


**PUBLIC WORKS DEPARTMENT
MEMORANDUM #2010 – 18**

DATE: March 25, 2010

TO: Honorable Mayor Joyce Downing and City Council Members

FROM: William A. Simmons, City Manager
David H. Willett, Director of Public Works 
Cory Peterson, Water Resources Engineer

SUBJECT: CR - 58 Intergovernmental Agreement (IGA) between the City of Northglenn and the City and County of Broomfield for the installation of flow monitoring equipment on Big Dry Creek.

BACKGROUND

The City and County of Broomfield (Broomfield) is interested in using and improving the City of Northglenn's (Northglenn) Big Dry Creek Flow Measuring Station (Station) located at approximately Weld County Road 4 and 15. Northglenn acquired the easement from the land owner adjacent to Big Dry Creek to construction and to operate the Station in 1999. Broomfield plans to improve the Station by installing electronic flow measuring equipment as well as radio communication equipment. In return for this use Broomfield has offered to share the flow data with Northglenn. Additionally, Broomfield has agreed to pay \$10,000 for the use of the Big Dry Creek Measuring Station to partially offset the expenses incurred by Northglenn in acquiring the easement and constructing the monitoring structure.

Broomfield is pursuing similar IGA's with the Cities of Thornton and Westminster for other monitoring stations located along Big Dry Creek. Broomfield approved the three IGAs at their regular scheduled Council Meeting on February 23, 2010.

BUDGET/TIME IMPLICATIONS

There is no cost to the City of Northglenn resulting from the IGA.

RECOMMENDATION

Attached to this memorandum is a Consideration Resolution which, if approved, would authorize the Mayor to execute the Intergovernmental Agreement between the City of Northglenn and the City and County of Broomfield. Staff recommends approval of the proposed agreement.

STAFF REFERENCE

David H. Willett, P.E., Director of Public Works
Cory T. Peterson, Engineer

dwillett@northglenn.org or 303.450.8783
cpeterson@northglenn.org or 720.490.6630

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-58
Series of 2010

Series of 2010

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND COUNTY OF BROOMFIELD AND THE CITY OF NORTHGLENN FOR EASEMENT AND USE OF A WATER FLOW MONITORING STATION ON BIG DRY CREEK

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Intergovernmental Agreement between the City and County of Broomfield and the City of Northglenn for easement and use of the water flow monitoring station on Big Dry Creek, as attached hereto, is hereby approved and the Mayor is authorized to execute same on behalf of the City.

DATED at Northglenn, Colorado, this ____ day of _____, 2010.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY AND COUNTY OF BROOMFIELD AND
THE CITY OF NORTHGLENN FOR EASEMENT AND USE OF WATER FLOW
MONITORING STATION ON BIG DRY CREEK AT SACK PROPERTY**

THIS AGREEMENT ("Agreement") is an intergovernmental agreement under C.R.S. § 29-1-201, *et seq.*, entered into this _____ day of _____, 2010, by and between the City of Northglenn ("Northglenn") a home rule city and municipal corporation, and the City and County of Broomfield, a home rule city and municipal corporation ("Broomfield"), collectively "the Parties".

WITNESS:

WHEREAS, C.R.S. § 29-1-201, as amended, authorizes the Parties to cooperate and contract with one another with respect to functions lawfully authorized to each of the Parties and the people of the State of Colorado have encouraged such cooperation and contracting through the adoption of Colorado Constitution, Article XIV, § 18(2); and

WHEREAS, the purpose of Part 2 of Article 1 of Title 29, C.R.S., is to implement the aforesaid provisions of the Colorado Constitution and authorize the Parties to enter into intergovernmental agreements; and

WHEREAS, C.R.S. § 29-1-203(1) provides, *inter alia*, that governmental units may cooperate with one another to provide any function, service, or facility lawfully authorized to each of the contracting units; and

WHEREAS, Broomfield entered into an Intergovernmental Agreement with Northern Colorado Water Conservancy District ("District") for Replacement of C-BT Return Flows dated April 14, 2006 ("Northern IGA"); and

WHEREAS, pursuant to the Northern IGA, Broomfield is responsible for the installation and maintenance of a monitoring system ("Big Dry Creek Monitoring Program") on Big Dry Creek capable of measuring and tracking any C-BT Effluent flowing in Big Dry Creek between Broomfield's wastewater treatment plant and the South Platte River; and

WHEREAS, Northglenn entered into a Permanent Easement Agreement with Albert F. Sack and Anne V. Sack, dated February 10, 1999, (attached hereto as Exhibit A) for the purposes of constructing, operating and maintaining the measuring flume and improvements within and adjacent to Big Dry Creek, and providing a 15-foot vehicular access easement between the measuring flume and Weld County Road No. 15 (“Sack Permanent Easement”); and

WHEREAS, Broomfield desires to utilize the Sack Permanent Easement to construct, install, and maintain a stream flow gauging station on Big Dry Creek as part of Broomfield’s Big Dry Creek Monitoring Program (“Station”); and

WHEREAS, the purpose of this Agreement is to allow Broomfield use of the Sack Permanent Easement for the installation, operation and maintenance of a gauging station.

NOW THEREFORE, the Parties covenant and agree as follows:

1. For and in consideration of the payment of Ten Thousand Dollars (\$10,000.00) from Broomfield to Northglenn, payable upon execution of this Agreement, and other good and valuable consideration, the receipt of which is hereby acknowledged, Northglenn hereby consents and agrees to allow Broomfield to use the Sack Permanent Easement for the installation, operation and maintenance of a gauging station on Big Dry Creek upon the Sack Property at the location described in paragraph 3, below, and Northglenn further grants the right of ingress and egress to and from the gauging station and said Sack Property. Broomfield shall use existing ingress and egress facilities to avoid disruption of Northglenn’s operations on the Property.
2. The Station shall be for the purpose of providing stream flow measurements downstream of the Thompson Ditch diversion and its return points.
3. The Station is located on Big Dry Creek on the Sack Property, at the location approximately shown on the attached Figure 1.
4. The Station equipment will consist of the following components: a measuring sensor, a data collector, a solar panel, telemetry, a mast for mounting equipment, and electrical wiring. Broomfield will provide further information regarding the equipment it plans to install when the selection process is completed.

5. Broomfield shall be responsible for the day-to-day operation and maintenance of the Station at its own cost and expense. Northglenn will not be responsible for the maintenance of the equipment Broomfield installs for Broomfield's use, nor shall Northglenn be responsible for any operation or maintenance cost or expense. Broomfield specifically agrees to be solely responsible during Broomfield's use of the Sack Permanent Easement property for Northglenn's compliance with Sections 2 and 3 of the Sack Permanent Easement.

6. Any improvements on the Sack Permanent Easement by Broomfield, the Station and any tools and equipment for the use and maintenance thereof placed in or on the Sack Property by Broomfield shall remain the property of Broomfield.

7. If the Station is ever removed by Broomfield, Broomfield shall restore the Sack Property to, as nearly as practicable, the same state and condition existing prior to the installation of the Station and the Station and all tools and equipment shall be removed by Broomfield at its own cost.

8. Broomfield, to the extent allowed by law, will indemnify Northglenn against any loss or damage which shall result from the exercise by Broomfield, its agents, contractors and employees of ingress to or egress from the Sack Property, from the Station, or by any wrongful or negligent act or omission of Broomfield or of its agents, contractors, or employees in the course of their employment in the use of Station. This indemnification is subject to the provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et. seq.*, as amended.

9. Northglenn retains the right to make full use of the Sack Property unless such use endangers or interferes with the rights of Broomfield under this Agreement.

10. Northglenn shall not interfere with Broomfield's rights of operation, maintenance, and reasonable access to the Station under this Agreement by constructing barriers or otherwise.

11. Northglenn shall prevent construction or alterations within the Sack Permanent Easement or upon the Sack Property, which might endanger or interfere with Broomfield's rights under this Agreement.

12. Northglenn warrants that the rights it possesses to the Sack Permanent Easement are those contained in the Sack Permanent Easement dated February 10, 1999, and all authority granted herein is subject to the limitations on title contained in the Sack Permanent Easement. .

13. The Parties anticipate that data generated by the Station will be reported electronically. Said electronic data will be made available by Broomfield in the form, by the means, and with a frequency agreed by and between the Broomfield Public Works Director and the Northglenn Public Works Director, but in no event shall the frequency of the data provided be any less frequent than once per month.

14. This Agreement becomes effective on the date of execution, and its term shall be perpetual.

15. This Agreement may be executed in counterparts, including counterparts by facsimile, each of which when considered together shall constitute the original Agreement.

16. Except as expressly provided otherwise, the Sack Permanent Easement is intended to be solely for the benefit of Broomfield and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action or other right.

17. If either party brings an action to enforce the terms hereof or declare rights hereunder, and is the prevailing party in any such action, on trial or appeal, the prevailing party shall be entitled to an award of its reasonable attorney's fees and costs as determined by the court.

18. Notices under this Agreement shall be in writing, shall be addressed as set forth below, and shall be sent by U.S. Mail, certified, return receipt requested, by facsimile, or by hand delivery.

18.1 If to Broomfield, to:

City and County of Broomfield
Attn: City and County Public Works Director
One DesCombes Drive
Broomfield CO 80020
Facsimile: 303-438-6296

With a copy to:

Harvey W. Curtis, Esq.
Harvey W. Curtis & Associates
2310 South Valley Highway, Suite 230
Englewood CO 80112
Facsimile: 303-292-1764

18.2 If to Northglenn, to:

City of Northglenn
Attn: Ray Reling, Utilities Director
11701 Community Center Drive
Northglenn, CO 80233
Facsimile: 303-450-8708

With a copy to:

Bill Fischer, Esq.
Fischer, Brown and Gunn, P.C.
1319 East Prospect Road
Fort Collins CO 80525
Facsimile: 970-407-1055

19. The provisions of this Agreement are severable and in the event any provision, clause, sentence, section or part thereof is held to be invalid, illegal, unconstitutional, inapplicable or unenforceable to any person or circumstances, such invalidity, illegality, unconstitutionality, inapplicability or unenforceability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of the Agreement or their application to the Parties. It is understood and agreed that the terms, conditions and covenants of this Agreement would have been made by both Parties if such invalid, illegal, unconstitutional, inapplicable or unenforceable provisions, sentence, clause, section or part had not been included therein. To the extent that any portion of this Agreement found to be invalid, illegal, unconstitutional, inapplicable or unenforceable may be made valid by striking of certain words or phrases, such words or phrases shall be deemed to be stricken and the remainder of the provisions and the remainder of the other portions of this Agreement shall remain in full force and effect.

20. This Agreement shall be governed by the substantive law of the State of Colorado. Venue for any dispute under this Agreement shall be in the Adams County District Court.

IN WITNESS WHEREOF, the Parties hereto have set heir hands and seals the day and year first above written.

CITY AND COUNTY OF BROOMFIELD

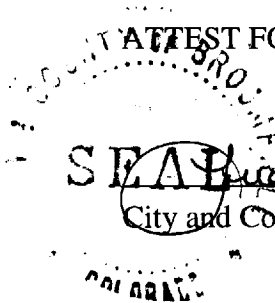
CITY OF NORTHGLENN

By Walter P. Spalder
Mayor *Pro-Tem*

By _____
Mayor

ATTEST FOR BROOMFIELD:

ATTEST FOR NORTHGLENN:



S.E.A. ... Reiser
City and County Clerk, Deputy

City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

William A. ...
City and County Attorney

City Attorney

ACKNOWLEDGMENTS:

STATE OF COLORADO)
) ss.
City and County of Broomfield)

The foregoing was acknowledged before me this 23rd day of February, ²⁰¹⁰ 2008 by Walter Spader as Mayor of the City and County of Broomfield.

Witness my hand and official seal.
My commission expires: Sept. 17, 2013
Judith L. Reiser
Notary Public



STATE OF COLORADO)
) ss.
City and County of _____)

The foregoing was acknowledged before me this ____ day of _____, 2008 by Kathie Novak, as Mayor of the City of Northglenn.

Witness my hand and official seal.
My commission expires: _____

Notary Public

ACKNOWLEDGMENTS:

STATE OF COLORADO)
) ss.
City and County of Broomfield)

The foregoing was acknowledged before me this ____ day of _____, 2010 by _____ as Mayor of the City and County of Broomfield.

Witness my hand and official seal.
My commission expires: _____

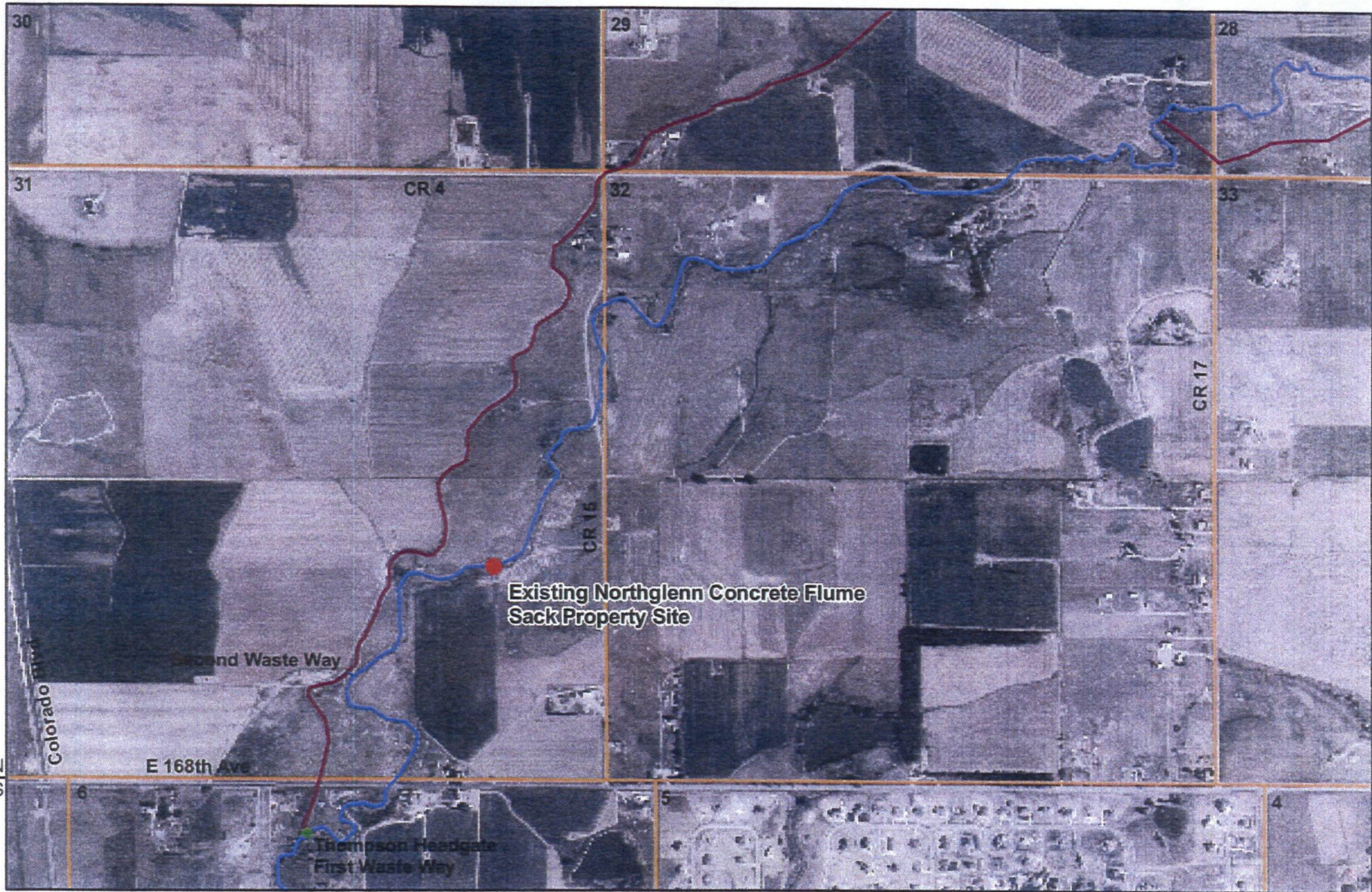
Notary Public

STATE OF COLORADO)
) ss.
City and County of _____)

The foregoing was acknowledged before me this ____ day of _____, 2010 by Joyce Downing, as Mayor of the City of Northglenn.

Witness my hand and official seal.
My commission expires: _____

Notary Public



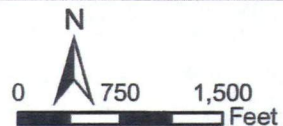
Project # 1095PUL03

February 2007



Leonard Rice Engineers, Inc.

2000 Clay Street, Suite 300, Denver, Colorado 80211-5119
 (303) 455-9589 * Fax (303) 455-0115 * www.lrowe.com

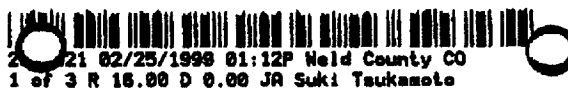


Legend

- Ditches
- Big Dry Creek
- Section Lines

Monitoring Station Location
 Sack Property
 Township 1S, Range 67 W
 Section 31

Figure 1



Big Dry Creek
Measuring Flume
SE 1/4, Sec. 31, T1N, R67W

PERMANENT EASEMENT

621

KNOW ALL MEN BY THESE PRESENTS, that Albert F. and Anne V. Sack, owner(s) of property located north of Weld County Road 2 and west of Weld County Road 15 in Weld County, Colorado, hereinafter called the "grantor," for and in consideration of the sum of Six Hundred Sixty-Eight Dollars (\$668.00), and other valuable considerations to them in hand paid by the CITY OF NORTHGLENN, hereinafter called the "grantee," receipt of which is hereby acknowledged, has given and granted and by these presents does hereby give and grant unto the said grantee, its heirs, successor or assign a PERPETUAL EASEMENT on, under, over and across the following described premises, to-wit:

LEGAL DESCRIPTION: PERMANENT EASEMENT FOR MEASURING FLUME

THAT PART OF THE SOUTHEAST ONE-QUARTER OF SECTION 31, TOWNSHIP 1 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO, DESCRIBED AS BEGINNING AT THE NORTHEAST CORNER OF SAID SOUTHEAST ONE-QUARTER, THENCE S48°49'03"W A DISTANCE OF 1171.22 FEET, THENCE S77°16'17"W A DISTANCE OF 41.36 FEET TO THE POINT OF BEGINNING, THENCE CONTINUING S77°16'17"W A DISTANCE OF 131.34 FEET; THENCE N12°43'43"W A DISTANCE OF 111.65 FEET, THENCE N77°16'17"E A DISTANCE OF 131.34 FEET, THENCE S12°43'43"E A DISTANCE OF 111.65 FEET TO THE POINT OF BEGINNING. CONTAINS 14,665 SQUARE FEET OR 0.337 ACRES MORE OR LESS.

BASIS FOR BEARINGS:

THE EAST LINE OF THE SOUTHEAST ONE-QUARTER OF SECTION 31, TOWNSHIP 1 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO, IS ASSUMED TO BEAR S00°00'00"E. (THE NORTHEAST CORNER OF SAID SOUTHEAST ONE-QUARTER IS A 3-1/4" ALUM CAP. — BAYER, L.S. 6973, 1997 AND THE SOUTHEAST CORNER OF SAID SOUTHEAST ONE-QUARTER IS A P.K. NAIL).

and

LEGAL DESCRIPTION: CENTERLINE OF 15-FOOT WIDE INGRESS & EGRESS EASEMENT (7.5 FEET ON EACH SIDE)

THAT PART OF THE SOUTHEAST ONE-QUARTER OF SECTION 31, TOWNSHIP 1 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO, DESCRIBED AS COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHEAST ONE-QUARTER, THENCE S00°00'00"E ON AN ASSUMED BEARING ALONG THE EAST LINE OF SAID SOUTHEAST ONE-QUARTER A DISTANCE OF 585.00 FEET, THENCE S87°58'46"W A DISTANCE OF 30.02 FEET TO THE POINT OF BEGINNING OF SAID CENTERLINE, THENCE CONTINUING S87°58'46"W A DISTANCE OF 146.15 FEET, THENCE S86°49'16"W A DISTANCE OF 167.69 FEET, THENCE S84°17'15"W A DISTANCE OF 102.64 FEET, THENCE S77°16'58"W A DISTANCE OF 51.22 FEET, THENCE S74°31'23"W A DISTANCE OF 56.38 FEET, THENCE S67°05'46"W A DISTANCE OF 55.09 FEET, THENCE S63°43'15"W A DISTANCE OF 93.80 FEET, THENCE S59°59'57"W A DISTANCE OF 101.43 FEET, THENCE S57°12'54"W A DISTANCE OF 81.594 FEET, THENCE S53°18'18"W A DISTANCE OF 0.57 FEET, TO THE BEGINNING OF A CURVE TO THE RIGHT, THE RADIUS OF SAID CURVE IS 68.00 FEET, THE DELTA OF SAID CURVE IS 82°13'16", THE CHORD OF SAID CURVE BEARS N85°35'04"W, 89.42 FEET, THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 97.58 FEET TO THE END OF SAID CURVE, THENCE N44°28'26"W A DISTANCE OF 6.91 TO THE POINT OF TERMINUS OF SAID CENTERLINE. CONTAINS 14,416 SQUARE FEET OR 0.331 ACRES MORE OR LESS.

BASIS FOR BEARINGS:

THE EAST LINE OF THE SOUTHEAST ONE-QUARTER OF SECTION 31, TOWNSHIP 1 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO, IS ASSUMED TO BEAR S00°00'00"E. (THE NORTHEAST CORNER OF SAID SOUTHEAST ONE-QUARTER IS A 3-1/4" ALUM CAP. — BAYER, L.S. 6973, 1997 AND THE SOUTHEAST CORNER OF SAID SOUTHEAST ONE-QUARTER IS A P.K. NAIL).

For the purpose of constructing, operating, and maintaining a measuring flume and related improvements within and adjacent to Big Dry Creek and providing a 15-foot-wide vehicular access easement between the measuring flume and Weld County Road No. 15.

Subject to the following terms and conditions:

1. Grantor grants Grantee only such rights as it has in the premises. The access right granted herein shall be deemed to be a non-exclusive right of access to Grantee. Grantor does not warrant title to the real property that is the subject of this agreement.
2. Grantee shall be solely responsible for all permits or other regulatory requirements, and shall maintain the measuring weir and any areas disturbed by the construction or presence of the measuring weir in such manner as shall not result in any increased erosion or blocking of the flow of Big Dry Creek in a manner which damages Grantor's property.
3. Grantee shall repair any damage to Grantor's property or the existing gravel access road that Grantee shall cause, and in the event that the existing gravel access road is no longer maintained by the oil service company, then Grantee shall become responsible for maintaining the existing gravel access road in its present condition.
4. In the event that the Grantor or Grantor's successors shall develop the Grantor's property in such manner as alternative access is provided from Weld County Road 15 to the Measuring Flume and recorder housing or otherwise provide alternative access to the Measuring Flume and recorder housing from Weld County Road 15 across an access right-of-way which is not substantially different than the access granted hereby, then in such event at the notice of the Grantor a description of the alternative access may be recorded and upon such event the access right-of-way granted hereby shall be deemed to be changed in location to the new 15-foot right-of-way described. Grantee shall not be required to maintain said alternative access except for repairs of any damage directly caused by the Grantee.
5. On an annual basis, when requested by the Grantors or their sons, the Grantee (City of Northglenn) will lease, at its option, either a maximum of 10 shares of FRICO Standley Lake Division Water or a maximum of 100-Acre Feet of treated effluent from the Grantee's Bull Reservoir under the following terms and conditions:
 - a) The right to lease shall extend to the Grantor's and any assignees who may from time to time be engaged in farming upon the Grantor's property.
 - b) Grantors or their assignees who shall from time to time be engaged in farming on the Grantor's property shall be afforded the first and prior right to lease either a maximum of 10 FRICO Standley Lake shares or a maximum of 100-acre feet of treated effluent from Grantee's Bull Reservoir, as provided by this agreement, so long as Grantee from year to year shall determine to lease either FRICO Standley Lake shares or water from the Bull Reservoir to any persons or organizations within the existing Bull Canal System for agricultural purposes.
 - c) In the event that Grantors shall enter an annual lease with the Grantee for shares or water as provided herein, and shall thereafter determine that they have an excess of water for their current needs, Grantors may sublease or assign the right to receive whatever balance of water remains to be received from the Grantee so long as such assignment is used for agricultural purposes and shall not increase the cost or burden of providing water to the Grantee.
 - d) Grantors shall advise the Grantee no later than February 15 of each year that they desire to lease said water.
 - e) The Grantee shall have the sole right to determine whether the leased water is from FRICO shares or treated effluent.
 - f) The cost of the leased water shall be at the prevailing rate established by the Grantee on an annual basis.
 - g) The leased water shall be used only for agricultural purposes on the Grantor's property or property owned or leased by the Grantors or their sons except as provided in Paragraph 5.c above.

2875621 02/23/1999 01:12P Weld County CO
3 of 3 R 16.00 D 0.00 JR Suki Tsukamoto

Big Dry Creek
Measuring Flume
SE 1/4, Sec. 31, T1N, R67W

6. This Permanent Easement is perpetual and is not limited in duration by the availability of lease water from the Grantee.
7. Grantee, for itself and its employees and invitees hereby releases and discharges the Grantors or their successors or assigns from any claims or damage which may arise as a result of Grantee's exercise of its rights granted under this agreement. As for itself and its permittees and invitees, Grantee shall have the right and obligation to insure the safety and suitability of the access road and the measuring weir site for the use and purposes for which this grant has been extended.

IN WITNESS WHEREOF, We have hereunto set our hands and seals this 10th
day of February, 19 99.

Albert F. Sack
Albert F. Sack
Grantor

Anne V. Sack
Anne V. Sack
Grantor

STATE OF COLORADO
COUNTY OF ADAMS

The foregoing instrument was acknowledged before me this 10th day of February
19 99 BY Albert F. Sack and Anne V. Sack.

Witness my hand and official seal.

My commission expires August 11, 2001

Brenda L. Douglas
Notary Public

