

RESOLUTION NO. 12-03

**A RESOLUTION CONCERNING THE GRANTING OF A
NON-EXCLUSIVE DRAINAGE EASEMENT
TO THE GRAND JUNCTION DRAINAGE DISTRICT**

WHEREAS, the City of Grand Junction believes it is the owner of certain real property described as Lots 33 and 34 of Pomona Park, commonly known as Canyon View Park, situate in Section 33, Township 1 North, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado; and

WHEREAS, the Grand Junction Drainage District has requested a non-exclusive drainage easement across said City property for the purposes of installing, operating, maintaining repairing and replacing a pipe to coven an existing drainage channel known as the Mitchell Drain.

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

That the City Manager is hereby authorized, on behalf of the City and as the act of the City, to execute the attached Easement Agreement conveying to the Grand Junction Drainage District a non-exclusive easement over and across the limits of the City property described therein.

PASSED and ADOPTED this 5th day of February, 2003.

Attest:

/s/ Cindy Enos-Martinez

President of the Council

/s/ Stephanie Tuin

City Clerk

EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is made and entered into as of the _____ day of _____, 2003, by and between The City of Grand Junction, a Colorado home rule municipality ("City"), whose address is 250 North 5th Street, Grand Junction, Colorado 81501, and the Grand Junction Drainage District, ("District") whose address is 722 23 Road, P.O. Box 969, Grand Junction, Colorado 81502-0969.

RECITALS

A. The City believes it is the owner of certain real property described as Lots 33 and 34 of Pomona Park, commonly known as Canyon View Park, situate in Section 33, Township 1 North, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, as recorded in Plat Book 1 at Page 24 in the office of the Mesa County Clerk and Recorder.

B. The aforescribed property of the City is presently encumbered by an open drainage channel commonly known as the Mitchell Drain. The owners of property presently being developed as Spanish Trails Subdivision, located adjacent to the City's property, have requested the District to install piping and other facilities so that the open Mitchell Drain may be converted to a piped drainage system.

C. The purposes of this Easement Agreement are to acknowledge an easement for surface and subsurface drainage facilities for the said Mitchell Drain and to authorize the District to install, operate, maintain and repair pipes and other facilities within the limits of the City's property hereinafter described.

NOW, THEREFORE, in consideration of the recitals above and the terms, covenants, conditions, restrictions, duties and obligations contained herein, the parties agree as follows:

1. Consideration, Grant, Acceptance.

1.1 For and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the City hereby grants and conveys to the District, by quit claim, a Nonexclusive Drainage Easement on, along, over, under, through and across the following described real property, to wit:

The South 30.0 feet of Lots 33 and 34 of Pomona Park, situate in Section 33, Township 1 North, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, as recorded in Plat Book 1 at Page 24 in the office of the Mesa County Clerk and Recorder.

1.2 The District accepts such grant and conveyance subject to the terms and conditions of this Agreement.

2. Term. As authorized by the Charter of the City, the initial term of this grant shall be for a period of twenty-five (25) years, beginning on the day and year first above written.

3. Option to Extend. Subject to the provisions of paragraph 6 below, the District shall be entitled to exercise successive extensions of this grant and conveyance, and the City hereby grants such right, for additional twenty-five (25) year periods ("later terms"). If the grant is extended for later terms, each such later term shall be upon the same terms and conditions of this Agreement or upon such other terms as may hereafter be negotiated between the City and the District.

4. Purposes of Easement, Express Limitations. The purpose of the Easement and the District's utilization thereof shall be specifically limited to the installation, operation, maintenance, repair and replacement of drainage facilities and shall include the right of ingress and egress for workers and equipment over and across the Easement area to accomplish such purposes, which may additionally include clearing, cleaning, adjusting and deepening said facilities, together with the right to trim interfering trees and brush. The District agrees that the District's utilization of the Easement shall be performed with due care or any other higher standard of care necessary to. The easement rights herein granted do not include the right to expand utilization of the Easement for any other purposes unless such uses are authorized by subsequent conveyance instrument(s).

5. Reservations from Grant. The City reserves the right to use and occupy the Easement area for any purpose which will not unreasonably interfere with the District's use thereof; provided, however, that the City agrees to not burden or overburden the Easement by the installation, construction or placement of any structures or any other item or fixture which might be detrimental to the facilities of the District or which might act to prevent reasonable ingress and egress for workers and equipment on, along, over, under, through and across the Easement area.

6. Abandonment/Automatic Termination. In the event of permanent abandonment of the Easement by the District, all rights, privileges and interests herein granted shall automatically terminate. Permanent abandonment shall have occurred if the District shall fail to use the Easement for any twelve (12) consecutive month period.

7. General Indemnification. The District hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold the City, its officers, employees, agents and assets harmless from any and all claims, costs, judgments, awards or liability, including reasonable attorneys' fees and costs (except those caused by the City's gross negligence or its willful or wanton acts) to any person or with regard to any property, including claims arising from injury or death, resulting from the Districts' gross negligence or willful act or failure to act pursuant to this Agreement. The foregoing indemnification obligations shall extend to claims which are not reduced to a suit and any claim which may be compromised by the District prior to the culmination of any litigation or the institution of any litigation.

8. Default. Should the District (a) default in the performance of this Agreement and any such default continue for a period of ninety (90) days after written notice thereof is given by the City to the District, or (b) be declared bankrupt, insolvent, make an assignment for the benefit of creditors, or if a receiver is appointed, or (c) fail to timely cure such default, the City, at its option, may file an action to cancel and annul this Agreement and obtain an order from a court of competent jurisdiction to enter and take possession of the Easement. This Agreement shall then terminate upon such occupation. Nothing herein shall prejudice or be to the exclusion of any other rights or remedies which the City may have against the District, including, but not limited to, the right of the City to obtain injunctive relief. If the City succeeds in such effort, the District shall pay the City's reasonable attorneys' fees.

9. Drainage District Acceptance Subject to Existing Conditions.

9.1 the District has inspected the Easement and accepts the same in its present condition and location. The District agrees that the condition of the Easement is sufficient for the purposes of the District. The City makes no warranties, promises or representations, express or implied, that the Easement is sufficient for the purposes of the District. If the Easement is damaged due to fire, flood or other casualty, or if the Easement is damaged or deteriorates to the extent that it is no longer functional for the purposes of the District, the City shall have no obligation to repair the Easement nor to otherwise make the Easement usable or occupiable, since such damages shall be at the Districts' own risk.

9.2 The City makes no representations or warranties regarding the presence or existence of any toxic, hazardous or regulated substances on, under or about the Easement, except to the extent that the City states it has not deposited or caused to be deposited any toxic, hazardous or regulated substances on, under or about the Easement.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

11. Total Agreement, Applicable to Successors. This Agreement contains the entire agreement between the parties and, except for automatic termination or expiration, cannot be changed or modified except by a written instrument subsequently executed by both parties. This Agreement and the terms and conditions hereof apply to and are binding upon the successors and authorized assigns of both parties.

IN WITNESS WHEREOF, the parties hereto have each executed and entered into this Easement Agreement as of the day and year first above written.

Attest:

The City of Grand Junction,
a Colorado home rule municipality

By _____
City Clerk

By _____
City Manager

Attest:

Grand Junction Drainage District:

By _____
Secretary

By _____
President

State of Colorado)
)ss.
County of Mesa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by Kelly Arnold as City Manager and attested to by Stephanie Tuin as City Clerk of the City of Grand Junction, a Colorado home rule municipality.

My commission expires: _____
Witness my hand and official seal

Notary Public

State of Colorado)
)ss.
County Mesa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by _____ as President and attested to by _____ as Secretary of Grand Junction Drainage District.

My commission expires: _____
Witness my hand and official seal

Notary Public