

**GRAND JUNCTION CITY COUNCIL
WORKSHOP**

**MONDAY, AUGUST 5, 2013, 9:00 A.M.
CITY AUDITORIUM
250 N. 5TH STREET**

To become the most livable community west of the Rockies by 2025

1. **HomewardBound of the Grand Valley Presentation Regarding a CDBG Grant Request:** HomewardBound of the Grand Valley owns and operates the Community Homeless Shelter. Representatives will present an overview of its recently-completed Guided Growth Plan and address the City Council regarding its current request for a CDBG grant of \$109,971 for the purchase of property. [Attach W-1](#)
2. **Mesa Land Trust (Rob Bleiberg) – Monument Road Project:** Presenting a draft letter for Council's consideration. [Attach W-2](#)
3. **Great Outdoors Colorado Grant for Las Colonias Park Phase I:** Parks and Recreation is seeking approval to apply for a Great Outdoors Colorado (GOCO) local government grant to assist with funding critical elements of the early phases of Las Colonias Park. A resolution from the governing body with primary jurisdiction must be attached to all grant applications. The fall cycle of grants is due on August 28 with an award decision on December 10. [Attach W-3](#)
4. **Agreement for Transfer of Grand Valley Drainage District Wilsea Drain to the City of Grand Junction:** A resolution to approve an agreement transferring ownership and maintenance responsibilities for the Wilsea Drain, located near 23 ³/₄ Road and G Road, for use by development to discharge urban storm water and transport such waters to the Colorado River. [Attach W-4](#)
5. **Prohibiting Retail Sale of Marijuana:** Amendment 64 to the Colorado State Constitution allows local governments to regulate or prohibit marijuana retail stores as well as cultivation, manufacturing, and testing facilities by ordinance or by placing a ballot measure on the General Election ballot. Based on direction previously provided by the City Council, Staff has prepared an ordinance prohibiting marijuana businesses in Grand Junction for the Council's consideration. [Attach W-5](#)
6. **Budget Philosophy and Policy Discussion**
7. **Other Business**



Date: July 31, 2013

Author: Kristen Ashbeck

Title/ Phone Ext: Sr Planner/1491

Proposed Meeting Date:

August 5, 2013

CITY COUNCIL STAFF REPORT WORKSHOP SESSION

Attach W-1

Topic: HomewardBound of the Grand Valley Presentation Regarding a CDBG Grant Request

Staff: Tim Moore, Deputy City Manager
Kristen Ashbeck, Senior Planner/CDBG Administrator

Summary: HomewardBound of the Grand Valley owns and operates the Community Homeless Shelter. Representatives will present an overview of its recently-completed Guided Growth Plan and address the City Council regarding its current request for a CDBG grant of \$109,971 for the purchase of property.

Background, Analysis and Options:

In May 2012, City Council approved allocation of its 2012 CDBG funding. HomewardBound of the Grand Valley was awarded \$109,071 to be used towards property acquisition for improvement and expansion of the community homeless shelter. Since that time, HomewardBound has undergone a change in leadership and is in the process of re-evaluating needs. They have identified the need to remodel the existing facility since the direction is to retain the current shelter. An amendment to the Annual Action Plan for the 2012 CDBG Program Year was proposed to City Council to allow the shelter to utilize the funding for the remodel instead of acquisition. The amendment was reviewed by City Council at its July 3, 2013 meeting and was not approved.

HomewardBound completed a Guided Growth Plan in June 2013 which also shows a need to improve and expand HomewardBound services, particularly for homeless families. This need will require property acquisition and, with the Plan completed and a real estate agent retained, HomewardBound is ready to pursue that acquisition. Thus, this activity does not require an amendment to the 2012 Annual Action Plan.

HomewardBound of the Grand Valley is considered a “subrecipient” to the City. The City will “pass through” a portion of its 2012 Program Year CDBG funds to HomewardBound but the City remains responsible for the use of these funds. The contract with HomewardBound outlines the duties and responsibilities of each party/program and is used to ensure that the subrecipient complies with all Federal rules and regulations governing the use of these funds. The contract must be approved before the subrecipient may spend any of these Federal funds. Exhibit A of the contract (Attachment) contains the specifics of the project and how the money will be used by HomewardBound.

Board or Committee Recommendation: N/A

Financial Impact/Budget: Previously approved 2012 CDBG Budget

Legal issues: Subject to Subrecipient Agreement

Other issues: None

Previously presented or discussed:

City Council discussed and approved the allocation of CDBG funding to this project at its May 16, 2012 meeting. The request to amend the allocation was presented to the City Council on July 3, 2013. That request was denied.

Attachments:

1. Exhibit A, Subrecipient Agreement – HomewardBound of the Grand Valley

**2012 SUBRECIPIENT CONTRACT FOR
CITY OF GRAND JUNCTION
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS WITH
HomewardBound of the Grand Valley**

**EXHIBIT "A"
SCOPE OF SERVICES**

1. The City agrees to pay the Subrecipient, subject to the subrecipient agreement, \$109,971.00 from its 2012 Program Year CDBG Entitlement Funds for acquisition of property in order to improve and expand services and shelter provided to homeless persons in Grand Junction. The acquisition of Property is eligible under 570.201(c) Public Facilities and Improvements; acquisition where the property is acquired for a public purpose and owned/operated by a non-profit organization.
2. The Subrecipient certifies that it will meet the CDBG National Objective of low/moderate limited clientele benefit (570.208(a)). It shall meet this objective by providing the above-referenced services to homeless persons in Grand Junction, Colorado. In addition, this project meets CDBG eligibility requirements under section 570.201(e), Public Services.
3. The project consists of acquisition of property within the City of Grand Junction in order to improve and expand services and shelter provided to homeless persons in Grand Junction. HomewardBound operates the Community Homeless Shelter at 2853 North Avenue. Since plans to expand the existing shelter have been withdrawn, there is a need to improve and expand services and shelter through acquisition of an additional location in order to establish a separate shelter for homeless families. It is understood that the City's grant of \$109,971 in CDBG funds shall be used only for property acquisition. Costs associated with any other elements of the project or costs above the grant amount shall be paid for by other funding sources obtained by the Subrecipient.
4. This project shall commence upon the full and proper execution of the 2012 Subrecipient Agreement and the completion of all appropriate environmental, Code, State and Local permit review and approval and compliance. The project shall be completed on or before May 31, 2014. If the subrecipient fails to expend the funding on property acquisition on or before May 31, 2013 this agreement shall be null and void.
5. During a period until December 31, 2019 the use or planned use of the Property may not change unless: A) the City determines the new use meets one of the National Objectives of the CDBG Program and B) HomewardBound provides affected citizens with reasonable notice and an opportunity to comment on any proposed changes. If HomewardBound decides, after consultation with affected citizens that it is appropriate to change the use of the Property to a use which the City determines does not qualify in meeting a CDBG National Objective, HomewardBound must reimburse the City. After December 31, 2019, the only City restrictions on use of the Property shall be those found within the City's laws, rules, codes and ordinances.

_____ HomewardBound

_____ City of Grand Junction

6. Upon the full and proper execution of the 2012 Subrecipient Agreement and the completion of all necessary environmental review of the site HomewardBound may proceed to acquire the Property. Acquisition of the Property as deemed by this agreement shall be completed on or before May 31, 2014. No reimbursement shall be made prior to that date if the subrecipient has not acquired the property.
7. The City shall monitor and evaluate the progress and performance of the Subrecipient to assure that the terms of this agreement are met in accordance with City and other applicable monitoring and evaluating criteria and standards. The Subrecipient shall cooperate with the City relating to monitoring, evaluation and inspection and compliance.
8. The Subrecipient shall provide quarterly financial and performance reports to the City. Reports shall describe the progress of the project, what activities have occurred, what activities are still planned, financial status, compliance with National Objectives and other information as may be required by the City. A final report shall also be submitted when the project is completed.
9. The Subrecipient understands that the funds described in the Agreement are received by the City from the U.S. Department of Housing and Urban Development under the Community Development Block Grant Program. The Subrecipient shall meet all City and federal requirements for receiving Community Development Block Grant funds, whether or not such requirements are specifically listed in this Agreement. The Subrecipient shall provide the City with documentation establishing that all local and federal CDBG requirements have been met.
10. A blanket fidelity bond equal to cash advances as referenced in Paragraph V.(E) will not be required as long as no cash advances are made and payment is on a reimbursement basis.
11. A formal project notice will be sent to the Subrecipient once all funds are expended and a final report is received.

_____ HomewardBound

_____ City of Grand Junction

Attach W-2

August 5, 2013

State Board of Directors
Great Outdoors Colorado
303 East 17th Avenue, Suite 1060
Denver, CO 80203

Dear Board Members,

The City of Grand Junction enjoys an effective, innovative partnership with Mesa Land Trust to acquire land along Monument Road to conserve property and create trail-based recreational opportunities. With the generous support of GOCO, 700 other contributors, community groups, and volunteers, this collaborative effort succeeded in acquiring the Three Sisters and developing trails on the land. The City is delighted to own Three Sisters and is heartened by the community's enthusiastic support for and use of the property.

The City is further collaborating with Mesa Land Trust on the Monument Road Vision project, which is gathering community input to define conservation and recreation goals for the area. Preliminary feedback has strongly supported additional conservation acquisitions and creation of more hiking and biking trails in the area. In the course of reaching out to stakeholders, two owners of strategically located properties have come forward with interest in selling their land to Mesa Land Trust for conservation and public use. The City of Grand Junction enthusiastically supports Mesa Land Trust's application to GOCO for these acquisitions.

The Monument Road corridor is an important asset for our community. It links our vibrant downtown to the Colorado National Monument, provides gorgeous vistas, and offers valuable natural habitat. It is also home to the Lunch Loop, a renowned trail network that draws mountain bikers from across the country and is heavily used by local residents. The area hosted an estimated 116,000 user days in 2012, a four-fold increase over five years. The corridor adds to our enviable quality of life and significantly contributes to our recreational tourist economy.

In public hearings this fall, the City Council will take action on the questions of providing funding for the acquisitions and taking title to the property following the Land Trust's purchase. As is the case with the Three Sisters property, the City understands that its ownership will be subject to a conservation easement. The City is excited by the prospect of additional conservation along Monument Road and the creation, through partnerships with community groups, of additional trails for our youth, families, and visitors.

The City of Grand Junction encourages you to award funding for this worthy project. Thank you for your consideration.

Sincerely,

Sam Susuras
Mayor



Date: July 26, 2013
Author: Traci Wieland
Title/ Phone Ext: Recreation
Superintendent, 254-3846
Proposed Meeting Date:
August 5, 2013

CITY COUNCIL STAFF REPORT WORKSHOP SESSION

Attach W-3

Topic: Great Outdoors Colorado Grant for Las Colonias Park Phase I

Staff (Name & Title): Rob Schoeber, Parks and Recreation Director

Summary:

Parks and Recreation is seeking approval to apply for a Great Outdoors Colorado (GOCO) local government grant to assist with funding critical elements of the early phases of Las Colonias Park. A resolution from the governing body with primary jurisdiction must be attached to all grant applications. The fall cycle of grants is due on August 28 with an award decision on December 10.

Background, Analysis and Options:

Las Colonias Park, a 101 acre parcel on the edge of the Colorado River south of downtown, was deeded to the City of Grand Junction in 1997 from the State of Colorado after the mill tailings cleanup was completed. The site has cultural and historical significance because of "Las Colonias", the colonies of people who worked in the orchards and sugar beet fields who once resided on the site.

Las Colonias Park was originally master planned in 1998. Construction of the Riverside Parkway, which started in 2006, impacted that original master plan so it was revised in 2008. That master plan included a footprint for a 75,000 square foot civic facility as well as a dog park, natural areas, playgrounds, picnic areas, a festival area/amphitheater, and trails. In 2012, City Council directed Parks and Recreation to again revise the existing master plan because of changing priorities among user and community groups.

The most plan recent includes:

- A western entrance into the park with shared parking for Western Colorado Botanical Gardens and any future educational developments, an 18 hole disc golf course on Watson Island, additional trail connections, park shelter/restroom, and play features.
- An amphitheater with sloped lawn seating for small events of 1,000 or large events of 10,000 with a stage, multipurpose rooms, developed plaza areas for tickets, restrooms, and vendors, a park shelter/restroom with play features, and paved/native grass parking areas.
- A multipurpose/festival grounds area for informal neighborhood play or festival use as well as a park shelter/restroom.
- A wetlands area with several cascading ponds, trails, picnic tables, fenced dog park, and an irrigation system. Area includes several parking areas, a

restroom/shelter, boat launch and parking, as well as several hundred additional native grass parking spaces.

The 2013 fall local government GOCO grant will assist with funding of improvements to the western end of the park which includes basic, and much needed amenities. These improvements include:

- A shelter/restroom
- Native arboretum trail and educational identification
- Additional trails and connections
- Parking improvements

Board or Committee Recommendation:

Parks and Recreation Advisory Board has discussed the GOCO grant application and the master plan on several occasions and supports the submittal of the application.

Financial Impact/Budget:

The grant requires a 10% cash match and 30% overall project cost match. Total estimated project cost will be \$800,000. City of Grand Junction match will be Parkland Expansion Funds from 2013 and 2014 totaling \$415,000. Based on project estimates, \$350,000 will be requested from GOCO to accomplish this phase of recommended improvements. The additional \$35,000 will come from local donations that have been committed and/or pending.

Estimated Project Cost/Revenues

Great Outdoors Colorado	\$	350,000
2013 Parkland Expansion Funds	\$	165,000
2014 Parkland Expansion Funds	\$	250,000
Local Donors	\$	<u>35,000</u>
Total	\$	800,000

Legal issues:

NA

Other issues:

NA

Previously presented or discussed:

The 2013 master plan was adopted by City Council on July 3, 2013.

Attachments:

Proposed Resolution

RESOLUTION NO. __-13

A RESOLUTION SUPPORTING THE GRANT APPLICATION FOR A LOCAL PARKS AND OUTDOOR RECREATION GRANT FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND FOR LAS COLONIAS PARK PROJECT.

WHEREAS, the City of Grand Junction supports the Great Outdoors Colorado to grant application for the Las Colonias Park project. If the grant is awarded, the City of Grand Junction supports the completion of the project.

WHEREAS, the City of Grand Junction has requested \$350,000 from Great Outdoors Colorado to fund the phase I development of Las Colonias Park.

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

- Section 1: The City Council of the City of Grand Junction strongly supports the application and has committed matching funds for a grant with Great Outdoors Colorado.
- Section 2: If the grant is awarded, the City Council of the City of Grand Junction strongly supports the completion of the project.
- Section 3: The City Council of the City of Grand Junction authorizes the expenditure of funds necessary to meet the terms and obligations of any Grant awarded.
- Section 4: The project site is owned by the City of Grand Junction and will be owned by the City of Grand Junction for the next 25 years.
- Section 5: The City Council of the City of Grand Junction will continue to maintain Las Colonias in a high quality condition and will appropriate funds for maintenance in its annual budget.
- Section 6: If the grant is awarded, the City Council of the City of Grand Junction authorizes the Grand Junction City Manager to sign the grant agreement with Great Outdoors Colorado.
- Section 7: This resolution to be in full force and effect from and after its passage and approval.

Passed and adopted this ____ day of _____, 2013.

President of the City Council

ATTEST:

City Clerk



Date: July 31, 2013
Author: Greg Trainor
Title/ Phone Ext: Public Works,
Utilities, Planning and Streets
Proposed Meeting Date: Monday,
August 5, 2013

CITY COUNCIL STAFF REPORT WORKSHOP SESSION

Attach W-4

Topic: Agreement for Transfer of Grand Valley Drainage District Wilsea Drain to the City of Grand Junction

Staff (Name & Title): Greg Trainor, Public Works, Utilities and Planning Director

Summary:

A Resolution to approve an agreement transferring ownership and maintenance responsibilities for the Wilsea Drain, located near 23 ¾ Road and G Road, for use by development to discharge urban storm water and transport such waters to the Colorado River.

Background, Analysis and Options:

The owner of the Wilsea Drain, the Grand Junction Drainage District, has requested that the City take ownership and maintenance responsibility for the Wilsea Drain because of use by the Medical Office Building, Community Hospital, and surrounding development to the north.

The original purpose of the Drain was to collect seep waters so that lands could be cultivated. Over time, as agricultural activities expanded within the Drainage District, return flows ("waste water") from irrigation flowed into the drain via laterals and lands within the District. More recently, in large part due to residential and commercial development, water flowing in the Drain consists of seepage, surface drainage and used and unused waters from lands within the District and lands to the north of the District boundaries. The City and the District have concluded that the Drain will carry significant volumes of storm water from streets, undeveloped areas and residential, commercial and other developments within the City limits. The remaining volume in the Drain is from seepage and irrigation return flows ("Drainage").

The City, as part of the land use and development review processes, requires that developers plan for storm water drainage. For years, developers have constructed facilities that direct storm water discharges into drains, and the District has allowed the same to occur.

In order to accommodate the storm water drainage needs of the community and recognizing that residential, commercial and other development will continue to expand into the areas historically served by the Grand Valley Drainage District, the City has

indicated its willingness to, pursuant to the terms of a written Agreement, accept ownership, maintenance, and operational control of the Wilsea Drain, as specifically described on the Drain Exhibit Map.

How this item relates to the Comprehensive Plan Goals and Policies:

Goal 1: To implement the Comprehensive Plan in a consistent manner between the City of Grand Junction and the Grand Valley Drainage District.

Goal 3: The Comprehensive Plan will create ordered and balanced growth. Management of storm water and development of flood control will insure that development can take place within the Grand Valley in a safe and orderly manner.

Board or Committee Recommendation:

The Board of the Drainage District and staffs of the District and the City have reviewed the Agreement and are recommending its approval.

Financial Impact/Budget:

Costs are dependent on several factors:

1. Timing of urban development in the Wilsea drainage basin.
2. Impervious surfaces in the Wilsea drainage basin that create quantity of water.
3. Development of the 521 Stormwater Authority and its ability to raise funds for stormwater improvements.

Presently the City of Grand Junction has modest funds to maintain and operate drains to accommodate stormwater. These are located in the stormwater accounts of the Streets Department of Public Works and have ranged between \$0 and \$200,000 over the past five years. In 2013, there is \$100,000 for clearing work in Leach Creek and other areas.

Although pipe maintenance costs of \$3,171.00 per year are estimated in the attached document, it is likely that only modest flows will be created in the Wilsea Drain from urban development in the near and intermediate term (1-10 years). These funds will eventually need to be budgeted. During this period the Drainage District has agreed to assist the City in maintaining the open portions of the Drain on an as-needed basis. However, pipe rehab work will have to happen at a cost of \$7,600 in 2014 and \$25,200 in 2016. This compares well with the \$27,000 cost of the 22 Road ROW, if the City had to purchase it.

Finally, the 521 Drainage Authority plays a role. The transfer of the Drain to the City is an interim step. The 521 Authority is working to create a utility fee, with a vote of the public that would allow all stormwater to become the responsibility of the Authority. In such a case, the Wilsea Drain and other drains in the urban growth boundary would be transferred from the City to the Authority.

The “do-nothing” alternative:

The transfer of the Wilsea Drain to the City was in exchange for the Drainage District transferring rights of way to the City for the construction of the 22 Road project. Should the transfer resolution not be passed, the City would be responsible for reimbursing the Drainage District for the 22 Road rights of way. Maximum exposure for this ROW would be approximately \$27,000.

In addition, alternative carriage of stormwater from the Medical Office Building, Community Hospital, and additional development in the Wilsea Drain basin would have to be devised as the Drainage District will not allow urban run-off into their facilities.

Legal issues:

Several dealing with municipal stormwater permit requirements

Other issues:

Stormwater/flood control with the 5-2-1 Drainage Authority

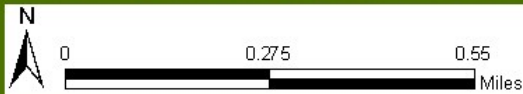
Previously presented or discussed:

Talked about previously at the June 17th Readiness Meeting

Attachments:

Wilsea Drain Map
Transfer agreement

Wilesea Drain Ditch Sections



Printed: 7/29/2013

1 inch = 952 feet



Wilsea Drain Piped Sections



Printed: 7/30/2013

1 inch = 238 feet



AGREEMENT
FOR TRANSFER OF
A GRAND VALLEY DRAINAGE DISTRICT DRAIN

The Grand Valley Drainage District, hereinafter referred to as “the District,” is a Title 37, C.R.S., Colorado political subdivision.

The City of Grand Junction, hereinafter referred to as the “City,” is a Colorado home rule city, authorized by Article XX of the Colorado constitution and the City’s home rule charter, and acts through its City Manager.

RECITALS:

A. The District represents that it owns the Drain described herein and the associated easements, right- of ways and interests in land (collectively the “Drain”). For the past 30 plus years, the agricultural uses of the lands originally served by the Drain have abated, leaving little if any seep or irrigation return flow (IRF) water in the Drain.

B. The District has maintained the Drain to the Colorado River even though very little seep or IRF water typically accumulates in it. The City is an urban service provider with one of the services that it provides for its citizens, in certain areas of the City, being municipal separate storm sewer system (MS4) collection.

C. The City and the District are members of the 5-2-1 Drainage Authority, an entity that is responsible for storm water management in the Grand Valley, including MS4 water.

D. The Drain is one in a series of ditches constructed and/or reconstructed by the District consistent with the District’s statutory mission to address drain, seep and IRF waters and to protect urban and rural properties from episodic torrential storms.

E. The original purpose of the Drain was to collect seep waters so that lands could be cultivated. Over time, as agricultural activities expanded within the District, IRF (“waste water”) from irrigation flowed into the Drain via laterals and lands within the District. More recently, in large part due to residential and other development, water flowing in the Drain consists of surface drainage and used and unused waters from lands within the District and lands to the north of the District boundaries.

F. The City and the District have concluded that the Drain will potentially carry significant volumes of storm water from streets, undeveloped areas and residential, commercial and other developments within the City limits. The remaining, minor (but not precisely measured) volume in the Drain is from seepage and irrigation return flows (“Drainage”).

G. The City, as part of the land use and development review processes, requires that developers plan for storm water drainage. For years, developers have constructed facilities that direct storm water discharges into the Drain, and the District has allowed the same to occur.

H. In order to accommodate the storm water drainage needs of the community and recognizing that residential, commercial and other development will continue to expand into the areas historically served by the District, the City has indicated its willingness to, pursuant to the terms of this written Agreement, accept future ownership, maintenance and operational control of the Drain, as specifically described on the Drain Exhibit Map, attached hereto as **Exhibit A** and incorporated herein by reference.

I. The District has determined that ownership of the Drain by the District is no longer necessary so long as the Drain continues to be owned, operated and maintained by the City and/or the 5-2-1 Drainage Authority to provide for the continuing passage of Drainage from the

lands of the District to the Colorado River, and so long as capacity for Drainage will be preserved upon transfer of ownership, maintenance and operational control of the Drain to the City. The District reserves and retains its rights to continue to discharge Drainage into the Drain.

NOW THEREFORE, the parties agree as follows:

1. The District agrees to indemnify and hold the City harmless with regard to existing and future seep water and IRF water, herein defined as "Drainage." Nothing herein shall be deemed to be a waiver, extension or modification of any statutes of limitations, governmental immunity(ies) or other defenses relating to any alleged act(s) of negligence by the District; further, the parties specifically intend that no person is an intended beneficiary of this Agreement or of the Quit Claim Deed from the District to the City.

2. The City agrees:

A. Effective on the date of mutual execution of the Quit Claim Deed to it, the City agrees to accept liability for and relating to any and all loss or damage of every description or kind whatsoever from the City's operation and maintenance of the Drain, including the receipt and conveyance of Drainage, after the date of mutual execution of the Quit Claim Deed.

B. On and after the date of mutual execution of the Quit Claim Deed to it, the City agrees to accept existing amounts and patterns of Drainage into the Drain. The City may modify the alignment of the Drain as shown on Exhibit A, provided that the new alignment shall be designed and constructed in a manner that will continue to accept the amount of Drainage discharge into the Drain which exists as of the date of this agreement.

C. The City agrees that the Drain is quitclaimed by the District to the City on an "AS-IS, WHERE-IS" basis with no representations, warranties or covenants of any kind (other than what is stated in Paragraph 1, above), express or implied, either oral or written, made by the District, or any agent or representative thereof, including without limitation; (i) the physical or structural condition of the Drain; (ii) the compliance of the Drain with any laws, ordinances or regulations of any federal, state, local or other governmental entity; (iii) title to the Drain; and (iv) the suitability or fitness of the Drain for any purpose, including without limitation use as a storm water and/or MS4 facility, all of which representations, warranties and covenants the District hereby expressly disclaims.

D. The City agrees to assume all costs incident to the ownership, operation and maintenance of the Drain, as of the date of mutual execution of the Quit Claim Deed.

GRAND VALLEY DRAINAGE DISTRICT

CITY OF GRAND JUNCTION

BY: _____
Manager

BY: _____
Mayor

Memorandum

TO: Mayor Susuras and Members of City Council

FROM: John Shaver, City Attorney

DATE: July 25, 2013

SUBJECT: Background and Draft Ordinance Prohibiting the Retail Sale of Marijuana

Please find attached a draft ordinance which prohibits the retail sale of marijuana in Grand Junction. Although Council has had no formal discussion of the matter, I drafted this ordinance because 1) of the election question in 2011 concerning medical marijuana and 2) the informal input that I have received from some Councilmembers. Certainly if a majority directs I will be pleased to present other options. As you are aware the City needs to take action by October 1st of this year.

A Few “Can and Can’t Do’s”

An ordinance may not prohibit the following:

- 1) Possession of up to one ounce of marijuana;
- 2) Private cultivation in an enclosed space (individuals may grow up to six plants, although only three of them can be flowering, or ready for harvest, at any given time).
- 3) An adult giving or “gifting” marijuana to another adult (as long as they are both over the age of 21)
- 4) Government run retail marijuana stores are not allowed.

An ordinance may:

- 1) Ban marijuana stores, marijuana-products businesses and commercial cultivation facilities, either through an ordinance or through a vote of the residents.
- 2) Create rules for marijuana stores and require licenses. Marijuana business licensing may occur as early as October 1, 2013.
- 3) Place additional taxes (if voter approved) and fees on the sale of retail marijuana.

Legislative Update

House Bill 1318 established excise and sales tax rates for retail marijuana that must be approved or rejected by voters in November 2013. If the City Council adopts an ordinance prohibiting retail marijuana in Grand Junction then the City will not be receiving tax revenue if the ballot question passes. In order that Council has the most complete information in anticipation of your consideration of an ordinance here are the highlights of the Bill.

The sales tax rate will initially be set at 10%. The General Assembly is authorized to pass legislation to increase or decrease the tax rate; however, it may not exceed 15%.

That tax is in addition to the 2.9% state sales tax and any local taxes or fees.

15% of the total sales tax revenues will be apportioned to local governments. The remaining funds will be transferred to the Marijuana Cash Fund for regulatory enforcement.

The excise tax will initially be set at 15%. The General Assembly is authorized to pass legislation to increase or decrease the tax rate; however, it may not exceed 15%.

The first \$40 million, annually, shall be transferred to the Public School Capital Construction Assistance Fund. Remaining monies will be transferred to the Marijuana Cash Fund for regulatory enforcement.

Implementation of the excise and sales tax is dependent on voter approval in the 2013 election. If the voters do not approve the tax then regulation of the new retail marijuana industry will be funded from the State general fund or through an increase in marijuana-related fees.

The State has estimated gross retail sales to be \$271 billion in 2014-2015 (the first full year of implementation of the above rates.)

Using either population or retail sales activity City staff estimates (if a prohibition ordinance is not adopted) \$86,160 - \$141,777 annual sales tax revenue. Net of uncollectible accounts and vendors fees the estimates are reduced to \$82,000 - \$135,000.

If the statewide ballot measure passes and again assuming no local prohibition, the state collected sales tax will be shared with local governments. That amount is estimated to be \$4.5 million state wide and will be distributed in proportion to the volume of transactions in each community. Staff estimates a distribution of \$50,000 - \$80,000.

In addition to House Bill 1318 the General Assembly passed three other bills. Summaries of those are provided below.

SB 283 - Implement Amendment 64 Consensus Recommendations: This bill implemented all of the recommendations that the marijuana task force agreed on unanimously. Those include:

- Allows retail marijuana businesses to participate in the medical marijuana responsible vendor program.
- Makes all legal contracts pertaining to retail marijuana enforceable.
- Tasks a committee with making recommendations concerning criminal laws that need to be revised to ensure compatibility with Amendment 64.
- Mandates that a list be developed of substances banned from being used in the cultivation or processing of marijuana.
- Designates that a state agency develop best practices in cultivation and laboratory practices.
- Establishes an educational oversight committee that will make recommendations on education of stakeholders in the marijuana industry. Additionally educational materials should be developed regarding appropriate use of marijuana and prevention of use by minors.
- Encourages POST Board to include advanced roadside impaired driving enforcement training in its curriculum.

- Requires a study to be conducted regarding law enforcement's activity and costs related to implementation of both medical marijuana and retail marijuana activities.
- Requires a health effects study to be conducted every two years beginning in 2015.
- Bans marijuana, cultivation and related products from schools, indoor public spaces, child care facilities, community residential homes and regional centers for persons with developmental disabilities.
- Permits federal deductions to be used to calculate state tax owed for marijuana facilities.
- Enforces the same open container offense for marijuana as for alcohol.

HB 1317 – Implement Amendment 64 Majority Recommendation: This bill implemented all of the recommendations that a majority of the legislative task force members agreed on. Major components of the bill include:

- Eliminates vertical integration as the mandatory regulatory structure.
- Establishes the following classes of licenses: (1) retail marijuana store license, (2) retail marijuana cultivation facility license, (3) retail marijuana products manufacturing license, (4) retail marijuana testing facility license, and (5) occupational licenses and registrations.
- Establishes appropriate funding sources and uses for the Marijuana Cash Fund.
- Current medical marijuana licensees or pending licenses will be the only eligible applicants for a retail medical marijuana license for nine months (October 2013 – July 2014). All other applicants may file intent to apply beginning in January 2014 but may not formally apply until July 1, 2014. Those that file an intent to apply will be given priority in the licensing process.
- Retail marijuana licenses will not become effective until January 2014.
- The legalization of marijuana does not affect employer policies regarding employee use of marijuana.
- Establishes a “seed to sale” tracking system.
- Establishes an independent testing and certification program that cultivators and retailers must use. CDPHE is tasked with developing a list of substances banned from being used in marijuana cultivation. The testing must also verify the THC potency.
- Security requirements must be developed for any licensed marijuana facility that includes: lighting, physical security, video, and alarms.
- Labeling requirements include: license numbers, batch number, net weight, THC potency, a list of pesticides used during production, warning labels, ingredients and possible allergens, amount of THC per serving, expiration date, and nutritional fact panels.
- Marijuana magazines must be stored behind the counter where persons under the age of 21 may be present
- License limitations may be in rule. Additionally, production may be limited either by license, license class, or statewide.
- If someone has discharged a sentence in the previous five years for a felony conviction, they do not qualify for license. It increases to ten years if it was a conviction related to a controlled substance (unless it was related to Marijuana and would now be legal).
- Owners of a facility must have been a Colorado resident for at least two years.
- All employees must be Colorado residents and must also pass a background check.
- If someone has a medical marijuana license and retail licenses, the two licenses must be separate including entrances, inventory, point of sale operations and record keeping;

however, if a dual center, sells medical marijuana only to individuals over 21, different rules may be adopted.

- Only ¼ ounce at a time may be sold during a single transaction to a non-resident.
- A maximum of one ounce may be sold at one time to a Colorado resident.
- No sale of nicotine or alcohol is allowed at a marijuana facility.
- Marijuana facilities may not conduct any internet sales or off-property sales.
- Vending machines may only be used on a facility premises.
- No consumption of marijuana may take place on the facility premises.
- Someone with an interest in a marijuana testing facility may not have an interest in a marijuana cultivation or retail facility and vice versa.
- Marijuana coffee shops and marijuana smoking in bars is banned.

HB 1325 – Inferences for Marijuana and Driving Offenses: Creates a permissible inference that a person is under the influence of drugs if his/her blood contains 5 nanograms or more of delta 9-tetrahydrocannabinol (THC) while driving.

ORDINANCE NO. ____

AN ORDINANCE PROHIBITING THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, AND RETAIL MARIJUANA STORES AND AMENDING THE GRAND JUNCTION MUNICIPAL CODE BY THE ADDITION OF A NEW SECTION PROHIBITING CERTAIN USES RELATING TO MARIJUANA

RECITALS:

The Grand Junction Municipal Code regulates a variety of businesses and land uses that occur and/or are proposed to occur within the City. On November 6, 2012 Colorado voters approved Amendment 64 which is now known as Article XVIII, Section 16 of the Colorado Constitution ("Amendment 64.") The Amendment decriminalized certain activity with respect to the use, possession, transportation and distribution of marijuana. With the adoption of Amendment 64 comes the possibility of business and commercial activity(ies) and enterprise(s) being allowed subject to State and local licensing or the local prohibition of the same.

Considering that in April 2011 the City electors overwhelmingly decided to prohibit medical marijuana related facilities within the City of Grand Junction; that marijuana continues to be prohibited as a Schedule I controlled substance under Federal law; that the City Council may, consistent with the provisions of Amendment 64, consider the adoption of an ordinance which would prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores within the City; and that the City Council has duly and fully considered the matter and determined that it is in the best interest of the citizens of Grand Junction to prohibit certain marijuana related commercial and industrial activities and enterprises, the City Council does hereby enact the following prohibitions, exclusions and proscriptions related to and concerning marijuana within the City.

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

Title 5 of the Grand Junction Municipal Code is amended to include a new article 15, as follows (additions shown in ALL CAPS, except section designations, which are shown in the actual case as they will appear in the Code).

Title 5, Article 15 Grand Junction Municipal Code

5.15.010 MARIJUANA

UNDER THE AUTHORITY GRANTED IN ARTICLE XVIII, SECTION 16 OF THE COLORADO CONSTITUTION (AMENDMENT 64) AND THE CHARTER OF THE CITY OF GRAND JUNCTION THIS ORDINANCE IS ADOPTED BY THE CITY COUNCIL TO

PROHIBIT THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, RETAIL MARIJUANA STORES AND ALL BUSINESS AND LAND USES RELATED TO MARIJUANA IN THE CITY AND IN FURTHERANCE OF ITS STATED INTENT, THE CITY COUNCIL MAKES THE FOLLOWING FINDINGS.

AFTER DUE AND CAREFUL CONSIDERATION OF ARTICLE XVIII, SECTION 16 OF THE COLORADO CONSTITUTION AND THE CONTROLLED SUBSTANCE ACT (21 U.S.C. 811) AND THE REAL AND POSSIBLE PRIMARY AND SECONDARY EFFECTS OF THE CULTIVATION AND DISPENSING OF MARIJUANA AND/OR THE MANUFACTURING AND SALE OF MARIJUANA INFUSED PRODUCTS, THOSE BUSINESSES, OPERATIONS AND LAND USES HAVE BEEN FOUND TO ADVERSELY AFFECT THE HEALTH, SAFETY AND WELFARE OF THE CITY AND ITS INHABITANTS.

THEREFORE, IT IS AND SHALL BE UPON PASSAGE OF THIS ORDINANCE UNLAWFUL FOR ANY PERSON TO OPERATE, CAUSE TO BE OPERATED OR PERMIT TO BE OPERATED A MARIJUANA CULTIVATION FACILITY(IES), MARIJUANA PRODUCT MANUFACTURING FACILITY(IES), MARIJUANA TESTING FACILITY(IES) AND/OR A RETAIL MARIJUANA STORE(S), BUSINESS OR OPERATION RELATED THERETO IN THE CITY AND NO CITY LICENSES, PERMITS OR APPROVALS SHALL ISSUE FOR THE SAME.

5.15.011 DEFINITIONS

ALL DEFINITIONS PROVIDED IN GJMC 5.14.011 AND ARTICLE XVIII, SECTION 16 OF THE COLORADO CONSTITUTION ARE ADOPTED HEREIN UNLESS SPECIFICALLY AMENDED HEREBY.

“MARIJUANA, MARIJUANA ACESSORIES, MARIJUANA CULTIVATION FACILITY, MARIJUANA ESTABLISHMENT, MARIJUANA PRODUCT MANUFACTURING FACILITY, MARIJUANA PRODUCTS, MARIJUANA TESTING FACILITY, RETAIL MARIJUANA STORE” ALL SHALL HAVE THE SAME MEANING AS SET FORTH IN ARTICLE XVIII, SECTION 16 OF THE COLORADO CONSTITUTION OR AS MAY BE MORE FULLY DEFINED IN ANY APPLICABLE STATE LAW OR REGULATION. COLLECTIVELY THESE MAY BE KNOWN AS AND/OR REFERRED TO AS “MARIJUANA BUSINESSES”

“MARIJUANA” MAY ALTERNATIVELY BE SPELLED “MARIHUANA.”

“PERSON” SHALL MEAN A NATURAL PERSON, PARTNERSHIP, ASSOCIATION, COMPANY, CORPORATION, LIMITED LIABILITY COMPANY OR OTHER ORGANIZATION OR ENTITY OR A MANAGER, AGENT, OWNER, OFFICER OR EMPLOYEE THEREOF.

“POSSESS OR POSSESSION” MEANS HAVING PHYSICAL CONTROL OF AN OBJECT, OR CONTROL OF THE PREMISES IN WHICH AN OBJECT IS LOCATED, OR HAVING THE POWER AND INTENT TO CONTROL AN OBJECT, WITHOUT REGARD TO WHETHER THE ONE IN POSSESSION HAS OWNERSHIP OF THE

OBJECT. POSSESSION MAY BE HELD BY MORE THAN ONE PERSON AT A TIME. USE OF THE OBJECT IS NOT REQUIRED FOR POSSESSION.

“PRODUCE OR PRODUCTION” MEANS (I) ALL PHASES OF GROWTH OF MARIJUANA FROM SEED TO HARVEST, (II) COMBINING MARIJUANA WITH ANY OTHER SUBSTANCE FOR DISTRIBUTION, INCLUDING STORAGE AND PACKAGING FOR RESALE, OR (III) PREPARING, COMPOUNDING, PROCESSING, ENCAPSULATING, PACKING OR REPACKAGING, LABELING OR RE-LABELING OF MARIJUANA OR ITS DERIVATIVES WHETHER ALONE OR MIXED WITH ANY AMOUNT OF ANY OTHER SUBSTANCE.

“SALE” “SELL” “OFFER FOR SALE” “OFFER TO SELL” MEANS AND INCLUDES EVERY CONTRACT OR TRANSACTION WHETHER ORAL OR WRITTEN THAT CONTEMPLATES THE EXCHANGE OF VALUE, WHETHER MONEY OR SOMETHING ELSE, TANGIBLE OR INTANGIBLE, FOR A PRODUCT OR COMMODITY.

5.15.012 APPLICABILITY AND EFFECTIVE DATE

THIS ARTICLE SHALL APPLY TO ALL PROPERTY AND PERSONS WITHIN THE CITY OF GRAND JUNCTION.

IT SHALL BE UNLAWFUL AND A VIOLATION UNDER THIS CHAPTER FOR A PERSON TO ESTABLISH, OPERATE, CAUSE OR PERMIT TO BE OPERATED, OR CONTINUE TO OPERATE WITHIN THE CITY AND WITHIN ANY AREA ANNEXED TO THE CITY AFTER THE EFFECTIVE DATE OF THIS ORDINANCE, A MARIJUANA CULTIVATION FACILITY, A MARIJUANA ESTABLISHMENT, A MARIJUANA PRODUCT MANUFACTURING FACILITY, A MARIJUANA TESTING FACILITY, A RETAIL MARIJUANA STORE AND/OR TO CONDUCT ANY BUSINESS AS EITHER A PRIMARY, INCIDENTAL OR OCCASIONAL ACTIVITY OR ANY OTHER OPERATION INVOLVING THE SALE OF AND/OR THE OFFER TO SELL MARIJUANA AND/OR THE ESTABLISHMENT OF A LAND USE, HOME OCCUPATION, BUSINESS OR COMMERCIAL ACTIVITY CONCERNING MARIJUANA.

PURSUANT TO THE PROHIBITION SET FORTH ABOVE ANY APPLICATION FOR A LICENSE TO OPERATE A MARIJUANA FACILITY, ESTABLISHMENT OR COMMERCIAL OPERATION SHALL BE DEEMED DENIED UPON THE DATE OF FILING THE SAME WITH THE CITY. APPLICATIONS FOR LICENSES MAY BE FILED WITH THE FINANCE DEPARTMENT.

5.15.013 MEDICAL AND PERSONAL USE MARIJUANA

NOTHING IN THIS CHAPTER SHALL PROHIBIT OR OTHERWISE IMPAIR OR BE CONSTRUED TO PROHIBIT OR IMPAIR THE CULTIVATION, USE OR POSSESSION OF MEDICAL AND/OR PERSONAL USE MARIJUANA BY A PATIENT AND/OR BY A PRIMARY CAREGIVER FOR HIS/HER PATIENTS PROVIDED THAT SUCH PATIENT OR PRIMARY CAREGIVER OR A PERSON ACTING IN ACCORDANCE WITH ALL APPLICABLE PROVISIONS OF ARTICLE XVIII, SEC. 14(1)(C) AND/OR ARTICLE XVIII, SEC. 16(2) OF THE COLORADO CONSTITUTION, 12-43.3-101 ET. SEQ. C.R.S. AS AMENDED, 25-1.5-106 C.R.S. AND/OR THE REGULATIONS

PROMULGATED BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, THE COLORADO DEPARTMENT OF REVENUE OR ANY OTHER STATE AND/OR FEDERAL AGENCY WITH REGULATORY AUTHORITY AND THE LAWS OF THE CITY.

5.15.014 PENALTY

A VIOLATION OF ANY PROVISION OF THIS CHAPTER SHALL CONSTITUTE A MISDEMEANOR OFFENSE PUNISHABLE IN ACCORDANCE WITH SECTION 1.04.090 OF THE GRAND JUNCTION MUNICIPAL CODE. A PERSON COMMITTING A VIOLATION SHALL BE GUILTY OF A SEPARATE OFFENSE FOR EACH AND EVERY DAY DURING WHICH THE OFFENSE IS COMMITTED OR CONTINUED TO BE PERMITTED BY SUCH PERSON AND SHALL BE PUNISHED ACCORDINGLY.

THE ESTABLISHMENT, OPERATION AND/OR CONTINUATION OF ANY ACTIVITY IN VIOLATION OF THIS ARTICLE IS SPECIFICALLY DETERMINED TO CONSTITUTE A PUBLIC NUISANCE AND MAY BE ABATED BY THE CITY AS A NUISANCE AND MAY BE ENJOINED BY THE CITY IN AN ACTION BROUGHT BY BEFORE THE MUNICIPAL COURT.

THE REMEDIES SET FORTH IN THIS ARTICLE ARE AND SHALL BE DEEMED CUMULATIVE AND SHALL BE IN ADDITION TO ANY OTHER REMEDY(IES) AT LAW OR IN EQUITY THAT THE CITY MAY POSSESS OR ASSERT.

5.15.015 SEVERABILITY

THIS ORDINANCE IS NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY, AND WELFARE OF THE RESIDENTS OF THE CITY.

IF ANY PROVISION OF THIS ORDINANCE IS FOUND TO BE UNCONSTITUTIONAL OR ILLEGAL, SUCH FINDING SHALL ONLY INVALIDATE THAT PART OR PORTION FOUND TO VIOLATE THE LAW. ALL OTHER PROVISIONS SHALL BE DEEMED SEVERED OR SEVERABLE AND SHALL CONTINUE IN FULL FORCE AND EFFECT.

All other provisions of Title 5 of the Grand Junction Municipal Code shall remain in full force and effect.

Section 21.04.010(d) of the Grand Junction Municipal Code shall be amended as follows (additions underlined):

- (d) **Prohibited Uses.** A blank space indicates the listed use is not allowed within the district, unless otherwise expressly allowed by another provision of this code. Marijuana related business, whether retail, commercial, industrial or agricultural, is prohibited in all zone districts in accordance with Title 5, Article 15, GJMC.

21.04.010 USE TABLE under the “Retail Sales and Service” category, the Table shall be footnoted to refer to Title 5, Article 15 GJMC.

All other provisions of Section 21.04.010 and 21.04.0140 shall remain in full force and effect.

21.04.040(g)(4) shall be amended to include MARIJUANA BUSINESSES as disallowed home occupations.

All other provisions of Section 21.04.0140 shall remain in full force and effect.

INTRODUCED ON FIRST READING AND ORDERED PUBLISHED in pamphlet form this ___ day of _____ 2013.

PASSED, ADOPTED, and ordered published in pamphlet form this ___ day of _____ 2013.

President of the Council

ATTEST:

City Clerk