

**TRANSFER OF DEVELOPMENT RIGHTS/CREDITS PROGRAM AGREEMENT**  
2nd August 2005

**THIS AGREEMENT**, entered into this 11th day of December, 2002 by and between MESA COUNTY, COLORADO, a Body Politic organized under and existing by virtue of the laws of the State of Colorado and the CITY OF FRUITA, COLORADO, together referred to as the "Parties."

**WHEREAS**, this agreement is entered under the authority authorized by Title 29, Article 20, Colorado Revised Statutes, as amended, and;

**WHEREAS**, in 1996, the Mesa County Land Use Incentives Final Report recommended the use of Transferable Development Rights/Credits (TDR's) to foster the creation of urban and rural settlement patterns that contribute to agricultural land preservation; and

**WHEREAS**, the 1996 Mesa County Land Use Incentives Final Report also recommended that Mesa County participate in a pilot project to formalize TDR mechanism's in County and local governmental agency development codes; and

**WHEREAS**, the Mesa Countywide Land Use Plan, adopted on October 17, 1996, contains the land use incentives identified in the Mesa County Land Use Incentives Final Report and expresses countywide goals, policies, and actions to address agricultural land use preservation, including the use of TDR's, and;

**WHEREAS**, the Board of County Commissioners of Mesa County, the Fruita City Council and the Grand Junction City Council entered a Cooperative Planning Agreement (MCA 98-11) on February 9, 1998 to assist in the orderly development and preservation of rural lands, and;

**WHEREAS**, the Board of County Commissioners of Mesa County adopted a resolution on April 5, 1999 supporting voluntary land conservation techniques (MCM #99-68), specifically "funding mechanisms and partnerships available for preserving open lands with an emphasis on enhancing the rural character of the cooperative planning areas" and to "work cooperatively with the County's municipalities and other potential partners to establish joint open space funding for acquisition of important land and/or development rights throughout Mesa County" and;

**WHEREAS**, the Board of County Commissioners of Mesa County adopted the Mesa County Land Development Code on February 28, 2000, inclusive of options to preserve agricultural land through the use of transferable density credits, and;

**WHEREAS**, the Fruita Community Plan 2020, adopted March 6, 2001, includes policies and actions regarding the implementation of Transfer of Development Rights/Credits Program, and;

**WHEREAS**, the Mesa County Strategic Plan, dated May 2001, includes goals and objectives concerning agricultural land preservation through the use of techniques such as the transfer of development rights/credits, and;

**WHEREAS**, the Board of County Commissioners and the Fruita City Council jointly applied to the Colorado Department of Local Affairs for a Colorado Heritage Area Grant to prepare a Transfer of Development Rights/Credits Program, and;

**WHEREAS**, a Colorado Heritage Area Grant was awarded to Mesa County and the City of Fruita to prepare a Transfer of Development Rights/Credits Program, and;

**WHEREAS**, the Board of County Commissioners of Mesa County and the Fruita City Council find it is for the mutual benefit of all Parties and in the interest of the public and affected land owners to cooperatively implement a Transfer of Development Rights/Credits Program as described in Attachment A.

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties as follows:

#### **SECTION I. DEFINITIONS:**

Capitalized words in this agreement are used as defined in this section.

1.1 **Base Density.** The number of dwelling units permitted by right, per acre, on a parcel of land within a zoning district.

1.2 **Bonus Density.** The additional number of dwelling units permitted on a parcel of land beyond those permitted by right within a zoning district.

1.3 **Cluster Development.** A design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for recreation, common open space, the preservation of environmentally sensitive areas or agricultural uses.

1.4 **City.** – City of Fruita, Colorado

1.5 **Code.** the Mesa County Land Development Code or the Fruita Land Use Code, as the context requires

1.6 **Conservation Easement.** A deed restriction placed on property that restricts its owner to specific limited uses of the property, typically agriculture or as passive, private open space.

1.7 **Cooperative Planning Area.** An area defined in an Intergovernmental Agreement between Mesa County, the City of Fruita, and the City of Grand Junction, and as shown on the "TDR

Sending Area" map, shown on Exhibit A, attached hereto and incorporated herein, also commonly known as the Fruita *Community Separator and Buffer Zone*.

1.8 County. The County of Mesa, Colorado.

1.9 Deed Restriction. A legal document, recorded with the County Clerk describing restricted activities on a sending site, which may or may not include a conservation easement.

1.10 Development Right/Credit "The ability to build one dwelling unit in a Sending Area, as such ability is created and administered by the City and the County pursuant to this Agreement and the Implementing Regulations. For purposes of its use with this Agreement and the Implementing Regulations, the term development right is also known as a development credit."

1.11 Implementing Regulations. The Mesa County Land Development Code and the Fruita Land Use Code.

1.12 Receiving Area. An area designated in urban or urbanizing areas with available infrastructure and services that can accommodate higher density development. Shown in Exhibit B, attached hereto and made a part hereof.

1.13 Receiving Site. An eligible property located within Receiving Area. Eligibility shall be determined by criteria found in the City of Fruita, Land Use Code.

1.14 Sending Area. An area designated for limited development or to remain undeveloped, such as prime agricultural land, the Cooperative Planning Area and/or an area with significant natural features. Shown in Exhibit A attached hereto and made a part hereof.

1.15 Sending Site. An eligible property located within Sending Area. Eligibility shall be determined by criteria found in the Mesa County Land Development Code.

1.16 Transferable Development Right/Credit (TDR). A Development Right/Credit which has been severed or extinguished from a Sending Site by deed restriction, conservation easement, or other legal instrument authorized by law and the recording of that instrument, and which is transferable to a specified Receiving Area.

1.17 TDR Development. A development using one or more TDR's.

1.18 TDR Certificate. A transferable certificate issued by the County evidencing the legal right of the holder thereof to use such certificate to obtain additional bonus density on a Receiving Site, subject to and in accordance with the City of Fruita Land Use Code.

1.19 TDR Program. The program authorized by this Agreement.

1.20 Transfer Ratio. The value of one TDR relative to its use on a Receiving Site. The transfer ratio shall be:

a) for Sending Sites inside the Cooperative Planning Agreement area, 1:8 for each single (1) TDR, eight (8) additional dwelling units are eligible as bonus density on a qualified Receiving Site.

b) for Sending Sites outside of the Cooperative Planning Agreement area, 1:7 for each single (1) TDR, seven (7) additional dwelling units are eligible as bonus density on a qualified Receiving Site

## SECTION II. IMPLEMENTATION OF THE TDR PROGRAM:

The County and the City agree to implement the TDR Program in the manner described in the Program Manual and this Agreement, by the adoption of necessary Code revisions. In the event either or both the County and the City have not taken such action prior to **July 1, 2003**, this Agreement shall terminate.

## SECTION III. CONTROLLING REGULATIONS:

3.1 The County and the City shall approve and authorize the voluntary transfer of Development Rights/Credits between Sending Areas and Receiving Areas pursuant to the terms and conditions of this Agreement and the applicable implementing land use regulations of the County and the City.

3.2 On or before **May 1, 2003** the County and City each agree to consider adoption of their own procedures, plans, policies, ordinances, or other regulations (hereinafter, the "Implementing Regulations") necessary to implement and enforce the provisions of this Agreement and the Program Manual and to give the other Party adequate notice to comment on the same prior to final adoption. In the event either or both the County and the City have not taken such action prior to **July 1, 2003**, this Agreement shall terminate.

3.3 The Implementing Regulations adopted by the County and the City shall be consistent with one another and with the Program Manual, in respect to, without limitation:

- \* Identified Sending and Receiving Areas and their criteria as expressed in the Program Manual
- \* Transfer ratios
- \* Processing requirements for use of TDR's

3.4 The Implementing Regulations shall provide for review by the City of TDR Development on Receiving Sites located outside the City, on the condition that such sites first be annexed to, or irrevocably commit to be annexed to the City.

3.5 This Agreement shall not restrict the City's authority to annex property, or to regulate the use and Development of any annexed property, or other property within its boundaries, according to Colorado law and the Fruita Land Use Code as amended from time to time.

3.6 Except as provided herein, neither the County nor the City shall allow TDR Development on a Sending Site or a Receiving Site which does not comply with this Agreement and/or the Implementing Regulations of the City or County, as applicable. The City agrees that approval of any proposed TDR Development on Sending Sites within the County boundaries shall be subject solely to review and approval of the County in accordance with the County's applicable rules and regulations as the same may be adopted or amended from time to time. The County agrees that approval of any proposed TDR Development on Receiving Sites within the City boundaries shall be subject solely to review and approval of the City in accordance with the City's applicable rules and regulations as the same may be adopted or amended from time to time.

3.7 The City agrees to amend its 201 Sewer service area as recommended in the Fruita Community Plan 2020

3.8 In the event the City shall annex any lands lying outside the growth boundaries specified in the Fruita Community Plan 2020, adopted March 6, 2001, such action shall be an event of default under Section VII hereof.

#### SECTION IV. TDR SENDING AREAS AND SITES

4.1 Development Rights/Credits may be transferred from the Sending Area designated in this Agreement only pursuant to and in compliance with this Agreement and the Implementing Regulations.

4.2 The Sending Areas designated in this Agreement are hereby approved, and the Parties agree that all land within the Sending Areas meeting the criteria of the Implementing Regulations shall be eligible to participate in the TDR Program, subject to applicable regulations.

4.3 The owner of the Sending Site involved in the sale or transfer of a Development Right/Credit must register such transaction with the County.

4.4 A TDR from a Sending Site may be purchased by one of the Parties or others.

## SECTION V. TDR RECEIVING AREAS AND SITES

5.1 Development Rights/Credits may be transferred to the Receiving Area designated in this Agreement only pursuant to and in compliance with this Agreement and the Implementing Regulations.

5.2 The Receiving Areas designated in this Agreement are hereby approved, and the Parties agree that all land within the Receiving Areas meeting the criteria of the the Implementing Regulations shall be eligible to participate in the TDR Program, subject to applicable regulations. TDR Program Administration

5.3 The TDR Program is hereby established. The administration of the TDR Program shall be controlled by the rules and regulations as described in this Agreement and in the Implementing Regulations. The Program Manual is an administrative guide and resource for property owners in Sending and Receiving Areas. The Program Manual is not a regulation.

5.4 In recognition of the fact that TDRs will be acquired throughout the term of this Agreement at various and differing costs, TDRs may be sold by the owner thereof, including the Parties, at different prices than were paid for such Development Rights/Credits when they were acquired.

5.5 In administering the TDR Program, the Parties shall be enabled to do the following:

- \* Generally administer and monitor the TDR Program.

- \* Register with the County transfers of Development Rights/Credits made pursuant to this Agreement.
- \* Agree that Mesa County will issue TDR Certificates pursuant to this Agreement.
- \* Assist with the conveyance of TDR Certificates by or between private persons.
- \* Purchase and sell TDR Certificates subject to prices and available funding.
- \* Generally perform all acts necessary or proper for the implementation of this Agreement.

5.6 A TDR Certificate shall remain valid only to the extent such Certificate is not fully used in connection with a project in the Fruita Receiving Area. TDR certificates will be canceled when used to obtain TDR Development in the Fruita Receiving Area.

The County and City shall coordinate and generally work together regarding the administration of the TDR Program. The County shall review title information submitted by applicants in Sending Sites, prior to and as a condition of recording of deed restrictions and the creation of TDR Certificates. The City shall assure that all the provisions of this Agreement have been complied with prior to the use of a TDR on a Receiving Site.

## SECTION VI. AGREEMENT TERM

6.1 The term of this Agreement shall commence on the first date set forth above, and continue for ten (10) years thereafter. At the expiration of the term, this Agreement shall automatically renew for additional ten (10) year periods unless one year prior written notice of non-renewal is given. However, either Party may terminate this Agreement, at any time and for any reason, upon one year's prior written notice to the other Party. This Agreement may also be terminated for cause as provided in Section VIII of this Agreement. Upon termination of this Agreement for any reason, the TDR Program shall cease to exist. Termination shall not affect the validity of TDR Development approvals that may occur during the term of this Agreement.

6.2 The termination or natural expiration of this Agreement shall not have any effect upon any TDR certificates then outstanding. Notwithstanding the termination or expiration of this Agreement: (1) outstanding Certificates may be used in connection with the development of property in the City Receiving Area or in accordance with any expansion thereof in the then-current development regulations of the City, and (2) the City shall be

obligated to honor such Certificates in accordance with the Transferable Development Right/Credit program established hereby.

## SECTION VII. DEFAULT

7.1 In the event either Party materially defaults in the performance of any of the material covenants or agreements to be kept, done or performed by it under the terms of this Agreement, the non-defaulting Party may notify the defaulting Party in writing of the nature of such default. Within thirty (30) days following receipt of such notice the defaulting Party shall correct such default; or, in the event of a default not capable of being corrected within thirty (30) days, the defaulting Party shall commence correcting the default within thirty (30) days of receipt of notification thereof and thereafter correct the default with due diligence. If the defaulting Party fails to correct the default as provided above, the non-defaulting Party, without further notice, shall have the right to declare that this Agreement is terminated effective upon such date as the non-defaulting Party shall designate. There shall be no damage or other legal or equitable remedy available against the defaulting Party, it being agreed in advance that the sole remedy for a breach of this Agreement is termination by the non-defaulting Party.

7.2 The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between persons who have authority to settle the controversy. Either Party may give to the other party written notice of any dispute not resolved in the normal course of business. Upon the giving of such notice, the provisions of Section 8.1 of this Agreement shall be temporarily suspended pending the conclusion of the Parties' efforts to reach a negotiated settlement of the dispute. Within twenty (20) days after receipt of said notice, representatives of the Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within sixty (60) days of the notice of dispute, or if the Parties fail to meet within twenty (20) days, the Parties shall have the rights and remedies provided in Section 8.1.

## SECTION VIII. DEFENSE OF CLAIMS

8.1 If any person, other than the Parties, allegedly aggrieved by any provision of this Agreement should sue the County or the City concerning this Agreement, the named Party in such suit shall, and the other Party, if not named, may, defend such claim upon

receiving timely and appropriate notice of pendency of such claim. Each Party shall bear its own costs.

8.2 Nothing in this Agreement shall constitute any waiver by the County or City of the provisions of the Colorado Governmental Immunity Act or other applicable immunity defenses afforded to one or both of the Parties. This provision shall survive termination of this Agreement, and be enforceable until all claims are precluded by statutes of limitation.

**SECTION IX. NOTICE**

Any notice required by this Agreement shall be in writing. If such notice is hand delivered or personally served, it shall be effective immediately upon such delivery or service. If given by mail, it shall be effective 3 days following the date of mailing, and addressed as follows:

Mesa County  
750 Main Street  
Box 20,000  
Grand Junction, CO 81502

City of Fruita  
325 East Aspen  
Suite 155  
Fruita, CO 81521

**SECTION X. MISCELLANEOUS PROVISIONS**

10.1 Amendments. This Agreement may be amended only by mutual agreement of the Parties and shall be evidenced by a written instrument authorized and executed with the same formality as accorded this Agreement. On or before one year from the first date set forth above, the parties agree to consider whether the transfer ratio defined at Section 1 hereof, should be adjusted based on market conditions and TDR Program performance.

10.2 Headings for Convenience. All headings, captions and titles are for convenience and reference only and are of no meaning in the interpretation or effect of this Agreement.

10.3 Governing Law and Venue. This Agreement, and the rights and obligations of the Parties hereto, shall be interpreted and construed according to the laws of the State of Colorado. Venue shall be proper and exclusive in the District Court for the County of Mesa, Colorado.

10.4 Alternative Dispute Resolution. If a dispute arises between Parties as to the interpretation or implementation of any part of this Agreement, Parties may agree to mediate or enter non-binding

arbitration to attempt to resolve such dispute, so long as Parties agree to the location, rules and mediator/arbitrator.

10.5 Severability. In case one or more of the provisions contained in this Agreement, or any application hereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement and the application hereof shall not in any way be affected or impaired thereby.

10.6 Provisions Construed as to Fair Meaning. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any party based upon any language attributed to such party or the source of the language in question.

10.7 Compliance with Ordinances and Regulations. This Agreement shall be administered consistent with all current and future laws, rules, regulations, charters and ordinances of the State of Colorado, the County and the City.

10.8 No Third Party Beneficiaries. No term, condition or covenant herein shall give or allow any claim, benefit, or right of action by any person not a party hereto. Any person other than the County or City receiving services or benefits under this Agreement shall only be an incidental beneficiary.

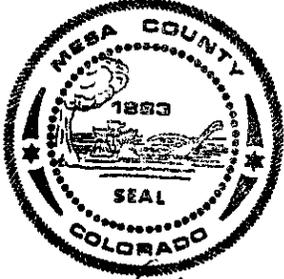
10.9 Integrated Agreement and Amendments. This Agreement is an integration of the entire understanding of the Parties with respect to the matters stated herein.

10.10 Financial Obligations. This Agreement shall not be deemed a pledge of credit of the County or City. Nothing herein shall be construed to create a multiple-fiscal year direct or indirect debt, or financial obligation.

10.11 Waiver. No waiver or any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default.

10.12 Approval By Governing Boards or Other Authority. In accordance with § 29-1-203, C.R.S., this Agreement shall not become effective unless and until it has been approved by the governing body of the County and the governing body of the City.

Board of County Commissioners,  
County of Mesa, State of Colorado



Attest:

Janice Ward  
Janice Ward, Clerk and Recorder

By: Tilman M. Bishop  
Tilman M. Bishop, Chair 7-11-2005

City of Fruita

By: E. James Adams  
E. James Adams, Mayor

Attest:

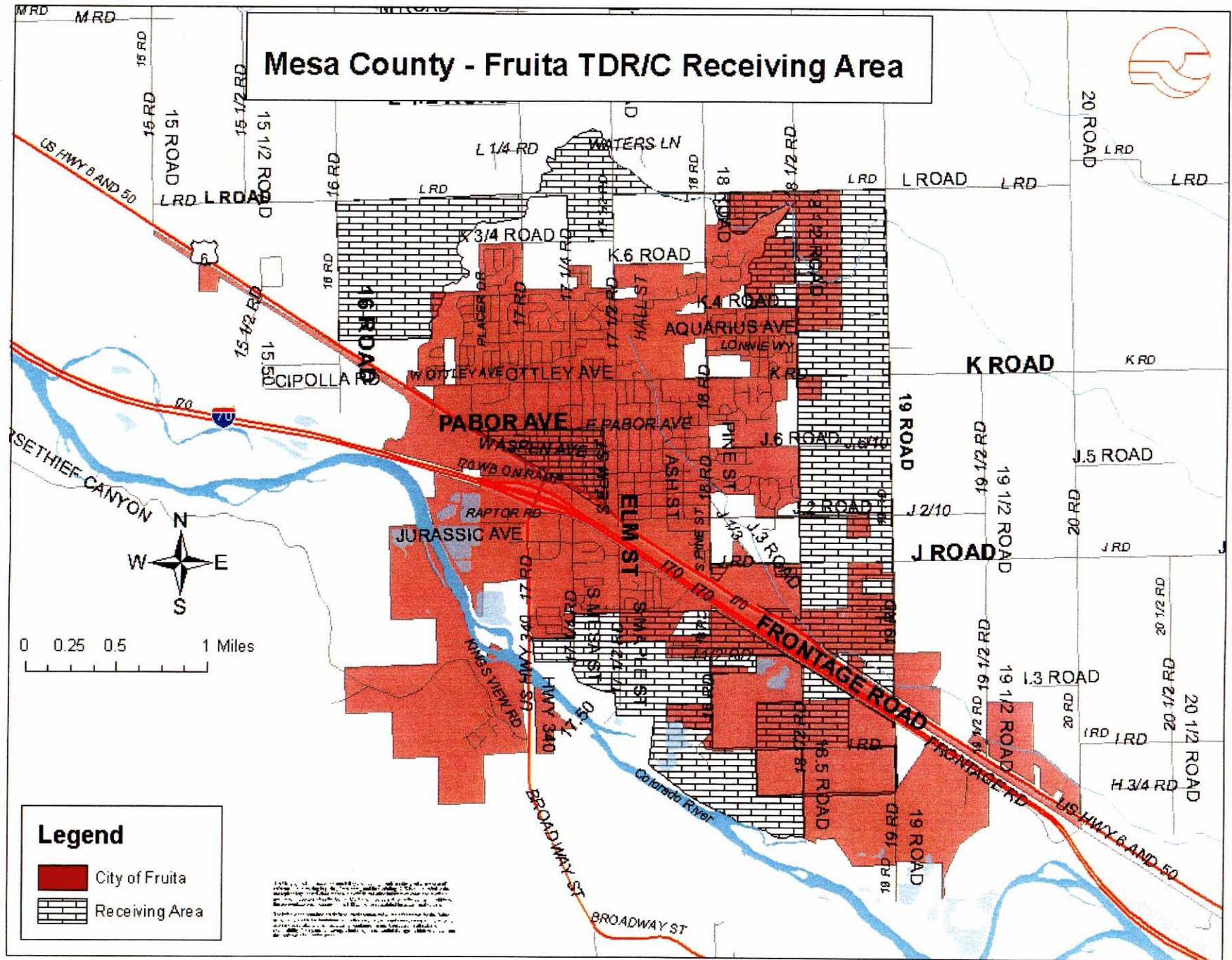
Margaret Steelman  
Margaret Steelman, City Clerk

**City Clerk's Note:** This agreement is entered into the 2<sup>nd</sup> day of August 2005 and replaces the original agreement dated December 11, 2002. I have corrected the date the agreement was entered into in the opening paragraph of this agreement.

Margaret Steelman  
Margaret Steelman, Fruita City Clerk 8/2/05



**EXHIBIT B**  
**FRUITA/MESA COUNTY TDR RECEIVING AREA**  
 July 2005



**Legend**

- City of Fruita
- Receiving Area

THIS MAP WAS PREPARED BY THE FRUITA CITY ENGINEER'S OFFICE FOR THE CITY OF FRUITA. THE CITY ENGINEER'S OFFICE HAS CONDUCTED A VISUAL INSPECTION OF THE MAP AND HAS FOUND IT TO BE ACCURATE. THE CITY ENGINEER'S OFFICE DOES NOT WARRANT THE ACCURACY OF THE INFORMATION SHOWN ON THIS MAP. THE USER OF THIS MAP ASSUMES ALL LIABILITY FOR ANY ERRORS OR OMISSIONS. THE CITY ENGINEER'S OFFICE IS NOT RESPONSIBLE FOR ANY DAMAGE TO PERSONS OR PROPERTY ARISING FROM THE USE OF THIS MAP.