

RESOLUTION NO. 17-90

AUTHORIZING INDUSTRIAL CONSTRUCTORS CORPORATION
TO CONSTRUCT AND USE A ROADWAY ON CITY PROPERTY

WHEREAS, The City of Grand Junction is the owner of certain real property described as the SE1/4 of the NW1/4 of Section 24, Township 2 South, Range 1 East of the Ute Meridian, Mesa County, Colorado, ("Property") which is presently leased for dry grazing purposes to Donald Dale Smith and Sally Marie Smith, together with a nonexclusive easement which is described as follows:

The South 35.0 feet of Lots 30 through 36 of Meserve Fruit Tracts lying South and West of U.S. Highway No. 50; AND ALSO a strip of land 50.0 feet in width lying South and West and adjacent to the Southwesterly right-of-way line for U.S. Highway No. 50, said strip of land being across Lots 35 and 36 of Meserve Fruit Tracts; and

WHEREAS, Industrial Constructors Corporation, a Montana corporation acting as the Uranium Mill Tailings Remedial Action Project Coordinator for the United States Department of Energy, is desirous of utilizing portions of the aforescribed City property and easement for the construction and use of a haul road in conjunction with the Uranium Mill Tailings Remedial Action Project; and

WHEREAS, subject to the conditions of the attached Agreement, the City Council of the City of Grand Junction finds that said request is reasonable and in the public interest.

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

That the City Manager, on behalf of the City and as the act of the City, is hereby directed and authorized to execute the attached Agreement which authorizes Industrial Constructors Corporation to utilize portions of the aforescribed City property and easement for the installation, use and maintenance of a haul road.

PASSED and ADOPTED this 7th day of February, 1990.

Attest:

R T Mantle
President of the Council

Neva B. Lockhart, CMC
City Clerk

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

C E R T I F I C A T I O N

I, Neva B. Lockhart, City Clerk of the City of Grand Junction, County of Mesa, Colorado, do hereby certify that the foregoing Resolution No. 17-90 is a true and correct copy of the Resolution introduced and read at the legally convened City Council meeting February 7, 1990.

I do further state that upon motion to pass and adopt the Resolution as read, roll was called upon the motion with the following result:

- Council Members voting AYE:
BENNETT, MANTLO, MC CURRY, NELSON,
RAGSDALE, SHEPHERD
- Council Members voting NO: NONE
- Council Members ABSENT: REFORD THEOBOLD.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City of Grand Junction this 12th day of February, 1990.



Neva B. Lockhart, CMC
City Clerk

AGREEMENT

THIS AGREEMENT is entered into as of this 12th day of March, 1990, between THE CITY OF GRAND JUNCTION, a municipal corporation of the State of Colorado, hereinafter "City", INDUSTRIAL CONSTRUCTORS CORPORATION, a Montana Corporation acting as the Uranium Mill Tailings Remedial Action Project Coordinator for the United States Department of Energy (DOE), hereinafter "ICC", and DONALD DALE SMITH and SALLY MARIE SMITH, hereinafter "Smith".

RECITALS:

A. ICC, pursuant to a contract with DOE, has the duty to design and construct a haul road to be used in conjunction with the Uranium Mill Tailings Remedial Action Project ("UMTRA Project").

B. City is the owner of a parcel of land ("City Parcel"), being described as follows:

The Southeast 1/4 of the Northwest 1/4 of Section 24, Township 2 South, Range 1 East of the Ute Meridian, Mesa County, Colorado.

Said parcel is presently being leased to Smith for dry grazing purposes.

C. City owns an interest in a nonexclusive easement across lands owned by Richard E. Anderton and Debbie Anderton, ("Anderton Easement"), which is described as follows:

The South 35.0 feet of Lots 30 through 36 of Meserve Fruit Tracts lying South and West of U.S. Highway No. 50; AND ALSO a strip of land 50.0 feet in width lying South and West and adjacent to the Southwesterly right-of-way line for U.S. Highway No. 50, said strip of land being across Lots 35 and 36 of Meserve Fruit Tracts; and

D. ICC has requested to place the haul road across portions of the City Parcel as shown in Exhibit A attached hereto and incorporated herein by this reference, and across the Anderton Easement. The terms of this Agreement apply to the City Parcel and the Anderton Easement only.

NOW, THEREFORE, based on the recitals above, and in consideration of the mutual promises below, the parties agree as follows:

1. Grant of Right to Construct and Use. City, and Smith as Lessee, do hereby grant to ICC the right to:

(1) Construct a Haul Road over and across those portions of the City parcel as shown in Exhibit A and across the Anderton Easement.

(2) To remove and relocate existing fence lines and cattle guards on the City Parcel and within the Anderton Easement as necessary and at a location to be determined on the ground by City and Smith to facilitate placement of the Haul Road.

(3) To construct access ramps with asphalt surfacing across portions of the City Parcel and Anderton Easement, as reasonably deemed necessary by City and Smith, in order to provide uninterrupted vehicular access from said Parcel to the Haul Road. The locations of said ramps shall be as designated on the ground by City and Smith.

(4) To install pipes, culverts and ditches to provide for drainage where necessary.

(5) ICC shall, during the progress of the UMTRA Project, have full and complete nonexclusive use and access to the haul road so constructed.

The rights granted hereunder shall not be interpreted or construed to limit, hinder or impede Smith and City from the utilization and quiet enjoyment of the City Parcel during and upon completion of the UMTRA Project. Any vehicle associated with the UMTRA Project which utilizes the Haul Road across the City Parcel and Anderton Easement shall not exceed, while crossing the City Parcel and Anderton Easement, a speed of 55 miles per hour. ICC, its officers, employees and agents shall exercise due care in the construction, maintenance and utilization of the Haul Road for the safety and protection of persons and property, in particular City, its officers, employees and agents, and Smith and their invitees such that any property damage, personal injury or death caused during the UMTRA Project by ICC, its officers, employees and agents for failure to exercise due care shall be the responsibility and liability of ICC.

2. Maintenance and Repairs. Subsequent to the installation of the Haul Road, and at all times through the duration of the UMTRA Project, ICC shall, at its sole cost and expense, repair and maintain the Haul Road in order to keep it in as good a condition as when it was first installed. Upon completion of the UMTRA Project, ICC shall, at its sole cost and expense, make any repairs to the Haul Road as reasonably deemed necessary by City and Smith so as to restore the Haul Road to a condition which is comparable with a condition as when it was first installed. ICC shall be relieved of its repair and maintenance obligations only when an agreement of acceptance has been signed by the respective parties, which agreement of acceptance shall not be unreasonably withheld.

3. Liability and Indemnity. Through the duration of the UMTRA Project, ICC, and each of ICC's successors, licensees, lessees, contractors, assigns, employees and agents who receive the benefit of the rights herein granted to ICC, shall indemnify Smith and the City and hold Smith and the City, its officers, employees and agents

harmless from any and all damages, claims for damages or causes of action to persons or property arising out of the use by ICC of the City Parcel, and any maintenance, or failure to maintain, not arising from City's or Smith's wilful misconduct.

4. Enforcement. The parties agree that the breach or violation, or failure to perform any of the terms and conditions in this Agreement may cause irreparable injury for which there shall be no adequate remedy at law for the aggrieved party. Accordingly, the parties agree that equitable relief in the form of specific performance or injunction shall be an appropriate remedy for an aggrieved party. However, the existence or exercise of an equitable remedy shall not be interpreted or construed as a limitation upon any other remedy in equity or at law available to any party hereto aggrieved as a result of the default of a breach or nonperformance of another party. In this event, if any party seeks to enforce any term or provision of this Agreement by legal proceedings, the prevailing party in such legal proceedings shall be entitled to an award of its costs and expenses therefor, including reasonable attorney's fees.

5. Benefit. The terms of this Agreement shall be binding upon and inure to the benefit of the respective parties, their heirs, successors, assigns and legal representatives.

6. Venue. Venue for any action relating to or arising out of this Agreement shall be in Mesa County, Colorado.

DATED the year and day first above written.

Attest:	CITY OF GRAND JUNCTION, a municipal corporation
By <u>Neva B. Lockhart, CMC</u> City Clerk	By <u>Mark A. Alchen</u> City Manager

Attest:	INDUSTRIAL CONSTRUCTORS CORPORATION, a Montana corporation
By <u>Heidi B. Mullen</u>	By <u>David H. Grover</u> President
<u>Donald Dale Smith</u> Donald Dale Smith	<u>Sally Marie Smith</u> Sally Marie Smith

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 12th day of February, 1990, by Mark K. Achen as the City Manager and attested to by Neva B. Lockhart as the City Clerk of the City of Grand Junction.

Witness my hand and official seal.
My commission expires: 2/28/90.

Tim Woodmanse
Notary Public

STATE OF MONTANA)
) ss.
COUNTY OF MISSOULA)

The foregoing instrument was acknowledged before me this 2nd day of March, 1990, by Darrol N. Groven as the President and attested to by Helen B. Miller as the Secretary of Industrial Constructors Corporation.

Witness my hand and official seal.
My commission expires: 6-16-92.

Doreen Hansen
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 20th day of March, 1990, by Donald Dale Smith and Sally Marie Smith.

Witness my hand and official seal.
My commission expires: 2/28/94.

Tim Woodmanse
Notary Public