

August 19, 1990

AGREEMENT

THIS AGREEMENT is made at Grand Junction, Colorado, between the CITY OF GRAND JUNCTION, COLORADO, a Colorado home rule City ("City") and the CLIFTON WATER DISTRICT, a quasi-municipal corporation ("Clifton").

PREAMBLE

In the fall of 1984, Clifton, City, and the Ute Water Conservancy District ("Ute") agreed to study the long-term capital and operation cost savings by unifying all the domestic water providers in the Grand Valley. The Town of Palisade elected to remain solitary, but had no objection to the other three domestic water providers uniting. The following objectives were established by Clifton and the City to be met by cooperation:

A. Clifton's only source of supply is the Colorado River. Due to the high salinity of the Colorado River water, resulting in hard water, the Directors of Clifton wished to obtain a source of softer water.

B. The City desired to avoid unnecessary capital costs involved in constructing a new flow line from its water supply on the Grand Mesa to its water treatment plant and to avoid future capital and operating costs for water treatment and administration.

The three major domestic water providers in the Grand Valley formed an ad hoc committee in 1987 to study the recommendations of a commissioned study by Black & Veatch and to resolve differences of opinion. In late 1989, Ute, by resolution, chose to remove itself from further discussion at the ad hoc committee meetings. Clifton and the City continued to meet and negotiate in an attempt to achieve their goals of the original unification effort. The following agreement is another major step in the long-term relationship between Clifton and the City.

The disbanding of the ad hoc committee did nothing to relieve the hard water supply for Clifton or the transmission of water to meet the summer demand of the City.

The City has an excess water supply and treatment capacity during the winter months when the salinity in the Colorado River water is at its highest concentration and Clifton has an excess water supply and treatment capacity during the summer months when the City's water demand is at its peak. For the benefit of each of its customers and to utilize water supplies and treatment capacity, it is responsible management that the City and Clifton combine water supplies and treatment capacity in order for both water

suppliers to avoid the expenditure of large sums of money and thus increase water rates that separate operations would cause.

The estimated cost savings during the 25-year term of this Agreement are as follows:

	<u>Per Year</u>	<u>Total</u>	<u>Future Value</u>
Savings to City	\$128,000	\$3,200,000	\$9,357,560
Savings to Clifton	\$ 55,000	\$1,375,000	\$4,020,827

RECITALS:

A. The City and Clifton are presently parties to two agreements, one dated September of 1977 ("1977 Agreement") and the other dated December of 1981 ("1981 Agreement"), which refer to various exchanges of both raw water and treated water for municipal use and the operation and maintenance of facilities to implement such exchanges. This Agreement supersedes both such agreements and they shall be of no further force or effect.

B. Following the 1977 Agreement, Clifton constructed an 8 million gallon per day (8 MGD) water treatment plant on the Colorado River at 34 Road ("Clifton Plant") and a treated water pipeline to 32 Road ("High Service Line"), and the City constructed a treated water pipeline from 32 Road to 30 Road ("Enlarged Link Line"). Pursuant to the 1977 Agreement, the City was entitled to 4 MGD of the capacity of the Clifton Plant for the account of the City, and was responsible for 37.5852% of the operation and maintenance costs of the Clifton Plant, plus an amount equal to 15% of such percentage to compensate Clifton for its overhead costs. In addition, the City paid for the cost of chemicals required to process water actually treated for the City. Further, the City was entitled to 21% of the capacity of the High Service Line for the account of the City, and was responsible for 19.6980% of the operation and maintenance costs of the High Service Line, plus an amount equal to 15% of such percentage to compensate Clifton for its overhead costs. Clifton was entitled to 36% of the capacity of the Enlarged Link Line for the account of Clifton, and was responsible for 11.0798% of the operation and maintenance costs, plus an amount equal to 15% of such percentage to compensate the City for its overhead costs. The map attached as Exhibit A sets forth the location of the Clifton Plant, High Service Line, and Enlarged Link Line.

C. The Clifton Plant was enlarged in 1982 to treat a total of 12 MGD. Under the 1981 Agreement, the City is entitled to an

additional 0.5 MGD (for a total of 4.5 MGD) of the capacity of the Clifton Plant for the account of the City. The City's share of the operation and maintenance costs of the Clifton Plant was reduced to 29.8373%, plus an amount equal to 15% of such percentage to compensate Clifton for its overhead costs. The 1981 Agreement did not modify expense allocation on the High Service Line or the Enlarged Link Line.

D. The water treatment plant referred to in the 1981 Agreement as the "Whitewater Hill Treatment Plant" is no longer operational and is not usable as a point of transfer for treated water.

E. The 1981 Agreement allowed Clifton to draw up to a maximum of 0.5 MGD of untreated water from the City's Purdy Mesa flow line at Whitewater Hill. Untreated water is no longer drawn from such flow line by Clifton.

F. The City under the 1977 Agreement conveyed 20 c.f.s. of its 100 c.f.s. Grand Junction Colorado River Pipeline conditional water right, with a priority of February 17, 1947 to Clifton ("1947 Water Right"). Of the 20 c.f.s. conveyed by the City to Clifton, the Clifton has obtained adjudication of 11.61 c.f.s. as an absolute right. Of the 80 c.f.s. retained by the City, the City has adjudicated 6.96 c.f.s. as an absolute right. The flow of 20 c.f.s. is equal to 12.927 MGD. The flow of 100 c.f.s. is equal to 64.52 MGD. Under the 1977 Agreement, the priority of use between the parties, their successors and assigns of the total 100 c.f.s. water right was allocated so that the first 3 MGD was for the account of Clifton, the next 4 MGD was for the account of the City, and the next 9.927 MGD was for the account of Clifton. The City has alternate points of diversion for its water right. The balance of such water right was for the account of the City. The 1981 Agreement did not place a preference between the parties on the additional 0.5 MGD to which the City was entitled, referred to in Recital C above.

G. The City operates and maintains a water treatment facility ("City Plant") that is supplied with untreated water from two flow lines delivering water from Grand Mesa and a pumping system to obtain water from the Gunnison River. The City Plant has a capacity of 16 MGD. One of the distribution lines for treated water in the City's system connects with the Enlarged Link Line at a meter vault located just west of 30 Road and south of I-70 Business Loop ("Meter Vault"). The Meter Vault is the terminus of the Enlarged Link Line.

H. The City desires to take the treated water to which it is entitled from the Clifton Plant through the High Service Line and

the Enlarged Link Line to the Meter Vault as described in Recital G above only during its period of peak water demand, which is during the months of April through September ("Summer Months"), and Clifton desires to provide such water to the City as set forth in this Agreement.

I. Clifton desires to obtain water treated in the City Plant and transported to the Meter Vault, then through the Enlarged Link Line and the High Service Line to the Clifton Plant during the months of October through March ("Winter Months") to improve the quality of its water, and the City desires to provide such water to Clifton as set forth in this Agreement.

J. This distribution of treated water pursuant to Recitals I and J above will be accomplished by reversing the flow in the described lines with the change of season.

IN CONSIDERATION of the foregoing and the covenants herein contained, the parties agree as follows:

1. The term of this Agreement shall be twenty-five (25) years from the date hereof and thereafter for successive ten (10) year periods, unless sooner terminated. Either party shall have the right to terminate this Agreement upon three (3) years' written notice to the other party prior to the end of a term.

2. During the term this Agreement is in effect:

A. Clifton will be responsible for maintaining and operating, at its cost, the Clifton Plant, the High Service Line and the Enlarged Link Line and for providing treated water that meets all Federal and State Safe Drinking Water Standards.

B. The City will be responsible for maintaining and operating, at its cost, the City Plant and all water transmission lines to the Meter Vault and for providing treated water that meets all Federal and State Safe Drinking Water Standards.

C. The City and Clifton shall share equally in operating and maintaining the costs of the Meter Vault.

3. The City shall pay Clifton \$75,000 per year, in six (6) equal installments of \$12,500 during the months of April, May, June, July, August and September. At such time as the City has received 250 million gallons of treated water in the Summer Months, the City will then pay an additional \$0.30 per thousand gallons for

all treated water received from Clifton in excess of 250 million gallons. The City shall pay the water charges to Clifton within fifteen (15) days after receipt of a statement. Treated water delivered by Clifton shall be delivered only in the Summer Months, except as provided below, and shall not exceed a 4.5 MGD rate unless agreed upon by both parties in advance (6 months x 30 days x 4.5 MGD ≈ 810 million gallons maximum). The City shall give not less than twenty-four (24) hours' written notice of the need for water, which notice may be a continuing notice.

4. Clifton shall pay the City \$75,000 per year, in six (6) equal installments of \$12,500 during the months of October, November, December, January, February and March. At such time as Clifton has received 250 million gallons of treated water in the Winter Months, Clifton will then pay an additional \$0.30 per thousand gallons for all treated water received from the City in excess of 250 million gallons. Clifton shall pay the water charges to the City within fifteen (15) days after receipt of a statement. Treated water delivered by the City shall be delivered only in the Winter Months, except as provided below, and shall not exceed a 4.5 MGD rate unless agreed upon by both parties in advance (6 months x 30 days x 4.5 MGD ≈ 810 million gallons maximum). Clifton shall give not less than twenty-four (24) hours' written notice of the need for water, which notice may be a continuing notice.

5. The meters in the Meter Vault will be read at approximately the same time each month by a person designated by the parties. Such person shall provide the information to both parties, and the entity receiving the water during that month will receive a statement from the entity supplying the water during that month. Each party shall have access to the Meter Vault at reasonable times for the purpose of inspection.

6. The priority of use between the parties as described in the 1977 Agreement is amended as follows:

A. The first 3,000,000 gallons of water diverted shall be for Clifton;

B. The next 4,000,000 gallons of water diverted shall be for the City;

C. The next 4,500,000 gallons of water diverted shall be for Clifton;

D. The next 500,000 gallons of water diverted shall be for the City; and

E. The next 5,427,000 gallons of water diverted shall be for Clifton.

For example:

(1) If the amount of water available to the Clifton Plant is 2 MGD, Clifton shall receive all such water;

(2) If the amount of water available to the Clifton Plant is 5 MGD, Clifton will receive 3 MGD and the City will receive 2.0 MGD;

(3) If the amount of water available to the Clifton Plant is 11.5 MGD, Clifton will receive 7.5 MGD and the City will receive 4.0 MGD.

7. In the event of shortage such as described in paragraph 6 above, for each one million four hundred thousand (1,400,000) gallons of water (810 million gallons ÷ 180 days ≈ 1.4 million gallons) less than the two hundred fifty million (250,000,000) gallon prepaid amount to be delivered, there shall be a refund at the rate of \$0.30 per thousand gallons from Clifton to the City on or before November 1 of the year in which the shortage occurs.

8. The parties agree that the priority of use described in paragraph 6 above is for division of water between the parties to this Agreement. The parties further agree that the priority of use shall survive termination of this Agreement if the water right is continued to be used between the parties as set forth in paragraph 12 below. However, if the parties are not using the Water Right as set forth in paragraph 12 below, then the parties shall have a pro rata right to the 100 c.f.s. Should any portion of such 100 c.f.s. be conveyed by either party to others as provided for in paragraph 14, the priority of use as described above in paragraph 6 shall not survive, but will be prorated according to the percentage of ownership of the 100 c.f.s.

9. It is recognized that due to emergency, act of God or other conditions beyond the control of a party, treated water may not be available for delivery to the City or Clifton in the quantities above described. The City and Clifton shall have no recourse against the other if the flow is reduced or stopped because a party cannot meet the demands on its water system for such reason. However, the parties agree to use all reasonable efforts to restore the flow as soon as possible. On days during the Winter Months in which the City is supplementing its water system with a source of supply from the Gunnison River, Clifton may decline to accept delivery of water. In the event the City does not deliver two hundred fifty million (250,000,000) gallons during

the Winter Months, then for each one million four hundred thousand (1,400,000) gallons of water less than such amount, which Clifton declined to accept from the City because the City's source of supply was the Gunnison River, there shall be a refund to Clifton at the rate of \$0.30 per thousand gallons on or before April 1 of the year in which such shortage occurred.

10. If, during the Winter Months, the City encounters an emergency so the City cannot reasonably meet the demands of its domestic water system from other sources (in addition to not being able to provide treated water to Clifton as provided herein), upon reasonable notice to Clifton by the City, Clifton will provide treated water to the Meter Vault in amounts requested by the City, subject to Clifton first providing treated water to its customers within Clifton and subject to the capacity of the Clifton Plant. All such deliveries at the Meter Vault shall be recorded and accounted for as provided in paragraph 5 above at a rate of \$0.30 per thousand gallons.

11. If Clifton encounters an emergency at any time during the year so that Clifton cannot reasonably meet the demands of its domestic water system from the Colorado River, upon reasonable notice to the City by Clifton, the City will provide treated water to the Meter Vault in amounts requested by Clifton, subject to the City first providing treated water to its customers within the City and subject to the capacity of the City Plant. All such deliveries at the Meter Vault shall be recorded and accounted for as provided in paragraph 5 above at a rate of \$0.30 per thousand gallons.

12. If this Agreement is terminated at a time that the Clifton Plant is still in operation, the City, during the life of the Clifton Plant, shall be entitled to 4.5 MGD of the capacity of the Clifton Plant for its account. The City, during the life of the Clifton Plant, shall pay 29.8373% of the operation and maintenance costs of the Clifton Plant, plus an amount equal to 15% of such percentage to compensate Clifton for its overhead costs. In addition, the City shall pay for the actual cost of chemicals used to treat water delivered to it. In addition, so long as the Clifton Plant is in operation, the City shall be entitled to 21% of the capacity of the High Service Line and shall pay 19.6980% of the operation and maintenance costs of the High Service Line, plus an amount equal to 15% of such percentage to compensate Clifton for its overhead costs. Clifton shall have the continued use of 36% of the capacity of the Enlarged Link Line, even if the Clifton Plant is not in operation, and shall pay the City 11.0798% of the operation and maintenance costs, plus an amount equal to 15% of such percentage to compensate the City for its overhead costs.

13. Nothing contained in this Agreement shall limit the right of either party to enlarge or change any part of the facilities owned by it, at its sole cost and expense, for its sole use.

14. Subject to the right of first refusal on sale or gift set forth below, each party shall have the right to lease, sell or give the portions of the 1947 Water Right owned by it provided no such lease, sale or gift shall supersede this Agreement and such lessee, purchaser or donee shall be bound by the obligations hereunder on the parties. Each party shall have a right of first refusal upon that part of the 1947 Water Right owned by the other party, or any portion thereof, proposed to be sold or gifted by the other party ("Offered Water"). Any agreement for sale or gift of the Offered Water, or any portion thereof, by a party ("Selling Party") shall contain a provision that the other party ("Other Party") has a right of first refusal to purchase or accept. The right of first refusal on a sale shall be upon the same terms and conditions as the Selling Party in a written agreement agrees to sell such Offered Water, or a portion thereof, to a third party or person. The right of first refusal on a gift shall be at fair market value of the Offered Water as determined by three appraisers, one to be selected by each party and such two appraisers to select a third appraiser. Upon execution of any such agreement of sale or gift, the Selling Party shall give written notification to the Other Party that it has executed such an agreement, that a copy of such agreement is attached to such written notification, and that such agreement is bona fide. The Other Party shall have a period of forty-five (45) days after receipt of such notice within which to give written notification to the Selling Party of exercise of its right of first refusal and, in the event of a gift, the Other Party's appointment of its appraiser. In the event of gift, the Selling Party shall, within fifteen (15) days of such notification, appoint its appraiser. The two appraisers shall then, within fifteen (15) days of such appointment, appoint the third appraiser. The appraisers shall promptly issue their valuation. If the Selling Party does not receive such written notification within such forty-five (45) day period, the Other Party shall be deemed to have waived its right of first refusal and the Selling Party may proceed with such proposed sale or gift. In the event such proposed sale or gift is not consummated, or in the event such proposed sale or gift is not of the entire 1947 Water Right owned by the Selling Party, the Other Party's right of first refusal shall apply to any new proposed sale or gift and to the balance of the 1947 Water Right not so sold or gifted.

15. Each party shall have the right to apply for an absolute decree upon its portion of the 1947 Water Right used by it through the Clifton Plant.

16. Clifton shall own the Clifton Plant and High Service Line. The City shall continue to own the Enlarged Link Line and the Meter Vault. The City shall continue to own the City Plant and its transmission lines to the Meter Vault.

17. Whenever required hereunder, notices shall be deemed sufficiently given if made in writing, upon mailing, United States mail, postage prepaid, certified mail, return receipt requested, to the addresses of the parties set forth below:

City: City of Grand Junction
250 North 5th Street
Grand Junction, Colorado 81501

Clifton: Clifton Water District
Post Office Box 100
Clifton, Colorado 81520

The address to which notice is given above may be changed by notice of change of address given in the method and manner provided herein.

18. In the event either party is required to seek legal recourse under the terms and conditions of this Agreement, the prevailing party shall be entitled to an award of its expenses incurred and reasonable attorneys' fees.

19. This Agreement will be initially executed by the Chairman of the Board and the Secretary of Clifton and the City Manager and City Clerk of the City, but will not become effective until the Agreement, in its entirety, has been approved by both the Council of the City and the Board of Directors of Clifton. If the City's Council and Clifton's Board have not ratified and approved this Agreement, in its entirety, within sixty (60) days after the date of the initial execution by the Chairman of the Board and the Secretary of Clifton and the City Manager and City Clerk of the City, then this Agreement shall be of no force and effect and the City and Clifton shall be relieved and discharged of any obligation and liability and shall waive and forego any right under this Agreement.

DATED this 10TH day of August, 1990.

CLIFTON WATER DISTRICT

Attest:

John L. Ballagh
Secretary

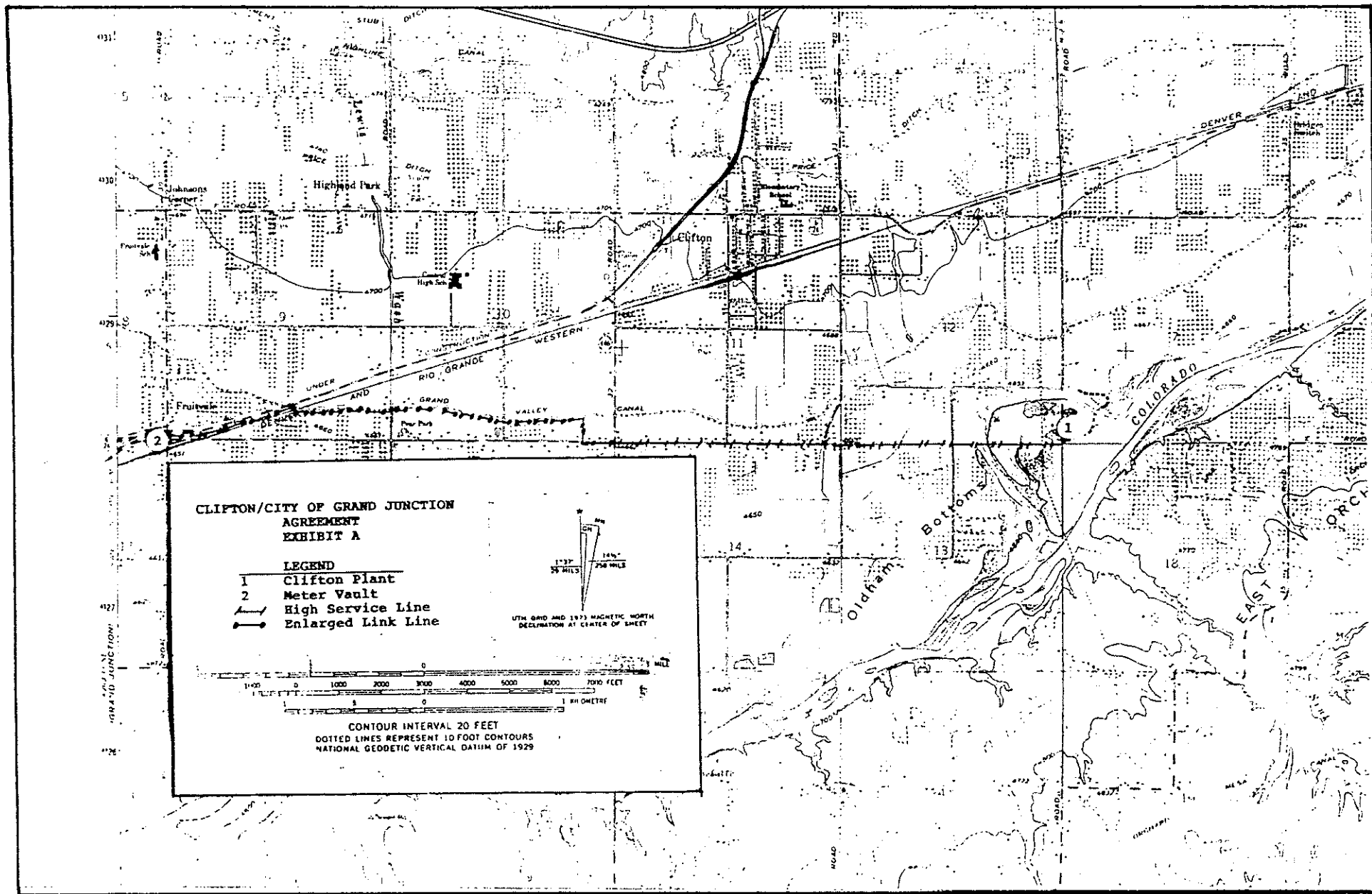
BY Paul E. Barrick
Chairman of the Board

CITY OF GRAND JUNCTION, COLORADO

Attest:

Neva B. Lockhart, CM
City Clerk

BY Mark E. Alchan
City Manager



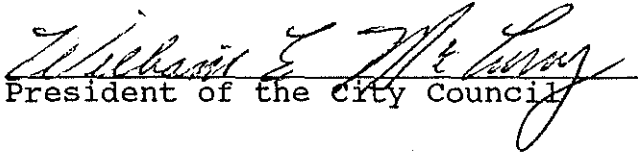
RESOLUTION 49-90

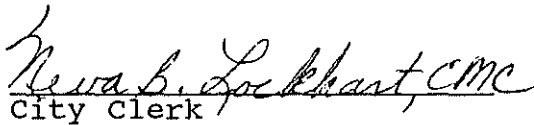
WHEREAS, the City Council had previously authorized the City Manager to execute an agreement between the Clifton Water District and the City, which agreement was dated August 10, 1990, and

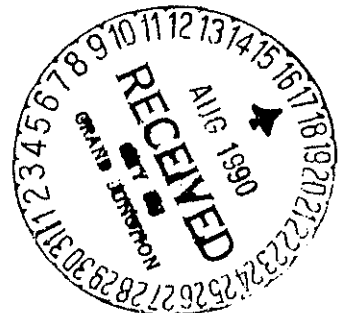
WHEREAS, the City Council desires to ratify that signature and cause the City to be bound by the terms of that agreement.

NOW, THEREFORE BE IT RESOLVED, the execution by the City Manager of the referenced agreement by the Clifton Water District and the City of Grand Junction is hereby approved and ratified.

ATTEST:


President of the city Council


City Clerk



R E S O L U T I O N

WHEREAS, at the present time the only source of raw water for the Clifton Water District is the Colorado River, and;

WHEREAS, the concentration of dissolved solids in the Colorado River is at its greatest in the winter months, exceeding the 500 parts per million as recommended by the United States Environmental Administration, and;

WHEREAS, it has been estimated that the future value of the savings to the District is \$4,020,827, and;

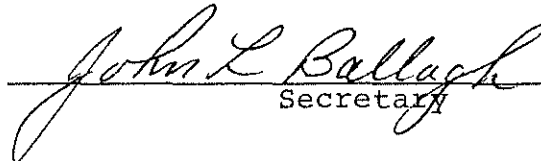
WHEREAS, it is in the best interest of the Clifton Water District to provide a source of softer water during the winter months to avoid the white, milky film on dishes, silverware and other household pots and pans due to the concentration of salts in the water.

NOW, THEREFORE, BE IT RESOLVED by the BOARD OF DIRECTORS of the CLIFTON WATER DISTRICT that the Agreement between the City of Grand Junction and the Clifton Water District signed by the Chairman of the Board and the Board's Secretary is approved in its entirety.



Chairman of the Board

ATTEST:



Secretary