

RWP79WTR

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **WATER**

NAME OF CONTRACTOR: REDLANDS WATER AND POWER COMPANY

SUBJECT/PROJECT: AGREEMENT DATED MARCH 15, 1979 TO  
TRANSFER WATER RIGHT TO THE CITY OF GRAND JUNCTION

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1979

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

## AGREEMENT

Agreement made at Grand Junction, Colorado as of the 15th day of March, 1979, between REDLANDS WATER AND POWER COMPANY ("Company") and the CITY OF GRAND JUNCTION, COLORADO ("City").

A. The Company has the right to divert 750 cubic feet of water per second of time ("c.f.s.") through the headgate of the Redlands Canal which takes its supply of water from the Gunnison River at the site of the Redlands Diversion Dam near Grand Junction, Colorado, under Priority having Basin Rank Numbers 1035, 2183 and 2563 as per the 1974 Tabulations of Water Division Engineer of Water Division No. 4. Of the total amount of water which the Company is now entitled to divert from the Gunnison River under the priorities specified above, approximately 670 c.f.s. or more is allocated for power generation (the "Power Right") and approximately 80 c.f.s. is allocated for irrigation, domestic and other purposes (the "Irrigation Right").

B. The City desires to expand and increase the supply of water available to it for its municipal, domestic and industrial purposes.

C. The City presently has water rights which provide a source of water for the City's municipal, domestic, irrigation and industrial uses and the uses of the users of water from the City's municipal water distribution systems, which other rights of the City are referred to in this Agreement as "Existing Rights".

D. The Company, when insufficient water is available for generation of the full amount of power required to run its lift pumps, purchases electrical power from third party suppliers of such power. The Company also generates electrical power for sale to a third party purchaser.

In consideration of their mutual promises and other considerations, the parties agree:

1. Transfer of Water Right: The Company agrees to transfer to the Company and the City, as common tenants,

100 c.f.s. of the earliest priority water constituting the Power Right and the Company agrees that some or all of such water may be used by the City and the users of water from the City's municipal water system for municipal, domestic, industrial, irrigation and other beneficial uses (herein called "Municipal Purposes") at such time as the City's Existing Rights (by reason of lack of supply or other reasons, including the need as determined by the City to carry-over portions of its Existing Rights from year to year) are not sufficient to provide the City with an adequate water source for distribution to the users of its water distribution system. The water to be transferred pursuant to this Section 1 is referred to in this Agreement as the "Transferred Water".

2. Use of Transferred Water: The City agrees that it will not use any part of the Transferred Water in its municipal distribution system during those times when (a) an adequate water supply is available to it to supply the needs of its users from the Existing Rights or through existing distribution and transmission facilities or (b) when Existing Rights are not retained in reservoirs to provide carry-over water in the event of drought or other apparent emergency or (c) when the Transferred Water is not required to meet the needs of any other municipality, water district or conservancy district which can benefit from the Transferred Water. At all times when an adequate water supply is available from Existing Rights to enable the City to supply all or part of the needs and requirements of the users of its municipal distribution system from Existing Rights and/or supply water to other municipal, water district and conservancy district users in the Grand Valley area, then the Company shall have the right to use the Transferred Water, for power generation purposes, or such part thereof as is not being used by the City.

3. Company's Power Costs: At any time the City uses any part of the Transferred Water for its Municipal Purposes

and as a result of such use, the Company is required to purchase electrical power from any third party source (whether to generate power for its irrigation system or to generate power for sale to third party purchasers) then the City will pay the Company (a) 200% of the actual amount paid by the Company for the purchase of electrical power or (b) 200% of the actual amount of the Company's power revenue loss which results from the City's use of Transferred Water or (c) 115% of any other loss or expense not included in (a) or (b) above incurred by the Company resulting from the City's use of the Transferred Water.

4. Annual Payments: In addition to the payments for which provision is made in the preceding Section, the City agrees to pay the Company an annual payment of \$1,500.00 per year, the first of which shall be paid to the Company on or before July 1, 1979, with like payments on or before the first day of July of each year thereafter. The payment provided by this Section 4, without adjustment pursuant to Section 5, is referred to in this Agreement as the "Base Annual Payment".

5. Adjustment of Annual Payment: Effective the first day of July 1981, and on the first day of July of each odd numbered year thereafter, the amount of the Annual Payment payable under this Agreement shall be adjusted to reflect the effects of inflation or deflation. In order to make any such adjustment, the Base Annual Payment shall be multiplied by a fraction in which the denominator is the Consumer's Price Index -- all commodities ("CPI") as published by the United States Department of Labor, Bureau of Statistics, in effect on June 1, 1979 and the numerator will be the CPI last published and available on the first day of June of the particular year in which any such adjustment is to become effective. The amount obtained as a result of the above calculation shall become the Annual Payment payable from the effective date of adjustment until the next date specified for adjustment.

6. Change of Water Right: Within thirty days after date hereof, the City will have its counsel prepare and

submit to counsel for the Company an application for change of water right with respect to the Transferred Water, which application will request the following on behalf of the City and Company:

6.1 The right to change the point of diversion of the Transferred Water so that all or any part of the Transferred Water may be diverted at the point of diversion of the Redlands Canal for power generation purposes, or alternatively diverted at the point of diversion of the City's pumping station located on the Northwest bank of the Gunnison River immediately upstream from the Company's diversion dam. Such application shall also request that when less than all of the Transferred Water is being used by the City for its Municipal Purposes, the remainder of the Transferred Water (not to exceed in the aggregate 100 c.f.s.) can be used by the Company for power generation purposes; and

6.2 The right to change the use of the Transferred Water so that all or any part of such Water may be used at any time, and from time to time, alternately or simultaneously for power generation purposes by the Company and by the City for Municipal Purposes, which application shall also request that when less than all of the Transferred Water is being used by the City for its Municipal Purposes, the remainder (not to exceed 100 c.f.s. in the aggregate) of the Transferred Water may be alternately or simultaneously used by the Company for power generation purposes.

6.3 The City and the Company believe that no injury will result to any appropriator of water on the Gunnison River or any of its tributaries as a result of the change of diversion points or change of use contemplated by the application for which provision is made in Subsections 6.1 and 6.2. However, to guard against any reduction being ordered in the amount of the Transferred Water, such application will also state that the applicants reserve the right to withdraw the requests for change as specified in Subsections 6.1

and 6.2 if the Water Referee or the Water Court for Water Division No. 4 or any appellate court issues a ruling or order which (a) requires, as a condition of granting the changes requested, that any part of the Transferred Water, when used by the City for Municipal Purposes, be left in the Gunnison River to compensate for loss of water or other injury to any other appropriator or (b) reduces the amount of the Transferred Water, when used by the Company for power generation.

6.4 If any ruling or order of the Water Referee or the Water Court or any appellate tribunal requires as a condition of the changes to be requested by Subsections 6.1 or 6.2 that the Transferred Water be reduced by any amount, when used by the City for Municipal Purposes, then at its option, the City may require the application for change to be withdrawn.

6.5 If any such ruling or order requires a reduction in the use of the Transferred Water, or any part thereof, when used by the Company for power generation, then the Company may, at its sole election and option, require the application to be withdrawn.

6.6 If the application is withdrawn pursuant to Subsections 6.4 or 6.5, then this Agreement shall be terminated and, effective such termination, the City will convey to the Company all of its interest in the Transferred Water.

7. Return Flow Losses: If by reason of any ruling or order issued by the Water Referee or the Water Court of Water Division No. 4, requires as a condition of any ruling or order permitting the change of point of diversion and change in manner of use for the Transferred Water, that a certain percentage of the Transferred Water, when used by the City for Municipal Purposes, be left in the Gunnison River to compensate for loss of return flow, or compensation for other injury and the City does not elect to cause the application to be withdrawn, then only the City will bear

such loss and in such event, the City will pay the amounts specified in Section 3 based upon the gross amount of water lost to the Company for power generation purposes as a result of the City's use of Transferred Water.

8. Expense and Fees of Counsel: The City agrees to pay all costs and expenses incurred by the City and Company in connection with the application contemplated by Section 6, including the fees and expenses of Company's counsel and its actual disbursements relating to such proceeding. Counsel for the City and Company will act as co-counsel in the change proceeding.

9. Company's Irrigation Rights: Nothing contained in this Agreement shall be construed, whether by implication or otherwise, to grant, convey or provide the City with any right, authority or interest in the Company's Irrigation Right and this Agreement, the Transferred Water and City's interest in the Transferred Water will at all times be subordinate to the right of the Company to divert water under the Irrigation Right.

10. City's Right to Sell Transferred Water: The City is expressly granted the right to sell Transferred Water, after diversion by the City, to any other municipality, water district or conservancy district in the Grand Valley area to be used by such municipality or district for Municipal Purposes.

11. Default by City:

11.1 If the City fails to make any payment required by this Agreement within fifteen (15) days after receiving written notice from the Company of a default in any such payment, then this Agreement shall be fully and finally terminated upon the expiration of such fifteen (15) day period. Such notice shall be given to the City by United States registered or certified mail, return receipt requested, addressed to the City as follows:

City of Grand Junction, Colorado  
Grand Junction City Hall  
Grand Junction, Colorado 81501

Attention: City Manager

or to such other address as the City designates in writing to the Company.

11.2 If this Agreement is terminated pursuant to procedures outlined in this Section 11, then upon the expiration of the fifteen (15) day period provided above, the City shall have no further right, title or interest in and to the Transferred Water and, upon request of the Company, will reconvey and transfer to the Company all of the City's right, title and interest acquired in and to the Transferred Water pursuant to this Agreement and the conveyance to be made pursuant to Section 1 of this Agreement.

12. Notices by City:

12.1 The City will give the Company not less than two (2) days notice of its intent to divert any part of the Transferred Water, which notice will be in writing and sent to the Company at 768 North Avenue, Grand Junction, Colorado 81501 or to such other address as the Company designates in writing. City will also give the same notice to Company of any increases in the amount of Transferred Water to be diverted by it.

12.2 City will also notify Company at least twenty-four (24) hours prior to the time it intends to reduce or cease diversion of Transferred Water.

13. Litigation Expense and Indemnity:

13.1 If by reason of the City's use of Transferred Water or as a result of the Company's compliance with the terms and conditions of the Agreement, the Company is made a party to any litigation or other proceeding, then the City agrees to defend the Company in any such litigation or other proceeding and pay all expenses incident to the same or incurred by the Company as a result thereof.

13.2 The City agrees to indemnify the Company, its officers and directors, and each of them, and save them harmless with respect to any loss, claim or damage they, or any of them, may incur (including attorneys fees and costs)



as a result of the Company or its officers or its directors having entered into, executed or approved the transactions specified in this Agreement.

14. Ratification of Agreement: The President of the Company and the Manager of the City will execute this Agreement and, within thirty days after date of this Agreement, the Manager of the City will submit this Agreement to the council for the City for ratification and approval and, within the same period of time, the President of the Company will submit this Agreement to the Board of Directors of the Company for ratification and approval of the terms and conditions of this Agreement. If this Agreement is not ratified and approved by a majority of the Board of Directors of the Company and by a majority of the members of the council of the City on or before the <sup>30th</sup> ~~1st~~ day of <sup>Aug</sup> ~~June~~, 1979, <sup>RST</sup> J.R.W. then this Agreement shall be of no force and effect and the City and the Company shall not have incurred any rights, obligations or liabilities under this Agreement, notwithstanding the execution of the Agreement by the Manager of the City and the President of the Company.

This Agreement replaces, supersedes and amends the Agreement dated March 8, 1979 between the same parties.

REDLANDS WATER AND POWER COMPANY

By *Walter J. Hill*  
President

CITY OF GRAND JUNCTION, COLORADO

By *James E. W. Zuercher*  
Manager

Attest:

*Neva B. Lockhart, CMC*  
City Clerk

The City Council of the City of Grand Junction, Colorado, convened in regular session August 1, 1979, at 7:30 p.m. in Council Chambers at City Hall. Those present were Council members Louis Brach, Frank Dunn, Dale Hollingsworth, Robert Holmes, Karl Johnson, Bill O'Dwyer, and Jane Quimby, a quorum. Also present were City Manager Jim Wysocki, City Attorney Gerald Ashby, and City Clerk Neva Lockhart.

Among other business to come before the Council, the following was had and taken to-wit:

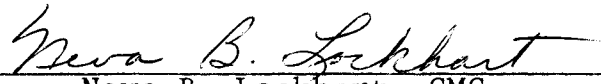
AGREEMENT WITH RELANDS WATER AND POWER COMPANY RATIFIED

Moved by Councilman Johnson: That the Agreement with Redlands Water and Power Company be ratified. Seconded by Councilman Hollingsworth.

Vote: AYES: HOLMES, HOLLINGSWORTH, JOHNSON,  
DUNN, O'DWYER, QUIMBY

ABSTAINING: BRACH

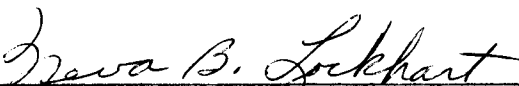
After other business to come before the Council, the meeting was adjourned.

  
\_\_\_\_\_  
Neva B. Lockhart, CMC  
City Clerk

STATE OF COLORADO        )  
COUNTY OF MESA            )        ss  
CITY OF GRAND JUNCTION)

I, Neva B. Lockhart, City Clerk of the City of Grand Junction, Colorado, do hereby certify that the foregoing extract of Minutes of the City Council, City of Grand Junction, is true and correct as the same appears on file in my office.

WITNESS my hand and the Seal of the said City of Grand Junction, Colorado, this 4th day of September, 1979.

  
\_\_\_\_\_  
Neva B. Lockhart, CMC  
City Clerk

AGREEMENT

AGREEMENT made at Grand Junction, Colorado as of June 15, 1977 between REDLANDS WATER & POWER COMPANY, a corporation, (the "Company") and the CITY OF GRAND JUNCTION, COLORADO, a municipal corporation, (the "City").

A. The Company has the right to divert 750 cubic feet of water per second ("c.f.s.") of time from the Gunnison River through the Redlands Canal under priorities assigned Index Nos. 1035 and 2563 by the office of the State Engineer of Colorado. Under Priority - Index No. 1035, the Company has the right to divert 616.7 c.f.s. for power generation purposes and 53.3 c.f.s. for irrigation purposes. Under Priority - Index No. 2563, the Company is entitled to divert 80 c.f.s. for power generation or irrigation purposes. For the purposes of this Agreement, the water diverted by the Company for power generation purposes is referred to as "Power Water" and that water diverted by the Company for irrigation water purposes is referred to as "Irrigation Water".

B. The City maintains a pumping plant at the site of the Redlands Diversion Dam for the purpose of also diverting water under its Priority Index No. 2957, which Priority is subordinate and junior to the rights of the Company.

C. At times prior to the date of this Agreement, there has been insufficient water in the Gunnison River to

supply the respective priorities of the Company and the City. It is also contemplated by the parties that for the remainder of the year 1977, there may be insufficient water in the Gunnison River to supply such priorities.

D. At times since April 1, 1977, the City, with the consent and approval of the Company, has diverted not more than 8 c.f.s. of water from the Gunnison River, which diversions have taken water which would otherwise be available to the Company to supply its Power Water. As a result, the Company has incurred expenses for the purpose of purchasing power from Public Service Company of Colorado ("Public Service"), so that its Irrigation Water could be pumped from the Redlands Canal to the irrigation laterals maintained by the Company for its users.

E. The parties desire to provide a means by which the City can continue the use of water from the Gunnison River for a period of time and reimburse the Company for the cost and expense it will incur as a result of the City's use of Gunnison River water to which the Company would be entitled under its Priorities Index Nos. 1035 and 2563.

IN CONSIDERATION OF their mutual promises and other considerations, the parties agree:

1. As reimbursement and repayment for any costs or expense the Company may have incurred or will incur as a result of the City's diversion of water from the Gunnison

River for the period specified below, the City agrees to pay the Company the following:

1.1 The hour of 4:00 o'clock P.M. on the 15th day of each of the months of October, November and December of 1977 and January, February and March of 1978 will be referred to in this Agreement as the "Effective Time" for each such month.

1.2 For each of the months of April and May of 1977, the City will pay the Company the sum of Five Hundred Dollars (\$500.00) for a total of \$1,000.00.

1.3 For each of the months of June, July, August and September of 1977, the City will pay Company the sum of One Thousand Two Hundred Dollars (\$1,200.00) for a total of \$4,800.00.

1.4 If the Company continues to supply irrigation water to its users through the month of October, the City will pay the Company the sum of One Thousand Two Hundred Dollars (\$1,200.00). However, if the Company does not supply irrigation water to its users through the entire month of October, 1977, then the amount payable by the City to the Company for that part of the month of October, 1977 during which the Company does supply irrigation water to its users will be an amount equal to \$40.00 times the number of days the Company supplied irrigation water to its users during the month of October.

1.5 If the Company terminates the supply of irrigation water to its users prior to October 15, 1977 and

if at the Effective Time for the month of October, 1977 there is insufficient water in the Gunnison River to enable the Company to generate 1,350 kilowatts of electrical power through its Redland's generating plant, then for the period from October 15 to October 31, the City will pay the Company, in addition to amounts specified in Subsection 1.4, the per acre foot rate specified in Subsection 1.6 for each acre foot of water diverted by the City from the Gunnison River during that period of time.

1.6 The City will pay the Company 25¢ for each acre foot of water diverted by the City each calendar month during the period commencing November 1, 1977 and ending March 31, 1978, if, but only if, at the Effective Time of each month during which diversion by the City occurs, the available water in the Gunnison River is insufficient to enable the Company to generate 1,350 kilowatts of electrical power in its Redlands generating plant.

The amounts payable under Subsections 1.2 and 1.3 will be payable by the City irrespective of the amount of water available for diversion from the Gunnison River.

2. Under no circumstances will the City divert water from the Gunnison River at any time when the flow in the Gunnison River available to the Company's Redlands Canal is less than 60 c.f.s.; provided, if the City violates the provisions of this Section 2, then the City agrees to

pay the Company, as agreed and liquidated damages, the sum of Five Hundred Dollars (\$500.00) for each day the City diverts water through its Gunnison River pumping system when the flow available to the Company's Redlands Canal is less than 60 c.f.s.

3. The Company gives and grants the City the right and option to divert water from the Gunnison River during the period from April 1, 1978 to March 31, 1979 (the "Extended Term") at the same rate per month as are specified in this Agreement for the period from April 1, 1977 to March 31, 1978; provided, if during the period of the Extended Term, the Company is required to pay the Public Service for the purchase of electrical power, per kilowatt rates which are higher than the rates in effect between the Public Service Company and the Company as of June 1, 1977, then the amounts payable by the City to the Company during the Extended Term shall be increased proportionately by the ratio that the higher rate, if any, during the Extended Term bears to the per kilowatt rates in effect on June 1, 1977. If the City exercises the option, all applicable 1977 and 1978 dates specified in this Agreement shall be 1978 and 1979 dates for the purposes of the Extended Term.

4. If the City desires to exercise the option granted in the preceding Section, it shall give notice of such exercise in writing to the Company on or before February 1, 1978.

5. Payments to be made by the City to the Company for the months of July, 1977 through and including September, 1977 shall be paid on or before the first day of each such month. The amount due by the City to the Company for the months of April, May and June of 1977 shall be paid on or prior to July 10, 1977. All payments due the Company for the months of October 1977 through and including March of 1978 shall be paid on or before the 15th day of the following calendar month.

6. If the City exercises its option to continue this Agreement for the Extended Term, all payments due the Company for the months of April through and including September of 1978 shall be paid on or before the first day of each applicable month. All payments due for the months of October through and including March of the Extended Term shall be paid on or before the 15th day of the month following the month during which such charges accrue.

7. Subject to the provisions of Section 2 and 10, the Company acknowledges that payments due by the City under this Agreement, or during the Extended Term are in full satisfaction of any loss, cost, expense or damage incurred by the Company in purchasing electrical power from the Public Service as a result of the City's diversion of water from the Gunnison River.

8. On May 19, 1977, the City and the Company executed a letter agreement providing for the City's use of



water from the Gunnison River on an interim basis, which letter agreement was prepared and submitted to the Division Engineer of Water Division No. 4 and the State Engineer of the State of Colorado in compliance with Section 37-83-105 of the Colorado Revised Statutes, 1973. As between the parties to this Agreement, the letter agreement of May 19, 1977 is superceded in all respects by the terms of this Agreement.

9. If the City exercises its option to continue this Agreement for the Extended Term, then prior to April 1, 1978 the parties will execute a letter agreement in substantially the same form as the letter agreement of May 1, 1977 and file such letter agreement with the Engineer of Water Division No. 4 and the State Engineer in compliance with Section 37-83-105, CRS, 1973. However, as between these parties, but subject to the provisions of Section 3 of this Agreement, the terms and conditions of this Agreement shall govern the rights and obligations of the parties for the Extended Term.

10. The City agrees to indemnify the Company for any loss, expense or liability the Company incurs as a result of any claim made by any third person or corporation against the Company resulting from the City's diversion of water under this Agreement. The City also agrees, at its expense, to defend any such claim for, or behalf of and in the name of the Company.

11. The City agrees that at any time it is diverting water from the Gunnison River under the rights and authority granted in this Agreement, it will not divert more than 8 c.f.s.

12. The President of the Company and the acting Manager of the City shall immediately submit this Agreement to their respective boards for approval and ratification. If this Agreement is not approved by the Board of Directors of the Company and the Council of the City on or before July 15, 1977, then this Agreement shall be of no force and effect and neither of the parties shall have incurred any rights, obligations or liability under this Agreement.

REDLANDS WATER & POWER COMPANY

BY *Reuben E. Schmitz*  
President

ATTEST:

*Agnes P. Kang*  
Secretary

CITY OF GRAND JUNCTION

BY *James J. Ashby*  
Acting Manager

ATTEST:

*Neva B. Kiehart*  
City Clerk

*by*  
*Terese Martiny*

CONVEYANCE OF WATER RIGHT

REDLANDS WATER AND POWER COMPANY, a corporation,  
"Grantor", in consideration of Ten Dollars (\$10.00) and other  
considerations, the adequacy of which is confessed and  
acknowledged, conveys, transfers and assigns to REDLANDS  
WATER AND POWER COMPANY and the CITY OF GRAND JUNCTION,  
COLORADO, a municipal corporation, "Grantees", the following  
described water right:

The right to divert 100 cubic feet of water per  
second of time through the headgate of the Redlands  
Power Canal No. 1 from the Gunnison River under  
Basin Rank No. 1035, as established by the 1974  
tabulation of the State Engineer of the State of  
Colorado.

The water right granted by this instrument is a part of a  
total water right consisting of 610 cubic feet of water per  
second of time awarded to the Redlands Power Canal No. 1 by  
the District Court of Mesa County, Colorado, in former Water  
District No. 42 and in that proceeding awarded District  
Priority No. 196, which water right was awarded Basin Rank  
No. 1035 in the 1974 tabulation of the State Engineer of  
Colorado.

This conveyance is made pursuant to the terms and  
conditions of an Agreement between Redlands Water and Power  
Company and the City of Grand Junction dated March 15, 1979.

Grantor executed this instrument on the 29th day of  
August, 1979.

REDLANDS WATER AND POWER COMPANY

By Henry E. Schuyt  
President

ATTEST:

Arnes P. Kanten  
Secretary

*Handwritten notes:*  
10-20-79

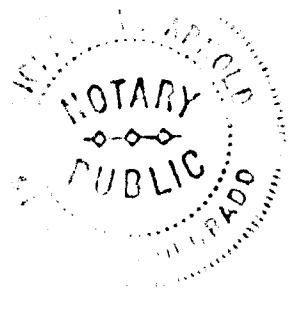
STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 29th day of August, 1979, by Richard E. Schultz, President and James P. Rankin, Secretary of Redlands Water and Power Company.

Witness my hand and official seal.

My Commission expires: June 1, 1981.

Richard A. Arnold  
Notary Public



find file  
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Put with