

AGREEMENT FOR TRANSFER OF DRAIN D

Contract No. 7-LM-4A-00070

Revised 01-24-06

THIS AGREEMENT (Agreement) is made this 1st day of May, 2006, between the United States of America, the Grand Valley Water Users Association, and the City of Grand Junction.

The United States acts in pursuance of the Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof or supplementary thereto, and the Federal Property and administrative Services Act of 1949 (40 U.S.C. 472), acting by and through the Bureau of Reclamation, Department of the Interior, hereinafter referred to as the "United States", represented by the officer executing this Agreement.

The Grand Valley Water Users Association, hereinafter referred to as the "Association", is a Colorado nonprofit corporation.

The City of Grand Junction, hereinafter referred to as the "City", is a Colorado home rule city, authorized by Article XX of the Colorado Constitution and the City's home rule charter, and acts through its City Manager.

RECITALS:

A. The United States represents that it owns Drain D and its associated easements, right-of-ways and interests in land (collectively, "Drain D"), as part of the Grand Valley Project. The United States has not maintained or operated Drain D as an urban storm water drain (36 Stat.835); however, it has been used as such over the years, without authorization from the United States.

B. The City is an urban service provider. One of the services provided by the City, in portions of the City, for its citizens, is storm water drainage.

C. The Association operates and maintains Drain D under the provisions of a contract with the United States, Contract No. ILR-644 dated January 27, 1945, and other contracts supplementary or amendatory thereto (collectively, the United States-Association Contract). For purposes of historical records and in order to establish maintenance standards, the United States-Association Contract is attached as Exhibit A.

D. Drain D is described by the United States as a United States right-of-way and facility of the Grand Valley Project, State of Colorado. The Drain D facility is a series of drainage ditches constructed on rights-of-ways reserved for the United States through the Association's Subscriptions for Stock ("Stock Subscriptions"). The Association operates and maintains the Grand Valley Project on behalf of the United States. Through the Stock Subscriptions (specifically, Article XV, Section 2 thereof), landowners obtained the use of Grand Valley Project water while granting to the United States rights-of-way necessary for the construction, operation and maintenance of the Project and its associated facilities. The Stock Subscriptions are recorded in the records of Mesa County, Colorado; however, not each or every Stock Subscription specifically describes the area claimed or burdened by the Project. Exhibit B, entitled "Subscription for Stock Drawing," attached hereto and incorporated herein by reference, generally indicates those lands subject to the Stock Subscriptions and pertaining to Drain D.

E. The original purpose of Drain D was to collect administrative spills of agricultural water from laterals 1 and 2 of the Grand Valley Project ("Administrative Spills") and irrigation return flows, which consist of seepage, surface drainage and unused waters, from the lands served by the Grand Valley Project ("Irrigation Drainage"). The United States has concluded that Drain D currently carries a majority of its volume as unauthorized storm water discharges from streets, undeveloped areas and residential and light commercial subdivisions within the City limits. The balance of Drain D's volume is from Administrative Spills and Irrigation Drainage.

F. Local governments, as part of the land use and development review processes, require that developers plan for storm water drainage. Historically, developers have constructed storm water discharges into Drain D without authorization from the United States. The United States has determined that it is not authorized to operate and maintain Drain D for non-agricultural use.

G. In order to accommodate the storm water drainage needs of the community and recognizing that residential, commercial and other development will continue to expand into the area historically served by Drain D, the City has indicated its willingness to, pursuant to this written Agreement, accept future ownership, maintenance and operational control of Drain D.

H. The United States has determined that ownership of Drain D is no longer necessary and that project purposes and needs can be served by transferring ownership to the City while reserving a right to continue to discharge Administrative Spills and Irrigation Drainage into Drain D.

NOW, THEREFORE, the parties agree as follows:

1. The United States agrees:

A. To execute and deliver a quit claim deed to the City for all of its right, title, and interest in and to Drain D, except as may otherwise be stated herein. The parties further agree that the Association shall also execute and deliver a quit claim deed to the City for any right, title, and interest it may have in and to Drain D, except as may otherwise be stated herein. The quit claim deeds shall be in the form attached hereto as Exhibits C and D, and shall be collectively referred to herein as the "Quit Claim Deeds."

B. To conduct an updated Hazardous Waste Survey for Drain D. A copy of the October 1996 Hazardous Waste Survey conducted by the United States is attached as Exhibit E and incorporated herein by reference. The updated survey, dated November 2005 is attached as Exhibit F and incorporated herein by reference.

C. The United States declares, states and affirms that it and its employees and agents are aware of no other data or information showing that Drain D contains any materials or substances in quantities regulated or prohibited by an federal or State of Colorado law, including but not limited to, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSA) or oils, gasoline or other hydrocarbons and/or petrochemicals. Effective on the date of delivery of the Quit Claim Deeds to the City, the United States shall not be liable to the City for damages of any kind arising out of any act, omission, or occurrence relating to Drain D, except for damages caused by acts of negligence committed by the United States or by its employees, agents or contractors prior to the date of delivery of the Quit Claim Deeds ("U.S. Pre-Delivery Damages"). Nothing herein shall be deemed to increase the liability of the United States beyond that currently provided in the Federal Tort Claims Act, 28 U.S.C. 2671, et. seq.

2. The City agrees:

A. Effective on the date of delivery of the Quit Claim Deeds to it, to accept liability for and relating to any and all loss or damage of every description or kind whatsoever from the City's construction, operation and maintenance of Drain D after the date of delivery.

B. On and after the date of delivery of the Quit Claim Deeds to it, to accept existing amounts and patterns of Irrigation Drainage and Administrative Spills into Drain D, until such time that there are no Irrigation Drainage or Administrative Spills to discharge. With respect to Administrative Spills only, the points of discharge and estimated amounts of the Administrative Spills are shown on Exhibit G, entitled "Aerial Map of Drain D," attached hereto and incorporated herein by reference.

C. That Drain D is quitclaimed by the United States and the Association and acquired by the City on an “AS-IS, WHERE-IS” basis with no representations, warranties or covenants of any kind (other than the indemnity stated in Paragraph 1.C., above, and in Paragraph 3.C., below), express or implied, either oral or written, made by the United States or the Association, or any agent or representative of such parties, including without limitation: (i) the physical or structural condition of Drain D; (ii) the compliance of Drain D with any laws, ordinances, or regulations of any federal, state, local or other governmental entity; (iii) title to Drain D; and (iv) the suitability or fitness of Drain D for any purpose, including without limitation use as a storm water facility, all of which representations, warranties and covenants the United States and the Association hereby expressly disclaim.

D. To assume all costs incident to the operations and maintenance of Drain D, subsequent to the date the Quit Claim Deeds are delivered to the City.

3. With respect to the Association, the parties agree as follows:

A. Effective on the date of delivery of the Quit Claim Deeds to the City, the Association shall have no further obligation, under the United States-Association Contract or otherwise, to operate or maintain Drain D. The Association agrees that it will, on an as-needed basis and for a period of 2 (two) years after the effective date of this Agreement, consult with the City, at no cost to the City, regarding the operation and maintenance of Drain D. The Association further agrees to provide the City with copies of any and all maps, plats, drawings and/or other documents in its possession related to the operation and maintenance of Drain D.

B. After the Quit Claim Deeds are delivered to the City, the Association may continue to make Administrative Spills of agricultural water into Drain D in connection with the operation of the Grand Valley Project at the points and in the estimated amounts set forth on Exhibit D, pursuant to the provisions of Paragraph 2.B., above. Such Administrative Spills may continue for as long as the Association operates the Grand Valley Project. The parties acknowledge that the Administrative Spill discharge amounts set forth on Exhibit G are estimated amounts, and that the actual amounts discharged may vary from such estimated amounts. The City shall not impose any charges against the Association for Administrative Spill discharges into Drain D.

C. Effective on the date of delivery of the Quit Claim Deeds to the City, the Association shall not be liable to the City for damages of any kind arising out of any act, omission or occurrence relating to Drain D, except for damages caused by acts of negligence committed by the Association or its employees or agents prior to the date of delivery of the Quit Claim Deeds (“Association Pre-Delivery Damages”). The Association shall indemnify the City and hold the City harmless from any Association Pre-Delivery Damages. Nothing herein shall be deemed to be a waiver, extension, or modification of any statutes of limitation or other defenses relating to any alleged acts of negligence by the Association.

4. With respect to this Agreement, all parties agree:

A. The execution and delivery of the Quit Claim Deeds and the other obligations of the parties under this Agreement shall be done and performed as soon as reasonably possible. The parties shall schedule a mutually agreeable date for delivery of the Quit Claim Deeds, and the executed Quit Claim Deeds shall be delivered to the City on such date.

B. This Agreement shall be binding on the successors and assigns of the parties hereto, and all persons claiming through the parties.

C. Each party warrants and represents to the other 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 law, regulation, order, Charter, ordinance or statute have been met. By signing below, each party warrants that it is authorized to sign on behalf of the party that he/she represents.

- D. This Agreement constitutes the complete and entire agreement of the parties.
- E. This Agreement is for the benefit of the parties; any direct or indirect benefit to a third party shall be deemed incidental.
- F. Failure of any 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.
- G. This Agreement was produced as a result of negotiations between the parties and shall not be construed against any party as the drafter of this Agreement.
- H. This Agreement shall be effective on the last date that it is executed by any of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

UNITED STATES OF AMERICA

GRAND VALLEY WATER USERS
ASSOCIATION

By: *Rick L. Gold*
Rick Gold, Regional Director
Upper Colorado Region
Bureau of Reclamation
Department of the Interior

By: *Daniel E. Cronk*
Daniel E Cronk, President

ATTEST: *William H. Buniger III*
William H. Buniger, III

David Shanon
Regional Solicitor's Office
CITY OF GRAND JUNCTION

ATTEST:

By: *Kelly Arnold*
Kelly Arnold, City Manager

Stephanie Tuin
Stephanie Tuin, City Clerk



- Exhibit A: United States-Association Contract No. Ilr-644
- Exhibit B: Subscription for Stock Drawing No. 1295-417-4017
- Exhibit C: Quit Claim Deed (United States Grantor)
- Exhibit D: Quit Claim Deed (Association Grantor)
- Exhibit E: October 1996 Hazardous Waste Survey
- Exhibit F: November 2005 Hazardous Waste Survey
- Exhibit G: Aerial Map of Drain D

Symbol II-644
See Also
Supplemental Contract
dated 4/27/84

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

GRAND VALLEY PROJECT, COLORADO

AMENDATORY CONTRACT BETWEEN THE UNITED STATES AND THE GRAND VALLEY
WATER USERS' ASSOCIATION

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

GRAND VALLEY PROJECT, COLORADO

AMENDATORY CONTRACT BETWEEN THE UNITED STATES AND THE GRAND VALLEY
WATER USERS' ASSOCIATION

THIS AMENDATORY CONTRACT, made this 27th day of January, 1945, under the provisions of the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, and particularly the Act of August 4, 1939 (53 Stat. 1187) as amended, together hereinafter referred to as the Federal Reclamation Law, between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, acting for this purpose through Michael W. Straus, Assistant Secretary of the Interior, hereinafter referred to as the Secretary, and the GRAND VALLEY WATER USERS' ASSOCIATION, a corporation organized and existing under the laws of the State of Colorado, and having its principal office at Grand Junction, Colorado, hereinafter referred to as the Association:

WITNESSETH, That:

Explanatory Recitals

2. WHEREAS, under the authority of the Federal Reclamation Law, the United States is constructing and has partially completed that certain irrigation project in the State of Colorado commonly known as the Grand Valley Project, and also known as the Grand Valley Irrigation Project, hereinafter referred to as the project;

3. WHEREAS, the United States and the Association entered into a contract dated February 13, 1913, amended and supplemented by contracts dated January 4, 1928; January 10, 1930; September 9, 1931; March 10, 1936;

February 7, 1942; February 9, 1942; and March 27, 1942, all of said contracts being hereinafter collectively referred to as the Government-Association contract;

4. WHEREAS, the United States, the Association and the Public Service Company of Colorado entered into a contract dated June 19, 1931, providing, among other things, for the construction of a power plant upon the project, and for the application of the revenues received from said Company upon certain obligations of the Association to the United States, which provisions for the application of said revenues were amended by contracts between the United States and the Association dated February 27, 1934, and September 27, 1935;

5. WHEREAS, the Government-Association contract provides, among other things, for the repayment to the United States by the Association of certain of the expenditures made by the United States in the construction of the project;

6. WHEREAS, the Association, as the duly authorized representative of the water users involved, desires to enter into an amendatory contract to effect changes in the Government-Association contract under the provisions of the Act of August 4, 1939 (53 Stat. 1187), as amended (the Reclamation Project Act of 1939), and to effect certain other changes in and to restate the provisions of the Government-Association contract; and

7. WHEREAS, the Secretary has determined that, in his judgment, such amendatory contract is both practicable and in keeping with the general purpose of the Reclamation Project Act of 1939:

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is hereby mutually agreed by and between the parties hereto as follows:

Scope of Amendatory Contract

8. (a) This amendatory contract supersedes and takes the place of the contracts between the United States and the Association dated February 13, 1913; January 4, 1928; January 10, 1930; September 9, 1931; March 10, 1936; February 7, 1942; February 9, 1942; and March 27, 1942 (which contracts have collectively been designated as the Government-Association contract), and the Government Association contract shall remain or be effective only to the extent expressly provided in this contract; Provided, That all obligations involving payments to the United States under the Government-Association contract which became due and payable prior to the date of this contract and have not been deferred pursuant to the applicable acts of Congress, and the provisions of the Government-Association contract which have been fully executed prior to the date of this contract, shall remain unaffected by this contract, except as this contract expressly provides otherwise.

(b) This contract is supplementary and amendatory to the contract between the United States, the Association and the Public Service Company of Colorado dated June 19, 1931, as amended by contracts between the United States and the Association dated February 27, 1934, and September 27, 1935, but that except as expressly modified by this contract the said contract between the United States, the Association and the Public Service Company of Colorado, as amended, shall be and remain in full force and effect unaffected by this contract.

DEFINITIONS

9. (a) The term "unaccrued balance" as hereafter used in this contract in relation to the obligations of the Association to the United States under the Government-Association contract for any part of the cost of the construction of the project means that portion of said obligations which has not become due and payable prior to the date of this contract, including instalments or parts of instalments of such obligations, with accrued interest thereon, deferred under the Act of April 1, 1932 (47 Stat. 75), as amended, and the part of the instalment deferred under section 17(b) of the Reclamation Project Act of 1939.

(b) The term "productive lands" as hereafter used in this contract means project lands which are classified pursuant to the Federal Reclamation Law as productive lands.

(c) The term "unproductive lands" as used in this contract means project lands which are classified as temporarily unproductive at any given time pursuant to the Act of May 25, 1926 (44 Stat. 636), as it may be amended or supplemented from time to time.

Association's Construction Charge Obligation

10. (a) The Association agrees to pay to the United States the unaccrued balance of the Association's construction charge obligation on account of the expenditures heretofore made by the United States in connection with the construction of the project, which unaccrued balance, determined in accordance with the provisions of the Government-Association contract is, as of the date of this contract, the sum of Two Million, Six Hundred Thirty-nine Thousand, Five Hundred Sixty-four Dollars and Seventy-four Cents

" (\$2,639,564.74), of which One Million, One Hundred Thirty-nine Thousand, Three Hundred Seventy-three Dollars and Eighty-four Cents (\$1,139,373.84) represent construction charges against those lands which under the Act of May 25, 1926 (44 Stat. 636) are termed temporarily unproductive and as to which special provisions are made herein for payment on a deferred basis. The said sum includes, among other expenditures, all expenditures of the United States for the purpose of draining project lands, farm unit surveys, the reconstruction of structures on the project main canals, and the construction of extensions to the project distribution systems, provided for in Article 20 of the contract between the United States and the Association dated January 4, 1928, as amended by the contract between said parties dated January 10, 1930.

(b) The Association agrees to pay to the United States all sums hereafter expended by the United States in connection with the completion of the construction of irrigation facilities for the lands in the Loma Extension of the project, and all sums hereafter expended by the United States in connection with the completion of irrigation facilities for the lands in the Garfield Pumping Division of the project, as provided in articles 15 and 16 hereof.

(c) The Association agrees to pay to the United States as provided in article 14, hereof, the sums expended by the United States in the rehabilitation and repair of Tunnel No. 3, pursuant to the Government-Association contract and pursuant to the provisions of article 14 hereof.

Temporarily Unproductive Lands

11. (a) The unaccrued balance of the Association's construction obligations on account of the expenditures heretofore made by the United States in connection with the construction of the project in the sum of Two Million, Six Hundred Thirty-nine Thousand, Five Hundred Sixty-four dollars and Seventy-four Cents (\$2,639,564.74) includes the Association's construction charge obligations on account of expenditures heretofore made applicable to lands served by the Association which pursuant to the Act of May 25, 1926 (44 Stat. 636) were, as of the date of this contract classified as unproductive. The construction charges to be paid to the United States by the Association on account of said lands, as of the date of this contract, are agreed to be the following:

(1) The sum of Five Hundred Sixty-two Thousand, Seven Hundred Twenty-two Dollars and Five Cents (\$562,722.05) established as the construction charge to be paid by the Association on account of approximately 7,150 acres of unproductive land in the Garfield Gravity Division.

(ii) The sum of Fifty Thousand, Two Hundred Fifty Dollars and Forty-four Cents (\$50,250.44) established as the construction charge on account of expenditures of the United States heretofore made to be paid by the Association on account of approximately 1,613 acres of unproductive land in the Loma Extension.

(iii) The sum of Five Hundred Twenty-six Thousand, Four Hundred One Dollars and Thirty-five Cents (\$526,401.35)

established as the construction charge, on account of expenditures of the United States heretofore made to be paid by the Association on account of approximately 10,250 acres of unproductive land in the Garfield Pumping Division.

The lands referred to in this subsection are shown upon the farm unit plats kept on file in the project office, Grand Junction, Colorado.

(b) Payments by the Association on account of the sums set out in paragraphs (i), (ii) and (iii) of subsection (a) of this article were suspended as of the date of this contract pursuant to the Act of May 25, 1926. The Association shall not be required to make payments, on account of these amounts unless and until said unproductive lands or any part thereof which pursuant to the Federal Reclamation Law are declared by the Secretary, after consultation with the Association, to be possessed of sufficient productivity to be placed in a paying class, whereupon payments shall be made as provided in article 12 hereof.

(c) The total construction charge obligations applicable to each acre of said unproductive lands, for the purpose of determining the amounts to be paid by the Association to the United States (that is, including the expenditures heretofore made by the United States, and, as the case may be, the expenditures hereafter made by the United States under the provisions of articles 15 and 16 hereof, as the case may be) are the following:

(i) The sum of Seventy-eight Dollars and Seventy-two Cents (\$78.72) for each acre of the lands referred to in subsection (a)(i) above.

(ii) The sum of Thirty-one Dollars and Fifteen Cents (\$31.15) for each acre of the lands referred to in Subsection (a)(ii) above, plus the proportionate cost per acre for expenditures hereafter made on account of such lands, as provided in article 15.

(iii) The sum of Fifty-one Dollars and Thirty-six Cents (\$51.36) for each acre of the lands referred to in subsection (a)(iii) above, plus the proportionate cost per acre for expenditures hereafter made on account of such lands, as provided in article 16.

The respective charges per acre above stated in this subsection, it is agreed, include an amount which represents the proportionate part of the cost of the joint features of the project works used in the delivery of water to the power plant and which is properly chargeable to power.

Payment and Determination of Annual Instalments
to be Paid by Association

12. (a) The Association's construction charge obligation shall be paid by the Association to the United States in annual instalments determined as provided in this article, each of which shall be paid one-half on or before December 31, of each year and one-half on or before June 1 of the year following, with the first of said payments due and payable on or before December 31, 1945.

(b) Each of said annual instalments shall be subject to increase or decrease pursuant to the provisions of article 13 hereof from and after the time that article becomes operative. Each of said annual instalments shall be determined by taking:

(i) The aggregate of the annual sums due and payable by the Association to the United States on account of the Association's construction charge obligations as provided in subsections (c), (d), and (e), of this article and article 14;

(ii) Less the power credits applicable to the Association's obligations in such year, as provided in article 21 or article 22, and the other contract return credits applicable to the association's obligations, as provided in article 20.

(c) That part of the unaccrued balance of the Association's construction charge obligation on account of expenditures heretofore made by the United States, as provided in article 10(a) hereof, applicable to the lands served by the Association, which as of the date of this contract are classified as productive lands (exclusive of such lands which as of the date of this contract are unentered public lands or entered public lands covered by entries theretofore made and canceled), in the sum of One Million, Three Hundred Sixty-eight Thousand, Seven Hundred Fifty-seven Dollars and Fifteen Cents (\$1,368,757.15) shall be due and payable to the United States in the following annual sums for the following respective years:

(i) For each of the years 1945 to 1959, inclusive, the annual sum of Thirty-two Thousand, Three Hundred Thirty-two Dollars (\$32,332);

(ii) For each of the years 1960 to 1970, inclusive, the annual sum of Sixty-seven Thousand, Five Hundred Thirty-nine Dollars and Sixty-six Cents (\$67,539.66);

(iii) For each of the years 1971 to 1972, inclusive, the annual sum of Seventy Thousand, Four Hundred Twenty Dollars and Forty-five Cents (\$70,420.45);

(iv) For each of the years beginning with the year 1973 and continuing until said unaccrued balance of One Million, Three Hundred Sixty-eight Thousand, Seven Hundred Fifty-seven Dollars and Fifteen Cents (\$1,368,757.15) has been paid in full, the annual sum of Seventy Thousand, Four Hundred Twenty Dollars and Forty-five Cents (\$70,420.45);

Provided, That the last of said annual sums, that is the annual sum completing the payment of said unaccrued balance of One Million, Three Hundred Sixty-eight Thousand, Seven Hundred Fifty-seven Dollars and Fifteen Cents (\$1,368,757.15), shall not exceed the final instalment necessary to make the total of the instalments provided for in this subsection (c) equal said sum of One Million, Three Hundred Sixty-eight Thousand, Seven Hundred Fifty-seven Dollars and Fifteen Cents (\$1,368,757.15): Provided further, That if at any time, by reason of the operation of the provisions of article 15 hereof, the unaccrued part of the said unaccrued balance covered by this subsection (c) has been reduced to an amount equal to or less than Seventy Thousand Dollars (\$70,000), such part shall be due and payable one-half on or before the following December 31, and one-half on or before the June 1 following said December 31, without further increase or decrease pursuant to the provisions of article 13.

(d) That part of said unaccrued balance of the Association's construction charge obligation on account of the expenditures heretofore made by the

United States, as provided in article 10 (a) hereof, applicable to lands served by the Association which, as of the date of this contract, are classified as productive lands and are unentered public lands, in the sum of One Hundred Thirty-one Thousand, Four Hundred Thirty-three Dollars and Seventy-five cents (\$131,433.75) shall be due and payable to the United States as follows:

(i) The annual sum due under this subsection (d) shall be the aggregate of the annual sums due on account of each acre of such land in a paying status for that year. Any such land shall be in a paying status beginning with the year following that in which the General Land Office allows entry or in which the land is otherwise disposed of. The annual sum due on account of any acre of such land shall be one-fortieth (1/40th) of Eighty-three Dollars and Forty-five Cents (\$83.45) less credits apportioned to such land while in a nonpaying status as provided in paragraph (ii) of article 22; and said sum shall continue to be due annually until the full construction charge, less said credits, on account of such land has been paid in full: Provided, that the last of said annual sums, that is the annual sum completing the paying of such construction charge obligation less said credits, shall not exceed the final sum necessary to make the total of the sums on account of such acre of land equal the full construction charge obligation applicable thereto less said credits. Provided further, That if at any time that part of said construction charge obligation less said credits which is unaccrued by reason

of the operation of the provisions of article 13 has been reduced to an amount equal to or less than said annual sum, such unaccrued part shall be due and payable one-half on or before the following December 31, and one-half on or before the June 1 following said December 31, without further increase or decrease, pursuant to the provisions of article 13.

(e) That part of said unaccrued balance of the Association's construction charge obligation on account of expenditures heretofore made by the United States, as provided in article 10 (a) hereof, and, as the case may be, the Association's construction charge obligation on account of expenditures hereafter made by the United States as provided in article 10 (b) hereof, applicable to lands described in subsection (a) of article 11, shall be due and payable to the United States as follows:

(i) The annual sum due under this subsection (e) shall be the aggregate of the annual sums due on account of each acre of such land in a paying status for that year. Any such land shall be in a paying status beginning with the year in which the Secretary determines that such land is productive land; Provided, That in the case of any tract of land within the Loma Extension and the Garfield Pumping Division such determination shall not be deemed effective until January 1 of the fifth full calendar year following that in which irrigation water is available; and Provided, That in the case of a tract of unentered public land such a determination shall not be deemed effective until January 1, of the fifth full

calendar year following that in which the General Land Office allows entry or such land is otherwise disposed of. The annual sum due on account of any acre of land under this subsection (e) shall be one-fortieth (1/40th) of the construction charge on account of such land, as determined under article 11(c), and said sum shall continue to be due annually until the full construction charge on account of such land has been paid in full; Provided, That the last of said annual sums, that is the annual sum completing the payment of said construction charge obligation, shall not exceed the final sum necessary to make the total of the sums on account of such acre of land equal the full construction charge obligation applicable thereto: Provided further, That if at any time that part of said construction charge obligation which is unaccrued by reason of the operation of the provisions of article 13 has been reduced to an amount equal to less than the amount of said annual sum, such unaccrued part shall be due and payable one-half on or before the following December 31, and one-half on or before June 1 following said December 31, without further increase or decrease pursuant to the provisions of article 13.

Annual Instalments to be Subject to
Increase or Decrease

13. When the Association so elects, the election to be evidenced by a proper resolution of its Board of Directors delivered to the Secretary on or before November 15 of the year for which the election is to be effective,

the annual instalment for that year, payable by the Association to the United States as provided in subsection (b) of article 12, and thereafter all subsequent annual instalments shall be payable subject to increase or decrease, as follows:

(a) For the purposes of this article all of the lands served by the Association which are classified under the provisions of the Federal Reclamation Law as productive lands on July 1 of the respective year shall comprise the "project contract unit".

(b) Each calendar year, in which construction charge payments are required to be made under this contract, the Secretary shall determine or estimate the "annual returns", and shall determine the "normal returns" for the project contract unit. "Annual returns" means the amount of the gross crop returns per acre of the area in cultivation within the project contract unit for any calendar year, the term being applied herein also to like returns for those calendar years prior to the ones for which the first instalment becomes due and payable under this contract in which, in the opinion of the Secretary, the records of such gross crop returns per acre are adequate for determining the annual returns for such year. The "normal returns" shall be determined by taking the weighted average of the "annual returns" of those ten calendar years of the thirteen-year period covering said year and the twelve years preceding it, in which annual returns for such years are highest: Provided, That an estimate of annual returns may be used for the year for which the normal returns are being determined. The Association and the water users thereof shall

furnish the Secretary with such assistance as he requests including the submission of preliminary crop reports and estimates for the current year on or before November 15 of each year or such other date fixed by the Secretary, for use in the preparation of estimates and final determinations of annual returns and the determinations of normal returns provided for in this article, and said estimates and determinations made by the Secretary shall be conclusive.

(c) Each calendar year in which, under the terms of this contract, the Association is obligated to make payments on account of the Association's construction charge obligations, the Secretary shall determine the percent of the normal returns for said year by which the annual returns for said year exceed or are less than said normal returns. For each one percent (1%) or major fraction of one percent (1%) there shall be an increase or decrease, respectively, of two percent (2%) in the amount of the annual instalment due and payable by the Association to the United States, as defined in article 12(b) under the provisions of this contract for that year. The amount of the construction charge instalment due and payable to the United States under the provisions of this contract for each year shall be furnished to the Association by the Secretary on or before December 15 of each year: Provided, That in no event shall the amount of said payment due and payable for said year be less than fifteen percent (15%) of the amount of the respective instalment for said calendar year.

(d) For the purposes of this article, the construction charge obligations of the association shall be grouped in schedules as follows:

(i) There shall be scheduled as one schedule the then unaccrued balances applicable to the lands covered by article 12(c) hereof.

(ii) There shall be scheduled as one schedule the then unaccrued balance of the construction charge obligations of the Association on account of the rehabilitation and repair of Tunnel No. 3, as provided in article 14 hereof.

(iii) In the event that any lands which as of the date of this contract are classified as productive lands but which, as of the date of this contract are unentered public lands, are entered and the construction charge obligation applicable to such lands is payable as provided in article 12(d), the amounts of such unaccrued balances of construction charges shall be separately scheduled, there being included in each such schedule the construction charges for which the initial annual sum comes due on the same date under the operations of article 12(d).

(iv) In the event that any lands classified as unproductive are placed in a classification of productive land and the construction charges applicable to each acre are due and payable as provided in article 12(e), the amounts of such construction charges shall be separately scheduled, there being included in each such schedule the construction charges for which the initial annual sum comes due on the same date under the operations of article 12(e).

(e) In the event that any part of the sums scheduled as provided in subsection (d) of this article are by reason of the increases or decreases in the instalments to be paid on account of the construction charges so scheduled by reason of the operation of article 13 hereof, is unaccrued upon the date that such construction charge obligations so schedule would have been due and payable in full if they had been paid in the respective annual sums provided in subsection (c), (d), and (e) of article 12 and article 14 without being subject to modification under the provisions of article 13, such unaccrued part of said sums so scheduled shall be subject to a charge of three percent (3%) per annum until due and payable under the provisions of this contract, and such charges shall be due and payable by the Association to the United States, on the same dates and in addition to the instalments provided in article 12.

Association to Reimburse United States Cost of
Rehabilitation and repair of Tunnel No. 3

14. (a) The United States has completed the rehabilitation and repair of Tunnel No. 3 of the project works, pursuant to the Government-Association contract, at a cost of Seventy-four Thousand, Eight Hundred Eighty-eight Dollars and Forty-eight Cents (\$74,888.48).

(b) The Association shall pay this cost of rehabilitation and repair to the United States, in addition to all other sums due and payable under the provisions of this contract in twenty-six (26) successive equal annual instalments, each of which shall be paid one-half on or before December 31 of each year and one-half on or before June 1 of the year following with the first of said payments due and payable on or before December 31, 1945.

(c) In the event that any part of the cost of said rehabilitation and repair, to be paid to the United States by the Association as in this article provided, is by reason of the increase or decrease in the instalments by reason of the operation of article 13 hereof, unaccrued upon the date following the date that the twenty-sixth (26th) annual sum herein provided is due and payable, such unaccrued part of the cost of said rehabilitation and repair shall be subject to an interest charge as provided in article 13(a) hereof and shall be due and payable in successive annual sums of Two Thousand Dollars (\$2,000) each, which shall be paid one-half on or before each December 31 and one-half on or before each June 1 following, beginning with the December 31 of the year following the year in which the first one-half of said twenty-sixth (26th) annual sum is due and payable. Said sums shall also be subject to increase or decrease under the provisions of article 13 hereof.

(d) If at any time the part of the cost of said rehabilitation and repair which is unaccrued by reason of the operation of the provisions of article 13 has been reduced to an amount equal to or less than Two Thousand Dollars (\$2,000), such unaccrued part shall be due and payable one-half on or before the following December 31, and one-half on or before the June 1 following December 31, without further increase or decrease pursuant to the provisions of article 13.

Provision for Completion of Construction
of Loma Extension

15. (a) The United States, as the advisability thereof is determined by the Secretary in his discretion, agrees to expend an amount sufficient to

complete the construction of the irrigation facilities for the lands of the Loma Extension to the project referred to in article 11(a) (ii) hereof.

Upon completion of said construction of irrigation facilities for the lands of said Loma Extension, the Secretary shall give the Association written notice of said expenditures.

(b) The Association agrees to pay to the United States said expenditures of the United States in completing the irrigation facilities for the lands of said Loma Extension as provided in article 12 hereof.

(c) The location and boundaries of the Loma Extension are set out in the map marked exhibit A attached hereto and made a part hereof.

Provision for Completion of Construction
of Garfield Pumping Division

16. (a) The United States, as the advisability thereof, is determined by the Secretary in his discretion, agrees to expend an amount sufficient to complete the construction of the irrigation facilities for the lands of the Garfield Pumping Division of the project referred to in article 11(a) (iii) hereof. Upon completion of said construction of irrigation facilities for the lands of said Garfield Pumping Division, the Secretary shall give the Association written notice of said expenditures.

(b) The Association agrees to pay to the United States said expenditures of the United States in completing the irrigation facilities for the lands of said Garfield Pumping Division, as provided in article 12 hereof.

(c) The location and boundaries of the Garfield Pumping Division are set out in the map marked exhibit A attached hereto and made a part hereof.

Computation of Cost

17. The "cost" which makes up the respective obligations of the Association to the United States under this contract shall embrace all expenditures of whatsoever kind incurred by the United States, in relation to the works, services, or functions for which the charge is made, including but not limited to the cost of labor, property, material; equipment, engineering, legal work; superintendence, administration, overhead, general expenses, crop censuses, and damage claims of all kinds. The determination of what costs are properly chargeable as a part of the cost of construction or cost of operation and maintenance or to the various other special charges and obligations under this contract shall be determined by the Secretary, whose determinations shall be conclusive and binding on the parties hereto.

General Obligations of the Association

18. The Association's obligations hereunder are general repayment obligations under which the Association as a whole is obligated to pay to the United States the full amount or amounts herein agreed to be paid according to the terms stated in this contract, notwithstanding any individual default in the payment to the Association of any assessments, tolls, or other charges levied by the Association; and while the Association, so far as its powers under the laws of Colorado and under its Articles of Incorporation and bylaws permit, may distribute said obligations among its shareholders in a manner that takes into account the productivity of the various classes of land of its shareholders and the benefits accruing to said lands by reason of the construction of the project, no such distribution of said obligations shall in any manner be deemed to relieve the

Association or any of its shareholders, or any land therein, of the Association's general obligation to the United States.

Assessments by Association

19. (a) The Association agrees to make levies and assessments against its shareholders sufficient in amount:

(i) To meet all payments due from the Association to the United States under the provisions of this contract;

(ii) To take care of deficiencies caused by defaults in payments of the levies and assessments by shareholders of the Association;

(iii) To accumulate and maintain an extraordinary operation and maintenance fund, as provided in article 24 hereof.

(iv) After the operation and maintenance of all or any part of the project works are turned over to the Association, as provided in article 29, to raise the funds to meet the cost of operating and maintaining the transferred works.

(b) The Association agrees that it will use all of its powers and resources, including the power of the Association to levy and collect assessments against its shares of stock and to enforce liens held by it, and the power to withhold delivery of water, to collect and pay to the United States all charges or sums provided in this contract in full on or before the day that the same become due. The obligations due the United

States hereunder are hereby declared to be prior to all other obligations of the Association, and from any moneys coming into the possession of the Association and applicable to the payment of its obligations, the United States shall be paid prior to all other claimants, whether the directors of the Association or other claimants.

(c) In the event of a delinquency in payment under any individual water right contract or application, to the extent authorized by law, the Association is hereby authorized to enforce the lien created by the water right contract or application against the land. The United States may pursue such remedies in aid of collections by the Association as shall be determined by the Secretary, but such action shall not alter the primary obligation of the Association hereunder to the United States. If the delinquent is an entryman not yet entitled to patent, the United States may begin proceedings to cancel the entry.

(d) Whenever required so to do by the Secretary, the Association shall give the officer of the United States in charge of the project advance notice of the amount of any assessment, toll, or other charge intended to be levied. Whenever practicable, such notices shall be given not less than ten (10) days prior to the intended levy.

Receipts from Certain Repayment Contracts

20. (a) Receipts from the Mesa County Irrigation District under that certain contract between the United States and the Mesa County Irrigation District dated June 10, 1918, and receipts from the Palisade Irrigation District under that certain contract between the United States and the Palisade Irrigation District dated May 31, 1918, as amended by those

supplemental contracts dated May 19, 1925, and April 14, 1938, due after the date of this contract, shall be credited annually in the following order:

(i) On the aggregate of the annual sums due and payable by the Association to the United States, as provided in article 12.

(ii) On the annual operation and maintenance charges payable by the Association to the United States, if any.

(iii) To the extent permitted by law, as the Association may direct.

(b) The costs of the entire project works (including the Orchard Mesa Division) include certain expenditures for construction made pursuant to the contract of November 22, 1917, made between the United States and the Grand Valley Drainage District (later the Grand Junction Drainage District) and the contract of February 18, 1922, as supplemented by the contract dated September 10, 1931, between the United States and the Orchard Mesa Irrigation District. Inasmuch as allowance for such expenditures has been made in determining the obligations of the Association hereunder, the payments made to the United States under the contract with the Grand Valley Drainage District (all of which have been paid), and the payments to the United States under these contracts with the Orchard Mesa Irrigation District shall be and remain the property of the United States.

Power Revenues Under the Contract between the United States
and the Public Service Company of Colorado and the
Association, Dated June 19, 1931, as Amended

21. (a) The annual payment of Twelve Thousand Dollars (\$12,000) which the Public Service Company of Colorado, hereinafter referred to as the Company, is required to pay direct to the United States on the last day of December of each year as provided in that certain contract between the United States, the Association and the Public Service Company of Colorado, dated June 19, 1931, as amended by contracts between the United States and the Association dated February 27, 1934, and September 27, 1935, shall be credited annually on the aggregate of the annual sums due and payable by the Association to the United States as provided in article 12 hereof.

(b) The annual payment of Three Thousand Three Hundred Sixty Dollars (\$3,360) and such additional sums which the Company is required to pay direct to the Association on the last day of December of each year, as provided in that certain contract between the United States, the Company and the Association dated June 19, 1931, shall be paid by the Association to the United States and the United States shall credit said sum of Three Thousand Three Hundred Sixty Dollars (\$3,360) and any additional sums to the annual billing against the Association for the annual operation and maintenance costs of the project: Provided, That if the operation and maintenance of the project is transferred to the Association as provided in article 29 hereof, so much of the sum of Three Thousand Three Hundred Sixty Dollars (\$3,360) and any additional sums which the Company is required to pay direct to the Association, as may be required to meet the annual billing against the Association for the annual operation and maintenance

costs of the project works, if any, retained for operation and maintenance by the United States, shall be paid by the Association to the United States, and the balance of such sum shall be applied by the Association to its annual operation and maintenance costs.

(c) In any year during the life of said contract of June 19, 1931, when in the joint opinion of the Secretary and the Board of Directors of the Association extraordinary operation and maintenance expenditures are required in caring for unusual damages to the irrigation plant or in meeting emergencies not ordinarily to be contemplated, in a sum in excess of funds available in the extraordinary operation and maintenance fund provided for in article 24, such part (not exceeding such extraordinary operation and maintenance expenditures) of said maximum annual payment of Twelve Thousand Dollars (\$12,000) referred to in subsection (a) of this article, for that year as shall be agreed upon in writing between said Secretary and the Board of Directors, which may be paid by the Company to the Association as provided in said contract of June 19, 1931, shall be applied upon the Association's operation and maintenance expenditures for such year, and the remainder of said payment of Twelve Thousand Dollars (\$12,000), which shall be paid by the Company to the United States as provided in said contract of June 19, 1931, shall be credited as provided in subsection (a) of this article.

(d) As between the United States and the Association, this article supplements article 6 of the contract between the United States, the Public Service Company of Colorado and the Association, dated June 19, 1931, as amended by contracts between the United States and the Association dated February 27, 1934, and September 27, 1935.

Power Receipts After the Termination of the Public
Service Company Contract

22. (a) Following the termination of the contract between the Public Service Company of Colorado and the United States and the Association, dated June 19, 1931, as amended by contracts between the United States and the Association dated February 27, 1934, and September 27, 1935, and until such time as all construction charge obligations to the United States which are payable under the terms of this contract are fully satisfied, the annual net revenues from the existing power plant comprising part of the project works shall be credited annually in the following order:

(i) On the aggregate of the annual sums due and payable by the Association to the United States, as provided in article 12.

(ii) On the unaccrued balance of the Association's construction charge obligations on account of the lands in the Garfield Gravity Division which, as of the date of this contract, are classed as productive but are unentered public lands and which have not, in the year for which the credit is applied, been put into a paying status as provided in article 12. Credits under this paragraph shall be spread equally against all productive but unentered lands in the nonpaying status in the year for which the credit is applied.

(b) Said annual net revenues shall be determined by deducting from the annual gross revenues from said power plant such costs as are properly and reasonably attributable to the cost of producing power and energy therefrom, including as a fair proportion of the costs of operating and maintaining those project features (joint features) of service both in the development of power and energy and the irrigation of project lands, Twenty-eight and Seven Hundredths (28.07) percent of all maintenance costs for the entire year and of the operation costs for the months from April to October, inclusive, plus One Hundred (100) percent of operation costs for the months from November to March, inclusive. The determinations required by this subsection shall be made by the Secretary and shall be conclusive on the parties hereto. During the time any joint features are being operated and maintained by the Association, it will be paid by the United States out of such gross power revenues, for each year or fraction thereof, an amount equal to the proportion of the costs of operating and maintaining the transferred joint features as herein are determined to be chargeable to power.

(c) It is expressly understood and agreed that, subject to the power of Congress, the Secretary has, and he shall have, full and complete authority to determine the manner of operation and maintenance of said plant and, subject to the provisions of the Federal Reclamation Law relating to the fixing of rates for the sale of electric power, to fix the rates for electrical energy generated and distributed by and from the existing power plant on the project. Sales of power and energy shall be made from said plant only on terms that, in the judgment of the Secretary, will not impair the efficiency of the project for irrigation purposes.

(d) From and after the time any of the lands of Garfield Pumping Division are declared to be productive pursuant to the Reclamation Law and this contract, there shall be reserved from the power produced by said plant sufficient energy, not to exceed Three Million (3,000,000) kw-hrs. per annum, for the pumping of irrigation water for service on that Division. Such energy shall be made available for such use on that Division at its cost of production and transmission, as determined by the Secretary.

(e) Based on the estimated capacity of One Thousand Four Hundred Twenty-five (1,425) second-feet in the main canal, the sum of Six Hundred Nine Thousand, One Hundred Thirteen Dollars and Fourteen Cents (\$609,113.14) is agreed to represent the project cost, exclusive of the power plant, which is properly chargeable to power. This sum represents, based on One Thousand Four Hundred Twenty-five (1,425) second-feet capacity in the main canal, the proportionate part of the cost of the diversion dam, the headworks of the main canal, the main canal, and related project facilities down to the inlet portal of Tunnel No. 3, all of which are used in the delivery of water to the power plant.

(f) A difference of opinion exists concerning entitlement to and the use and application of net power revenues. Other than as expressly provided in this contract, nothing herein shall be construed to affect or prejudice the rights of either party hereto.

Cost of Operation and Maintenance to be
Paid in Advance

23. (a) The Association agrees that each year during the time that any part of the irrigation works of the project are being operated by the United States, it will pay in advance the estimated cost, as determined by the secretary, of operating and maintaining such project works (except the Orchard Mesa Division which Division is shown on exhibit A) being operated by the United States for the use of the Association.

(b) Payments shall be made each year on the basis of annual estimates made by the Secretary. Such annual estimates, hereinafter referred to as the operation and maintenance charge notice, shall contain a statement of the estimated cost of operation and maintenance to be incurred in the following calendar year to be paid by the Association. Such operation and maintenance charge notice shall be furnished to the Association on or before October 1 of the year preceding the year covered thereby.

(c) The Association agrees to pay the amount set out in such operation and maintenance charge notice to be paid by the Association in three instalments, the first, which shall be twenty-five percent (25%) of such amount, on or before December 1 of the year in which the notice is given, and the second, which shall be fifty percent (50%) of said amount, on or before March 1, and the third, which shall be twenty-five percent (25%) of said amount, on or before July 1 of the year for which said charge is made. The first instalment of said charge for the year 1946 shall be due and payable on or before December 1, 1945.

(d) Whenever, in the opinion of the Secretary, funds so advanced will be inadequate to operate and maintain the works being operated by the United States, he may give a supplemental operation and maintenance charge notice, stating therein the amount of additional funds required, and the Association shall advance such additional amount on or before the date specified in the supplemental notice. If funds advanced by the Association under this article exceed the cost of operation and maintenance for the year for which advanced, the surplus shall be credited on the second instalment due for the succeeding year.

(e) In the event that any part of the irrigation works of the project are transferred to the Association for care, operation and maintenance, pursuant to article 29 hereof, the Association during the time it operates and maintains such works transferred to it, shall annually levy and collect in advance either as an assessment, or as a toll charge, in addition to all other charges, an annual operation and maintenance charge based upon the estimated cost of the operation and maintenance of such transferred works for the following year, including an amount sufficient to cover deficiencies in collections, and increased by any deficit or decreased by any excess for the previous year, and including the amount required for the accumulation and maintenance of the extraordinary operation and maintenance fund provided for in article 24 following.

(f) With the object of collecting sufficient funds to meet the net amount provided in subsection (a) of this article, together with the charges for the accumulation and maintenance of the extraordinary operation and maintenance fund provided for in article 24, the Association shall levy an annual minimum operation and maintenance charge to be paid in advance on each acre of productive lands served by the Association whether water is used or not. Such annual minimum operation and maintenance charge shall entitle any given acre of land to the delivery during such year of not to exceed the number of acre-feet of water, as shall be determined by the Secretary after consultation with the Board: Provided, that such number of acre-feet may be different for any acre of land, as determined by the Secretary after consultation with the Board. Additional water may be delivered to any given acre

of such land at a charge per acre-foot which shall not be less than fifty percent (50%) more than the average charge per acre-foot of water which said land is entitled to receive for the annual minimum operation and maintenance charge. Such charge for additional water shall be paid at the same time as and in addition to the first instalment of the annual minimum operation and maintenance charge for the following year.

Extraordinary Operation and Maintenance

24. (a) Until all construction charge obligations to be paid to the United States are paid in full, the Association shall include in the annual operation and maintenance assessment or toll charge to be collected from its water users, as provided in article 23(a) and (e), an annual amount sufficient to collect an annual amount of Two Thousand Dollars (\$2,000) for the accumulation of and the maintenance of an extraordinary operation and maintenance fund. Accumulations shall be made in this fund until it is equal in amount at least to the average of the annual operation and maintenance costs of the irrigation works being operated and maintained by or for the Association for the five preceding years. Thereafter, such further annual amounts shall be collected whenever, as of the time the annual operation and maintenance charge is fixed, the fund has been reduced to an amount less than the average annual operation and maintenance costs for the then five preceding years. Such fund shall be available only for the purpose of meeting the cost of operation and maintenance, repair and betterments of the irrigation works being operated and maintained by or for the Association which, as determined by the Secretary, are costs in excess of the normal operation and maintenance cost of said works.

(b) Such fund shall be maintained by the Association apart from other of its funds and shall be deposited with such depository or may be invested in such securities as are approved by the secretary.

Overhead, Inspection, Repair, and Other Charges
To be paid by the Association

25. (a) The Association shall pay to the United States for each calendar year, on or before March 1 of the succeeding year, any of the following costs or expenses incurred by the United States:

(i) A charge to cover that part of the expense incurred by the United States in the operation of the field legal offices, and other detached offices of the Bureau of Reclamation, which in the opinion of the Secretary are properly and equitably chargeable to the Association;

(ii) The costs of all inspections under the provisions of article 33;

(iii) The cost of repairs to the transferred works made by the United States under the provisions of article 34;

(iv) The cost of all crop censuses and investigations under the provisions of article 36(b);

(v) The direct cost plus the proper proportionate part of overhead cost apportionable thereto of hydrometric measurements made by the United States for the proper division of project water, and for the protection of project water rights;

(vi) The Association's share, as determined by the Secretary, of such other direct costs for special work performed for the benefit of the Association or the project by the United States at the direction of the Secretary, and which in the opinion of the Secretary are for the use and benefit of the Association:

Provided, That the obligations under this article are exclusive of any of these costs or expenses that have been included in billings for operation and maintenance charges under article 23.

(b) In the event that, due to lack of appropriations by Congress, there are no funds available, with which to do the work herein covered by subsection (a) of this article, and for which the Association agrees to pay as herein provided, the Association will pay to the United States the estimated costs of such work, as determined by the Secretary, in advance. In the event that such costs, as determined by the Secretary, are less than funds advanced, appropriate credit shall be given upon such instalments thereafter coming due, as the Secretary shall determine.

Penalty for Delinquency in Payment

26. In the event that any payment by the Association to the United States provided for in this contract, is not made on or before the date that such payment is due and payable, there shall be added to the amount unpaid a penalty of one-half of one percent (1/2%) on the day following the due date, and there shall be added a like penalty of one-half of one percent (1/2%) of the remaining unpaid amount on the first day of each calendar month thereafter as long as such default shall continue.

Water Supply

27. The project water supply is agreed to comprise the water heretofore appropriated by the United States for the benefit of the project, and which at any given time is available under such appropriations. Out of this supply, there shall be made available to the Association for the irrigation of the productive lands in the project, including temporarily suspended lands when declared to be productive, such water as is lawfully available and reasonably required therefor as determined by the Secretary, subject to compliance by the Association with all the provisions of this contract and subject to the right to the use for the development of power of at least eight hundred (800) cubic feet per second of said supply during each nonirrigation season and during each irrigation season, all the water from the project water supply that may be used without encroachment on the requirements from said supply for irrigation on the project as herein provided.

Refusal of Water in case of Default

28. (a) No water from the project water supply shall be delivered to or for the Association if the Association shall be in arrears in the advance payment of operation and maintenance charges due to the United States, if any, or more than twelve (12) months in arrears in the payment, as required by the terms of this contract, of the annual instalments provided for in article 12 hereof, or more than twelve (12) months in arrears in the payment of any other amounts payable to the United States by the Association under the provisions of this contract. The Association agrees that it will refuse to

deliver water to lands or parties who are in arrears in the advance payment of operation and maintenance charges due from said lands or parties to the United States or to the Association, or to lands or parties who are in arrears for more than twelve (12) months in the payment of the amounts due from said lands or parties to the United States or to the Association for the annual instalments provided for in article 12 hereof, or for any other amounts due from the Association to the United States under this contract. The provisions of this article are not exclusive and shall not in any manner prevent the United States from exercising any other remedy given by this contract or by law to enforce the collection of any payments due under the terms of this contract.

(b) After any part of the project works are turned over to the Association for care, operation and maintenance, as provided in article 29, the United States reserves the right and power to resume control of such project works or any part thereof at any time when necessary to shut off water to enforce the provisions of this article, of article 23, or article 30, or of article 36(b). In the event that the United States resumes control of the project works or any part thereof, as herein provided, neither the United States, its officers or employees shall be liable for any damages resulting directly or indirectly from any such resumption of control or withholding of water from the Association or from lands served by the Association, as herein provided, and the Association agrees to hold the United States, its officers and employees harmless from any and all claims of damage.

Transfer of Care, Operation and Maintenance

29. (a) Effective on the transfer date set out in a written notice from the Secretary to the Association, which shall be given to the Association not less than ninety (90) days prior to such transfer date, the United States will transfer to the Association, under the conditions herein stated, the care, operation and maintenance of all or any part of the project works of the project, as the Secretary shall determine.

(b) Said transfers or any or all of them will be made subject to the terms of all contracts existing at the date of said transfer.

(c) The property so transferred shall be referred to as the transferred works. The term transferred works shall also include the property and works title to which is hereafter conveyed to the United States pursuant to the provisions of article 31(b).

(d) Equipment and supplies on hand, used in connection with the works transferred to the Association, will be transferred to the Association at the time such works are transferred for operation and maintenance, as provided in this article, subject to arrangements satisfactory to the Secretary being made for the payment of the book value thereof to the United States in the case of such materials purchased with government funds.

Association to accept Care, Operation and Maintenance
of Transferred Works

30. The Association agrees to accept on the transfer date the care, operation and maintenance of all project works turned over to it for care, operation and maintenance, as provided in article 29. Thereafter it will care for, operate and maintain the transferred works and deliver water

therefrom to lands served by the Association only, and in full compliance with the Federal Reclamation Law, including the condition that such water shall not be furnished to any landowner in amounts in excess of the amounts provided in the Federal Reclamation Law, the terms of this contract, the regulations of the Secretary pursuant thereto, and in such manner that the transferred works will remain in as good and efficient condition and of equal capacity for the storage, development, diversion, and distribution of irrigation water, as at the date that such transferred works are turned over to the Association, and will use all proper methods to secure the economical and beneficial use of irrigation water. Said care, operation and maintenance, and control of the transferred works by the Association shall be without cost or expense to the United States.

Title to Transferred Works

31. (a) Title to all project works, including the works to be transferred to the Association under the provisions of this contract, shall remain in the United States until otherwise provided by Congress.

(b) The Association agrees that after the operation and maintenance of the project or any part thereof is turned over to the Association, as provided in article 29, within ninety (90) days after the construction of any irrigation works including drainage ditches, and canals, laterals, and sublaterals of such laterals, constructed by the Association in connection with the project works operated and maintained by the Association, it will convey to the United States by good and sufficient instrument title to such works. The instruments to be given the United States by the Association pursuant to this article shall be in form satisfactory to the secretary.

Responsibility for Holding United States Harmless

32. The Association shall hold the United States, its officers, employees and agents, harmless as to any and all damage which may in any manner grow out of the care, operation and maintenance of the transferred works by the Association.

Inspection of Transferred Works

33. After the care, operation and maintenance of the project works, or any part of them, shall have been taken over by the Association, as provided in article 29, the Secretary shall cause to be made from time to time a reasonable inspection of the transferred works for the purpose of ascertaining whether the terms of this contract are being carried out by the Association. Such inspection shall include examinations of the transferred works and of the books, records, and papers of the Association, together with examinations in the office of the Bureau of Reclamation of all contracts, papers, plans, records and programs connected with said transferred works. The actual costs, as determined by the Secretary, of such inspection shall be charged to the Association, which determination of costs shall be conclusive and binding on the parties hereto. The Association shall pay to the United States such costs as provided in article 25 hereof.

Keeping Transferred Works in Repair

34. No substantial change in any of the transferred works shall be made by the Association without first obtaining the written consent of the Secretary to such change. The Association shall make promptly any and all

repairs to the transferred works which in the opinion of the Secretary are deemed necessary for the proper care, operation and maintenance of the transferred works and of the project. If at any time, in the opinion of the Secretary, any part of the transferred works is for any cause in a condition unfit for service, he may order the water turned out and shut off until in his opinion such part of the transferred works is put in proper condition for service. In case of neglect or failure of the Association to make such repairs, the Secretary may cause the repairs to be made, and charge the costs thereof, as determined by the Secretary, to the Association, which determination of costs shall be conclusive and binding on the Association. The Association shall pay to the United States such costs as provided in article 25 hereof.

Resumption of Management and Control
In Event of Default

35. (a) In the event that the Association at any time or times is in default in any of its obligations to the United States under this contract, or is found by the Secretary to be operating the transferred works or any part thereof in violation of the provisions of this contract, the United States may, at the election of the Secretary, take over from the Association and operate and maintain all or any part of said transferred works, title to which is vested in the United States, by giving written notice to the Association of the election, of the property and works to be taken over and of the effective date of the election. Notwithstanding any such resumption of operation and maintenance by the United States, all or any part of the transferred works taken over by the United States may, at the election of

the Secretary, be retransferred to the Association for operation and maintenance in accordance with the terms of this contract by giving written notice to the Association of such election, of the property and works to be retransferred, and the effective date of such retransfer. The Association agrees to surrender possession of any such property and works or to accept the retransfer of any such property and works on the effective date of such surrender or retransfer as specified in any such written notice. No resumption of the management and control of such property and works, as herein provided for, shall relieve the Association of its obligations under this contract.

(b) During any period that any transferred works are being operated and maintained by the United States pursuant to this article, the Association agrees that it will pay in advance the operation and maintenance costs of the transferred works being, or to be operated by the United States, as provided in subsection (a), (b), (c), and (d) of article 23, except that the Secretary may direct that payments shall be made on the basis of estimates by the Secretary furnished to the Association at such time or times as the Secretary may direct.

(c) It is agreed that in the event that the United States, its officers or employees resume or take over the operation and maintenance of the works of the project or any part thereof, neither the United States its officers or employees shall be liable for any damages resulting directly or indirectly from any such resumption or taking over; and the Association agrees to hold the United States, its officers and employees harmless from any and all claims of damage.

Association to Keep Books and Records
And Report Crop Returns

36. (a) The Association shall:

(i) Install and maintain a modern set of books of accurate account, to be acceptable to the Secretary, showing all the financial transactions of the Association, and furnish such financial reports and statements in such form as may be required from time to time by the Secretary;

(ii) Keep each year an accurate record of the project water supply and the disposition of the same, and furnish the Secretary with such detailed reports covering said water supply and its disposition, in such form as is prescribed by the Secretary;

(iii) Keep such other records in such manner and form as the Secretary may require and submit such reports based thereon as may be required from time to time by the Secretary.

(b) In the event that any part of the irrigation works of the project are transferred to the Association for care, operation and maintenance as provided in article 29 hereof, after the date of such transfer the Association shall, in addition to the books and records required to be kept as provided in subsection (a) of this article, keep an accurate record of all crops and agricultural and livestock products produced on the lands served by the Association, and furnish the Secretary on or before December 31, of each year with a crop report covering such crops, agricultural

and livestock products, in such form as is prescribed by the Secretary. The reports required under this subsection shall be in addition to those required under the provisions of article 13(b): Provided, That at such times as the Secretary in his opinion shall deem it necessary or desirable, he may cause a crop census to be taken and an investigation of the per-acre income to be made of all, or of such part as he shall determine, of the lands served by the Association: Provided further, That no such census and investigation shall be taken and made more often than once in each calendar year. Such a census and investigation shall be for the purpose of assisting the Secretary in checking the records furnished by the Association to the United States or for the purpose of securing independent information concerning the crops produced and income secured from the lands served by the Association. In connection with such a census or investigation, the Secretary may require such information to be given under oath; any owner or occupant of such land who shall refuse to give under oath such information when requested to do so by a crop census taker or other person authorized by the Secretary to secure such information shall be without right to receive water through the transferred works until such information is furnished. The census taker, enumerator, investigator, or other person authorized by the Secretary to secure such information shall report to the Association Board the descriptions of lands and the names of the owners or occupants refusing such information or refusing to verify or affirm the same under oath or affirmation. Upon notice from the Secretary, the Association shall refuse to deliver water made available through the transferred works to such land or to such landowners or

occupants until the requested information has been furnished. The Secretary shall furnish the Association with a statement of the costs of such crop census and investigations which costs shall be paid to the United States by the Association as provided in article 25 hereof.

Access to Books and Records

37. Subject to applicable Federal laws and regulations, the proper officers or agents of the Association shall have full and free access at all reasonable times to the project account books and official records of the Bureau of Reclamation relating to the construction, acquisition, care, operation and maintenance of the project works and the status of Association or individual accounts and payments of operation and maintenance and construction charges, with the right at any time during office hours to make copies thereof. The proper representatives of the United States shall have similar rights in respect to the account books and records of the Association.

Selection of Manager or Superintendent

38. During the time when any of the project works are being operated and maintained by the Association and until all construction charge obligations to be paid to the United States are paid in full, the Association shall employ a competent and suitable manager or superintendent at a compensation which in the opinion of the Secretary is adequate. The selection of such manager or superintendent and the salary paid to him or his successors shall be subject to the approval of the Secretary. Upon notice from the Secretary that such project manager or superintendent, is or has

become unsatisfactory, the Association shall promptly and as often as such notice is given, terminate the employment of such unsatisfactory employee and employ one who is competent and suitable in the opinion of the Secretary.

Furnishing Water on a Temporary Basis

39. Water may be furnished both to lands served by the Association classed as permanently unproductive and to lands served by the Association classed as temporarily unproductive at the rates, the length of time, and other terms fixed by the Secretary. Any revenues so realized in excess of the cost of delivery of such water shall be disposed of as required by law.

Carriage of Water of Orchard Mesa District

40. The United States and the Association reaffirm their grant to the Orchard Mesa Irrigation District of the permanent right to have certain water owned and claimed by the District for power and irrigation purposes diverted and carried by the United States in connection with the project, as provided in that certain contract between the United States, the Association and the Orchard Mesa District dated February 18, 1922, limited at all times, however, to the amount of water which the District is lawfully entitled to divert up to but not exceeding four hundred (400) cubic feet per second of time and which at the time is actually flowing in the river exclusive of any stored water claimed by any party other than the District. In the event, however, that the actual available supply from the natural flow of the Colorado River (formerly the Grand River) for the District and the project at the diversion dam and headworks constructed for the project shall be reduced as a result

of natural causes to a quantity less than thirteen hundred and five (1305) cubic feet of water per second of time, or the available capacity of the canal becomes insufficient to carry said thirteen hundred and five (1305) cubic feet of water per second of time in addition to a total of one hundred and twenty (120) cubic feet per second of time, which amount of water is diverted and carried in said canal by the United States for the Mesa County Irrigation District and Palisade Irrigation District under two certain contracts heretofore made by the United States, dated respectively June 10, 1918, and May 31, 1918, then in that event, the District shall be entitled only to such proportionate part of the water available as determined by the relation which the number 400 bears to the number 1305, or 30.65 per centum, and the District shall accept such proportionate part as full satisfaction of its claim for water during such periods of shortage or reduced capacity of said canal. It is understood and agreed that this contract is made subject to the rights of said Mesa and Palisade districts to have their water carried in said canal as provided in said contracts.

Water and Canal Capacity for Permanently Unproductive
Land Retained by United States

41. (a) It is agreed that there is retained for use and disposal of the United States as it sees fit, sufficient capacity in the canals, ditches and other project works for the carriage and delivery of the proportionate part of the project water supply intended to be used through and by means of said irrigation works upon lands served by the Association now or hereafter declared to be permanently unproductive, and the cost of which water supply

and capacity the Association is not required to pay, the same having been charged off as provided in the Act of May 25, 1926 (44 Stat. 636), or which is charged off and the Association is not required to pay pursuant to any subsequent legislation.

(b) It is further agreed that any purchaser of such water rights or capacity from the United States will be required to pay to the United States or to the Association an equitable operation and maintenance charge for the carriage and delivery of such water.

Shortage of Water

42. On account of drought, canal breaks, inaccuracy in distribution, or other causes, there may occur at times a shortage in the water supply for lands served by the Association, and while the United States will use all reasonable means to guard against such shortage, in no event shall any liability accrue against the United States, its officers, agents, or employees, for any damages, direct or indirect, arising therefrom; nor shall any obligations provided for herein be reduced or deferred because of any such shortage or damage.

Waste, Seepage and Return Flow

43. It is agreed and understood that the United States does not abandon or relinquish any of the waste or seepage water, or return flow coming from lands of the project irrigated through works constructed by the United States, but that the same is reserved and intended to be retained and used for the benefits of the project.

Water Users to be Members of Association

44. (a) The United States agrees that in opening to entry public lands within the project, in accepting additional water right applications, and in entering into additional water right contracts with water users within the service area of the project, excepting water users of the Orchard Mesa Division of the Project, for water from project water supply, to accept as entrymen, applicants and contractors only those water users who are or who agree to become members of the Association under the provisions of its Articles of Incorporation and bylaws.

(b) The Association agrees that it will accept as members of the Association, such water users of the project, excepting water users of the Orchard Mesa Division, as designated by the Secretary, and upon the compliance with other conditions prescribed for such membership.

Project Contracts

45. (a) After the operation and maintenance of any project works are turned over to the Association, as provided in article 29 hereof, the Association shall perform and carry out in accordance with their true intent and meaning, to the satisfaction of the Secretary, the obligations imposed upon the United States in connection with the project works so transferred in all project contracts in force at the time of the turning over of such works, and shall not attempt in any manner to change any of the terms of any of said contracts.

(b) So far as permitted by law and not otherwise provided, the Association shall have the rights and privileges, under any and all such

contracts, of the United States that are necessary for the Association in carrying out its obligations as provided in subsection (a) above.

(c) After the date of the turning over of the project works, or any part thereof, as provided in this contract, no contract made by the Association that purports to affect the title to any of the project works or that would in any manner interfere with or prevent the Association or the United States from carrying out their respective duties and obligations under this contract, shall be valid until approved by the Secretary:

Provided, That this requirement shall not apply to contracts for labor, equipment, supplies and services in connection with the operation and maintenance of the transferred works and the delivery and distribution of water thereby which are of the kind customarily entered into by water users organizations operating projects under the Federal Reclamation Law.

Changes in Organization of Association

46. While this contract is in effect no change shall be made by the Association in its Articles of Incorporation, nor shall the Association make any change in its bylaws or its rules and regulations, nor shall the Association change its organization under its Articles of Incorporation, by proceedings to dissolve or otherwise, except upon the Secretary's written consent thereto.

Secretary Arbiter of Disputes Involving Questions of Fact

47. In the event of disputes between the parties hereto arising out of this contract involving questions of fact, in so far as the provisions hereto require a determination of fact to be made, the Secretary is hereby

designated as the arbiter of such questions and as the one required to make such determinations of fact and his decision thereon shall be conclusive and binding on the parties hereto. In all acts, matters and determinations provided in this contract to be done, determined or decided by the Secretary or by the United States, it is agreed that the acts, decisions, findings and determinations by the Secretary shall be final and conclusive as to all the parties to this contract and as to all persons claiming any rights under or by virtue of this contract or in anywise based upon or arising out of this contract or any act or proceeding carried on thereunder.

Representative of Secretary

48. Where this contract provides for action by the Secretary, said action may be taken for and on behalf of the Secretary by his representatives duly authorized in writing by him.

Rules and Regulations

49. The United States, acting for this purpose through the Secretary, reserves the right, so far as the purport thereof may be consistent with the provisions of this contract, to make reasonable rules and regulations, and to add to or modify them as the Secretary may deem proper and necessary to carry out the true intent and meaning of the law and of this contract and to supply necessary details of its administration; and the Association agrees to observe such rules and regulations.

Assignment Prohibited:
Successors and Assigns Obligated

50. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto but no assignment or transfer

of this contract, or any part thereof, or interest therein, shall be valid until approved by the Secretary. All rights of action for breach of this contract are reserved to the United States as provided in section 3757 of the Revised Statutes of the United States.

Contingent on Appropriations or Allotment of Funds

51. The expenditure of any money or the performance of any work by the United States herein provided for, which may require appropriations of money by Congress or the allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of Congress so to appropriate funds, or the failure of an allotment of funds, shall not relieve the Association from any obligations under this contract and no liability shall accrue against the United States in case such funds are not so appropriated or allotted.

Officers Not to Benefit

52. No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefits.

Confirmation of Contract

53. The execution of this contract shall be effective only if it has been authorized by the qualified electors of the Association at an election held for the purpose of authorization. The Association agrees that upon the execution of this contract, it will proceed promptly to secure a final decree

of the proper court of the State of Colorado approving and confirming this contract and decreeing and adjudging the same to be a lawful, valid and binding general obligation of the Association, and decreeing the same to be lawful and binding. The Association shall furnish certified copies of such decrees to the Secretary. In the event that in the opinion of the Secretary satisfactory confirmatory decrees are not secured promptly as herein provided, the Secretary by giving notice in writing to the Association may terminate this contract. In the event of such termination the Government-Association contract shall be deemed as having been continuously in full force and effect unmodified by this contract, and all sums due the United States under said Government-Association contract which have not been paid or have been paid only in part because of the operations of this contract shall become immediately due and payable.

IN WITNESS WHEREOF, the parties have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA

May 7, 1945

By Michael W. Straus
Assistant Secretary of the Interior

THE GRAND VALLEY WATER USERS' ASSOCIATION

By W. J. Baker
President

(SEAL)

Attest:

C. E. Blumenshine
Secretary

RESOLUTION OF THE BOARD OF DIRECTORS

OF THE GRAND VALLEY WATER USERS' ASSOCIATION

BE IT AND IT IS HEREBY RESOLVED, by the Board of Directors of the Grand Valley Water Users' Association, that the President and Secretary of said Association be, and they hereby are, authorized and empowered to execute and deliver for, and in behalf of, said Association, an amendatory repayment contract with the United States of America, for the repayment of the cost of The Grand Valley Irrigation Project, and other purposes, upon the terms and conditions set forth in the form of contract submitted by the United States and duly considered at this meeting.

Certificate

I, C. E. Blumenshine, Secretary of the Grand Valley Water Users' Association, do hereby certify that the foregoing is a full, true and correct copy of a Resolution passed by the Board of Directors of The Grand Valley Water Users' Association, at a Special meeting held on the 12th day of January 1945.

I FURTHER CERTIFY, that at said special meeting, Ten Directors were present; that Ten Directors voted in favor of said Resolution; and that None voted against said Resolution.

I FURTHER CERTIFY, That the total number of Directors of the said The Grand Valley Water Users' Association is eleven (11).

I FURTHER CERTIFY, that the amendatory repayment contract executed by the President and Secretary, under date of January 27, 1945, is identical to the form of the contract authorized by the Board of Directors, by the aforementioned resolution.

C. E. Blumenshine

Secretary, Board of Directors
The Grand Valley Water Users' Association

RESOLUTION OF THE STOCKHOLDERS
OF THE GRAND VALLEY WATER USERS' ASSOCIATION

BE IT AND IT IS HEREBY RESOLVED, by the Stockholders of the Grand Valley Water Users' Association, that the Board of Directors of the said Association and its President and Secretary be and hereby are empowered, authorized and instructed to enter into an amendatory repayment contract with the United States of America, for the repayment of the cost of the Grand Valley Irrigation Project, and other purposes, upon the terms and conditions set forth in the form of contract submitted by the United States and duly considered at this meeting.

BE IT FURTHER RESOLVED, That said Board of Directors is hereby authorized and empowered to take any and all steps as may be necessary to consummate such amendatory repayment contract.

Certificate

I, C. E. BLUMENSHINE, Secretary of the Grand Valley Water Users' Association, do hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at the Annual Stockholders' Meeting held on January 9th, 1945.

I FURTHER CERTIFY, That at said Annual Stockholders' Meeting of January 9th, 1945, there was duly represented 13,182 shares of stock of the Grand Valley Water Users' Association, and that 13,182 shares of stock voted in favor of said Resolution, and No shares of stock voted against said Resolution; that the number of shares of stock entitled to vote at said meeting was 23,296.

C. E. Blumenshine
C. E. Blumenshine, Secretary
Grand Valley Water Users' Association.

440 ✓
OFFICIAL FILE COPY

Contract No. Ilr-644

Conformed Copy

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

GRAND VALLEY PROJECT, COLORADO

SUPPLEMENTAL CONTRACT BETWEEN THE UNITED STATES AND THE
GRAND VALLEY WATER USERS ASSOCIATION

THIS CONTRACT, made this 27th day of April, 1964,
pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts
amendatory thereto, between THE UNITED STATES OF AMERICA, hereinafter
styled the United States, represented by the officer executing this
contract, the GRAND VALLEY WATER USERS ASSOCIATION, a corporation
duly organized and existing under the laws of the State of Colorado,
hereinafter styled the Association.

EXPLANATORY RECITAL

WITNESSETH, That:

1. WHEREAS, the United States and the Association entered
into an amendatory contract dated January 27, 1945, hereinafter
referred to as Government-Association contract, which contract
provides, among other things, for the repayment to the United States
by the Association of certain of the expenditures made by the United
States in the construction of the project, and the Act of June 21,
1963 (Public Law 88-43), authorizes a modification of the Association's
construction obligation; and it is also desirable to modify the Govern-
ment-Association contract to provide for the levying by the Association
of equitable but unequal assessments against its shareholders, and

2. NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is hereby mutually agreed by and between the parties hereto, as follows:

3. The Association shall make unequal but equitable assessments against stock of the Association using water on lots or small areas under 3.0 acres. The amount of such assessments shall be fixed annually by the Board of Directors and shall take into consideration, among other things, additional costs of administration, operation and maintenance and other charges that are connected with service to such lots and small areas.

4. The contractual obligation of the Grand Valley Water Users Association under the Government-Association contract is hereby reduced by the amount of \$109,158.19, and a credit on the next annual installment from the Association due after June 21, 1963, under the Government-Association contract in the sum of \$4,531.93 is hereby given.

5. This contract supplements the Government-Association contract. All provisions therein not modified by this contract remain in full force and effect.

6. The Association warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Association for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to

annul this contract without liability or in its discretion to add to the contract repayment obligation or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

7. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

EQUAL EMPLOYMENT OPPORTUNITY

8. (a) During the performance of this contract, the Association, hereinafter referred to in this article as contractor, agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting

forth provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.

(3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency contracting officer, advising the said labor or worker's representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 10925 of March 6, 1961, as amended, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting officer and the Committee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rules, regulations, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(7) The contractor will include the provisions of the foregoing paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting officer, the contractor

may request the United States to enter into such litigation to protect the interests of the United States.

(b) Inclusion of the Equal Employment Opportunity clause may be by reference to Section 301 of Executive Order 10925, dated March 6, 1961, as amended. Subcontracts below the second tier, other than subcontracts calling for construction work at the site of construction are exempt from inclusion of the clause.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

THE UNITED STATES OF AMERICA

By /s/ F. M. Clinton
Regional Director, Region 4,
Bureau of Reclamation

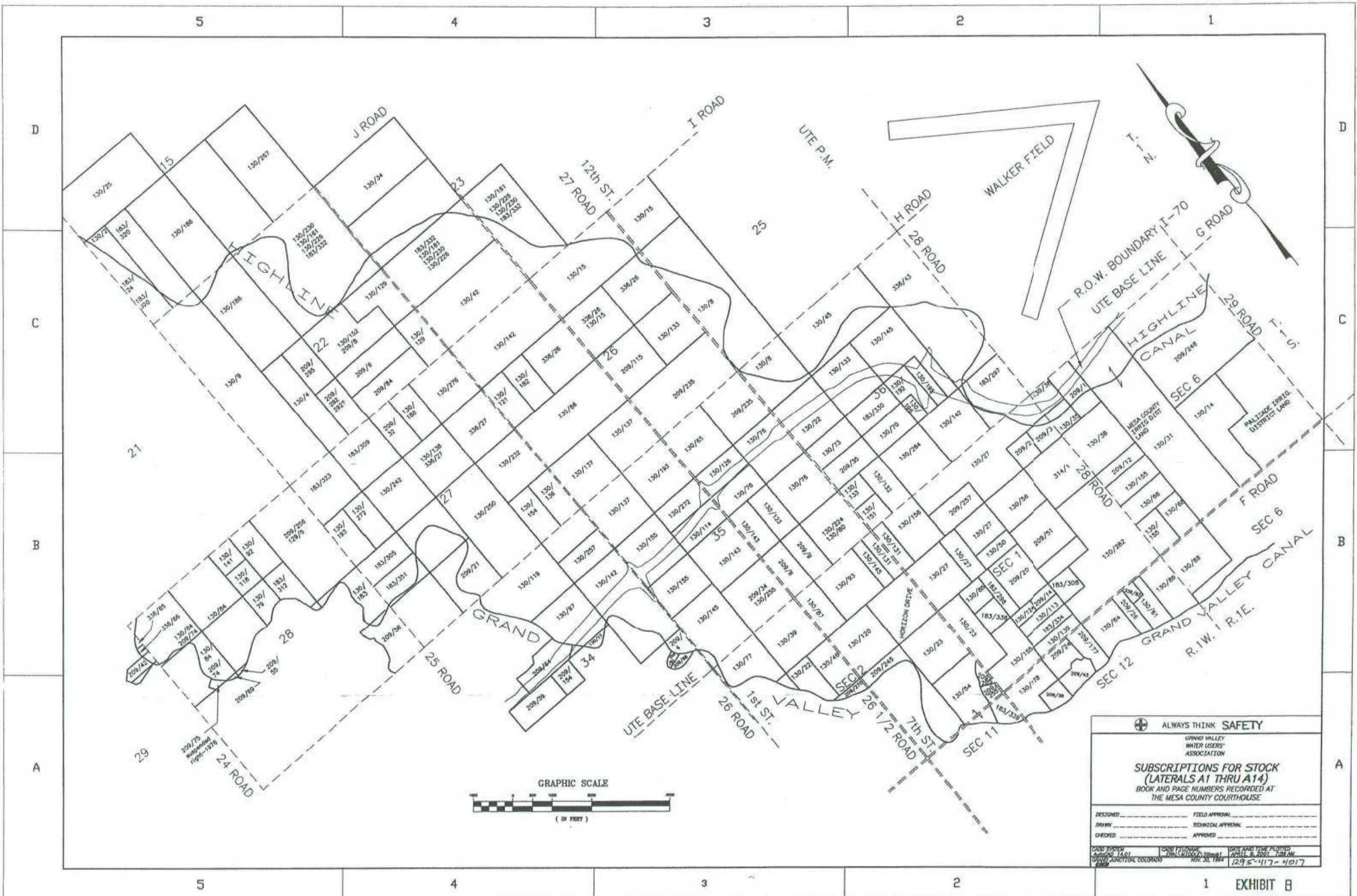
GRAND VALLEY WATER USERS ASSOCIATION

ATTEST:

/s/ Ray Gobbo
Secretary

By /s/ W. J. Baker
President

(SEAL)



ALWAYS THINK SAFETY

GRAND VALLEY
WATER USERS'
ASSOCIATION

**SUBSCRIPTIONS FOR STOCK
(LATERALS A1 THRU A14)**
BOOK AND PAGE NUMBERS RECORDED AT
THE MESA COUNTY COURTHOUSE

DESIGNED _____	FIELD APPROVAL _____
DRAWN _____	TECHNICAL APPROVAL _____
CHECKED _____	APPROVED _____

2000 PROPERTY MAPS & SURVEYS, INC. 1000 W. 10TH ST. SUITE 100, DENVER, CO 80202
 303.733.8888
 2000 PROPERTY MAPS & SURVEYS, INC. 1000 W. 10TH ST. SUITE 100, DENVER, CO 80202
 303.733.8888

QUIT CLAIM DEED

The UNITED STATES OF AMERICA, acting pursuant to the provisions of the Act of June 17, 1902 (32 Stat. 388), and Acts and regulations amendatory thereof or supplementary thereto, which Acts are commonly known and referred to as Reclamation Laws, particularly, the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), GRANTOR, for One Dollar (\$1.00) and other good and valuable consideration, hereby quitclaims and conveys to the CITY OF GRAND JUNCTION, GRANTEE, a Colorado home rule city, authorized by Article XX of the Colorado Constitution and the City of Grand Junction's home rule charter, with its principal offices located at 250 North 5th Street, Grand Junction, Colorado 81501, all of its right, title, and interest in and to the following described interests in real property located in Mesa County, Colorado:

Any and all easements, rights-of-way and other interests in land for the water drainage system known as Drain D, a facility of the Grand Valley Project, a federal reclamation project, as shown on the Drain D Drainage System Drawing which is attached hereto and made a part hereof. The Drain D drainage system is located in Sections 1, 2, 11 and 12, Township 1 South, Range 1 West, Ute P.M., and in Section 6, Township 1 South, Range 1 East, Ute P.M. The Drain D drainage system is comprised of a series of drainage ditches and pipes constructed on interests in land reserved for the United States through the Grand Valley Water Users Association's Subscriptions for Stock (Article XV, Section 2). The easements, rights-of-way and other interests in land for the Drain D drainage system encompass approximately 7.7 acres.

RESERVING TO THE GRANTOR, as provided in Paragraphs 2.B. and 3.B. of the Agreement for Transfer of Drain D, Contract No. 7-LM-4A-00070, dated May 1, 2006, between the City of Grand Junction, the Grand Valley Water Users Association, and the United States of America ("Transfer Agreement"), the right to continue to discharge Irrigation Drainage and Administrative Spills (as those terms are defined in the Transfer Agreement) into Drain D. This deed is intended to fulfill the terms of the Transfer Agreement.

WITNESS the hand of the Grantor, this 1st day of May, 2006.

Approved: 
Office of the Regional Solicitor

UNITED STATES OF AMERICA

By: 

Rick Gold, Regional Director

Upper Colorado Region
Bureau of Reclamation
Department of the Interior

QUIT CLAIM DEED

The GRAND VALLEY WATER USERS ASSOCIATION (Association), a Colorado nonprofit corporation, GRANTOR, for One Dollar (\$1.00) and other good and valuable consideration, hereby sells and quitclaims to the CITY OF GRAND JUNCTION, GRANTEE, a Colorado home rule city, authorized by Article XX of the Colorado Constitution and the City of Grand Junction's home rule charter, with its principal offices located at 250 North 5th Street, Grand Junction, Colorado 81501, all of its right, title and interest in and to the following described interests in real property located in Mesa County, Colorado:

Any and all easements, rights-of-way and other interests in land for the water drainage system known as Drain D, a facility of the Grand Valley Project, a federal reclamation project, as shown on the Drain D Drainage System Drawing which is attached hereto and made a part hereof. The Drain D drainage system is located in Sections 1, 2, 11 and 12, Township 1 South, Range 1 West, Ute P.M., and in Section 6, Township 1 South, Range 1 East, Ute P.M. The Drain D drainage system is comprised of a series of drainage ditches and pipes constructed on interests in land reserved for the United States through the Association's Subscriptions for Stock (Article XV, Section 2). The easements, rights-of-way and other interests in land for the Drain D drainage system encompass approximately 7.7 acres.

RESERVING TO THE GRANTOR, as provided in Paragraphs 2.B. and 3.B. of the Agreement for Transfer of Drain D, Contract No. 7-LM-4A-00070, dated MAY 1, 2006, between the City of Grand Junction, the Grand Valley Water Users Association, and the United States of America ("Transfer Agreement"), the right to continue to discharge Irrigation Drainage and Administrative Spills (as those terms are defined in the Transfer Agreement) into Drain D. This deed is intended to fulfill the terms of the Transfer Agreement.

WITNESS the hand of the Grantor, this 8th day of MAY, 2006.

GRAND VALLEY WATER USERS
ASSOCIATION

By: Daniel E. Cronz
President

ATTEST:

William H. Bungeer III
Secretary

**Low-Intensity
Rural, Residential, Crop/Agricultural, etc.
Real Property Questionnaire Checklist
Phase I**

EXHIBIT E

INSTRUCTIONS: Circle for each question. Explain briefly on back if a "yes" or "unknown" are circled. Indicate whether a phase II assessment will be recommended. Attach a legal description of the real estate property covered by this survey.

A. Background Information.

Region UC Region
 Project Grand Valley Project
 Property ID "D" drain County Mesa State CO (see map)
 Owner(s) Reclamation has easement; numerous underlying owners
 Date of survey 10/30/96

Question	Owner/and or Occupant			Observed during visual inspection		
	Yes	No	Unk	Yes	No	Unk
1. Currently or in the past has the property or any adjoining property being or been used for an industrial use such as: gasoline station, motor repair facility, junkyard or landfill, or recycling facility?				Yes	<u>No</u>	Unk
2. Are there currently, or to the best of your knowledge have there been previously, any damaged or discarded vehicle batteries, or pesticides, paints, or other chemicals (disregard petroleum products) in individual containers of greater than 25 gal in volume or 100 gal in the aggregate, stored on or used on the property or at the facility?	Yes	No	Unk	Yes	No	<u>Unk</u>
3. Are there currently, or to the best of your knowledge have there been previously, any drums (typically 55 gal or sacks of chemicals materials stored on the property or at the facility?	Yes	No	Unk	Yes	<u>No</u>	Unk
4. Has fill material been brought onto the property that originated from a hazardous material contaminated site?	Yes	No	Unk	Yes	<u>No</u>	Unk
5. Are there currently, or to the best of your knowledge have there been previously, any pits, ponds, or lagoons located on the property associated with waste treatment or waste disposal?	Yes	No	Unk	Yes	<u>No</u>	Unk
6. Is there currently, or to the best of your knowledge has there been previously, any significantly stained soils on the property?	Yes	No	Unk	Yes	No	<u>Unk</u>
7. Are there currently, or to the best of your knowledge have there been previously, any leaking storage tanks (above or underground) located on the property?	Yes	No	Unk	Yes	No	<u>Unk</u>
8. If the property is served by a private well or non-public water system, have contaminants been identified in the well or system that exceed guidelines applicable to the water system?	Yes	No	Unk	Yes	<u>No</u>	Unk
9. To the best of your knowledge, have any hazardous substances or petroleum products, unidentified waste materials, tires, automotive or industrial batteries or any other waste materials been dumped above grade, buried and/or burned on the property?	Yes	No	Unk	Yes	<u>No</u>	Unk
10. To the best of your knowledge, has any part of the area been used as a spray operation base: air strip, equipment parking area?	Yes	No	Unk	Yes	<u>No</u>	Unk
11. Is there currently, or to the best of your knowledge has there been structures containing asbestos located on the property and/or has any asbestos been buried on the property?	Yes	No	Unk	Yes	No	<u>Unk</u>
12. Is there evidence of chemical contamination e.g., vegetation different from surrounding for no apparent reason, bare ground, sterile water bodies etc?	Yes	No	Unk	Yes	<u>No</u>	Unk
13. Is there a transformer, capacitor, or any hydraulic equipment for which there is documentation indicating the presence of PCBs?	Yes	No	Unk	Yes	<u>No</u>	Unk

Unk = "unknown" or "no response."

Public Records/Historical Sources Inquiry

14. Do any of the following Federal government record systems list the property or any property within the circumference of the area noted below:	Yes	No
National Priorities List—within 1.0 mile (1.6 Km)?	Yes	<u>No</u>
CERCLIS List—within 1.5 mile (0.8 Km)?	Yes	<u>No</u>
RCRA TSD Facilities—within 1.0 mile (1.6 Km)?	Yes	<u>No</u>
15. Do any of the following state record systems list the property or any property within the circumference of the area noted below:	Yes	<u>No</u>
List maintained by state environmental agency of hazardous waste sites identified for investigation or remediation that is the state agency equivalent to NPL—within approximately 1.0 mile (1.6 Km)?	Yes	<u>No</u>
List maintained by state environmental agency of sites identified for investigation or remediation that is the state equivalent to CERCLIS—within 0.5 mile (0.8 Km)?	Yes	<u>No</u>
Leaking Underground Storage Tank (LUST) List—within 0.5 mile (0.8 Km)?	Yes	<u>No</u>
Solid Waste/Landfill Facilities—within 0.5 mile (0.8 Km)?	Yes	<u>No</u>

Certification (CHECK ONE).

I hereby certify that to the best of my knowledge no contaminants are present on this real estate, and there are no obvious signs of any effects of contamination. *(See attachment)*

On the basis of the information collected to complete this form, it is possible to reasonably conclude that there is a potential for contaminants, or the effects of contaminants, to be present on that real estate. Phase II assessment will be performed.

Examiner

Examiner represents that to the best of his/or her's knowledge the above statements and facts are true and correct.

Signed *SK McCall* Print Name Stephen K McCall
 Date 10/30/96 Title ENV Spec.

Approving Official

I concur with the above certification

Signed *Ed Warner* Print Name Ed Warner
 Date 10/30/96 Title Acting Northern Division Resource Manager

Additional information

Question # _____ Comment _____

Question # _____ Comment _____

Question # _____ Comment _____

Reclamation has an easement for "D" Drain in Mesa County. This drain was originally constructed to drain irrigated lands of the Grand Valley Project. All lands that the drain is constructed on are private. Reclamation is considering transferring their interests in the drain to another entity.

At the present time there is only a remnant of irrigated land in the approximately 1.5 square miles served by the drain. The primary land use now is residential housing and church buildings, although near the mouth of the drain, there is a commercial complex with small retail shops and a physical rehabilitation center. The majority of the drain has been placed in buried pipes under subdivisions. Several ponds have also been developed on the drain.

Historically the land involved was used for irrigated farms and most likely had pesticides and petroleum products stored on the land as is typical of farms in the area. There is no evidence of industrial use of the land.

Along areas of the drain that are visible, there are no obvious signs of pollution; however most of the drain cannot be seen. There are no readily apparent past land uses that would cause concerns with hazardous waste pollution. The drain water has not been sampled but similar drains in the Grand Valley normally have elevated levels of total dissolved solids and selenium.

**Low-Intensity
Rural, Residential, Crop/Agricultural, etc.
Real Property Questionnaire Checklist
Phase I**

EXHIBIT F

INSTRUCTIONS: Circle for each question. Explain briefly on back if a "yes" or "unknown" are circled. Indicate whether a phase II assessment will be recommended. Attach a legal description of the real estate property covered by this survey.

A. Background Information.

Region Upper Colorado

Project Grand Valley Project

Property ID Drain D-Grand Junction CO (see attached map) County Mesa State Colo

Owner(s) Drain D is constructed on easement owned by United States across numerous private and city properties

Date of survey November 2005

Question	Owner/and or Occupant (Grand Valley Water Users manager-November 2005)			Observed during visual inspection		
1. Currently or in the past has the <i>property</i> or any <i>adjoining property</i> being or been used for an industrial use such as: gasoline station, motor repair facility, junkyard or landfill, or recycling facility?	Yes	No-x	Unk	Yes	No-x	Unk
2. Are there currently, or to the best of your knowledge have there been previously, any damaged or discarded vehicle batteries, or pesticides, paints, or other chemicals (disregard petroleum products) in individual containers of greater than 25 gal in volume or 100 gal in the aggregate, stored on or used on the <i>property</i> or at the facility?	Yes	No-x	Unk	Yes	No-x	Unk
3. Are there currently, or to the best of your knowledge have there been previously, any <i>drums</i> (typically 55 gal or sacks of chemicals materials stored on the <i>property</i> or at the facility)?	Yes	No-x	Unk	Yes	No-x	Unk
4. Has <i>fill material</i> been brought onto the <i>property</i> that originated from a hazardous material contaminated site?	Yes	No-x	Unk	Yes	No-x	Unk
5. Are there currently, or to the best of your knowledge have there been previously, any <i>pits, ponds, or lagoons</i> located on the <i>property</i> associated with waste treatment or waste disposal?	Yes	No-x	Unk	Yes	No-x	Unk
6. Is there currently, or to the best of your knowledge has there been previously, any significantly stained soils on the <i>property</i> ?	Yes	No-x	Unk	Yes	No-x	Unk
7. Are there currently, or to the best of your knowledge have there been previously, any leaking storage tanks (above or underground) located on the <i>property</i> ?	Yes	No-x	Unk	Yes	No-x	Unk
8. If the <i>property</i> is served by a private well or non-public water system, have contaminants been identified in the well or system that exceed guidelines applicable to the water system?	Yes	No-x	Unk	Yes	No-x	Unk
9. To the best of your knowledge, have any <i>hazardous substances or petroleum products</i> , unidentified waste materials, tires, automotive or industrial batteries or any other waste materials been dumped above grade, buried and/or burned on the <i>property</i> ?	Yes-X (see explanat ion)	No-	Unk			
10. To the best of your knowledge, has any part of the area been used as a spray operation base: air strip, equipment parking area?	Yes	No-x	Unk			
11. Is there currently, or to the best of your knowledge has there been structures containing asbestos located on the <i>property</i> and/or has any asbestos been buried on the <i>property</i> ?	Yes	No-x	Unk	Yes	No-x	Unk
12. Is there evidence of chemical contamination e.g., vegetation different from surrounding for no apparent reason, bare ground, sterile water bodies etc?	Yes	No-x	Unk	Yes	No-x	Unk
13. Is there a transformer, capacitor, or any hydraulic equipment for which there is documentation indicating the presence of PCBs?	Yes	No-x	Unk	Yes	No-x	Unk

Unk = "unknown" or "no response."

Public Records/Historical Sources Inquiry

14. Do any of the following Federal government record systems list the property or any property within the circumference of the area noted below: Yes No-x

National Priorities List--within 1.0 mile (1.6 Km)? Yes No-x

CERCLIS List--within 1.5 mile (0.8 Km)? Yes No-x

RCRA TSD Facilities--within 1.0 mile (1.6 Km)? Yes No-x

15. Do any of the following state record systems list the property or any property within the circumference of the area noted below: Yes No-x

List maintained by state environmental agency of hazardous waste sites identified for investigation or remediation that is the state agency equivalent to NPL--within approximately 1.0 mile (1.6 Km)? Yes No-x

List maintained by state environmental agency of sites identified for investigation or remediation that is the state equivalent to CERCLIS--within 0.5 mile (0.8 Km)? Yes No-x

Leaking Underground Storage Tank (LUST) List--within 0.5 mile (0.8 Km)? Yes No-x

Solid Waste/Landfill Facilities--within 0.5 mile (0.8 Km)? Yes No-x

#9-Tires have been used by a landowner to stabilize their backyard along portion of Drain D in the vicinity of Patterson Road but do not represent a hazardous material problem. May be removed as part of piping this section.

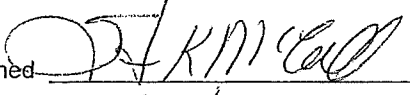
Certification (CHECK ONE)

I hereby certify that to the best of my knowledge no contaminants are present on this real estate, and there are no obvious signs of any effects of contamination.

On the basis of the information collected to complete this form, it is possible to reasonably conclude that there is a potential for contaminants, or the effects of contaminants, to be present on that real estate. Phase II assessment will be performed.


Examiner

Examiner represents that to the best of his/or her's knowledge the above statements and facts are true and correct.

Signed  Print Name Stephen K. McCull
Date 11/29/2005 Title EIO Spec

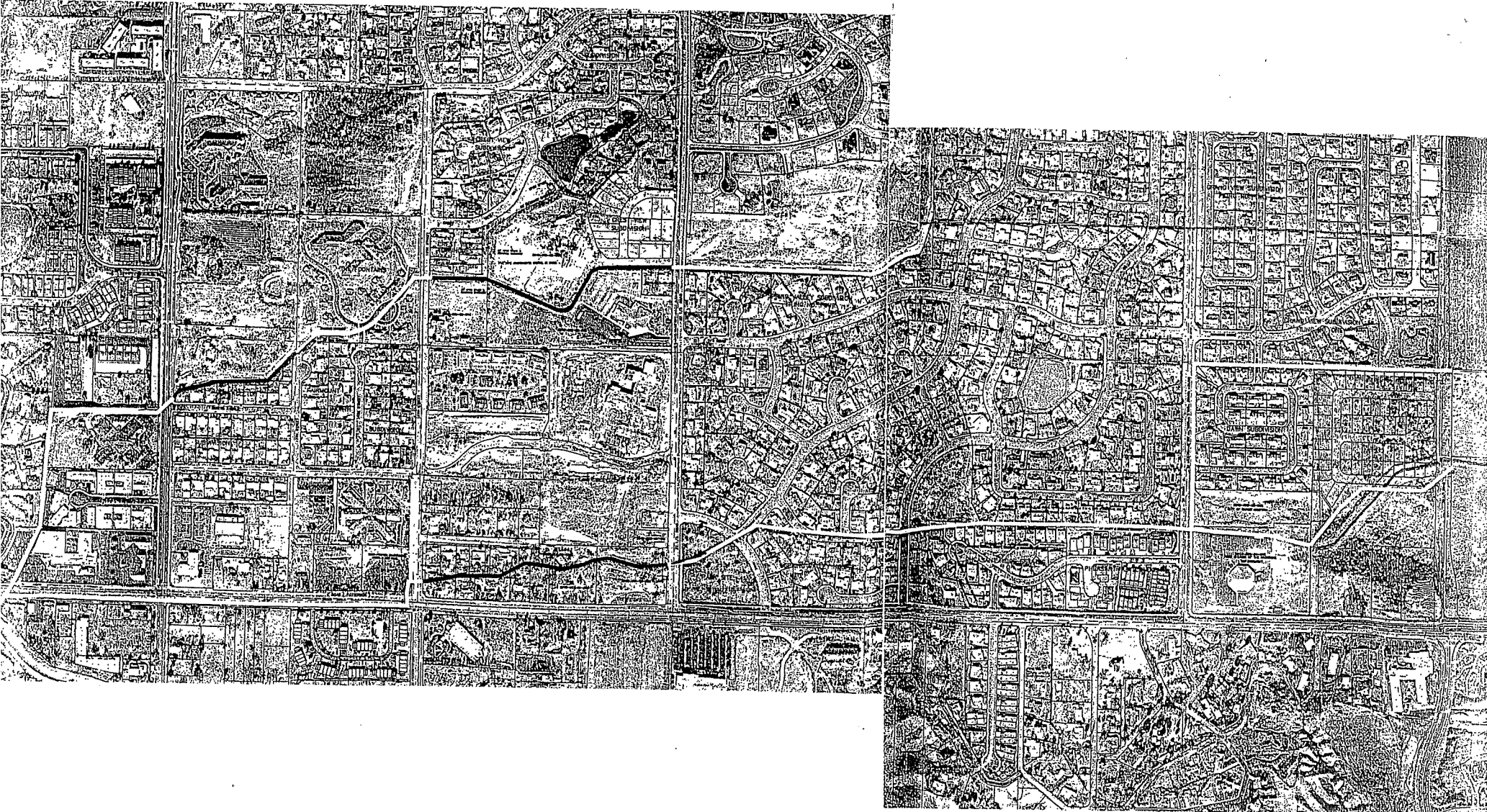
Approving Official

I concur with the above certification

Signed  Print Name Ed Warner
Date 11-30-05 Title Resources Division Manager

Additional information

Drain D was originally constructed as an agricultural drain for the Grand Valley Project. Lands served by the drain were irrigated fields are now primarily residential or city parks. There is some commercial use, primarily health care-related, in the vicinity of the drain. There is no Industrial land use that might result in release of hazardous material. The majority of the drain has been placed in pipe with approximately 2500 feet remaining as an open drain.



DRAWD

**Low-Intensity
Rural, Residential, Crop/Agricultural, etc.
Real Property Questionnaire Checklist
Phase I**

EXHIBIT F

INSTRUCTIONS: Circle for each question. Explain briefly on back if a "yes" or "unknown" are circled. Indicate whether a phase II assessment will be recommended. Attach a legal description of the real estate property covered by this survey.

A. Background Information.

Region Upper Colorado

Project Grand Valley Project

Property ID Drain D-Grand Junction CO (see attached map) County Mesa State Colo

Owner(s) Drain D is constructed on easement owned by United States across numerous private and city properties

Date of survey November 2005

Question	Owner/land or Occupant (Grand Valley Water Users manager-November 2005)			Observed during visual inspection		
1. Currently or in the past has the <i>property</i> or any <i>adjoining property</i> being or been used for an industrial use such as: gasoline station, motor repair facility, junkyard or landfill, or recycling facility?	Yes	No-x	Unk	Yes	No-x	Unk
2. Are there currently, or to the best of your knowledge have there been previously, any damaged or discarded vehicle batteries, or pesticides, paints, or other chemicals (disregard petroleum products) in individual containers of greater than 25 gal in volume or 100 gal in the aggregate, stored on or used on the <i>property</i> or at the facility?	Yes	No-x	Unk	Yes	No-x	Unk
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4. Has <i>fill material</i> been brought onto the property that originated from a hazardous material contaminated site?	Yes	No-x	Unk	Yes	No-x	Unk
5. Are there currently, or to the best of your knowledge have there been previously, any <i>pits, ponds, or lagoons</i> located on the <i>property</i> associated with waste treatment or waste disposal?	Yes	No-x	Unk	Yes	No-x	Unk
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9. To the best of your knowledge, have any <i>hazardous substances or petroleum products</i> , unidentified waste materials, tires, automotive or industrial batteries or any other waste materials been dumped above grade, buried and/or burned on the <i>property</i> ?	Yes-X (see explanation)	No-	Unk			
10. To the best of your knowledge, has any part of the area been used as a spray operation base: air strip, equipment parking area?	Yes	No-x	Unk			
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Unk = "unknown" or "no response."

Public Records/Historical Sources Inquiry

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RCRA TSD Facilities--within 1.0 mile (1.6 Km)? Yes No-x

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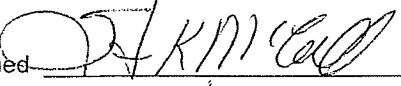
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Examiner

Examiner represents that to the best of his/or her's knowledge the above statements and facts are true and correct.

Signed  Print Name Stephen K. McCull
Date 11/29/2005 Title EWO Spec

Approving Official

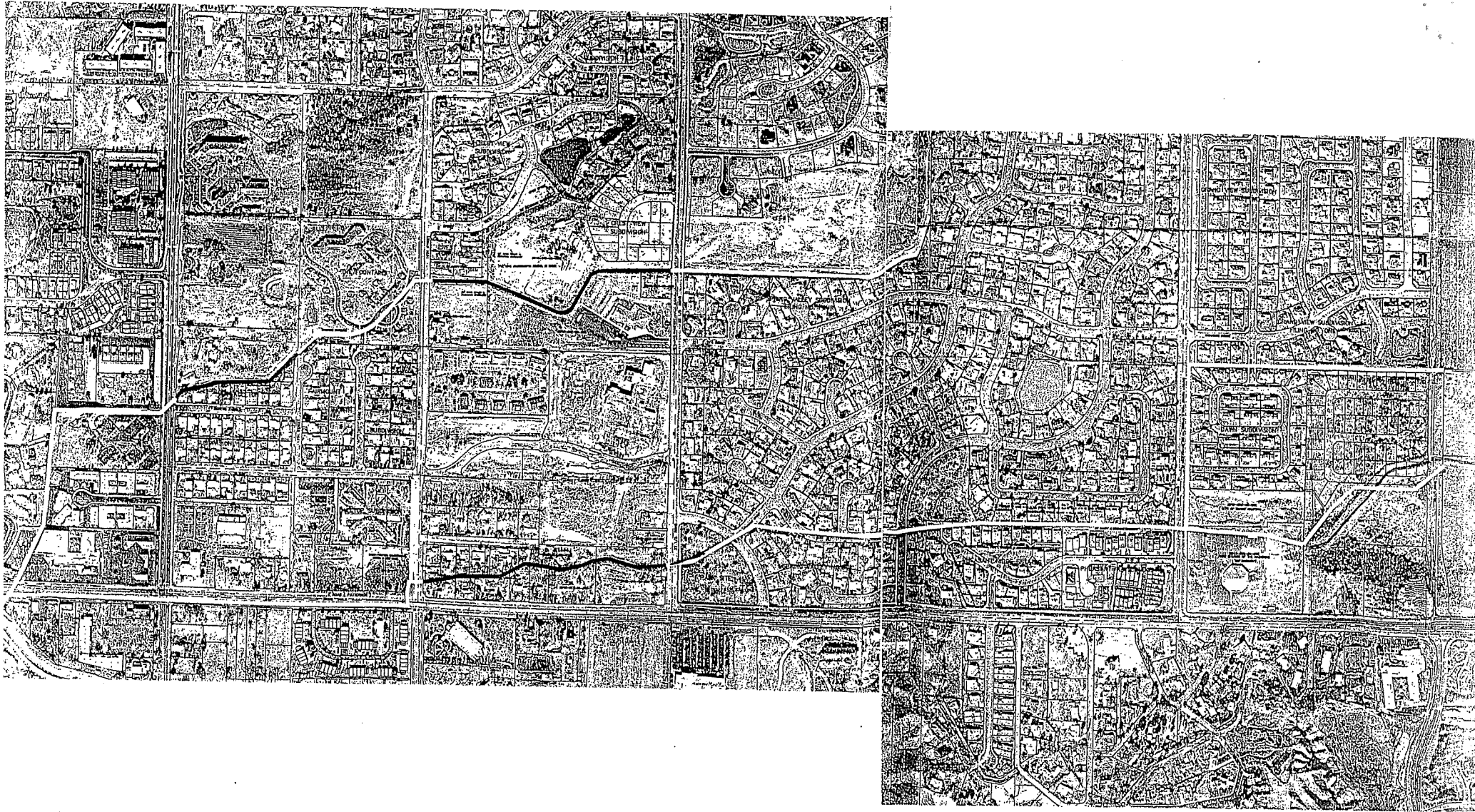
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Signed  Print Name Ed Warner
Date 11-30-05 Title Resources Division Manager

Additional information

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Unk = "unknown" or "no response."



DRAW D

DRAIN "D" DRAINAGE SYSTEM

LEGEND

- PIPE
- OPEN DITCH
- POB
- MANHOLE
- CATCH BASIN

100' ADMINISTRATIVE SPILL POTENTIAL
2% CUBIC FEET PER SECOND

REVISION A	DATE	DRAWN BY	DATE
REVISION B	DATE	CHECKED BY	DATE
REVISION C	DATE	APPROVED BY	DATE

1" = 300'



PUBLIC WORKS
AND UTILITIES
ENGINEERING DIVISION

DRAIN "D" DRAINAGE SYSTEM
FIGURE ONE

EXHIBIT G