efforts and in taking of additional samples. The Company may have any such samples tested by the Company's independent laboratory. Closing will be delayed until flushing, chlorination, or other efforts, as confirmed by resampling, proves the absence of bacterial or other adverse conditions or presence.
20. Time is of the essence hereof. If any payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed as herein provided, there shall be the following remedies:
- (a) IF THE CITY IS IN DEFAULT, the Company may treat the Contract as canceled in which case all payments and things of value received hereunder shall be forfeited by the City and retained on behalf of the Company and the Company may sue for specific performance; notwithstanding any other provision hereof, in no event may the Company sue the City for any monetary damages, of whatever form.
 - (b) IF THE COMPANY IS IN DEFAULT, the City may treat the Contract as being in full force and effect and shall have the right to specific performance. In addition, if the City, in reliance on this contract, has spent money or incurred expenses or costs, and the

Company either fails to close or cannot close, the City has the right to for such damages, costs and expenses, including attorney's fees. In addition, if Company fails to deliver possession at closing or comply with all terms of this contract and the City has relied to its detriment on the terms hereof, in addition to any other remedy the City may have, the Company agrees to pay a daily possession fee of \$25.00 and agrees to pay the City's costs and attorney's fees required to evict the Company. Each of such remedies is cumulative; exercise of one remedy does not preclude exercise the full or partial exercise of another.

- (c) Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this contract, the court may award to the prevailing party all reasonable costs and expenses, including attorneys' fees.
21. After closing, the City shall provide domestic water service to the customers and area now served by the Company. The City may determine that not all of the facilities and property are suitable or desirable for water service purposes and may elect to modify, replace, sell, exchange, divide or otherwise dispose of portions of the facilities or property as it deems necessary and/or appropriate.
22. The City and the Company represent to each other that the sale and purchase of the Company, its facilities and property hereby contemplated was brought about without the efforts of any brokers or agents and that neither party has dealt with any brokers or agents in connection with this sale and purchase. Each party agrees to defend, indemnify and hold the other harmless from any claim for real estate brokerage commissions or finder's fees asserted by any other party as a result of dealings claimed to have been conducted by the respective party.
23. Neither this agreement nor any other provision hereof shall be deemed to create rights in any third party. There shall be no third party beneficiaries of this agreement.
24. This entire contract and the City's obligation to proceed under its terms is expressly conditioned upon:
- (a) the consent and approval of the City Council of the City of Grand Junction. If such consent and approval is not obtained on or before December 15, 1999, then this Agreement shall automatically become void and of no effect, and neither party shall have any further rights or obligations under this Agreement.
- (b) Within ninety (90) days of signing of this contract, the Company shall deliver true copies of all documents evidencing easements and rights-of-way for every portion of the Purdy System, establishing that portions of the Purdy System are subject to recorded easements, rights-of-way or fee title, along with reasonable vehicular access to all portions of the

Purdy System. The term "reasonable vehicular access" includes access at least twenty (20) feet wide for purposes of operating, repairing, constructing and reconstructing, rebuilding, replacing and maintaining a water system and the Purdy System. On or before April 1, 2000, the Company shall deliver to the City copies of fully executed and notarized Grants of Easement, in the form attached hereto as Exhibit "Purdy Easement," executed by each shareholder of the Company for the portion of the Company's water pipeline or System which crosses or lies within property owned by the shareholder. At closing, the Company will deliver the originals for recordation.

25. This contract contains the entire agreement between the parties and cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. The parties have had extensive discussions and negotiations. If a term or provision is not written in this contract, it shall not be enforceable.

26. The Company and the City each agree to rely on the advice of their own tax and legal counsel regarding this contract. Any ambiguity shall not be construed against the drafter.

27. This contract shall remain in full force and effect until January 1, 2025.

The City of Grand Junction, Colorado



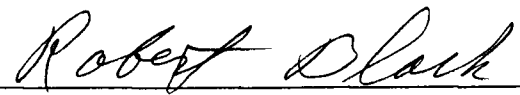
Mark K. Achen, City Manager

Dated: 12/3/99

Purchaser's Address: City of Grand Junction
250 North 5th Street
Grand Junction, Colorado 81501

With a Copy to: City of Grand Junction
Attn: City Attorney
250 North 5th Street
Grand Junction, Colorado 81501

The Purdy Mesa Livestock Water Company:



President

Dated: 12-14-99

Seller's Address:

Purdy Mesa Livestock Water Company
3333 Purdy Mesa Road
Whitewater, Colorado 81527

agreemnts\purdy443.doc
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Exhibit #1, "Purdy Property"

1. 5.51 acre plant site, described as follows:

Commencing on the Southeast Corner of Section 36, Township 12 South, Range 98 west of the 6th Principal Meridian, Mesa County, Colorado, and considering the South line of said Section 36 to bear N 89°20' W with all bearings contained herein being relative thereto; thence N 89°20' W along the South line of said Section 36 a distance of 850.0 feet to the POINT OF BEGINNING;

thence N 89°20' W along the South line of said Section 36 a distance of 300.0 feet;

thence N 00°40' E a distance of 800.0 feet;

thence S 89°20' E a distance of 300.0 feet;

thence S 00°40' W a distance of 800.0 feet to the POINT OF BEGINNING,

containing 5.51 acres, more or less.

Note: The City conveyed this 5.51 acre property to the Company by warranty deed dated Oct 7, 1992, with reservations of all water and water rights, and subject to terms, covenants and conditions of that certain agreement between the City and PMLWC dated July 15, 1992¹. That agreement provided that the property would revert to the City if the plant or system were abandoned.

2. US Filter Ultra Filtration treatment plant and trailer, associated lined raw water pond, chlorine contact tanks, buried finished water tanks, fencing and gates, one inch (1") raw water tap on the City's Kannah Creek flowline, three inch (3") influent flow line from said tap to the treatment plant, and all other water transmission and distribution system lines and appurtenances as described in the contract of which this exhibit is a part.

3. Easements and rights of way, as described in the contract of which this exhibit is a part.

The Company will remove all tires, trash, and debris from the treatment plant site, before closing.

¹ The agreement is actually dated *June* 15, 1992.

TAP LIST FORM

(Example)

<u>Name of Tap Owner</u>	<u>Address Location of Use</u>	<u>Number of Residences</u>	<u>Amount of Upgrade Fee Paid</u>	<u>Residence Receiving Benefit of Upgrade Fee Paid</u>	<u>Residence Not Receiving Benefit of Upgrade Fee Paid</u>
(A) Stockholders					
1. Bradbury	So. Highway 50	2	\$1,000	Bradbury Home	Bradbury Family
2. Bradbury	Not-in-use	0	0	0	0
3. Bradbury	Not-in-use	0	0	0	0
4. Bonnell	Divide Road	1	\$1,000	Bonnell Home	N/A
5. Bonnell	Not-in-use	0	0	0	0
6. Bonnell	Not-in-use	0	0	0	0
7.					
8.					
(B) Customers					
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
Total Residence Taps in use		55	60		
Total Residence Taps Not-in-use		20	20		
Total		75	80		

Exhibit 2

"PURDY EASEMENT"

GRANT OF EASEMENT

THIS GRANT OF EASEMENT is made and given as of _____, 199__, from

_____ ,
whose address is _____ ("Grantor") to
the City of Grand Junction, a Colorado home rule city, 250 North 5th Street, Grand Junction,
Colorado 81501 (the "City").

RECITALS

The City owns a domestic water system in Mesa County, Colorado. The City desires to operate and maintain a portion of its water system on, over, under and across real property owned by Grantor, and Grantor agrees to grant an easement for such purposes to the City, on the terms set forth in this Grant.

NOW, THEREFORE, this Grant is made as follows:

1. As used in this Grant, the following terms have the following meanings:
 - A. The "Grantor's Property" means the real property described on Exhibit A, owned by Grantor and located in Mesa County, Colorado.
 - B. The "Centerline" means location of the existing water pipeline under and across the Grantor's Property. The approximate location of the Centerline is shown on the aerial photograph attached hereto as Exhibit B.
 - C. The "Purdy Mesa System" means the portion of the City's domestic water system which serves domestic water to the Purdy Mesa area and other areas around Whitewater, Colorado.
 - D. The "Facilities" mean water transmission and distribution lines and appurtenant facilities such as valves and meters owned by the City and used in connection with the Purdy Mesa System.
2. For Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grant, sells, and conveys to the City a permanent easement (the "Easement") on, over, under and across the Grantor's Property,. The Easement shall be twenty (20) feet in width, located ten (10) feet on each side of the Centerline. The Grantor further grants, sells, and conveys to the City the right of ingress and egress along a reasonable route or routes across Grantor's Property for access to the Easement, and the right of ingress and egress along and upon the Easement, for exercising the rights for which the Easement is granted. In exercising such access rights, the City shall use existing roadways on Grantor's Property whenever possible, and shall use its best efforts to avoid damaging any of Grantor's crops outside of the easement area.
3. The Easement shall be for the purpose of operating, maintaining, repairing, altering, replacing, and reconstructing the Facilities located on Grantor's Property. All Facilities constructed and installed on Grantor's Property shall be located within the Easement.
4. Grantor shall have the right to cultivate the area of the Easement, and to otherwise use and occupy the area of the Easement for purposes which are consistent with rights granted to the City in this Grant and which will not interfere with or endanger the Facilities in the Easement. Without limiting the generality of the foregoing, Grantor shall not (a) place any obstructions within the area of the Easement which could interfere with the normal operation, repair and maintenance

of the Facilities; or (b) construct any permanent buildings or structures or impound any water in, over, on, or across the area of the Easement. The prohibitions of this paragraph shall not apply to any trees which exist in the Easement area on the effective date of this Grant, provided, however, that if any trees or other landscaping in the Easement area should, in the future, unreasonably interfere with the ability of the City to operate, maintain, repair, or reconstruct the Facilities, the City shall be privileged to trim or, if absolutely necessary, remove such trees or landscaping.

5. The City will install and construct the Facilities in accordance with good engineering practices. Except when good engineering practices require otherwise, any pipelines installed through tillable land in the Permanent Easement will be buried at least _____ inches below the surface of the ground. Any excavations made in the area of the Easement shall be promptly backfilled, and the surface shall be graded as closely as possible to original or design grade conditions. The top _____ inches of pipeline trench excavation shall be replaced with topsoil removed and stockpiled from such excavation.

6. All Facilities constructed in the Permanent Easement shall be constructed and maintained in good repair at the expense of the City and shall remain the property of the City removable or replaceable at its option.

7. Grantor reserves to Grantor and Grantor's heirs, successors and assigns the right to grant easements and licenses to others over, under, along or across the Easement area, provided that no such easement or license (or use thereof) shall unreasonably interfere with the City's use of the Easement for the purposes described herein.

8. The Easement and other rights granted to the City in this Grant shall be permanent and perpetual. This Grant inures to the benefit of and is binding upon the parties and their heirs, successors, grantees, and assigns.

9. This Grant of Easement replaces and supersedes the Easement recorded in Book _____ at Page _____ of the records of Mesa County (the "Existing Easement"). Upon the recording of this Easement in the records of Mesa County, the Existing Easement shall terminate and be of no further force and effect.

IN WITNESS WHEREOF, Grantor has executed this Grant as of the date set forth above.

GRANTOR:

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this _____ day of _____,
199__ by _____.

WITNESS my hand and official seal.
My Commission Expires: _____

Notary Public