

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

Issuing Office

LLCON03000

Serial Number  
COC30221

**RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT**

1. A (right-of-way) (permit) is hereby granted pursuant to:
  - a.  Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);
  - b.  Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185);
  - c. Other (*describe*) \_\_\_\_\_
2. Nature of Interest:
  - a. By this Instrument, the holder The City of Grand Junction (250 N. 5<sup>th</sup> Street, Grand Junction, CO 81501) receives a right to construct, operate, maintain, and terminate an extension to the irrigation and stock water ditch known as Bauer Ditch (or Bower Ditch) on public lands (or Federal land for MLA Rights-of-Way) described as follows:

6<sup>th</sup> Principle Meridian  
T. 12 S., R.97 W.,  
Section 19, Lot 8

Mesa County, Colorado

- b. The right-of-way or permit area granted herein is 30 feet wide, VAR feet long and contains 0.220 acres, more or less. If a site type facility, the facility contains \_\_\_\_\_ acres.
- c. This instrument shall terminate on December 31, 2040, 30 years from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.
- d. This instrument  may  may not be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.
- e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

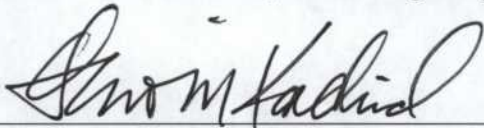
3. Rental:

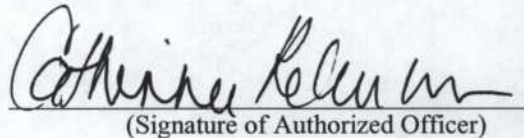
For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted for such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. Terms and Conditions:

- a. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations parts 2800 and 2880.
- b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 90 days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.
- c. Each grant issued pursuant to the authority of paragraph (1)(a) for a term of 20 years or more shall, at minimum, be reviewed by the authorized officer at the end of the 20<sup>th</sup> year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Terms and Conditions, dated October 20, 1980, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and health and safety of the public.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant or permit.

  
\_\_\_\_\_  
(Signature of Holder)

  
\_\_\_\_\_  
(Signature of Authorized Officer)

City Manager  
\_\_\_\_\_  
(Title)

Field Manager  
\_\_\_\_\_  
(Title)

9-14-10  
\_\_\_\_\_  
(Date)

9/29/10  
\_\_\_\_\_  
(Date)

### Additional Stipulations for Right-of-Way Renewals

1. All previously authorized stipulations for each right-of-way grant associated with the requested renewal shall remain in full force and affect in addition to these Amended Stipulations.
2. The holder shall notify the authorized officer at least 60 days prior to non-emergency activities that would cause surface disturbance in the right-of-way. A "Notice to Proceed" shall be required prior to any non-emergency activities that would cause surface disturbance on the right-of-way. Any request for a "Notice to Proceed" must be made to the authorized officer, who will review the proposed action for consistency with resource management concerns such as wildlife, big game winter range, paleontology, special status species, and cultural resource protection. The authorized officer may require the completion of special status species surveys or other resource surveys by a third party contractor at the expense of the holder. Additional measures may be required to protect special status species or other resources.
3. For projects with surface disturbance equal to or greater than one acre, a stormwater permit and stormwater management plan (SWMP) is required by the State of Colorado. Best Management Practices (BMPs) identified in the SWMP must be in place prior to any surface-disturbing activity. The holder shall install additional BMPs as determined necessary by the authorized officer.
4. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. The holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder shall be responsible for the cost of evaluation, and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.
5. Pursuant to 43 CFR 10.4(g) the holder must notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), the holder must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.
6. On the Right-of-Way, the holder shall monitor and control those noxious weeds that may occur or be found, as listed in the booklet, Noxious Weeds of Mesa County. If chemical control is necessary, use of pesticides shall comply with the applicable Federal and State

laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Bureau of Land Management. Prior to the use of pesticides, the holder shall obtain from the authorized officer written approval of a plan showing the type and quantity of material to be used, the pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Emergency use of pesticides shall be approved in writing by the authorized officer prior to such use. Oil and gas operators must follow the *Noxious and Invasive Weed Management Plan for Oil and Gas Operators* dated March 2007.

7. The holder shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601 et seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant (see 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193). Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
COLORADO STATE OFFICE

Serial Number C-30221

Expiration Date October 19, 2010

Right-of-Way Grant

80 OCT 10 A7:45

This right-of-way grant, which is a license for a term of 30 years entered into on Oct. 20, 1980, by the United States of America, the licensor, through the Bureau of Land Management, and the City of Grand Junction, 250 North Fifth Street, Grand Junction, Colorado 81501, the licensee, is hereby issued under Title V of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743, 2776-2782; 43 U.S.C. 1701, 1761-1771), and is subject to all applicable Federal, State and local laws and regulations, now or hereafter in force, including Title 43, Code of Federal Regulations, Part 2800. The terms used in this right-of-way grant are defined at 43 CFR 2800.0-5 (45 Federal Register 44527, July 1, 1980).

Sec. 1. RIGHTS UNDER THIS RIGHT-OF-WAY GRANT -- This right-of-way grant confers upon the holder a non-exclusive right to construct, operate and maintain, in accordance with the terms, conditions and stipulations of this document and applicable regulations, an extension to the irrigation and stock water ditch known as Bauer Ditch (or Bower Ditch) on the following-described public lands situated in the State of Colorado (this description is limited to 40-acre aliquot parts, or surveyed lots, within which the right-of-way is to be located):

Township 12 South, Range 97 West, 6th P.M.  
Section 19: Lot 8

a. This right-of-way grant is subject to all valid rights existing on the date issued.

b. The United States retains all rights in the public lands subject to this right-of-way not expressly granted in this document, including, but not limited to, the right to require common use of the right-of-way and to authorize compatible uses of the right-of-way, including the subsurface and air space; and a continuing right of access onto the public lands covered by the right-of-way grant and, upon reasonable notice to the holder, access and entry to any facility constructed on the right-of-way.

c. The United States retains the right to review this right-of-way grant at the end of the twentieth year of its term and revise or modify its terms at that time.

d. This right-of-way grant shall terminate on October 19, 2010 unless prior to that time it is relinquished, abandoned or otherwise terminated pursuant to the provisions of this grant or of any applicable Federal law or regulation. This right-of-way grant is renewable at the end of its term if an application for renewal is properly and timely filed by the holder and the facility is being operated and maintained in accordance with all provisions of this grant, and applicable laws and regulations. At the time of renewal, the authorized officer may modify the terms, conditions and stipulations of this grant.

Sec. 2. TERMS AND CONDITIONS -- In consideration of the foregoing, the holder hereby agrees:

a. To construct, operate and maintain on public lands only those facilities represented at the location(s) shown on the official approved right-of-way map, consisting of 3 sheets, filed with the Bureau of Land Management on June 18, 1980, and designated by the holder as Bauer Ditch Diversion. The total width of the right-of-way granted by this document is 50 feet for the first year or until construction is completed and 30 feet thereafter.

b. To comply with applicable State standards for public health and safety, environmental protection, and siting, construction, operation and maintenance, if these State standards are more stringent than Federal standards for similar projects.

c. That all activities authorized by this right-of-way grant may be suspended prior to an administrative proceeding, upon a determination by the authorized officer that such suspension is necessary to protect the public health and safety or the environment. An order of immediate temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption activities.

11-16-1981 ml 1/6/81 ml  
11-26-80 am P. 12/1/80 B

d. That the authorized officer may suspend or terminate this right-of-way grant if he determines that the holder is unwilling, unable or has failed to comply with the applicable laws or regulations, or any term, condition or stipulation of this document or has abandoned the right-of-way. Failure of the holder to use the right-of-way for the purposes authorized for any continuous five-year period shall constitute a presumption of abandonment.

e. To provide the authorized officer with a statement, commencing on the fifth year from the date of this right-of-way grant and every five years thereafter, that the holder is using the right-of-way for the purposes authorized herein in accordance with the terms of this grant.

f. To remove all structures and improvements within a reasonable time after termination, revocation or cancellation of this right-of-way grant, unless directed otherwise in writing by the authorized officer, and to restore the site to a condition satisfactory to the authorized officer. If the holder fails to remove all such structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but the holder shall remain liable for the cost of removal of the structures and improvements and for restoration of the site.

g. That this right-of-way grant cannot be conveyed, assigned or otherwise transferred, in whole or in part, without prior written approval by the authorized officer. Any transfer will be subject to existing regulations and such other terms, conditions and stipulations deemed necessary at the time of approval of the transfer.

h. To notify the authorized officer of any change in the holder's status, such as changes in legal mailing address, financial condition, business or corporate status, and alien ownership.

i. That this right-of-way grant does not authorize the holder to take from the public lands any mineral or vegetative material, including timber, without securing prior authorization under the Materials Act (30 U.S.C. 601 et seq.; 43 CFR 3610) and paying in advance the fair market value of the material so removed. However, common varieties of stone and soil that are necessarily removed in the construction of this project may be used elsewhere on public lands in the same project without additional authorization and payment. In the performance of normal maintenance, the holder shall be allowed to do minor trimming, pruning and clearing of vegetative material within the right-of-way and around constructed facilities without additional authorization and payments.

j. To pay the United States the full value for all damages to the lands or other property of the United States caused by the holder or by his employees, contractors, or employees of the contractors.

k. To be fully liable for injuries or damages to third parties resulting from activities or facilities on lands under Federal jurisdiction, in accordance with the law of the jurisdiction in which the damage or injury occurred, and to fully indemnify the United States for liability, damage or claims arising in connection with the use and occupancy of the right-of-way area.

l. To rebuild and repair roads, fences, and established trails that may be destroyed or damaged by construction, operation or maintenance of the project authorized by this right-of-way grant and to build and maintain suitable crossings for existing roads and trails that intersect the project.

m. To prevent or suppress fires on or in the immediate vicinity of the right-of-way and to make available such construction and maintenance personnel and equipment as may be reasonably obtainable for the suppression of such fires.

n. To take all measures necessary to protect Federal property and economic interests; protect lawful users of the lands adjacent to or traversed by the right-of-way; to protect lives and property; and to protect interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes.

o. That in the construction, operation, maintenance and termination of the facilities authorized by this right-of-way grant, the holder shall not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. All subcontracts shall include an identical provision.

Sec. 3. STIPULATIONS -- The holder further agrees to comply with and be bound by the following stipulations, which are made a part hereof: For the purposes of these stipulations, the authorized officer shall be the Grand Junction Resource Area Manager.

a. The holder shall immediately bring to the attention of the authorized officer any and all antiquities or other objects of historic or scientific interest including, but not limited to, historic or prehistoric ruins, or artifacts discovered as a result of operations under this right-of-way grant. The holder shall immediately suspend all activities in the area of the object and shall leave such discoveries intact until told to proceed by the authorized officer. Approval to proceed will be based upon evaluation of the cultural significance of the object. Evaluation shall be by a qualified professional selected by the authorized officer from a Federal agency insofar as practicable. When not practicable, the holder shall bear the cost of the services of a non-Federal professional. The holder shall follow the mitigation requirements set forth by the authorized officer concerning protection, preservation or disposition of any sites or material discovered. In those situations where the authorized officer determines that data recovery and/or salvage excavations are necessary, the holder shall bear the cost of such data recovery and/or salvage operations.

b. The holder shall comply with the applicable Federal and state laws and regulations concerning the use of pesticides (i.e., insecticides, herbicides, fungicides, rodenticides, and other similar substances) in all activities and/or operations under this right-of-way grant. The holder shall obtain from the authorized officer approval of a written plan prior to the use of such substances. The plan must provide for the type and quantity of material to be used; the pest, insect, fungus, etc., to be controlled; the method of application, the location for storage and disposal of containers; and other pertinent information that the authorized officer may require. The plan should be submitted no later than December 1 of any calendar year that covers the proposed activities for the next fiscal year.

Emergency use of pesticides may occur. The use of substances on or near the right-of-way area shall be in accordance with the approved plan. A pesticide shall be used only in accordance with its registered uses and without other limitations if the Secretary of the Interior has not imposed restrictions. A pesticide shall not be used if the Secretary has prohibited its use. Pesticides shall not be permanently stored on public lands authorized for use under this right-of-way grant.

c. The grantee shall call for a preconstruction conference with the authorized officer at least one week prior to the commencement of any surface disturbing activities authorized under this grant. The grantee shall likewise notify the authorized officer when construction activities are completed so that a BLM representative can examine the right-of-way area to determine that all the terms, conditions, and stipulations of this grant have been complied with. Prior to abandonment of the items authorized herein, the grantee shall supply for the authorized officer's approval an abandonment plan.

d. No new roads shall be built in conjunction with the facilities authorized herein.

e. All construction activities shall be confined to the minimum area necessary and shall not exceed the 50-foot right-of-way width granted herein. The exterior boundaries of the right-of-way shall be clearly flagged.

f. When construction of the facilities authorized herein is completed, the grantee shall rehabilitate all disturbed areas as directed by and to the satisfaction of the authorized officer. All disturbed areas shall be recontoured and revegetated, using the following seed formula:

Indian ricegrass	2 lbs/acre
Western wheatgrass	3 lbs/acre
Streambank wheatgrass	2 lbs/acre

g. The holder shall provide a qualified archeologist, as determined by the authorized officer, to monitor all surface-disturbing construction activities authorized herein, including access and equipment storage.

Sec. 4. EXECUTION AND AGREEMENT -- This right-of-way grant consists of 4 pages, of which this is the fourth. Execution of this document constitutes an agreement between the holder and the United States that, in consideration of the right to use Federal lands, the holder shall abide by all the terms, conditions and stipulations contained in this document and the provisions of applicable laws and regulations.

For Execution by the Holder:

James E. Wysocki  
(Holder's Signature)  
City Mgr. City of G.F.  
Title (if applicable)  
10-6-80  
Date

For Execution by the United States:

The United States of America

[Signature]  
Leader, Canon City-Grand Junction Team  
Branch of Adjudication  
Colorado State Office  
Bureau of Land Management

ATTEST:

[Signature]  
City Clerk

Corporate Seal  
(if applicable)

S \_\_\_\_\_ MI  
P \_\_\_\_\_