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**CITY COUNCIL AGENDA
WEDNESDAY, APRIL 3, 2024
250 NORTH 5TH STREET - AUDITORIUM
5:30 PM – REGULAR MEETING**

Call to Order, Pledge of Allegiance, Moment of Silence

Proclamations

Proclaiming April 2024 as Water Conservation Month in the City Grand Junction

Public Comments

Individuals may comment regarding items scheduled on the Consent Agenda and items not specifically scheduled on the agenda. This time may be used to address City Council about items that were discussed at a previous City Council Workshop.

The public has four options to provide Public Comments: 1) in person during the meeting, 2) virtually during the meeting (registration required), 3) via phone by leaving a message at 970-244-1504 until noon on Wednesday, April 3, 2024 or 4) submitting comments [online](#) until noon on Wednesday, April 3, 2024 by completing this form. Please reference the agenda item and all comments will be forwarded to City Council.

City Manager Report

Boards and Commission Liaison Reports

CONSENT AGENDA

The Consent Agenda includes items that are considered routine and will be approved by a single motion. Items on the Consent Agenda will not be discussed by City Council, unless an item is removed for individual consideration.

1. Approval of Minutes

- a. Minutes of the March 18, 2024 Special Meeting
- b. Summary of the March 18, 2024 Workshop

- c. Minutes of the March 19, 2024 Special Meeting
- d. Minutes of the March 20, 2024 Special Meeting
- e. Minutes of the March 20, 2024 Regular Meeting
- f. Minutes of the March 22, 2024 Special Meeting

2. Set Public Hearings

- a. Quasi-judicial
 - i. Introduction of an Ordinance to Vacate Approximately 0.32 Acres of Ferree Drive Right-of-Way and Setting a Public Hearing for April 17, 2024
 - ii. Introduction of an Ordinance Amending Ordinance 4991 Concerning the City-Las Colonias Development Corporation Master Lease and the Second Amendment thereto for Purposes of Amending the Description of Site M for the Purpose of Facilitating the Development of Oak Star Bank on Site M at the Las Colonias Business Park and Setting a Public Hearing for April 17, 2024
 - iii. Introduction of an Ordinance Approving a Rezone of Approximately 0.43 Acres from I-2 (Industrial General) to CG (Commercial General) Located at 739 3rd Avenue and Setting a Public Hearing for April 17, 2024

3. Agreements

- a. Agreement for Palisade Pool Operations

4. Procurements

- a. Contract Approval for Construction Management/General Contractor Services for Construction of Fire Station 7
- b. Contract for 2024 Concrete Curb, Gutter, and Sidewalk Replacement Project

5. Resolutions

- a. A Resolution Authorizing the Purchase of Real Property Located at 756 Chipeta Avenue, Grand Junction, Colorado

- b. A Resolution Authorizing the City Manager to Expend Funds in Support of the Housing Resources of Western Colorado Affordable Housing Development Known as the Row Homes at Meridian Park in Grand Junction, CO
- c. A Resolution Amending Resolution 90-21 Concerning Naming Opioid Settlement Abatement Fund Council Designees

6. Other Action Items

- a. Request for 2024 Fireworks Displays at Suplizio Field

REGULAR AGENDA

If any item is removed from the Consent Agenda by City Council, it will be considered here.

7. Public Hearings

- a. Legislative
 - i. An Ordinance Amending Ordinance No. 5064 and Sections 5.13.013 and 5.13.029 of the Grand Junction Municipal Code Regarding Certain Marijuana Business Security Requirements
 - ii. An Ordinance Amending Various Sections of the Grand Junction Municipal Code (GJMC) on Sales and Use Tax by Amending GJMC Related to Vendor Fees
- b. Quasi-judicial
 - i. An Ordinance for a Comprehensive Plan Amendment for 4.23 Acres from Commercial to Residential Medium (5.5 to 12 du/ac) and Rezone from Mixed Use Neighborhood (MU- 1) to RM-8 (Residential Medium - 8 du/ac) of 4.23 Acres, Located at 2152 Broadway and 2155 Monument Lane
 - ii. A Resolution Accepting the Petition for the Annexation of 3.744 Acres of Land and Ordinances Annexing and Zoning the Fire Station Annexation to R/M-8 (Residential Medium – 8 du/ac), Located at 2351 H Road

8. Agreements

- a. Letter of Intent to Purchase Property for Affordable and Attainable Housing at 450 28 Road, Grand Junction, Colorado

9. Resolutions

- a. A Resolution Supporting the Contribution of Funds for the Acquisition and Permanent Protection of the Shoshone Water Rights
- b. Discussion and Possible Direction Regarding a Contract for Interim City Manager

10. Non-Scheduled Comments

This is the opportunity for individuals to speak to City Council about items on tonight's agenda and time may be used to address City Council about items that were discussed at a previous City Council Workshop.

11. Other Business

12. Adjournment



City of Grand Junction, State of Colorado

Proclamation

- Whereas,** the City of Grand Junction and its partner water providers- Ute Water Conservancy District and Clifton Water District- continue to explore ways to manage consumption of water, and to inspire community members to care for our natural resources; and
- Whereas,** Grand Junction is located in an arid climate where drought is a critical and ever-present factor in water use; and
- Whereas,** municipal and other water providers can engage in efforts to inspire our community, as well as our neighboring communities, to become better environmental stewards; and
- Whereas,** the twelfth annual National Mayor's Challenge for Water Conservation presented by the Wyland Foundation is a healthy non-profit competition between cities across the US for water reduction; and
- Whereas,** with the encouragement of City Council, residents may register their participation in the Challenge, by making an online pledge to decrease their water use for a period of one year; and
- Whereas,** as a part of the competition with other cities across the US, our community and participants stand to benefit from winning prizes and garnering recognition as a result of our participation; and
- Whereas,** as a result, from the competition, Grand Junction hopes to be among the winning cities, but more importantly, hopes to spread more understanding about the importance of water conservation; and
- Whereas,** from April 1-30, 2024, the City of Grand Junction wishes to inspire its community members and its neighboring communities to take the "Wyland Mayor's Challenge for Water Conservation" by making a series of online pledges at mywaterpledge.com to reduce their impact on the environment and to see savings in their water bills.

NOW, THEREFORE, I, Anna Stout, by the power vested in me as Mayor of the City of Grand Junction, do hereby proclaim April 2024 as

"Water Conservation Month"

in the City of Grand Junction, in support of the Wyland Mayor's Challenge for Water Conservation and encourages all community members to take an active role in water conservation, both during the month of April as well as all year, by signing an online pledge to reduce water consumption.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official Seal of the City of Grand Junction this 3rd day of April 2024


Mayor

**GRAND JUNCTION CITY COUNCIL
MINUTES OF THE SPECIAL MEETING**

Fire Administration Training Room

March 18, 2024

Call to Order

Council President Anna Stout called the Special Meeting of the Grand Junction City Council to order at 4:01 p.m. on the 18th day of March 2024.

Councilmembers Scott Beilfuss, Cody Kennedy, Jason Nguyen, Randall Reitz, Dennis Simpson, and Council President Anna Stout were present. Council President *pro tem* Abe Herman was absent. Also, present was City Attorney John Shaver.

Council President Stout reviewed the process Council discussed at its prior Special Meeting held at the same location on March 4th 2024.

At the close of discussion, President Stout asked for a motion and second to convene in Executive Session.

Councilmember Nguyen moved and Councilmember Kennedy seconded to convene into *Executive Session to DISCUSS AND CONSIDER APPOINTMENT OR EMPLOYMENT MATTERS RELATING TO AN INTERIM CITY MANAGER, PURSUANT TO C.R.S. SECTION 24-6-402(3.5) AND/OR 24-6-402(4)(F)(I) REGARDING AND RELATING TO DISCUSSION AND CONSIDERATION OF APPOINTMENT OR EMPLOYMENT MATTERS RELATING TO AN INTERIM CITY MANAGER.*

With a unanimous vote the Executive Session was convened in accordance with the posted notice and for the purpose stated. The meeting was conducted in the Fire Administration Training Room. The time was 4:11 p.m.

Upon completion of the Executive Session, Council President pro tem Herman moved, and Councilmember Nguyen seconded a motion to adjourn the Executive Session. The motion passed with a unanimous vote.

Council President Stout reconvened the Special Meeting at 4:51 p.m. and stated for the record that Council met in Executive Session:
to DISCUSS AND CONSIDER APPOINTMENT OR EMPLOYMENT MATTERS RELATING TO AN INTERIM CITY MANAGER, PURSUANT TO C.R.S. SECTION 24-6-402(3.5) AND/OR 24-6-402(4)(F)(I) REGARDING AND RELATING TO DISCUSSION AND CONSIDERATION OF APPOINTMENT OR EMPLOYMENT MATTERS RELATING TO AN INTERIM CITY MANAGER.

A motion was made by Councilmember Kennedy and seconded by Councilmember Nguyen to send invitations to Interim City Manager candidates, Andrea Phillips, Jennifer Phillips and Roger Tinklenberg, for interviews in an Executive Session on Wednesday, March 20, 2024. The motion passed unanimously by a vote of 7:0.

There being no further business or discussion, Council President Stout adjourned the Special Meeting at 4:56 p.m.

Amy Phillips
City Clerk



GRAND JUNCTION CITY COUNCIL WORKSHOP SUMMARY

March 18, 2024

Meeting Convened: 5:30 p.m. The meeting was held in person at the Fire Department Training Room, 625 Ute Avenue, and live streamed via GoToWebinar.

City Councilmembers Present: Councilmembers Scott Beilfuss, Cody Kennedy, Jason Nguyen, Randall Reitz, Dennis Simpson, and Mayor Anna Stout. Mayor Pro Tem Abe Herman was absent.

Staff present: City Manager Greg Caton, City Attorney John Shaver, Assistant to the City Manager Johnny McFarland, Niki Galehouse Planning Supervisor, Utilities Director Randi Kim, Transportation and Engineering Director Trent Prall, Housing Manager Ashley Chambers, Deputy Chief Gary Marak, City Clerk Amy Phillips, and Deputy City Clerks Krystle Koehler and Selestina Sandoval.

1. Discussion Topics

a. Housing Resources of Western Colorado (HRWC)

Emily Powell Executive Director of Housing Resources of Western Colorado, presented a proposal for a housing project in collaboration with BOA Builders. The project involves buying lots from BOA Builders at their Meridian Park subdivision and hiring them to construct affordable housing units. The request is for \$350,000 in acquisition funds to purchase 10 finished lots, limiting affordability to 120% of the area median income. The project aims to provide affordable housing for eligible homeowners, supported by pre-purchase counseling and homebuyer education. The proposal includes an affordability analysis and outlines how the funds would be utilized. The project is described as shovel-ready. The presentation emphasized the importance of partnerships between the nonprofit and for-profit sectors in addressing affordable housing needs. Council discussed various aspects of the proposal.

Councilmember Kennedy disclosed a personal connection with someone involved in the project but indicated that it would not affect his decision-making.

Discussion ensued regarding the flow of funds, potential interest rates on loans, and the availability of down payment assistance funds. It also delved into assumptions about household size and affordability, with considerations for the viability of the project without City funding. There was discussion of alternative ways the City could support the project, such as covering impact fees.

Council discussed various options for funding the project, including using existing funds versus seeking a supplemental appropriation, implications of tapping into different funding sources and the potential impact on future projects. There was a desire to balance the immediate needs of the project with the ongoing need for affordable housing funding in the community.

Council also considered the mechanics of amending an existing agreement to add flexibility needed to adapt to changing circumstances.

Overall, Council supports the concept of the proposal, but needs further analysis to address concerns before placing on a Council agenda.

b. Follow Up to January 8 Workshop for Second Hand Sales Tax Exemption

This item was a request from Councilmember Kennedy for discussion related to the consideration of a sales tax exemption for secondhand stores.

Based on the recent request for consideration of a sales tax exemption for secondhand stores, City staff brought forward information to assist Council with the discussion that took place at the January 8, 2024 City Council Workshop. As an outcome of that meeting, a subsequent memo was submitted to Council on January 19, 2024. This item was presented to Council for further discussion purposes.

Councilmember Kennedy lead the discussion. The proposal suggested exempting all secondhand goods under \$5,000, excluding motor vehicles, from sales tax. He stated that the proposal aligns with the City's Strategic and Comprehensive Plans, focusing on resource stewardship and environmental health. The exemption is seen as part of promoting a circular economy and diverting useful items from landfills.

There was discussion about the potential revenue loss of around \$675,000 and its impact on the budget. Supporters of the proposal contended for a multiplier effect and increased economic activity offsetting this loss. A concern was raised about whether the exemption would actually change consumer behavior and if the revenue loss could be better spent elsewhere.

Opinions varied on whether to include nonprofits immediately or phase them in later. Some suggested starting slow and evaluating the impact before expanding the exemption. Others proposed making it part of the budget process, advocating for broader implementation and coordinated efforts with neighboring jurisdictions. The discussion highlighted a balance between fiscal responsibility, environmental goals, and the practicality of the proposed exemption.

The conversation included transparency about recent discussions with the County regarding their stance on the proposal. There are concerns about legal feasibility and the perception of favoring certain businesses over others. The potential impact on various funds was noted, with suggestions to simplify accounting by subsidizing impacted funds from the general fund.

There was discussion of the complexity involved in enforcement and reporting, especially for businesses that sell both new and used items.

Concluding discussion, Council agreed to revisit the proposal during the 2025 budget process, with a possible implementation to begin with nonprofits in 3rd (July 1) or 4th (October 1) quarter of 2024, and a request for staff to explore measurement mechanisms, particularly regarding nonprofits' sales data availability.

c. Orchard Mesa Pool

Ken Sherbenou, Parks and Recreation Director assisted by consultants Ohlson Lavoie Corporation (OLC) and PROS consulting presented this item.

On January 22, 2024, the consultants, presented the results of the Orchard Mesa Recreation Facility (OMRF) Plan. This in-depth community engagement planning process that spanned a

large portion of 2023 had the aim of objectively evaluating possible paths forward for the Orchard Mesa Pool. This facility was built in 1983 as a partnership between the Mesa County School District 51, Mesa County, and the City. Despite significant service to the larger Grand Junction community over the past 40 years, the facility is at the end of its useful life. It needs a complete renovation should it continue its long-term operation.

Options #1 through #5 were fleshed out in the OMRP Plan, ranging from up to \$800,000 to continue status quo to \$33 million for a new facility. After that meeting on January 22, School District #51, the owner of the land and the building, decided to update the appraisal of the vacant land, now valued at \$240,000, and the cost of demolition, now projected to cost approximately \$1,300,000. Following that, the School District sent a letter to the City dated February 20, 2024. The letter gave the City two options: either accept the deed of the land and title of the building or the Orchard Mesa Pool would be demolished. These two options for the City were also shared publicly.

The County has budgeted \$800,000 in 2024 to go towards whatever is pursued, renovation or demolition. The City has taken the position that the pool needs to remain available to the community at least until the Community Recreation Center opens, which is currently scheduled to be mid-2026. The School District may see this expressed goal of the City as an opportunity to push the City into accepting option 1, accepting ownership of the Orchard Mesa Pool. With that said, the urgency is not apparent as nothing has changed over the past five years since the intergovernmental agreement between the three pool partners expired. The only significant change forthcoming is the opening of the Community Recreation Center, which will have substantial aquatic facilities.

Floor Plan Option	Capital Cost	Projected Annual Visitation	Cost Recovery	Annual Subsidy	Operational Subsidy per Visit (not including capital)
Option 1: Status Quo	<\$800,000	14,400	24%	\$400,000	\$27.78
Option 2: Basic Modernization of Pool	\$5.7M - \$6.2M	26,250	30%	\$455,000	\$17.33
Option 3: Full Facility Renovation	\$12.6M - \$13.5M	52,500	40%	\$390,000	\$7.43
Option 4: Convert Pool/ Add Turf	\$27.5M - \$29M	78,750	70%	\$162,000	\$2.06
Option 5: New Fieldhouse	\$30M - \$33M	98,000	80%	\$126,000	\$1.29
New CRC	\$70M	396,000	62%	\$1,329,000	\$3.36

Council had a robust discussion about the future of the Orchard Mesa pool and the financial implications for the City. Discussion revolved around whether the City should take on the responsibility of funding the operation of the pool until 2026, as well as potentially acquiring ownership of the pool. There were concerns about the financial burden on the City and where the funds would come from to support the pool's operation and potential renovations. Additionally, there was discussion about the broader context of City infrastructure needs and how funding priorities are determined.

Varying perspectives on the issue ensued, with some Councilmembers advocating for immediate action to address the pool's condition and maintain it as an asset for Orchard Mesa residents, while others prefer to wait and see the impact of the new Community Recreation Center before committing to a major investment.

There was discussion about the financial implications for the City and the need for community input in decision-making processes.

Some key points and perspectives that emerged from the conversation included:

- 1. Prioritization of Resources:** Prioritize resources, especially considering the financial constraints and competing needs within the community.
- 2. Community Engagement:** Community engagement and ensuring that the decisions reflect the desires and needs of residents, particularly those in Orchard Mesa.
- 3. Negotiations with the School District:** Negotiations with the School District regarding the future of the pool facility, including potential options for operational responsibility and ownership.
- 4. Financial Considerations:** Financial implications of different options, including the cost of maintenance, demolition, and potential upgrades, are being carefully weighed.
- 5. Historical Context:** Past efforts and decisions regarding the pool facility, highlighting the ongoing nature of the discussion and the challenges faced in finding a resolution.
- 6. Maintenance and Repair Needs:** There was a discussion about the ongoing maintenance and repair needs currently for the Orchard Mesa pool, including the need to address issues such as the malfunctioning hot tub.

Further discussions and negotiations with stakeholders were deemed necessary to reach a resolution.

2. City Council Communication

The topic of Public Comment at City Council meetings was brought up, reminding community members that public input is important and occurs during City Council Regular Meetings on the first and third Wednesday of each month.

It was suggested that Council discuss the future structure of the Council, including the possibility of electing a Mayor considering such discussions while the City is in a transition phase with an Interim City Manager.

It was noted, the importance of maintaining consistency in decision-making between City Managers. Additionally, some would like to discuss the process of appointing Councilmembers to various Boards and Commissions and propose discussing it before upcoming decisions in April or May.

3. Adjournment

There being no further business, the Workshop adjourned at 8:40 p.m.

**GRAND JUNCTION CITY COUNCIL
MINUTES OF THE SPECIAL MEETING**

City Hall Administration Conference Room

March 19, 2024

Call to Order

Council President Anna Stout called the Special Meeting of the Grand Junction City Council to order at 4:32 p.m. on the 19th day of March 2024.

Councilmembers Scott Beilfuss, Cody Kennedy, Jason Nguyen, Randall Reitz, Dennis Simpson, Council President *pro tem* Abe Herman (on telephone) and Council President Anna Stout were present.

Also, present was City Attorney John Shaver.

President Stout asked for a motion and second to convene in Executive Session.

Councilmember Nguyen moved and Councilmember Reitz seconded to convene into Executive Session to *DISCUSS PERSONNEL MATTERS UNDER AND PURSUANT TO C.R.S SECTION 24-6-402(4)(f)(I) OF THE OPEN MEETINGS LAW RELATIVE TO A CITY COUNCIL EMPLOYEE, SPECIFICALLY THE CITY ATTORNEY. THE CITY ATTORNEY HAS NOT REQUESTED DISCUSSION IN OPEN SESSION.*

With a unanimous vote (7:0) the Executive Session was convened in accordance with the posted notice and for the purpose stated. The meeting was conducted in the City Hall Administration Conference Room. The time was 4:33 p.m.

Upon completion of the Executive Session, Councilmember Kennedy moved, and Councilmember Nguyen seconded a motion to adjourn the Executive Session. The motion passed 7-0.

Council President Stout reconvened the Special Meeting at 5:34 p.m. and stated for the record that Council met in Executive Session to *DISCUSS PERSONNEL MATTERS UNDER AND PURSUANT TO C.R.S SECTION 24-6-402(4)(F)(I) OF THE OPEN MEETINGS LAW RELATIVE TO A CITY COUNCIL EMPLOYEE, SPECIFICALLY THE CITY ATTORNEY. THE CITY ATTORNEY HAS NOT REQUESTED DISCUSSION IN OPEN SESSION.*

Adjournment

There being no further business or discussion, Council President Stout adjourned the Special Meeting at 5:35 p.m.

Amy Phillips
City Clerk



**GRAND JUNCTION CITY COUNCIL
MINUTES OF THE SPECIAL MEETING**

City Hall Administration Conference Room

March 20, 2024

Call to Order

Council President Anna Stout called the Special Meeting of the Grand Junction City Council to order at 3:02 p.m. on the 20th day of March 2024.

Councilmembers Scott Beilfuss, Cody Kennedy, Jason Nguyen, Randall Reitz, Dennis Simpson, Council President *pro tem* Abe Herman and Council President Anna Stout were present.

Also, present was City Attorney John Shaver.

Council President Stout asked for a motion and second to convene in Executive Session.

Council President pro tem Herman moved and Councilmember Kennedy seconded to convene into Executive Session to *DISCUSS AND CONSIDER APPOINTMENT OR EMPLOYMENT MATTERS RELATING TO AN INTERIM CITY MANAGER, SPECIFICALLY TO INTERVIEW JENNIFER PHILLIPS AND ROGER TINKLENBERG, PURSUANT TO C.R.S. SECTION 24-6-402(3.5) AND/OR 24-6-402(4)(F)(I) REGARDING AND RELATING TO DISCUSSION AND CONSIDERATION OF APPOINTMENT OR EMPLOYMENT MATTERS RELATING TO AN INTERIM CITY MANAGER.*

3:00 - 3:45 PM *ROGER TINKLENBERG*

4:00 - 4:45 PM *JENNIFER PHILLIPS*

With a unanimous vote (7:0) the Executive Session was convened in accordance with the posted notice and for the purpose stated. The meeting was conducted in the City Hall Administration Conference Room. The time was 3:04 p.m.

Upon completion of the Executive Session, Councilmember Kennedy moved, and Councilmember Reitz seconded a motion to adjourn the Executive Session. The motion passed 7:0.

Council President Stout reconvened the Special Meeting at 3:43 p.m. and stated for the record that Council met in Executive Session to:

DISCUSS AND CONSIDER APPOINTMENT OR EMPLOYMENT MATTERS RELATING TO AN INTERIM CITY MANAGER, SPECIFICALLY TO INTERVIEW JENNIFER PHILLIPS AND ROGER TINKLENBERG, PURSUANT TO C.R.S. SECTION 24-6-402(3.5) AND/OR 24-6-402(4)(F)(I) REGARDING AND RELATING TO

***DISCUSSION AND CONSIDERATION OF APPOINTMENT OR EMPLOYMENT
MATTERS RELATING TO AN INTERIM CITY MANAGER.***

3:00 - 3:45 PM **ROGER TINKLENBERG**

4:00 - 4:45 PM **JENNIFER PHILLIPS**

Council President Stout noted for the record, Jennifer Phillips was not present for her interview.

Adjournment

There being no further business or discussion, Council President Stout adjourned the Special Meeting at 3:44 p.m.

Call to Order

Council President Anna Stout called the Special Meeting of the Grand Junction City Council to order at 4:46 p.m. on the 20th day of March 2024.

Councilmembers Scott Beilfuss, Cody Kennedy, Jason Nguyen, Randall Reitz, Dennis Simpson, Council President pro tem Abe Herman and Council President Anna Stout were present.

Also, present was City Attorney John Shaver, City Manager Greg Caton and General Services Director Jay Valentine.

Council President Stout asked for a motion and second to convene in Executive Session.

Councilmember Kennedy moved and Councilmember Nguyen seconded to convene into Executive Session to ***DISCUSS MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS, DEVELOPING STRATEGY FOR NEGOTIATIONS, AND/OR INSTRUCTING NEGOTIATORS PURSUANT TO C.R.S. SECTION 24-6-402(4)(e)(I) OF COLORADO'S OPEN MEETINGS LAW RELATIVE TO A POSSIBLE CONTRACT WITH BRUIN WASTE FOR RECYCLABLE MATERIALS HANDLING AND MANAGEMENT AT A MATERIALS HANDLING FACILITY IN GRAND JUNCTION, COLORADO.***

With a unanimous vote (7:0) the Executive Session was convened in accordance with the posted notice and for the purpose stated. The meeting was conducted in the City Hall Administration Conference Room. The time was 4:50 p.m.

Upon completion of the Executive Session, Councilmember Reitz moved, and Council President *pro tem* Abe seconded a motion to adjourn the Executive Session. The motion passed 7:0.

Council President Stout reconvened the Special Meeting at 5:24 p.m. and stated for the record that Council met in Executive Session to:

DISCUSS MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS, DEVELOPING STRATEGY FOR NEGOTIATIONS, AND/OR INSTRUCTING NEGOTIATORS PURSUANT TO C.R.S. SECTION 24-6-402(4)(e)(I) OF COLORADO'S OPEN MEETINGS LAW RELATIVE TO A POSSIBLE CONTRACT WITH BRUIN WASTE FOR RECYCLABLE MATERIALS HANDLING AND MANAGEMENT AT A MATERIALS HANDLING FACILITY IN GRAND JUNCTION, COLORADO.

Adjournment

There being no further business or discussion, Council President Stout adjourned the Special Meeting at 5:25 p.m.

Amy Phillips
City Clerk



Grand Junction City Council
Minutes of the Regular Meeting
March 20, 2024

Call to Order, Pledge of Allegiance, Moment of Silence

The City Council of the City of Grand Junction convened into regular session on the 20th day of March 2024 at 5:30 p.m. Those present were Councilmembers Randall Reitz, Dennis Simpson, Scott Beilfuss, Cody Kennedy, Jason Nguyen, Council President Pro Tem Abe Herman, and Council President Anna Stout.

Also present were City Manager Greg Caton, City Attorney John Shaver, Planning Supervisor Niki Galehouse, Principal Planner David Thornton, Senior Planner Jessica Johnsen, City Clerk Amy Phillips, and Deputy City Clerks Selestina Sandoval and Krystle Koehler.

Council President Stout called the meeting to order. Councilmember Nguyen led the Pledge of Allegiance, followed by a moment of silence.

Proclamation

Proclaiming March 31, 2024 as César Chávez Day

Councilmember Beilfuss read the proclamation, and Treasurer of Cesar Chavez Celebration Committee Maria Luiza Perez-Chavez accepted the proclamation.

Proclaiming March 2024 National Intellectual and Developmental Disabilities Awareness Month

Council President Pro Tem Herman read the proclamation, and Mosaic in Western Colorado Community Relations Manager Brandon Cummings accepted the proclamation.

Appointments

To the Forestry Board

Councilmember Kennedy moved, and Councilmember Reitz seconded to appoint Mollie Freilicher to a partial term ending November 30, 2024. Motion carried by unanimous voice vote.

To the Urban Trails Committee

Councilmember Nguyen moved, and Councilmember Simpson seconded to reappoint Brent Starnes to a full-term ending June 30, 2027, and Kristen Burnham to partial term ending June 30, 2026, and appoint Julia Wildman to a partial term ending June 30, 2025. Motion carried by unanimous voice vote.

Public Comments

Dessa Loughman from CO Weedery expressed her concern regarding the Marijuana Requirements.

Ricki Howie, Rob Scribner, Carol Ward, Kim Wise, Donald Hackley, Patrick Hackley, Karen Hackley, Rhonda Bates, Daniel Moore, Mercedes Borman, Renee Fujair, Sandra Geer, Mariann Taigman, Ellen Toma, Kevin Kne, Thomas Horan, Marty Smith, David Nelson, Jesse Miltier, Janet Magoon, Dana Vazquez, Chelsea Cruz, and Alexander Lyon all expressed their concern that the Orchard Mesa Pool may be closed.

Laurie Buniger and Darla Klausner expressed their concern via email that the Orchard Mesa Pool may be closed.

City Manager Report

City Manager Greg Caton had Kyle Thomas from DA Davidson, the City's Bond Underwriter, give council an update on the recent Bond issuance. City Manager Greg Caton had no additional report.

Board and Commission Liaison Reports

Councilmember Simpson gave an update on the Business Incubator Center.

Councilmember Kennedy gave an update regarding the Grand Junction Economic Partnership's event on April 16th.

Councilmember Reitz shared an update about the City and County working group along with Councilmember Kennedy regarding the I-70 interchange.

Council President Stout shared updates regarding the Associated Governments of Northwest Colorado, Visit Grand Junction, and the Persigo Agreement.

CONSENT AGENDA

1. Approval of Minutes

- a. Minutes of the March 4, 2024 Special Meeting
- b. Summary of the March 4, 2024 Workshop
- c. Minutes of the March 6, 2024 Special Meeting

d. Minutes of the March 6, 2024 Regular Meeting

2. Set Public Hearings

a. Legislative

- i. Introduction of an Ordinance Amending Ordinance No. 5064 and Sections 5.13.013 and 5.13.029 of the Grand Junction Municipal Code Regarding Certain Marijuana Business Security Requirements and Setting a Public Hearing for April 3, 2024
- ii. Introduction of an Ordinance Amending Various Sections of the Grand Junction Municipal Code (GJMC) on Sales and Use Tax by Amending GJMC Related to Vendor Fees and Setting a Public Hearing for April 3, 2024

b. Quasi-judicial

- i. Introduction of an Ordinance for a Comprehensive Plan Amendment for 4.23 Acres from Commercial to Residential Medium (5.5 to 12 du/ac) and Rezone from Mixed Use Neighborhood (MU– 1) to RM-8 (Residential Medium - 8 du/ac) of 4.23 Acres, Located at 2152 Broadway and 2155 Monument Lane and Setting a Public Hearing for April 3, 2024
- ii. Introduction of an Ordinance Zoning Approximately 3.744 Acres from County RSF-R (Residential Single Family Rural) to RM-8 (Residential Medium – 8 du/ac) for the Fire Station No. 7 Annexation, Located at 2351 H Road, and Setting a Public Hearing for April 3, 2024
- iii. A Resolution Referring a Petition to the City Council for the Annexation of Lands to the City of Grand Junction, Colorado, Setting a Hearing on Such Annexation, Exercising Land Use Control, and Introducing Proposed Annexation Ordinance for the Five Star Annexation of 0.11 Acres, Located East of the Northern End of Allyce Avenue, and Setting a Public Hearing for May 1, 2024

3. Resolutions

- a. A Resolution to Submit a Congressionally Directed Spending (CDS) Request for the Persigo Phase 1 Wastewater Treatment Plant Expansion Project. – **This item was withdrawn by staff.**

Councilmember Nguyen moved, and Councilmember Simpson seconded to adopt Consent Agenda Items 1 and 2 (items 3.a. withdrawn). Motion carried by unanimous voice vote.

Regular Agenda

An Ordinance Amending Title 21 Zoning and Development Code to Modify and Clarify Various Provisions Relating to Withdrawn Applications, Public Notice Requirements, Planned Developments, Adding a Use for Public Parking, Accessory Dwelling Unit (ADU) Standards, Drive-Through Facility Standards, and Fence Standards; Introduction of an Ordinance Amending Title 25 24 Road Corridor Design Standards Regarding Alternate Streets Requests for Widths of Pedestrian Walks; Introduction of an Ordinance Amending Title 22, Title 23, Title 24, Title 25, Title 26, and Title 27 to Update Zone District Titles to Reflect Revisions in the Adoption of the 2023 Zoning & Development Code

When the Zoning & Development Code was repealed and replaced on December 20, 2023, it was anticipated that there would be necessary revisions to provide clarity and alleviate practical issues with implementation. Staff identified several items that were amended, which inadvertently conflict with standard practice or could use additional clarification. The proposed amendments address eight sections of the Code and add applicable definitions as needed. In addition, there is an amendment proposed that updates all references to legacy zone districts to new zone districts as adopted in the 2023 Zoning & Development Code.

Planning Supervisor Niki Galehouse presented this item.

Conversation ensued regarding fence height for deer and the allowed national standard of six feet.

The public hearing opened at 7:21 pm.

There were no public comments.

The public hearing closed at 7:21 pm.

Councilmember Reitz moved, and Councilmember Nguyen seconded to adopt Ordinance No. 5205, an ordinance amending Title 21 Zoning and Development Code of the Grand Junction Municipal Code. Motion carried by unanimous roll call vote.

Councilmember Simpson moved, and Council Pro Tem Herman seconded to adopt Ordinance No. 5206, an ordinance amending Title 25 Zoning and Development Code of the Grand Junction Municipal Code. Motion carried by unanimous roll call vote.

Councilmember Kennedy moved, and Councilmember Nguyen seconded to adopt Ordinance No. 5207, an ordinance amending Title 22, Title 23, Title 24, Title 25, Title 26, and Title 27 Zoning and Development Code of the Grand Junction Municipal Code. Motion carried by unanimous roll call vote.

An Ordinance Rezoning 7.11 Acres from R-4 (Residential - 4 du/ac) to R-24 (Residential – 24 du/ac), Located at 2651 Stacy Drive -Continued from February 21, 2024

The owner, Ken Co, LLC with Applicant, Aspire Residential, requested a rezone of R-4 (Residential – 4 du/ac) to R-24 (Residential – 24 du/ac) for property consisting of 7.11-acres located at 2651 Stacy Drive, in anticipation of future multi-family residential development. The requested R-24 zone district would be consistent with the Land Use Map designation of Mixed Use established for the property.

Principal Planner David Thornton and Mark Austin with Austin Civil Group on behalf of John Garza with Aspire Residential presented this item.

Council asked to see the future land use map.

The public hearing opened at 7:39 pm.

There were no public comments.

The public hearing closed at 7:39 pm.

Council Pro Tem Herman moved, and Councilmember Kennedy seconded to adopt Ordinance No. 5200, an ordinance rezoning approximately 7.11 acres located at 2651 Stacy Drive from R-4 (Residential - 4 du/ac) to R-24 (Residential – 24 du/ac), City file number RZN-2024.12, on final passage and ordered final publication in pamphlet form. Motion carried by unanimous roll call vote.

An Ordinance Zoning Approximately 4.06 Acres from R-8 (Residential 8 du/ac) to MU-2 (Mixed Use) Located at 640 24 ½ Road

The Applicant, Royce Carville, requested a rezone to MU-2 (Mixed Use Light Commercial) for approximately 4.06 acres of land located at 640 24 ½ Road. The zone district of MU-2 is consistent with the Mixed-Use Land Use category of the Comprehensive Plan. The application was filed and reviewed prior to the new Zoning and Development Code adoption and is being evaluated under the 2010 Zoning and Development Code. The zoning district names are updated as the new code is now effective.

Senior Planner Jessica Johnsen presented this item.

The public hearing opened at 7:45 pm.

There were no public comments.

The public hearing closed at 7:45 pm.

Councilmember Nguyen moved, and Council Pro Tem Herman seconded to adopt Ordinance No. 5208, an ordinance to rezone 4.06 acres from RM-8 (Residential Medium – 8 du/ac) to MU-2 (Mixed Use Light Commercial) located at 640 24 1/2 Road

on final passage and ordered final publication in pamphlet form. Motion carried by unanimous roll call vote.

Other Business

Council took a break at 7:46 pm and resumed at 7:54 pm.

Discussion and Possible Action Regarding Selection Process for City Manager

Naming Roger Tinklenberg as a finalist for the Interim City Manager role, naming this finalist does not preclude Council from considering additional candidates.

Councilmember Reitz moved, and Council Pro Tem Herman seconded to name Roger Tinklenberg as a finalist for the Interim City Manager position. Motion carried unanimously by voice vote.

Council discussed recruitment proposals from Raftelis, GMP Consultants, CPS HR Consultants, and CBNA Consulting.

Council Pro Tem Herman moved, and Councilmember Nguyen seconded to move forward with Raftelis regarding City Manager Recruitment. Motion carried by roll call vote 4-3, with Councilmembers Simpson, Beilfuss and Kennedy voting in opposition.

Non-Scheduled Comments

Council President Stout stated Liz Zajkowski signed up for public comments, but GoToWebinar had an outage and people were unable to attend online, Council received Liz's comment via email.

Christopher Michael Bickford appreciated that National Intellectual and Development Disabilities Awareness Month was recognized.

Adjournment

Meeting adjourned at 8:21 pm.

Amy Phillips, CMC
City Clerk



**GRAND JUNCTION CITY COUNCIL
MINUTES OF THE SPECIAL MEETING**

City Hall Administration Conference Room

March 22, 2024

Call to Order

Council President Anna Stout called the Special Meeting of the Grand Junction City Council to order at 8:35 a.m. on the 22nd day of March 2024.

Councilmembers Cody Kennedy, Jason Nguyen (virtual), Dennis Simpson, Council President *pro tem* Abe Herman and Council President Anna Stout (virtual) were present. Councilmembers Scott Beilfuss and Randall Reitz were absent.

Also, present was City Attorney John Shaver. There was no public in attendance.

Council President Anna Stout asked for a motion and a second to convene into Executive Session.

Council President *pro tem* Herman moved and Councilmember Simpson seconded to convene into Executive Session to:

DISCUSS AND CONSIDER APPOINTMENT OR EMPLOYMENT MATTERS RELATING TO AN INTERIM CITY MANAGER, SPECIFICALLY TO INTERVIEW ANDREA PHILLIPS, PURSUANT TO C.R.S. SECTION 24-6-402(3.5) AND/OR 24-6-402(4)(F)(I) REGARDING AND RELATING TO DISCUSSION AND CONSIDERATION OF APPOINTMENT OR EMPLOYMENT MATTERS RELATING TO AN INTERIM CITY MANAGER.

With a unanimous vote (5:0) the Executive Session was convened in accordance with the posted notice and for the purpose stated. The meeting was conducted in the City Hall Administration Conference Room. The time was 8:36 a.m.

Upon completion of the Executive Session, Councilmember Simpson moved, and Council President *pro tem* Herman seconded a motion to adjourn the Executive Session. The motion passed 5:0.

Council President Stout reconvened the Special Meeting at 9:21 a.m. and stated for the record that Council met in Executive Session to:

DISCUSS AND CONSIDER APPOINTMENT OR EMPLOYMENT MATTERS RELATING TO AN INTERIM CITY MANAGER, SPECIFICALLY TO INTERVIEW ANDREA PHILLIPS, PURSUANT TO C.R.S. SECTION 24-6-402(3.5) AND/OR 24-6-402(4)(F)(I) REGARDING AND RELATING TO DISCUSSION AND CONSIDERATION OF APPOINTMENT OR EMPLOYMENT MATTERS RELATING TO AN INTERIM CITY MANAGER.

Council President pro tem Herman moved and Councilmember Simpson seconded to name Andrea Phillips as a finalist for the Interim City Manager position.

The motion passed 5:0.

Adjournment

There being no further business or discussion, Council President Stout adjourned the Special Meeting at 9:24 a.m.

Amy Phillips
City Clerk





Grand Junction City Council

Regular Session

Item #2.a.i.

Meeting Date: April 3, 2024
Presented By: Jessica Johnsen, Senior Planner
Department: Community Development
Submitted By: Jessica Johnsen, Senior Planner

Information

SUBJECT:

Introduction of an Ordinance to Vacate Approximately 0.32 Acres of Ferree Drive Right-of-Way and Setting a Public Hearing for April 17, 2024

RECOMMENDATION:

Planning Commission heard this item at the March 12, 2024 meeting and voted (7 to 0) to recommend approval of the request.

EXECUTIVE SUMMARY:

The Applicant, Lawrence Balerio, is requesting the vacation of approximately 0.32 acres of public right-of-way of Ferree Drive in anticipation of future residential subdivision development for the proposed Monument Ridge Estates Subdivision which will be located at 2076 Ferree Drive and 2074 Broadway. The request to vacate is consistent with the City's Comprehensive Plan and Circulation Plan.

The approval of the request is conditioned on the construction of Manzanita Drive and Blue Moon Drive being completed prior to the ordinance associated with this application becoming effective to ensure connectivity to Broadway for the residents in the area and throughout construction and development of the subdivision.

This application was filed and reviewed prior to the adoption of the new Zoning and Development Code, and it is being evaluated under the 2010 Zoning and Development Code. The zoning district names are updated as the new code is now effective.

BACKGROUND OR DETAILED INFORMATION:

BACKGROUND

The subject vacation area of 0.32 acres is located north of Broadway (Hwy 340), on the southeastern portion of Ferree Drive. The right-of-way was dedicated in 1958 "to the

public” by Myron J. Ferree and Eloise J. Ferree on the plat for Ellie Heights with Reception #731636.

The subject property is adjacent to the Monument Ridge Estates Development. State requirements for Highway 340 (Broadway) do not allow for two entrances so close together as the connection is designed with the Monument Ridge Estates. In order for the developer to create additional lots, the entrance as designed was needed. Vacating the requested portion of Ferree Drive allows for the subdivision to build out as designed. The subdivision includes a connection to the entrance onto Broadway so those residents who have used this portion of Ferree Drive still have appropriate circulation available. Manzanita Drive and Blue Moon Drive will be constructed with Monument Ridge Estates and provide connectivity to Broadway (Hwy 340). The vacation of this right-of-way is necessary for future development of the subdivision.

Manzanita Drive will facilitate the connectivity to Broadway (Hwy 340). As a condition of approval, the vacation ordinance will not be effective until the construction of Manzanita Drive and Blue Moon Drive are completed.

NOTIFICATION REQUIREMENTS

A Neighborhood Meeting regarding the proposed rezone request was held on September 7, 2022, in accordance with Section 21.02.080(e) of the Zoning and Development Code. There were eleven participants, including the applicants, City staff, and eight members of the public. Questions focused on future development of the site and the process for development.

Notice was completed consistent with the provisions in Section 21.02.030(g) of the City’s Zoning and Development Code. The subject property was posted with application signs on each street frontage on February 28, 2024. Mailed notice of the public hearings before Planning Commission and City Council in the form of notification cards was sent to surrounding property owners within 500 feet of the subject property on March 1, 2024. The notice of the Planning Commission public hearing was published on March 3, 2024, in the Grand Junction Daily Sentinel. An online hearing with an opportunity for public comment was held between March 5 and March 11, 2024, through the GJSpeaks platform.

ANALYSIS

The criteria for review are set forth in Section 21.02.100(c) of the Zoning and Development Code. The purpose of this section is to permit the vacation of surplus rights-of-way and/or easements. The vacation of the right-of-way or easement shall conform to the following:

1. The Comprehensive Plan, Grand Valley Circulation Plan and other adopted plans and policies of the City;

The request to vacate 0.32 acres of existing public right-of-way does not conflict with the Comprehensive Plan, Grand Junction Circulation Plan or other adopted plans and

policies of the City. Vacation of this right-of-way will have no impact on public facilities or services provided to the general public as comparable circulation will be available through the Monument Ridge Estates subdivision with the right-of-way built and useable before the vacation is complete.

Further, the vacation request is consistent with the following goals and policies of the Comprehensive Plan:

- Principal 3: Responsible and Managed Growth
- Policy 4: Maintain and build infrastructure that supports urban development.
- Policy 5: Plan for and ensure fiscally responsible delivery of City services and infrastructure.

Therefore, staff has found this criterion has been met.

2. No parcel shall be landlocked as a result of the vacation;

This request is to vacate existing public right-of-way which is not needed to provide access to the subject property. The property will have multiple points of access once Blue Moon Dr. and the portion of Manzanita Dr. from the north intersection line with Blue Moon Drive to US Hwy 340 are constructed. As stated, the vacation will not be effective until the new subdivision's streets are completed. Therefore, staff has found that this criterion has been met.

3. Access to any parcel shall not be restricted to the point where access is unreasonable, economically prohibitive, or reduces or devalues any property affected by the proposed vacation;

With the required conditions, this vacation request does not impact access to any parcel, and as such, staff finds that this criterion has been met.

4. There shall be no adverse impacts on the health, safety, and/or welfare of the general community, and the quality of public facilities and services provided to any parcel of land shall not be reduced (e.g., police/fire protection and utility services; There will be no adverse impact to public facilities and services. A utility easement shall be retained in the right-of-way area as Ute Water has a waterline in the roadway. In addition, a sight-distance easement shall be retained in a portion of the right-of-way being vacated as indicated on Exhibit Six (6) attached hereto and incorporated herein. The sight distance easement is a requirement of CDOT for the entrance on Broadway to change to from this portion of Ferree Drive to Manzanita Drive. CDOT, Redlands Water and Power, City of Grand Junction Fire, and Xcel Energy responded during the review that there was no objection to the vacation of this property. No comments were received from other review agencies. Staff therefore finds this criterion has been met.

5. The provision of adequate public facilities and services shall not be inhibited to any property as required in Chapter 21.06 GJMC; and

Neither staff nor utility providers have identified that this request will inhibit the provision of adequate public facilities and services with the retaining of the utility easement and the sight-distance easement, further, the site planning process will facilitate locating adequate public facilities and services. Staff finds that this criterion has been met.

6. The proposal shall provide benefits to the City such as reduced maintenance requirements, improved traffic circulation, etc.

This proposal will remove right-of-way and provide for better circulation through the subdivision and allow for additional lots within the City consistent with the designated zone and Comprehensive Plan Land Use designation. The anticipated benefit of the vacation request will give the Applicant the ability to develop the property with road infrastructure that is constructed to City standards as well as the construction and alignment of roads consistent with the City's adopted Circulation Plan. As such, Staff finds that this criterion has been met.

RECOMMENDATION AND FINDINGS OF FACT

After reviewing the Ferree Drive Public Right-Of-Way Vacation, VAC-2023-111, located north of Broadway (Hwy 340), on the southeastern portion of Ferree Drive, the following findings of fact have been made with the recommended conditions of approval:

- The request with the following conditions conforms with Section 21.02.100(c) of the Zoning and Development Code.

Therefore, staff recommends approval of the requested vacation with the following conditions:

1. The full right-of-way area being vacated shall be retained as a utility easement and a portion as described in Exhibit Six (6) shall be retained as a sight-distance easement.
2. The vacation shall not be effective until Blue Moon Drive and Manzanita Drive have been constructed and approved for use by the public.

The Planning Commission heard this request at the March 12, 2024, meeting and recommended approval with conditions of the request.

FISCAL IMPACT:

The estimated appraised value of this property is \$30,000 to \$50,000 (\$90,000/acre to \$156,000/acre) for the 0.32 acre right-of-way to be vacated. However, there is no fiscal impact related to the right-of-way vacation request.

SUGGESTED MOTION:

I move to introduce an ordinance to vacate 0.32 acres of Ferree Drive right of way located north of Broadway (Hwy 340), on the southeastern portion of Ferree Drive, and set a public hearing for April 17, 2024.

Attachments

1. Exhibit 2 - Development Application
2. Exhibit 3 - Site Map
3. Exhibit 4 - Neighborhood Meeting Notes
4. Exhibit 5 - ROW Vacation Exhibit
5. Exhibit 6 - Sight Distance Easement
6. Exhibit 8 - Planning Commission Minutes - 2024 - March 12 - DRAFT
7. Exhibit 7 - Draft Ordinance

Development Application

We, the undersigned, being the owner's of the property adjacent to or situated in the City of Grand Junction, Mesa County, State of Colorado, as described herein do petition this:

Petition For: Vacation - Right-of-way

Please fill in blanks below only for Zone of Annexation, Rezones, and Comprehensive Plan Amendments:

Existing Land Use Designation

Existing Zoning

Proposed Land Use Designation

Proposed Zoning

Property Information

Site Location: 2076 Ferre & 2074 Broadway

Site Acreage: 0.880476 & 3.674549

Site Tax No(s): 2947-154-10-022 & 2947-154-00-120

Site Zoning: R-4

Project Description: The request is to vacate the Right of Way

Property Owner Information

Name: Prolo Family Clovis LLC 60

Street Address: 19841 Glen Una Drive

City/State/Zip: Saratoga, CA 95070

Business Phone #: 408-373-1629

E-Mail: jmprob@yahoo.com

Fax #:

Contact Person: Joanne Prolo

Contact Phone #: 408-373-1629

Applicant Information

Name: Monument Ridge Estates

Street Address: 1380 North Avenue

City/State/Zip: Grand Junction, CO 81501

Business Phone #: 970-245-7542

E-Mail: balerio1@aol.com

Fax #:

Contact Person: Lawrence Balerio

Contact Phone #: 970-245-7542

Representative Information

Name: Kim Kerk Land Consulting and

Street Address: 2829 North Ave Suite 200

City/State/Zip: Grand Junction, CO 81501

Business Phone #: (970) 640-6913

E-Mail: Kimk355@outlook.com

Fax #:

Contact Person: Kim Kerk

Contact Phone #: (970) 640-6913

NOTE: Legal property owner is owner of record on date of submittal.

We hereby acknowledge that we have familiarized ourselves with the rules and regulations with respect to the preparation of this submittal, that the foregoing information is true and complete to the best of our knowledge, and that we assume the responsibility to monitor the status of the application and the review comments. We recognize that we or our representative(s) must be present at all required hearings. In the event that the petitioner is not represented, the item may be dropped from the agenda and an additional fee may be charged to cover rescheduling expenses before it can again be placed on the agenda.

Signature of Person Completing the Application

Joanne Prolo

Date

Feb. 7, 2023

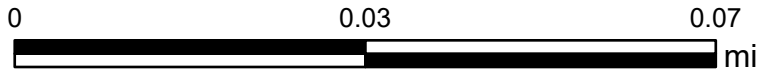
Signature of Legal Property Owner

Joanne Prolo

Date

Feb. 7, 2023

Site Map



Printed: 3/4/2024
1 inch equals 94 feet
Scale: 1:1,128
Packet Page 31

09/07/2022

Lawrence Balerio- Integrity Homes **2076 Ferree and 2074 Broadway**

Attendees: Kim Kerk, Scott Peterson and 8 neighbors. Also, Jeffery Fleming (Planner) for 2080 Broadway.

Meeting called at 5:35pm

Kim Kerk, Project Manager (PM) introduced herself and Senior Planner, Scott Peterson.

This is the 3rd additional Neighborhood Meeting for the proposed Monument Ridge Estates (Updated Informational Meeting) 46 to 47 lots.

The neighbors arrived with concerns. Kim explained that there was going to be 1 additional lot. The previous Engineer took room well under the zoning for the last addition. Construction will begin as soon as approved for phase 1. Reports and permits are in place.

The following question were asked:

Q) How will this affect the current irrigation system, with 15 shares for 47 lots?

A) There will be a storage vault installed, that will continuously stock itself. The builder at Integrity Homes has already met with Ron Davis about the irrigation.

Q) Will the builders and everyone else involved in the project clean up the mess?

A) Their first goal is to clear everything off the site.

Q) Did they have permission to cut down all the trees?

A) Yes, we got permission, we got an Early Grading Stormwater Permit.

Q) Who do we email if we have questions?

A) You can email Scott Peterson with any further questions.

Q) Do you have a sewer connection?

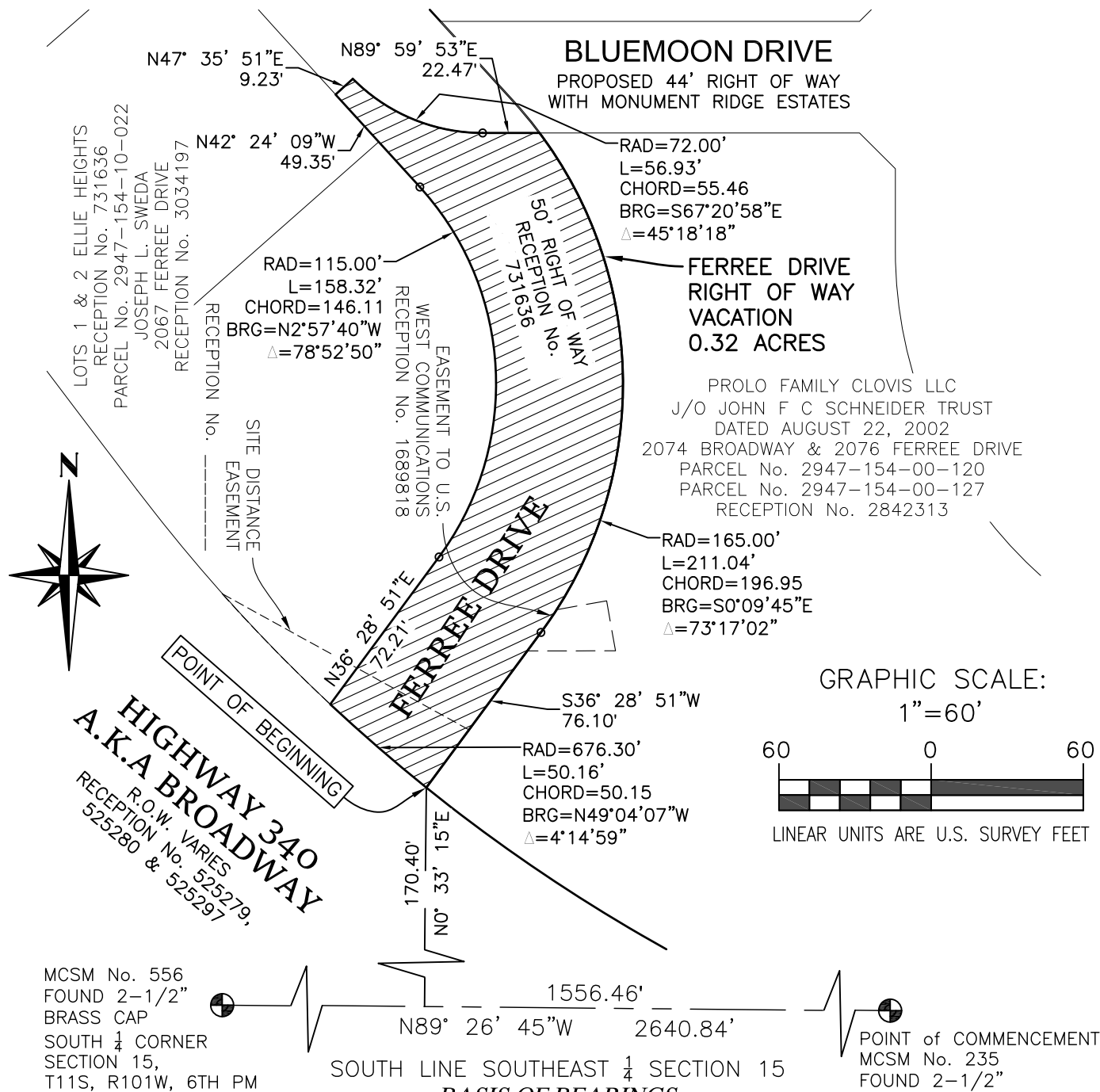
A) Yes, within the Persigo Boundary.

Kim Kerk Land Consulting & Development, LLC

Info: Construction access will be on the new Manzanita Dr. and done before Ferree is closed and vacated at Broadway.

The meeting ended at 5:54pm

EXHIBIT SKETCH



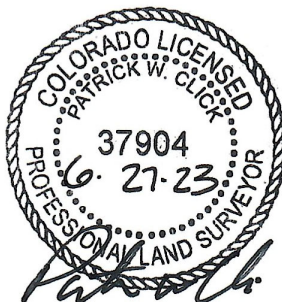
LEGAL DESCRIPTION SKETCH

JOB: 2019-112 DATE: 6/27/2023

RIGHT OF WAY VACATION
MONUMENT RIDGE ESTATES
GRAND JUNCTION, COLORADO

SE1/4 OF SECTION 15
T11S, R101W, 6TH P.M.

CITY OF GRAND JUNCTION, MESA COUNTY, COLORADO

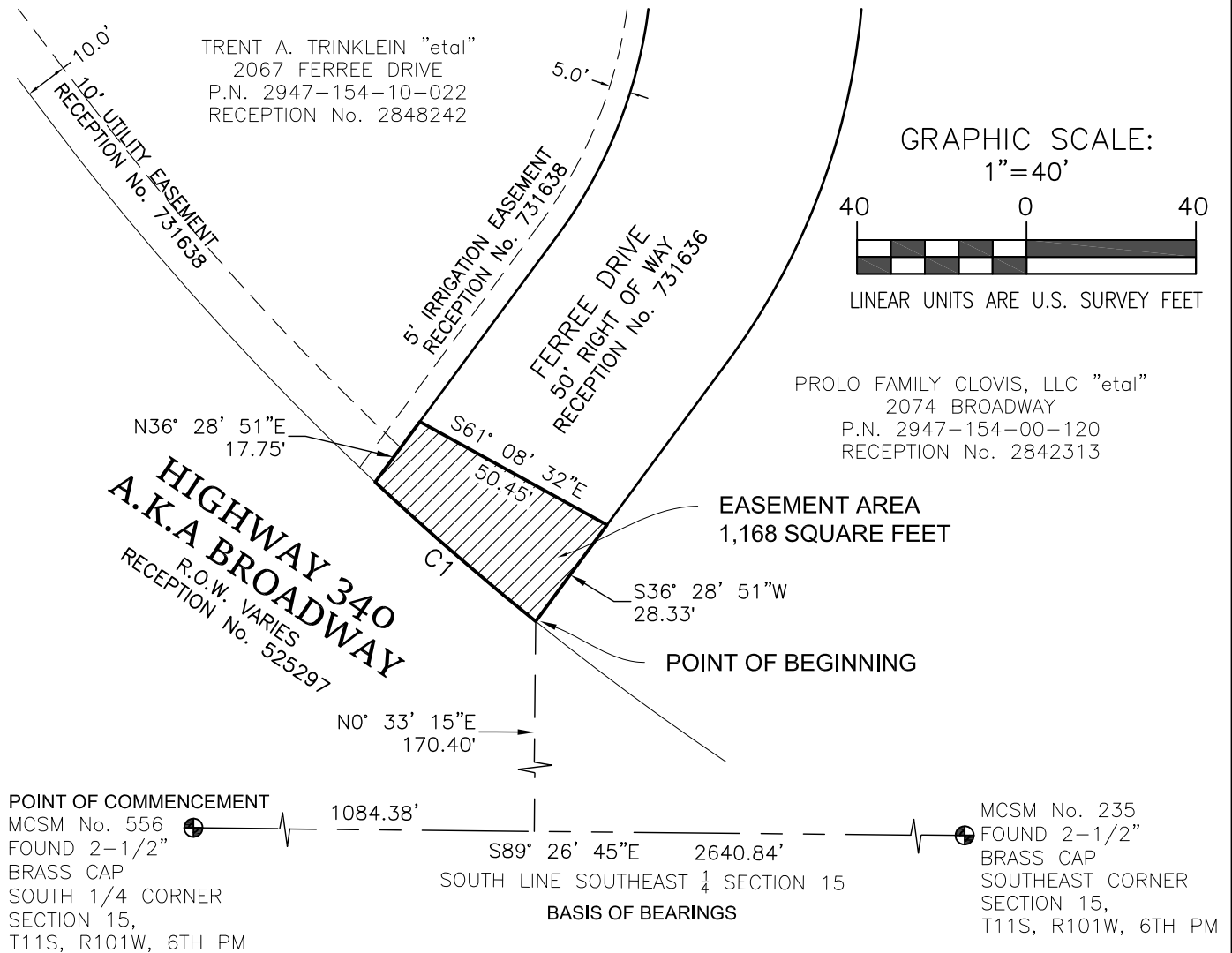


POLARIS SURVEYING

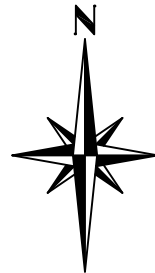
PATRICK W. CLICK P.L.S.

3194 MESA AVE
GRAND JUNCTION, CO 81504
PHONE (970)434-7038

Exhibit B



Non-Tangent Curve Table					
Curve #	Radius	Length	Delta	CHORD LENGTH	CHORD BEARING
C1	676.30'	50.16'	004° 14' 59"	50.15'	N49° 04' 07"W



LEGAL DESCRIPTION SKETCH

SITE DISTANCE EASEMENT

DATE: 12/20/2023

RIGHT OF WAY FERREE DRIVE
GRAND JUNCTION, COLORADO

SW 1/4 SE 1/4 SECTION 15
T11S, R101W, 6th P.M.
MESA COUNTY, COLORADO

POLARIS SURVEYING

PATRICK W. CLICK P.L.S.

3194 MESA AVE
GRAND JUNCTION, CO 81504
PHONE (970)434-7038

Exhibit A

A parcel of land situated in Section 15, Township 11 South, Range 101 West of the 6th Principal Meridian, Mesa County, Colorado being more particularly described as follows:

Commencing at the South Quarter Corner of said Section 15 from whence the Southeast Corner of said Section 15 bears S89°26'45"E a distance of 2640.84 feet for a Basis of Bearings with all bearings herein related thereto; thence S89°26'45"E along said line being the South Line of the Southeast Quarter of said Section 15 a distance of 1084.38 feet; thence N0°33'15"E a distance of 170.40 feet to the intersection of Right of Way of Highway 340 as recorded at Reception Number 525297 of the Mesa County Clerk and Recorder's Office, Mesa County, Colorado and the Right of Way of Ferree Drive, at Reception No. 731636, said point being the Point of Beginning;

thence along said Highway 340 and a non-tangent curve to the right an arc length of 50.16 feet, a radius of 676.30 feet and a central angle of 4°14'59" whose chord bears N49°04'07"W a distance of 50.15 feet to the Northwesternly Line of said Right of Way for Ferree Drive; thence N36°28'51"E along said Northwesternly Line a distance of 17.75; thence S61°08'32"E a distance of 50.45 feet to the Southeasterly Line of said Right of Way for Ferree Drive; thence S36°28'51"W along said Southeasterly Line a distance of 28.33 feet to the Point of Beginning.

Said parcel contains 1,168 square feet.

Above legal description written by:

Patrick W. Click

Colorado registered Professional Surveyor No. 37904

3194 Mesa Avenue Unit B

Grand Junction, Colorado 81504

GRAND JUNCTION PLANNING COMMISSION
March 12, 2024, 5:30 PM
MINUTES

The meeting of the Planning Commission was called to order at 5:31 p.m. by Chairman Teske.

Those present were Planning Commissioners; Ken Scissors, Shanon Secrest, Melanie Duyvejonck, Sandra Weckerly, Kim Herek, and Keith Ehlers.

Also present were Jamie Beard (City Attorney), Niki Galehouse (Planning Supervisor), Jessica Johnsen (Senior Planner), Dave Thornton (Principal Planner), Tim Lehrbach (Senior Planner), Madeline Robinson (Planning Technician), and Jacob Kaplan (Planning Technician).

There were 11 members of the public in attendance, and 1 virtually.

CONSENT AGENDA

1. Approval of Minutes

Minutes of Previous Meeting(s) from February 13, 2024.

REGULAR AGENDA

1. Ferree ROW Vacation

VAC-2023-111

Consider a request by Monument Ridge Estates LLC., Lawrence Balerio, to vacate 0.32 acres of Ferree Drive right-of-way.

Staff Presentation

Jessica Johnsen, Senior Planner, introduced exhibits into the record and provided a presentation regarding the request.

Representative Kim Kerk with Kim Kerk Land Consulting provided additional context on the request and was available for questions.

Questions for staff and applicant

Chairman Teske asked for confirmation that the vacated land would be granted to the property owner to the West and wondered if they had expressed any concerns with the vacation. He also asked for confirmation on the City's intent to maintain a utility easement over the entirety of the vacated area.

Commissioner Weckerly asked how sight distance would be retained following the vacation.

Commissioner Ehlers asked about the timeline of the ROW vacation in reference to the development of Monument Ridge Estates. He also asked if there would be any issues with the

vacation process should the referenced streets in Monument Villas change names before the vacation was completed.

Kim Kerk provided an update on the progress of development for Monument Ridge Estates.

Public Hearing

The public comment period was opened at 5:00 p.m. on Tuesday, March 5, 2024, via www.GJSpeaks.org.

There were no public comments.

The public comment period was closed at 5:50 p.m. on March 12, 2024.

Discussion

Motion and Vote

Commissioner Secrest made the following motion “Mr. Chairman, on the Ferree Drive – Public Right-Of-Way Vacation located north of Broadway (Hwy 340), on the southeastern portion of Ferree Drive, City file number VAC-2023-111, I move that the Planning Commission forward a recommendation of approval to City Council with the findings of fact and conditions as listed in the staff report.”

Commissioner Ehlers seconded; motion passed 7-0.

2. Fire Station #7 Annexation

ANX-2023-740

Consider a request by the City of Grand Junction to zone 3.744 acres from County RSF-R (Residential Single Family Rural) to RM-8 (Residential Medium 8) located at 2351 H Road.

Staff Presentation

Dave Thornton, Principal Planner, introduced exhibits into the record and provided a presentation regarding the request.

Questions for staff and applicant

Public Hearing

The public comment period was opened at 5:00 p.m. on Tuesday, March 5, 2024, 2024, via www.GJSpeaks.org.

Dylan Frye called attention to the irrigation canal on the South side of the property.

The public comment period was closed at 6:02 p.m. on March 12, 2024.

Discussion

Motion and Vote

Commissioner Scissors made the following motion “Mr. Chairman, on the Zone of Annexation request for the property located at 2351 H Road, City file number ANX-2023-740, I move that the Planning Commission forward a recommendation of approval to City Council with the findings of fact as listed in the staff report.”

Commissioner Secrest seconded; motion passed 7-0.

3. Monument Villas Comp Plan Amendment & Rezone CPA-2023-783 & RZN-2023-784

Consider a request by D&B Broadway Monument, LLC for a Comprehensive Plan Amendment for 4.23 acres from Commercial to Residential Medium (5.5 to 12 du/ac) and rezone the 4.23 acres from Mixed Use Neighborhood (MU– 1) to RM-8 (Residential Medium - 8).

Staff Presentation

Dave Thornton, Principal Planner, introduced exhibits into the record and provided a presentation regarding the request.

Jeffrey Fleming with Colorado Land Advisor Ltd., expanded on the staff presentation and was available for questions.

Questions for staff and applicant

Public Hearing

The public comment period was opened at 5:00 p.m. on Tuesday, March 5, 2024, via www.GJSpeaks.org.

There were no public comments.

The public comment period was closed at 6:28 p.m. on March 12, 2024.

Discussion

Discussion ensued about the minimum density requirements in the MU-1 zone district.

Commissioner Ehlers agreed with the staff that this area had not developed as a neighborhood center as projected in the 2010 Comp Plan so the rezone to strictly residential made sense.

Motion and Vote

Commissioner Scissors made the following motion “Mr. Chairman, on the Comprehensive Plan Amendment request for the property located at 2152 Broadway & 2155 Monument Lane, City file number CPA-2023-783, I move that the Planning Commission forward a recommendation of approval to City Council with the findings of fact as listed in the staff report.”

Commissioner Weckerly seconded; motion passed 7-0.

Commissioner Scissors made the following motion “Mr. Chairman, on the Rezone request for the property located at 2152 Broadway & 2155 Monument Lane, City file number RZN-2024-784, I

move that the Planning Commission forward a recommendation of approval to City Council with the findings of fact as listed in the staff report and with the condition that City Council approves the Comprehensive Plan Land Use Map Amendment to Residential Medium.”

Commissioner Weckerly seconded; motion passed 7-0.

4. Lange Annexation **ANX-2023-754**

Consider a request by James N. Lange to zone 1.65 acres within the Lange Annexation to R-8 (Residential – 8 du/ac) located at 2908 Kennedy Avenue.

This item was rescheduled to a future meeting to be determined.

5. NAK Properties Rezone **RZN-2024-57**

Consider a request by NAK Property 2, LLC to rezone 0.43 acres from I-2 (Industrial General) to CG (Commercial General) located at 739 3rd Avenue.

Staff Presentation

Tim Lehrbach, Senior Planner, introduced exhibits into the record and provided a presentation regarding the request.

Applicant Nathan Krehbiel was present and available for questions.

Questions for staff

Public Hearing

The public comment period was opened at 5:00 p.m. on Tuesday, March 5, 2024, via www.GJSpeaks.org.

There were no public comments.

The public comment period was closed at 6:50 p.m. on March 12, 2024.

Discussion

Commissioners expressed their appreciation for staff’s presentation and their agreement with the rezone request.

Motion and Vote

Commissioner Secrest made the following motion “Mr. Chairman, on the rezone request for the property located at 739 3rd Avenue, City file number RZN-2024-57, I move that the Planning Commission forward a recommendation of approval to the City Council with the findings of fact as listed in the staff report.”

Commissioner Scissors seconded; motion passed 7-0.

OTHER BUSINESS

ADJOURNMENT

Commissioner Weckerly moved to adjourn the meeting.

The vote to adjourn was 7-0.

The meeting adjourned at 6:53 p.m.

DRAFT

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO. _____

**AN ORDINANCE VACATING PUBLIC RIGHT-OF-WAY
LOCATED AT 2076 FERREE DRIVE**

Recitals:

A vacation of public right-of-way has been requested by Monument Ridge Estates, LLC ("Monument Ridge") who owns the land at 2074 Broadway and 2076 Ferree Drive. Monument Ridge is developing a major subdivision on its property, named Monument Ridge Estates. The design for the subdivision includes a public roadway connection to Ferree Drive, referred to on the preliminary subdivision plan as Blue Moon Drive, and another to Broadway, referred to on the preliminary subdivision plan as Manzanita Drive.

Broadway is under the jurisdiction of the Colorado Department of Transportation ("CDOT"). The connection in the new subdivision is too close to Ferree Drive's connection to Broadway so a portion of Ferree Drive is requested to be vacated to satisfy CDOT's requirements for the connection from the new subdivision. The connectivity from the remaining Ferree Drive to Blue Moon Drive and Manzanita Drive provides sufficient access to those who previously relied on that portion of Ferree Drive requested to be vacated.

There is a waterline in the roadway that requires a utility easement be retained by the City of Grand Junction ("City") for the benefit of public utilities. In addition, CDOT requires a sight distance easement for the new connection which will also be retained by the City.

After public notice and public hearing as required by the Grand Junction Zoning & Development Code, and upon recommendation of conditional approval by the Planning Commission, the Grand Junction City Council finds that the request to vacate a portion of Ferree Drive included within the subdivision plat known as Ellie Heights at Reception No. 731636 in the Mesa County Clerk and Records Records and described in the attached Exhibit Sketch, is consistent with the Comprehensive Plan, the Grand Junction Circulation Plan and Section 21.02.100 of the Grand Junction Municipal Code as long as the conditions set forth herein are met.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT THE FOLLOWING DESCRIBED DEDICATED RIGHT-OF-WAY IS HEREBY VACATED SUBJECT TO THE LISTED CONDITIONS:

CONDITIONS:

1. The roads referred to as Blue Moon Drive and that portion of Manzanita Drive which connects to Blue Moon Drive and Broadway as shown on the preliminary subdivision plan for Monument Ridge Estates in the City file numbered SUB-2021-

643 shall be constructed and approved for use as determined acceptable by City staff and dedicated to the City for use of the public as roadway.

2. A perpetual utility easement for the installation, operation, maintenance, and repair of utilities and appurtenances of utilities is retained and reserved by the City in all that area vacated for the use of public utilities approved by the City.
3. A sight distance easement for the purpose of maintaining intersection sight distance across the easement which may not have any solid structures, including but not limited to solid fences, utility boxes, trees or tree trunks, landscaping, or other objects, improvements, or structures installed or permitted on the easement which interferes in anyway with or obstructs the sight distance area is retained and reserved by the City for public use.
4. Applicant shall pay all recording/documentary fees for the Vacation Ordinance, any right-of-way/easement documents and/or dedication documents.

RIGHT-OF-WAY DESCRIPTION:

A parcel of land for a fifty (50) foot Right of Way as described at Reception Number 731636 of the Mesa County Records situated in Section 15, Township 11 South, Range 101 West of the 6th Principal Meridian, City of Grand Junction, Mesa County, Colorado, said tract being located entirely within the Ferree Drive Right of Way as shown at Reception Number 731636 of the Mesa County Records, being more particularly described as follows:

Commencing at the Southeast Corner of said Section 15, from whence the South Quarter Corner of Section 15 bears N89°26'45"W a distance of 2640.84 feet for a Basis of Bearings, all bearings herein related thereto; thence N89°26'45"W along the South line of the Southeast Quarter of Section 15 a distance of 1556.46 feet; thence N0°33'15"E a distance of 170.40 feet to the Southeast Corner of the Ferree Drive Right of Way as shown on the Subdivision of Ellie Heights at Reception Number 731636, and the Point of Beginning; thence along said Right of way the following three (3) courses and distances;

1. 50.16 feet along the length of a non-tangent curve to the right with a radius of 676.30 feet and a central angle of 4°14'59" whose chord bears N49°04'07"W a distance of 50.15 feet;
2. N36°28'51"E a distance of 72.21 feet to the start of a tangent curve to the left;
3. 158.32 feet along the length of a tangent curve to the left with a radius of 115.00 feet and a central angle of 78°52'50" whose chord bears N2°57'40"W a distance of 146.11 feet;
4. N42°24'09"W a distance of 28.85 feet;

thence N89°59'53"E a distance of 66.64 to the Easterly line of said Ferree Drive; thence along said Easterly line the following two (2) courses and distances;

1. 211.04 feet along the length of a non-tangent curve to the left with a radius of 165.00 feet and a central angle of $73^{\circ}17'02''$ whose chord bears $S0^{\circ}09'45''E$ a distance of 196.95 feet;
2. $S36^{\circ}28'51''W$ a distance of 76.10 feet to the Point of Beginning.

Said tract of land contains 0.32 Acres as described. See Exhibit Sketch attached and incorporated herein.

Said area is retained and reserved as a utility easement as described above.

A portion of said area as depicted in the attached Exhibit B and incorporated herein is retained and reserved as a sight distance easement for the City as described above.

All conditions set forth above shall be met on or before two years from the effective date of this ordinance or the ordinance shall lapse and be held for naught.

Introduced on first reading this _____ day of _____, 2024 and ordered published in pamphlet form.

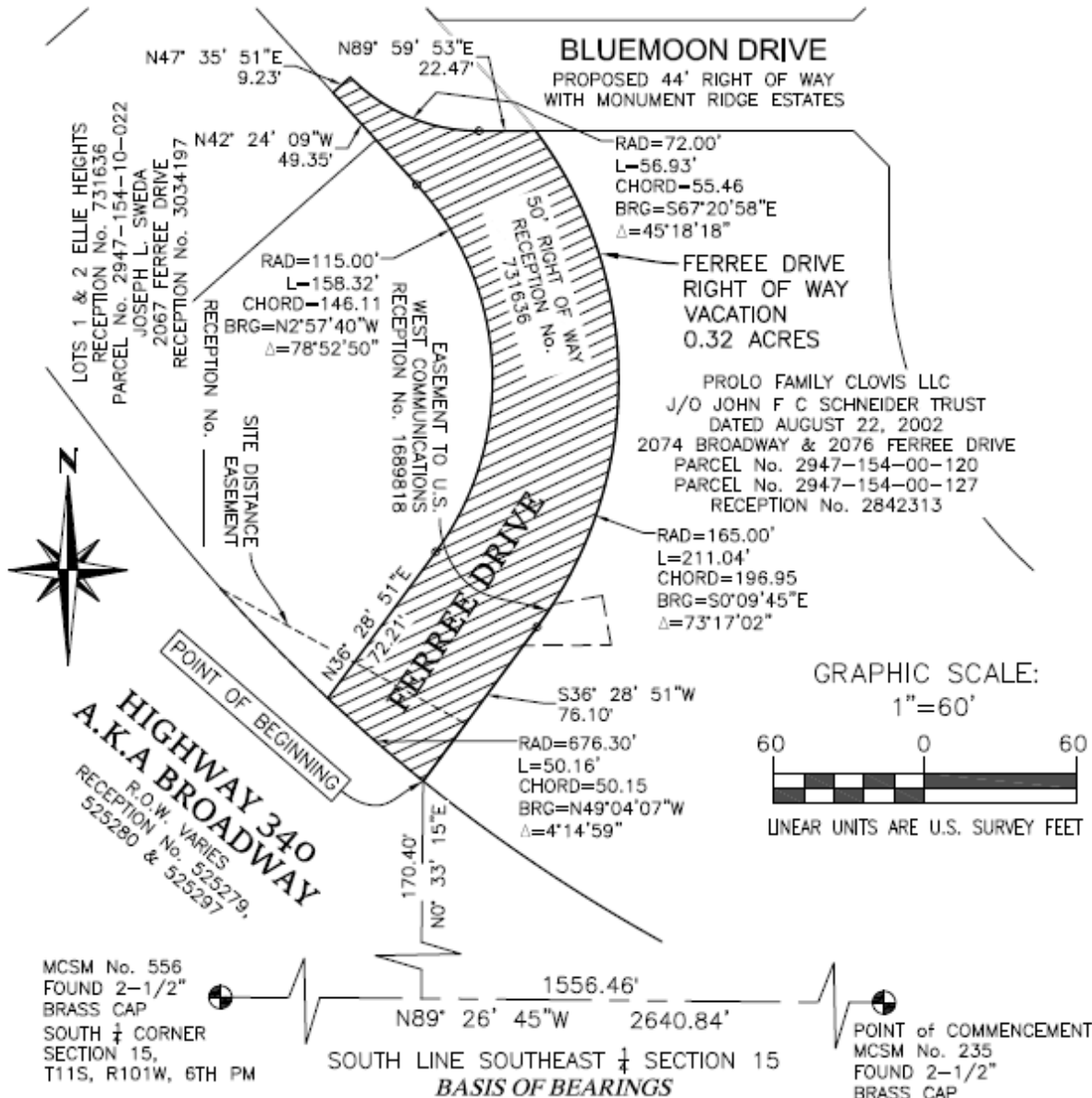
Adopted on second reading this _____ day of _____, 2024 and ordered published in pamphlet form.

ATTEST:

City Clerk

Mayor

EXHIBIT SKETCH



LEGAL DESCRIPTION SKETCH

JOB: 2019-112 DATE: 6/27/2023

RIGHT OF WAY VACATION

MONUMENT RIDGE ESTATES

GRAND JUNCTION, COLORADO

SE1/4 OF SECTION 15

T11S, R101W, 6TH P.M.

CITY OF GRAND JUNCTION, MESA COUNTY, COLORADO



POLARIS SURVEYING

PATRICK W. CLICK P.L.S.

3194 MESA AVE
GRAND JUNCTION, CO 81504
PHONE (970)434-7038



Grand Junction City Council

Regular Session

Item #2.a.ii.

Meeting Date: April 3, 2024

Presented By: John Shaver, City Attorney, Trenton Prall, Engineering & Transportation Director

Department: Engineering & Transportation

Submitted By: Trent Prall

Information

SUBJECT:

Introduction of an Ordinance Amending Ordinance 4991 Concerning the City-Las Colonias Development Corporation Master Lease and the Second Amendment thereto for Purposes of Amending the Description of Site M for the Purpose of Facilitating the Development of Oak Star Bank on Site M at the Las Colonias Business Park and Setting a Public Hearing for April 17, 2024

RECOMMENDATION:

Approve the Ordinance on first reading and set a public hearing for April 17, 2024.

EXECUTIVE SUMMARY:

The proposed ordinance amends the Las Colonias Development Corporation to amend the leaseable boundary for Pad M to the south.

BACKGROUND OR DETAILED INFORMATION:

In November 2017, with adoption of Resolution 69-17, the City Council authorized and approved actions furthering the development of 15 acres of the Las Colonias property known as the Las Colonias Business Park. The redevelopment was anticipated to occur pursuant to a Master Lease from the City to the Las Colonias Development Corporation (LCDC). The Master Lease was considered and approved by the City Council in accordance with the City Charter.

In November 2019, City voters approved an amendment to the City Charter, which allowed the City to lease certain property, including the Las Colonias Business Park, for a term of up to 99 years. The Charter amendment affirmed the City Council's right to

lease the property for a term of not to exceed 99 years. The Master Lease was amended to provide the same.

The LCDC has subleased three of the developable sites and otherwise facilitated the development of two of those sites within the Las Colonias Business Park by commercial subtenants in accordance with the Master Lease, as amended. Recently a developer and LCDC have agreed to lease terms for a fourth site, Lease Parcel M; however, for that site to develop the area of the site as provided in the Master Lease as amended needs to be revised.

The City Council, by and with approval of this Ordinance does amend the description of Site M provided in the Master Lease as amended and does authorize the Second Amendment to the Master Lease and Development Agreement for Las Colonias Business and Recreation Park all in furtherance of the LCDC sublease of Lease Parcel M to Oak Star Bank on the area shown in the attached legal description. The form of the Second Amendment to the Master Lease and Development Agreement for Las Colonias Business and Recreation Park shall be reviewed and approved by the City Attorney and, with his advice and approval, shall be executed by the City Manager.

FISCAL IMPACT:

Amending the lease has no direct financial impact to the City. The amended lease area will allow Oakstar Bank to construct a new facility within the commercial/retail area at Las Colonias. The facility will also have up to two additional tenants that could generate future sales tax.

SUGGESTED MOTION:

I move to introduce an ordinance to amend Ordinance 4991 concerning the City-Las Colonias Development Corporation Master Lease and the Second Amendment thereto for Purposes of Amending the Description of Site M for the purpose of facilitating the development of Oak Star Bank on Site M at the Las Colonias Buisness Park and setting a hearing for April 17, 2024

Attachments

1. Las Colonias PadM Lease Amendment Vicinity Map
2. Lease Parcel Add to Master 4 legal UPDATED
3. Lease Parcel Add to Master 4 exhibit UPDATED
4. Master Lease Amendment 2 DRAFT 20240313
5. ORD-LCDC Second Amend Oak Star 20240314



ADDITION TO LAS COLONIAS MASTER LEASE PARCEL 4

Parcel No. 2945-231-00-052
(Rec. No. 1796705)

Legal Description

A parcel of land being a portion of that tract of land described in Reception Number 1796705 located in Government Lot 4, also known as the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 24, Township 1 South, Range 1 West, Ute Meridian, City of Grand Junction, Mesa County, Colorado being more particularly described as follows:

Commencing at the Northeast Corner of said Lot 4 of Section 24 whence the north line of said Lot 4 bears S89°56'29"W with all other bearings contained herein being relative thereto; thence S79°49'18"W, a distance of 672.48 feet to a point on the southerly boundary of the existing Master Lease Parcel 4 being the Point of Beginning; thence the following two (2) courses along an existing chain link fence line and the extension thereof, 1) S17°22'19"W, a distance of 114.00 feet; 2) S02°40'11"W, a distance of 61.98 feet; thence 216.83 feet along the arc of a 6,376.68 foot radius curve concave Southerly, through a central angle of 01°56'54" whose chord bears S85°06'35"E, 216.82 feet; thence 79.74 feet along the arc of a 221.47 foot radius curve concave Southwesterly, through a central angle of 20°37'41" whose chord bears S73°49'16"E, 79.31 feet to a point on said existing Boundary Line of Master Lease Parcel 4; thence the following courses along said existing Boundary Line of Master Lease Parcel 4; N62°25'06"W, a distance of 195.02 feet; thence 48.11 feet along the arc of a 100.00 foot radius curve concave Southwesterly, through a central angle of 27°34'00" whose chord bears N76°12'11"W, 47.65 feet; thence N89°59'11"W, a distance of 67.15 feet; thence N16°53'32"E, a distance of 113.60 feet; thence 2.20 feet along the arc of a 409.27 foot radius curve concave Southwesterly, through a central angle of 00°18'26" whose chord bears N65°22'33"W, 2.20 feet to the Point of Beginning.

Said parcel of land containing 12,048 Square Feet or 0.28 Acres, more or less as described.

Authorized by:

Renee B. Parent, CO LS #38266

City Surveyor, City of Grand Junction

244 N. 7th Street, Grand Junction, Colorado, 81501

(970) 256-4003



The descriptions shown hereon has been derived from subdivision plats, deposit surveys & deed descriptions as they appear in the office of the Mesa County Clerk & Recorder & monuments as shown. This sketch does not constitute a legal boundary survey, & is not intended to be used as a means for establishing or verifying property boundary lines.

Drawn By: NCW
Date: 03/12/24
Reviewed By: RBP
Approved By: RBP

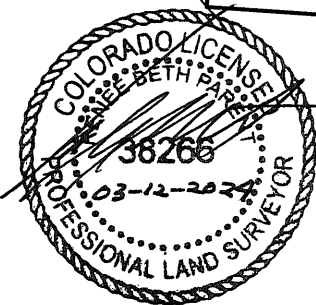
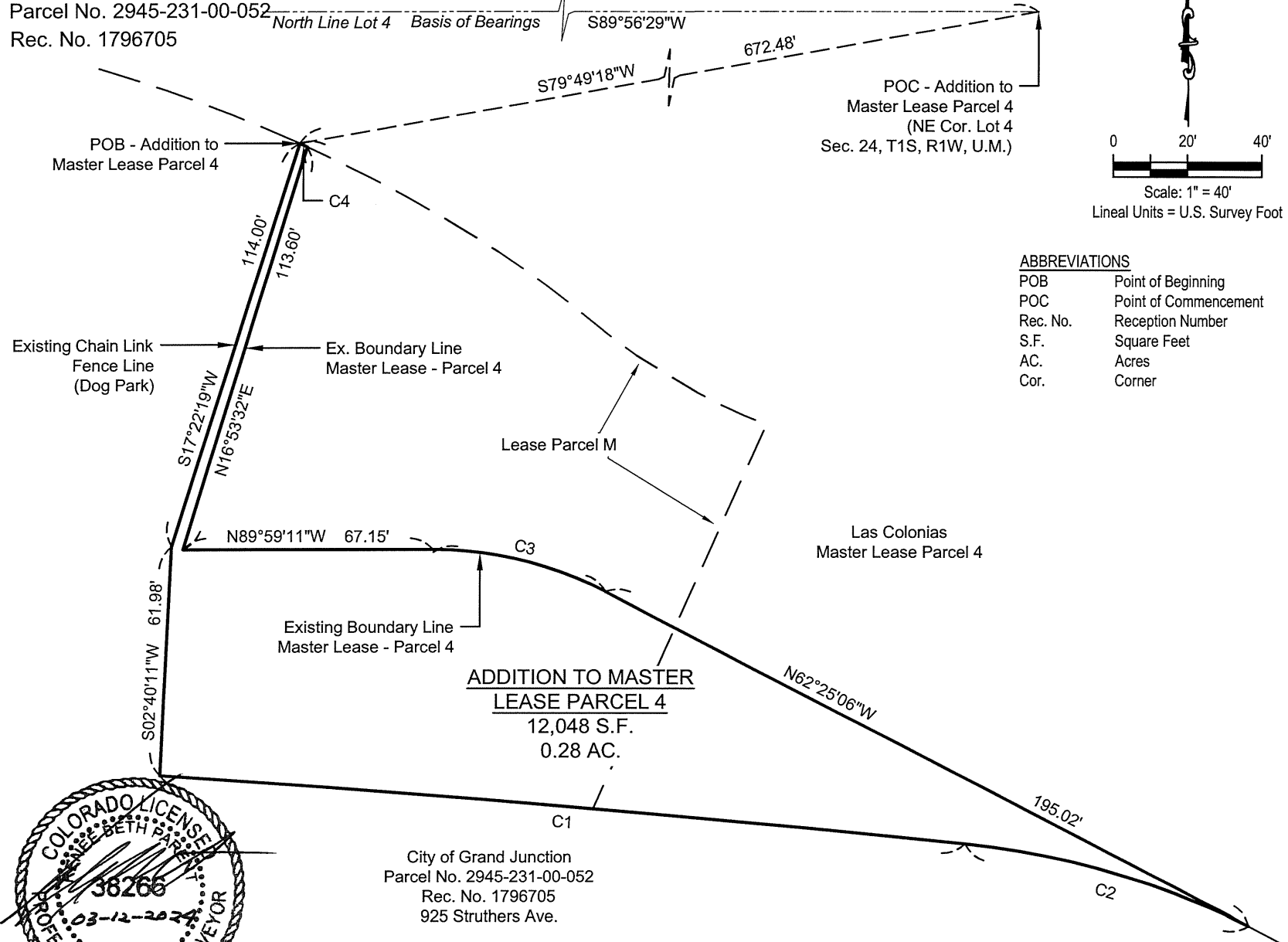
Located in Lot 4, Section 24
Township 1 South, Range 1 West
Ute Meridian, City of Grand Junction
Mesa County, Colorado

CITY OF
Grand Junction
COLORADO
244 North 7th Street
Grand Junction, Co. 81501

ADDITION TO LAS COLONIAS MASTER LEASE PARCEL 4

Parcel No. 2945-231-00-052

Rec. No. 1796705



Renee B. Parent, CO PLS #38266
244 N. 7th St. Grand Junction, CO. 81501
(970) 256-4003

CITY OF
Grand Junction
COLORADO
244 North 7th Street
Grand Junction, Co. 81501

Located in Lot 4, Section 24
Township 1 South, Range 1 West
Ute Meridian, City of Grand Junction
Mesa County, Colorado

Drawn By: NCW
Date: 03/12/24
Reviewed By: RBP
Approved By: RBP

The descriptions shown hereon have been derived from subdivision plats, deposit surveys & deed descriptions as they appear in the office of the Mesa County Clerk & Recorder & monuments as shown. This sketch does not constitute a legal boundary survey, & is not intended to be used as a means for establishing or verifying property boundary lines.

SECOND AMENDMENT TO MASTER LEASE AND DEVELOPMENT AGREEMENT FOR LAS COLONIAS BUSINESS AND RECREATION PARK

THIS SECOND AMENDMENT TO MASTER LEASE AND DEVELOPMENT AGREEMENT FOR LAS COLONIAS BUSINESS AND RECREATION PARK (“Lease Amendment”) is made and entered into this ____ day May 2024 by and between the City of Grand Junction, a Colorado home rule municipal corporation (“the City”), and the Las Colonias Development Corporation, a Colorado nonprofit corporation (“LCDC”) collectively “Parties.”

RECITALS

- A. The City and the LCDC entered into that certain Master Lease and Development Agreement for Las Colonias Business and Recreation Park (“Master Lease”) on or about March 22, 2018 in which the City leased certain premises described therein (the Premises) for a term of 25 years to the LCDC for the purpose of developing a recreation and business park on such premises upon the terms and conditions described therein.
- B. On November 5, 2019, the voters of the City of Grand Junction authorized the City to lease Las Colonias properties, including the Premises, for a term of up to 99 years.
- C. Thereafter the Master Lease was amended (“first Amendment”) to:
 - a. increase the term of the Master Lease from 25 to 99 years;
 - b. clarify the process for the LCDC to review, approve and recommend development plans;
 - c. clarify that in the event of conflicts between any covenants, conditions and restrictions running with the land and the City’s zoning and development requirements, regulations, and/or restrictions, the greater restriction shall control;
 - d. clarify the process for certification of compliance for subleases;
 - e. clarify the “campus” nature of the Business and Recreation Park and the application of zoning and development requirements to site plans for individual pad sites; and,
 - f. clarify the right of the LCDC to amend covenants, conditions and restrictions running with the land.
- D. On April 3, 2024, the City Council approved Ordinance ____, which Ordinance amended Ordinance 4991 regarding the Master Lease. With the approval of Ordinance ____ the City Council authorized and approved a revision to the description of Lease Parcel M for the purposes of the Master Lease and in turn a sublease from LCDC to Oak Star Bank for the development of Lease Parcel M.

WHEREFORE, the Parties do amend the Master Lease as amended to revise and replace the description of Lease Parcel M in Exhibit A as the same is attached hereto and incorporated herein by this reference as if fully set forth.

ALL OTHER provisions of the Master Lease as amended not expressly stated herein shall remain in full force and effect and unmodified hereby.

ENTERED INTO effective the day and year first set forth above.

LAS COLONIAS DEVELOPMENT CORPORATION

By: _____

President of the LCDC Board of Directors

CITY OF GRAND JUNCTION

APPROVED AS TO FORM:

By: _____

Anna M. Stout
President of the City Council

John Shaver
City Attorney

ATTEST:

Amy Phillips
City Clerk

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO. ____

AN ORDINANCE AMENDING ORDINANCE 4991 CONCERNING THE CITY- LAS COLONIAS DEVELOPMENT CORPORATION MASTER LEASE AND THE SECOND AMENDMENT THERETO FOR PURPOSES OF AMENDING THE DESCRIPTION OF SITE M FOR THE PURPOSE OF FACILITATING THE DEVELOPMENT OF OAK STAR BANK ON SITE M AT THE LAS COLONIAS BUSINESS PARK IN THE CITY OF GRAND JUNCTION, COLORADO.

RECITALS:

In November 2017 with adoption of Resolution 69-17 the City Council authorized and approved actions furthering the development of 15 acres of the Las Colonias property known as the Las Colonias Business Park. The redevelopment was anticipated to occur pursuant to a Master Lease from the City to the Las Colonias Development Corporation (LCDC). The Master Lease was considered and approved by the City Council in accordance with the City Charter.

In November 2019 City voters approved an amendment to the City Charter which allowed the City to lease certain property, including the Las Colonias Business Park, for a term of up to 99 years. The Charter amendment affirmed the City Council's right to lease the property for a term of not to exceed 99-years. The Master Lease was amended to provide the same.

The LCDC has subleased three of the developable sites and otherwise facilitated the development of two of those sites within the Las Colonias Business Park by commercial subtenants in accordance with the Master Lease, as amended. Recently a developer and LCDC have agreed to lease terms for a fourth site, Lease Parcel M; however, for that site to develop the area of the site as provided in the Master Lease as amended needs to be revised.

The City Council, by and with approval of this Ordinance does amend the description of Site M provided in the Master Lease as amended and does authorize the Second Amendment to the Master Lease and Development Agreement for Las Colonias Business and Recreation Park all in furtherance of the LCDC sublease of Lease Parcel M to Oak Star Bank on the area shown in the attached legal description. The form of the Second Amendment to the Master Lease and Development Agreement for Las Colonias Business and Recreation Park shall be reviewed and approved by the City Attorney and with his advice and approval, shall be executed by the City Manager.

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

Incorporating the foregoing Recitals, the City Council does authorize and approve amendment of the Master Lease by and with the Second Amendment (Second Master Lease Amendment) thereto, as provided herein, for Lease Parcel M of the Las Colonias Business and Recreation Park all in furtherance of the LCDC subleasing and Oak Star Bank developing the property.

The Second Master Lease Amendment shall upon execution be attached hereto and incorporated by this reference and the same shall be deemed by the City Council to discharge the City Charter and the laws and ordinances of the City of Grand Junction and State of Colorado.

Introduced on first reading this 20th day of March 2024 and ordered published in pamphlet form.

Adopted on second reading the ____th day of April 2024 and ordered published in pamphlet form.

Anna M. Stout
President of the City Council

ATTEST:

Amy Phillips
City Clerk



Grand Junction City Council

Regular Session

Item #2.a.iii.

Meeting Date: April 3, 2024
Presented By: Timothy Lehrbach, Senior Planner
Department: Community Development
Submitted By: Tim Lehrbach, Senior Planner

Information

SUBJECT:

Introduction of an Ordinance Approving a Rezone of Approximately 0.43 Acres from I-2 (Industrial General) to CG (Commercial General) Located at 739 3rd Avenue and Setting a Public Hearing for April 17, 2024

RECOMMENDATION:

The Planning Commission heard the request at its March 12, 2024 meeting and voted (7-0) to recommend approval of the request.

EXECUTIVE SUMMARY:

The applicant, NAK Property 2, LLC is requesting approval of a rezone from I-2 (Industrial General) to CG (Commercial General) on the approximately 0.43 acres at 739 3rd Avenue. The requested CG zone district implements the Comprehensive Plan Land Use Map designation of Commercial assigned to the subject property.

BACKGROUND OR DETAILED INFORMATION:

BACKGROUND

The subject property, located at 739 3rd Avenue, is zoned I-2 (Industrial General). The One Grand Junction Comprehensive Plan changed the land use designation of the subject property and areas to the east and south from Industrial to Commercial. The I-2 zone district does not implement the Commercial land use designation.

The Commercial land use designation provides concentrated areas of retail, services, and employment that support both City residents and those in the surrounding region.

The Property Owner, NAK Property 2, LLC, has requested a rezone to CG (Commercial General) zoning. The purpose of the CG district is to provide for auto-oriented retail commercial and commercial services, wholesale, and warehouse facilities. The district is intended to be located along corridors where proximity to residential and walkable

mixed-use development is limited.

In addition to the CG zoning requested by the applicant, the following zone districts would also be consistent with the Commercial land use designation:

- a. MU-2 (Mixed-Use Light Commercial)
- b. P-2 (Public, Civic, and Institutional Campus)
- c. Planned Development (PD)

Surrounding properties to the east and south are zoned I-2 (Industrial General). The property to the north is zoned I-1 (Industrial Light). Properties fronting S 7th Street to the west are zoned CG (Commercial General).

NOTIFICATION REQUIREMENTS

A Neighborhood Comment Meeting regarding the proposed rezone request was held via zoom on Tuesday, January 30, 2024, in accordance with Section 21.02.030(c) of the Zoning and Development Code. The owner, City staff, and one neighbor were present.

Notice was completed consistent with the provisions in Section 21.02.030(g) of the Zoning and Development Code. The subject property was posted with application signs on each street frontage on February 19, 2024. Mailed notice of the public hearings before Planning Commission and City Council in the form of notification cards was sent to surrounding property owners within 500 feet of the subject property on March 1, 2024. The notice of the Planning Commission public hearing was published March 3, 2024 in the Grand Junction Daily Sentinel. An online hearing with an opportunity for public comment was held between March 5 and March 11, 2024, through the GJSpeaks platform. A public hearing was held before the Planning Commission at their March 12, 2024, regular meeting.

ANALYSIS

The criteria for review are set forth in Section 21.02.050(l)(3)(ii) of the Zoning and Development Code, which provides that an applicant for rezoning has the burden of producing evidence that proves each of the following criteria:

A. Consistency. The proposed zoning is generally consistent with applicable provisions of the Comprehensive Plan.

The One Grand Junction Comprehensive Plan changed the land use designation of the subject property from Industrial to Commercial. The CG (Commercial General) zone district implements the Commercial land use designation. In addition, the proposed rezone supports the following principles, goals, and strategies of the Comprehensive Plan:

Plan Principle 2: Resilient and Diverse Economy.

Goal 1. Foster a vibrant, diverse, and resilient economy.

Strategy b. Employment Base.

This strategy focuses on retention, expansion, incubation, and recruitment efforts that create jobs and import income. The range of allowed uses in the CG zone district supports retail and commercial service uses not allowed in the existing I-2 (Industrial General) zone district and accommodates the growth of existing firms and the attraction of firms requiring a large-format retail footprint.

Plan Principle 3: Responsible and Managed Growth

Goal 2. Encourage infill and redevelopment to leverage existing infrastructure.

Strategy a. Underutilized Properties.

This strategy focuses on revitalization and adaptive reuse of existing vacant, blighted, or otherwise underutilized structures. Rezoning the subject property to CG enables a broader range of uses for reuse of the existing structure or redevelopment of the subject site in context with surrounding buildings and land use designations of Commercial and Mixed-Use.

Plan Principle 4: Downtown and University Districts

Goal 3. Promote the continued reinvestment into Downtown, Riverfront, Rail, and University District's economy and built environment.

Strategy a.i. Diversification of Downtown Economic Base.

This strategy focuses on the creation of a "Tech and Rec" hub within the Downtown and River Districts. The subject property is located within the South 7th Street Corridor of the Lower Downtown subarea. The existing structure, site, and vicinity are suitable for "Tech and Rec" uses, which are more readily accommodated by the CG zone district than by the existing I-2 district. The existing zoning on-site limits allowed uses to heavier industrial uses often including a substantial outdoor operations and storage component whereas the proposed rezone allows a range of retail, office, and consumer-oriented businesses.

Plan Principle 7: Great Places and Recreation

Goal 4. Support a lively arts and culture community.

Strategy d. Infill and Redevelopment Support.

This strategy encourages development that supports creative activities in the City's priority locations for urban intensification, including downtown. The CG zone district allows for a broad range of commercial and artisan industrial uses that complement the downtown core, promote the growth of creative industries, and are compatible with existing, adjacent commercial and industrial uses. The CG zone district also introduces (re)development site and structure standards appropriate to a vibrant, active South 7th Street corridor, consistent with the adopted vision for the Lower downtown subarea.

Staff finds this criterion is met.

B. Development Patterns. The proposed zoning will result in logical and orderly development pattern(s).

The subject property is located within the South 7th Street Corridor of the Lower Downtown subarea identified for Area-Specific Policies in the Comprehensive Plan.

Properties within that corridor which front 7th Street are designated as Mixed Use on the Comprehensive Plan land use map. Areas to the east, outside the corridor, are a mix of Commercial and Industrial land use designations. Appropriate rezoning within the commercial areas from the existing industrial zones will serve to create a transition area between the intended walkable vibrancy of the Mixed Use designated areas and the heavier, outdoor-intensive uses which characterize the Industrial designated areas. Zone districts such as CG or MU-2 (Mixed-Use Light Commercial) to implement the Commercial land use designation in this area will allow a mix of retail, service, office, and artisan industrial uses which complement both adjacencies. Site and Structure Development Standards, which do not apply to properties within the industrial zones, do apply to commercial zones. This ensures the incremental (re)development of a built environment supportive of the nearby South 7th Street and Downtown, which are envisioned as a mix of light commercial and residential uses at a pedestrian-oriented scale. The site is presently developed with an 18,228 square foot building with no on-site loading area or outside storage area. Existing conditions are more compatible with the predominantly indoor, customer-oriented uses allowed in the requested CG district than with the substantial outdoor and heavy vehicle and equipment components allowed in the I-2 district.

Staff finds this criterion is met.

C. Benefits. The community or area, as decided by the reviewing body, derives an overall benefit(s) from the proposed rezoning.

The area within the vicinity of the subject property benefits from the redevelopment potential of rezoning underutilized industrially zoned properties to the commercial zone districts. As described under criteria (A) and (B), the range of uses and design standards applicable to the CG zone district will contribute to the implementation of Comprehensive Plan principles, goals, and strategies which promote business development generally and a transition area supportive of the desired character and function of adjacent Mixed Use and Industrial areas.

The citywide community benefits from the occupancy of underutilized properties with a mix of tax-generating and employment-creating business uses. Any proposed rezone to CG or MU-2 in this area not only contributes to a desired character area from which residents and visitors may benefit, but also promotes businesses which generate tax revenue, employment growth, and industry clusters which may not otherwise proliferate in the more limited industrial zones.

Staff finds this criterion is met.

FINDINGS OF FACT AND RECOMMENDATION

After reviewing the NAK Property 2, LLC rezone request, RZN-2024-57, for a rezone from I-2 (Industrial General) to CG (Commercial General), located at 739 3rd Avenue, the following findings of fact have been made:

1. The request has met the burden of proof identified in Section 21.02.050(l)(3)(ii) of the

Zoning and Development Code.

Therefore, the Planning Commission recommended approval of the request.

FISCAL IMPACT:

There is no direct fiscal impact from the proposed rezone.

SUGGESTED MOTION:

I move to introduce an ordinance zoning approximately 0.43 acres from I-2 (Industrial General) to CG (Commercial General), located at 739 3rd Avenue, and set a public hearing for April 17, 2024.

Attachments

1. Exhibit 1 - Development Application
2. Exhibit 2 - Site Maps
3. ORD-Zoning 3rd Avenue 20240327



Development Application

We, the undersigned, being the owner's of the property adjacent to or situated in the City of Grand Junction, Mesa County, State of Colorado, as described herein do petition this:

Petition For: Rezone

Please fill in blanks below only for Zone of Annexation, Rezones, and Comprehensive Plan Amendments:

Existing Land Use Designation: Unknown

Existing Zoning: I-2

Proposed Land Use Designation: Retail

Proposed Zoning: CG

Property Information

Site Location: LOT 2 LOFFREDA SUB SEC 23 1S 1W UM

Site Acreage: 0.43

Site Tax No(s): Parcel #: 2945-231-41-002 Account #: R093228

Site Zoning: I-2

Project Description:

Rezone from I-2 to CG.

Property Owner Information

Name: NAK Property 2, LLC

Street Address: 739 3rd Ave

City/State/Zip: Grand Junction, CO

Business Phone #: 9703908816

E-Mail: nkrehbiel@gmail.com

Fax #: _____

Contact Person: Nathan Krehbiel

Contact Phone #: (970)390-8816

Applicant Information

Name: Same

Street Address: _____

City/State/Zip: _____

Business Phone #: _____

E-Mail: _____

Fax #: _____

Contact Person: _____

Contact Phone #: _____

Representative Information

Name: Same

Street Address: _____

City/State/Zip: _____

Business Phone #: _____

E-Mail: _____

Fax #: _____

Contact Person: _____

Contact Phone #: _____

NOTE: Legal property owner is owner of record on date of submittal.

We hereby acknowledge that we have familiarized ourselves with the rules and regulations with respect to the preparation of this submittal, that the foregoing information is true and complete to the best of our knowledge, and that we assume the responsibility to monitor the status of the application and the review comments. We recognize that we or our representative(s) must be present at all required hearings. In the event that the petitioner is not represented, the item may be dropped from the agenda and an additional fee may be charged to cover rescheduling expenses before it can again be placed on the agenda.

Signature of Person Completing the Application: _____ Date: _____
Please print and sign

Signature of Legal Property Owner: _____ Date: _____
Please print and sign

OWNERSHIP STATEMENT - CORPORATION OR LIMITED LIABILITY COMPANY

(a) NAK Property 2, LLC ("Entity") is the owner of the following property:

(b) LOT 2 LOFFREDA SUB SEC 23 1S 1W UM - 18774SF/0.43AC or 739 3rd Ave Grand Junction, CO 81501

A copy of the deed(s) evidencing the owner's interest in the property is attached. Any documents conveying any interest in the property to someone else by the owner are also attached.

I am the (c) Manager for the Entity. I have the legal authority to bind the Entity regarding obligations and this property. I have attached the most recent recorded Statement of Authority of the Entity.

- ☒ My legal authority to bind the Entity both financially and concerning this property is unlimited.
☐ My legal authority to bind the Entity financially and/or concerning this property is limited as follows:

- ☒ The Entity is the sole owner of the property.
☐ The Entity owns the property with other(s). The other owners of the property are:

On behalf of Entity, I have reviewed the application for the (d) Rezone

I have the following knowledge or evidence of a possible boundary conflict affecting the property:

(e) _____

I understand the continuing duty of the Entity to inform the City planner of any changes regarding my authority to bind the Entity and/or regarding ownership, easement, right-of-way, encroachment, lienholder and any other interest in the land.

I swear under penalty of perjury that the information in this Ownership Statement is true, complete and correct.

Signature of Entity representative: 

Printed name of person signing: Nathan Krehbiel

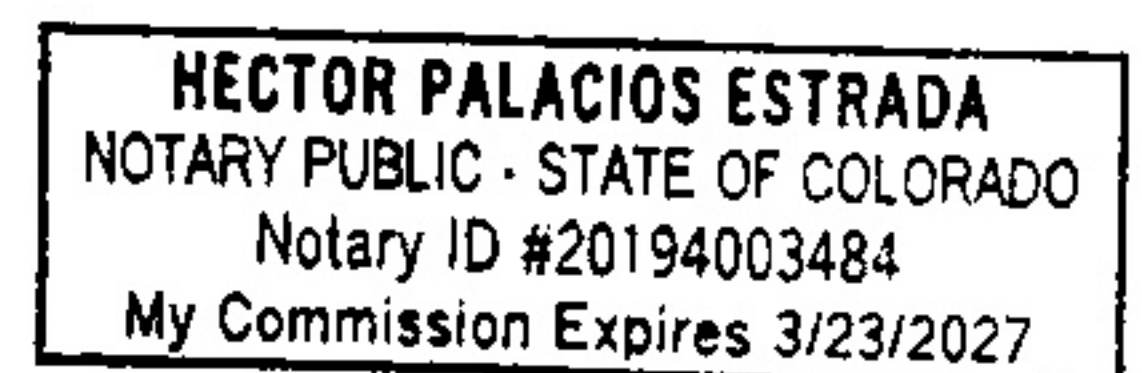
State of Colorado

County of Eagle) ss.

Subscribed and sworn to before me on this 17th day of January, 20 24
by Nathan Krehbiel

Witness my hand and seal.

My Notary Commission expires on 03/23/2027




Notary Public Signature

RETURN RECORDED DOCUMENT TO:
NAK Property 2, LLC, a Colorado Limited Liability Company
P.O. Box 203, Red Cliff, CO 81649

Document Fee: \$89.50

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, dated 29th day of November, 2023, is made between Allen J. Munro, L.L.C., a Colorado Limited Liability Company ("Grantor"), of the County of Mesa and the State of Colorado.

AND

NAK Property 2, LLC, a Colorado Limited Liability Company ("Grantee"), of the County of Eagle and the State of Colorado, whose legal address is P O Box 203, Red Cliff, CO 81649.

WITNESS, that the Grantor(s), for and in consideration of EIGHT HUNDRED NINETY FIVE THOUSAND AND 00/100 DOLLARS (\$895,000.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, and convey unto the Grantee, and the heirs, successors and assigns of the Grantee forever, all the real property, together with fixtures and improvements located thereon, if any, situate, lying and being in the County of Mesa and State of Colorado, described as follows:

Lot 2 of
LOFFREDA SUBDIVISION,
County of Mesa, State of Colorado

ALSO KNOWN AS 739 Third Avenue, Grand Junction, CO 81501

TOGETHER WITH, all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor(s), either in law or equity, of, in and to the above-bargained premises, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the Grantee, and the heirs, successors and assigns of the Grantee forever. The Grantor, for the Grantor and the heirs, successors and assigns of the Grantor, warrants title to the same against all persons claiming by, through or under the Grantor, subject to the Statutory Exceptions

EXECUTED AND DELIVERED by Grantor on the date first set forth above.

Allen J. Munro, L.L.C., a Colorado
Limited Liability Company

By: Allen J. Munro, as Managing Member

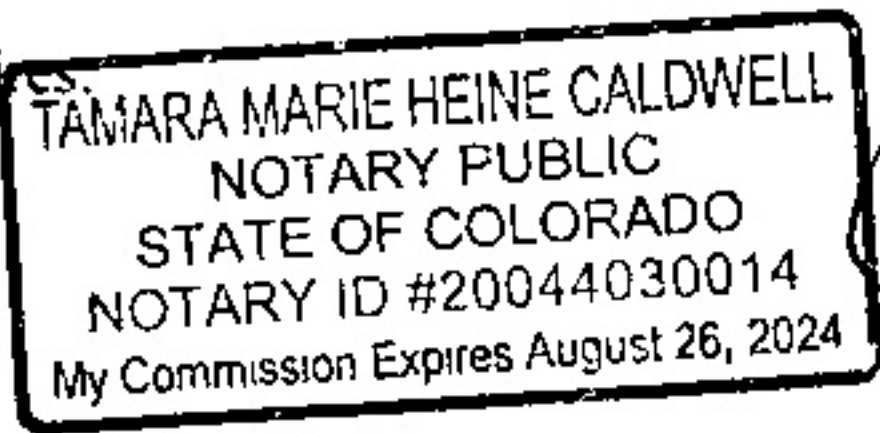
State of : Colorado

County Of Mesa

}
}
} ss.
}

The foregoing instrument was subscribed, sworn to, and acknowledged before me this November 29, 2023, by Allen J. Munro, as Managing Member of Allen J. Munro, L.L.C., a Colorado Limited Liability Company

My Commission expires



Witness my hand and official seal.

Tamara Marie Heine Caldwell
Notary Public

**If tenancy is unspecified, the legal presumption shall be tenants in common (C.R.S. 38-31-101)

STATEMENT OF AUTHORITY

E-RECORDED

1. This Statement of Authority relates to an entity named: **NAK Property 2, LLC**
2. The Entity is a: **Limited Liability Company**
3. The Entity is formed under the laws of: **Colorado**
4. The mailing address for the entity is:
P.O. Box 203, Red Cliff, CO 81649
5. The name and position of each person authorized to execute instruments conveying, encumbering, or otherwise affecting title to real property on behalf of the entity are:
6. **Nathan Krehbiel, as Managing Member**
Ashleigh Krehbiel, as Managing Member.
7. The authority of the foregoing person(s) to bind the entity is **not limited**.
8. Other matters concerning the manner in which the entity deals with interests in real property: **NONE**
9. This Statement of Authority is executed on behalf of the Entity pursuant to the provisions of C.R.S. Section §38-30-172.

Executed this: November 29, 2023

NAK Property 2, LLC, a Colorado Limited Liability Company



By: Nathan Krehbiel, as Managing Member

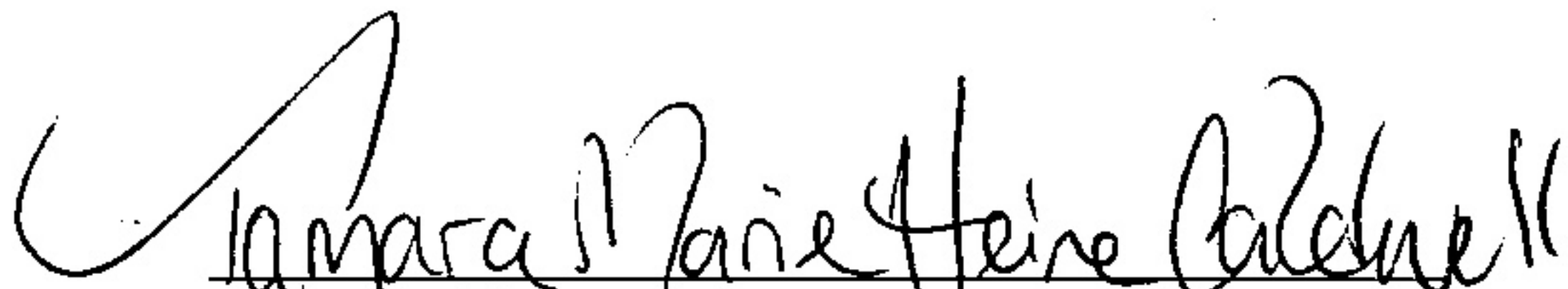
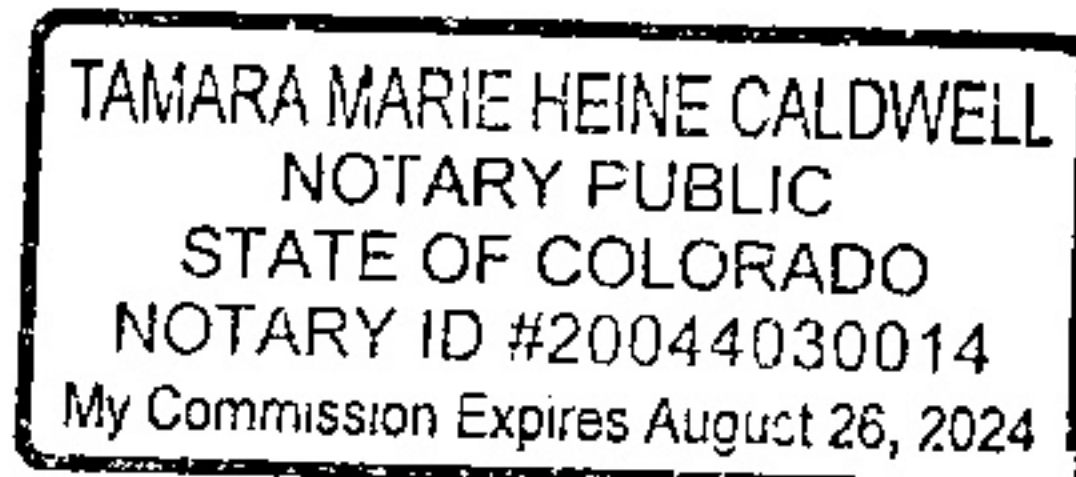
STATE OF: Colorado

COUNTY OF: Mesa

The foregoing instrument was acknowledged before me this 29th day of November, 2023, by **Nathan Krehbiel, as Managing Member of NAK Property 2, LLC, a Colorado Limited Liability Company**

Witness my hand and seal.

My commission expires:


Notary Public

NAK Property 2, LLC
739 3rd Ave
Grand Junction, CO 81505

RE: LEGAL DESCRIPTION

LOT 2 LOFFREDA SUB SEC 23 1S 1W UM - 18774SF/0.43AC

FOR CITY USE ONLY

TYPE OF DOCUMENT

BOOK

PAGE

LOFFREDA SUBDIVISION

A REPLAT OF LOTS 11 THROUGH 19
IN BLOCK 20 OF MILDDALE SUBDIVISION
LOCATED IN THE NE 1/4 OF SECTION 23,
TOWNSHIP 1 SOUTH, RANGE 1 WEST OF THE UTE MERIDIAN

DEDICATION:

KNOW ALL MEN THESE PRESENTS:

That KnowMoore, LLC and Allen J. Munro LLC, a Colorado Limited Liability Company are the owners of that real property as described in Book 4530 at Page 641 (Reception Number 2406335) and Book 5191 at Page 52 (Reception Number 2582428) as recorded in the Mesa County Clerk and Recorder's Office.

Said property described as: Lots 11 through 19 inclusive in Block 20 Milldale Subdivision, City of Grand Junction, County of Mesa and State of Colorado.

That said owner does hereby dedicate and set apart that real property as labeled on the accompanying plat as follows:

That said owner has caused that real property to be laid out and surveyed as LOFFREDA SUBDIVISION.

All streets, roads and rights of way are dedicated to the City of Grand Junction for the use of the public forever.

All lienholders appear hereon.

IN WITNESS said owners have caused their names to be hereunto subscribed

this 21st day of August A.D. 2013

Allen J. Munro

Allen J. Munro, Managing Member
Allen J. Munro LLC, a Colorado Limited
Liability Company.

Kirk Knowles

Kirk Knowles, Managing Member
Knowmoore LLC

STATE OF COLORADO)

COUNTY OF MESA) SS

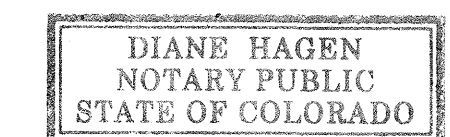
The foregoing instrument was acknowledged before me this 21st day of August

AD 2013

My commission expires

Notary Public

Diane Hagen



CLERK AND RECORDER'S CERTIFICATE

STATE OF COLORADO)

COUNTY OF MESA) SS

I hereby certify that this instrument was filed in my office at 12:12 O'clock PM

this 4th day of September A.D. 2013

Book 5522 Pages 355 Reception Number 2667546

Drawer No. 22-65 Fees \$10+1

Sheila Reiner
Clerk and Recorder

Rose Tjoga
Deputy

CITY OF GRAND JUNCTION APPROVAL

This plat of Loffreda Subdivision, City of Grand Junction, Mesa

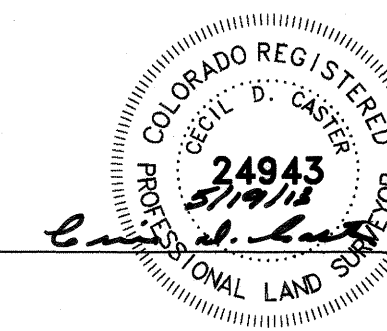
County, Colorado was approved this 23 day of August A.D. 13

[Signature]
City Manager

[Signature]
President of City Council

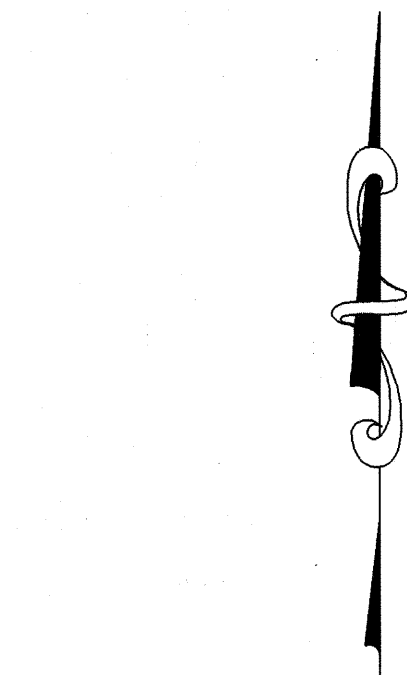
SURVEYOR'S CERTIFICATE

I, Cecil D. Caster, do hereby certify that, to the best of my knowledge, information, and belief, the accompanying plat of LOFFREDA SUBDIVISION is a true and accurate representation of a field survey made under my direct supervision, and all information pertinent to said survey is shown on this plat. This survey is in accordance with applicable standards of practice for the State of Colorado and is not a guaranty of warranty, either expressed or implied.



Cecil D. Caster
Registered Professional Land Surveyor
P.L.S. No. 24943

Basis of Bearing: A bearing of S89°59'32"W has been determined per the Mesa County GIS information between the City of Grand Junction Monuments located 7th Street and 3rd Avenue and 8th Street and Third Avenue.



GRAPHIC SCALE 1"=30'

ALL DISTANCES SHOWN ARE IN U.S. SURVEY FEET
838-51-106 (1) (I) C.R.S.

LEGEND

△ CITY MONUMENT

● FOUND NO. 5 REBAR AND CAP
AS NOTED

○ SET NO.5 REBAR/CAP MONUMENT P.L.S. 24943

AREA SUMMARY

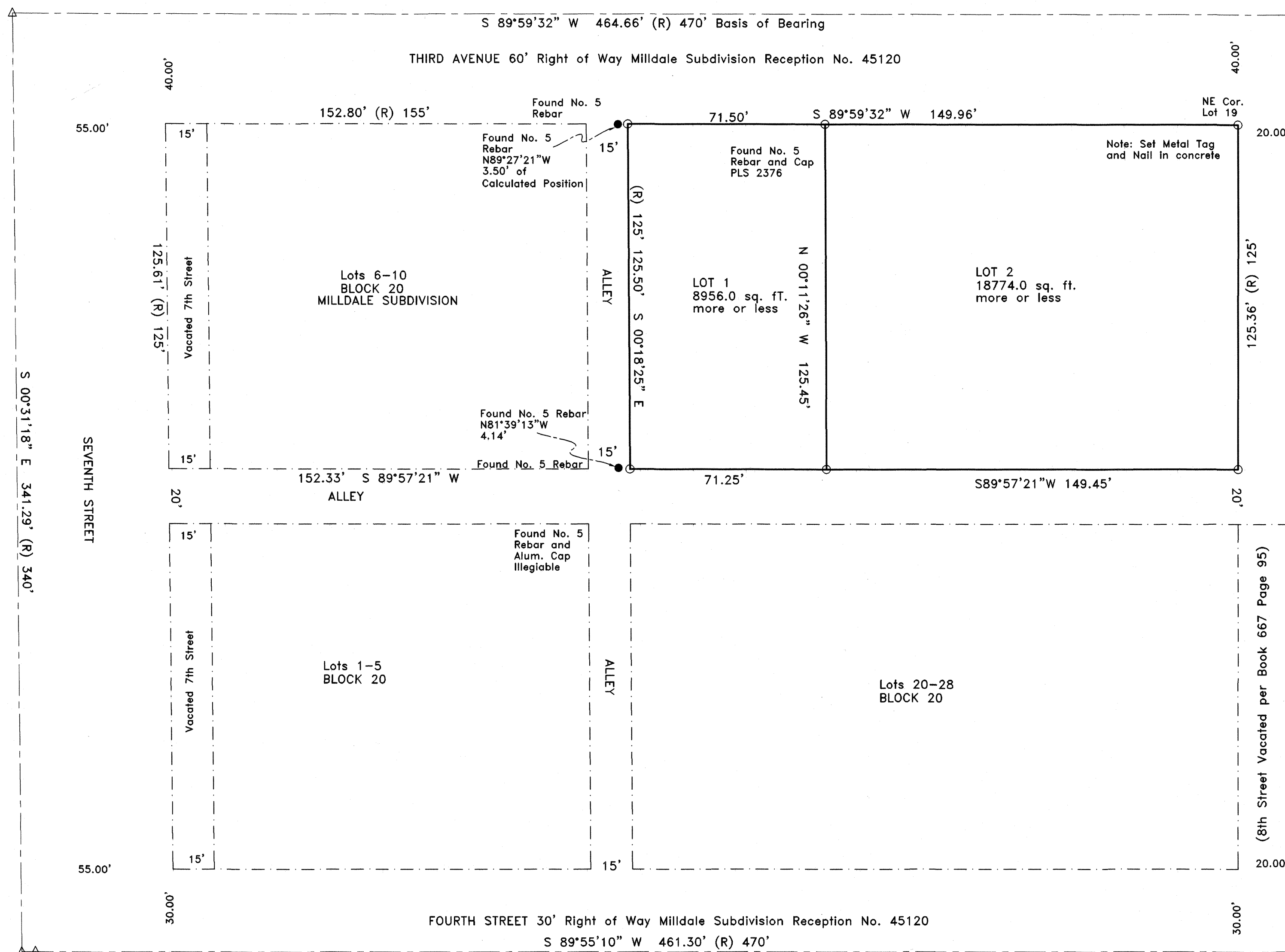
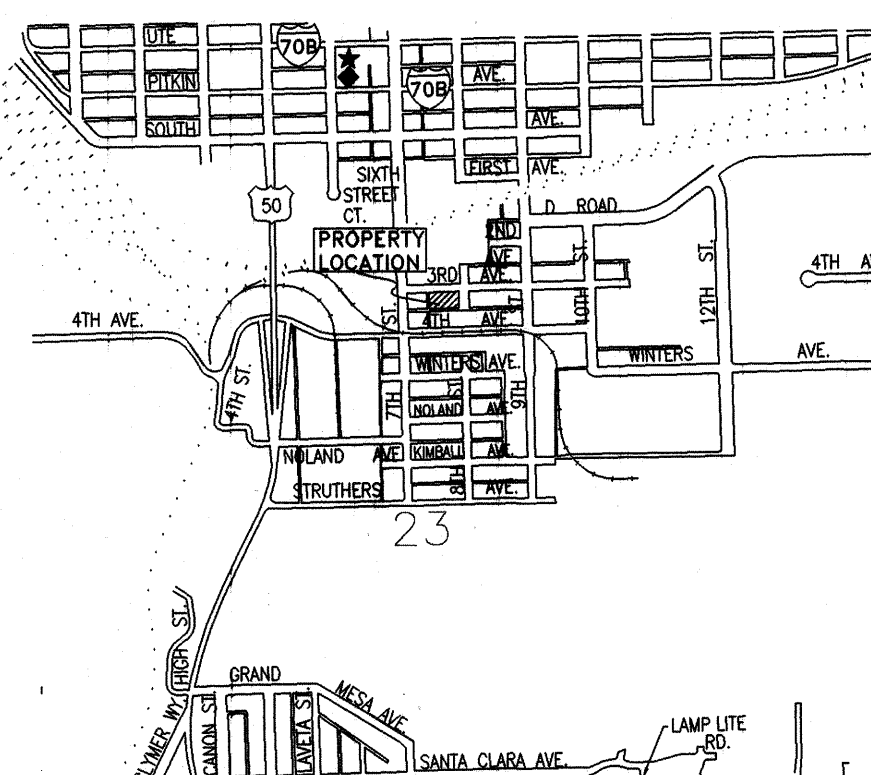
LOTS 27,730 SQ. FT. 100%
STREETS 0.0 0%
TOTAL 27,730 SQ. FT 100%

LIST OF ABBREVIATIONS

MCSM MESA COUNTY SURVEY MARKER
FND. FOUND.
+/- MORE OR LESS
SEC. SECTION
T TOWNSHIP
R RANGE
BLM BUREAU OF LAND MANAGEMENT
COR CORNER
N. S. E. W. NORTH, SOUTH, EAST OR WEST
sq. ft. SQUARE FEET
U.M. UTE MERIDIAN
PLS PROFESSIONAL LAND SURVEYOR
ALUM ALUMINUM
(R) RECORDED DISTANCE OR BEARING

VICINITY MAP

Not to Scale



LIENHOLDER'S RATIFICATION OF PLAT

The undersigned, Timberline Bank, hereby certifies that it is a holder of a security interest upon the property hereon described and does hereby join in and consent to the dedication of the land described in said dedication by the owner thereof and agrees that its security interests which are recorded in Book 5302 at Page 99, Reception No. 2611595, of the public records of Mesa County, Colorado shall be subordinated to the dedications shown hereon.

By: *[Signature]*

Title: *President*

STATE OF Colorado)

COUNTY OF Mesa) SS

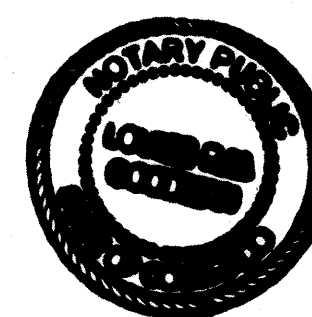
The foregoing Lienholder's Ratification of Plat was acknowledged before me by *Jeffrey Taets*

for Timberline Bank, on this 13th day of May 2013

Louise R. M. Jordan

Notary Public

My Commission expires: 5-19-2013



TITLE CERTIFICATION

We, Abstract and Title Company of Mesa County, Inc., as duly licensed in the State of Colorado, hereby certify that we have examined the Title to the hereon described property, that we find the title to the property vested to Allen J. Knowmoore, LLC, A Colorado Limited Liability Company, the current taxes have been paid; that all mortgages not satisfied or released of record nor otherwise terminated by law are shown hereon and that there are no other encumbrances of record; that all easements, reservations and rights of way of record are shown hereon. TAXES FOR 2012 PAID AS OF AUGUST 21, 2013

By: *Barbara A. Griffin*

Title Examiners signature

Printed Name BARBARA A. GRIFFIN

Executed this 21st day of August 2013

LIENHOLDER'S RATIFICATION OF PLAT

The undersigned, Wells Fargo Bank, N.A., hereby certifies that it is a holder of a security interest upon the property hereon described and does hereby join in and consent to the dedication of the land described in said dedication by the owner thereof and agrees that its security interests which are recorded in Book 5193 at Page 263, Reception No. 2583041, of the public records of Mesa County, Colorado shall be subordinated to the dedications shown hereon.

By: *Carol Skubic, VP*

For Wells Fargo Bank, N.A.

STATE OF COLORADO)

COUNTY OF Mesa) SS

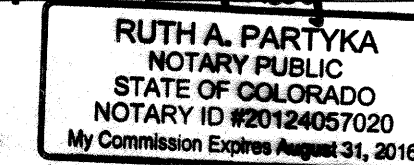
The foregoing Lienholder's Ratification of Plat was acknowledged before me by *Carol Skubic*

for Wells Fargo Bank, N.A. as its Vice President on this 17th day of May 2013

Ruth A. Partyka

Notary Public

My Commission expires: August 31, 2016



TITLE CERTIFICATION

We, Abstract and Title Company of Mesa County, Inc., as duly licensed in the State of Colorado, hereby certify that we have examined the Title to the hereon described property, that we find the title to the property vested to Knowmoore LLC, A Colorado Limited Liability Company, the current taxes have been paid; that all mortgages not satisfied or released of record nor otherwise terminated by law are shown hereon and that there are no other encumbrances of record; that all easements, reservations and rights of way of record are shown hereon. AS OF AUGUST 21, 2013 AND TAXES FOR 2012 PAID

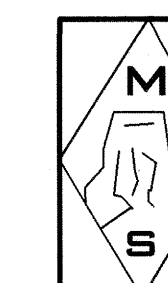
By: *Barbara A. Griffin*

Title Examiners signature

Printed Name BARBARA A. GRIFFIN

Executed this 21 day of August 2013

NOTICE: According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.



Monument Surveying Inc.

3094 Pinyon Place
Grand Junction, CO 81504
(970) 245-4189

LOFFREDA SUBDIVISION
Replat of Lots 11 through 19, Block 20,
Milldale Subdivision as Recorded at
Reception Number 45120.
Located in the NE 1/4 of Section 23
Township 1 South, Range 1 West, U.M.

DESIGNED _____ FIELD APPROVAL *BKH*

DRAWN *CDC* TECHNICAL APPROVAL _____

CHECKED *CDC* APPROVED 05/09/13

PREPARED FOR: Joe Loffreda

JOB NO.

NAK Property 2, LLC
739 3rd Ave
Grand Junction, CO 81505

RE: GENERAL PROJECT REPORT

This is a request to rezone 739 3rd Ave from Industrial General (I-2) to Commercial General (CG). Rezoning to CG allows for commercial uses not currently allowed by I-2 zoning.

This rezoning request is in line with the City of Grand Junctions Comprehensive Plan. According to the Comprehensive Plan Chapter 3: Land Use and Growth, the above address should transition from Industrial to Commercial indicated by the land use map on page 59. Therefore rezoning to CG is generally consistent with the City's plans for this area.

Furthermore, the above property is situated on the edge of the currently industrial zoned area. As this area transitions to commercial zoning it makes sense to start from the edge. Therefore, rezoning is a logical and orderly development pattern.

Lastly, there is an overall benefit to the community as expanding the uses allowed on this property will bring a wider variety of businesses to the area increasing activity and therefore visibility of other businesses.

Neighborhood Comment Meeting Notes

Topic of Discussion:

Rezoning of 739 3rd Ave

Venue:

The meeting was held digitally with Google Meets.

Attendees:

Nathan Krehbiel

Daniel West

Tim Lehrbach

Start: 1830 January 30th, 2024

End: 1847 January 30th, 2024

Notes:

Mr. Krehbiel opened the meeting with a description of proposed rezoning with the purpose of broadening the commercial uses for the building to include retail. He also reported that there is a river supply business that wants to lease retail space in the building. He also reported there is interest from the CCA to lease space in the building as well.

Mr. Lehrbach commented on the city council process reporting that there will be three meetings to pass the rezoning. He also reported that rezoning is in line with the city's comprehensive plan for the area.

Mr. Krehbiel and Mr Lehrbach both encouraged questions.

Mr. West reported via written message that his microphone was not working. He did not send any questions.

The meeting was concluded.

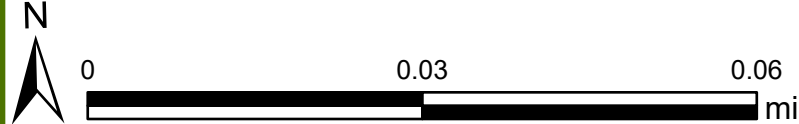
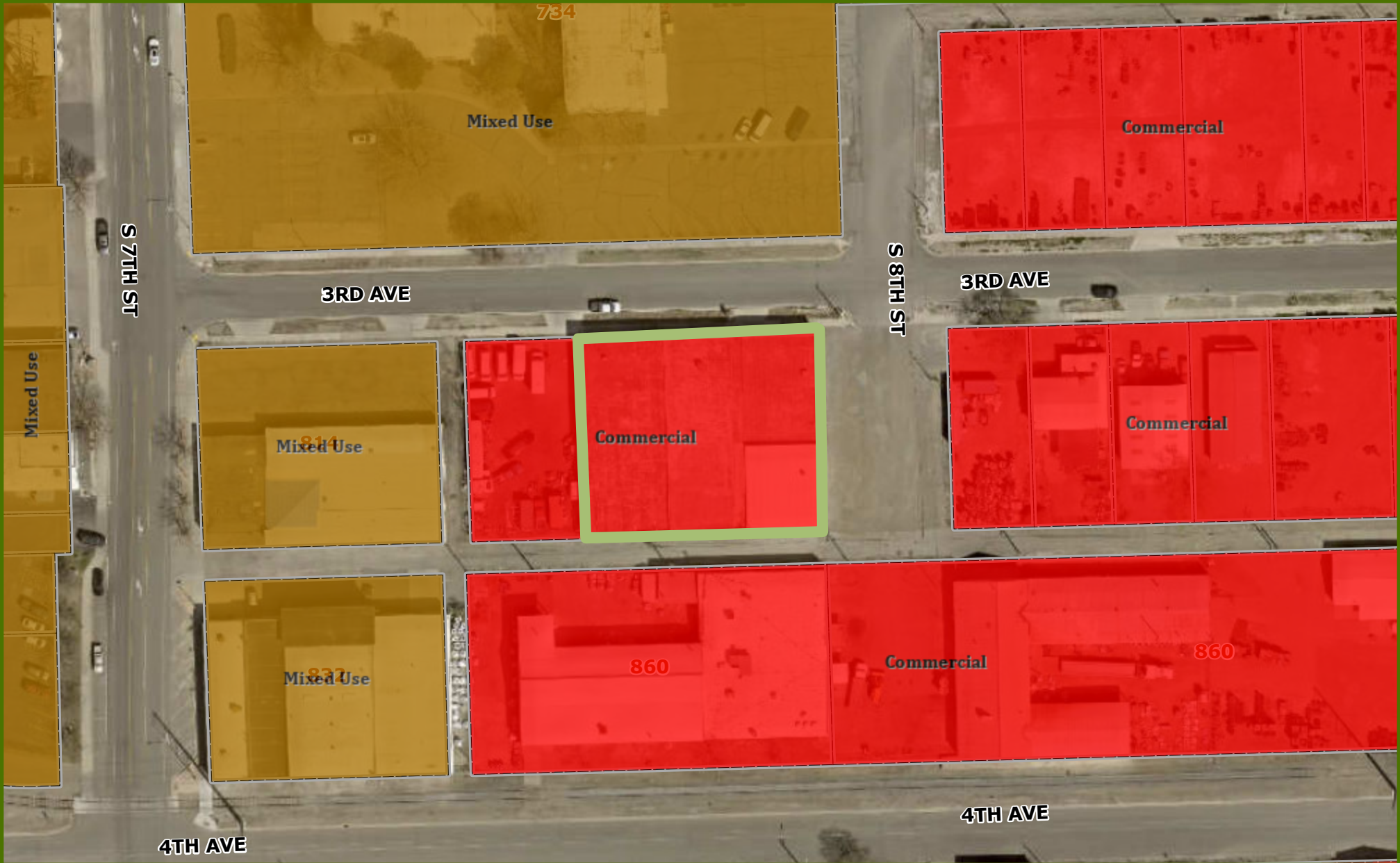
Location Map



0 0.03 0.06 mi

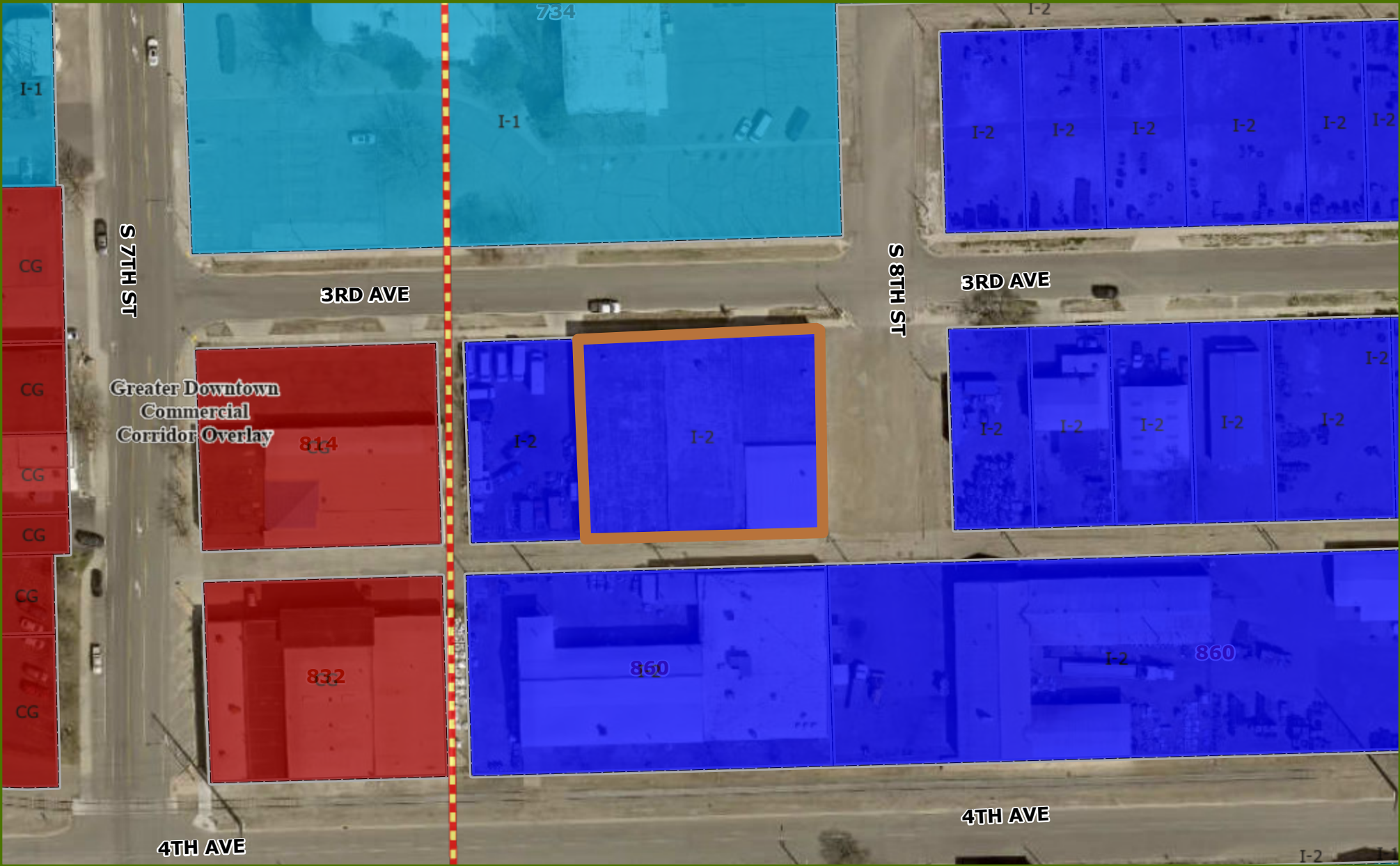
Printed: 2/21/2024
1 inch equals 83 feet
Scale: 1:1,000
Packet Page 68

Comprehensive Plan Map



Printed: 2/21/2024
1 inch equals 83 feet
Scale: 1:1,000
Packet Page 69

Existing Zoning Map



Printed: 2/21/2024
1 inch equals 83 feet
Scale: 1:1,000
Packet Page 70

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO.

**AN ORDINANCE REZONING APPROXIMATELY 0.43 ACRES FROM I-2
(INDUSTRIAL GENERAL) TO CG (COMMERCIAL GENERAL) ZONE DISTRICT
LOCATED AT 739 3RD AVENUE, GRAND JUNCTION, COLORADO**

Recitals:

The property owner, NAK Property 2, LLC, proposes a rezone 0.43 acres located at 739 3rd Avenue (Property) from I-2 (Industrial General) to CG (Commercial General).

After public notice and public hearing as required by the Grand Junction Zoning and Development Code (Code), the Grand Junction Planning Commission recommended approval of the proposed rezone for the Property changing the zoning from I-2 (Industrial General) to CG (Commercial General). The Planning Commission found that that the change is consistent with the *2020 One Grand Junction Comprehensive Plan Land Use Map* designation of Commercial and the Comprehensive Plan's goals and policies.

After public notice and public hearing, the Grand Junction City Council finds that rezoning the Property from I-2 (Industrial General) to CG (Commercial General) is consistent with the vision, intent, goals, and policies of the *Comprehensive Plan*. The City Council also finds that the request for rezone to the CG (Commercial General) zone district meets the stated criteria of Section 21.02.050(l)(3)(ii) of the Code.

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

The foregoing Recitals are incorporated and in consideration of the same the Property as described herein is hereby duly and lawfully zoned CG (Commercial General) in accordance with the Grand Junction Zoning and Development Code.

The Property is described as a parcel of land being LOT 2, LOFFREDA SUBDIVISION, same as recorded at Reception No. 3080195, situated in Northeast 1/4 of Section 23, Township 1 South, Range 1 West of the Ute Meridian, City of Grand Junction, County of Mesa, Colorado.

Said parcel being comprised of 18,774 Square Feet or 0.43 Acres, more or less.

INTRODUCED on first reading this 3rd day of April 2024 and ordered published in pamphlet form.

ADOPTED on second reading this 17th day of April 2024 and ordered published in pamphlet form.

Anna M. Stout
President of the City Council

ATTEST:

Amy Phillips
City Clerk



Grand Junction City Council

Regular Session

Item #3.a.

Meeting Date: April 3, 2024

Presented By: Ken Sherbenou, Parks and Recreation Director

Department: Parks and Recreation

Submitted By: Ken Sherbenou

Information

SUBJECT:

Agreement for Palisade Pool Operations

RECOMMENDATION:

Staff recommends approval of the agreement as proposed.

EXECUTIVE SUMMARY:

The Grand Junction Parks and Recreation's Aquatics Division was asked to manage the aquatics operations at the Town of Palisade's municipal swimming pool in exchange for reimbursement. This includes covering all direct and indirect costs of providing this service. The City and the Town of Palisade first entered into this agreement in 2009. Each year, it is updated, and costs are increased to reflect current staffing and operational needs. For 2024, the increase was 5 percent. If approved by City Council, the City will provide another year of staffing, scheduling, minor maintenance, concessions, and overall operations of public swim and swim lessons. The expertise of the Grand Junction Parks and Recreation's aquatics division enables a safe and quality operation of the Town of Palisade Pool, and the costs of providing this service are covered by the Town of Palisade.

BACKGROUND OR DETAILED INFORMATION:

Based on the terms of the agreement, the City agrees to provide all required labor for the Palisade Pool. Labor includes lifeguards, swim instructors, swim coaches, guest service representatives, and pool managers. The City pays all wages, salaries, benefits, and workers' compensation insurance premiums for the required labor for the Palisade Pool. There are operational efficiencies and economies of scale since the City also hires, trains, and staffs the Orchard Mesa Pool and the Lincoln Park Pool.

Ellis and Associates Comprehensive Aquatic Risk Management Program, employed at

Orchard Mesa Pool and Lincoln Park Pool, is applied to the Palisade Pool. This, and all other operational decisions, are made by the Grand Junction Parks and Recreation team. Furthermore, City staff provide basic daily maintenance, including but not limited to lawn mowing, facility cleaning, and pool vacuuming. This is reflected in the enclosed proposed agreement, as is the Town of Palisade's obligations. These include larger-scale maintenance of the Pool. The Town of Palisade shall repair and/or replace all mechanical and chemical systems per the agreement. The Town of Palisade will also repair and/or replace all sprinklers, fences, lights, restroom facilities, shelters, tables, benches, sign(s), trash receptacles, and any other feature, facility, or installation of the Pool.

The cost to maintain the Pool, including repairs, upkeep, and utilities, shall be the sole expense and liability of the Town of Palisade. All supplies and equipment required by the City and Ellis and Associates Comprehensive Aquatic Risk Management Program shall be purchased by the Town of Palisade. Exhibit D of the Memorandum of Understanding provides a detailed list of supplies and equipment.

FISCAL IMPACT:

The City has included expenses and offsetting revenues of \$120,220 in the 2024 Adopted Budget.

SUGGESTED MOTION:

I move to (authorize/not authorize) the execution of the Palisade Pool Agreement as proposed between the City of Grand Junction and the Town of Palisade from April 1, 2024 to September 31, 2024.

Attachments

1. Palisade Pool IGA - 2024

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2024, by and between THE TOWN OF PALISADE, hereinafter called “Town” and THE CITY OF GRAND JUNCTION, a Colorado Home Rule City, hereinafter called “City,” collectively the “Parties.”

R E C I T A L S

The Town is the owner of real property situated at 571 West 5th Street, in Palisade, Colorado, known as Palisade Swimming Pool, hereinafter called “Pool”.

The City and the Town agree that the provision of recreation programs is important to the public in general and specifically to those persons utilizing Palisade Swimming Pool.

In support of the Pool, the City and Town agree that the City will provide all lifeguards, guest service representatives, swim instructors, and pool managers at Palisade Swimming Pool.

An intergovernmental agreement for such purpose is authorized pursuant to Section 18, Article XIV of the Colorado Constitution, Section 29-1-203, C.R.S., Section 22-32-110(1)(f), C.R.S., and other applicable laws.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

1. The term of this Agreement will be for six months, commencing April 1, 2024, and ending September 31, 2024, and may be extended for an additional term upon mutual agreement.

2. The City agrees to provide all required labor for the Pool. Labor for purposes of this Agreement is lifeguards, swim instructors, swim coach, guest service representatives, and pool managers. The City will pay all wages, salaries, benefits, and workers’ compensation insurance premiums for the required labor for the Pool. The Town agrees that the standard and customary City and Ellis and Associates Comprehensive Aquatic Risk Management Program shall be applied to the Pool. City staff will provide basic daily maintenance including but not limited to lawn mowing, cleaning of facility, and pool vacuuming.

3. As owner of the Pool, Town agrees to be responsible for maintenance of the Pool. Without limiting the generality of that responsibility, the Town shall repair and/or replace all mechanical, filtration, and chemical systems. The Town will also repair and/or replace all sprinklers, fences, lights, restrooms facilities, shelters, tables, benches, sign(s), trash receptacles and any other feature, facility or installation of the Pool. The cost to maintain the Pool, including repairs, upkeep and utilities shall be the sole expense and liability of the Town. All facility compliance as it refers to Virginia Graeme Baker Pool and Spa Safety Act (15 USC 8001) is the responsibility of the Town of Palisade, as well as all 2010 ADA requirements.

All supplies and equipment required by the City and Ellis and Associates Comprehensive Aquatic Risk Management Program shall be purchased by the Town. A detailed list of supplies and equipment is provided in Exhibit D of the Memorandum of Understanding, which is attached hereto as Exhibit 1 and incorporated herein by reference.

4. The Town and City agree to promptly notify each other should the physical condition of the Pool not be conducive to the safe conduct of any programmed activity in the Pool and/or if maintenance practices may impact in any way, the scheduling of activities in the Pool.

5. The City will register all swim lesson and special event participants as well as manage all public swim entries, swim lessons, and community swim team. The City staff will collect the revenues generated by public swim, swim lessons, private parties, and special events but the Town will retain all revenues.

The Town agrees to give management of all concession operations, including staff and supply expenses, to the City with all revenues being retained by the City.

6. The City and Town agree that for purposes of this Agreement the City's annual expenses to cover all public swim and swim lessons are estimated to be \$120,220. This includes all direct staff costs, indirect staff costs with a Recreation Supervisor and Recreation Coordinator, hiring costs incurred by the City, Ellis and Associates audit fees, mileage, special equipment, and uniform costs. The City shall bill the Town a lump sum of \$120,220 in September 2024. Direct labor costs for all mutually agreed upon special events and private parties shall be charged to the Town above and beyond the \$120,220.

In the event the City's annual expense exceeds the annual amount for some unforeseen circumstances, the City and Town may renegotiate the base amount based on the City's actual cost.

7. The Town understands and agrees that it will not reserve, schedule or hold any activity at the Pool, for itself or for any other person or entity, without first communicating and coordinating with the City's Parks and Recreation designee. The final determination regarding the scheduling of such activities at the pool will be made jointly by the Town and the City.

8. The Town will set the fees and charges for Pool usage and programming in accordance with the prevailing Town rates in effect as of the date of this Agreement. All fees collected by the City shall be retained by the Town per the provisions of Paragraph 5 herein. Exhibit C of the attached Memorandum of Understanding provides the fee schedule for the Palisade Pool. In addition, it is agreed that the Town and City will allow season pass holders of the respective swimming pool facilities to utilize the pool facilities of the other jurisdiction upon presentation of the other's season pass for an additional \$1.00 charge.

9. The Parties understand and agree that both the City and the Town may be protected by and will rely on and do not waive or intend to waive by any provision of this Agreement the monetary insurance limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, 24-1-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available.

10. The Town agrees to indemnify and hold harmless the City and its officers and its employees, from and against all liability, claims, demands and expenses, including court costs and attorney fees, on account of any injury, loss or damage, which arise out of or are in any manner connected with the maintenance work to be performed by the Town under this agreement, if such injury, loss or damage is caused by, or is claimed to be caused by, the act, omission or other fault of the Town or any officer or employee of the Town.

The City agrees to indemnify and hold harmless the Town and its officers and its employees, from and against all liability, claims, demands and expenses including court costs and attorney fees, on account of any injury, loss or damage, which arise out of or are in any manner connected with the programming work to be performed by the City under this agreement, if such injury, loss or damage is caused by, or is claimed to be caused by, the act, omission, or other fault of the City or any officer or employee of the City.

11. Any persons employed by either the City or the Town for the performance of work hereunder shall be employees of the respective party and not agents or employees of the other.

12. Neither party may assign or delegate this Agreement or any portion thereof without the prior written consent of the other Party.

13. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either Party should fail or refuse to perform according to the terms of this Agreement; such party may be declared in default.

14. This Agreement may be terminated by either party for material breach, default of the Agreement by the other party not caused by any action or omission of the other party, or for no reason, by giving the other party written notice of at least thirty (30) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

15. The Parties shall reasonably comply with the applicable provisions of the American with Disabilities Act of 1990 and any and all other applicable federal, state or local laws and regulations.

16. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. Only an instrument in writing signed by the parties may amend this Agreement.

17. The traditional rule that ambiguities shall be construed against the drafter is waived.

18. Venue for any action arising out of or occurring under this Agreement shall be Palisade, Colorado. The agreement shall be controlled by, construed and interpreted in accordance with the law of Town of Palisade and State of Colorado.

TOWN OF PALISADE, COLORADO CITY OF GRAND JUNCTION, COLORADO

_____	_____	_____	_____
Janet Hawkinson	Date	Greg Caton	Date
Town Administrator		City Manager	

RATIFIED

TOWN OF PALISADE, COLORADO CITY OF GRAND JUNCTION CITY
BOARD OF TRUSTEES COUNCIL

_____	_____	_____	_____
	Date	Anna Stout, Mayor	Date

ATTEST: ATTEST:

_____	_____
	Amy Phillips, City Clerk

EXHIBIT 1

MEMORANDUM OF UNDERSTANDING
Regarding
Cooperative Operation and Provision of Life Guards
For the Palisade Swimming Pool
2024

DATE: April 1, 2024

WHEREAS, City of Grand Junction (City) and Town of Palisade (Town) have a history of cooperation; and,

WHEREAS, there are opportunities for cooperation in the area of recreation services to the benefit of citizens of both jurisdictions and the Grand Valley; and,

WHEREAS, both municipalities are desirous of cooperating and contracting for certain services associated with the provision of life guards and operation of the Palisade Swimming Pool;

NOW THEREFORE BE IT AGREED as follows:

The City of Grand Junction will:

- 1) Hire, employ, supervise and provide Ellis and Associates trained and certified Lifeguards for the Palisade Swimming Pool for the 2024 summer swimming season.
- 2) Pay all wages, benefits, pursuant to Grand Junction personnel policies and pay all workers' compensation insurance premiums for all Life Guards utilized at the Palisade Swimming Pool.
- 3) Provide uniforms for Palisade Swimming Pool staff pursuant to Exhibit A - Uniforms attached hereto.
- 4) Provide sufficient staffing to operate the Palisade Swimming Pool seven days per week from May 17, 2024 through and including September 4, 2024, with a minimum of one Pool Manager, one Guest Services Representative, and adequate number of Lifeguards during agreed operating hours.
- 5) Provide, provision, open, and staff a concession located on site and keep and retain all revenues generated from the sale of concessions at the Palisade Pool.
- 6) Answer inquires and schedule lessons and special events utilizing employees at the Palisade Pool
- 7) Plan, staff, and manage special events and lessons at the Palisade Pool.
- 8) Collect all admission and fees for pool programs at the Palisade Swimming Pool pursuant to Exhibit C – Palisade Pool Fee Schedule.
- 9) Provide sufficient on and off-site supervision of the Palisade Swimming Pool operation and personnel by the Grand Junction Aquatics Coordinator, Recreation Supervision and other Grand Junction Recreation Office Management staff.

The Town of Palisade will:

- 1) Pay \$120,220 to the City of Grand Junction in September 2024 for direct and indirect staffing costs associated with regular pool operations.
- 2) Pay the additional costs of direct staffing associated with lessons and special events at the hourly rates specified in Exhibit B.
- 3) Equip the Palisade Pool with all supplies and equipment as specified in Exhibit D – Supplies attached hereto.
- 4) Provide space at the Palisade Pool for a concession operation to be operated by the City of Grand Junction.
- 5) Pay all costs of pool repairs, maintenance, and utilities.

IT IS FURTHER AGREED AS FOLLOWS:

- 1) All admission, lesson, special events, or other fees associated with use of the Palisade Swimming Pool will be retained by the Town of Palisade.
- 2) All revenues from concessions will be retained by the City of Grand Junction.
- 3) Grand Junction and Palisade will honor each other's season pass with a \$1 additional charge at their respective pools as follows:
 - Patrons of the Palisade pool with a Grand Junction pool season pass will be allowed admission to the Palisade Pool for \$1.
 - Patrons of the Orchard Mesa and Lincoln Park pools with a Palisade pool season pass will be allowed admission to the Orchard Mesa and Lincoln Park pools for \$1.

City of Grand Junction Authorized Signature

Town of Palisade Authorized Signature

Exhibit A – Uniforms

<u>Item</u>	<u>Cost</u>
Men's Shorts	\$26.50
Women's Shorts	\$19.00
*Women's Suits	\$30.00
T-shirts	\$7.50
Whistles	\$2.90
Lanyards	\$1.85
Fanny packs	\$6.75
Hats	\$ 12.00
Visors	\$10.00

Women purchase suits. Employees choose a hat or visor. Grand Junction Parks and Recreation purchases and provides all other uniforms.

Exhibit B Staffing & Budget

Direct Staffing Cost

	<u>Managers</u>	<u>Guards</u>	<u>Instructors</u>	<u>GSR</u>
Hours Per Season	840	2703	1331	873
Rate	\$19.42	\$17.25	\$17.25	\$16.58
Cost for 15 weeks	\$16,312	\$46,626	\$22,960	\$14,474

Total Direct Staffing Cost \$100,372
*Does not include special events or private parties, these are billed separately bases on mutual agreement.

Indirect Staffing

Aquatics Coordinator Time	80 hours @ \$34.25	\$2,740
Recreation Supervisor Time	25 hours @ \$49.13	\$1,228
Management Staff Preseason	50 hours @ \$20.20	\$1010
Administration Cost	5% of direct labor	\$5,018
Mileage		\$408
Total indirect staffing cost		\$10,404

Direct Operational Cost

Uniform cost	11 guards @ 63.75 each	\$701.25
Lifeguarding audit fee	3 @ 333.75	\$1,001.25
Risk Mgt retainer fee		\$316.50
Staff hiring/training	11 @ \$675	\$7,425
Total direct operational cost		\$9,444.00

Exhibit C – Palisade Pool Fee Schedule

Daily Admission

Child (0-2 years):	Free with Paid Adult limit 2 per adult
Youth (3-17 years) & seniors (55+):	\$3
Adult (18-55):	\$4
Senior:	\$2.50
Wednesday all ages:	\$1
Twilight:	\$2.50
Sunday:	\$2.00

Season Passes

Youth:	\$70
Adult:	\$80
Senior:	\$65
Family Pass (upto 6 members):	\$185

*Pass are discounted 50% on July 1

Punch Card

20 visits, all ages:	\$55
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Group Admissions

10 or more by same group, single day: \$2.50 each

Daycare Swim	\$2.50
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Special Events/Parties

0 – 20 people:	\$80
21 to 50 people:	\$180
51 to 100 people:	\$230
101 to 125 people	\$280

Exhibit D – Required Equipment and Supplies

Supply Needs

- AED
- AED Case
- AED Rechargeable Battery
- AED Trainer
- AED Trainer Battery
- AED Pads (Adult & Pediatric)x2
- Scissors/Deodorant/Razors
- Supplemental O2
- Rescue Tubes
- V-Vac suction
- BVM (Adult/Child/Infant)x2
- Chamois Cloth Towel
- Non-rebreathers
- Trauma Bag
- Gloves Latex
- Gloves Nitride
- Bandages
- Band-Aids
- Gauze pads
- Cotton Balls
- Tape
- Hydrogen Peroxide
- CPR/AR Training Mannequins
- Vigilance Training Manikin
- Life Jackets
- CJ Wood Backboard



Grand Junction City Council

Regular Session

Item #4.a.

Meeting Date: April 3, 2024

Presented By: Ken Watkins, Fire Chief

Department: Fire

Submitted By: Gus Hendricks, Deputy Fire Chief

Information

SUBJECT:

Contract Approval for Construction Management/General Contractor Services for Construction of Fire Station 7

RECOMMENDATION:

Authorize the City Purchasing Division to enter into a contract with FCI Constructors, Inc., for Construction Management/General Contractor services for pre-construction services/construction of Fire Station 7.

EXECUTIVE SUMMARY:

The Fire Department is scheduled to construct and operate the third of three additional fire stations in 2024/2025. The City Purchasing Division has completed the selection process for Construction Management/General Contractor (CM/GC) services and has selected FCI Constructors, Inc. for this project. If approved, FCI will work with the project team, comprised of the Blythe Group and Company Architects and the City project team to design and construct this station. Once contracted, FCI will develop a Guaranteed Maximum Price (GMP) to be approved by City Council at a later date.

BACKGROUND OR DETAILED INFORMATION:

In April 2019, City of Grand Junction voters approved Measure 2B, creating a First Responder Sales Tax of .5 percent to provide funding for expansion of public safety services provided by the Fire and Police Departments. These funds are used for the construction, operation and personnel for three additional fire stations for the Fire Department. The first of these stations (Fire Station 6) was completed and began operations in November 2020. Fire Station 8 was completed and began operations in January 2023. Fire Station 7 will be the third of three fire stations built with the First Responder sales tax funds. Construction of Fire Station 7 is planned to start in the fall of 2024, with completion in the summer of 2025.

City Council Resolution No. 58-23 authorized the purchase of vacant property at 2351 H Road for the construction of Fire Station 7 and the property was closed on August 9, 2023. Blythe Group and Company Architects are completing design documents for this project based on the design used for Fire Stations 3 and 8. This design includes response and living facilities for up to seven personnel to staff one fire engine, one ambulance and any specialty apparatus housed at this location.

The City has chosen to hire a firm to provide Construction Manager/General Contractor (CM/GC) services to construct this project and to work with the Blythe Group and the City project team to complete design and facilitate construction. A formal Request for Proposal (RFP) was issued on January 12, 2024, via BidNet (an online site for government agencies to post solicitations), posted on the City's Purchasing website, sent to the Grand Junction Chamber of Commerce, the Western Colorado Contractors Association, and advertised in The Daily Sentinel. Two firms responded as shown below:

Company	Location
FCI Constructors	Grand Junction, Colorado
Shaw Construction	Grand Junction, Colorado

An evaluation team consisting of representatives from the Fire Department, General Services, Engineering, and Parks and Recreation reviewed the proposals. The evaluation team scored the submittals in accordance with weighted values in four qualifying areas and an accompanying weighted score for the fee charged by the firm. Based upon initial scoring, interviews were conducted with both firms, as were reference checks for similar projects. The conclusion of the evaluation committee is to recommend awarding FCI Constructors, Inc., for this project.

CM/GC services are priced based on pre-construction services, general conditions, and a percentage markup for overhead and profit (OH&P). OH&P is calculated as a percentage of the project's total cost and is included in the GMP. These costs from both companies are detailed below.

The committee evaluated the responsiveness to the RFP, understanding of the project, experience on similar projects, strategy and implementation plan, and fee computation for both firms.

The City has been awarded a Department of Local Affairs Energy and Mineral Impact Assistance Grant to assist with the construction of this project. Final execution of the CM/GC contract will be completed upon receipt of the DOLA grant contract later in April 2024.

Once the Guaranteed Maximum Price (GMP) is established (at a future date), it will be brought to Council for approval.

Per Section 1.1.3, Paragraph 3 of the Purchasing Manual, all solicitation documents shall remain confidential until the Purchasing Division awards the contract.

FISCAL IMPACT:

Funding for CM/GC services is included in the City's 2024 Adopted Budget for the \$7,500,000 project. In addition, the City has been awarded a Department of Local Affairs Energy and Mineral Impact Assistance Grant for \$1,000,000 to assist with the construction of this project. A GMP will be established after representatives from the City, the architect, and FCI work together on project design, engineering, and pricing, followed by approval by the City Council at a later date.

SUGGESTED MOTION:

I move to (authorize/not authorize) the Purchasing Division to enter into a contract with FCI Constructors Inc. to provide Construction Management/General Contractor services for the pre-construction services/construction of Fire Station 7 for: \$0 Pre-Construction Fee, \$382,544 (based upon \$7,500,000 budget), and 4 percent overhead and profit, on negotiated terms approved by the City Manager and in a form approved by the City Attorney.

Attachments

None



Grand Junction City Council

Regular Session

Item #4.b.

Meeting Date: April 3, 2024

Presented By: Trenton Prall, Engineering & Transportation Director

Department: Public Works - Streets

Submitted By: Isaac Greenwald, Engineering Specialist

Information

SUBJECT:

Contract for 2024 Concrete Curb, Gutter, and Sidewalk Replacement Project

RECOMMENDATION:

Authorize the City Purchasing Division to enter into a Contract with Agave Construction, LLC of Grand Junction, CO for the construction of the 2024 Curb, Gutter, and Sidewalk Replacements in the amount of \$201,056.

EXECUTIVE SUMMARY:

This construction contract with Agave Construction, LLC, if approved, will reconstruct various sections of concrete curb, gutter, sidewalks, drain pans, driveways, and ramps at various locations throughout the City.

BACKGROUND OR DETAILED INFORMATION:

This project is intended to repair various defective concrete elements within the City of Grand Junction. This project will include removing and replacing concrete curb, gutter, and sidewalk sections within the transportation network. The scope of replacements included in the contract was prioritized to address known safety issues due to potential tripping hazards on city sidewalks or settled concrete that has compromised the integrity of the adjacent street. This scope included the replacement of concrete at 18 locations throughout the City, which includes replacing approximately 932 square yards of curb, gutter, and/or sidewalk of varying thicknesses, two concrete ADA ramps, and 165 square yards of asphalt patching along the replaced concrete edges. It is intended that additional concrete replacements identified as a safety issue during the term of the contract may be added to this contract if budget allows.

A formal Invitation for Bids was issued via BidNet (an on-line site for government agencies to post solicitations), posted on the City's Purchasing website, sent to the

Grand Junction Chamber of Commerce and the Western Colorado Contractors Association, and advertised in The Daily Sentinel. One company submitted a formal bid of the following amount:

Firm	Location	Bid Amount
Agave Construction, LLC	Grand Junction, CO	\$201,056

This is the third year in a row that the City has only received bids from only one local contractor for the sidewalk replacement program and Agave Construction has been awarded the contract for the past two years, which Agave Construction completed with no performance issues. In 2023, the City did receive bids from a total of four separate companies but three of them were located outside of Mesa County (with the closest located in Montrose, Colorado) and Agave was determined to be the lowest responsible bidder. The bids received for the 2024 Curb, Gutter, and Sidewalk Replacement project from Agave Construction have the same unit prices for concrete as the 2023 contract, and appear to be commensurate with current market conditions. As such, the bid received from Agave Construction was determined to be both reasonable and responsible.

If this contract is awarded, this project is scheduled to begin in Mid-April with an expected final completion date by the middle of August.

Per Section 1.1.3 of the Purchasing Manual, all solicitation documents shall remain confidential until the Purchasing Division awards the contract.

FISCAL IMPACT:

A total of \$400,000 is included in the 2024 Adopted Budget to improve the condition of the City's sidewalks. The 2024 Curb, Gutter, and Sidewalk Replacement project for \$201,056 is just one aspect of the sidewalk improvement program. The remaining budget will be utilized for a combination of additional concrete replacements, repairs, and/or grinding services.

SUGGESTED MOTION:

I move to (authorize/not authorize) the City Purchasing Division to enter into a Contract with Agave Construction, LLC of Grand Junction, CO for the construction of the 2024 Curb, Gutter, and Sidewalk Replacements in the amount of \$201,056.

Attachments

None



Grand Junction City Council

Regular Session

Item #5.a.

Meeting Date: April 3, 2024

Presented By: Greg Caton, City Manager

Department: Finance

Submitted By: John Shaver

Information

SUBJECT:

A Resolution Authorizing the Purchase of Real Property Located at 756 Chipeta Avenue, Grand Junction, Colorado

RECOMMENDATION:

Adopt and approve Resolution , a resolution authorizing the purchase of real property located at 756 Chipeta Avenue, Grand Junction, Colorado for employee housing.

EXECUTIVE SUMMARY:

In the 2024 budget, the City Council approved \$750,000.00 for the possible purchase of real property for employee housing. The property at 756 Chipeta, if purchased for \$749,000.00, would provide three residential units and is within budget. This purchase will support the City's ongoing recruitment efforts by offering temporary housing to help new employees transition into the community. This ensures the City remains competitive in attracting and retaining quality talent.

BACKGROUND OR DETAILED INFORMATION:

The City Manager has entered into a contract with New Direction Trust Company for the purchase by the City of the real property and improvements located at 756 Chipeta Avenue, Grand Junction, Colorado. In the 2024 budget, the City Council approved \$750,000.00 for the possible purchase of real property for employee housing. If purchased, the property at 756 Chipeta would provide three residential units and is within budget. The City Council has considered the contract and, in the totality of the circumstances, deems the purchase of the property at 756 Chipeta Avenue for employee housing for \$749,000.00 to be proper.

Offering temporary employee housing emerges as a strategic solution to enhance the City's ability to attract and retain quality talent, which is particularly crucial due to the

City's location and limited local housing availability. This approach directly addresses the challenges the organization is facing, including delayed start dates, the risk of losing potential candidates, and the necessity of temporary remote work arrangements owing to the absence of immediate housing options. By providing temporary housing, new employees are afforded the opportunity to acquaint themselves with the area at their own pace and make informed decisions about long-term housing without the initial relocation stress. This benefit not only signals the City's commitment to employee well-being, making the organization more attractive to prospective employees but also facilitates quicker integration and productivity of new staff. Implementing temporary housing benefits reflects a comprehensive strategy to mitigate relocation barriers, fostering a smoother transition for employees into their professional roles and the community, thereby supporting the City's overarching goals of recruitment excellence and community integration.

FISCAL IMPACT:

The funds for the \$749,000 purchase of real property are included in the Sales Tax Capital Improvement Fund's 2024 Adopted Budget. Revenues generated from rental of the three units will be utilized to cover anticipated maintenance and utility costs associated with the property.

SUGGESTED MOTION:

I move to (adopt/deny) Resolution No.19-24, a resolution authorizing the purchase of real property located at 756 Chipeta Avenue, Grand Junction, Colorado for employee housing as provided in the contract attached to the Resolution.

Attachments

1. 756 Chipeta Avenue Grand Junction CONTRACT TO BUY AND SELL REAL ESTATE - Income-Residential
2. RES-756 Chipeta Purchase 20240325



The Christi Reece Group
Christi H. Reece
Ph: 970-589-7700

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (CBS2-6-23) (Available 8-23, Mandatory 1-24)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

**CONTRACT TO BUY AND SELL REAL ESTATE
(INCOME – RESIDENTIAL)
(☐ 1-4 Units ☐ Larger than 1-4 Units)**

Date: 3/1/2024

AGREEMENT

1. AGREEMENT. Buyer agrees to buy and Seller agrees to sell the Property described below on the terms and conditions set forth in this contract (Contract).

2. PARTIES AND PROPERTY.

2.1. Buyer. City of Grand Junction (Buyer) will take title to the Property described below as ☐ Joint Tenants ☐ Tenants In Common ☒ Other In Severalty.

2.2. No Assignability. This Contract **IS NOT** assignable by Buyer unless otherwise specified in Additional Provisions.

2.3. Seller. New Direction Trust Company (Seller) is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of Mesa, Colorado (insert legal description):

LOTS 21-22-23 BLK 49 GRAND JUNCTION

known as: 756 Chipeta Avenue, Grand Junction, CO 81501

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

2.5. Inclusions. The Purchase Price includes the following items (Inclusions):

2.5.1. Inclusions – Attached. If attached to the Property on the date of this Contract, the following items are included unless excluded under **Exclusions**: lighting, heating, plumbing, ventilating and air conditioning units, TV antennas, inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories) and garage door openers (including n/a remote controls). If checked, the following are owned by the Seller and included: ☐ **Solar Panels** ☐ **Water Softeners** ☐ **Security Systems** ☐ **Satellite Systems** (including satellite dishes). Leased items should be listed under § 2.5.7. (Leased Items). If any additional items are attached to the Property after the date of this Contract, such additional items are also included in the Purchase Price.

2.5.2. Inclusions – Not Attached. If on the Property, whether attached or not, on the date of this Contract, the following items are included unless excluded under **Exclusions**: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings and treatments, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, carbon monoxide alarms, smoke/fire detectors and all keys.

2.5.3. Other Inclusions. The following items, whether fixtures or personal property, are also included in the Purchase Price:

All furniture, accessories, appliances, and attachments on the property as of the date of this

contract. A full list to be agreed upon and attached before closing.

☐ If the box is checked, Buyer and Seller have concurrently entered into a separate agreement for additional personal property outside of this Contract.

2.5.4. Encumbered Inclusions. Any Inclusions owned by Seller (e.g., owned solar panels) must be conveyed at Closing by Seller free and clear of all taxes (except personal property and general real estate taxes for the year of Closing), liens and encumbrances, except:
n/a

2.5.5. Personal Property Conveyance. Conveyance of all personal property will be by bill of sale or other applicable legal instrument.

2.5.6. Parking and Storage Facilities. The use or ownership of the following parking facilities:
n/a; and the use or ownership of the following storage facilities:
n/a

Note to Buyer: If exact rights to the parking and storage facilities is a concern to Buyer, Buyer should investigate.

2.5.7. Leased Items. The following personal property is currently leased to Seller which will be transferred to Buyer at Closing (Leased Items):
n/a

2.6. Exclusions. The following items are excluded (Exclusions):
n/a

2.7. Water Rights/Well Rights.

☐ **2.7.1. Deeded Water Rights.** The following legally described water rights:
n/a

Any deeded water rights will be conveyed by a good and sufficient n/a deed at Closing.

☐ **2.7.2. Other Rights Relating to Water.** The following rights relating to water not included in §§ 2.7.1., 2.7.3. and 2.7.4., will be transferred to Buyer at Closing:
n/a

☐ **2.7.3. Well Rights.** Seller agrees to supply required information to Buyer about the well. Buyer understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water Well" used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer must complete a registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer must file the form with the Division within sixty days after Closing. The Well Permit # is
n/a.

☐ **2.7.4. Water Stock Certificates.** The water stock certificates to be transferred at Closing are as follows:
n/a

2.7.5. Conveyance. If Buyer is to receive any rights to water pursuant to § 2.7.2. (Other Rights Relating to Water), § 2.7.3. (Well Rights), or § 2.7.4. (Water Stock Certificates), Seller agrees to convey such rights to Buyer by executing the applicable legal instrument at Closing.

2.7.6. Water Rights Review. Buyer ☐ Does ☐ Does Not have a Right to Terminate if examination of the Water Rights is unsatisfactory to Buyer on or before the **Water Rights Examination Deadline**.

3. DATES, DEADLINES AND APPLICABILITY.

3.1. Dates and Deadlines.

Item No.	Reference	Event	Date or Deadline
1	§ 3	Time of Day Deadline	<u>n/a</u>
2	§ 4	Alternative Earnest Money Deadline	<u>MEC + 3</u>
		Title	
3	§ 8	Record Title Deadline (and Tax Certificate)	<u>3/13/2024</u> Wednesday
4	§ 8	Record Title Objection Deadline	<u>3/15/2024</u> Friday

123	5	§ 8	Off-Record Title Deadline	3/13/2024	Wednesday
124	6	§ 8	Off-Record Title Objection Deadline	3/15/2024	Friday
125	7	§ 8	Title Resolution Deadline	3/18/2024	Monday
126	8	§ 8	Third Party Right to Purchase/Approve Deadline	n/a	
127			Owners' Association		
128	9	§ 7	Association Documents Deadline	n/a	
129	10	§ 7	Association Documents Termination Deadline	n/a	
130			Seller's Disclosures		
131	11	§ 10	Seller's Property Disclosure Deadline	3/6/2024	Wednesday
132	12	§ 10	Lead-Based Paint Disclosure Deadline	3/6/2024	Wednesday
133			Loan and Credit		
134	13	§ 5	New Loan Application Deadline	n/a	
135	14	§ 5	New Loan Terms Deadline	n/a	
136	15	§ 5	New Loan Availability Deadline	n/a	
137	16	§ 5	Buyer's Credit Information Deadline	n/a	
138	17	§ 5	Disapproval of Buyer's Credit Information Deadline	n/a	
139	18	§ 5	Existing Loan Deadline	n/a	
140	19	§ 5	Existing Loan Termination Deadline	n/a	
141	20	§ 5	Loan Transfer Approval Deadline	n/a	
142	21	§ 4	Seller or Private Financing Deadline	n/a	
143			Appraisal		
144	22	§ 6	Appraisal Deadline	n/a	
145	23	§ 6	Appraisal Objection Deadline	n/a	
146	24	§ 6	Appraisal Resolution Deadline	n/a	
147			Survey		
148	25	§ 9	New ILC or New Survey Deadline	3/11/2024	Monday
149	26	§ 9	New ILC or New Survey Objection Deadline	3/13/2024	Wednesday
150	27	§ 9	New ILC or New Survey Resolution Deadline	3/15/2024	Friday
151			Inspection and Due diligence		
152	28	§ 2	Water Rights Examination Deadline	n/a	
153	29	§ 8	Mineral Rights Examination Deadline	n/a	
154	30	§ 10	Inspection Termination Deadline	3/15/2024	Friday
155	31	§ 10	Inspection Objection Deadline	3/15/2024	Friday
156	32	§ 10	Inspection Resolution Deadline	3/19/2024	Tuesday
157	33	§ 10	Property Insurance Termination Deadline	3/18/2024	Monday
158	34	§ 10	Due Diligence Documents Delivery Deadline	3/6/2024	Wednesday
159	35	§ 10	Due Diligence Documents Objection Deadline	3/11/2024	Monday
160	36	§ 10	Due Diligence Documents Resolution Deadline	3/14/2024	Thursday
161	37	§ 10	Environmental Inspection Termination Deadline	n/a	
162	38	§ 10	ADA Evaluation Termination Deadline	n/a	
163	39	§ 10	Conditional Sale Deadline	n/a	
164	40	§ 10	Lead-Based Paint Termination Deadline	3/15/2024	Friday

41	§ 11	Estoppel Statements Deadline	n/a
42	§ 11	Estoppel Statements Termination Deadline	n/a
		Closing and Possession	
43	§ 12	Closing Date	3/21/2024 Thursday
44	§ 17	Possession Date	3/21/2024 Thursday
45	§ 17	Possession Time	upon closing
46	§ 27	Acceptance Deadline Date	3/4/2024 Monday
47	§ 27	Acceptance Deadline Time	5 pm mdt
48	n/a	n/a	n/a
49	n/a	n/a	n/a

Note: If **FHA** or **VA** loan boxes are checked in § 4.5.3. (Loan Limitations), the **Appraisal** deadlines **DO NOT** apply to **FHA** insured or **VA** guaranteed loans.

3.2. Applicability of Terms. If any deadline blank in § 3.1. (Dates and Deadlines) is left blank or completed with "N/A", or the word "Deleted," such deadline is not applicable and the corresponding provision containing the deadline is deleted. Any box checked in this Contract means the corresponding provision applies. If no box is checked in a provision that contains a selection of "None", such provision means that "None" applies.

The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract. The abbreviation "N/A" as used in this Contract means not applicable.

3.3. Day; Computation of Period of Days; Deadlines.

3.3.1. Day. As used in this Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings, as applicable). Except however, if a **Time of Day Deadline** is specified in § 3.1. (Dates and Deadlines), all Objection Deadlines, Resolution Deadlines, Examination Deadlines and Termination Deadlines will end on the specified deadline date at the time of day specified in the **Time of Day Deadline**, United States Mountain Time. If **Time of Day Deadline** is left blank or "N/A" the deadlines will expire at 11:59 p.m., United States Mountain Time.

3.3.2. Computation of Period of Days. In computing a period of days (e.g., three days after MEC), when the ending date is not specified, the first day is excluded and the last day is included.

3.3.3. Deadlines. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline ☒ **Will** ☐ **Will Not** be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

4. PURCHASE PRICE AND TERMS.

4.1. Price and Terms. The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1.	Purchase Price	\$ 749,000.00	
2	§ 4.3.	Earnest Money		\$ 7,500.00
3	§ 4.5.	New Loan		\$
4	§ 4.6.	Assumption Balance		\$
5	§ 4.7.	Private Financing		\$
6	§ 4.7.	Seller Financing		\$
7	n/a	n/a		\$
8	n/a	n/a		\$
9	§ 4.4.	Cash at Closing		\$ 741,500.00
10		Total	\$ 749,000.00	\$ 749,000.00

247 **4.2. Seller Concession.** At Closing, Seller will credit to Buyer \$n/a (Seller Concession). The Seller
248 Concession may be used for any Buyer fee, cost, charge or expenditure to the extent the amount is allowed
249 by the Buyer's lender and is included in the Closing Statement or Closing Disclosure at Closing. Examples of
250 allowable items to be paid for by the Seller Concession include, but are not limited to: Buyer's closing costs,
251 loan discount points, loan origination fees, prepaid items and any other fee, cost, charge, expense or
252 expenditure. Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere
253 in this Contract.
254

255 **4.3. Earnest Money.** The Earnest Money set forth in this Section, in the form of a GOOD FUNDS,
256 will be payable to and held by Abstract and Title (Earnest Money Holder), in its trust account, on behalf of
257 both Seller and Buyer. The Earnest Money deposit must be tendered, by Buyer, with this Contract unless the
258 parties mutually agree to an **Alternative Earnest Money Deadline** for its payment. The parties authorize
259 delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at
260 or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money
261 deposits transferred to a fund established for the purpose of providing affordable housing to Colorado
262 residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money
263 deposited with the Earnest Money Holder in this transaction will be transferred to such fund.
264

265 **4.3.1. Alternative Earnest Money Deadline.** The deadline for delivering the Earnest Money, if
266 other than at the time of tender of this Contract, is as set forth as the **Alternative Earnest Money Deadline**.
267

268 **4.3.2. Disposition of Earnest Money.** If Buyer has a Right to Terminate and timely terminates,
269 Buyer is entitled to the return of Earnest Money as provided in this Contract. If this Contract is terminated as
270 set forth in § 24 and, except as provided in § 23 (Earnest Money Dispute), if the Earnest Money has not
271 already been returned following receipt of a Notice to Terminate, Seller agrees to execute and return to Buyer
272 or Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within three
273 days of Seller's receipt of such form. If Seller is entitled to the Earnest Money, and, except as provided in §
274 23 (Earnest Money Dispute), if the Earnest Money has not already been paid to Seller, following receipt of an
275 Earnest Money Release form, Buyer agrees to execute and return to Seller or Broker working with Seller,
276 written mutual instructions (e.g., Earnest Money Release form), within three days of Buyer's receipt.
277

278 **4.3.2.1. Seller Failure to Timely Return Earnest Money.** If Seller fails to timely execute
279 and return the Earnest Money Release Form, or other written mutual instructions, Seller is in default and
280 liable to Buyer as set forth in "If Seller is in Default", § 20.2. and § 21, unless Seller is entitled to the
281 Earnest Money due to a Buyer default.
282

283 **4.3.2.2. Buyer Failure to Timely Release Earnest Money.** If Buyer fails to timely execute
284 and return the Earnest Money Release Form, or other written mutual instructions, Buyer is in default and
285 liable to Seller as set forth in "If Buyer is in Default, § 20.1. and § 21, unless Buyer is entitled to the Earnest
286 Money due to a Seller Default.
287

288 **4.4. Form of Funds; Time of Payment; Available Funds.**

289 **4.4.1. Good Funds.** All amounts payable by the parties at Closing, including any loan proceeds,
290 Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado laws, including
291 electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds).
292

293 **4.4.2. Time of Payment.** All funds, including the Purchase Price to be paid by Buyer, must be
294 paid before or at Closing or as otherwise agreed in writing between the parties to allow disbursement by
295 Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT**.
296

297 **4.4.3. Available Funds.** Buyer represents that Buyer, as of the date of this Contract, ☒ **Does**
298 ☐ **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount
299 stated as Cash at Closing in § 4.1.
300

301 **4.5. New Loan.** (Omitted as inapplicable)

302 **4.6. Assumption.** (Omitted as inapplicable)

303 **4.7. Seller or Private Financing.** (Omitted as inapplicable)
304

305 **TRANSACTION PROVISIONS**

306 **5. FINANCING CONDITIONS AND OBLIGATIONS.** (Omitted as inapplicable)

307 **5.3. Credit Information.** (Omitted as inapplicable)

308 **5.4. Existing Loan Review.** (Omitted as inapplicable)

309
310
311 **6. APPRAISAL PROVISIONS.**

312 **6.1. Appraisal Definition.** An "Appraisal" is an opinion of value prepared by a licensed or certified
313 appraiser, engaged on behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised
314 Value). The Appraisal may also set forth certain lender requirements, replacements, removals or repairs
315 necessary on or to the Property as a condition for the Property to be valued at the Appraised Value.

316 **6.2. Appraised Value.** The applicable appraisal provision set forth below applies to the respective
317 loan type set forth in § 4.5.3., or if a cash transaction (i.e., no financing), § 6.2.1. applies.

318 **6.2.1. Conventional/Other.** Buyer has the right to obtain an Appraisal. If the Appraised Value is
319 less than the Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline**
320 Buyer may, on or before **Appraisal Objection Deadline**:

321 **6.2.1.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 24.1., that this Contract
322 is terminated; or

323 **6.2.1.2. Appraisal Objection.** Deliver to Seller a written objection accompanied by either a
324 copy of the Appraisal or written notice from lender that confirms the Appraised Value is less than the
325 Purchase Price (Lender Verification).

326 **6.2.1.3. Appraisal Resolution.** If an Appraisal Objection is received by Seller, on or before
327 **Appraisal Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on
328 or before **Appraisal Resolution Deadline**, this Contract will terminate on the **Appraisal Resolution**
329 **Deadline**, unless Seller receives Buyer's written withdrawal of the Appraisal Objection before such
330 termination, (i.e., on or before expiration of **Appraisal Resolution Deadline**).

331 **6.2.2. FHA.** It is expressly agreed that, notwithstanding any other provisions of this Contract, the
332 purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to
333 incur any penalty by forfeiture of Earnest Money deposits or otherwise unless the purchaser (Buyer) has
334 been given, in accordance with HUD/FHA or VA requirements, a written statement issued by the Federal
335 Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement lender, setting forth the
336 appraised value of the Property of not less than \$n/a. The purchaser (Buyer) shall have the privilege and
337 option of proceeding with the consummation of this Contract without regard to the amount of the appraised
338 valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of
339 Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the
340 Property. The purchaser (Buyer) should satisfy himself/herself/themselves that the price and condition of the
341 Property are acceptable.

342 **6.2.3. VA.** It is expressly agreed that, notwithstanding any other provisions of this Contract, the
343 purchaser (Buyer) shall not incur any penalty by forfeiture of Earnest Money or otherwise or be obligated to
344 complete the purchase of the Property described herein, if the Contract Purchase Price or cost exceeds the
345 reasonable value of the Property established by the Department of Veterans Affairs. The purchaser (Buyer)
346 shall, however, have the privilege and option of proceeding with the consummation of this Contract without
347 regard to the amount of the reasonable value established by the Department of Veterans Affairs.

348 **6.3. Lender Property Requirements.** If the lender imposes any written requirements, replacements,
349 removals or repairs, including any specified in the Appraisal (Lender Property Requirements) to be made to
350 the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract,
351 this Contract terminates on the earlier of three days following Seller's receipt of the Lender Property
352 Requirements, or Closing, unless prior to termination: (1) the parties enter into a written agreement to satisfy
353 the Lender Property Requirements; (2) the Lender Property Requirements have been completed; or (3) the
354 satisfaction of the Lender Property Requirements is waived in writing by Buyer.

355 **6.4. Cost of Appraisal.** Cost of the Appraisal to be obtained after the date of this Contract must be
356 timely paid by ☐ Buyer ☐ Seller. The cost of the Appraisal may include any and all fees paid to the
357 appraiser, appraisal management company, lender's agent or all three.

358 **7. OWNERS' ASSOCIATIONS.** This Section is applicable if the Property is located within one or more
359 Common Interest Communities and subject to one or more declarations (Association).

360 **7.1. Common Interest Community Disclosure.** **THE PROPERTY IS LOCATED WITHIN A**
361 **COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY.**
362 **THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS'**
363 **ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND**

REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

7.2. Association Documents to Buyer. Seller is obligated to provide to Buyer the Association Documents (defined below), at Seller's expense, on or before **Association Documents Deadline**. Seller authorizes the Association to provide the Association Documents to Buyer, at Seller's expense. Seller's obligation to provide the Association Documents is fulfilled upon Buyer's receipt of the Association Documents, regardless of who provides such documents.

7.3. Association Documents. Association documents (Association Documents) consist of the following:

7.3.1. All Association declarations, articles of incorporation, bylaws, articles of organization, operating agreements, rules and regulations, party wall agreements and the Association's responsible governance policies adopted under § 38-33.3-209.5, C.R.S.;

7.3.2. Minutes of: (1) the annual owners' or members' meeting and (2) any executive boards' or managers' meetings; such minutes include those provided under the most current annual disclosure required under § 38-33.3-209.4, C.R.S. (Annual Disclosure) and minutes of meetings, if any, subsequent to the minutes disclosed in the Annual Disclosure. If none of the preceding minutes exist, then the most recent minutes, if any (§§ 7.3.1. and 7.3.2., collectively, Governing Documents); and

7.3.3. List of all Association insurance policies as provided in the Association's last Annual Disclosure, including, but not limited to, property, general liability, association director and officer professional liability and fidelity policies. The list must include the company names, policy limits, policy deductibles, additional named insureds and expiration dates of the policies listed (Association Insurance Documents);

7.3.4. A list by unit type of the Association's assessments, including both regular and special assessments as disclosed in the Association's last Annual Disclosure;

7.3.5. The Association's most recent financial documents which consist of: (1) the Association's operating budget for the current fiscal year, (2) the Association's most recent annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the Association's last Annual Disclosure, (3) the results of the Association's most recent available financial audit or review, (4) list of the fees and charges (regardless of name or title of such fees or charges) that the Association's community association manager or Association will charge in connection with the Closing including, but not limited to, any fee incident to the issuance of the Association's statement of assessments (Status Letter), any rush or update fee charged for the Status Letter, any record change fee or ownership record transfer fees (Record Change Fee), fees to access documents, (5) list of all assessments required to be paid in advance, reserves or working capital due at Closing and (6) reserve study, if any (§§ 7.3.4. and 7.3.5., collectively, Financial Documents);

7.3.6. Any written notice from the Association to Seller of a "construction defect action" under § 38-33.3-303.5, C.R.S. within the past six months and the result of whether the Association approved or disapproved such action (Construction Defect Documents). Nothing in this Section limits the Seller's obligation to disclose adverse material facts as required under § 10.2. (Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition) including any problems or defects in the common elements or limited common elements of the Association property.

7.4. Conditional on Buyer's Review. Buyer has the right to review the Association Documents. Buyer has the Right to Terminate under § 24.1., on or before **Association Documents Termination Deadline**, based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective discretion. Should Buyer receive the Association Documents after **Association Documents Deadline**, Buyer, at Buyer's option, has the Right to Terminate under § 24.1. by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's receipt of the Association Documents. If Buyer does

not receive the Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions of the Association Documents as satisfactory and Buyer waives any Right to Terminate under this provision, notwithstanding the provisions of § 8.6. (Third Party Right to Purchase/Approve).

8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.

8.1. Evidence of Record Title.

☒ **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the title insurance company to furnish the owner's title insurance policy at Seller's expense. On or before **Record Title Deadline**, Seller must furnish to Buyer, a current commitment for an owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price, or if this box is checked, ☐ an **Abstract of Title** certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing.

☐ **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title Deadline**, Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price.

If neither box in § 8.1.1. or § 8.1.2. is checked, § 8.1.1. applies.

8.1.3. Owner's Extended Coverage (OEC). The Title Commitment ☒ **Will** ☐ **Will Not** contain Owner's Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (period between the effective date and time of commitment to the date and time the deed is recorded) and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid by ☒ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **Other** n/a.

Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or delete or insure over any or all of the standard exceptions for OEC. The Title Insurance Company may require a New Survey or New ILC, defined below, among other requirements for OEC. If the Title Insurance Commitment is not satisfactory to Buyer, Buyer has a right to object under § 8.7. (Right to Object to Title, Resolution).

8.1.4. Title Documents. Title Documents consist of the following: (1) copies of any plats, declarations, covenants, conditions and restrictions burdening the Property and (2) copies of any other documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in the Title Commitment furnished to Buyer (collectively, Title Documents).

8.1.5. Copies of Title Documents. Buyer must receive, on or before **Record Title Deadline**, copies of all Title Documents. This requirement pertains only to documents as shown of record in the office of the clerk and recorder in the county where the Property is located. The cost of furnishing copies of the documents required in this Section will be at the expense of the party or parties obligated to pay for the owner's title insurance policy.

8.1.6. Existing Abstracts of Title. Seller must deliver to Buyer copies of any abstracts of title covering all or any portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title Deadline**.

8.2. Record Title. Buyer has the right to review and object to the Abstract of Title or Title Commitment and any of the Title Documents as set forth in § 8.7. (Right to Object to Title, Resolution) on or before **Record Title Objection Deadline**. Buyer's objection may be based on any unsatisfactory form or content of Title Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are not received by Buyer on or before the **Record Title Deadline**, or if there is an endorsement to the Title Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment will be delivered to Buyer. Buyer has until the earlier of Closing or ten days after receipt of such documents by Buyer to review and object to: (1) any required Title Document not timely received by Buyer, (2) any change to the Abstract of Title, Title Commitment or Title Documents, or (3) any endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.2. (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.7. (Right to Object to Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all

documents required by § 8.1. (Evidence of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Abstract of Title, Title Commitment and Title Documents as satisfactory.

8.3. Off-Record Title. Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true copies of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters not shown by public records, of which Seller has actual knowledge (Off-Record Matters). This Section excludes any **New ILC** or **New Survey** governed under § 9 (New ILC, New Survey). Buyer has the right to inspect the Property to investigate if any third party has any right in the Property not shown by public records (e.g., unrecorded easement, boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2. (Record Title) and § 13 (Transfer of Title), in Buyer's sole subjective discretion, must be received by Seller on or before **Off-Record Title Objection Deadline**. If an Off-Record Matter is received by Buyer after the **Off-Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and object to such Off-Record Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.3. (Off-Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.7. (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts title subject to such Off-Record Matters and rights, if any, of third parties not shown by public records of which Buyer has actual knowledge.

8.4. Special Taxing and Metropolitan Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR. The official website for the Metropolitan District, if any, is: n/a.

8.5. Tax Certificate. A tax certificate paid for by ☒ **Seller** ☐ **Buyer**, for the Property listing any special taxing or metropolitan districts that affect the Property (Tax Certificate) must be delivered to Buyer on or before **Record Title Deadline**. If the content of the Tax Certificate is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may terminate, on or before **Record Title Objection Deadline**. Should Buyer receive the Tax Certificate after **Record Title Deadline**, Buyer, at Buyer's option, has the Right to Terminate under § 24.1. by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's receipt of the Tax Certificate. If Buyer does not receive the Tax Certificate, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the content of the Tax Certificate as satisfactory and Buyer waives any Right to Terminate under this provision. If Buyer's loan specified in §4.5.3. (Loan Limitations) prohibits Buyer from paying for the Tax Certificate, the Tax Certificate will be paid for by Seller.

8.6. Third Party Right to Purchase/Approve. If any third party has a right to purchase the Property (e.g., right of first refusal on the Property, right to purchase the Property under a lease or an option held by a third party to purchase the Property) or a right of a third party to approve this Contract, Seller must promptly submit this Contract according to the terms and conditions of such right. If the third-party holder of such right exercises its right this Contract will terminate. If the third party's right to purchase is waived explicitly or expires, or the Contract is approved, this Contract will remain in full force and effect. Seller must promptly notify Buyer in writing of the foregoing. If the third party right to purchase is exercised or approval of this Contract has not occurred on or before **Third Party Right to Purchase/Approve Deadline**, this Contract will then terminate. Seller will supply to Buyer, in writing, details of any Third Party Right to Purchase the Property on or before the Record Title Deadline.

8.7. Right to Object to Title, Resolution. Buyer has a right to object or terminate, in Buyer's sole subjective discretion, based on any title matters including those matters set forth in § 8.2. (Record Title), §

8.3. (Off-Record Title), § 8.5. (Tax Certificate) and § 13 (Transfer of Title). If Buyer exercises Buyer's rights to object or terminate based on any such title matter, on or before the applicable deadline, Buyer has the following options:

8.7.1. Title Objection, Resolution. If Seller receives Buyer's written notice objecting to any title matter (Notice of Title Objection) on or before the applicable deadline and if Buyer and Seller have not agreed to a written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on the expiration of **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title Deadline or the Off-Record Title Deadline, or both, are extended pursuant to § 8.2. (Record Title) or § 8.3. (Off-Record Title) the Title Resolution Deadline also will be automatically extended to the earlier of Closing or fifteen days after Buyer's receipt of the applicable documents; or

8.7.2. Title Objection, Right to Terminate. Buyer may exercise the Right to Terminate under § 24.1., on or before the applicable deadline, based on any title matter unsatisfactory to Buyer, in Buyer's sole subjective discretion.

8.8. Title Advisory. The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including, without limitation, boundary lines and encroachments, set-back requirements, area, zoning, building code violations, unrecorded easements and claims of easements, leases and other unrecorded agreements, water on or under the Property and various laws and governmental regulations concerning land use, development and environmental matters.

8.8.1. OIL, GAS, WATER AND MINERAL DISCLOSURE. THE SURFACE ESTATE OF THE PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE AND TRANSFER OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL ESTATE OR WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF THE PROPERTY, WHICH INTERESTS MAY GIVE THEM RIGHTS TO ENTER AND USE THE SURFACE OF THE PROPERTY TO ACCESS THE MINERAL ESTATE, OIL, GAS OR WATER.

8.8.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE PROPERTY TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE COUNTY CLERK AND RECORDER.

8.8.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES, PRODUCING WELLS, REWORKING OF CURRENT WELLS AND GAS GATHERING AND PROCESSING FACILITIES.

8.8.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL AND GAS CONSERVATION COMMISSION.

8.8.5. Title Insurance Exclusions. Matters set forth in this Section and others, may be excepted, excluded from, or not covered by the owner's title insurance policy.

8.9. Mineral Rights Review. Buyer ☐ Does ☐ Does Not have a Right to Terminate if examination of the Mineral Rights is unsatisfactory to Buyer on or before the **Mineral Rights Examination Deadline**.

9. NEW ILC, NEW SURVEY.

9.1. New ILC or New Survey. If the box is checked, (1) ☒ **New Improvement Location Certificate (New ILC)**; or, (2) ☐ **New Survey** in the form of n/a; is required and the following will apply:

9.1.1. Ordering of New ILC or New Survey. ☐ Seller ☒ Buyer will order the New ILC or New Survey. The New ILC or New Survey may also be a previous ILC or survey that is in the above-required form, certified and updated as of a date after the date of this Contract.

9.1.2. Payment for New ILC or New Survey. The cost of the New ILC or New Survey will be paid, on or before Closing, by: ☐ Seller ☒ Buyer or:

Buyers may choose to order an ILC for review

9.1.3. Delivery of New ILC or New Survey. Buyer, Seller, the issuer of the Title Commitment (or the provider of the opinion of title if an Abstract of Title) and Buyer's Agent will receive a New ILC or New Survey on or before **New ILC or New Survey Deadline**.

9.1.4. Certification of New ILC or New Survey. The New ILC or New Survey will be certified by the surveyor to all those who are to receive the New ILC or New Survey.

9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection. Buyer may select a New ILC or New Survey different than initially specified in this Contract if there is no additional cost to Seller or change to the **New ILC or New Survey Objection Deadline**. Buyer may, in Buyer's sole subjective discretion, waive a New ILC or New Survey if done prior to Seller incurring any cost for the same.

9.3. New ILC or New Survey Objection. Buyer has the right to review and object based on the New ILC or New Survey. If the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may, on or before **New ILC or New Survey Objection Deadline**, notwithstanding § 8.3. or § 13:

9.3.1. Notice to Terminate. Notify Seller in writing, pursuant to § 24.1., that this Contract is terminated; or

9.3.2. New ILC or New Survey Objection. Deliver to Seller a written description of any matter that was to be shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires Seller to correct.

9.3.3. New ILC or New Survey Resolution. If a **New ILC or New Survey Objection** is received by Seller, on or before **New ILC or New Survey Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **New ILC or New Survey Resolution Deadline**, this Contract will terminate on expiration of the **New ILC or New Survey Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the New ILC or New Survey Objection before such termination (i.e., on or before expiration of **New ILC or New Survey Resolution Deadline**).

DISCLOSURE, INSPECTION AND DUE DILIGENCE

10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE AND SOURCE OF WATER.

10.1. Seller's Property Disclosure. On or before **Seller's Property Disclosure Deadline**, Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller to Seller's actual knowledge and current as of the date of this Contract.

10.2. Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition. Seller must disclose to Buyer any adverse material facts actually known by Seller as of the date of this Contract. Seller agrees that disclosure of adverse material facts will be in writing. In the event Seller discovers an adverse material fact after the date of this Contract, Seller must timely disclose such adverse fact to Buyer. Buyer has the Right to Terminate based on the Seller's new disclosure on the earlier of Closing or five days after Buyer's receipt of the new disclosure. Except as otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an "**As Is**" condition, "**Where Is**" and "**With All Faults**."

10.3. Inspection. Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to have inspections (by one or more third parties, personally or both) of the Property, Leased Items, and Inclusions (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions and Leased Items, (3) service to the Property (including utilities and communication services), systems and components of the Property (e.g., heating and plumbing), (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer's sole subjective discretion, Buyer may:

10.3.1. Inspection Termination. On or before the **Inspection Termination Deadline**, notify Seller in writing, pursuant to § 24.1., that this Contract is terminated due to any unsatisfactory condition, provided the Buyer did not previously deliver an Inspection Objection. Buyer's Right to Terminate under this provision expires upon delivery of an Inspection Objection to Seller pursuant to § 10.3.2.; or

10.3.2. Inspection Objection. On or before the **Inspection Objection Deadline**, deliver to Seller a written description of any unsatisfactory condition that Buyer requires Seller to correct.

10.3.3. Inspection Resolution. If an Inspection Objection is received by Seller, on or before **Inspection Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination (i.e., on or before expiration of **Inspection Resolution Deadline**). Nothing in this provision prohibits the Buyer and the Seller from mutually terminating this Contract before the Inspection Resolution Deadline passes by executing an Earnest Money Release.

10.4. Damage, Liens and Indemnity. Buyer, except as otherwise provided in this Contract or other written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at Buyer's request (Work) and must pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to defend against any such liability, damage, cost or expense, or to enforce this Section, including Seller's reasonable attorney fees, legal fees and expenses. The provisions of this Section survive the termination of this Contract. This § 10.4. does not apply to items performed pursuant to an Inspection Resolution.

10.5. Insurability. Buyer has the Right to Terminate under § 24.1., on or before **Property Insurance Termination Deadline**, based on any unsatisfactory provision of the availability, terms and conditions and premium for property insurance (Property Insurance) on the Property, in Buyer's sole subjective discretion.

10.6. Due Diligence.

10.6.1. Due Diligence Documents. Seller agrees to deliver copies of the following documents and information pertaining to the Property and Leased Items (Due Diligence Documents) to Buyer on or before **Due Diligence Documents Delivery Deadline**:

10.6.1.1. Occupancy Agreements. All current leases, including any amendments or other occupancy agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the Property that survive Closing are as follows (Leases):

n/a

10.6.1.2. Leased Items Documents. If any lease of personal property (§ 2.5.7., Leased Items) will be transferred to Buyer at Closing, Seller agrees to deliver copies of the leases and information pertaining to the personal property to Buyer on or before **Due Diligence Documents Delivery Deadline**. Buyer ☐ **Will** ☐ **Will Not** assume the Seller's obligations under such leases for the Leased Items (§ 2.5.7., Leased Items).

10.6.1.3. Encumbered Inclusions Documents. If any Inclusions owned by Seller are encumbered pursuant to § 2.5.4. (Encumbered Inclusions) above, Seller agrees to deliver copies of the evidence of debt, security and any other documents creating the encumbrance to Buyer on or before **Due Diligence Documents Delivery Deadline**. Buyer ☐ **Will** ☐ **Will Not** assume the debt on the Encumbered Inclusions (§ 2.5.4., Encumbered Inclusions).

10.6.1.4. Other Documents. If the respective box is checked, Seller agrees to additionally deliver copies of the following:

☒ **10.6.1.4.1.** All contracts relating to the operation, maintenance and management of the Property;

☐ **10.6.1.4.2.** Property tax bills for the last n/a years;

☐ **10.6.1.4.3.** As-built construction plans to the Property and the tenant improvements, including architectural, electrical, mechanical and structural systems; engineering reports; and permanent Certificates of Occupancy, to the extent now available;

☒ **10.6.1.4.4.** A list of all Inclusions to be conveyed to Buyer;

☐ **10.6.1.4.5.** Operating statements for the past n/a years;

☐ **10.6.1.4.6.** A rent roll accurate and correct to the date of this Contract;

☐ **10.6.1.4.7.** A schedule of any tenant improvement work Seller is obligated to complete but has not yet completed and capital improvement work either scheduled or in process on the date of this

Contract;

☒ **10.6.1.4.8.** All insurance policies pertaining to the Property and copies of any claims which have been made for the past n/a years;

☒ **10.6.1.4.9.** Soils reports, surveys and engineering reports or data pertaining to the Property (if not delivered earlier under § 8.3.);

☒ **10.6.1.4.10.** Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results, advisories and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or other toxic, hazardous or contaminated substances and/or underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller warrants that no such reports are in Seller's possession or known to Seller;

☒ **10.6.1.4.11.** Any *Americans with Disabilities Act* reports, studies or surveys concerning the compliance of the Property with said Act;

☒ **10.6.1.4.12.** All permits, licenses and other building or use authorizations issued by any governmental authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations, if any; and

☐ **10.6.1.4.13.** Other:

n/a

10.6.2. Due Diligence Documents Review and Objection. Buyer has the right to review and object based on the Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are unsatisfactory, in Buyer's sole subjective discretion, Buyer may, on or before **Due Diligence Documents Objection Deadline**:

10.6.2.1. Notice to Terminate. Notify Seller in writing, pursuant to § 24.1., that this Contract is terminated; or

10.6.2.2. Due Diligence Documents Objection. Deliver to Seller a written description of any unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

10.6.2.3. Due Diligence Documents Resolution. If a Due Diligence Documents Objection is received by Seller, on or before **Due Diligence Documents Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Due Diligence Documents Resolution Deadline**, this Contract will terminate on **Due Diligence Documents Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Due Diligence Documents Objection before such termination (i.e., on or before expiration of **Due Diligence Documents Resolution Deadline**).

10.6.3. Zoning. Buyer has the Right to Terminate under § 24.1., on or before **Due Diligence Documents Objection Deadline**, based on any unsatisfactory zoning and any use restrictions imposed by any governmental agency with jurisdiction over the Property, in Buyer's sole subjective discretion.

10.6.4. Due Diligence – Environmental, ADA. Buyer has the right to obtain environmental inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable. ☐ Seller ☐ Buyer will order or provide **Phase I Environmental Site Assessment, Phase II Environmental Site Assessment** (compliant with most current version of the applicable ASTM E1527 standard practices for Environmental Site Assessments) and/or n/a, at the expense of ☐ Seller ☐ Buyer (Environmental Inspection). In addition, Buyer, at Buyer's expense, may also conduct an evaluation whether the Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and evaluations must be conducted at such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's tenants' business uses of the Property, if any.

If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the **Environmental Inspection Termination Deadline** will be extended by n/a days (Extended Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection Deadline extends beyond the **Closing Date**, the **Closing Date** will be extended a like period of time. In such event, ☐ Seller ☐ Buyer must pay the cost for such Phase II Environmental Site Assessment.

Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this § 10.6.4., Buyer has the Right to Terminate under § 24.1., on or before **Environmental Inspection Termination Deadline**, or if applicable, the Extended Environmental Inspection Objection Deadline, based on any unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.

Buyer has the Right to Terminate under § 24.1., on or before **ADA Evaluation Termination Deadline**, based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

10.7. Conditional Upon Sale of Property. This Contract is conditional upon the sale and closing of

that certain property owned by Buyer and commonly known as n/a. Buyer has the Right to Terminate under § 24.1. effective upon Seller's receipt of Buyer's Notice to Terminate on or before **Conditional Sale Deadline** if such property is not sold and closed by such deadline. This Section is for the sole benefit of Buyer. If Seller does not receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any Right to Terminate under this provision.

10.8. Source of Potable Water (Residential Land and Residential Improvements Only). Buyer ☐ Does ☒ Does Not acknowledge receipt of a copy of Seller's Property Disclosure or Source of Water Addendum disclosing the source of potable water for the Property. ☒ There is **No Well**. Buyer ☐ Does ☐ Does Not acknowledge receipt of a copy of the current well permit.

Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.

10.9. Existing Leases; Modification of Existing Leases; New Leases. Seller states that none of the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent abatements except as disclosed in the Lease or other writing received by Buyer. Seller will not amend, alter, modify, extend or cancel any of the Leases nor will Seller enter into any new leases affecting the Property without the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed.

10.10. Lead-Based Paint.

10.10.1. Lead-Based Paint Disclosure. Unless exempt, if the Property includes one or more residential dwellings constructed or a building permit was issued prior to January 1, 1978, for the benefit of Buyer, Seller and all required real estate licensees must sign and deliver to Buyer a completed Lead-Based Paint Disclosure (Sales) form on or before the **Lead-Based Paint Disclosure Deadline**. If Buyer does not timely receive the Lead-Based Paint Disclosure, Buyer may waive the failure to timely receive the Lead-Based Paint Disclosure, or Buyer may exercise Buyer's Right to Terminate under § 24.1. by Seller's receipt of Buyer's Notice to Terminate on or before the expiration of the **Lead-Based Paint Termination Deadline**.

10.10.2. Lead-Based Paint Assessment. If Buyer elects to conduct or obtain a risk assessment or inspection of the Property for the presence of Lead-Based Paint or Lead-Based Paint hazards, Buyer has a Right to Terminate under § 24.1. by Seller's receipt of Buyer's Notice to Terminate on or before the expiration of the **Lead-Based Paint Termination Deadline**. Buyer may elect to waive Buyer's right to conduct or obtain a risk assessment or inspection of the Property for the presence of Lead-Based Paint or Lead-Based Paint hazards. If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the condition of the Property relative to any Lead-Based Paint as satisfactory and Buyer waives any Right to Terminate under this provision.

10.11. Carbon Monoxide Alarms. Note: If the improvements on the Property have a fuel-fired heater or appliance, a fireplace, or an attached garage and include one or more rooms lawfully used for sleeping purposes (Bedroom), the parties acknowledge that Colorado law requires that Seller assure the Property has an operational carbon monoxide alarm installed within fifteen feet of the entrance to each Bedroom or in a location as required by the applicable building code.

10.12. Methamphetamine Disclosure. If Seller knows that methamphetamine was ever manufactured, processed, cooked, disposed of, used or stored at the Property, Seller is required to disclose such fact. No disclosure is required if the Property was remediated in accordance with state standards and other requirements are fulfilled pursuant to § 25-18.5-102, C.R.S., Buyer further acknowledges that Buyer has the right to engage a certified hygienist or industrial hygienist to test whether the Property has ever been used as a methamphetamine laboratory. Buyer has the Right to Terminate under § 24.1., upon Seller's receipt of Buyer's written Notice to Terminate, notwithstanding any other provision of this Contract, based on Buyer's test results that indicate the Property has been contaminated with methamphetamine, but has not been remediated to meet the standards established by rules of the State Board of Health promulgated pursuant to § 25-18.5-102, C.R.S. Buyer must promptly give written notice to Seller of the results of the test.

10.13. Radon Disclosure. THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT STRONGLY RECOMMENDS THAT ALL HOME BUYERS HAVE AN INDOOR RADON TEST PERFORMED BEFORE PURCHASING RESIDENTIAL REAL PROPERTY AND RECOMMENDS HAVING THE RADON LEVELS MITIGATED IF ELEVATED RADON CONCENTRATIONS ARE FOUND. ELEVATED RADON CONCENTRATIONS CAN BE REDUCED BY A RADON MITIGATION

PROFESSIONAL.

RESIDENTIAL REAL PROPERTY MAY PRESENT EXPOSURE TO DANGEROUS LEVELS OF INDOOR RADON GAS THAT MAY PLACE THE OCCUPANTS AT RISK OF DEVELOPING RADON-INDUCED LUNG CANCER. RADON, A CLASS A HUMAN CARCINOGEN, IS THE LEADING CAUSE OF LUNG CANCER IN NONSMOKERS AND THE SECOND LEADING CAUSE OF LUNG CANCER OVERALL. THE SELLER OF RESIDENTIAL REAL PROPERTY IS REQUIRED TO PROVIDE THE BUYER WITH ANY KNOWN INFORMATION ON RADON TEST RESULTS OF THE RESIDENTIAL REAL PROPERTY.

AN ELECTRONIC COPY OF THE MOST RECENT BROCHURE PUBLISHED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT IN ACCORDANCE WITH C.R.S. §25-11-114(2)(A) THAT PROVIDES ADVICE ABOUT RADON IN REAL ESTATE TRANSACTIONS IS AVAILABLE AT: [HTTPS://CDPHE.COLORADO.GOV/RADON-AND-REAL-ESTATE](https://cdphe.colorado.gov/radon-and-real-estate).

11. TENANT ESTOPPEL STATEMENTS.

11.1. Estoppel Statements Conditions. Buyer has the right to review and object to any Estoppel Statements. Seller must request from all tenants of the Property and if received by Seller, deliver to Buyer on or before **Estoppel Statements Deadline**, statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant at the Property (Estoppel Statement) attached to a copy of the Lease stating:

11.1.1. The commencement date of the Lease and scheduled termination date of the Lease;

11.1.2. That said Lease is in full force and effect and that there have been no subsequent modifications or amendments;

11.1.3. The amount of any advance rentals paid, rent concessions given and deposits paid to Seller;

11.1.4. The amount of monthly (or other applicable period) rental paid to Seller;

11.1.5. That there is no default under the terms of said Lease by landlord or occupant; and

11.1.6. That the Lease to which the Estoppel Statement is attached is a true, correct and complete copy of the Lease demising the premises it describes.

11.2. Seller Estoppel Statement. In the event Seller does not receive from all tenants of the Property a completed signed Estoppel Statement, Seller agrees to complete and execute an Estoppel Statement setting forth the information and documents required §11.1. above and deliver the same to Buyer on or before **Estoppel Statements Deadline**.

11.3. Estoppel Statements Termination. Buyer has the Right to Terminate under § 24.1., on or before **Estoppel Statements Termination Deadline**, based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective discretion, or if Seller fails to deliver the Estoppel Statements on or before **Estoppel Statements Deadline**. Buyer also has the unilateral right to waive any unsatisfactory Estoppel Statement.

12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

12.1. Closing Documents and Closing Information. Seller and Buyer will cooperate with the Closing Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their designees. If Buyer is obtaining a loan to purchase the Property, Buyer acknowledges Buyer's lender is required to provide the Closing Company, in a timely manner, all required loan documents and financial information concerning Buyer's loan. Buyer and Seller will furnish any additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer and Seller will sign and complete all customary or reasonably required documents at or before Closing.

12.2. Closing Instructions. Colorado Real Estate Commission's Closing Instructions ☐ **Are** ☒ **Are Not** executed with this Contract.

12.3. Closing. Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date specified as the **Closing Date** or by mutual agreement at an earlier date. At Closing, Seller agrees to deliver a set of keys for the Property to Buyer. The hour and place of Closing will be as designated by **Abstract and Title**.

12.4. Disclosure of Settlement Costs. Buyer and Seller acknowledge that costs, quality and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

12.5. Assignment of Leases. Seller must assign to Buyer all Leases at Closing that will continue after Closing and Buyer must assume Seller's obligations under such Leases. Further, Seller must transfer to Buyer all Leased Items and assign to Buyer such leases for the Leased Items accepted by Buyer pursuant to § 2.5.7. (Leased Items).

13. TRANSFER OF TITLE. Subject to Buyer's compliance with the terms and provisions of this Contract, including the tender of any payment due at Closing, Seller must execute and deliver the following good and sufficient deed to Buyer, at Closing: ☐ special warranty deed ☒ general warranty deed ☐ bargain and sale deed ☐ quit claim deed ☐ personal representative's deed ☐ n/a deed. Seller, provided another deed is not selected, must execute and deliver a good and sufficient special warranty deed to Buyer, at Closing.

Unless otherwise specified in § 29 (Additional Provisions), if title will be conveyed using a special warranty deed or a general warranty deed, title will be conveyed "subject to statutory exceptions" as defined in §38-30-113(5)(a), C.R.S.

14. PAYMENT OF LIENS AND ENCUMBRANCES. Unless agreed to by Buyer in writing, any amounts owed on any liens or encumbrances securing a monetary sum against the Property and Inclusions, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not, and previous years' taxes, will be paid at or before Closing by Seller from the proceeds of this transaction or from any other source.

15. CLOSING COSTS, FEES, ASSOCIATION STATUS LETTER AND DISBURSEMENTS, TAXES AND WITHHOLDING.

15.1. Closing Costs. Buyer and Seller must pay, in Good Funds, their respective closing costs and all other items required to be paid at Closing, except as otherwise provided herein. However, if Buyer's loan specified in §4.5.3. (Loan Limitations) prohibits Buyer from paying for any of the fees contained in this Section, the fees will be paid for by Seller.

15.2. Closing Services Fee. The fee for real estate closing services must be paid at Closing by ☐ Buyer ☐ Seller ☒ One-Half by Buyer and One-Half by Seller ☐ Other n/a.

15.3. Association Fees and Required Disbursements. At least fourteen days prior to **Closing Date**, Seller agrees to promptly request that the Closing Company or the Association deliver to Buyer a current Status Letter, if applicable. Any fees associated with or specified in the Status Letter will be paid as follows:

15.3.1. Status Letter Fee. Any fee incident to the issuance of Association's Status Letter must be paid by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.3.2. Record Change Fee. Any Record Change Fee must be paid by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.3.3. Assessments, Reserves or Working Capital. All assessments required to be paid in advance (other than Association Assessments as defined in § 16.2. (Association Assessments), reserves or working capital due at Closing must be paid by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.3.4. Other Fees. Any other fee listed in the Status Letter as required to be paid at Closing will be paid by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.4. Local Transfer Tax. Any Local Transfer Tax must be paid at Closing by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.5. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction must be paid when due by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.6. Private Transfer Fee. Any private transfer fees and other fees due to a transfer of the Property, payable at Closing, such as community association fees, developer fees and foundation fees, must be paid at Closing by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.7. Water Transfer Fees. Water Transfer Fees can change. The fees, as of the date of this Contract, do not exceed \$n/a for:

☐ Water Stock/Certificates ☐ Water District

☐ Augmentation Membership ☐ Small Domestic Water Company ☐ n/a

and must be paid at Closing by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.8. Utility Transfer Fees. Utility transfer fees can change. Any fees to transfer utilities from Seller to

Buyer must be paid by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☒ N/A.

15.9. FIRPTA and Colorado Withholding.

15.9.1. FIRPTA. The Internal Revenue Service (IRS) may require a substantial portion of the Seller's proceeds be withheld after Closing when Seller is a foreign person. If required withholding does not occur, the Buyer could be held liable for the amount of the Seller's tax, interest and penalties. If the box in this Section is checked, Seller represents that Seller ☐ **IS** a foreign person for purposes of U.S. income taxation. If the box in this Section is not checked, Seller represents that Seller is not a foreign person for purposes of U.S. income taxation. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably requested documents to verify Seller's foreign person status. If withholding is required, Seller authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

15.9.2. Colorado Withholding. The Colorado Department of Revenue may require a portion of the Seller's proceeds be withheld after Closing when Seller will not be a Colorado resident after Closing, if not otherwise exempt. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably requested documents to verify Seller's status. If withholding is required, Seller authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

16. PRORATIONS AND ASSOCIATION ASSESSMENTS.

16.1. Prorations. The following will be prorated to the **Closing Date**, except as otherwise provided:

16.1.1. Taxes. Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of Closing, based on

☐ **Taxes for the Calendar Year Immediately Preceding Closing**

☒ **Most Recent Mill Levy and Most Recent Assessed Valuation**, adjusted by any applicable qualifying seniors property tax exemption, qualifying disabled veteran exemption or ☐ **Other**

n/a

16.1.2. Rents. Rents based on ☐ **Rents Actually Received** ☐ **Accrued**. At Closing, Seller will transfer or credit to Buyer the security deposits for all Leases assigned to Buyer, or any remainder after lawful deductions, and notify all tenants in writing of such transfer and of the transferee's name and address.

16.1.3. Other Prorations. Water and sewer charges, propane, interest on continuing loan and

n/a

16.1.4. Final Settlement. Unless otherwise specified in Additional Provisions, these prorations are final.

16.2. Association Assessments. Current regular Association assessments and dues (Association Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special assessment assessed prior to **Closing Date** by the Association will be the obligation of ☐ **Buyer** ☐ **Seller**. Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller unless otherwise specified in Additional Provisions. Seller represents there are no unpaid regular or special assessments against the Property except the current regular assessments and

n/a

Association Assessments are subject to change as provided in the Governing Documents.

17. POSSESSION. Possession of the Property and Inclusions will be delivered to Buyer on **Possession Date at Possession Time**, subject to the Leases as set forth in § 10.6.1.1. and, if applicable, any Post-Closing Occupancy Agreement.

If Seller, after Closing occurs, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable to Buyer, notwithstanding § 20.2. (If Seller is in Default), for payment of \$ n/a per day (or any part of a day notwithstanding § 3.3., Day) from **Possession Date** and **Possession Time** until possession is delivered.

Buyer represents that Buyer will occupy the Property as Buyer's principal residence unless the following box is checked, then Buyer ☒ **Does Not** represent that Buyer will occupy the Property as Buyer's principal

residence.

☐ If the box is checked, Buyer and Seller agree to execute a Post-Closing Occupancy Agreement.

General Provisions

18. CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION; AND WALK-THROUGH. Except as otherwise provided in this Contract, the Property, Inclusions or both will be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

18.1. Causes of Loss, Insurance. In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing (Property Damage) in an amount of not more than ten percent of the total Purchase Price and if the repair of the damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 24.1., on or before **Closing Date**, if the Property is not repaired before **Closing Date**, or if the damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received the insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** to have the Property repaired prior to Closing or, at the option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's insurance company and Buyer's lender; or (2) the parties may enter into a written agreement prepared by the parties or their attorney requiring the Seller to escrow at Closing from Seller's sale proceeds the amount Seller has received and will receive due to such damage, not exceeding the total Purchase Price, plus the amount of any deductible that applies to the insurance claim.

18.2. Damage, Inclusions and Services. Should any Inclusion or service (including utilities and communication services), system, component or fixture of the Property (collectively Service) (e.g., heating or plumbing), fail or be damaged between the date of this Contract and Closing or possession, whichever is earlier, then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or replaced on or before Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 24.1., on or before **Closing Date**, or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair or replacement of such Inclusion or Service. Such credit must not exceed the Purchase Price. If Buyer receives such a credit, Seller's right for any claim against the Association, if any, will survive Closing.

18.3. Condemnation. In the event Seller receives actual notice prior to Closing that a pending condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 24.1., on or before **Closing Date**, based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer is entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of the Property or Inclusions, but such credit will not include relocation benefits or expenses or exceed the Purchase Price.

18.4. Walk-Through and Verification of Condition. Buyer, upon reasonable notice, has the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

18.5. Home Warranty. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover the repair or replacement of such Inclusions.

19. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this Contract, Buyer and Seller acknowledge that their respective broker has advised that this Contract has important legal consequences and has recommended: (1) legal examination of title; (2) consultation with legal and tax or other counsel before signing this Contract as this Contract may have important legal and tax implications; (3) to consult with their own attorney if Water Rights, Mineral Rights or Leased Items are included or excluded in the sale; and

(4) to consult with legal counsel if there are other matters in this transaction for which legal counsel should be engaged and consulted. Such consultations must be done timely as this Contract has strict time limits, including deadlines, that must be complied with.

20. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence for all dates and deadlines in this Contract. This means that all dates and deadlines are strict and absolute. If any payment due, including Earnest Money, is not paid, honored or tendered when due, or if any obligation is not performed timely as provided in this Contract or waived, the non-defaulting party has the following remedies:

20.1. If Buyer is in Default:

☐ **20.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money is not a penalty, and the parties agree the amount is fair and reasonable. Seller may recover such additional damages as may be proper. Alternatively, Seller may elect to treat this Contract as being in full force and effect and Seller has the right to specific performance or damages, or both.

20.1.2. Liquidated Damages, Applicable. This § 20.1.2. applies unless the box in § 20.1.1. is checked. Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money amount specified in § 4.1. is LIQUIDATED DAMAGES and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4. and 21), such amount is SELLER'S ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

20.2. If Seller is in Default:

20.2.1. Specific Performance, Damages or Both. Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received hereunder will be returned to Buyer and Buyer may recover such damages as may be proper. Alternatively, in addition to the per diem in § 17 (Possession) for failure of Seller to timely deliver possession of the Property after Closing occurs, Buyer may elect to treat this Contract as being in full force and effect and Buyer has the right to specific performance or damages, or both.

20.2.2. Seller's Failure to Perform. In the event Seller fails to perform Seller's obligations under this Contract, to include, but not limited to, failure to timely disclose Association violations known by Seller, failure to perform any replacements or repairs required under this Contract or failure to timely disclose any known adverse material facts, Seller remains liable for any such failures to perform under this Contract after Closing. Buyer's rights to pursue the Seller for Seller's failure to perform under this Contract are reserved and survive Closing.

21. LEGAL FEES, COST AND EXPENSES. Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and expenses.

22. MEDIATION. If a dispute arises relating to this Contract (whether prior to or after Closing) and is not resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must agree to the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at that party's last known address (physical or electronic as provided in § 26). Nothing in this Section prohibits either party from filing a lawsuit and recording a *lis pendens* affecting the Property, before or after the date of written notice requesting mediation. This Section will not alter any date in this Contract, unless otherwise agreed.

23. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder must release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1)

wait for any proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction (Earnest Money Holder is entitled to recover court costs and reasonable attorney and legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit and has not interpleaded the monies at the time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of § 22 (Mediation). This Section will survive cancellation or termination of this Contract.

24. TERMINATION.

24.1. Right to Terminate. If a party has a right to terminate, as provided in this Contract (Right to Terminate), the termination is effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right to Terminate accepts the specified matter, document or condition as satisfactory and waives the Right to Terminate under such provision.

24.2. Effect of Termination. In the event this Contract is terminated, and all Earnest Money received hereunder is timely returned to Buyer, the parties are relieved of all obligations hereunder, subject to §§ 10.4. and 21.

25. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS. This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject hereof and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by its terms, exists or is intended to be performed after termination or Closing survives the same. Any successor to a party receives the predecessor's benefits and obligations of this Contract.

26. NOTICE, DELIVERY AND CHOICE OF LAW.

26.1. Physical Delivery and Notice. Any document or notice to Buyer or Seller must be in writing, except as provided in § 26.2. and is effective when physically received by such party, any individual named in this Contract to receive documents or notices for such party, Broker, or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm).

26.2. Electronic Notice. As an alternative to physical delivery, any notice may be delivered in electronic form to Buyer or Seller, any individual named in this Contract to receive documents or notices for such party, Broker or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing, cancellation or Termination must be received by the party, not Broker or Brokerage Firm) at the electronic address of the recipient by facsimile, email or n/a.

26.3. Electronic Delivery. Electronic Delivery of documents and notice may be delivered by: (1) email at the email address of the recipient, (2) a link or access to a website or server provided the recipient receives the information necessary to access the documents, or (3) facsimile at the facsimile number (Fax No.) of the recipient.

26.4. Choice of Law. This Contract and all disputes arising hereunder are governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property located in Colorado.

27. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal will expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below and the offering party receives notice of such acceptance pursuant to § 26 on or before **Acceptance Deadline Date** and **Acceptance Deadline Time**. If accepted, this document will become a contract between Seller and Buyer. A copy of this Contract may be executed by each party, separately and when each party has executed a copy thereof, such copies taken together are deemed to be a full and complete contract between the parties.

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1239 28. **GOOD FAITH.** Buyer and Seller acknowledge that each party has an obligation to act in good faith
1240 including, but not limited to, exercising the rights and obligations set forth in the provisions of **Financing**
1241 **Conditions and Obligations; Title Insurance, Record Title and Off-Record Title; New ILC, New Survey;**
1242 **and Property Disclosure, Inspection, Indemnity, Insurability Due Diligence and Source of Water.**
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ADDITIONAL PROVISIONS AND ATTACHMENTS

29. **ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

Buyers understand that there is a primary contract in place, and this contract will be in backup position. If the primary contract should fail for any reason, this contract shall move into first place and be in full force and effect.

Sellers attest that no tenants` rights remain.

Buyers will be provided with any previous physical inspection documents currently in possession of seller or seller's agent.

Offer is subject to City Council approval on March 20, 2024. Although this is a contingency, \$750,000 has been budgeted and approved by City Council during the budget process, but they must also approve the specific purchase at the March 20 meeting.

30. **OTHER DOCUMENTS.**

30.1. **Documents Part of Contract.** The following documents **are a part** of this Contract:

30.1.1. **Post-Closing Occupancy Agreement.** If the Post-Closing Occupancy Agreement box is checked in § 17 the Post-Closing Occupancy Agreement is a part of this Contract.
n/a

30.2. **Documents Not Part of Contract.** The following documents have been provided but are **not a** part of this Contract:
n/a

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Signatures

Greg Caton, City Manager

Date: **3/1/2024**

Buyer: **City of Grand Junction**

By: Greg Caton, City Manager

[NOTE: If this offer is being countered or rejected, do not sign this document.]

Bill McDonald, Trustee

Date: 3/4/2024

Seller: **New Direction Trust Company**
By: Bill McDonald, Trustee

Kristin McDonald, Trustee

Date: 3/4/2024

Seller: **New Direction Trust Company**
By: Kristin McDonald, Trustee

END OF CONTRACT TO BUY AND SELL REAL ESTATE

BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

A. Broker Working With Buyer

Broker ☐ Does ☒ **Does Not** acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 23, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Broker is working with Buyer as a ☒ **Buyer's Agent** ☐ **Transaction-Broker** in this transaction.

☐ **Customer.** Broker has no brokerage relationship with Buyer. See § B for Broker's brokerage relationship with Seller.

Brokerage Firm's compensation or commission is to be paid by ☒ **Listing Brokerage Firm** ☐ **Buyer**
☐ **Other** .

This Broker's Acknowledgements and Compensation Disclosure is for disclosure purposes only and does NOT create any claim for compensation. Any compensation agreement between the brokerage firms must be entered into separately and apart from this provision.

Brokerage Firm's Name: **The Christi Reece Group**
The Christi Reece Group

Brokerage Firm's License #: **EC.100081939**

Christi H. Reece

Date: 3/1/2024

Broker's Name: **Christi H. Reece**

Broker's License #: **FA.001313108**

Address: **1601 Riverfront Drive, Suite 103 Grand Junction, CO 81501**

Phone No.: **970-589-7700**

Fax No.:

Email Address:

christi@christireece.com;stephanie@christireece.com;jessie@christireece.com;kerry@christireece.com

B. Broker Working with Seller

Broker ☐ Does ☒ Does Not acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 23, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Broker is working with Seller as a ☒ Seller's Agent ☐ Transaction-Broker in this transaction.

☐ Customer. Broker has no brokerage relationship with Seller. See § A for Broker's brokerage relationship with Buyer.

Brokerage Firm's compensation or commission is to be paid by ☒ Seller ☐ Buyer ☐ Other . This Broker's Acknowledgements and Compensation Disclosure is for disclosure purposes only and does NOT create any claim for compensation. Any compensation agreement between the brokerage firms must be entered into separately and apart from this provision.

Brokerage Firm's Name: **Vertex Realty Partners, Inc.**

Brokerage Firm's License #: **EC 100094206**

Scott Roahrig

Date: **3/2/2024**

Broker's Name: **Scott Roahrig**

Broker's License #: **FA100065778**

Address: **601 Main St Grand Junction Grand Junction, CO 81501**

Phone No.: **970-261-7534**

Fax No.:

Email Address: **scottroahrigvrp@gmail.com**

CBS2-6-23. CONTRACT TO BUY AND SELL REAL ESTATE (INCOME - RESIDENTIAL)

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RESOLUTION NO. __-24

A RESOLUTION AUTHORIZING THE PURCHASE OF REAL PROPERTY LOCATED AT 756 CHIPETA AVENUE, GRAND JUNCTION, COLORADO, FROM NEW DIRECTION TRUST COMPANY AND RATIFYING ACTIONS HERETOFORE TAKEN IN CONNECTION THEREWITH

RECITALS:

The City Manager has entered into a contract (Contract) with New Direction Trust Company (Seller) for the sale by the Seller and the purchase by the City (Buyer or City) of the real property and improvements located at 756 Chipeta Avenue, Grand Junction, Colorado (Property).

In the 2024 budget the City Council approved funds for the possible purchase of real property for employee housing. The Property, if purchased would provide three residential units and is within budget.

The City Council has considered the Contract and in the totality of the circumstances deems the purchase of the Property to be reasonable and proper.

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

1. The foregoing Recitals are incorporated herein and in consideration of the same and as determined by the Council and as evidenced by this Resolution, the City Council hereby authorizes the purchase of the real property and improvements (Property) commonly addressed as 756 Chipeta Avenue (legally described as Lots 21-23, Block 49), Grand Junction, Colorado by the City for a price of \$749,000.00. All actions heretofore taken by the officers, employees and agents of the City relating to the purchase of the Property which are consistent with the provisions of the Contract to Buy and Sell Real Estate (copy attached) and this Resolution are hereby ratified, approved, and confirmed.
2. That the City Council hereby authorizes the expenditure of \$749,000.00 of appropriated and budgeted funds to purchase the Property and an additional sum for the payment of necessary and reasonable expenses to be paid at closing for the purchase.
3. That the officers, employees, and agents of the City are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Resolution and the attached Contract to Buy and Sell Real Estate (Contract), including, without limitation, as may be

necessary or desirable to effect the purchase of the Property as described in the Contract.

PASSED and ADOPTED this 3rd day of April 2024.

Anna M. Stout
President of the City Council

ATTEST:

Amy Phillips
City Clerk

DRAFT



Grand Junction City Council

Regular Session

Item #5.b.

Meeting Date: April 3, 2024

Presented By: Ashley Chambers, Housing Manager

Department: Community Development

Submitted By: Ashley Chambers, Housing Manager

Information

SUBJECT:

A Resolution Authorizing the City Manager to Expend Funds in Support of the Housing Resources of Western Colorado Affordable Housing Development Known as the Row Homes at Meridian Park in Grand Junction, CO

RECOMMENDATION:

Staff recommends approval of this item.

EXECUTIVE SUMMARY:

This resolution authorizes the City Manager to expend \$100,000 for the Housing Resources of Western Colorado Affordable Housing Development Known as the Row Homes at Meridian Park in Grand Junction, CO

BACKGROUND OR DETAILED INFORMATION:

In January 2024, City staff received a request from Housing Resources in Western Colorado (HRWC) for \$700,000 to purchase 10 parcels in the Row Homes at Meridian Park subdivision. The purpose was to build 10 affordable townhomes for sale to income-eligible households. The proposal involved purchasing lots from BOA Builders and then hiring them to complete the construction of the units at a set price. The set price would include a discount on the building as a contribution to the affordability of the units. Housing Resources intended to sell the units to households earning between 80-120 percent of the Area Median Income (AMI) by leveraging the Land and Building Acquisition Program (LAP) subsidy and several other grant or funding opportunities. However, City staff notified HRWC of the hold on funding for the LAP program.

On January 26, 2024, HRWC urgently requested funding for the Meridian Park project from City Council due to its accelerated timeline, with infrastructure already in progress as of January 2024. Limited alternative funding options exist, as the state does not

provide acquisition grants, and its construction funding is fully allocated through June. Despite securing an extension on the closing date to April 2024, HRWC had initially anticipated LAP funding as an option, which is currently unavailable.

On March 4, 2024, recognizing the limitations on the City's scarce funding sources and the situation with the PRO Housing Grant, HRWC revisited the project pro forma to analyze the request to the City with modifications to serve households earning between 100-120 percent of the AMI. They are now requesting a smaller acquisition grant of \$35,000 per unit for a total request of \$350,000.

At the March 18, 2024, City Council Workshop, HRWC presented their revised request. City Council determined that HRWC could utilize \$250,000 from the City ARPA grant funds previously allocated and an additional \$100,000 from the 2024 City Housing Strategies Budget, pending Council resolution. These funds would be used for acquisition and recaptured as a down payment assistance loan for each household at closing.

More detailed information about HRWC's request and the City's Land and Building Acquisition Program is attached.

FISCAL IMPACT:

The City's 2024 adopted budget included \$6,491,758 to facilitate the execution of adopted housing strategies including production of affordable housing units. Of these funds, \$200,000 is budgeted for the Grand Valley Catholic Outreach Mother Teresa Place project, \$356,600 is budgeted for operating costs towards the United Way of Mesa County and Homeward Bound of the Grand Valley's resource center, \$1,500,000 is budgeted to support the Grand Junction Housing Authority "The Current" housing project, and \$500,000 is budgeted to support Colorado Mesa University's Master of Social Work Student Loan Repayment Program leaving \$3,935,158 remaining.

Staff is recommending utilizing \$100,000 of the remaining appropriated funding to support the Housing Resources of Western Colorado/Com Act's affordable housing project.

SUGGESTED MOTION:

I move to (adopt/deny) Resolution 20-24, a resolution to amend Resolutions 20-23 and 39-23 concerning a grant award to Housing Resources of Western Colorado/Com Act Housing Corporation and to authorize the City Manager to make a second grant award to Housing Resources of Western Colorado/Com Act Housing Corporation in support of the Meridian Park affordable housing project

Attachments

1. Revised Meridian Park support request to Mayor Stout (1)
2. Strategy 6 & Land and Building Acquisition Program
3. RES-HRWC Meridian park



March 4, 2024

The Honorable Anna Stout, Mayor
City of Grand Junction
250 N. 5th Street
Grand Junction, CO 81501

Dear Mayor Stout:

I'm writing in follow-up to my previous correspondence regarding our proposed affordable homeownership project at the Meridian Park subdivision. The City has still not received word on the PRO Housing Grant application, leaving our project at a standstill. The lot seller has graciously agreed to extend our closing date to April 1st from the original scheduled date of March 1st.

As you recall, our request to the City's Housing Department was for \$70,000 per unit for the purchase of 10 finished lots. We committed to an affordability cap of 120% AMI but felt that we could even reach the 80-100% AMI range utilizing the City's acquisition grant plus additional DPA funded by the state's program and by deferring our profit. We intentionally did not assume using any City-funded DPA.

Recognizing the limitations on the City's scarce funding sources and the situation with the PRO Housing Grant, we revisited the project pro forma to analyze a scenario of a smaller acquisition grant from the City. We feel comfortable that we can serve the 100-120% AMI range with a smaller acquisition grant of \$35,000 per unit (\$350,000 total). The resulting effective prices would be right on the edge of affordable to households at 100% AMI. Getting below that 100% AMI mark will depend on many buyer-specific factors such as their household size, their consumer debt, their credit score, and their interest rate.

However, if we utilize our City-funded DPA program as part of the affordable capital stack, we can more confidently project serving buyers below 100% AMI. Our loan policies and underwriting procedures protect from over-subsidizing a homebuyer so we would utilize a City-funded DPA loan only if it were needed, and if the household was under 100% AMI. We will also max out other sources, such as CHFA downpayment assistance and state funds, before we would layer on additional City-funded DPA.

With that additional information, I renew my request for the City Council to consider funding this project, with a revised total request of \$350,000. While I understand the City's reason for placing their housing funds on hold, the project at hand does not have an indefinite time frame. The seller can't delay closing too much longer because of their own carrying costs.

Thank you again for considering this request. I'm happy to discuss this project at any time.

Sincerely,

Emilee Powell
Executive Director

Housing Strategy #6.

Allocate City Owned Land (And/or Strategically Acquire Vacant and Underutilized Properties) for Affordable and Mixed-Income Housing

This information is related to implementation of Grand Junction Housing Strategy 6: Allocate city owned land (and/or strategically acquire vacant or underutilized properties) for affordable and mixed-income housing. The strategy language from the Housing Strategy is excerpted below for reference.

HSP STRATEGY 6. ALLOCATE CITY OWNED LAND (AND/OR STRATEGICALLY ACQUIRE VACANT OR UNDERUTILIZED PROPERTIES) FOR AFFORDABLE AND MIXED-INCOME HOUSING.

Property acquisition costs, especially in developed areas of the city, is a major component of the cost of developing affordable housing. The city and other public agencies, such as Mesa County and the State, own properties which could potentially reduce costs and facilitate development of affordable housing. While much of this property is either already utilized for public facilities or is inappropriate for residential development, there may be opportunities to leverage additional affordable and mixed-income housing through better utilization of publicly owned property. It is increasingly common for local governments to donate, discount, or lease vacant land or underutilized properties (e.g., closed schools, vacant or out-of-date public sector offices) for use as residential mixed-income or mixed-use developments. Some properties are acquired after businesses have been closed for illegal use or very delinquent taxes. These properties are held in a “land bank” by the City and eventually redeveloped by nonprofit or private developers through a Request for Proposal (RFP) process. Land banks vary in forms from single parcels to multiple, scattered site properties, to large tracts of land. The land can be donated, discounted, or offered on a land lease to the selected developer who agrees to a specified affordability level or community benefit. A good starting point in this process for any community is creating an inventory of existing public land that could be used for housing sites in the future.

Benefits. Conducting an initial inventory of publicly owned land is a low/no-cost step. Land banking and donation can reduce future development costs (particularly if acquired when land costs are low) and maintains flexibility in meeting future needs because the land can be held and then used for acute needs as they arise. Converting vacant land or underutilized retail can also have tax benefits to the city (performing residential, even if with a lower property tax value, is better than vacant and abandoned land from a revenue perspective).

Challenges. Acquiring land can be costly (depending on market cycle); limited supply can require quick response to land available (staffing/authority concern); and there is a risk that future needs will not align with expected land use.

Expected outcomes and keys to success. Outcomes depend on existing land inventory and committed resources though there is potential for high impact (substantial number of units). This works best in communities where there is land available to repurpose; when the city can acquire land at reasonable costs (e.g., during a down market); and when the city has strong partnerships with non-profit developers or existing land trust programs.

Recommended actions for Grand Junction:

- Inventory existing public land (including land owned by the City, the County, State, the schools district, and others) and evaluate feasibility for residential development.
- Establish partnerships with local affordable developers and land trusts who may be able to develop the land into affordable rental or ownership units.
- Evaluate funding sources for land/property acquisition that could be utilized to create or preserve affordable housing.
- Actively watch for property and land to acquire to repurpose (this could include vacant land, underutilized/vacant commercial, and/or small naturally occurring affordable multifamily housing).

On March 15, 2023, the Grand Junction City Council endorsed Resolution No. 30-23, establishing the Land and Building Acquisition Program (LAP) in response to the widespread shortage of affordable housing in the area. LAP primarily aims to allocate funds to aid affordable housing developers in acquiring property, with the goal of alleviating the housing shortage in Grand Junction. For the LAP, developers submit an application for specific project that must meet expectations in all categories of LAPs scoring matrix.

The City received \$10.4 million in American Rescue Plan Act (ARPA) funds, initially designated for revenue replacement. However, the City opted to allocate \$9 million of these funds towards initiatives benefiting homelessness, mental health, and affordable housing. From this allocation, \$3,373,337 was earmarked for the LAP and authorized for expenditure through a supplemental appropriation ordinance on April 5, 2023 for the 2023 budget year. To date, almost all of the 2024 Housing Implementation \$6.5 million budget including the \$2 million PRO housing grant match (outlined below) has been pledged.

In November 2023, the City of Grand Junction applied for the U.S. Dept of HUD Pathways to Removing Obstacles to Housing (PRO Housing) Grant, seeking \$4,000,000 in funding. To support the capitalization of the Land and Building Acquisition Program, the City committed a grant match of \$2,000,000 from the 2024 budget.

Presently, the City awaits notification regarding the approval or denial of the grant and are unsure of timing of notifications as there has been significant delays. Until this determination is received, the Land and Building Acquisition Program cannot accept applications. Commencing any project before the funding release would deviate from the goals and objectives specified in the PRO housing grant, potentially exceeding the City's available funding. Such actions could result in non-compliance with grant stipulations, rendering the project ineligible for funding.

RESOLUTION __-24

A RESOLUTION TO AMEND RESOLUTIONS 20-23 AND 39-23 CONCERNING A GRANT AWARD TO HOUSING RESOURCES OF WESTERN COLORADO/COM ACT HOUSING CORPORATION AND TO AUTHORIZE THE CITY MANAGER TO MAKE A SECOND GRANT AWARD TO HOUSING RESOURCES OF WESTERN COLORADO/COM ACT HOUSING CORPORATION IN SUPPORT OF THE MERIDIAN PARK AFFORDABLE HOUSING PROJECT

RECITALS:

With the adoption of Resolutions 20-23 and 39-23 the City Council authorized the City Manager to execute a notice of award of American Rescue Plan Act (ARPA) funds in the amount of \$1,000,000.00 to Housing Resources of Western Colorado (Award).

With Resolution 39-23 the City Council authorized the Award to be used, and the loan fund established by the Award, to be held and administered by and through Com Act Housing Corporation (CAHC) a wholly owned not for profit affiliate of Housing Resources of Western Colorado.

Housing Resources of Western Colorado (HRWC) recently discussed with the City Council the purchase of ten lots for affordable housing units. Those lots, and the homes that will be constructed on them, are commonly known, and referred to as Meridian Park.

After due consideration the City Council agreed to support the Meridian Park project by and with this Resolution which, as provided herein authorizes a) CAHC/HRWC to utilize \$250,000 of the Award in support of the acquisition of the ten Meridian Park lots (Lots), b) the amendment of the Award and supporting agreement to recognize the City's support of the acquisition of the Lots and construction of affordable homes on those lots and c) the expenditure of \$100,000 from the City Housing fund in support of the Meridian Park project. The City Council finds that these actions are consistent with the City's homelessness and housing goals and that CAHC/HRWC are designated and approved to expend \$250,000 of the Award and the additional sum of \$100,000 in accordance with the plan presented to City Council, this Resolution, and the to be amended grant award agreement.

Having been fully advised in the premises, the City Council by and with this Resolution amends Resolutions 20-23 and 39-23 as provided herein and affirms and directs the same as the actions of the City.

NOW THEREFORE, the City Council of the City of Grand Junction authorizes the City Manager to execute a notice of award of funds in the amount of \$100,000.00 to Com Act Housing Corporation a wholly owned not for profit affiliate of Housing Resources of Western Colorado and to amend Resolutions 20-23, 39-023, and for the City Attorney to

amend the underlying Award agreement as provided herein all to effectuate the purposes hereof.

Anna M. Stout
President of the City Council

ATTEST:

Amy Phillips
City Clerk

DRAFT



Grand Junction City Council

Regular Session

Item #5.c.

Meeting Date: April 3, 2024

Presented By: Greg Caton, City Manager

Department: City Attorney

Submitted By: John Shaver

Information

SUBJECT:

A Resolution Amending Resolution 90-21 Concerning Naming Opioid Settlement Abatement Fund Council Designees

RECOMMENDATION:

Adopt and approve Resolution, A Resolution amending Resolution 90-21 concerning naming Opioid Settlement Abatement Fund Council designees.

EXECUTIVE SUMMARY:

By and with the adoption of this Resolution, Anna Stout, President of the City Council, is named and appointed as the voting member and the Police Chief as the non-voting member of the Region 13 Opioid Settlement Council.

BACKGROUND OR DETAILED INFORMATION:

By and with Resolution 90-21 the City Council adopted and approved the Colorado Opioids Settlement Memorandum of Understanding (MOU) and the City became a party to the MOU. City Manager Greg Caton was named and appointed as the City's designee to the Region 13 Council as the voting member and Police Chief Doug Shoemaker was named and appointed as the non-voting member to the Region 13 Council. Because of the resignations of City Manager Caton and Chief Shoemaker from their service to the City, the City Council needs to name replacements. By and with this Resolution, the City Council designates Anna Stout, President of the City Council, as the voting member and the Police Chief or their designee as the non-voting member of the Region 13 Council.

FISCAL IMPACT:

There is no fiscal impact associated with the adoption of the Resolution.

SUGGESTED MOTION:

I move to (adopt/deny) Resolution 21-24, a resolution naming and appointing Anna Stout, President of the City Council, as the voting member and the Police Chief as the non-voting member of the Region 13 Opioid Settlement Council.

Attachments

1. RES-Opioid Council Designees 20240329 (002)

RESOLUTION NO. __-24

RESOLUTION AMENDING RESOLUTION 90-21 CONCERNING NAMING OPIOID SETTLEMENT
ABATEMENT FUND COUNCIL DESIGNEES

RECITALS:

By and with Resolution 90-21 the City Council adopted and approved the Colorado Opioids Settlement Memorandum of Understanding (MOU) and the City became a party to the MOU.

City Manager Greg Caton was named and appointed as the City's designee to the Region 13 Council as the voting member and Police Chief Doug Shoemaker was named and appointed as the non-voting member to the Region 13 Council.

Because of the resignations of City Manager Caton and Chief Shoemaker from their service to the City, the City Council needs to name replacements. Accordingly, by and with this Resolution the City Council designates Anna Stout, President of the City Council, as the voting member and the Police Chief, or their designee as the non-voting member of the Region 13 Council.

NOW, THEREFORE, BE IT RESOLVED that the fore going Recitals are incorporated herein and now and hereafter Anna Stout, President of the City Council, is named and appointed as the voting member and the Police Chief as the non-voting member of the Region 13 Opioid Settlement Council.

Anna M. Stout
President of the City Council

ATTEST: _____
Amy Phillips
City Clerk



Grand Junction City Council

Regular Session

Item #6.a.

Meeting Date: April 3, 2024

Presented By: Ken Sherbenou, Parks and Recreation Director

Department: Parks and Recreation

Submitted By: Ken Sherbenou

Information

SUBJECT:

Request for 2024 Fireworks Displays at Suplizio Field

RECOMMENDATION:

Ken Sherbenou

EXECUTIVE SUMMARY:

To be held in conjunction with baseball games and events at Suplizio, fireworks displays are being requested on behalf of Colorado Mesa University, Junior College World Series (JUCO), the Grand Junction Jackalopes and the City of Grand Junction. The 2024 dates include a total of five shows: a CMU baseball game, JUCO (on Memorial Day), Independence Day, and two Friday evening for Jackalopes Games.

The dates for the proposed shows are as follows:

- April 26 (CMU) – This is CMU's participation night.
- May 27 (JUCO) - This is JUCO's salute to veterans on Memorial Day.
- June 7 (Jackalopes) - This is a Friday and opening night for the Grand Junction Jackalopes. It commemorates the start of their summer season at Lincoln Park Stadium.
- July 4 (City/Jackalopes) - The City will host the Fireworks Extravaganza and the Grand Junction Jackalopes will play a game beforehand. Like in 2022 and 2023, the game will start two hours earlier than 2021, at 4 p.m., to ensure fireworks begin at around 9:45 p.m. There will also be family-friendly activities between the end of the game and the start of the fireworks to ensure the crowd in the Stadium is entertained. This occurred in 2022 and 2023, and it was successful.
- August 9 (Jackalopes) - This is the last Friday before school goes back into session and the last celebration for summer. If this show, or the June 9 show,

are canceled due to rain or weather, the GJ Jackalopes would be allowed to host a fireworks show on Saturday, August 17, to make up for the lost show.

BACKGROUND OR DETAILED INFORMATION:

Staff requests City Council consider a motion to approve or deny the request to hold five shows this spring and summer. Previous years saw about ten shows approved each year and significant negative feedback was received from the surrounding neighborhood. In direct response to these concerns, which were also reflected by some members of City Council, staff proposed a dramatic decrease in the number of shows to be held. All the partners who actually put on the shows agreed to a downsized schedule in 2022. Neighbors of Lincoln Park received the approach well and staff is proposing that the 2024 season closely match what occurred in 2022 and 2023.

The plan for 2024 takes into account a significant public process that occurred in 2021, including a survey of 499 respondents. Revising the plan per this public input was why the 2022 season went so well with minimal complaints. Like 2022, the Jackalopes still have the most shows, albeit far fewer than they have hosted in previous years, with two of the five being on Friday evenings after a GJ Jackalopes game. Staff also recommends approval of a "rain out" date of Saturday, August 16, if either of the GJ Jackalopes shows gets canceled due to weather.

The only show the City of Grand Junction is involved in putting on is the 4th of July show. The community has come to expect this fireworks show on the 4th of July to celebrate our nation's independence. The other four shows are the responsibility of the organizing entity, either Grand Junction Baseball (JUCO), Colorado Mesa University, or the Grand Junction Jackalopes. Game start times for the Jackalopes (formerly the Rockies) have historically been at 6:40 p.m. on those Friday evenings. Given the concern about disruption to the neighborhood, Friday night games were moved up to 6:05 p.m. in 2021. An additional difficulty in 2021 prompted an even earlier game start time of 5:35 p.m. This will be the start time for 2024. This enables the Jackalopes to have an estimated and likely display time of 9:30 p.m. JUCO is also moving up their start times for the first game on Memorial Day, and those games are scheduled at 9 a.m., 1 p.m., and 6 p.m.

All shows at Lincoln Park require a coordinated effort, including the event organizer, City staff from Parks, General Services, Fire, Police, and Traffic. Depending on the size of the show, fireworks are staged east of the field from either the practice field or the golf course driving range. Weather conditions are monitored closely, and the Grand Junction Fire Department grants final approval each night. The proposed schedule for 2024 is included in the Executive Summary above. If approved, a direct mailing will be sent to all adjacent neighbors highlighting the dates of the shows this season and a post on social media with the fireworks show dates. The draft letter from all four entities involved is included in the agenda documentation.

FISCAL IMPACT:

There is no fiscal impact associated with this request.

SUGGESTED MOTION:

I move to (approve/deny) the request to host five public fireworks displays at Lincoln Park Stadium as presented by Colorado Mesa University, Grand Junction Baseball (JUCO), Grand Junction Jackalopes, and the City of Grand Junction.

Attachments

1. Draft Fireworks Letter 2024, final



April 5, 2024

Dear Neighbor,

We would like to take this opportunity to share some important information regarding special events in Lincoln Park that will involve fireworks presentations. For 2024, there are five approved shows compared with the 10 or so that typically happen. In 2021, the City put out a survey and offered a listening session to gather community feedback about firework shows at Lincoln Park. Based on that feedback, the City reduced the number of shows in 2022, and this revised plan seemed to go well for everyone. This was also the case for 2023 so we plan to do the same thing for 2024.

Five shows are planned throughout the summer to celebrate major events such as Memorial Day (put on by JUCO), the Fourth of July (put on by the City), the start of the GJ Jackalopes baseball season, the Jackalopes final summer game before kids return to school and Colorado Mesa University's participation night.

We realize that the park is adjacent to a residential neighborhood and that noise levels are a concern of many who live nearby. Several modifications have been made to the events that are intended to lessen the impacts to adjacent neighbors in addition to a drastic reduction in the number of shows. Also, firework shows should happen between 9:00pm and 10:00pm.

On the Fourth of July, the GJ Jackalopes game will begin at 4:05pm and family friendly activities will fill the time between the conclusion of the game and the beginning of the fireworks at 9:45pm. This will ensure that game delays do not cause the fireworks to be shot off late and the tens of thousands of residents not in the Stadium waiting to see the show will be able to enjoy the fireworks. The Fourth of July fireworks show will begin about 9:45pm, as soon as it is dark enough.

2024 Schedule of Special Fireworks Events

- Friday, April 26 CMU Baseball Game
- Monday, May 27 JUCO Tournament Memorial Day Fireworks
- Friday, June 7 GJ Jackalopes Fireworks Night
- Tuesday, July 4 City Fireworks Extravaganza; Fireworks Begin about 9:45 p.m.
- Friday, August 9 GJ Jackalopes Fireworks Night

Note: If either the June 7 or August 9 GJ Jackalopes Fireworks Night are unable to happen due to weather, Saturday August 17 will be the make-up date.

We thank you for your support of these events in and around Lincoln Park. If you have any questions, please contact the Parks & Recreation Office at 254-3866. We hope you have a great spring and summer in Grand Junction.

Sincerely,

City of Grand Junction Parks and Recreation Department
Grand Junction Jackalopes
Colorado Mesa University
Junior College World Series (JUCO)



Grand Junction City Council

Regular Session

Item #7.a.i.

Meeting Date: April 3, 2024

Presented By: John Shaver, City Attorney

Department: City Attorney

Submitted By: John Shaver

Information

SUBJECT:

An Ordinance Amending Ordinance No. 5064 and Sections 5.13.013 and 5.13.029 of the Grand Junction Municipal Code Regarding Certain Marijuana Business Security Requirements

RECOMMENDATION:

Second reading and public hearing of Ordinance ____ an ordinance amending the Grand Junction Municipal Code regarding certain marijuana business security measures and authorize publication in pamphlet form.

EXECUTIVE SUMMARY:

This ordinance amends Ordinance 5064 and its codification in the GJMC at 5.13.029 and 5.13.013 to require the secure storage of marijuana and marijuana products and cash kept at each regulated cannabis business in the City in a safe, vault or equivalent fixture, feature, or improvement to the business's property and that the fixture, feature, or improvement is either integral to the building structure or securely attached to the building.

BACKGROUND OR DETAILED INFORMATION:

On April 6, 2022, the City Council adopted Ordinance 5064 regarding cannabis business licenses and regulations. By and with the adoption of that Ordinance, the Grand Junction Municipal Code ("GJMC") now includes time, place, and manner restrictions for operating regulated cannabis businesses in the City while protecting the public health and safety through reasonable limitations on business operations. Regulated cannabis businesses include retail and/or co-located retail and medical cannabis businesses.

Recently, a coalition of regulated cannabis businesses contacted the City Council

seeking an amendment to the GJMC to clarify the requirements for storage of cannabis and money in business places. A copy of the correspondence is attached.

This ordinance amends Ordinance 5064 and its codification in the GJMC at 5.13.029 and 5.13.013 to require the secure storage of marijuana and marijuana products and cash kept at each regulated cannabis business in the City in a safe, vault or equivalent fixture, feature, or improvement to the business's property and that the fixture, feature, or improvement is either integral to the building structure or securely attached to the building.

FISCAL IMPACT:

There is no fiscal impact associated with this request.

SUGGESTED MOTION:

I move to (adopt/deny) Ordinance 5209, an ordinance amending the Grand Junction Municipal Code regarding certain marijuana business security measures on second reading and authorize publication in pamphlet form.

Attachments

1. Cannabis
2. ORD-Amend 5064 MJ business security 20240327



February 2, 2024

Honorable Grand Junction City Councilmembers,

We represent a coalition of cannabis businesses that were awarded licenses to operate in Grand Junction. As we've begun opening our businesses to serve the public, we've encountered issues with the requirements in local statutes pertaining to the safe storage of marijuana and marijuana products.

The safety and security of our businesses are of the utmost importance to us. Those of us with dispensary locations in other areas of the state have worked with local enforcement agencies over the years to refine and optimize the secure storage of our products to ensure the risk of burglary and product diversion is minimal. A prime example is the City of Denver's [Rules Governing Cannabis Storage and Service Windows](#) (Pg. 2, Section 3).

Grand Junction's product storage requirements diverge from the best practices established in other jurisdictions, like Denver. The original ordinance that was passed in 2022 contains conflicting language about the safe storage of marijuana and marijuana products.

Section 5.13.029(a)(2) states, "The installation and use of a safe for storage and any processed cannabis and cash on the premises when the business is closed to the public. The safe, as defined in GJMC 5.13.013, shall be incorporated into the building structure or securely attached thereto."

Section 5.13.029(b)(3) states, "The security plan shall be designed to: Prevent theft or the diversion of cannabis, including maintaining all cannabis in a secure, locked room that is accessible only to authorized persons and, when the business is closed to the public, in a safe or vault or equivalent secured fixture."

Officer Travis Wright clarified that the use of safes is required for overnight storage of products that contain THC. As responsible operators, we complied. **Now, we are requesting that the Council review the conflicting language and pass an ordinance to allow vaults and other storage alternatives that are functionally equivalent to a safe to be used for the safe storage of our products when our businesses are not open to the public for the following reasons:**

1. Efficiency of transporting from our production facilities and efficiency of 3rd party vendors transporting products to our Grand Junction stores
2. Varied and sufficient product supply to meet customer demand

We ask that the Council take up this issue and amend the statute to allow the safe storage of marijuana and marijuana products in a safe, vault, or storage alternative that is functionally equivalent to a safe or vault.

We will be following up with each of you and look forward to hearing your thoughts as our Council representatives.

Respectfully,

Grand Junction Cannabis Coalition

CannaCare, LLC

Colorado Weedery

Elevate

The Garage

Grand Junction Greenery

The Green Horizon

Lucky Me Dispensary

Native Roots

ORDINANCE NO. ____

AN ORDINANCE AMENDING ORDINANCE NO. 5064 AND SECTIONS 5.13.013 AND 5.13.029 OF THE GRAND JUNCTION MUNICIPAL CODE REGARDING CERTAIN MARIJUANA BUSINESS SECURITY REQUIREMENTS

RECITALS:

On April 6, 2022, the City Council adopted Ordinance 5064 regarding cannabis business licenses and regulations. By and with the adoption of that Ordinance the Grand Junction Municipal Code ("GJMC") now includes time, place, and manner restrictions for operating regulated cannabis businesses in the City while protecting the public health and safety through reasonable limitations on business operations. Regulated cannabis businesses include retail and/or co-located retail and medical cannabis businesses.

Recently a coalition of regulated cannabis businesses contacted the City Council seeking an amendment of the GJMC to clarify the requirements for storage of cannabis and money in the business places.

This ordinance amends Ordinance 5064 and its codification in the GJMC at 5.13.029 and 5.13.013 to require the secure storage of marijuana and marijuana products and cash kept at each regulated cannabis businesses in the City in a safe, vault or equivalent fixture, feature, or improvement to the business's property and that the fixture, feature, or improvement is either integral to the building structure or securely attached to the building.

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

Title 5 of the Grand Junction Municipal Code, in relevant part, is amended as follows. Additions are shown in **bold** typeface. Deletions are shown in ~~strikethrough~~ typeface. All other provisions of Title 5 of the Grand Junction Municipal Code shall remain in full force and effect.

5.13.029 Security Requirements

5.13.029(a)(2) A security plan submitted with the application, as it may be amended, shall provide equipment, which shall be in good working order, monitored, and secured 24 hours per day. The plan, at a minimum, shall include:

(i) The installation and use of a safe **or vault as defined in GJMC 5.13.013**, for storage **of and all** ~~any processed cannabis and products containing cannabis~~ and/or cash on the **licensed** premises when the business is closed to the public. ~~The safe as defined in GJMC 5.13.013, shall be incorporated into the building structure, or securely attached thereto.~~

(ii) **Cannabis-infused products and cannabis concentrates that must be refrigerated or frozen shall be stored in a lockable refrigerator or freezer with all-**

metal sides and doors, which refrigerator or freezer shall either secured to the building structure within the Limited Access Area of the Licensed Premises or positioned within a vault, as defined in 5.13.013, and such refrigerators and freezers shall be locked when the business is closed to the public.

5.13.029(b)(3) The security plan shall be designed to:

Prevent theft or the diversion of cannabis, including maintaining all cannabis in a secure, locked room that is accessible only to authorized persons and, when the business is closed to the public, in a safe or vault or equivalent as defined in 5.13.013.

5.13.029(c) On and after the Effective Date of Ordinance # (this ordinance) any licensed regulated cannabis business in good standing with the City may amend its security plan to install and use a safe or vault as defined in GJMC 5.13.013 for storage of all cannabis and products containing cannabis and/or cash on the premises when the business is closed to the public as provided in this Code, subject any State or local requirements for inspection(s) and/or modification of the licensed premises as required by 5.13.039.

5.13.013 Definitions.

~~Safe means a metal box, fixture, feature or improvement as specifically defined herein, including any definition(s) adopted by reference, that is either integral to the building structure or securely attached to the building structure capable of (1) being locked securely by either a mechanical or electronic combination lock that is protected by a case-hardened drill-resistant steel plate or drill-resistant material of equivalent strength; (2) having door hinges that prevent the removal of the door, including but not limited to hinges that are not exposed to the outside, interlocking door designs, dead bars, jeweler's lugs and active locking bolts; (3) being constructed in a manner to prevent opening by human or mechanical force, or through the use of common tools, including but not limited to hammers, bolt cutters, crowbars or pry bars.; and (4) being certified by the manufacturer to be adequate for securely storing the quantity of monetary funds and physical cannabis product of the cannabis business.~~

A Vault means a fixture, feature or improvement as specifically defined herein, including any definition(s) adopted by reference, that is integral to the building structure within the Limited Access Area of the Licensed Premises capable of (1) being locked securely by either a mechanical or electronic combination lock that is protected by a case hardened drill resistant steel plate or drill resistant material of equivalent strength; (2) having door hinges that prevent the removal of the door; (3) being constructed in a manner to prevent opening by human or mechanical force, or through the use of common tools, including but not limited to hammers, bolt cutters, crow bars or pry bars, and (4) with a steel door frame and with walls, floors and ceiling reinforced with at least one of the following:

- 1) At least one layer of one-eighth inch or thicker welded steel plating;**

76 **2) Steel mesh of 10-gauge wire or thicker with openings no larger than**
77 **2 ½" x 2 ½" that is securely attached to the building structure;**

78 **3) Concrete 4" or thicker reinforced with ½" or thicker steel rods no**
79 **wider than 6" apart;**

80 **4) A cage constructed to current 21 CFR 1301.72(b)(4) standards;**

81 **5) A vault constructed to current 21 CFR 1301.72(a)(3) standards**

82 ...

83 This ordinance is necessary to protect the public health, safety, and welfare of the
84 residents of the City. If any provision of this ordinance is found to be unconstitutional or
85 illegal, such finding shall only invalidate that part or portion found to violate the law. All
86 other provisions shall be deemed severed or severable and shall continue in full force
87 and effect.

88 INTRODUCED ON FIRST READING AND ORDERED PUBLISHED in pamphlet form
89 this 20th day of March 2024.

90
91 PASSED, ADOPTED, AND ORDERED PUBLISHED AS AMENDED in pamphlet form
92 this 3rd day of April 2024.

93 _____
94 Anna M. Stout
95 President of the City Council

96
97 ATTEST:

98 _____
99 Amy Phillips
100 City Clerk



Grand Junction City Council

Regular Session

Item #7.a.ii.

Meeting Date: April 3, 2024
Presented By: Jennifer Tomaszewski, Finance Director
Department: Finance
Submitted By: Jennifer Tomaszewski, Finance Director

Information

SUBJECT:

An Ordinance Amending Various Sections of the Grand Junction Municipal Code (GJMC) on Sales and Use Tax by Amending GJMC Related to Vendor Fees

RECOMMENDATION:

Staff recommends approval of the ordinance amending various sections of the Grand Junction Municipal Code (GJMC) on Sales and Use Tax by amending GJMC Related to Vendor Fees.

EXECUTIVE SUMMARY:

On January 3, 2023, Council approved an ordinance amending various sections of the Grand Junction Municipal Code (GJMC) on Sales and Use Tax by adding terms and definitions to the GJMC Related to "economic nexus" and authorize an intergovernmental agreement with the Colorado Department of Revenue (CDOR) to participate in the State Sales and Use Tax System (SUTS).

Since January 3, finance staff have been working with the state and the state's integration partners (GOVOS) to coordinate configuring the link from the City's tax administration system, GenTax, into SUTS. The early stages of this project required the City team to provide the local configurations, which GOVOS would map into SUTS. This includes providing the various exemptions and credits available to local businesses, which are included in their monthly tax returns. Recently, information provided by both the state and GOVOS confirmed a need for minor changes to the current vendor fee credits available to businesses that file sales tax returns to the City and the City's Municipal Code as it relates to vendor fee caps in order to integrate into SUTS.

BACKGROUND OR DETAILED INFORMATION:

The City allows filers to receive a "vendor fee" credit when filing sales and use tax returns if returns are submitted before the due date as an incentive for timely reporting. There are three options for this vendor fee credit per GJMC 3.12.100(b)(1), based on various reporting periods, as follows:

*(1)Vendor's Fee. A retailer's collection and remittance expense equal to three and one-third percent of the sum of the sales tax collected and any excess tax collected may be taken as a credit against sales tax paid on or before the due date. The credit shall not exceed **\$500.00 per month** for taxpayers filing monthly; **\$1,500 for taxpayers filing quarterly**; and **\$6,000 per year for taxpayers filing annually**. However, no such credit shall be allowed for any sales tax that is not reported in a timely manner and paid by the due date. Forfeiture of the vendor's fee shall be prima facie evidence that the taxpayer was in violation of this chapter.*

Recently, during the early phases of the SUTS integration, the state confirmed that the City of Grand Junction is the only municipality that offers three options for the vendor fee credit, and the SUTS system is only able to accommodate one option. Most municipalities that allow for a credit only issue one credit calculation (and cap) regardless of the filing frequency. Therefore, to integrate with SUTS, the City will need to reduce to one option. The most widely used cap, by far, is the credit of 3.333 percent up to \$500 (cap) for monthly filers.

With that information, staff reviewed the number of businesses that would have been impacted by this change in 2023, including all returns filed and any financial impacts. Given the vast majority of businesses receive a credit of \$500 or less, regardless of the reporting period, only 11 businesses would have been impacted had the City only provided one \$500 cap (for all filers: monthly, quarterly, and annual). See the detail in the table below, which depicts the number of businesses that would have been impacted, the dollar impact, and the location of these businesses.

# of Businesses Impacted	2023 Actual Credit	If \$500 credit	Financial Impact	location of businesses impacted
1	\$ 574	\$ 500	\$ 74	Grand Junction
10	17,735	6,500	11,235	NM, TX, MO,CA, GA, MI, FL, IL
11	\$ 18,309	\$ 7,000	\$ 11,309	

As seen, there is minimal impact on eliminating the \$1,500 cap for quarterly filers and the \$6,000 cap for annual filers. The benefits to most sales tax filers far outweigh the financial impacts of making this change. Most of the businesses that would be impacted are located outside of Colorado and would benefit further by filing via SUTS.

FISCAL IMPACT:

The impact on sales and use tax revenue by removing the vendor fee cap of \$1,500 for quarterly and \$6,000 for annual filers is minimal, estimated to increase revenues of less than \$12,000 annually, as most sales and use tax filers already stay below the \$500 monthly vendor fee cap.

SUGGESTED MOTION:

I move to (adopt/deny) Ordinance 5210, an ordinance amending various sections of the Grand Junction Municipal Code (GJMC) on sales and use tax by amending GJMC related to vendor fees, and publish the ordinance in pamphlet form.

Attachments

1. ORD-Amending Vendor Fee 20240307

ORDINANCE NO. ____

AN ORDINANCE AMENDING CHAPTER 3, SECTION 3.12.100 OF THE GRAND JUNCTION MUNICIPAL CODE (GJMC) CONCERNING THE SALES TAX VENDOR'S FEE

RECITALS:

The Grand Junction Municipal Code regulates the taxation, collection, reporting and remittance of sales and use taxes in the City. To alleviate some of the burden of those requirements the City has for many years provided to retailers that collect and remit tax a credit of three and one-third percent of the sum of the sales tax collected to offset the expense to the retailers for the collection and remittance effort, provided that no credit is allowed for any sales tax that is not properly and timely reported and paid by the due date.

The credit, known as a "vendor's fee", (hereinafter "Fee") was established prior to the introduction of automated systems and accordingly the Fee was then more aligned with the cost of collecting, preparing, and filing the tax returns and remitting the tax.

Now, because of the prevalence of point-of-sale systems, automated bookkeeping, and computerized tax preparation programs, together with the State's requirement for certain changes to the reporting of sales and use taxes necessitated by the implementation of the Colorado Department of Revenue Sales & Use Tax System (SUTS) the City Council has determined that the Fee should change. The Fee is proposed to be capped as provided herein and by and with adoption of this Ordinance the Fee will be limited to \$500.00 per filing per sales tax account.

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

Title 3, Section 12, Part 100(b)(1) of the Grand Junction Municipal Code is amended as follows. (Amendments to the relevant portion of the Code are shown in ~~strikethrough~~ and ALL CAPS BOLD ITALIC typeface as applicable.)

The foregoing Recitals are incorporated herein and GJMC 3.12.100(b)(1) is amended as shown:

3.12.100(b)(1) Vendor's Fee. A retailer's collection and remittance expense equal to three and one-third percent of the sum of the sales tax collected and any excess tax collected may be taken as a credit against sales tax paid on or before the due date. The credit shall not exceed \$500.00 (five hundred dollars) per filing for EACH taxpayers/SALES TAX ACCOUNT. ~~filing monthly; \$1,500 for dollars per month for taxpayers filing quarterly; and, \$6,000 dollars per year for taxpayers filing annually.~~ However, no such credit shall be allowed for any sales tax that is not timely reported and paid by the due date. Forfeiture of the vendor's fee shall be prima facie evidence that the taxpayer was in violation of this chapter. However, no such credit shall be allowed for any sales tax that is not timely reported and paid by the due date. Forfeiture of the vendor's fee shall be prima facie evidence that the taxpayer was in violation of this chapter.

All other provisions of Title 3, Section 12 Part 100 are unchanged and shall remain in full force and effect.

The City Council finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare and this Ordinance bears a rational relation to the legislative object sought to be obtained.

INTRODUCED ON FIRST READING AND ORDERED PUBLISHED in pamphlet form this 20th day of March 2024.

PASSED, ADOPTED, and ordered published in pamphlet form this ____ day of _____ 2024.

Anna M. Stout
President of the City Council

ATTEST:

Amy Phillips
City Clerk



Grand Junction City Council

Regular Session

Item #7.b.i.

Meeting Date: April 3, 2024
Presented By: David Thornton, Principal Planner
Department: Community Development
Submitted By: David Thornton, Principal Planner

Information

SUBJECT:

An Ordinance for a Comprehensive Plan Amendment for 4.23 Acres from Commercial to Residential Medium (5.5 to 12 du/ac) and Rezone from Mixed Use Neighborhood (MU- 1) to RM-8 (Residential Medium - 8 du/ac) of 4.23 Acres, Located at 2152 Broadway and 2155 Monument Lane

RECOMMENDATION:

The Planning Commission heard this request at their March 12, 2024 meeting and voted (7-0) to recommend approval of the request.

EXECUTIVE SUMMARY:

The Property Owner, D&B Broadway Monument, LLC is requesting a Comprehensive Plan Amendment from Commercial to Residential Medium (5.5-12 du/ac) and a rezone to RM-8 (Residential Medium – 8) for property located at 2152 Broadway and 2155 Monument Lane on 4.23 acres in the Redlands near the Monument Village Shopping Center. The subject properties are vacant.

The properties were zoned B-1 (Neighborhood Business) at the time the application was submitted to the City in December 2023 with a requested rezone to R-8 (Residential – 8). With the passage and effective date of the 2023 Zoning and Development Code on January 21, 2024, the current zoning on both properties is now MU-1 (Mixed Use Neighborhood) and the requested rezone is now for RM-8 (Residential Medium – 8).

The property owner is requesting an amendment to the One Grand Junction Comprehensive Plan in anticipation of future residential development. The zone district of RM-8 is consistent with the proposed Residential Medium Land Use category of the Comprehensive Plan. The zoning and Comprehensive Plan amendment requests will be considered concurrently and are included in this staff report.

BACKGROUND OR DETAILED INFORMATION:

On January 21, 2024, the R-8 zone district transitioned to RM-8 (Residential Medium - 8), and the development rights under the zone district are now found in the new Zone District and Dimensional Standards. As this application was received before the effective date of this update, the analysis found in this staff report is pursuant to the previous Zoning & Development Code language and criteria.

The Property Owner, D&B Broadway Monument, LLC, has requested a Comprehensive Plan amendment and rezone for 4.23 acres of land located on property at 2152 Broadway & 2155 Monument Lane in the Redlands in anticipation of future single-family residential development. The Applicant is requesting to amend the land use designation from Commercial to Residential Medium to allow for a rezone from MU-1 (Mixed-Use Neighborhood) to RM-8.

The property has had a zoning of MU-1 since January 21, 2024, when the City's new Zoning and Development Code and revised zoning map went into effect. Prior to that, the zoning on the two parcels was B-1 (Neighborhood Business). The rezone application requested a rezone from B-1 to R-8. Under the 2023 Code and revised zoning Map this request becomes a rezone from MU-1 to RM-8.

Surrounding properties have a mix of jurisdictions; the area to the east is zoned RM-8 in the city, to the south is zoned P-2 (Public, Civic, & Institutional Campus) (Fire Station No. 5) in the city, to the north is a Planned Unit Development in Mesa County and to the west there are areas zoned C-1 (Commercial) in Mesa County and areas zoned MU-1 in the city. Existing land uses include residential single-family to the north and east. There is also a church east of this site. Fire Station No. 5 is located to the south, along with a single-family detached residential area in unincorporated Mesa County. To the west is the existing Monument Village shopping center.

The Property Owner is requesting to amend the One Grand Junction Comprehensive Plan Land Use Map from Commercial to Residential Medium, which is the same category found to the north and east of the subject property. They seek to develop the site with the same housing type, which is single-family detached only and at densities similar to the surrounding residential single-family neighborhoods. The subject property has sewer service and all other urban amenities. It is located within Tier 2 on the Comprehensive Plan's Intensification and Growth Tiers Map. The land use category of "Commercial" includes the lands to the west, which is where the Monument Village Shopping Center exists.

The Monument Village Shopping Center was a thriving retail center with a grocery store anchor in 2010 when the 2010 Comprehensive Plan was adopted by the City and County. A vital element of the 2010 Plan was to plan for, encourage new, and grow existing neighborhood centers. Monument Village was a neighborhood center where the total area was expanded on the 2010 Future Land Use Map for a mixed-use neighborhood center. It had the elements of a thriving neighborhood center for goods

and services and was envisioned for future commercial growth opportunities. However, the retail center began to lose business, and eventually, the anchor supermarket closed. In the 2020 One Grand Junction Comprehensive Plan, the amount of area identified for a mixed-use center was reduced. Still, it included the subject property with a commercial land use designation, providing an opportunity for the center to grow. Now, in 2024, the supermarket space is occupied by Family Dollar and Dollar Tree with limited grocery items. The hardware store building now houses a church. Other smaller storefronts (businesses) have changed or closed. The existing nine-acre neighborhood center has approximately one acre of land developed as a parking lot that could be further developed for future retail/office space.

Increasing residential land uses near and around existing neighborhood centers is key in helping a center to be productive and thrive. The existing zoning of MU-1 allows for a variety of housing types, including single-family detached. However, the minimum density requirement of MU-1 zoning is eight dwelling units per acre. Developing the site under the MU-1 zone district with only single-family residential is likely impossible and still meets the minimum density requirements of MU-1. The proposal for residential development within an RM-8 zone district will support single-family detached only. The existing MU-1 zone district would require a mixture of housing types to meet the minimum density required or be required to provide 10 percent of the site to be developed with non-residential land use, which then removes the minimum density requirement of the MU-1 zone district.

RM-8 is appropriate for the creation of neighborhoods as a transitional district between low-density zone districts such as RL-4 and Mixed-Use Districts. The property's acreage lends itself to residential infill development potential, thereby supporting the Comprehensive Plan "Plan Principle 3 Responsible and Managed Growth" and the goal to "Encourage infill and redevelopment to leverage existing infrastructure. The property owner is requesting a Comprehensive Plan Amendment to Residential Medium and a rezone to RM-8 to achieve this.

The request for a Comprehensive Plan amendment concurrent with the rezone request is included in this staff report, and the accompanying ordinance provides for concurrent consideration by the Planning Commission and City Council. Without a change to the Land Use Map as requested in the Comprehensive Plan Amendment, the Rezone request to RM-8 is not supported by the Comprehensive Plan. Support for a Rezone to RM-8 is tied to an amendment to the Land Use Map of Residential Medium for the property.

Comprehensive Plan Future Land Use Map Amendment:

Presently, the Comprehensive Plan designates the subject property as Commercial on the Land Use Map. The Applicant is requesting to change the land use designation from Commercial to Residential Medium to allow for a residential development of single-family dwelling units with an overall density between 5.5 and eight dwelling units per acre. The existing zoning of MU-1 allows residential development with a minimum

of eight dwelling units per acre. However, this minimum density is difficult to meet with the type of single-family housing proposed. It thus does not permit the applicants to build the type of single-family detached housing for the property they envision.

The primary land uses found in the Residential Medium Land Use category are small, single-family residential, and medium-density multifamily, providing a range of housing types and densities. This request for Residential Medium land use would expand the existing Residential Medium land use area already existing to the north and east of the subject property.

Secondary land uses in Residential Medium include open space and parks, schools, places of worship, home-based business, public/institutional uses, and other complementary neighborhood uses. A church exists across Rio Hondo Road from this subject property. Grand Junction Fire Station No. 5 is located across Broadway (Hwy 340) from the subject property.

Rezone Request:

The Applicant is interested in preparing the property for future residential development, consistent with the scope and type of development located to the north and east of the subject property with the proposed Land Use Map change to Residential Medium (5.5 - 12 du/ac) density. The RM-8 zoning requires a minimum of 5.5 dwelling units per acre. Therefore, the requested zoning of RM-8 implements the Comprehensive Plan's Residential Medium Land Use category.

The purpose of the RM-8 (Residential – 8 du/ac) zone district is to provide medium-density detached dwellings, two-family and other attached single-family dwellings, and medium-sized multifamily structures. RM-8 is appropriate for the growth of neighborhoods as a transitional district between low-density zone districts such as RL-4 and Mixed-Use Districts. Areas to the south of the subject property are zoned and built out to Residential Low densities. The nine-acre Monument Village Shopping Center is zoned MU-1 in the City and C-1 (Commercial) in Mesa County. The proposed RM-8 zone district is an appropriate transition between these existing land uses.

The RM-8 ensures minimum densities of 5.5 dwelling units per acre are met. This property is located within an infill area impacting an existing neighborhood center. The greater surrounding area, mostly within unincorporated Mesa County, is largely developed with single-family detached homes. Further infill development is encouraged within this area of the City with the One Grand Junction Comprehensive Plan. This property provides a large enough site to accommodate such development. Existing City zoning to the east across Rio Hondo Road is already zoned RM-8 and located within the Residential Medium Land Use category established there.

In addition to the RM-8 (Residential – 8 du/ac) zoning requested by the petitioner, the following zone districts would also be consistent with the proposed Comprehensive Plan designation of Residential Medium (5.5 – 12 du/ac).

Residential Medium (5.5 – 12 du/ac)

- a. RM-12 (Residential Medium – 8-12 du/ac)
- b. P-1 (Public Parks and Open Space)
- c. P-2 (Public, Civic, and Institutional Campus)
- d. Planned Development

In reviewing the other zoning district options for the proposed Residential Medium (5.5 – 12 du/ac) category, the RM-12 zone district does not allow single-family detached and would include a minimum density of eight dwelling units per acre.

NOTIFICATION REQUIREMENTS

A Neighborhood Meeting regarding the proposed Comprehensive Plan Amendment and Zoning was held on December 12, 2023, in accordance with Section 21.02.080(e) of the Zoning and Development Code. The Applicant, Applicant's representative and City staff were in attendance, along with more than 40 members of the public. Concerns expressed included, traffic issues on Hwy 340 and Monument Village Drive, did not want to see apartments or high density, preferred one-story single family, irrigation water concerns, lack of notification of the meeting: many that came did not receive notice from the City (They were beyond the required 500 ft. notice requirement).

Notice was completed consistent with the provisions in Section 21.02.080(g) of the City's Zoning and Development Code. The subject property was posted with an application sign on December 27, 2023. Mailed notice of the public hearings before Planning Commission and City Council in the form of notification cards was sent to surrounding property owners within 500 feet of the subject property on March 1, 2024. The notice of the Planning Commission public hearing was published on March 3, 2024, in the Grand Junction Daily Sentinel. An online public hearing with an opportunity for public comment was held between March 5, 2024, and March 11, 2024, through the GJ Speaks platform.

ANALYSIS - Comprehensive Plan Amendment

As noted above this application was received before the effective date of the Zoning and Development Code and City Zoning Map update. Therefore, the following Comprehensive Plan Amendment analysis is pursuant to the previous Zoning & Development Code language.

The criteria for review are set forth in Section 21.02.130(c)(1). The criteria provide that the City may amend the Comprehensive Plan, neighborhood plans, corridor plans and area plans if the proposed change is consistent with the vision (intent), goals and policies of the Comprehensive Plan and at least one of the criteria outlined below;

- (1) Subsequent events have invalidated the original premises and findings; and/or The decision to designate the property as a Commercial Land Use under the

Comprehensive Plan was made with the adoption of the 2020 One Grand Junction Comprehensive Plan. No substantial changes to the infrastructure, development context, or development potential of the subject property has occurred since that time. Therefore, staff finds that this criterion is not met.

(2) The character and/or condition of the area has changed such that the amendment is consistent with the Plan; and/or

The character of the area has not been changed substantively since the Comprehensive Plan was adopted. The surrounding land uses remain low-density and medium-density residential development. The subject property is an urban infill site but has been even through the Comprehensive Plan planning process. Therefore, staff finds this criterion is not met.

(3) Public and community facilities are adequate to serve the type and scope of land use proposed; and/or

This 4.23-acre subject property has public sanitary sewer service, Ute Water domestic water service, Xcel electrical and natural gas service, and sanitary sewers available to the site. The existing transportation infrastructure has been improved with multi-modal transportation options that accommodate pedestrian, bicycle, and vehicular traffic. Redlands Middle school is a short walking distance away. Fire Station No. 5 is located across the street. Shopping opportunities for goods and services are adjacent across Monument Village Drive and are adequate to serve the development of the type and scope associated with the proposed residential medium land use category. Therefore, staff find that this criterion is met.

(4) An inadequate supply of suitably designated land is available in the community, as defined by the presiding body, to accommodate the proposed land use and/or

Citywide, medium-density residential land use is 16 percent of the entire Grand Junction Planning Area within the Urban Development Boundary (UDB). Much of this Residential Medium area is already developed. Increasing the Residential Medium land use area is the first step in providing sufficient area for future growth and providing housing opportunities with medium-density housing options that permit single-family detached housing within the 5.5 to 12 dwellings per acre densities. Therefore, it is appropriate to amend this property from Commercial to Residential Medium on the Comprehensive Plan Land Use Map. Staff, therefore, finds this criterion to be met.

(5) The community or area, as defined by the presiding body, will derive benefits from the proposed amendment.

The requested amendment to Residential Medium land use designation will provide an opportunity for housing within a range of density (5.5 to 12 dwelling units per acre) that is compatible with the surrounding neighborhood with similar densities and will provide housing for a growing community and the existing neighborhood Monument Village commercial center. The Residential Medium land use will limit the nonresidential development options on the subject property, promoting the likelihood of residential uses being constructed, which will provide additional residents that will support the

existing commercial area of Monument Village Shopping Center. This is supported by the Comprehensive Plan and the development of neighborhood centers and furthers the plan's goal of promoting a diverse supply of housing types that meet the needs of all ages, abilities, and incomes identified in Plan Principle 5: Strong Neighborhoods and Housing Choice, Chapter 2 of the 2020 One Grand Junction Comprehensive Plan. Therefore, staff finds that this criterion has been met.

Changes are consistent with the vision, goals and policies of the Comprehensive Plan. Implementing the Comprehensive Plan. The proposed Land Use Map Amendment to Residential Medium (5.5-12 du/ac) implements the following Plan Principles, goals and policies of the Comprehensive Plan:

Plan Principle 3: Responsible and Managed Growth

Goal: Support fiscally responsible growth...that promote a compact pattern of growth...and encourage the efficient use of land.

Goal: Encourage infill and redevelopment to leverage existing infrastructure.

Plan Principle 5: Strong Neighborhoods and Housing Choices

Goal: Promote more opportunities for housing choices that meet the needs of people of all ages, abilities, and incomes.

Intensification and Tiered Growth Plan (Chapter 3). The subject property is located within Tier 2 (Suburban Infill) – In Tier 2, the Comprehensive Plan supports sub-urban growth for infill on this site. The Plan directs development toward vacant and underutilized parcels. Development of this parcel will provide development opportunities while minimizing the impact on infrastructure and City services.

ANALYSIS - Rezone

As noted above, this application was received before the effective date of the Zoning and Development Code and City Zoning Map update; therefore, the following Rezone analysis is pursuant to the previous Zoning & Development Code language.

The criteria for review is set forth in Section 21.02.140(a) and includes that the City may rezone property if the proposed changes are consistent with the vision, goals, and policies of the Comprehensive Plan and must meet one or more of the following rezone criteria as identified:

(1) Subsequent events have invalidated the original premises and findings; and/or The property owner is seeking an amendment to the Comprehensive Plan to change the land use category from Commercial to Residential Medium with a requested zone district of RM-8, which is compatible with the proposed Comprehensive Plan Land Use Map designation of Residential Medium (5.5 to 12 du/ac). The decision to designate the property as Commercial Land Use under the Comprehensive Plan was made with the adoption of the 2020 One Grand Junction Comprehensive Plan. No substantial changes to the infrastructure, development context, or development potential of the subject property have occurred since that time.

The proposed RM-8 zone district (densities of 5.5 to 8 du/ac) does implement the Residential Medium Land Use category if the Land Use Map is amended to Residential Medium. The Plan Amendment to Residential is a new subsequent event invalidating the original premises and findings. However, since the zoning request and plan amendment are being considered concurrently, and the plan amendment has not been approved at the time of this analysis, staff have found that this criterion has not been met.

(2) The character and/or condition of the area has changed such that the amendment is consistent with the Plan; and/or

The character or condition of the areas has not changed enough to satisfy this criterion. Staff finds that this criterion has not been met.

(3) Public and community facilities are adequate to serve the type and scope of land use proposed and/or

Adequate public and community facilities and services are available to the properties and are sufficient to serve land uses associated with the proposed RM-8 zone district. This 4.23-acre subject property has public sanitary sewer service, Ute Water domestic water service, Xcel electrical and natural gas service, and sanitary sewer is available to the site. The existing transportation infrastructure has been improved with multi-modal transportation options that accommodate pedestrian, bike, and vehicle traffic. Redlands Middle School is a short walking distance away. Fire Station No. 5 is located across the street. Shopping opportunities for goods and services are adjacent across Monument Village Drive and are adequate for the development of the type and scope associated with the proposed RM-8 zone district.

Staff has found the public and community facilities are adequate to serve the type and scope of the residential land use proposed at the R-8 densities and therefore has found this criterion has been met.

(4) An inadequate supply of suitably designated land is available in the community, as defined by the presiding body, to accommodate the proposed land use; and/or Citywide, medium-density residential zoning is common, but very few properties with such zoning remain undeveloped. Only 12 percent of RM-8 zoned land city-wide is currently undeveloped. Therefore, to continue to provide housing opportunities within a medium-density housing range within 5.5 to eight dwellings per acre density, additional RM-8 zoning is desirable and appropriate. In addition, this density range helps meet the goals of the Comprehensive Plan. Therefore, it is appropriate to amend this property from Commercial to Residential Medium on the Comprehensive Plan Land Use Map. Staff finds this criterion to be met.

(5) The community or area, as defined by the presiding body, will derive benefits from the proposed amendment.

The zoning on this property at the time of this Comprehensive Plan Amendment and

Rezone submittal was B-1 but has since been changed to MU-1 with the City's Zoning Map Update. The property has seen development around it built over the past 30 years and is one of just a few infill sites provided for the growth of the Monument Village neighborhood center commercial area.

A rezone to RM-8 increases the amount of undeveloped land to potential RM-8 densities as the area continues to attract residential development at densities needing urban and city services. Very little of the Redlands community has RM-8 zoning, with most of the existing City and unincorporated Mesa County zoning at densities of 4 dwelling units per acre or less on the Redlands. If zoned to RM-8, the subject property will be available to provide single-family residential opportunities with smaller lot sizes and densities of less than eight dwelling units per acre, thereby providing housing choices to city residents of different ages, abilities, and incomes.

The requested zone district will provide an opportunity for housing within a range of density of 5.5 to eight dwelling units per acre that is consistent with the surrounding neighborhood and the needs of the growing community. RM-8 is appropriate for the growth of neighborhoods as a transitional district between low-density zone districts such as RL-4 and Mixed-Use Districts. This is supported by the Comprehensive Plan keeping pace with housing demand for similar housing types found in this area and furthers the plan's goal of promoting a diverse supply of housing types that meet the needs of all ages, abilities, and incomes identified in Plan Principle 5: Strong Neighborhoods and Housing Choice, Chapter 2 of the 2020 One Grand Junction Comprehensive Plan. Therefore, staff finds that this criterion has been met.

Section 21.02.160(f) of the Grand Junction Zoning and Development Code provides that a rezone shall be consistent with the adopted Comprehensive Plan and the criteria set forth. Though the RM-12 zone district could be considered in a Residential Medium Land Use implementing zone district, the RM-8 zone is consistent with the recommendations of the Plan's proposed amended Land Use Map, is compatible with the surrounding neighborhood, and provides for single-family housing on a smaller residential lot, thereby providing housing choice to the community.

Consistency with Comprehensive Plan

Further, the plan amendment and rezone request are consistent with the following chapters, goals and principles of the Comprehensive Plan:

Chapter 2

Plan Principle 3: Responsible and Managed Growth

Goal: Support fiscally responsible growth and annexation policies that promote a compact pattern of growth...and encourage the efficient use of land.

Goal: Encourage infill and redevelopment to leverage existing infrastructure.

Plan Principle 5: Strong Neighborhoods and Housing Choices

Goal: Promote more opportunities for housing choices that meets the needs of people of all ages, abilities, and incomes.

Chapter 3

Intensification and Tiered Growth Plan. The subject property is located within Tier 2 – In Tier 2, the City should promote the annexation of those parcels which are surrounded by, and or have direct adjacency to, the City limits of Grand Junction. Annexation and development of these parcels will provide development opportunities while minimizing the impact on infrastructure and City services.

Relationship to Existing Zoning. Requests to rezone properties should be considered based on the Implementing Zone Districts assigned to each Land Use Designation.

- Guide future zoning changes. Requests for zoning changes are required to implement the Comprehensive Plan.

RECOMMENDATION AND FINDINGS OF FACT

After reviewing the Comprehensive Plan Amendment CPA-2023-783 request for a Comprehensive Plan Amendment from Commercial to Residential Medium (5.5 to 12 du/ac) for the properties located at 2152 Broadway and 2155 Monument Lane, the following findings of facts and condition have been made.

1. The Comprehensive Plan Amendment request has met one or more of the criteria in Section 21.02.130(c)(1) of the Zoning and Development Code.
2. The Comprehensive Plan Amendment request is consistent with the vision, goals and policies of the Comprehensive Plan.

On the request for a Rezone, RZN-2023-784, from MU-1 to RM-8 for the properties located at 2152 Broadway and 2155 Monument Lane, if the Comprehensive Plan Amendment is approved, the following findings of fact have been made:

1. The Rezone request has met one or more of the criteria in Section 21.02.140 of the Zoning and Development Code.
2. The Rezone request is consistent with the vision (intent), goals and policies of the Comprehensive Plan.

Therefore, Planning Commission recommended approval of the requested Comprehensive Plan Amendment and Rezone.

FISCAL IMPACT:

This land use action does not have any direct fiscal impact.

SUGGESTED MOTION:

Two separate motions (Motion 2 cannot be approved without approval of Motion 1)

Motion 1: I move to (adopt/deny) Ordinance 5211, an ordinance amending the One

Grand Junction Comprehensive Plan Land Use map on the Comprehensive Plan Amendment request for the property located at 2152 Broadway & 2155 Monument Lane from Commercial to Residential Medium, City file number CPA-2023-783 on final passage and order final publication in pamphlet form.

Motion 2: I move to (adopt/deny) Ordinance 5211, an ordinance rezoning property located at 2152 Broadway & 2155 Monument Lane from Mixed Use Neighborhood (MU-1) to Residential Medium - 8 (RM-8), City file number RZN-2023-784 on final passage and order final publication in pamphlet form.

Attachments

1. Development Application
2. Site Location, Aerial, Future Land Use & Zoning Maps, etc
3. Neighborhood Meeting Notes Monument Villas & sign in
4. Public Comments - Monument Villas
5. GJSpeaks Public Comments
6. Public Comments since Planning Commission - Monument Villas
7. Public Comments
8. Planning Commission Minutes - 2024 - March 12 - DRAFT
9. ORD-CPA and Zoning 20240311

Development Application

We, the undersigned, being the owner's of the property adjacent to or situated in the City of Grand Junction, Mesa County, State of Colorado, as described herein do petition this:

Petition For:

Please fill in blanks below only for Zone of Annexation, Rezones, and Comprehensive Plan Amendments:

Existing Land Use Designation

Existing Zoning

Proposed Land Use Designation

Proposed Zoning

Property Information

Site Location:

Site Acreage:

Site Tax No(s):

Site Zoning:

Project Description:

Property Owner Information

Name:

Street Address:

City/State/Zip:

Business Phone #:

E-Mail:

Fax #:

Contact Person:

Contact Phone #:

Applicant Information

Name:

Street Address:

City/State/Zip:

Business Phone #:

E-Mail:

Fax #:

Contact Person:

Contact Phone #:

Representative Information

Name:

Street Address:

City/State/Zip:

Business Phone #:

E-Mail:

Fax #:

Contact Person:

Contact Phone #:

NOTE: Legal property owner is owner of record on date of submittal.

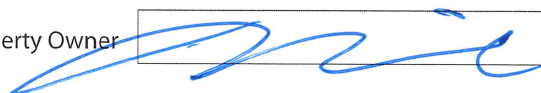
We hereby acknowledge that we have familiarized ourselves with the rules and regulations with respect to the preparation of this submittal, that the foregoing information is true and complete to the best of our knowledge, and that we assume the responsibility to monitor the status of the application and the review comments. We recognize that we or our representative(s) must be present at all required hearings. In the event that the petitioner is not represented, the item may be dropped from the agenda and an additional fee may be charged to cover rescheduling expenses before it can again be placed on the agenda.

Signature of Person Completing the Application

 Jeffery Fleming

Date

Signature of Legal Property Owner



Date



Title Page

This report is for the private use and distribution of the developers for Monument Villas their successors and assigns.

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Prepared by:

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Grand Junction, CO 81501

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LandAdvisor@ColoradoLandAdvisor.com

As a professional Urban Planner much experience and research has gone into compiling information for this report. All information was compiled from various sources and every attempt has been made to acknowledge the contributing sources. Any errors of omission are unintentional and should be brought to the attention of the author as soon as possible.

Table of Contents

Introduction and Summary	4
Site Analysis	5
Soils & Utilities	6
Zoning	7
Land Use	8
Transportation and Emergency Services	9
Public Benefit	10
Parking Inventory	12
Parking Imagery	13
Development Schedule	19
Approval Criteria	20

Introduction and Summary

The purpose of this General Project Report, documents, and accompanying drawings is intended to provide an overview of the property and proposed development efforts utilizing the Grand Junction Community Development process. The process is intended to gather initial input from review agencies prior to the subsequent submission of a future development proposal.

The site selected for the rezone and comprehensive plan amendment consists of 2 parcels of land that totals 4.23 acres+/- . The site is located at 2152 Broadway & 2155 Monument Lane Grand Junction, CO. 81507. The parcels of land are currently vacant. The Mesa County Assessors have given the property the following parcel numbers: 2947-231-45-001 & 2947-231-45-002.

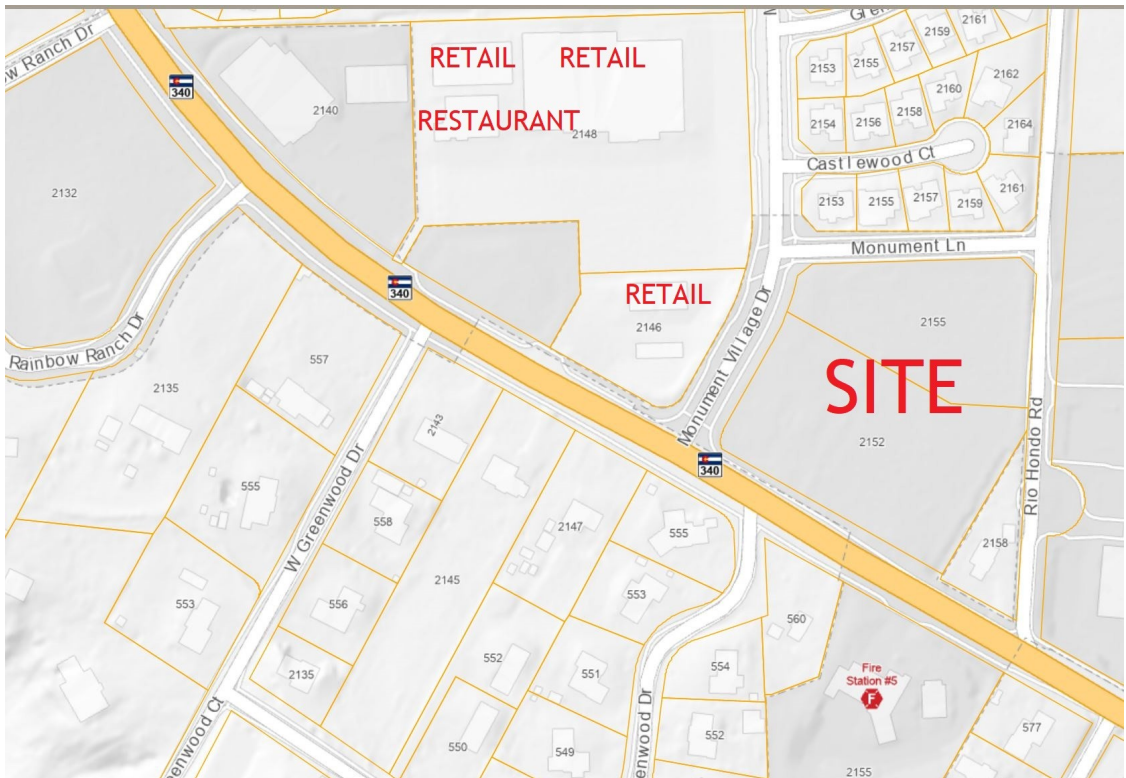
A public demand exists, and will continue to exist, within the Redlands for moderately priced homes, more so within the Monument Village area. This is demonstrated by the consistent growth of rooftops each year. Growth has been consistent since the Great Recession nearly 15 years ago.

The site is located directly next to a struggling neighborhood retail center who's anchor tenant vacated the building about 9 years ago. The 'Safeway' building remained vacant until recently when a retail 'dollar store' leased the unit. The property is adjacent to a major state roadway, Highway 340, which will enable future users to easily access the community.

Adequate utility services exist to serve the proposed rezone development type. Domestic water, sanitary sewer, irrigation water, electrical power, natural gas, internet cables, as well as cellular coverage exist on-site or in the adjacent rights-of-way.

This request for rezone is based upon the facts that the past vision for retail and office space in the Redlands area has been reshaped by a significant change in the shopping habits of the typical consumer as well as a significant surge in 'work from home' opportunities.

The rise of E-Commerce, changes in shopping habits brought on by the 2020 pandemic, and a realignment of national grocery chains business models has eliminated any significant growth possibilities for commercial, retail, and office growth in the Monument Village area. The greatest need for this area is for moderately priced residential units.



Soils & Utilities

Soils

No man-made or natural geologic hazards are known to exist on the subject property. The US Department of Agriculture, Soil Conservation Service, has identified the Mack-Gyprockmesa complex, 1 to 5 % slopes exist on the site. (The complete USDA narrative is available from Colorado Land Advisor) This soil is well suited for development

Utilities

Domestic water mains owned and operated by Ute Water Conservancy District are in adjacent streets. Capacity for future development is adequate.

Sanitary Sewer Existing sanitary sewer lines extend the entire length of the Rio Hondo and Monument Lane rights-of-way. Sanitary sewer mains also are adjacent to the parcels in portions of Highway 340 as well as Monument Village Drive.

Irrigation Water Redlands Water and Power services the area surrounding the property. There is a 12 inch main crossing Highway 340 onto the property. This will be utilized to provide future irrigation water needs to any development.

Electric service is provided by XCEL Energy and is in the adjacent rights-of-way.

Natural Gas service is provided by XCEL Energy and is in the adjacent rights-of-way.

Internet Communications is available from Century Link & Spectrum which have lines buried and overhead in the adjacent rights of way.

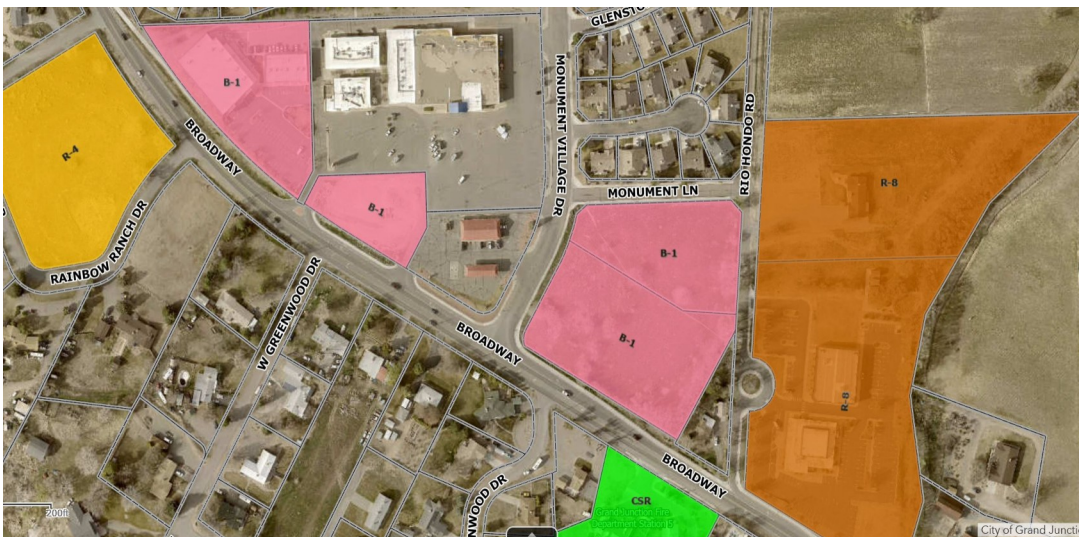
Cellular coverage - All major cellular telephone companies provide coverage to the area. Phone reception for each of the carriers is available with signals ranging from very good (AT&T) to excellent (Verizon and T-mobile).

Zoning

Zoning- An examination of the City of Grand Junction Zoning Map reveals that the subject property is currently zoned B1. According to the City's Zoning and Development code, the purpose of this designation is to provide small areas for office and professional services combined with limited retail uses, designed in scale with surrounding residential uses.

Adjacent properties which have been annexed into the City of Grand Junction have zoning designations of CSR and R8. Nearby properties carry the B1 as well as R4 zone designation. The Church on the Rock is on land with an R8 zone (the same zone the applicant is seeking for this property)

Adjacent properties that remain in Mesa County have zoning designations of C1 commercial and PUD residential.



The demands for the B1 type of zoning have been reshaped greatly since the passing of the Comprehensive Plan. The 2020 pandemic impacted the office sector more than any other. Office vacancy rates have grown from 11.4% in 2019 to 16.2% in mid 2023. Retail Neighborhood and Community Shopping Malls have the highest retail vacancy rates at 6%, according to Cushman Wakefield's 2023 Q3 report.

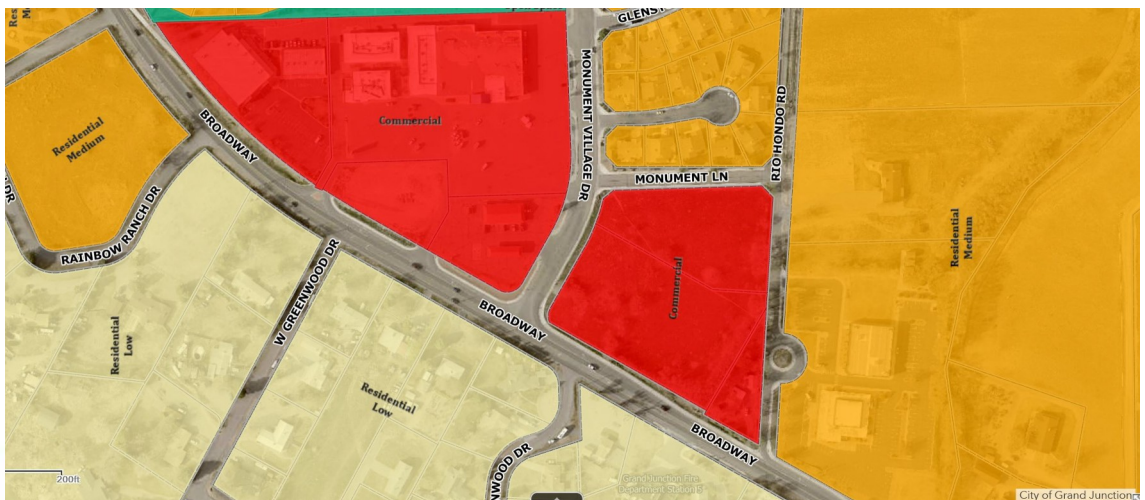
<https://www.cushmanwakefield.com/en/united-states/insights/us-marketbeats/us-shopping-center-marketbeat-report>

Land Use

Current Land Use- An examination of the City of Grand Junction GIS Zoning Map reveals that the subject property, has always been and, remains **vacant**. Adjacent uses are commercial retail, governmental (fire station), single family residential, and non-residential (church).



The City of Grand Junction's **Future Land Use** Map shows a designation for the site as Commercial.



Transportation and Emergency Services

Access to the site is gained from Colorado State Highway 340. Highway 340 is the major Redlands thoroughfare also known as Broadway with an asphalt surface with curb gutter and sidewalks running along the north side of the street.

The property is located directly across Hwy 340 from Fire Area "F" as established by the City of Grand Junction Fire Department. Firefighters can respond to emergencies from Fire Station No. 5 located at 2155 Broadway, which is less than 100 feet mile away from the project site.

The Grand Junction Fire Department currently employs over 123 full time employees at 7 stations. It is one of the largest paid fire departments between Denver and Salt Lake City; the Grand Junction Fire Department has made numerous upgrades to it's service including a modern 911 Call Center.

Other emergency services are available from the City of Grand Junction Police Department; the Uniform Patrol section is comprised of sworn officers, non-sworn police service technicians, sergeants and lieutenants. Collateral duties such as the Canine Program, SWAT, the Bike Office Program, and Forensic Investigations fall under the Uniform Patrol section. In all the Grand Junction Police Department has approximately 200 full-time law enforcement employees.

Source: City of Grand Junction www.gjcity.org.

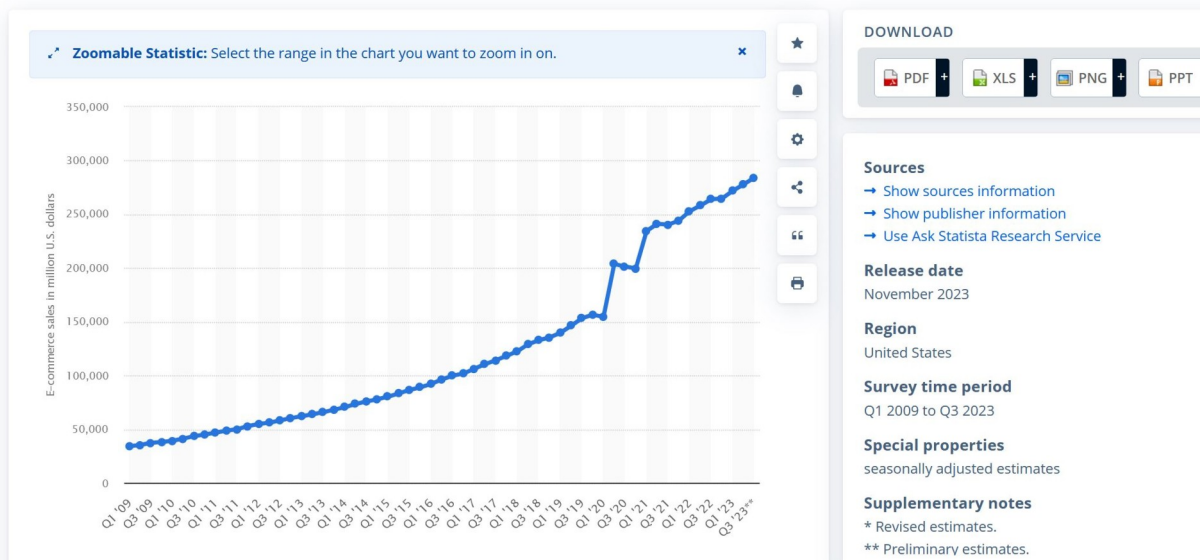
SITE:



Public Benefit

Public Benefit- The growth of online e-commerce has affected the demand for brick and mortar sites. This has impacted the expected demand for neighbourhood retail stores. Converting these empty parcels into residential developments benefits the area, as well as the community as a whole.

Retail e-commerce sales in the United States from 1st quarter 2009 to 3rd quarter 2023
(in million U.S. dollars)



<https://www.statista.com/statistics/187443/quarterly-e-commerce-sales-in-the-us/>

Expected Growth in Global Online Retail Sales

Source: Statista

2023

9%

2024

8%

<https://www.visualcapitalist.com/sp/history-of-online-shopping/>

Public Benefit

Public Benefit-

These parcels have been for sale so long that the real estate sign has all but completely faded out. It's time to develop these parcels into something the community wants and prefers, something it can benefit from.

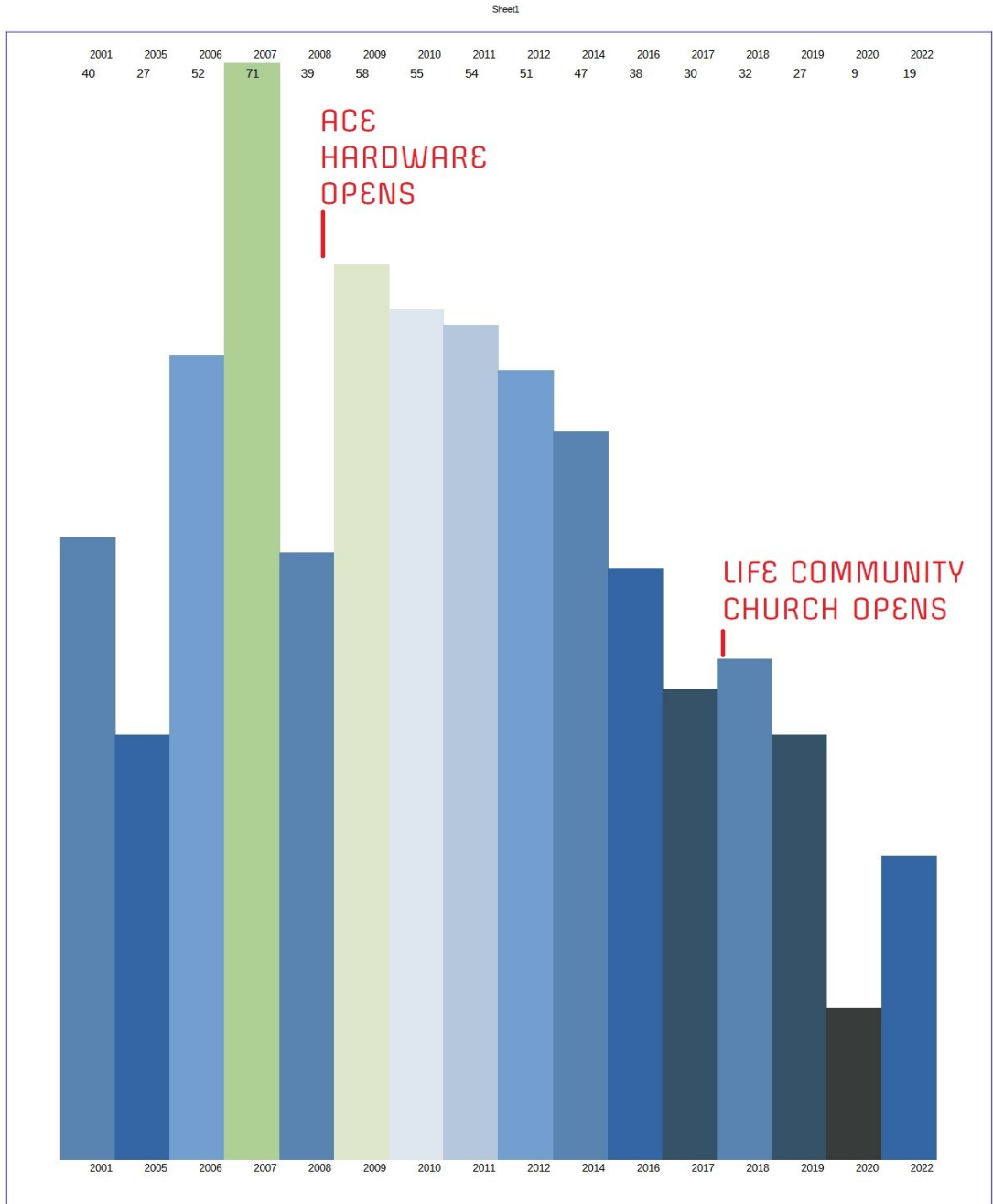
As of the last count in December 2022 only 1.7% of the City's R8 zoned land is vacant. The supply of R8 zoned land is reaching a critical point. This proposal would bring a small increase to the available land that is becoming more preferred by home buyers. These smaller lots are easier to maintain and more affordable than the typical R4 lots around the City.

With in the Redlands Area Plan it is stated @ 34.20.070 Neighborhood shopping centers and neighborhood convenience centers:

(a) **Neighborhood Shopping Centers.** Neighborhood shopping centers are sites of 10 to 15 acres, designed to meet consumer needs from adjacent neighborhoods. Uses usually include a supermarket with associated mixed retail and personal services. These centers might also include employment uses, such as office. Examples of neighborhood shopping centers on the Redlands are Monument Village Shopping Center, with Safeway as the anchor, and Redlands Marketplace, with Albertson's as the anchor. Safeway abandoned this location nearly a decade ago in 2015. The recently opened 'Dollar Store' is usually considered a 'secondary tenant' in shopping malls such as this. The restaurant location in Monument Village has been empty for over 7 years. The potential for commercial uses has shrank significantly as the existing retail/commercial/business suites struggle to remain leased up. The demand for office space continues to be reduced. Existing businesses fail to fill the parking lot as evidenced by annual aerial photos.



Parking Inventory at Monument Village



Aerial Imagery of Monument Village

Map >

- 2015 Air Photo (Countywide)
- 2014 Air Photo (Grand Valley)
- 2012 Air Photo (Countywide)
- 2011 Air Photo (Countywide)
- 2010 Air Photo (Grand Valley)
- 2009 Air Photo (Countywide)
- 2008 Air Photo (Grand Valley)
- 2007 Air Photo (Countywide)
- 2006 Air Photo (Grand Valley)
- 2005 Air Photo (Countywide)
- 2003 CIR County Air Photo
- ✓ 2001 Air Photo (Countywide)

Mesa County, Colorado
GIS/IT Department
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Map >

- 2015 Air Photo (Countywide)
- 2014 Air Photo (Grand Valley)
- 2012 Air Photo (Countywide)
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Aerial Imagery of Monument Village

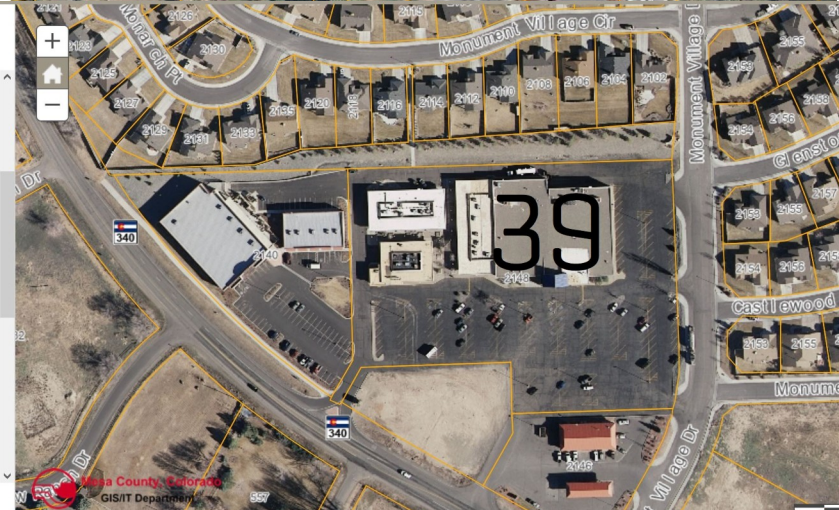
Map >

- 2018 Air Photo (Grand Valley)
- 2017 Air Photo (Countywide)
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- 2006 Air Photo (Grand Valley)



Aerial Imagery of Monument Village

Map >

- Hillshade
- 2022 Air Photo (City/County)
- 2020 Air Photo (City/County)
- 2019 Air Photo (Countywide)
- 2018 Air Photo (Grand Valley)
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Aerial Imagery of Monument Village

Layers
Basemap
Legend
Measure
Query
Bookmark
Print
Help

Select Map
Search By...
Share

Map >

Hillshade

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Mesa County, Colorado
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Mesa County, Colorado
GIS/IT Department
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Mesa County, Colorado
GIS/IT Department
X=703346.7 Y=4329179.5

Aerial Imagery of Monument Village



In the image above the Life Community Church has about a dozen staff members Parking on their lot.

Since 2018 the church has contributed to about 30% of the cars parking on the lot on any given day.

The demand for Neighborhood Retail and office has not met expectations at Monument Village. The reduction in demand for retail grocery and office space has impacted the neighborhood shopping center leaving the adjacent vacant land undevelopable in the foreseeable future.

Development Schedule

It is anticipated that upon approval of the Rezone and Comprehensive Plan Amendment the developer will apply for a preliminary and final plan for a Major Site Plan review. It is anticipated that process will take 10-15 months. After these approvals construction of necessary street improvements will be made along with new infrastructure items. This would happen simultaneously with some home construction along the existing streets. The developer of the property is financially prepared to construct this quickly. This would likely be mid-year 2025.

MONUMENT VILLAGE CRITERIA for

21.02.130 Comprehensive Plan amendment (CPA).

(a) *Purpose. In order to maintain internal consistency within the Comprehensive Plan, administrative changes and proposed amendments to the Comprehensive Plan must be consistent with the vision (intent), goals and policies included in the Plan.*

(b) *Applicability. All proposed amendments to the text of the Comprehensive Plan shall comply with the provisions of this section. Any proposed development that is inconsistent with any goals or policies of the Comprehensive Plan shall first receive approval of a Comprehensive Plan amendment. The Comprehensive Plan shall include all neighborhood plans, corridor plans, area plans, the Grand Junction Circulation Plan, and all other elements adopted as a part of the Comprehensive Plan.*

(1) *Jurisdiction Approvals. Changes to various areas of the Grand Junction Comprehensive Plan require different land use approvals:*

(i) *Land use changes located within the City limits may be approved by the City and do not require County approval. APPLICABLE*

(ii) *Changes to land use designations inside the Persigo 201 Boundary (outside the City limits) require annexation and City approval and do not require County approval. NOT APPLICABLE*

(iii) *Changes to land use designations outside of the Persigo 201 Boundary require County approval and do not require City approval. NOT APPLICABLE*

(iv) *Changes to the Persigo 201 Service Area require approval by the Persigo Board, which is comprised of the County Commissioners and the City Council. NOT APPLICABLE*

(v) *Each entity will have an opportunity to comment on proposed changes to the Comprehensive Plan prior to adoption of the amendment. APPLICABLE*

(c) *Criteria for Plan Amendments.*

(1) *The City may amend the Comprehensive Plan, neighborhood plans, corridor plans and area plans if the proposed change is consistent with the vision (intent), goals and policies of the Comprehensive Plan and:*

(i) *Subsequent events have invalidated the original premises and findings; and/or*

The proposed change is consistent with the intent of the Comprehensive Plan in that it develops parcels at a density that is consistent and compatible with neighboring developments. The goal to increase efficiencies of infrastructure would be accomplished through the development of these long-vacant properties. The original vision for the Monument Village area nearly 20 years ago was for this area to become a Neighborhood/Village Center. But subsequent events have changed how consumers shop. Online shopping has grown 10 times over in the last 14 years. This growth has come at the detriment of brick and mortar stores. What was seen as possible small shops to complement the anchor grocery store (Safeway) never gained enough interest. In fact, the existing shops directly adjacent to the Safeway store have struggled to stay leased. In the last 10 years there has been a significant decline in

square footage leased in the Monument Village Shopping Center. Where once the vision was for a thriving grocery, restaurant, and hardware store, there is today an unproven dollar store format, a vacant restaurant, and a church. The decline in retail sales for the plaza has been dramatic. It is estimated that in from it's peak in 2009 to 2022 the shopping center revenues have plummeted 80%.

(ii) The character and/or conditions of the area has changed such that the amendment is consistent with the Plan; and/or

As the City was developing the Comprehensive Plan in 2010 the City of Grand Junction considered Monument Village Shopping Center (MVSC) the 'poster child' for village centers. It was a small growing retail hub that served the area of the upper Redlands. But soon afterwards things changed. Online shopping began it's growth and brick and mortar stores suffered. Vacancy rates in the MVSC began to climb. The Ace Hardware store shut down operations after only a few years. Safeway began it's store realignment and closed the MVSC location, which had long served as it's anchor store. The coffee shop changed ownership a couple times, the gym closed and reopened under new ownership. The salon did the same. The only steady businesses have been the convenience store and the liquor store.

(iii) Public and community facilities are adequate to serve the type and scope of land use proposed; and/or

As evidence in the narrative above, the number of area 'rooftops' has slowly been growing and yet the existing retail and business services has struggled to maintain incomes sufficient to be sustainable. This tells us that the retail and services is over supplied. Roadways, fire protections, schools, churches, and other infrastructure are all in place and have available capacity for most types of development. Certainly there is capacity for a small medium density residential development.

(iv) An inadequate supply of suitably designated land is available in the community, as defined by the presiding body, to accommodate the proposed land use; and/or

This rezone proposal is to convert 4.23 acres of B1 land into an R8 residential development. Within the City of Grand Junction there are approximately 9579 acres of R8 zoned land. There remains approximately 160 acres of R8 land that is vacant, or about 1.7%. It typically takes about 2 years for a developer to deliver the first for sale residence in a new development. Thus, that 1.7% number is likely to decrease in that time frame unless more is created through a rezone process.

(v) The community or area, as defined by the presiding body, will derive benefits from the proposed amendment.

This land has been annexed and re-platted in efforts to gain attention, in an effort to make it more developable. Yet to date, there has not been any steps taken toward development. The residential neighborhood directly to the north has been in place for over 25 years, all the while these parcels have sat vacant.

Providing new home building lots that are slightly smaller than adjacent home will allow for a new residential development which can be slightly more affordable in overall prices while maintaining the style and finishes of the nearby homes, thus preserving the character of the neighborhood.

(2) *The City and County shall amend the Grand Junction Circulation Plan if:*

(i) *There was an error such that then-existing facts, projects, or trends that were reasonably foreseeable were not accounted for; or*

Statistica projects online E-commerce to grow 9% this year and 8% in 2024. Forbes projects that overall retail sales will increase 4-6% while E-commerce will grow at a 10-12% rate. This is a telling sign that many brick and mortar stores will struggle to maintain existing business. It also shows that commerce is changing, consumers are looking to a different way of obtaining goods. E-commerce (Online shopping) and the impacts of Amazon, Kroger & Walmart+ home delivery, Uber eats, and other services have consumed all the growth of retail trade in the last 10 or more years. These trends are likely to continue into the foreseeable future.

(<https://www.forbes.com/sites/allbusiness/2023/04/17/the-future-of-retail-what-the-stats-say-about-retailers-in-2023/?sh=4fe1d67f089c>)

(ii) *Subsequent events have invalidated the original premises and findings;*

In 2010 the City identified the Monument Village Shopping Center as the ideal neighborhood shopping plaza and focused the comp plan on duplicating this type of retail around the valley in order to meet the growth of specific areas e.g. Appleton & Orchard Mesa. Subsequent events described above (online shopping and the impacts of Amazon, Kroger & Walmart+ home delivery, Uber eats, and other services) have invalidated those premises.

(iii) *The character and/or condition of the area have changed enough that the amendment is acceptable;*

The character of the area has not changed, that is the problem. There has not been enough growth in rooftops to support a village center in this part of the Redlands. What has changed is the character of consumer shopping with home delivery as it has migrated towards E-commerce. This has consumed all the retail growth away from neighborhood brick and mortar stores.

(iv) *The community or area, as defined by the presiding body, will derive benefits from the proposed amendment;*

These parcels of land were annexed and re-platted in efforts to match the Comp Plan, in an effort to make them more more positioned for development. Yet to date, there has not been any steps taken toward any commercial development. The residential neighborhood directly to the north has been in place for over 25 years, all the while these parcels have sat vacant.

Providing new home building lots which would be slightly smaller than adjacent home will allow for a new residential development which can be slightly more affordable in overall prices while maintaining the style and finishes of the nearby homes, thus preserving the character of the neighborhood.

The neighborhood will benefit by finally being able to remove the highly weathered -For Sale- sign from the parcels. This sign has sat in-place for 15 years with no serious interest. It is so weathered it is barely legible. Developing smaller than average home-sites in a highly regarded neighborhood would be a benefit to the community. Smaller home footprints serve the ever-shrinking American family size. Within the valley 29% of homes are occupied by a single human. 37% of homes are occupied by

merely 2 humans. The epoch of larger single family homes on large lots is winding down. We need fewer and fewer of these home every year. Gen-z and younger families want smaller homes with little or no maintenance. This housing type fits neatly into the proposed R8 zone district.

(v) *The change will facilitate safe and efficient access for all modes of transportation; and*

The location of these two parcels is but a few blocks away from preferred schools. Smaller footprint easily maintained housing is growing in preference. These two facts coupled together will likely draw younger families to the area. A wide fully developed sidewalk will enable school-age children to walk a few blocks to school. A bicycle lane is painted on Highway 340.

(vi) *The change furthers the goals for circulation and interconnectivity.*

It is likely that a short cul-de-sac will need to be built to serve any future development. Circulation around the perimeter of the site already exists via Highway 340, Monument Village Drive, Monument Lane, and Rio Hondo.

(d) *Decision Maker: Administrative Changes.*

This request does not qualify for an administrative change

(1) *Where the City of Grand Junction has sole jurisdiction, the Director has the authority to:*

(i) *Make minor additions or clarifications to the policy section;*

Not Applicable

(ii) *Correct errors or grammar;*

Not Applicable

(iii) *Make land use designation changes for property that has multiple land use designations and is consistent with project approvals;*

Not relevant as these two parcel have a single land use designation, B1.

(iv) *Approve flexibility in the location of the Village and Neighborhood Center by granting a one-half-mile leeway; and*

Not Applicable

(v) *Allow the processing of a rezone application or request without a plan amendment when the proposed zoning is inconsistent with the Comprehensive Plan and the property is adjacent to the land use designation that would support the requested zone district.*

This request is adjacent to additional acreage zoned R8. Immediately adjacent to the east is the same R8 zone that has been applied to 9.67 acres currently occupied by a church and a single family residence. This application seeks to match this neighboring zoning designation. The difference being this 4.23 acres would be built as intended.

(e) *Decision-Maker: Plan Amendments.*

(1) *Inside of Persigo 201 Boundary. Concerning property within the Persigo 201 Boundary, which will be annexed if not already within the City limits, the Director and Planning Commission shall recommend and the City Council's action is the City's final action. City Council shall hold a public hearing prior to any decision regarding a Comprehensive Plan amendment within the Persigo 201 Boundary.*

The process as we understand it for this application

(2) *Failure of Amendment. If an amendment request fails, any pending development application must be changed to be consistent with the plan.*

(f) *Application and Review Procedure.*

(1) *Procedure. See GJMC [21.02.080](#).*

(2) *Deadlines.*

(i) *Plan amendments shall be processed when they are received.*

(3) *Application Requirements.*

(i) *Minimum Requirements. In making a request for a Plan amendment the applicant shall address each of the criteria provided in this section.*

(ii) *Optional Materials. In addition to the required written descriptions, justifications and responses, the City Council, Planning Commission or staff may request additional documents, reports, studies, plans and drawings as deemed necessary to fully evaluate the request. The applicant may submit additional relevant materials.*

See rezone and comp plan amendment application packet

(Ord. 4419, 4-5-10)

21.02.140 Code amendment and rezoning.

(a) *Approval Criteria. In order to maintain internal consistency between this code and the zoning maps, map amendments must only occur if:*

(1) *Subsequent events have invalidated the original premises and findings; and/or*

In 2010 the City identified the Monument Village Shopping Center as the ideal neighborhood shopping plaza and focused the Comp Plan on duplicating this type of retail around the valley in order to meet the growth of specific areas e.g. Appleton, Pear Park, & Orchard Mesa. Subsequent events described above (online shopping and the impacts of Amazon, Walmart+ home delivery, Uber eats, and other services) have invalidated those premises. The 2020 pandemic accelerated this evolution of trade toward more e-commerce. The near future of retail is hybrid with a few specialty service retail businesses back-filling segments within niche markets.

(2) *The character and/or condition of the area has changed such that the amendment is consistent with the Plan; and/or*

The character of the area has not changed, that is the problem. There has not been enough growth in rooftops to support a village center in this part of the Redlands. What has changed is the character of consumer shopping as it migrated towards E-commerce which has consumed much of the retail growth away from neighborhood brick and mortar stores.

(3) Public and community facilities are adequate to serve the type and scope of land use proposed; and/or

As evidence in the narrative above, the number of area 'rooftops' has slowly been growing and yet the existing retail and business services has struggled to maintain incomes sufficient to be sustainable. This tells us that the retail and services is over supplied. Roadways, fire protections, schools, churches, and other infrastructure are all in place and have available capacity for most types of development. Certainly there is capacity for a small medium density residential development.

(4) An inadequate supply of suitably designated land is available in the community, as defined by the presiding body, to accommodate the proposed land use; and/or

This rezone proposal is to convert 4.23 acres of bB land into an R8 residential development. Within the City of Grand junction there are 9579 acres of R8 zoned land. There remains approximately 160 acres of that R8 land which remains vacant, or about 1.7%. It typically takes about 2 years for a developer to deliver the first for sale residence in a new development. Thus, that 1.7% number is likely to decrease in that time frame unless more is created through a rezone process.

(5) The community or area, as defined by the presiding body, will derive benefits from the proposed amendment.

This land has been annexed and re-platted for 20 years in an effort to make it more developable. Yet to date, there has not been any development. The residential neighborhood directly to the north has been in place for over 25 years, all the while these parcels sit vacant, unproductive.

Providing new home building lots that are slightly smaller than adjacent home will allow for a new residential development which can be slightly more affordable in overall prices while maintaining the style and finishes of the nearby homes, thus preserving the character of the neighborhood.

The neighborhood will benefit by finally being able to remove the highly weathered -for sale- sign from the parcels. This sign has sat in-place for 15 years with no serious interest. It is so weathered it is barely legible. Developing smaller than average home-sites in a highly regarded neighborhood would be a benefit to the community. Smaller home footprints serve the ever-shrinking American family size. Within the valley 29% of homes are occupied by a single human. 37% are occupied by merely 2 humans. The epoch of larger single family homes on large lots is winding down. We need fewer and fewer of these home every year. Gen-Z and Millennial buyers want smaller homes with little or no maintenance. This housing type fits neatly into the proposed R8 zone district. This coupled with the fact of being in close proximity to schools will attract younger families to the area.

The Goals of the Comprehensive Plan include *Principal 2 A Resilient and Diverse Economy*

The severely under-performing Monument Village Shopping Center is worsened by maintaining adjacent vacant commercial land that is in no way attractive to commercial developers. By building more residential adjacent to it the MVSC it would benefit from more people living nearby and be more likely to build it's resilience within it's present footprint.

The immediate Redlands neighborhood is somewhat diverse as it has schools, churches, a winery, limited retail, single family, and single family attached housing nearby.

The Goals of the Comprehensive Plan include *Principal 5 Strong Neighborhoods and Housing Choices*

The immediate Redlands neighborhood has a greater need for more housing that is moderately priced. This coupled with being in close proximity to schools makes this location well suited for younger families.

Approval of this Rezone and Comprehensive Plan Amendment would build a stronger, more resilient, and somewhat more diverse neighborhood with less vacant, idle land adjacent to struggling retail shops.

SUMMARY -

The vision of the 2010 and 2020 Comprehensive Plan was to develop Monument Village Shopping Center (MVSC) into a thriving neighborhood center filled with retail and office uses. As seen in these images and in retail sales tax data, this has not come to fruition. This is largely due to several factors:

Online shopping, also known as e-commerce, has absorbed nearly all of the retail growth that was anticipated in the 2010-2020 Comprehensive Plans.

The realignment of retail grocery. Safeway, Walmart+, and Kroger (City Market) have designed large footprint retail groceries designed with a pick-up and delivery options. This has greatly reduced the emphasis on mid-sized stores in neighborhood centers. These national chains have closed Grand Junction locations: downtown, at First and Orchard, at 12th and Orchard, as well as the site in MVSC,

Office space demand has struggled to fill existing vacancies. The impacts of the pandemic 'work from home' decisions continue to reshape the business environment reducing office space demand by over 20% as of early 2023, this according to a report from CBRE Real Estate (www.cbre.com).

MVSC has struggled to fill the existing retail and office spaces. There is no need in the foreseeable future to nearly double the size of commercial space available in the Monument Village area.

A better and more immediate use of the parcels would be to develop them into medium density housing zoned R8. The smaller footprint lots would provide more moderate priced housing in the Redlands area.

2152 BROADWAY & 2155 MONUMENT LANE

IMPROVEMENT SURVEY

SECTION 23, T11S, R10W, 6TH PRINCIPAL MERIDIAN
COUNTY OF MESA, STATE OF COLORADO



Per Colorado Statute Number 38-51-106(l)
all lineal units used on this plat are U.S.
Survey Feet.

LEGEND & NOTES

- FOUND SURVEY MONUMENTS AS DESCRIBED
 - SET NO. 5 RE-BAR W/CAP L.S. 30111
 - ⊗ TELEPHONE/POWER/SERVICE POLE
1. Deeds were provided by client.
2. A Title commitment was provided Land Title Guarantee Company Order#GLB65056903 and relied upon. A Title search was not performed by me.

- Denotes boundary line
- - - - - Denotes adjoining property
- E — E — E — E — Denotes overhead power lines

Basis of Bearings Statement

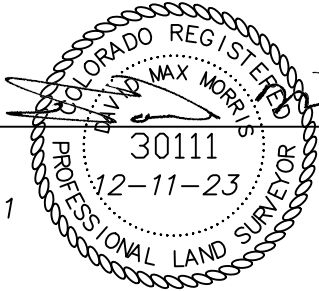
Bearings are based on the Mesa County Local Coordinate System, locally determined by GPS observations on Survey Markers (at the NW corner and the NE corner of Lot 2 of D & B Subdivision)

The measured bearing of this line is S89°49'37"E 342.19'

SURVEYOR'S CERTIFICATION

I, DAVID M. MORRIS, A REGISTERED PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF COLORADO, HEREBY CERTIFY TO CHAPARRAL WEST THAT A FIELD SURVEY OF THE PROPERTY DESCRIBED HEREON WAS CONDUCTED UNDER MY DIRECT SUPERVISION AND COMPLETED ON DECEMBER 2023, THAT THIS IMPROVEMENT SURVEY PLAT CORRECTLY SHOWS ALL BOUNDARIES, THE LOCATION OF ALL PINS AND MONUMENTS, THE LOCATION OF ALL STRUCTURES SITUATED ON THE SAID PROPERTY, APPARENT EASEMENTS AND THE SOURCE FROM WHICH THEY WERE OBTAINED, CONFLICTING BOUNDARY EVIDENCE, ANY FENCES, HEDGES OR WALLS ON OR WITHIN FIVE FEET OF BOTH SIDES OF ALL BOUNDARIES OF SAID PROPERTY, THE LOCATION OF ALL VISIBLE UTILITIES LOCATED ON SAID PROPERTY, ALL UNDERGROUND UTILITIES FOR WHICH THERE IS VISIBLE SURFACE EVIDENCE, AND THE AVAILABLE FROM THE COUNTY CLERK AND RECORDER OR FOR WHICH INFORMATION WAS MADE AVAILABLE.

COLORADO REGISTERED
PROFESSIONAL LAND SURVEYOR L.S. 30111



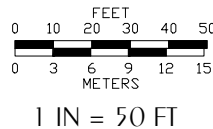
2152 BROADWAY & 2155 MONUMENT LANE

IMPROVEMENT SURVEY

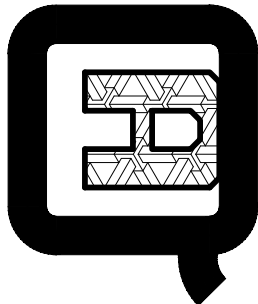
SECTION 23, T11S, R10W, 6TH PRINCIPAL MERIDIAN
COUNTY OF MESA, STATE OF COLORADO

FOR: CHAPARRAL WEST

SCALE:



DATE: 12/11/2023



Q.E.D.
SURVEYING
SYSTEMS, Inc.
2718 SIERRA VISTA RD
GRAND JUNCTION, CO
81503-2232
(970) 241-2370
FAX: 241-7025

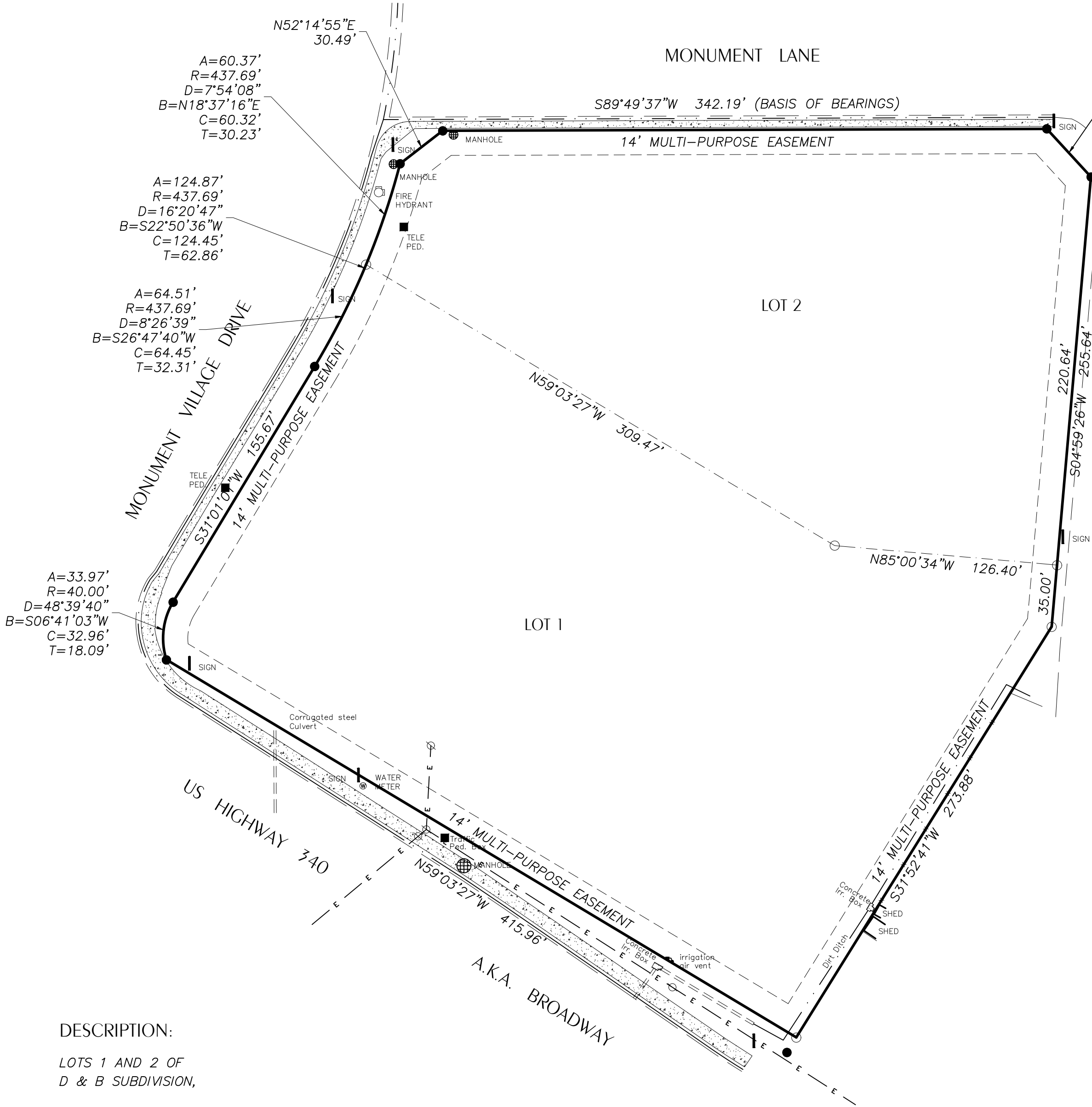
SURVEYED BY: MSM

DRAWN BY: MEM

ACAD ID: 2152 Broadway IS

SHEET NO.

FILE: 2023-340.1



DESCRIPTION:

LOTS 1 AND 2 OF
D & B SUBDIVISION,

COUNTY OF MESA, STATE OF COLORADO

TAX SCHEDULE NO. 2947-231-45-001
TAX SCHEDULE NO. 2947-231-45-002

Land Title Guarantee Company
Order Number: GJB65056903

NOTICE:

ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

LAND SURVEY DEPOSITS
MESA COUNTY SURVEYORS OFFICE

DATE _____

DEPOSIT NUMBER _____

LEGAL DESCRIPTION

Lots 1 and 2 of D & B Subdivision
County of Mesa, State of Colorado

OWNERSHIP STATEMENT - CORPORATION OR LIMITED LIABILITY COMPANY

(a) D&B Broadway/Monument, LLC ("Entity") is the owner of the following property:

(b) 2152 BROADWAY & 2155 MONUMENT LN GRAND JUNCTION, CO. 81507

A copy of the deed(s) evidencing the owner's interest in the property is attached. Any documents conveying any interest in the property to someone else by the owner are also attached.

I am the (c) Managing Member for the Entity. I have the legal authority to bind the Entity regarding obligations and this property. I have attached the most recent recorded Statement of Authority of the Entity.

☒ My legal authority to bind the Entity both financially and concerning this property is unlimited.

☐ My legal authority to bind the Entity financially and/or concerning this property is limited as follows:

N/A

☒ The Entity is the sole owner of the property.

☐ The Entity owns the property with other(s). The other owners of the property are:

N/A

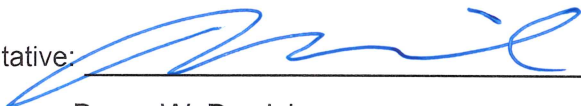
On behalf of Entity, I have reviewed the application for the (d) Rezone

I have the following knowledge or evidence of a possible boundary conflict affecting the property:

(e) None

I understand the continuing duty of the Entity to inform the City planner of any changes regarding my authority to bind the Entity and/or regarding ownership, easement, right-of-way, encroachment, lienholder and any other interest in the land.

I swear under penalty of perjury that the information in this Ownership Statement is true, complete and correct.

Signature of Entity representative: 

Printed name of person signing: Bruce W. Derrick

State of TEXAS)

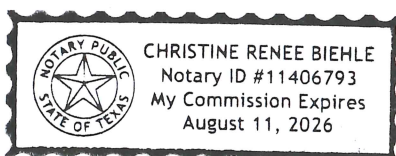
County of HARRIS) ss.

Subscribed and sworn to before me on this 15th day of November, 2023

by Bruce W. Derrick

Witness my hand and seal.

My Notary Commission expires on 08/11/2026




Notary Public Signature

11/5.00

Recorded by LTC-GJ File # 65000978

Filed for record the _____ day of _____, A.D. _____, at _____ o'clock _____ M. _____

Reception No. _____ By _____ DEPUTY.

WARRANTY DEED

THIS DEED, Made on this day of **November 15, 2006**, between

SURF VIEW DEVELOPMENT CO., A CALIFORNIA CORPORATION

of the _____ County of _____ and State of _____, the Grantor(s), and

D & B - BROADWAY/MONUMENT, LLC, A COLORADO LIMITED LIABILITY COMPANY

whose legal address is c/o Derrick Interests, Inc. 3900 Essex Lane, Suite 550, Houston TX 77027 County of _____ and State of _____, the Grantee(s):

WITNESS, That the Grantor(s), for and in consideration of the sum of (**\$1,150,000.00**)

***** One Million One Hundred Fifty Thousand and 00/100 *** DOLLARS**

the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto the Grantee(s), his heirs and assigns forever, all the real property, together with improvements, if any, situate, lying and being in the _____ County of **MESA** and State of Colorado, described as follows:

BLOCK 1 OF MONUMENT VILLAGE COMMERCIAL CENTER, COUNTY OF MESA, STATE OF COLORADO

also known as street number **2152 BROADWAY GRAND JUNCTION CO 81503**

TOGETHER with all and singular and hereditaments and appurtenances thereto belonging, or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right title interest, claim and demand whatsoever of the Grantor(s), either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described with appurtenances, unto the Grantee(s), his heirs and assigns forever. The Grantor(s), for himself, his heirs and personal representatives, does covenant, grant, bargain, and agree to and with the Grantee(s), his heirs and assigns, that at the time of the enrolling and delivery of these presents, he is well seized of the premises above conveyed, has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature soever, Subject to general taxes for the year 2006 and those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Grantee(s) in accordance with Section 8a (Title Review) of the Contract to Buy and Sell Real Estate relating to the above described property; distribution utility easements (including cable TV); those specifically described rights of third parties not shown by the public records of which Grantee(s) has actual knowledge and which were accepted by Grantee(s) in accordance with Section 8b (Matters not Shown by the Public Records) and Section 8c (Survey Review) of the Contract to Buy and Sell Real Estate relating to the above described real property; inclusion of the Property within any special tax district; and, the benefit and burdens of any declaration and party wall agreements, if any and other ~~None~~

The Grantor(s) shall and will WARRANT AND FOREVER DEFEND the above bargained premises in the quiet and peaceable possession of the Grantee(s), his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof. The singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF the Grantor(s) has executed this deed on the date set forth above.

SURF VIEW DEVELOPMENT CO., A CALIFORNIA CORPORATION

By: David L. Fletcher U.P.
David L. Fletcher, as Vice-President

STATE OF _____)
County of _____) ss.

See attached Notary

The foregoing instrument was acknowledged before me on this day of **November 15, 2006**, by **DAVID L. FLETCHER, AS VICE-PRESIDENT OF SURF VIEW DEVELOPMENT CO., A CALIFORNIA CORPORATION**

My commission expires _____
Witness my hand and official seal.

Notary Public

Name and Address of Person Creating Newly Created Legal Description (38-35-106.5, C.R.S.)

Escrow# GJ65000978 When Recorded Return to: D & B - BROADWAY/MONUMENT, LLC, A COLORADO LIMITED
Title# GJR65000978 LIABILITY COMPANY
4704 LAKE FOREST DR, SUITE 200 ATLANTA, GA 30320
(4129118)

Form 84 08/29/04 WDL WARRANTY DEED (Photographic)

WELLS
FARGO

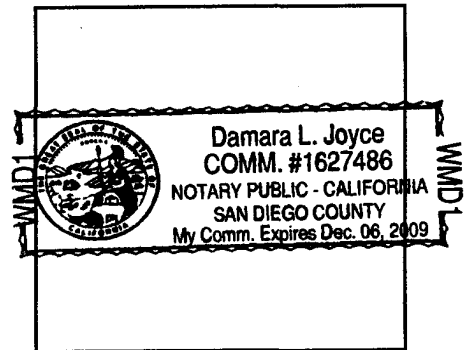
All-purpose Acknowledgment California only

State of California County of San Diego

On 11-10-06 before me, Damara L. Joyce, Notary Public (here insert name and title of the officer),

personally appeared David L. Fletcher

personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the
person ~~(s)~~ whose name ~~(s)~~ subscribed to the within instrument and acknowledged to
me that he ~~/she/they~~ executed the same in his ~~/her/their~~ authorized capacity ~~(ies)~~, and that
by his ~~/her/their~~ signature ~~(s)~~ on the instrument the person ~~(s)~~, or the entity upon behalf of
which the person ~~(s)~~ acted, executed the instrument.



WITNESS my hand and official seal.

Signature Damara L. Joyce

Notary Seal

Optional

Description of Attached Document

Type or Title of Document	Document Date	Number of Pages
<u>Warranty Deed</u>		

Signer(s) Other Than Named Above

Capacity(ies) claimed by Signer(s)

Signer's Name

Signer's Name

- ☐ Individual
☐ Corporate Officer
Title(s) _____
☐ Partner
 ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other _____

Right Thumbprint
of Signer

Top of thumb here

- ☐ Individual
☐ Corporate Officer
Title(s) _____
☐ Partner
 ☐ Limited ☐ General
☐ Attorney-In-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other _____

Right Thumbprint
of Signer

Top of thumb here

Signer is Representing:

Signer is Representing:

Statement of Authority

The undersigned hereby executes this Statement of Authority, pursuant to the provisions of Section 38-30-172, C.R.S., on behalf of D & B BROADWAY/MONUMENT LLC, an entity other than an individual, capable of holding title to real property ("Entity"), and states as follows:

1. The Entity is a Limited Liability Company formed and existing under the laws of the following governmental authority Colorado
(state the type of entity and the state, country or other governmental authority under whose laws it was formed. Example: a Limited Liability Company formed and existing under the laws of Colorado)
2. If formed under a governmental authority other than the State of Colorado, state the name under which the Entity has filed with the Colorado Secretary of State Colorado
3. The Entity's mailing address is: 3900 ESSEX LN STE 340 HOUSTON, TX 77027-5474
4. The name of the person or persons, or the position or positions, of the Entity authorized to execute instruments on behalf of the Entity to convey, encumber or otherwise affect the title to real property is/are:
Bruce W. Derrick – Managing Member
- ☐ If ALL names or positions provided here are required for authority, please check this box. If box is not checked, then only one of the names or positions provided is necessary for execution of instruments on Entity's behalf.
5. The limitations upon the authority of the person or persons named above to bind the Entity are as follows:
NONE
(if no limitations insert "NONE")
6. Other matters concerning the manner in which the Entity deals with any interest(s) in real property are: _____
NONE
(if none insert "NONE")

This Statement of Authority amends or replaces any prior Statement of Authority executed on behalf of the Entity.

EXECUTED this 15th day of November, 2023.

ENTITY: D & B BROADWAY/MONUMENT LLC, a limited liability company _____

BY: [Signature] _____ Managing Member _____
Name Bruce W. Derrick Position

STATE OF TEXAS)
) ss.
COUNTY OF HARRIS)

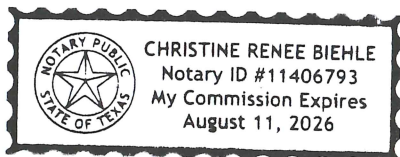
The foregoing instrument was acknowledged before me this 15th day of November, 2023, by

Bruce W. Derrick and _____.

Witness my hand and official seal.

My commission expires:

[Signature]
Notary Public





INVOICE

Land Title Guarantee Company
5975 Greenwood Plaza Blvd Suite 125
Greenwood Village, CO 80111
970-245-0550

CHAPARRAL WEST
RON ABELOE
PO BOX 1765
GRAND JUNCTION, CO 81502

Reference

Your Reference Number: TBD Commitment - 65056903
Our Order Number: GJ-8408
Our Customer Number: 38605.1
Invoice Requested by: RON ABELOE
Invoice (Process) Date: November 27, 2023
Transaction Invoiced By: Web Services
Email Address: system@ltgc.com

Invoice Number: GJ-8408

Date: November 27, 2023

Order Number: 65056903

Property Address: 2152 BROADWAY AND 2155 MONUMENT LANE GRAND JUNCTION 81507

Parties: A Buyer To Be Determined

Invoice Charges

Service:	TBD Commitment	\$265.00
Ref:	65056903	
Addr:	2152 BROADWAY AND 2155 MONUMENT LANE	
Party:	D & B - BROADWAY/MONUMENT, LLC, A COLORADO LIMITED LIABILITY COMPANY	
		\$265.00
Total Amount Invoiced:		\$0.00
Less Payment(s):		\$265.00
Balance Due:		

Due and Payable upon receipt

Please make check payable to Land Title Guarantee Company and send to the address at the top of Page 1.
Please reference **Invoice Number GJ-8408** on your Payment



Customer Distribution



Prevent fraud - Please call a member of our closing team for wire transfer instructions or to initiate a wire transfer. Note that our wiring instructions will never change.

Order Number: **GJB65056903**

Date: **12/01/2023**

Property Address: **2152 BROADWAY AND 2155 MONUMENT LANE, GRAND JUNCTION, CO 81507**

For Closing Assistance

For Title Assistance

Land Title Mesa County Title
Team
2454 PATTERSON RD #100
GRAND JUNCTION, CO 81505
(970) 245-0550 (Work)
(970) 245-0089 (Work Fax)
gjresponse@ltgc.com

Seller/Owner

D & B - BROADWAY/MONUMENT, LLC
Delivered via: No Commitment Delivery

REDLANDS INVESTMENT PROPERTIES, LLC
Attention: CLIFTON ANSON
2185 QUAIL CT
GRAND JUNCTION, CO 81507
(970) 261-1066 (Cell)
(970) 245-9090 (Work)
(970) 245-9089 (Work Fax)
cliffanson@msn.com

CHAPARRAL WEST
Attention: RON ABELOE
PO BOX 1765
GRAND JUNCTION, CO 81502
(970) 244-9986 (Work)
(970) 244-8858 (Work Fax)
ron@cwihomes.com
Delivered via: Electronic Mail

Surveyor
COLORADO LAND ADVISOR
Attention: JEFFERY L. FLEMING
300 MAIN STREET
SUITE 302
GRAND JUNCTION, CO 81501
(970) 234-3466 (Cell)
(970) 812-3288 (Work)
landadvisor@coloradolandadvisor.com
Delivered via: Electronic Mail



Estimate of Title Fees

Order Number: GJB65056903

Date: 12/01/2023

Property Address: 2152 BROADWAY AND 2155 MONUMENT LANE, GRAND JUNCTION, CO 81507

Seller(s): D & B - BROADWAY/MONUMENT, LLC, A COLORADO LIMITED LIABILITY COMPANY

Buyer(s): A BUYER TO BE DETERMINED

Thank you for putting your trust in Land Title. Below is the estimate of title fees for the transaction. The final fees will be collected at closing. Visit ltgc.com to learn more about Land Title.

Estimate of Title Insurance Fees	
"TBD" Commitment	\$265.00
TOTAL	\$265.00

Note: The documents linked in this commitment should be reviewed carefully. These documents, such as covenants conditions and restrictions, may affect the title, ownership and use of the property. You may wish to engage legal assistance in order to fully understand and be aware of the implications of the documents on your property.

Chain of Title Documents:

[Mesa county recorded 11/15/2006 under reception no. 2348830](#)

Plat Map(s):

[Mesa county recorded 10/28/2009 under reception no. 2510683](#)

[Mesa county recorded 09/14/2000 under reception no. 1965032](#)

ALTA COMMITMENT
Old Republic National Title Insurance Company
Schedule A

Order Number: GJB65056903

Property Address:

2152 BROADWAY AND 2155 MONUMENT LANE, GRAND JUNCTION, CO 81507

1. Effective Date:

11/14/2023 at 5:00 P.M.

2. Policy to be Issued and Proposed Insured:

"TBD" Commitment

\$0.00

Proposed Insured:

A BUYER TO BE DETERMINED

3. The estate or interest in the land described or referred to in this Commitment and covered herein is:

FEE SIMPLE

4. Title to the estate or interest covered herein is at the effective date hereof vested in:

D & B - BROADWAY/MONUMENT, LLC, A COLORADO LIMITED LIABILITY COMPANY

5. The Land referred to in this Commitment is described as follows:

LOTS 1 AND 2 OF D & B SUBDIVISION, COUNTY OF MESA, STATE OF COLORADO

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ALTA COMMITMENT
Old Republic National Title Insurance Company
Schedule B, Part I
(Requirements)

Order Number: GJB65056903

All of the following Requirements must be met:

This proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.

Pay the agreed amount for the estate or interest to be insured.

Pay the premiums, fees, and charges for the Policy to the Company.

Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

THIS COMMITMENT IS FOR INFORMATION ONLY, AND NO POLICY WILL BE ISSUED PURSUANT HERETO.

1. WRITTEN INSTRUCTIONS AUTHORIZING LAND TITLE TO PREPARE A STATEMENT OF AUTHORITY FOR D & B - BROADWAY/MONUMENT, LLC, A COLORADO LIMITED LIABILITY COMPANY, STATING UNDER WHICH LAWS THE ENTITY WAS CREATED, THE MAILING ADDRESS OF THE ENTITY, AND THE NAME AND POSITION OF THE PERSON(S) AUTHORIZED TO EXECUTE INSTRUMENTS CONVEYING, ENCUMBERING, OR OTHERWISE AFFECTING TITLE TO REAL PROPERTY ON BEHALF OF THE ENTITY; OR, A DULY EXECUTED AND ACKNOWLEDGED STATEMENT OF AUTHORITY SETTING FORTH THE NAME OF D & B - BROADWAY/MONUMENT, LLC, A COLORADO LIMITED LIABILITY COMPANY AS A LIMITED LIABILITY COMPANY.

NOTE: ANY STATEMENT OF AUTHORITY MUST BE IN COMPLIANCE WITH THE PROVISIONS OF SECTION 38-30-172, C.R.S. AND BE RECORDED WITH THE CLERK AND RECORDER.

ALTA COMMITMENT
Old Republic National Title Insurance Company
Schedule B, Part II
(Exceptions)

Order Number: GJB65056903

This commitment does not republish any covenants, condition, restriction, or limitation contained in any document referred to in this commitment to the extent that the specific covenant, conditions, restriction, or limitation violates state or federal law based on race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin.

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.
8. RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED MARCH 25, 1912 UNDER RECEPTION NO. [105740](#) IN BOOK 163 AT PAGE [176](#).
9. TERMS, CONDITIONS, STIPULATIONS, OBLIGATIONS AND PROVISIONS OF RESOLUTION NO. MCM 94-8, PLANNING DEPARTMENT NO. C53-93-2, APPROVAL OF A REVISED OFFICIAL DEVELOPMENT PLAN AND PRELIMINARY/FINAL PLAN FOR FILING 4 AND DENIAL OF A RIGHT-OF-WAY VACATION MONUMENT VILLAGE DEVELOPMENT, RECORDED JANUARY 18, 1994 UNDER RECEPTION NO. [1668217](#) IN BOOK 2042 AT PAGE [257](#); AMENDMENT WAS RECORDED FEBRUARY 10, 1995 UNDER RECEPTION NO. [1708691](#) IN BOOK 2127 AT PAGE [88](#).
10. MULTI-PURPOSE UTILITY EASEMENT AND RIGHTS INCIDENTAL THERETO AS SET FORTH IN INSTRUMENT RECORDED JANUARY 14, 1997 UNDER RECEPTION NO. [1784964](#) IN BOOK 2294 AT PAGE [243](#).
11. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF MONUMENT VILLAGE COMMERCIAL CENTER RECORDED SEPTEMBER 14, 2000 UNDER RECEPTION NO. [1965032](#).
12. TERMS, CONDITIONS, STIPULATIONS, OBLIGATIONS AND PROVISIONS OF MESA COUNTY DEVELOPMENT PERMIT, RECORDED SEPTEMBER 14, 2000 UNDER RECEPTION NO. [1965033](#) IN BOOK 2750 AT PAGE [249](#).
13. TERMS, CONDITIONS AND PROVISIONS OF THE DEVELOPMENT IMPROVEMENTS AGREEMENT, RECORDED SEPTEMBER 14, 2000 UNDER RECEPTION NO. [1965034](#) IN BOOK 2750 AT PAGE [250](#).

ALTA COMMITMENT
Old Republic National Title Insurance Company
Schedule B, Part II
(Exceptions)

Order Number: GJB65056903

14. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN RESOLUTION NO. MCM 2009-086, A RESOLUTION TO ABANDON A PORTION OF PETITIONED RIGHT OF WAY RECORDED JUNE 15, 2009 UNDER RECEPTION NO. [2493583](#) IN BOOK 4872 AT PAGE [647](#).



Land Title Guarantee Company

Disclosure Statements

Note: Pursuant to CRS 10-11-122, notice is hereby given that:

- (A) The Subject real property may be located in a special taxing district.
- (B) A certificate of taxes due listing each taxing jurisdiction will be obtained from the county treasurer of the county in which the real property is located or that county treasurer's authorized agent unless the proposed insured provides written instructions to the contrary. (for an Owner's Policy of Title Insurance pertaining to a sale of residential real property).
- (C) The information regarding special districts and the boundaries of such districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor.

Note: Effective September 1, 1997, CRS 30-10-406 requires that all documents received for recording or filing in the clerk and recorder's office shall contain a top margin of at least one inch and a left, right and bottom margin of at least one half of an inch. The clerk and recorder may refuse to record or file any document that does not conform, except that, the requirement for the top margin shall not apply to documents using forms on which space is provided for recording or filing information at the top margin of the document.

Note: Colorado Division of Insurance Regulations 8-1-2 requires that "Every title entity shall be responsible for all matters which appear of record prior to the time of recording whenever the title entity conducts the closing and is responsible for recording or filing of legal documents resulting from the transaction which was closed". Provided that Land Title Guarantee Company conducts the closing of the insured transaction and is responsible for recording the legal documents from the transaction, exception number 5 will not appear on the Owner's Title Policy and the Lenders Policy when issued.

Note: Affirmative mechanic's lien protection for the Owner may be available (typically by deletion of Exception no. 4 of Schedule B, Section 2 of the Commitment from the Owner's Policy to be issued) upon compliance with the following conditions:

- (A) The land described in Schedule A of this commitment must be a single family residence which includes a condominium or townhouse unit.
- (B) No labor or materials have been furnished by mechanics or material-men for purposes of construction on the land described in Schedule A of this Commitment within the past 6 months.
- (C) The Company must receive an appropriate affidavit indemnifying the Company against un-filed mechanic's and material-men's liens.
- (D) The Company must receive payment of the appropriate premium.
- (E) If there has been construction, improvements or major repairs undertaken on the property to be purchased within six months prior to the Date of Commitment, the requirements to obtain coverage for unrecorded liens will include: disclosure of certain construction information; financial information as to the seller, the builder and or the contractor; payment of the appropriate premium fully executed Indemnity Agreements satisfactory to the company, and, any additional requirements as may be necessary after an examination of the aforesaid information by the Company.

No coverage will be given under any circumstances for labor or material for which the insured has contracted for or agreed to pay.

Note: Pursuant to CRS 10-11-123, notice is hereby given:

This notice applies to owner's policy commitments disclosing that a mineral estate has been severed from the surface estate, in Schedule B-2.

- (A) That there is recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate and that there is substantial likelihood that a third party holds some or all interest in oil, gas, other minerals, or geothermal energy in the property; and
- (B) That such mineral estate may include the right to enter and use the property without the surface owner's permission.

Note: Pursuant to CRS 10-1-128(6)(a), It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

Note: Pursuant to Colorado Division of Insurance Regulations 8-1-3, notice is hereby given of the availability of a closing protection letter for the lender, purchaser, lessee or seller in connection with this transaction.

Note: Pursuant to CRS 24-21-514.5, Colorado notaries may remotely notarize real estate deeds and other documents using real-time audio-video communication technology. You may choose not to use remote notarization for any document.



**Joint Notice of Privacy Policy of
Land Title Guarantee Company
Land Title Guarantee Company of Summit
County
Land Title Insurance Corporation and
Old Republic National Title Insurance Company**

This Statement is provided to you as a customer of Land Title Guarantee Company as agent for Land Title Insurance Corporation and Old Republic National Title Insurance Company.

We want you to know that we recognize and respect your privacy expectations and the requirements of federal and state privacy laws. Information security is one of our highest priorities. We recognize that maintaining your trust and confidence is the bedrock of our business. We maintain and regularly review internal and external safeguards against unauthorized access to your non-public personal information ("Personal Information").

In the course of our business, we may collect Personal Information about you from:

- applications or other forms we receive from you, including communications sent through TMX, our web-based transaction management system;
- your transactions with, or from the services being performed by us, our affiliates, or others;
- a consumer reporting agency, if such information is provided to us in connection with your transaction;
- and
- The public records maintained by governmental entities that we obtain either directly from those entities, or from our affiliates and non-affiliates.

Our policies regarding the protection of the confidentiality and security of your Personal Information are as follows:

- We restrict access to all Personal Information about you to those employees who need to know that information in order to provide products and services to you.
- We may share your Personal Information with affiliated contractors or service providers who provide services in the course of our business, but only to the extent necessary for these providers to perform their services and to provide these services to you as may be required by your transaction.
- We maintain physical, electronic and procedural safeguards that comply with federal standards to protect your Personal Information from unauthorized access or intrusion.
- Employees who violate our strict policies and procedures regarding privacy are subject to disciplinary action.
- We regularly assess security standards and procedures to protect against unauthorized access to Personal Information.

WE DO NOT DISCLOSE ANY PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT STATED ABOVE OR PERMITTED BY LAW.

Consistent with applicable privacy laws, there are some situations in which Personal Information may be disclosed. We may disclose your Personal Information when you direct or give us permission; when we are required by law to do so, for example, if we are served a subpoena; or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

Our policy regarding dispute resolution is as follows: Any controversy or claim arising out of or relating to our privacy policy, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.



Commitment For Title Insurance

Issued by Old Republic National Title Insurance Company

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON. .

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Old Republic National Title Insurance Company, a Minnesota corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured. If all of the Schedule B, Part I—Requirements have not been met within 6 months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

COMMITMENT CONDITIONS

1. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
- (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
- (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
- (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (h) "Title": The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:

- (a) the Notice;
- (b) the Commitment to Issue Policy;
- (c) the Commitment Conditions;
- (d) Schedule A;
- (e) Schedule B, Part I—Requirements; and
- (f) Schedule B, Part II—Exceptions; and
- (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
 - i. comply with the Schedule B, Part I—Requirements;
 - ii. eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
 - iii. acquire the Title or create the Mortgage covered by this Commitment.
- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.

- (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

IN WITNESS WHEREOF, Land Title Insurance Corporation has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A to be valid when countersigned by a validating officer or other authorized signatory.

Issued by:
Land Title Guarantee Company
3033 East First Avenue Suite 600
Denver, Colorado 80206
303-321-1880



Craig B. Rants, Senior Vice President



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

By



President

Attest



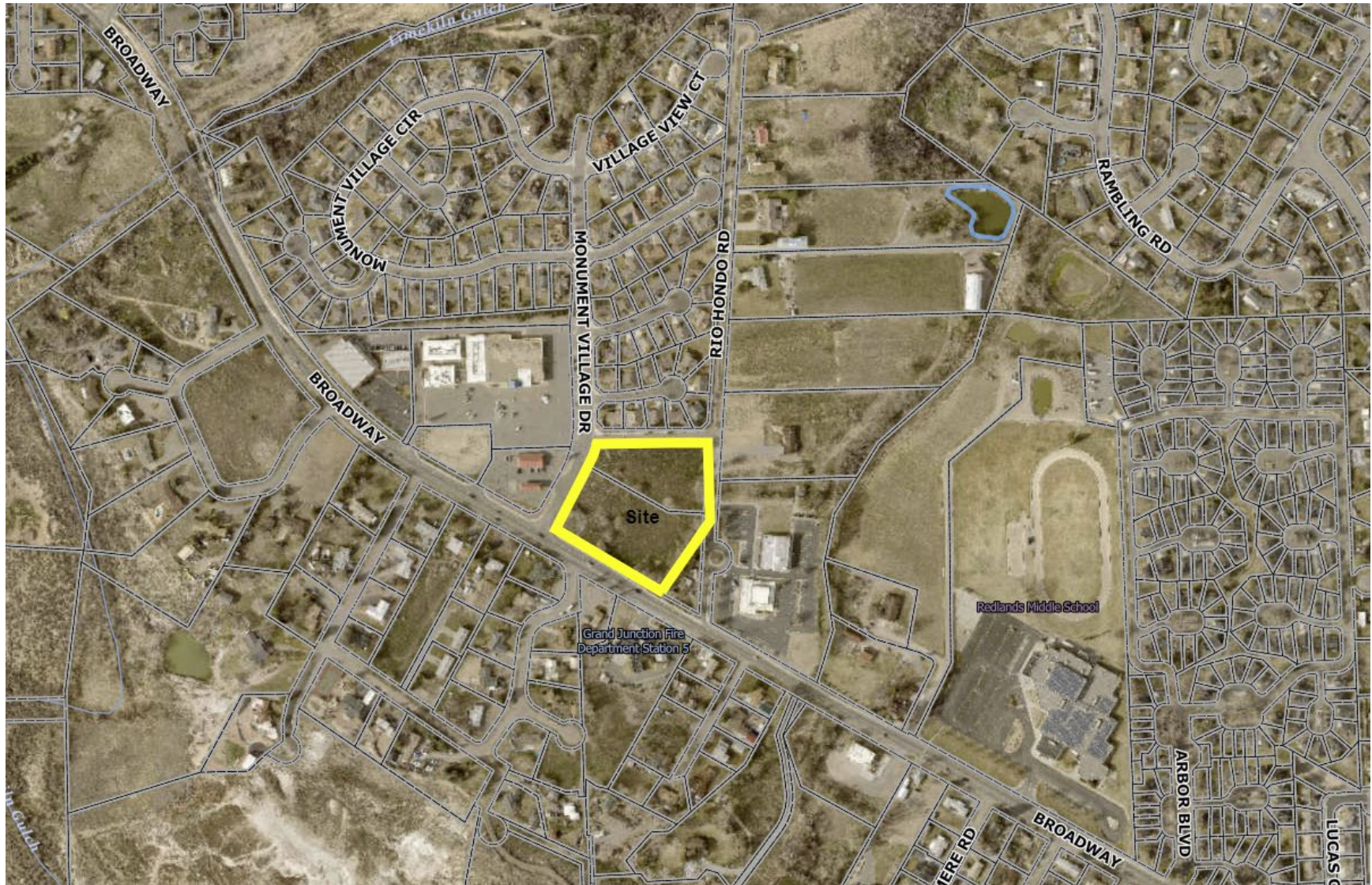
Secretary

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Old Republic National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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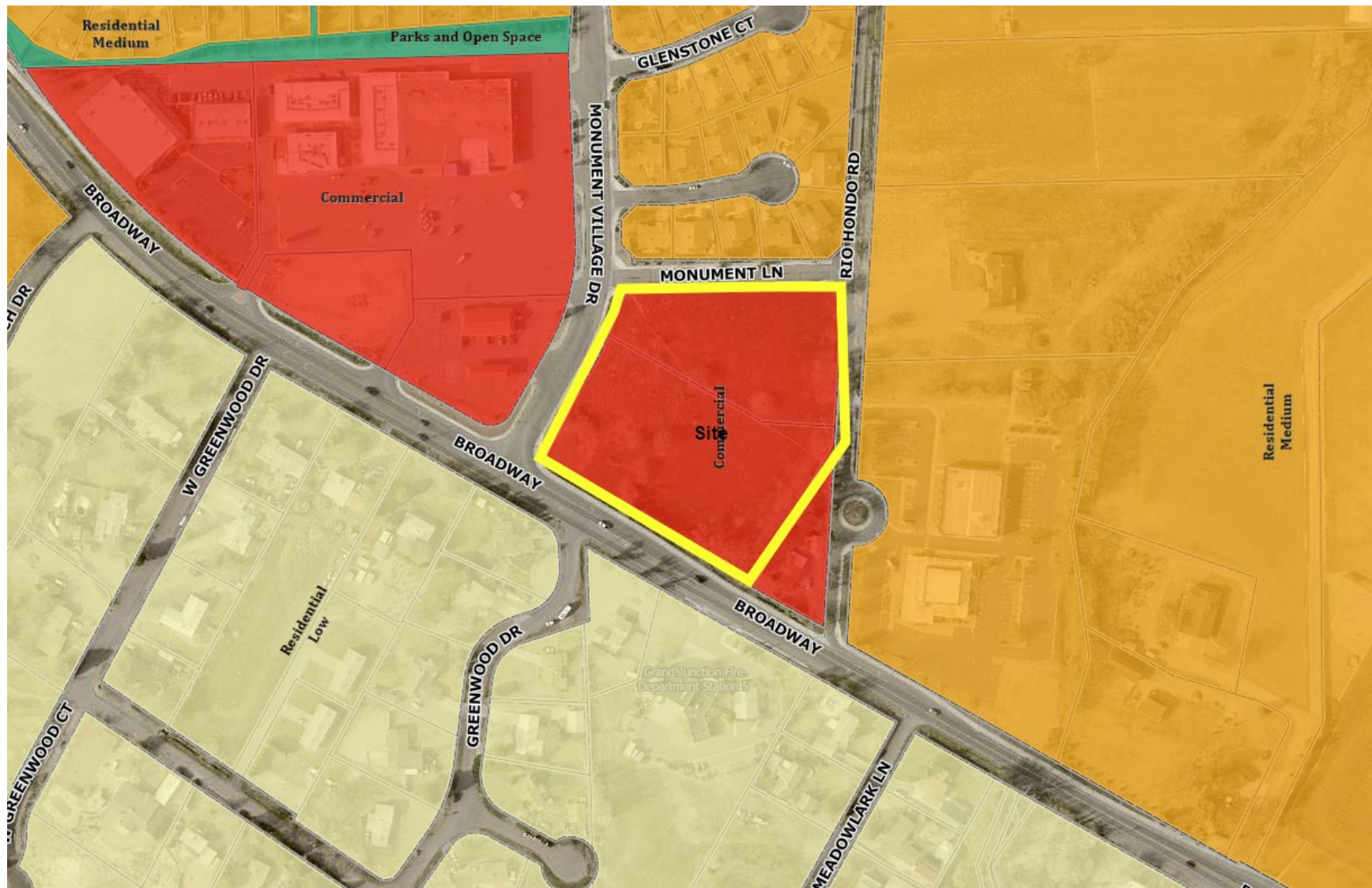
Site Vicinity Map – Monument Villas Comp Plan Amendment & Rezone



Site Location Map

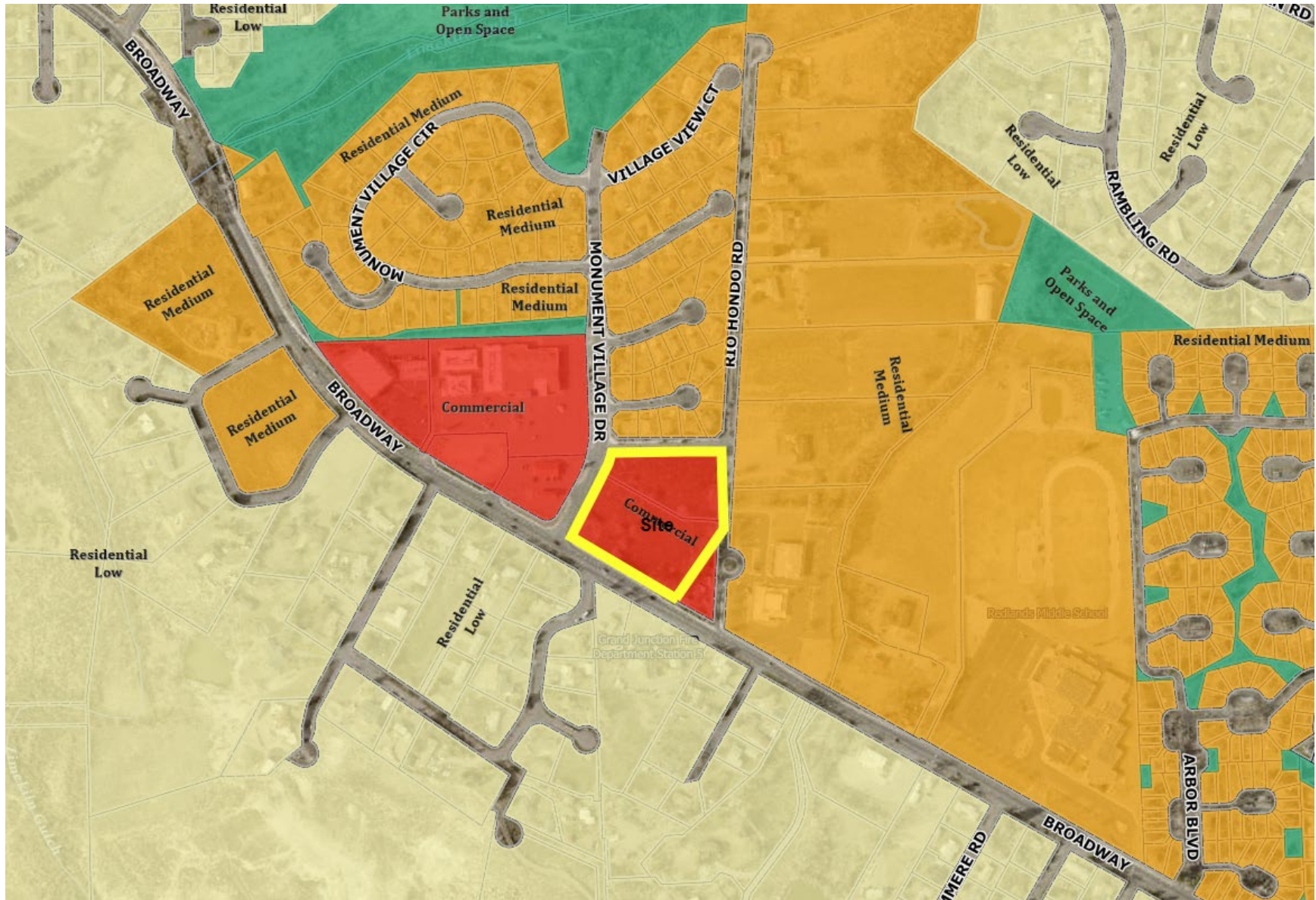


Land Use Map



Land Use Map

Larger View



Zoning Map





View of property from shopping center looking east



View of property from shopping center looking southeast

Monument Villas Neighborhood Meeting Notes

for the proposed Rezone and Comp Plan Amendment

Held at the Life Community Church Office Meeting Room December 12, 2023. @ 5:30 PM

1. Irrigation water - Several of the Monument Village residents expressed concern about the possibility of their irrigation water being disturbed by this development. It was pointed out that the Monument village irrigation water comes from Kiln Creek, while the project's irrigation water comes from a head gate across hwy 340 in the Redlands Water& Power ditch directly behind the City's new fire station.
2. Traffic - Many residents expressed concern about the traffic volume on HWY 340 making it difficult to exit from Monument Village Drive.
3. Notification - Some residents of Monument Village were concerned because they did not receive a Notice of the Meeting. It was explained that the statutory requirement for notice in the City is to mail our notices to property owners within 500 feet of the property, and that the City supplies us with the mailing labels. Several of the attending neighbors DO live beyond the 500 ft boundary. The President of the Monument Village HOA, who also did not get a notice, offered to do an email blast out to all of the residents in MV, if only his name would be put on the mailing list.
4. Density - The Applicants displayed a preliminary site plan containing 25 single family lots on 4.23 acres, for a density of 5.9 units/acre. The neighbors didn't want anything with more density than their own neighborhood (about 3.9 units/acre). Once it was explained that the new code will require a minimum of 34 units with no limit on the maximum, there was a clear and very strong majority of neighbors in favor of the rezoning of the property to RMF-8.

SIGN IN SHEET FOR
Monument Villas Rezone & Comp Plan Amendment
 NEIGHBORHOOD MEETING 12-12-23
 @ Life Community Church 2140 Broadway

NAME	ADDRESS	PHONE or EMAIL
Jeffery Fleming	300 Main Street Suite 302 GJ CO 81501	970-812-3288
CLIFF ANSON	2185 QUAIL CT GJ 81507	970-861-1066
Don Abele	720 Bella Cyn dr. GJ 6 81507	970-234-5681
Jim Cagney	2103 MONUMENT VILLAGE Circle 81507	970-307-421-6490
2118 Jones 2158	" " " "	970-210-307-0285
Sam	" "	
Anne Maurer	2158 Glenstone Ct. GJ 81507	(970) 549-4883
Reverie Christ	555 Greenwood Dr	602-628-773
Darlene Hallmark	2266 1/4 Rd, GJ 81505	970-250-0985
Tim Lehrbach	250 N 5th Street	970-244-1534
LEE SPARN	2124 Monarch Pt.	970-433-7272
Ingrid Ketcham	2157 Castlewood Ct	970-729-0675
Jena Gross	2160 Castlewood Ct.	970-549-4515
Sharon Kellogg	2170 Broadway 81507	970-242-7625
Sam	2155 Castlewood Ct 81507	970-250-7826
Steve Oster	2129 Monarch Pt.	703-628-3627
Steve Oster	2129 Monarch Pt.	703-628-3627
EO Miller	2139 MONUMENT VILLAGE CIR	970-270-7774
KEVIN KEPPEL	2134 VILLAGE CIR. CT.	970-712-1228
Laura Moses	2135 Monarch Point	720) 253-9623
RICH SPRIGGS	2171 1/2 BROADWAY	610 392 1156
Jory Sorensen	2180 Broadway	970 948 0642

SIGN IN SHEET FOR
Monument Villas Rezone & Comp Plan Amendment
 NEIGHBORHOOD MEETING 12-12-23
 @ Life Community Church 2140 Broadway

NAME	ADDRESS	PHONE or EMAIL
Jeffery Fleming	300 Main Street Suite 302 GJ CO 81501	970-812-3288
Kim Cagney	2103 Monument Village Circle	307-421-4937
Don & Lana Middleton	2143 Monument Village Cir	970-276-
Dean & Marcia Derck	551 Greenwood Dr	608-385-3863
Jerry & Katherine Lafreniere	Greenwood dr.	970-201-3861
M. Jean Landis	560 Greenwood Dr	970-712-9232
Dennis R. Lucas	2160 ⁶⁵ ^{Ma hands} 2120	970-2601596
Marilyn Petek	2109 Monument Village Cir	970-243-6646
MARIN BIRST	2153 Village View Ct.	970-201-7824
THOMAS WALSH	2147 Monument Village Cir.	203-819-6865
Paula Armstrong	2133 Village Cir. ct. Grand St, CO	970-245-6029
CAROLE MORITZ	2158 CASTLEWOOD CT GJ, CO	970-3145249
Shelly Williams	2159 Village View Ct GJ CO	970-250-7357
David Williams	" " " " " "	(970) 712-3282
Nikki Lussaux	2134 Monument Vill Cir	970-9858069
Jeanie & Mike Kruger	2154 Glenstone	970-270-2210
Ken Boese	2156 Village View Ct	970 243-5395
Rob Denbeger	2147 Broadway	970-256-7089
Lucy Bondy	" "	"
DAVE PARMLEY	2142 Monument Village Cir	970-418-8155

David Thornton

From: Edward Miller <ecmdrm.miller@gmail.com>
Sent: Saturday, December 30, 2023 9:21 AM
To: David Thornton
Subject: Zoning of Property at 2152 Broadway & 2155 Monument Lane

**** - EXTERNAL SENDER. Only open links and attachments from known senders. DO NOT provide sensitive information. Check email for threats per risk training. - ****

Dear Mr. Thornton:
Subject: Zoning of Property at 2152 Broadway & 2155 Monument Lane

I live at 2139 Monument Village Circle located in the Monument Village Subdivision consisting of Filings 4, 5, 6, and 7 located north of subject properties. I attended a neighborhood meeting on December 12th regarding the potential development of homes on 4.23 Acres located at 2152 Broadway and 2155 Monument Lane. I was told that the developers requested the current B1 zoning be changed to RMF-8 which will allow for a minimum build of 5.5 homes per acre.

This is similar to the size of homes in Filings 6 and 7 of Monument Village and approximately half the size of Filings 4 and 5. I ask that the planning board recommend to the City Council to approve the RMF-8 zoning request as any higher density homes do not blend into the surroundings of the current homes in Monument Village.

Thank you for your time and consideration in this matter,

Edward Miller
2139 Monument Village Circle
Grand Junction, CO 81507
970-270-7770

David Thornton

From: M J LANDIS <jelandis2@msn.com>
Sent: Wednesday, December 13, 2023 1:55 PM
To: David Thornton
Subject: 2152 Broadway & 2155 Monument Lane rezone

**** - EXTERNAL SENDER. Only open links and attachments from known senders. DO NOT provide sensitive information. Check email for threats per risk training. - ****

As someone who lives across the street from this property (560 Greenwood Drive) I would like to express my favorable opinion of the rezoning from commercial B-1 to residential RMF8. I especially favor the developer's desire to put in single story, detached homes. I will still be able to gaze across Hwy 340 with a pretty unobstructed view of the Bookcliffs.

The traffic flow of course will increase but it was heavier when both the grocery store and the hardware store were open. The church traffic is preferable to previous situations. At some point perhaps the Hwy 340 speed limit coming from the west will be reduced earlier to accomodate traffic safely.

Side note: as someone who has also fought the elm seed bugs and am looking forward to my big trees dying off, the developer will most likely take out all the volunteer elm trees growing on that side of Hwy 340!!!

Regards, Jean Landis

David Thornton

From: chris hatton <hatton81507@gmail.com>
Sent: Wednesday, December 13, 2023 10:39 AM
To: David Thornton
Subject: Downzoning properties of 2152 Broadway and 2155 Monument Lane

**** - EXTERNAL SENDER. Only open links and attachments from known senders. DO NOT provide sensitive information. Check email for threats per risk training. - ****

As a property owner in this neighborhood I am very concerned with the possibility of construction of multi apartments in this area. Although I would prefer no construction in this quiet neighborhood, the thought of 50 units or more is very disturbing.

I am asking that you minimize the construction to the minimum density of 25 lots, that will keep traffic down and security safer. This is a very lowkey residential area and we all would love to keep it that way.

Thank you for your time and consideration on this problem.

Christopher and Renee Hatton
555 Greenwood Dr
Grand Junction Co 81507

David Thornton

From: Grand Junction Speaks <no-reply@gjspeaks.org>
Sent: Wednesday, March 6, 2024 6:08 PM
To: David Thornton
Cc: Jacob Kaplan
Subject: [Grand Junction Speaks] Comment submitted for: Monument Villas Comp Plan Amendment & Rezone

**** - EXTERNAL SENDER. Only open links and attachments from known senders. DO NOT provide sensitive information. Check email for threats per risk training. - ****



The following comment has been submitted for Monument Villas Comp Plan Amendment & Rezone by Dean R Deick:

I live in the Shadow Mountain subdivision directly across highway 340 from the proposed development. I support the rezoning if it truly means moderately priced single family homes will be built. The only concern I have is the stated 'irrigation available' provided by a "12 inch pipe" under highway 340. This gives the impression there is a 12 inch pipe's worth of available irrigation water when this is not the case. I've lived in this neighborhood since 2019 and have been taking over much of the neighborhood management of the irrigation ditch providing our subdivision and several others. Redlands Water & Power does not manage water to the fore mention pipe. The water in that "12 inch" pipe comes from an 8 inch pipe off one of Redlands Water & Power's main ditches at gate #154. The 8 inch pipe off gate #154 is typically only half filled at the location where it splits toward the property in question. Also, given the elevation of the property to be rezoned and the elevation of where the irrigation water passes under highway 340, a pump station would be required to get the water to the property.

You can approve or reject the comment [here](#).

This email was delivered by gjspeaks.org

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and CPA-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

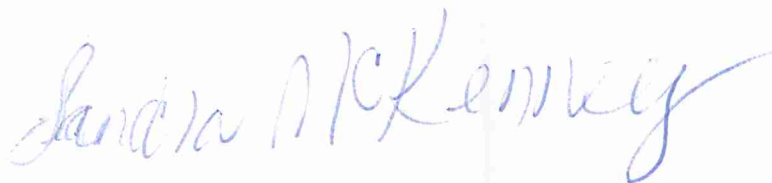
Dear Mr. Thornton,

I would like to take this opportunity to express my support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property.

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as would a commercial development.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in blue ink, reading "Sandra McKenney". The signature is written in a cursive, flowing style.

David Thornton

From: Paula S Armstrong <starbuckp@aol.com>
Sent: Wednesday, March 27, 2024 4:59 PM
To: David Thornton
Subject: Dave Thornton

**** - EXTERNAL SENDER. Only open links and attachments from known senders. DO NOT provide sensitive information. Check email for threats per risk training. - ****

It is our hope that The City Council will support the Chaparral West Inc proposal. The Planning Commission on Tuesday, March 12, 2024, voted to rezone the property to R8 and it was approved by a 7-0 vote.

The Property is located at 2152 Broadway and 2155 Monument Lane.

The Chaparral West Inc proposal is compatible with my neighborhood. We attended a meeting where neighbors were informed of the proposal. We were impressed with the proposal and as a group supported it.

Thank you for your consideration
Paula and Bob Armstrong

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

Dear Mr. Thornton,

I would like to take this opportunity to express my support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property.

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as a commercial development would.

Thank you for your consideration in this matter.

Sincerely,

Dave & Kathy Panley

David Thornton

From: Margaret Simonson <magisim@hotmail.com>
Sent: Saturday, March 30, 2024 7:54 AM
To: Vicki Brickey; James Cagney
Cc: CLIFF ANSON; Dave Parmley; Don Middleton; HOA Diane McClean; Ken Boese; Marty Dirst; David Thornton; ron@cwihomes.com
Subject: Re: Rezoning at 2152 Broadway and 2155 Monument Lane

**** - EXTERNAL SENDER. Only open links and attachments from known senders. DO NOT provide sensitive information. Check email for threats per risk training. - ****

I am in favor of the proposed single family home project. I share Mr. Cagney's concerns about the intersection with the related increased traffic.

Margaret

Sent from my T-Mobile 5G Device
Get [Outlook for Android](#)

From: Vicki Brickey <vickibrickey@gmail.com>
Sent: Saturday, March 30, 2024 7:37:36 AM
To: James Cagney <jcagney56@gmail.com>
Cc: CLIFF ANSON <cliffanson@msn.com>; Dave Parmley <dparmley53@gmail.com>; Don Middleton <letsgolf51@gmail.com>; HOA Diane McClean <dianemclean@kw.com>; HOA Tr Margaret Mags Simonson <magisim@hotmail.com>; Ken Boese <kenboese@gmail.com>; Marty Dirst <mdirst1950@gmail.com>; davidth@gjcity.org <davidth@gjcity.org>; ron@cwihomes.com <ron@cwihomes.com>
Subject: Re: Rezoning at 2152 Broadway and 2155 Monument Lane

I vote yes.

On Fri, Mar 29, 2024 at 10:18 AM James Cagney <jcagney56@gmail.com> wrote:
Dear Mr Thorton,

I am Jim Cagney, president of the Monument Village 2001 Homeowners Association which includes 57 homes NW of the property in question, which is located east of the Good 2 Go store on Broadway.

Our organization discussed the proposed development for the parcel at our annual meeting on February 3, 2024. We didn't vote, and I don't suggest I speak for every homeowner in this Association. But I received no opposition when I suggested that the current development proposal, currently before the council, is the best fit for our neighborhood.

I'm confident that every homeowner in our neighborhood would agree that the intersection of 2152 Broadway and 2155 Monument Lane is increasingly hazardous. The last thing we need is 25 more houses entirely dependent on that intersection. However, given the range of alternatives reasonably foreseeable for development of the parcel, this proposal is preferred. I urge the Grand Junction city

council to approve the rezoning as requested in order that this property be developed as currently proposed. Let's get this done. That parcel is a dark cloud hanging over our neighborhood.

I don't know what entity is responsible for Monument Village Lane at its intersection with Broadway. If Grand Junction is responsible, please paint lanes to identify a center line, and right and left turn lanes for vehicles attempting to enter onto Broadway. Only the area immediately north of Broadway needs this remedy. If Grand Junction is not responsible for that section of road, please let me know who is.

Thank you for your consideration,

Jim Cagney

[2103 Monument Village Circle](#)

[Grand Junction, CO 81507](#)

307-421-6490

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 N 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO. 81507

Dear Mr. Thornton,

We would like to express our thanks and gratitude for the hard work of the planning department.

Additionally, we would like to convey our support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development more compatible with our neighborhood, which will be directly impacted by the development of this property.

Although this proposal will allow more residential units than we would like on this property, it should not result in as much of a negative impact on my neighborhood or the safety of the many middle school students that utilize the sidewalks surrounding this parcel going to and from school as a commercial development would.

Could you please confirm receipt of this email?

Thank you for your consideration of this matter.

Sincerely,
David and Shelly Williams
davshellyw@aol.com

Mr. Dave Thorton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and CPA-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

Dear Mr. Thorton,

I would like to take this opportunity to express my support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with the neighborhood.

Thank you for your consideration in this matter.

Sincerely, Randy Cloyd
2146 Monument Village Circle
Grand Junction Co. 81507

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

Dear Mr. Thornton,

I would like to take this opportunity to express my support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property.

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as a commercial development would.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Kevin R. Keppel". The signature is written in dark ink and is positioned below the word "Sincerely,".

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

Dear Mr. Thornton,

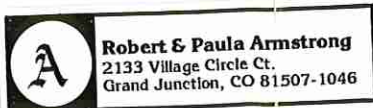
I would like to take this opportunity to express my support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property.

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as a commercial development would.

Thank you for your consideration in this matter.

Sincerely,

Paula Armstrong
Robert Armstrong



From: Council <council@gjcity.org>

Sent: Monday, April 1, 2024 8:47 AM

To: Abe Herman <abeh@gjcity.org>; Anna Stout <annas@gjcity.org>; Belinda White <belindaw@gjcity.org>; Cody Kennedy <codyken@gjcity.org>; Council <council@gjcity.org>; Dennis Simpson <denniss@gjcity.org>; Greg Caton <gregc@gjcity.org>; Jason Nguyen <jasonnn@gjcity.org>; John Shaver <johns@gjcity.org>; Johnny McFarland <johnnym@gjcity.org>; Randall Reitz <randallr@gjcity.org>; Scott Beilfuss <scottb@gjcity.org>; Anna Stout <anna@annaforgj.com>

Subject: FW: Monument Villas to be located at 2152 Broadway and 2155 Monument Lane

FYI: Madame Mayor and Members of Council, the message below from Randy Cloyd and Maria Kelley regarding the above-mentioned, was left on Council's email Sunday morning:

*Belinda White
Administrative Specialist*

(970) 244-1508



From: Maria Kelley <mariakelley2146@outlook.com>

Sent: Sunday, March 31, 2024 8:28 AM

To: Council <council@gjcity.org>

Subject: Re: Monument Villas to be located at 2152 Broadway and 2155 Monument Lane

**** - EXTERNAL SENDER. Only open links and attachments from known senders. DO NOT provide sensitive information. Check email for threats per risk training. - ****

Dear City Council members, we would like to let you know of our support for the rezoning of the above referenced property to RMF8, because this zoning will allow for development that will be more compatible with our neighborhood, and would directly impact the development of this property. This proposal will allow more residential units than we would like on this property, but would not negatively impact our neighborhood as much as a commercial development or higher density housing. Thank you for your consideration.

Randy Cloyd
Maria Kelley

2146 Monument Village Circle
Grand Junction, CO 81507

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

Dear Mr. Thornton,

I would like to take this opportunity to express my support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property.

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as a commercial development would.

Thank you for your consideration in this matter.

Sincerely,

Lana Middleton
2143 Monument Village Circle
Grand Junction CO. 81507

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

Dear Mr. Thornton,

I would like to take this opportunity to express my support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property.

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as a commercial development would.

Thank you for your consideration in this matter.

Sincerely,

Sophia Weiss
2152 Broadway
GJ. *Blenstone et*
81507

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

Dear Mr. Thornton,

I would like to take this opportunity to express my support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property.

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as a commercial development would.

Thank you for your consideration in this matter.

Sincerely,

Frances Hayes
2125 Monument Avenue Circle

I do not support this. This (new) development will undoubtedly need to hook into our H2O water - which is old and horribly expensive - pumps and what not. Also, the Traffic Engineering in the City, County and state is terrible. There probably will not be a traffic signal installed and there will probably be only one entrance - on monument lane - thus forcing some traffic into the private church property adjacent to the East which has a cock-a-mamy record about with no left turn.

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

Dear Mr. Thornton,

I would like to take this opportunity to express my support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property.

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as a commercial development would.

Thank you for your consideration in this matter.

Sincerely,

Martine D. Dwyer
2153 Village View Ct.
G.J., Co. 81507

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

Dear Mr. Thornton,

I would like to take this opportunity to express my support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property.

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as a commercial development would.

Thank you for your consideration in this matter.

Sincerely,

Michael Krager

Jeanie Krager

3-29-24

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gicity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

Dear Mr. Thornton,

I would like to take this opportunity to express my ^{oppose}~~support~~ for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property. *25 home is too many 15 home would be ok*

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as a commercial development would.

Thank you for your consideration in this matter.

Sincerely,

Dennis A. Leers

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

Dear Mr. Thornton,

I would like to take this opportunity to express ~~my support~~ ^{I do not} for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property. 25 home is to much for 4 1/2 AC 15 would Be Better

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as a commercial development would.

Thank you for your consideration in this matter.

Sincerely,



Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

Dear Mr. Thornton,

I would like to take this opportunity to express my support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property.

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as a commercial development would.

Thank you for your consideration in this matter.

Sincerely,

Jera Gross
2160 Castlewood Ct.
Grand Jct. CO 81507

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

Dear Mr. Thornton,

I would like to take this opportunity to express my support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property.

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as a commercial development would.

Thank you for your consideration in this matter.

Sincerely,

Robert T. Cady
M. Sam Cady

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

Dear Mr. Thornton,

I would like to take this opportunity to express my support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property.

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as a commercial development would.

Thank you for your consideration in this matter.

Sincerely,

Donald E. Hualodt
2131 Monument Pt
GJ, CO 81507

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

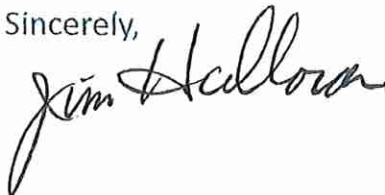
Dear Mr. Thornton,

I would like to take this opportunity to express my support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property.

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as a commercial development would.

Thank you for your consideration in this matter.

Sincerely,



Jim & Susy Halloran
2155 Village View Ct
G.J. 81507
303-906-8719

Mr. Dave Thornton
Senior Planner
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501
davidth@gjcity.org
970-244-1450

Re: CPA-2023-783 Comp Plan Amendment and RZN-2023-784 Rezone of Lots 1 and 2 of D & B Subdivision; known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

Dear Mr. Thornton,

I would like to take this opportunity to express my support for the rezoning of the above referenced property to RMF8, because this zoning will allow for a development that will be more compatible with my neighborhood, which will be directly impacted by the development of this property.

Although this proposal will allow more residential units than I would like on this property, it should not result in as much of a negative impact on my neighborhood as a commercial development would.

Thank you for your consideration in this matter.

Sincerely,

Brian Chadez

A handwritten signature in black ink, appearing to be "Brian Chadez", with a stylized, sweeping underline.

-----Original Message-----

From: G. Alison Giachetti <galigia@yahoo.com>

Sent: Tuesday, April 2, 2024 11:06 AM

To: Council <council@gjcity.org>

Subject: CPA-2023-784 Comp Plan Amendment and RZN-2023 784 Rezone of Lots 1 and 2 of D&B Subdivision, known as 2152 Broadway and 2155 Monument Lane, Grand Junction, CO 81507

** - EXTERNAL SENDER. Only open links and attachments from known senders. DO NOT provide sensitive information. Check email for threats per risk training. - **

Dear members of the City Council

I live at 2147 Monument Village Circle located in the Monument Village Subdivision consisting of Filings 4, 5, 6, and 7 located north of proposed development. I have been following the potential development of homes on 4.23 acres located at 2152 Broadway and 2155 Monument Lane. The developers proposing to build on this lot have requested the current zoning be changed to RMF-8 which would allow for a build of 5.5 homes per acre. This request was unanimously approved by the Planning Commission and is now in your hands.

The requested zoning change is similar to the size of homes in Filings 6 and 7 of Monument Village and approximately half the size of Filings 4 and 5. Therefore, these houses would blend well with the existing neighborhood.

Please approve the requested zoning change from MU-1 to RMF-8. We believe that not doing so will have a strong negative effect on our neighborhood.

Thank you for your consideration of this matter.

Alison Giachetti

GRAND JUNCTION PLANNING COMMISSION
March 12, 2024, 5:30 PM
MINUTES

The meeting of the Planning Commission was called to order at 5:31 p.m. by Chairman Teske.

Those present were Planning Commissioners; Ken Scissors, Shanon Secrest, Melanie Duyvejonck, Sandra Weckerly, Kim Herek, and Keith Ehlers.

Also present were Jamie Beard (City Attorney), Niki Galehouse (Planning Supervisor), Jessica Johnsen (Senior Planner), Dave Thornton (Principal Planner), Tim Lehrbach (Senior Planner), Madeline Robinson (Planning Technician), and Jacob Kaplan (Planning Technician).

There were 11 members of the public in attendance, and 1 virtually.

CONSENT AGENDA

1. Approval of Minutes

Minutes of Previous Meeting(s) from February 13, 2024.

REGULAR AGENDA

1. Ferree ROW Vacation

VAC-2023-111

Consider a request by Monument Ridge Estates LLC., Lawrence Balerio, to vacate 0.32 acres of Ferree Drive right-of-way.

Staff Presentation

Jessica Johnsen, Senior Planner, introduced exhibits into the record and provided a presentation regarding the request.

Representative Kim Kerk with Kim Kerk Land Consulting provided additional context on the request and was available for questions.

Questions for staff and applicant

Chairman Teske asked for confirmation that the vacated land would be granted to the property owner to the West and wondered if they had expressed any concerns with the vacation. He also asked for confirmation on the City's intent to maintain a utility easement over the entirety of the vacated area.

Commissioner Weckerly asked how sight distance would be retained following the vacation.

Commissioner Ehlers asked about the timeline of the ROW vacation in reference to the development of Monument Ridge Estates. He also asked if there would be any issues with the

vacation process should the referenced streets in Monument Villas change names before the vacation was completed.

Kim Kerk provided an update on the progress of development for Monument Ridge Estates.

Public Hearing

The public comment period was opened at 5:00 p.m. on Tuesday, March 5, 2024, via www.GJSpeaks.org.

There were no public comments.

The public comment period was closed at 5:50 p.m. on March 12, 2024.

Discussion

Motion and Vote

Commissioner Secrest made the following motion “Mr. Chairman, on the Ferree Drive – Public Right-Of-Way Vacation located north of Broadway (Hwy 340), on the southeastern portion of Ferree Drive, City file number VAC-2023-111, I move that the Planning Commission forward a recommendation of approval to City Council with the findings of fact and conditions as listed in the staff report.”

Commissioner Ehlers seconded; motion passed 7-0.

2. Fire Station #7 Annexation

ANX-2023-740

Consider a request by the City of Grand Junction to zone 3.744 acres from County RSF-R (Residential Single Family Rural) to RM-8 (Residential Medium 8) located at 2351 H Road.

Staff Presentation

Dave Thornton, Principal Planner, introduced exhibits into the record and provided a presentation regarding the request.

Questions for staff and applicant

Public Hearing

The public comment period was opened at 5:00 p.m. on Tuesday, March 5, 2024, 2024, via www.GJSpeaks.org.

Dylan Frye called attention to the irrigation canal on the South side of the property.

The public comment period was closed at 6:02 p.m. on March 12, 2024.

Discussion

Motion and Vote

Commissioner Scissors made the following motion “Mr. Chairman, on the Zone of Annexation request for the property located at 2351 H Road, City file number ANX-2023-740, I move that the Planning Commission forward a recommendation of approval to City Council with the findings of fact as listed in the staff report.”

Commissioner Secrest seconded; motion passed 7-0.

3. Monument Villas Comp Plan Amendment & Rezone CPA-2023-783 & RZN-2023-784

Consider a request by D&B Broadway Monument, LLC for a Comprehensive Plan Amendment for 4.23 acres from Commercial to Residential Medium (5.5 to 12 du/ac) and rezone the 4.23 acres from Mixed Use Neighborhood (MU– 1) to RM-8 (Residential Medium - 8).

Staff Presentation

Dave Thornton, Principal Planner, introduced exhibits into the record and provided a presentation regarding the request.

Jeffrey Fleming with Colorado Land Advisor Ltd., expanded on the staff presentation and was available for questions.

Questions for staff and applicant

Public Hearing

The public comment period was opened at 5:00 p.m. on Tuesday, March 5, 2024, via www.GJSpeaks.org.

There were no public comments.

The public comment period was closed at 6:28 p.m. on March 12, 2024.

Discussion

Discussion ensued about the minimum density requirements in the MU-1 zone district.

Commissioner Ehlers agreed with the staff that this area had not developed as a neighborhood center as projected in the 2010 Comp Plan so the rezone to strictly residential made sense.

Motion and Vote

Commissioner Scissors made the following motion “Mr. Chairman, on the Comprehensive Plan Amendment request for the property located at 2152 Broadway & 2155 Monument Lane, City file number CPA-2023-783, I move that the Planning Commission forward a recommendation of approval to City Council with the findings of fact as listed in the staff report.”

Commissioner Weckerly seconded; motion passed 7-0.

Commissioner Scissors made the following motion “Mr. Chairman, on the Rezone request for the property located at 2152 Broadway & 2155 Monument Lane, City file number RZN-2024-784, I

move that the Planning Commission forward a recommendation of approval to City Council with the findings of fact as listed in the staff report and with the condition that City Council approves the Comprehensive Plan Land Use Map Amendment to Residential Medium.”

Commissioner Weckerly seconded; motion passed 7-0.

4. Lange Annexation **ANX-2023-754**

Consider a request by James N. Lange to zone 1.65 acres within the Lange Annexation to R-8 (Residential – 8 du/ac) located at 2908 Kennedy Avenue.

This item was rescheduled to a future meeting to be determined.

5. NAK Properties Rezone **RZN-2024-57**

Consider a request by NAK Property 2, LLC to rezone 0.43 acres from I-2 (Industrial General) to CG (Commercial General) located at 739 3rd Avenue.

Staff Presentation

Tim Lehrbach, Senior Planner, introduced exhibits into the record and provided a presentation regarding the request.

Applicant Nathan Krehbiel was present and available for questions.

Questions for staff

Public Hearing

The public comment period was opened at 5:00 p.m. on Tuesday, March 5, 2024, 2024, via www.GJSpeaks.org.

There were no public comments.

The public comment period was closed at 6:50 p.m. on March 12, 2024.

Discussion

Commissioners expressed their appreciation for staff’s presentation and their agreement with the rezone request.

Motion and Vote

Commissioner Secrest made the following motion “Mr. Chairman, on the rezone request for the property located at 739 3rd Avenue, City file number RZN-2024-57, I move that the Planning Commission forward a recommendation of approval to the City Council with the findings of fact as listed in the staff report.”

Commissioner Scissors seconded; motion passed 7-0.

OTHER BUSINESS

ADJOURNMENT

Commissioner Weckerly moved to adjourn the meeting.

The vote to adjourn was 7-0.

The meeting adjourned at 6:53 p.m.

DRAFT

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO.

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN LAND USE MAP OF THE CITY OF GRAND JUNCTION FROM COMMERCIAL TO RESIDENTIAL MEDIUM (5.5-12 DWELLING UNITS/ACRE) AND A REZONE FOR MONUMENT VILLAS FROM MIXED USE NEIGHBORHOOD (MU-1) TO RM-8 (RESIDENTIAL MEDIUM – 8 DWELLING UNITS/ACRE) ZONE DISTRICT

LOCATED AT 2152 BROADWAY AND 2155 MONUMENT LANE

Recitals:

The property owner, D&B Broadway Monument LLC, proposes an amendment to the Comprehensive Plan Land Use Map from Commercial to Residential Medium (5.5–12 du/ac) and a rezone from Mixed Use Neighborhood (MU-1) to RM-8 (Residential – 8 du/ac) on a total of 4.23-acres, located at 2152 Broadway and 2155 Monument Lane.

After public notice and public hearing as required by the Grand Junction Zoning and Development Code, the Grand Junction Planning Commission recommended approval of amending the Comprehensive Plan Future Land Use designation for the Property from Commercial to Residential Medium (5.5-12 du/ac) and recommended subsequent approval of changing the zoning from Mixed Use Neighborhood (MU-1) to RM-8 (Residential – 8 du/ac) for the property, finding that it conforms to and is consistent with the Land Use Map designation of Residential Medium (5.5-12 du/ac) of the Comprehensive Plan and the Comprehensive Plan's goals and policies and is generally compatible with land uses located in the surrounding area.

After public notice and public hearing, the Grand Junction City Council finds that amending the Comprehensive Plan Land Use Map from Commercial to Residential Medium (5.5-12 du/ac) and recommended subsequent approval of changing the zoning from Mixed Use Neighborhood (MU-1) to RM-8 (Residential – 8 du/ac) for the property, is consistent with the vision, intent, goals and policies of the Comprehensive Plan and has met one or more criteria for a Comprehensive Plan amendment, the City Council also finds that the RM-8 (Residential Medium – 8 du/ac) zone district, is consistent and is in conformance with the Comprehensive Plan and at least one of the stated criteria of Section 21.02.140 of the Grand Junction Zoning and Development Code.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:

The Recitals are incorporated and in consideration of the same and for reasons found adequate by the City Council, the following property shall be designated as Residential Medium (5.5-12 du/ac) on the Land Use Map of the Comprehensive Plan and shall be duly and lawfully zoned RM-8 (Residential Medium – 8 du/ac) on the zoning map:

Lots 1 and 2 of D & B Subdivision, County of Mesa, State of Colorado
INTRODUCED on first reading this _____ day of _____, 2024 and ordered
published in pamphlet form.

ADOPTED on second reading this _____ day of _____, 2024 and ordered
published in pamphlet form.

Anna M. Stout
President of the City Council

ATTEST:

Amy Phillips
City Clerk



Grand Junction City Council

Regular Session

Item #7.b.ii.

Meeting Date: April 3, 2024
Presented By: David Thornton, Principal Planner
Department: Community Development
Submitted By: David Thornton, Principal Planner

Information

SUBJECT:

A Resolution Accepting the Petition for the Annexation of 3.744 Acres of Land and Ordinances Annexing and Zoning the Fire Station Annexation to R/M-8 (Residential Medium – 8 du/ac), Located at 2351 H Road

RECOMMENDATION:

The Planning Commission heard this request at its March 12, 2024 meeting and voted (7-0) to recommend approval of the request.

EXECUTIVE SUMMARY:

The Applicant, City of Grand Junction, is requesting annexation and a zone of annexation to RM-8 (Residential Medium 8) for the Fire Station No. 7 Annexation. The approximately 3.744 acres consists of one parcel of land located at 2351 H Road. The property is vacant. Annexation is being sought in anticipation of developing the site for a fire station.

The property is Annexable Development per the Persigo Agreement. The zone district of RM-8 is consistent with the Residential Medium Land Use category of the Comprehensive Plan. The request for annexation will be considered separately by City Council, but concurrently with the zoning amendment request.

BACKGROUND OR DETAILED INFORMATION:

Annexation.

The City of Grand Junction is requesting annexation of approximately 3.744 acres consisting of one parcel of land located at 2351 H Road. There is a portion of the H Road and 23 ½ Road right-of-way included in the annexation.

The property is Annexable Development per the Persigo Agreement. The property is

vacant. The City plans to construct a fire station on the property. Annexation is being sought in anticipation of the development of the site.

The proposed zone district of RM-8 is consistent with the Residential Medium Land Use category of the Comprehensive Plan. The request for zoning will be considered separately by City Council, but concurrently with the annexation request and will be heard in a future Council action.

The schedule for the annexation and zoning is as follows:

- Referral of Petition (30 Day Notice), Introduction of a Proposed Ordinance, Exercising Land Use – February 21, 2024
- Planning Commission considers Zone of Annexation – March 12, 2024
- Introduction of a Proposed Ordinance on Zoning by City Council – March 20, 2024
- Acceptance of Petition and Public Hearing on Annexation and Zoning by City Council – April 3, 2024
- Effective date of Annexation and Zoning – May 5, 2024

Zone of Annexation.

The City is proposing a zone district of R-8 (old Code) which is RM-8 (Residential Medium 8) in the 2023 Zoning and Development Code. The property is currently zoned in the County as RSF-R (Residential Single Family Rural). The proposed zone district of RM-8 is consistent with the Residential Medium Land Use category of the Comprehensive Plan. The surrounding County zoning is mostly RSF-R, a zone district that provides zoning for interim agricultural uses prior to urbanization that is expected by the Comprehensive Plan.

The annexation area has sewer available and all other urban amenities to the property. It is located within Tier 1 on the Intensification and Growth Tiers Map of the Comprehensive Plan.

The RM-8 zoning permits by right the fire station and residential development.

In addition to the RM-8 zoning requested by the petitioner, the following zone districts would also be consistent with the Comprehensive Plan designation of Residential Medium.

- a. Residential Medium – 12 (RM-12)
- b. Public Parks and Open Space (P-1)
- c. Public, Civic, and Institutional Campus (P-2)
- d. Planned Development (PD)

NOTIFICATION REQUIREMENTS

A Neighborhood Meeting regarding the proposed Annexation and Zoning was held in person on November 29, 2023, in accordance with Section 21.02.080(e) of the Zoning and Development Code. Several city staff members and 14 members of the public were in attendance.

Notice was completed consistent with the provisions in Section 21.02.080(g) of the City's Zoning and Development Code. The subject property was posted with an application sign on December 12, 2023. Mailed notice of the public hearings before Planning Commission and City Council in the form of notification cards was sent to surrounding property owners within 500 feet of the subject property on March 1, 2024. The Planning Commission public hearing notice was published on March 23, 2024, in the Grand Junction Daily Sentinel. An online public hearing with an opportunity for public comment was held between March 5, 2024, and March 11, 2024, through the GJ Speaks.org platform.

Analysis - Annexation

The property is adjacent to existing city limits within H Road but is a serial annexation to obtain the required one-sixth contiguity requirements of State Statutes for annexation. The City as property owner has signed a petition for annexation.

Staff has found, based on review of the petition and knowledge of applicable state law, including the Municipal Annexation Act Pursuant to C.R.S. 31-12-104, that the Fire Station No. 7 Annexation is eligible to be annexed because of compliance with the following:

a) A proper petition has been signed by more than 50 percent of the owners and more than 50 percent of the property described. The petition has been signed by the owners of all properties or 100 percent of the owners and includes 100 percent of the property described.

b) Not less than one-sixth of the perimeter of the area to be annexed is contiguous with the existing City limits. The Fire Station No. 7 Annexation No. 1 has just over 17.1 percent of the perimeter of the annexation contiguous with the existing City limits, meeting the 1/6 contiguity requirements for annexation. The Fire Station No. 7 Annexation No. 2 has just over 41.4 percent of the perimeter of the annexation contiguous with the City limits, meeting the 1/6 contiguity requirements for annexation.

c) A community of interest exists between the area to be annexed and the City. This is so in part because the Central Grand Valley is essentially a single demographic and economic unit and this city property that will house a proposed fire station can be expected to provide urban level of services to area residents.

d) The area is or will be urbanized in the near future. The property is proposed for the development of a fire station. The property has existing urban utilities and services near and available to the property.

e) The area is capable of being integrated with the city. The proposed annexation area is adjacent to the City limits along H Road on the north and has direct access to 23 ½ Road and H Road. Urban services are available to the property.

f) No land held in identical ownership is being divided by the proposed annexation. The annexation consists of one property and is owned by the applicant.

g) No land held in identical ownership comprising 20 contiguous acres or more with an assessed valuation of \$200,000 or more for tax purposes is included without the owner's consent. The property is less than 20 acres in size. The petitioner has also granted consent to the City to annex this property.

Please note that the annexation petition was prepared by the City.

Analysis - Zone of Annexation

A note about the implementation of the Zoning & Development Code Update: The R-8 zone district has transitioned to RM-8 (Residential Medium 8) and the development rights under the zone district will be found in the new Zone District and Dimensional Standards. As this application was received before the effective date of this update, the following analysis is pursuant to the previous Zoning & Development Code language.

The criteria for review are set forth in Section 21.02.140(a) and includes that the City may rezone property if the proposed changes are consistent with the vision, goals, and policies of the Comprehensive Plan and must meet one or more of the following rezone criteria as identified:

(1) Subsequent events have invalidated the original premises and findings; and/or The property owner has requested that the property be annexed and zoned to RM-8, compatible with the Comprehensive Plan Land Use Map designation of Residential Medium. When a property is annexed into the city, the assumptions and facts used to assign County zoning are no longer valid. County zoning is not carried forward into the City, and by Colorado Statute, municipal zoning must be assigned to the property within 90 days of the effective date of annexation. The property currently has 'no zoning designation' within City limits; therefore, there are no original premises and findings that must be invalidated. Staff finds that this criterion is not applicable.

(2) The character and/or condition of the area has changed such that the amendment is consistent with the Plan; and/or

The character or condition of the area is changing with the further development of residential subdivisions to the west (550 feet) and to the northeast (850 feet), all a short distance away. The Appleton neighborhood is slowly urbanizing with new development occurring adjacent to large lot residential areas with and without small agricultural operations in unincorporated Mesa County. In addition, a major retail development is planned for the NE corner of I-70 and 24 Road, approximately three-quarters of a mile away. This proposed annexation area is in a prime location for the City to construct an additional fire station to serve this urbanizing area. The 3.76-acre property is being planned for the fire station to occupy approximately two acres with the remaining land area available for future development. Therefore, staff finds this criterion is met.

(3) Public and community facilities are adequate to serve the type and scope of land use proposed; and/or

Existing public and community facilities and services are available in close proximity to and can be extended into the annexation area. These services are sufficient to serve land uses associated with the proposed RM-8 zone district and for the planned fire station land use on this property.

Utility services are available to this property and include the Ute Water District service area which has an 8-inch water line in 23 ½ Road and 8-inch and 24-inch waterlines in H Road. The area can be served by Grand Valley Power.

The property is currently within the Persigo 201 Sewer Service Area and has an 8-inch sewer line in the H Road and 23 ½ Road rights-of-way.

This property is in the Grand Junction Rural Fire Protection District served by the Grand Junction Fire Department through an intergovernmental agreement between the City and the rural fire district. Due to this annexation, no changes in fire protection and emergency medical response are expected. Currently, the primary response is from Fire Station 3 at 2580 25 ½ Road. The proposed future Fire Station No. 7 will increase the capacity for fire and emergency medical services (EMS) for the Appleton area.

Appleton Elementary School is across H Road from the annexation area to the north. The site is within the enrollment boundaries of Redlands Middle School, Fruita 8/9 for 9th Grade and Fruita Monument High School. One convenience store with gas is located approximately one mile to the southeast on 24 Road and G Road. Major goods and services (groceries, banks, restaurants, regional retail, etc.) can be found nearby at 24 Road and Patterson Road (Mesa Mall Area) less than two miles away.

Staff has found the public and community facilities are adequate to serve the type and scope of potential urban land uses in the future at such time the property is further developed, and existing public facilities can accommodate the fire station or residential development options under the RM-8 zone district this property may have in the future. Therefore, staff finds this criterion is met.

(4) An inadequate supply of suitably designated land is available in the community, as defined by the presiding body, to accommodate the proposed land use; and/or
The subject property and surrounding area are designated on the Comprehensive Plan Land Use Map as Residential Medium with densities between 8 and 12 dwelling units per acre. The proposed zoning designation of RM-8 implements this land use designation and provides a zoning that allows the proposed fire station land use on the property.

The Land Use Map defines much of the immediate quarter-mile area around the subject property as Residential Medium (including north, south, east, and west) with an area of Residential Low to the northeast of the site. This annexation area is located within Tier 1 on the Intensification and Growth Tiers Map. Within Tier 1 areas of the Comprehensive Plan, development generally does not require expansion of services or

extension of infrastructure, though improvements to infrastructure capacity may be necessary. Staff finds that the RM-8 zone district will establish zoning that will accommodate the desired development of the fire station and support the needs of the Appleton neighborhood. It supports existing and expected land uses identified in the 2020 One Grand Junction Comprehensive Plan. Therefore, staff finds this criterion has been met.

(5) The community or area, as defined by the presiding body, will derive benefits from the proposed amendment.

Annexation and zoning of the property will provide additional land within the city limits for city growth, but more specifically, for the Appleton area, better fire and EMS services for the neighborhood with the planned and budgeted construction of City Fire Station No. 7. The annexation is also consistent with the City and county 1998 Persigo Agreement. Therefore, staff finds this criterion is being met.

Section 21.02.160(f) of the Grand Junction Zoning and Development Code provides that the zoning of an annexation area shall be consistent with the adopted Comprehensive Plan and the criteria set forth. Though other zone districts could be considered in a Residential Medium Land Use area, the RM-8 zone district is consistent with the recommendations of the Comprehensive Plan.

Further, the zoning request is consistent with the following chapters, goals and principles of the Comprehensive Plan:

Chapter 2

Plan Principle 3: Responsible and Managed Growth

Goal: Support fiscally responsible growth and annexation policies that promote a compact pattern of growth...and encourage the efficient use of land.

Goal: Encourage infill and redevelopment to leverage existing infrastructure.

Chapter 3

Intensification and Tiered Growth Plan. Subject property is located within Tier 1 where the focus is on areas within the existing 201 and UDB boundaries with urbanization that is occurring now. Annexation is appropriate for new development and redevelopment in Tier 1 areas, intensifying residential areas through infill and redevelopment. The City should promote the annexation of those parcels which are surrounded by, and or have direct adjacency to, the City limits of Grand Junction. Annexation and development of these parcels will provide development opportunities while minimizing the impact on infrastructure and City services.

Relationship to Existing Zoning. Requests to rezone properties should be considered based on the Implementing Zone Districts assigned to each Land Use Designation.

- Guide future zoning changes. Requests for zoning changes are required to implement the Comprehensive Plan.

RECOMMENDATION AND FINDINGS OF FACT

After reviewing the Fire Station No. 7 Annexation, ANX-2023-740 request for the property located at 2351 H Road to be annexed into the City limits, the following findings of facts have been made:

1. The request conforms with annexation criteria found in accordance with the Municipal Annexation Act – C.R.S 31-12-104.

Therefore, Staff recommends approval of the request.

After reviewing the Fire Station No. 7 Zone of Annexation, ANX-2023-740 request for the property located at 2351 H Road to be zoned from County RSF-R (Residential Single Family - Rural) to RM-8 (Residential Medium – 8 du/ac), the following findings of facts have been made:

1. The request conforms with Section 21.02.140 of the Zoning and Development Code.
2. The request is consistent with the vision (intent), goals and policies of the Comprehensive Plan.

Therefore, Planning Commission recommends approval of the request.

FISCAL IMPACT:

Property tax levies and municipal sales and use tax will be collected as the property is developed. For every \$1,000,000 of actual value, City property tax revenue on residential property at the current assessment rate would be approximately \$620 annually. Sales and use tax revenues will depend on construction activity and ongoing consumer spending on City taxable items for residential and commercial uses.

Public Works. Engineering and Transportation / Operations - The annexation takes in the south half of 261 feet of H Road (arterial) and the east half of 730 feet of 23 1/2 Road (collector) currently maintained by Mesa County. Both roads are typical county roads with 22 feet of asphalt, a few feet of gravel shoulders, and borrow ditches. Pavement conditions are estimated in the mid-50s. There is no curb and gutter and no storm drain facilities other than a few culverts. There are also no streetlights. Street sweeping, snow removal on H Road, and minimal storm drain maintenance in the borrow ditch are estimated at \$325 annually. Chip seals are estimated at \$4,000 in 2032. The site is adjacent to the Appleton Elementary School pickup zone. Eventually, H Road will be improved to a full arterial or collector standard complete with curb, gutter, sidewalk, and streetlights; however, in the meantime, more modest shoulder improvements are proposed along the H Road frontage of the fire station to accommodate school pickup.

Utilities. This property is located within the Ute Water District. Sanitary sewer is available to the property.

Fire Department. Currently, this property is in the Grand Junction Rural Fire Protection District, which the Grand Junction Fire Department serves through a contract with the District. The Fire District collects a 9.6450 mill levy that generates \$14.85 yearly in property taxes. The property will be excluded from the Grand Junction Fire Protection District if annexed. The area is currently served by Grand Junction Fire Station No. 3, but with this annexation, a new fire station will be constructed and serve the area from this location.

SUGGESTED MOTION:

I move to (adopt/deny) Resolution No. 22-24 , a resolution accepting a petition to the City Council for the annexation of lands to the City of Grand Junction, Colorado, the Fire Station No. 7 Annexation, approximately 3.744 acres, located at 2351 H Road,

i move to (adopt/deny) Ordinance No. 5212, an ordinance annexing territory to the City of Grand Junction, Colorado, Fire Station No. 7 Annexation, approximately 3.744 acres, located at 2351 H Road, on final passage and order final publication in pamphlet form.

I move to (adopt/deny) Ordinance No. 5213, an ordinance zoning the Fire Station No. 7 Annexation to RM-8 (Residential Medium - 8) zone district, from Mesa County RSF-R (Residential Single Family - Rural) on final passage and order final publication in pamphlet form.

Attachments

1. General Project Report
2. Fire Station No7 Annexation Map
3. Site Maps and Pictures
4. Annexation Schedule - Table - Fire Station 7 Annexation
5. Neighborhood Meeting Notes
6. Planning Commission Minutes - 2024 - March 12 - DRAFT
7. Resolution Accepting Petition for Annexation
8. Fire Station No 7 Annexation Ordinance
9. ORD-Zoning FS 7 ANX 20240313

General Project Report

Fire Station No. 7 Annexation & Zoning

Background:

The City is proposing to annex land recently purchased by the city for the location of a new fire station, Fire Station No. 7. The property is located in Appleton at 2351 H Road and consists of 3.76 acres, see area highlighted in yellow below. Public Utilities are available to the property. A petition for annexation has been signed by the City for the annexation. The annexation area will contain the subject property and a portion of the H Road ROW. It may also include a portion of the 23 ½ Road ROW.



Proposed Zoning:

The proposed zoning is R-8. The property lies within the area of Residential Medium on the Land Use Map of the One Grand Junction Comprehensive Plan. The zone districts that implement that land use category include R-8 and R-12 with densities from 5.5 dwelling units per acre to 12 dwelling units per acre. The R-8 zone density range is 5.5 to 8 dwellings per acre. Due to the proximity to Appleton Elementary School and other city services not far away in the 24 Road Corridor the density range is appropriate. The R-8 zone density falls within the low end of the density range. Existing R-8 zoning is already located within the neighborhood. Other City zoning in the area includes R-5 and R-4. Fire Stations are allowed land use in all zone districts under the land use category of Community Service.

Neighborhood Meeting:

A neighborhood meeting was held on Wednesday, November 29th to discuss annexation and zoning of the property. See Neighborhood Meeting Notes.

Zone of Annexation/Rezoning Criteria:

(a) **Approval Criteria.** In order to maintain internal consistency between this code and the zoning maps, map amendments must only occur if:

(1) Subsequent events have invalidated the original premises and findings; and/or

Response: The City has petitioned for annexation of city owned property into the City limits and requested zoning of R8 which is compatible with the Comprehensive Plan Land Use Map designation of Residential Medium. Since the property is currently in the County, the annexation of the property is a subsequent event that will invalidate one of these original premises, a county zoning designation of RSF-R (Residential Singel family Rural with densities of one dwelling unit per 5 acres). Therefore, this criterion is being met.

(2) The character and/or condition of the area has changed such that the amendment is consistent with the Plan; and/or

Response: The character or condition of the area is changing with the further development of residential subdivisions to the west (550 feet), and to the northeast (850 feet) all a short distance away. The Appleton neighborhood is slowly urbanizing with new development occurring adjacent to large lot residential areas with and without small agricultural operations in unincorporated Mesa County. In addition, a major retail development is planned for the NE corner of I-70 and 24 Road approximately three quarters of a mile away. This proposed annexation area is in a prime location for the city to construct an additional fire station that will serve this urbanizing area. The 3.76-acre property is being planned for the fire station to occupy approximately 2 acres with the remaining land area available for future development. Therefore, this criterion is being met.

(3) Public and community facilities are adequate to serve the type and scope of land use proposed; and/or

Response: Existing public and community facilities and services are available in close proximity to and can be extended into the annexation area. These services are sufficient to serve land uses associated with the proposed R-8 zone district as well as for the planned fire station land use on this property. Utility services are available to this property and include the Ute Water District service area which has an 8-inch water line in 23 ½ Road and 8-inch and 24-inch waterlines in H Road. The area can be served by Grand Valley Power.

The property is currently within the Persigo 201 Sewer Service Area and has an 8-inch sewer line in the H Road and 23 ½ Road rights-of-way.

This property is in the Grand Junction Rural Fire Protection District served by the Grand Junction Fire Department through an intergovernmental agreement between the City and the rural fire district. No changes in fire protection and emergency medical response are expected due to this annexation. Currently primary response is from Fire Station 3 at 2580 25 ½ Road. The proposed future Fire Station No. 7 will increase the capacity for fire and emergency medical services (EMS) for the Appleton area.

Appleton Elementary School is across H Road from the annexation area to the north. The site is within the enrollment boundaries of Redlands Middle School, Fruita 8/9 for 9th Grade and Fruita Monument High School. One convenience store with gas is located approximately one mile to the southeast on 24 Road and G Road. Major goods and services (groceries, banks, restaurants, regional retail, etc.) can be found nearby at 24 Road and Patterson Road (Mesa Mall Area) less than 2 miles away.

Staff has found the public and community facilities are adequate to serve the type and scope of potential urban land uses in the future at such time the property is further developed, and existing public facilities can accommodate the fire station or residential development options under the R-8 zone district this property may have in the future. Therefore, this criterion is being met.

(4) An inadequate supply of suitably designated land is available in the community, as defined by the presiding body, to accommodate the proposed land use; and/or

Response: The subject property and surrounding area are designated on the Comprehensive Plan Land Use Map as Residential medium with densities between 8 and 12 dwelling units per acre. The proposed zoning designation of R-8 implements this land use designation and provides a zoning that allows the proposed fire station land use on the property.

The Land Use Map defines much of the immediate quarter mile area around the subject property as Residential Medium (including north, south, east and west) with an area of Residential Low to the northeast of the site. This annexation area is located within Tier 1 on the Intensification and Growth Tiers Map. Within Tier 1 areas of the Comprehensive Plan, development generally does not require expansion of services or extension of infrastructure, though improvements to infrastructure capacity may be necessary. Staff finds that the R-8 zone district will establish zoning that will accommodate desired development of the fire station and support the needs of the Appleton neighborhood. It supports existing and expected land uses identified in the 2020 One Grand Junction Comprehensive Plan. Therefore, this criterion is being met.

(5) The community or area, as defined by the presiding body, will derive benefits from the proposed amendment.

Response: Annexation and zoning of the property will provide additional land within the City limits for City growth, but more specifically for the Appleton area better fire and EMS services for the neighborhood with the planned and budgeted construction of City Fire Station No. 7. The annexation is also consistent with the City and County 1998 Persigo Agreement. Therefore, this criterion is being met.

Site Photos:



Located across Appleton Elementary School south side of H Road.



View from 23 ½ Road looking northeast.



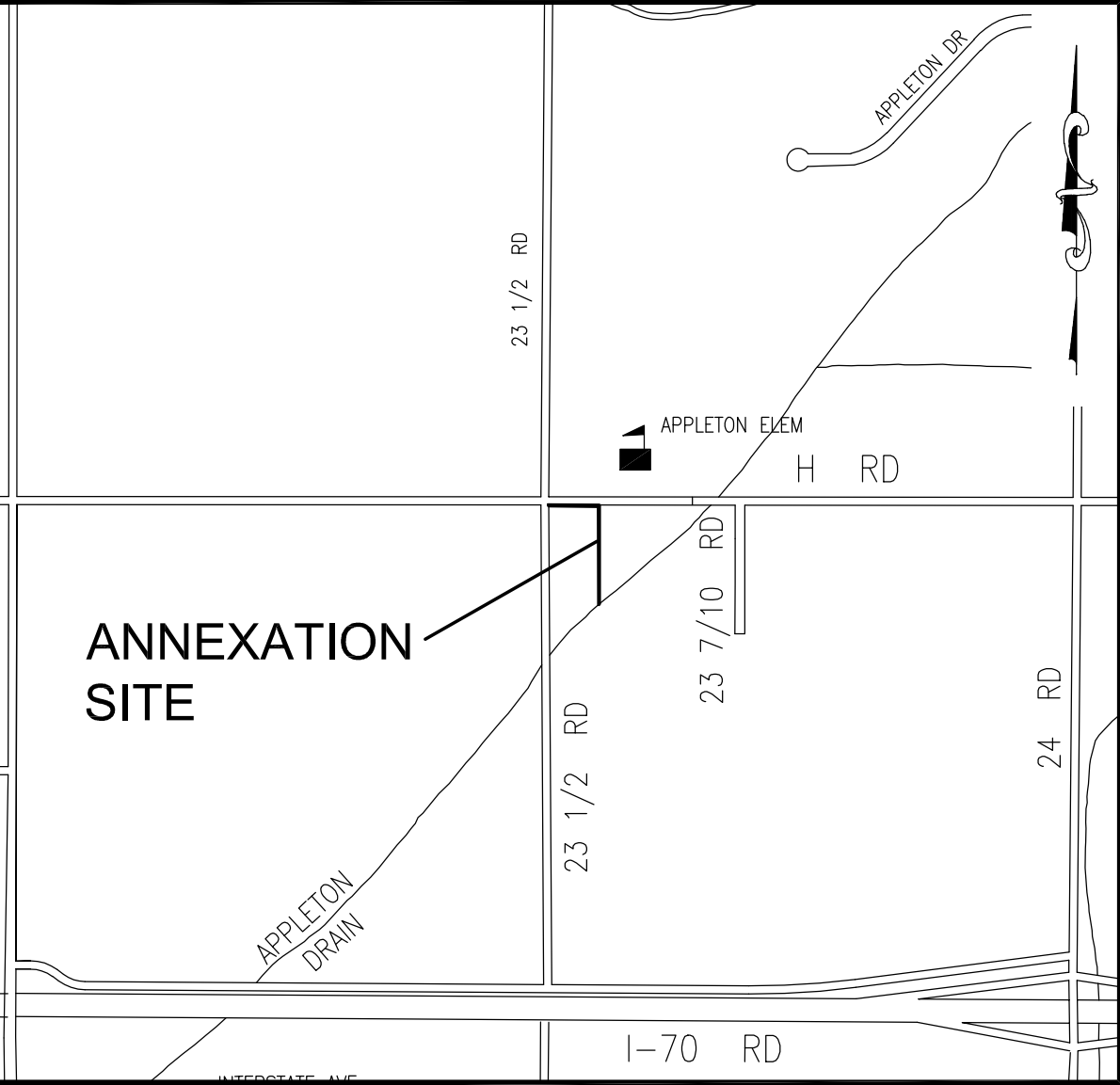
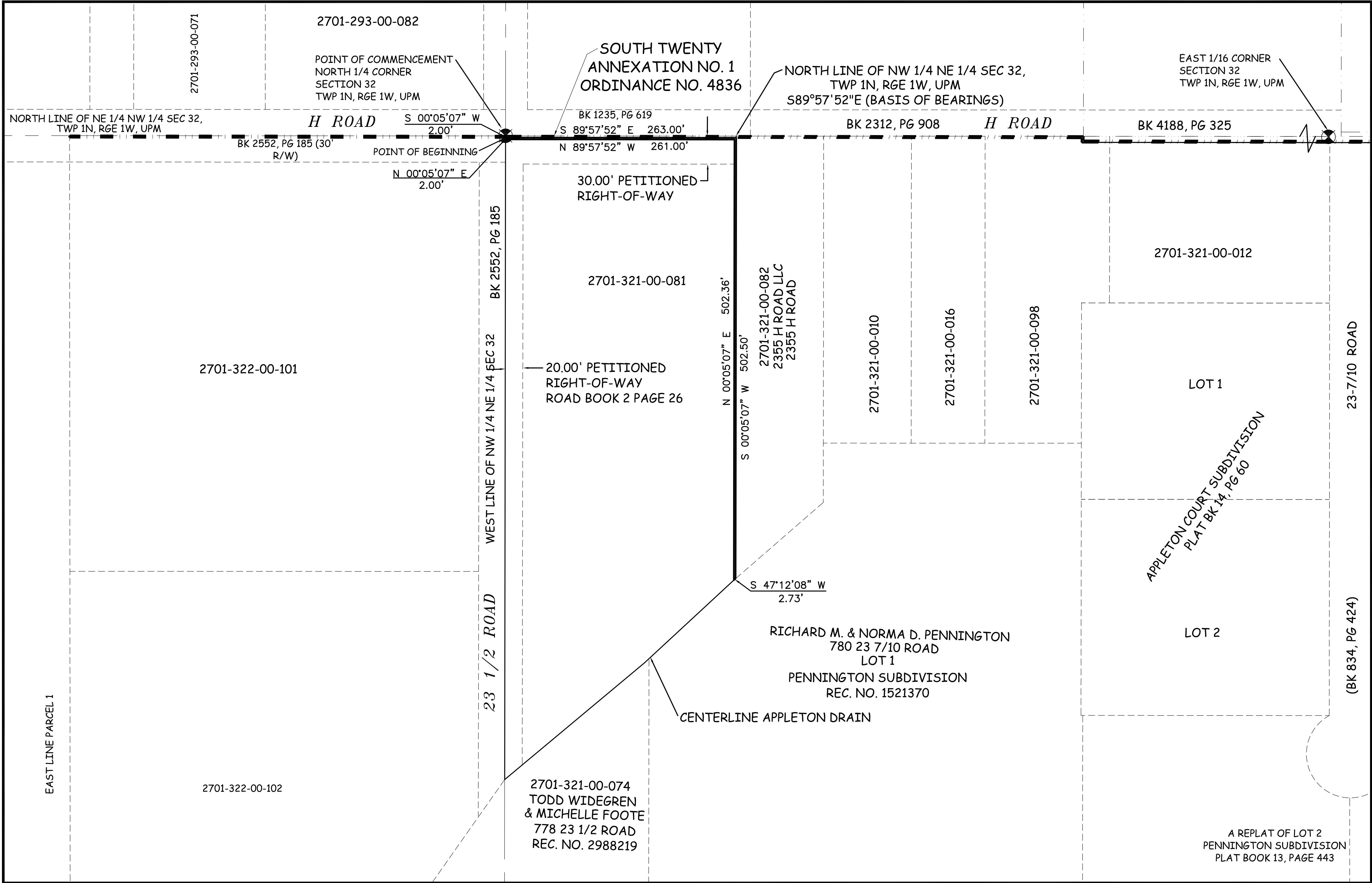
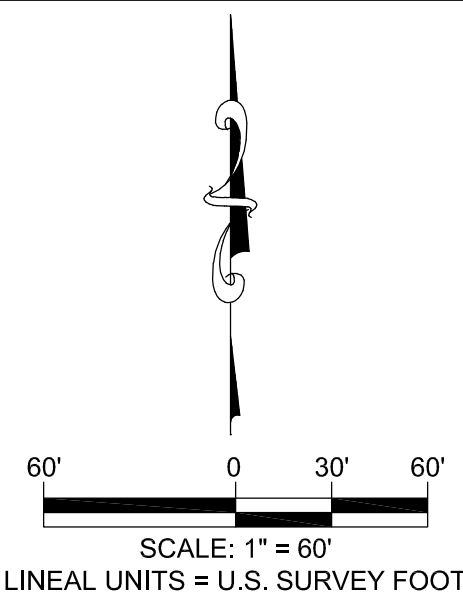
View from the SW corner of the site



Looking Northeast from 23 ½ Road towards Appleton Elementary School

FIRE STATION NO. 7 ANNEXATION NO. 1

Located in the NW1/4 NE1/4 SECTION 32, TOWNSHIP 1 NORTH, RANGE 1 WEST,
UTE MERIDIAN, COUNTY OF MESA, STATE OF COLORADO



SITE LOCATION MAP SCALE: 1" = 800'

LEGAL DESCRIPTION

A parcel of land being a part of the Northwest Quarter of the Northeast Quarter (NW1/4 NE1/4) of Section 32, Township 1 North, Range 1 West, Ute Meridian, Mesa County, Colorado more particularly described as follows:

Commencing at the North 1/4 Corner of said Section 32 whence the East 1/16 Corner of said Section 32 bears S89°57'52"E, with all other bearings relative thereto; thence S00°05'07"W a distance of 2.00 feet along the west line of the Northwest Quarter of the Northeast Quarter of said Section 32 to the Point of Beginning; thence leaving said west line S89°57'52"E a distance of 263.00 feet along the south line of the *SOUTH TWENTY ANNEXATION NO. 1, ORDINANCE NO. 4836*; thence leaving said north line S00°05'07"W a distance of 502.50 feet to the centerline of the Appleton drain; thence along said centerline S47°12'08"W a distance of 2.73 feet; thence leaving said centerline, N00°05'07"E a distance of 502.36 feet; thence N89°57'52"W a distance of 261.00 feet to the west line of the Northwest Quarter of the Northeast Quarter of said Section 32; thence along said west line N00°05'07"E, a distance of 2.00 feet, to the Point of Beginning.

Said Parcel of land CONTAINING **1528.88** Square Feet or **0.035** Acres, more or less.

AREAS OF ANNEXATION

ANNEXATION PERIMETER	1533.58 FT.
CONTIGUOUS PERIMETER	263.00 FT.
AREA IN SQUARE FEET	1528.88 FT ²
AREA IN ACRES	0.035
AREA WITHIN R.O.W.	582.00 FT ²
	0.013 ACRES
AREA WITHIN DEEDED R.O.W.	0.0 FT ²
	0.0 ACRES

LEGEND

ANNEXATION BOUNDARY	
ANNEXATION AREA	
EXISTING CITY LIMITS	

SURVEY ABBREVIATIONS		SQ. FT.	SQUARE FEET
P.O.C.	POINT OF COMMENCEMENT	Δ=	CENTRAL ANGLE
P.O.B.	POINT OF BEGINNING	RAD.	RADIUS
R.O.W.	RIGHT OF WAY	ARC	ARC LENGTH
SEC.	SECTION	CHD.	CHORD LENGTH
TWP.	TOWNSHIP	CHB.	CHORD BEARING
RGE.	RANGE	BLK.	BLOCK
U.M.	UTE MERIDIAN	P.B.	PLAT BOOK
NO.	NUMBER	BK.	BOOK
REC.	RECEPTION	PG.	PAGE
		HOR. DIST.	HORIZONTAL DISTANCE

ORDINANCE NO. PRELIMINARY	EFFECTIVE DATE PRELIMINARY
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NOTE:
THE DESCRIPTION(S) CONTAINED HEREIN HAVE BEEN DERIVED FROM SUBDIVISION PLAT, DEED DESCRIPTIONS & DEPOSIT SURVEYS AS THEY APPEAR IN THE OFFICE OF THE MESA COUNTY CLERK & RECORDER. THIS PLAT OF ANNEXATION DOES NOT CONSTITUTE A LEGAL BOUNDARY SURVEY, AND IS NOT INTENDED TO BE USED AS A MEANS OF ESTABLISHING OR VERIFYING PROPERTY BOUNDARY LINES.

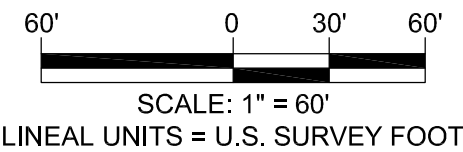
PRELIMINARY

JODIE L GREIN DATE
STATE OF COLORADO - P.L.S. NO. 38075
FOR ROLLAND CONSULTING ENGINEERS
405 RIDGES BLVD. SUITE A
GRAND JUNCTION, CO. 81507

THIS IS NOT A BOUNDARY SURVEY

NOTICE:
ACCORDING TO COLORADO LAW ANY LEGAL ACTION BASED UPON ANY DEFECT FOUND IN THIS SURVEY MUST COMMENCE WITHIN THREE (3) YEARS AFTER THE DISCOVERY OF SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT FOUND IN THIS SURVEY BE COMMENCED MORE THAN TEN (10) YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

DRAWN BY: JLG DATE: 1/24/2024
DESIGNED BY: JLG DATE: 1/24/2024
CHECKED BY: JAM DATE: 1/24/2024



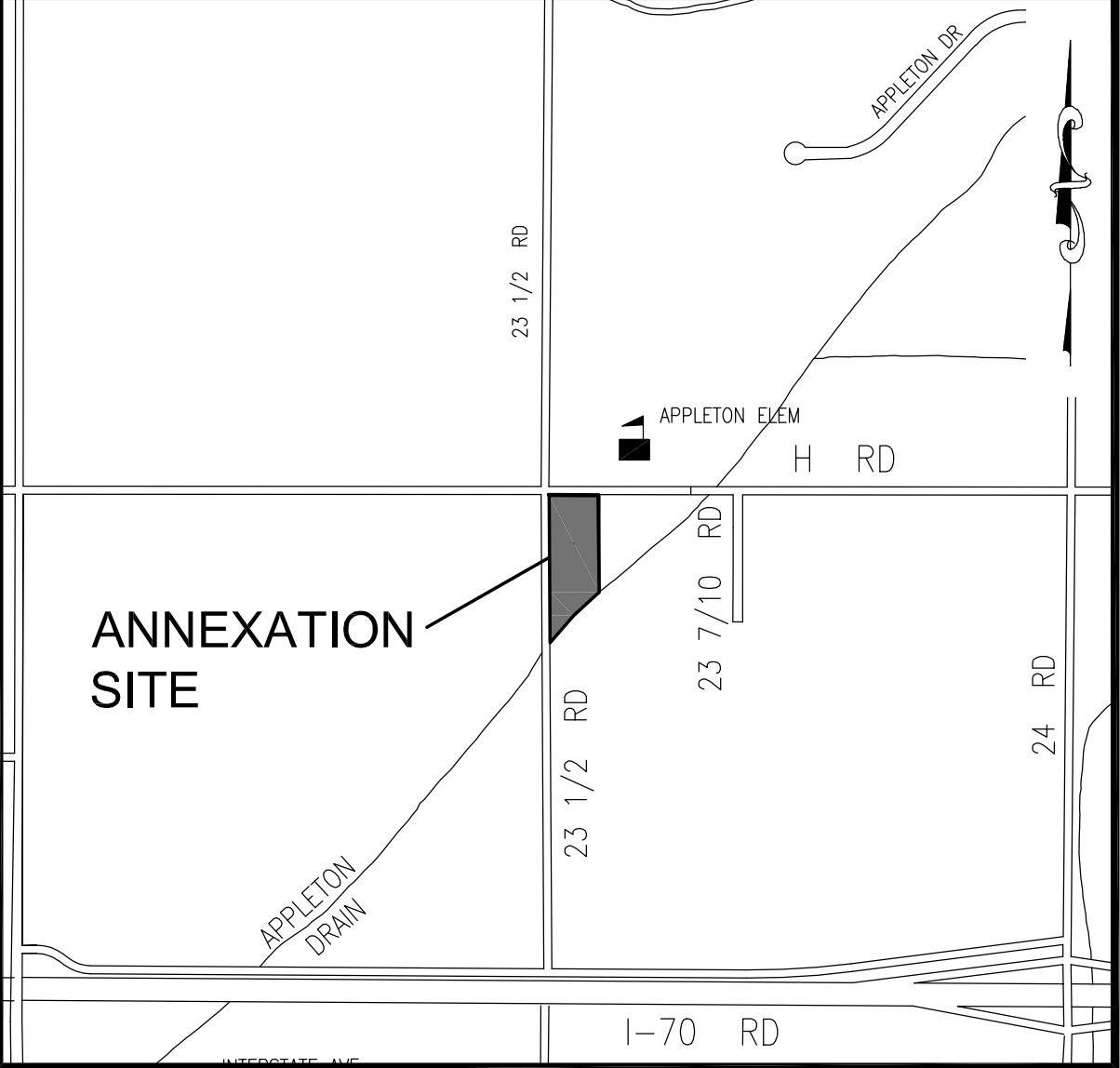
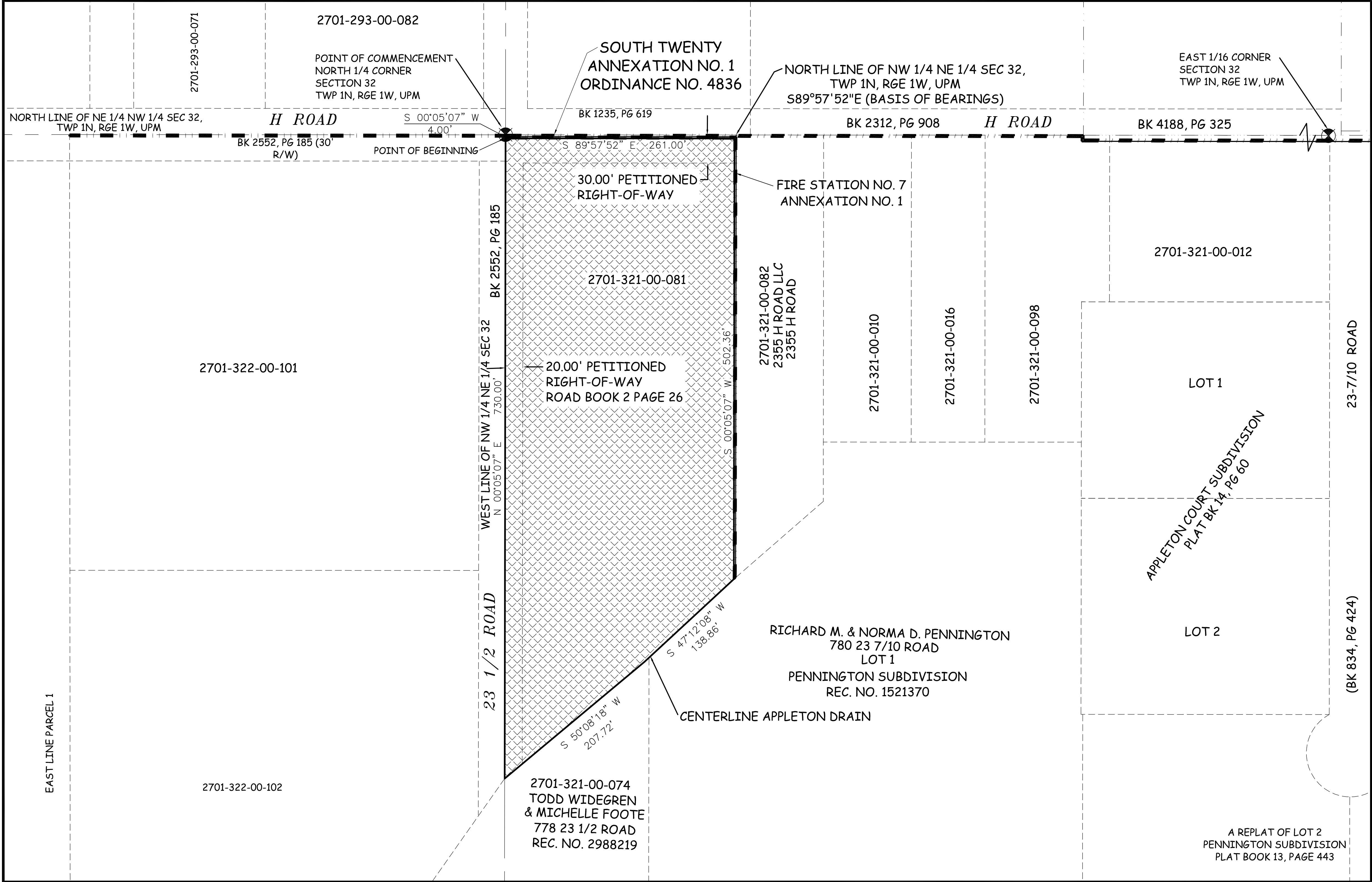
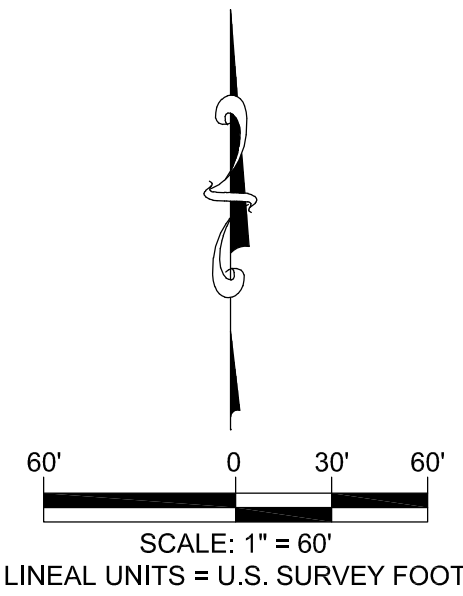
PUBLIC WORKS
ENGINEERING DIVISION

FIRE STATION NO. 7 ANNEXATION NO. 1

Located in the NW1/4 NE1/4 SECTION 32,
TOWNSHIP 1 NORTH, RANGE 1 WEST
UTE MERIDIAN, MESA COUNTY, STATE OF COLORADO

FIRE STATION NO. 7 ANNEXATION NO. 2

Located in the NW1/4 NE1/4 SECTION 32, TOWNSHIP 1 NORTH, RANGE 1 WEST,
UTE MERIDIAN, COUNTY OF MESA, STATE OF COLORADO



SITE LOCATION MAP SCALE: 1" = 800'

LEGAL DESCRIPTION

A parcel of land being a part of the Northwest Quarter of the Northeast Quarter (NW1/4 NE1/4) of Section 32, Township 1 North, Range 1 West, Ute Meridian, Mesa County, Colorado more particularly described as follows:

Commencing at the North 1/4 Corner of said Section 32 whence the East 1/16 Corner of said Section 32 bears S89°57'52"E, with all other bearings relative thereto; thence S00°05'07"W a distance of 4.00 feet along the west line of the Northwest Quarter of the Northeast Quarter of said Section 32 to the Point of Beginning; thence leaving said west line S89°57'52"E a distance of 261.00 feet along the south line of the FIRE STATION NO. 7 ANNEXATION NO. 1; thence leaving said south line S00°05'07"W a distance of 502.36 feet along the west line of the FIRE STATION NO. 7 ANNEXATION NO. 1, to the centerline of the Appleton drain; thence along said centerline S47°12'08"W a distance of 138.86 feet; thence continuing on said drain centerline, S50°08'18"W a distance of 207.72 feet, to a point on the west line of the Northwest Quarter of the Northeast Quarter of said Section 32; thence leaving said centerline along said west line N00°05'07"E, a distance of 730.00 feet, to the Point of Beginning.

Said Parcel of land CONTAINING 161,560.33 Square Feet or 0.3,709 Acres, more or less.

AREAS OF ANNEXATION

ANNEXATION PERIMETER	1,839.94 FT.
CONTIGUOUS PERIMETER	763.35 FT.
AREA IN SQUARE FEET	161,560.33 FT ²
AREA IN ACRES	3.709
AREA WITHIN R.O.W.	21,179.12 FT ²
	0.486 ACRES
AREA WITHIN DEEDED R.O.W.	0.0 FT ²
	0.0 ACRES

LEGEND

ANNEXATION BOUNDARY	
ANNEXATION AREA	
EXISTING CITY LIMITS	

SURVEY ABBREVIATIONS

P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING
R.O.W.	RIGHT OF WAY
SEC.	SECTION
TWP.	TOWNSHIP
RGE.	RANGE
U.M.	UTE MERIDIAN
NO.	NUMBER
REC.	RECEPTION

SQ. FT.

Δ=	CENTRAL ANGLE
RAD.	RADIUS
ARC	ARC LENGTH
CHD.	CHORD LENGTH
CHB.	CHORD BEARING
BLK.	BLOCK
P.B.	PLAT BOOK
BK.	BOOK
PG.	PAGE
HOR. DIST.	HORIZONTAL DISTANCE

ORDINANCE NO.
PRELIMINARY

EFFECTIVE DATE
PRELIMINARY

NOTE:
THE DESCRIPTION(S) CONTAINED HEREIN HAVE BEEN DERIVED FROM SUBDIVISION PLAT, DEED DESCRIPTIONS & DEPOSIT SURVEYS AS THEY APPEAR IN THE OFFICE OF THE MESA COUNTY CLERK & RECORDER. THIS PLAT OF ANNEXATION DOES NOT CONSTITUTE A LEGAL BOUNDARY SURVEY, AND IS NOT INTENDED TO BE USED AS A MEANS OF ESTABLISHING OR VERIFYING PROPERTY BOUNDARY LINES.

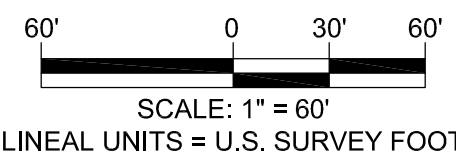
PRELIMINARY

JODIE L GREIN DATE
STATE OF COLORADO - P.L.S. NO. 38075
FOR ROLLAND CONSULTING ENGINEERS
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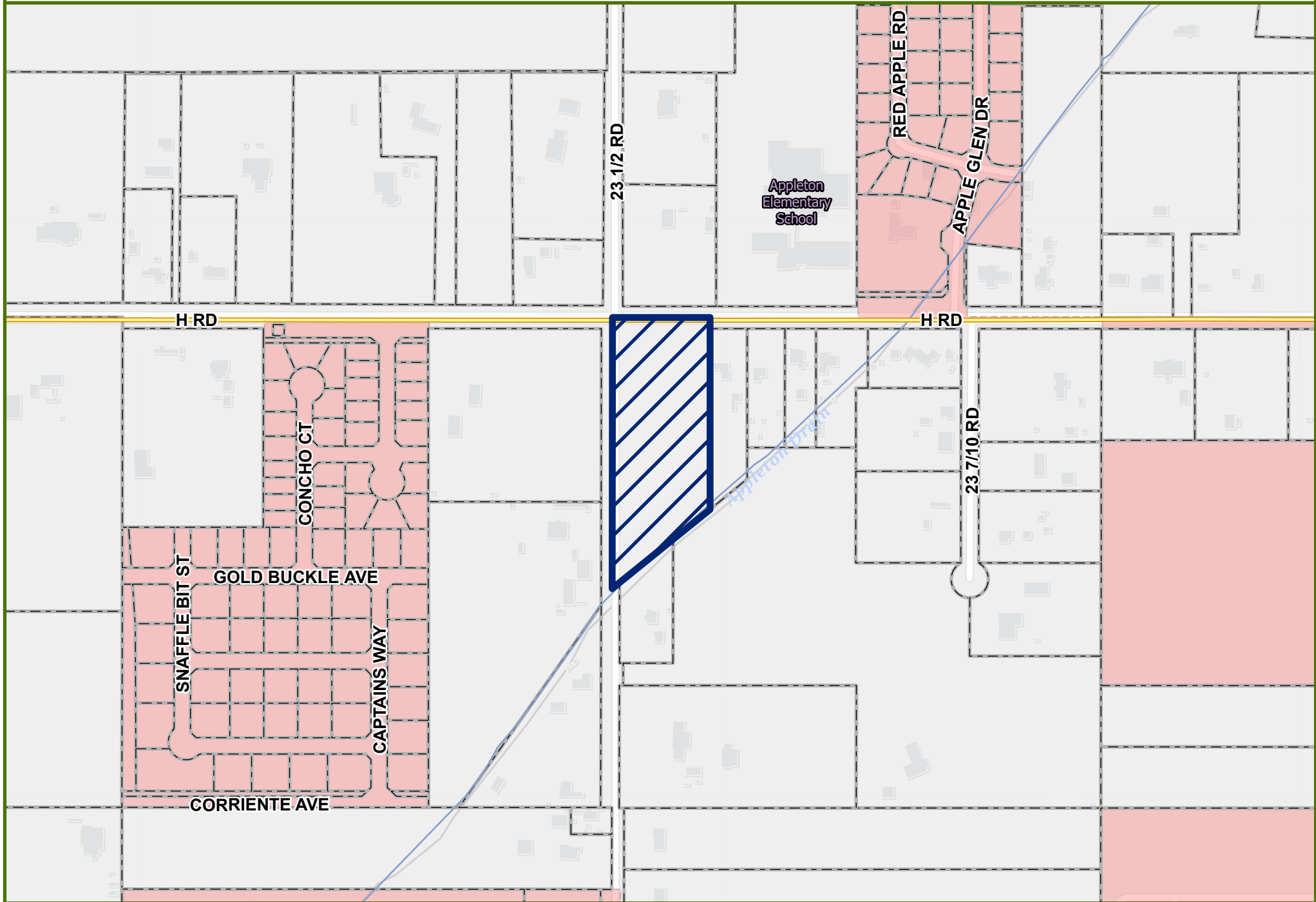
PUBLIC WORKS
ENGINEERING DIVISION

FIRE STATION NO. 7 ANNEXATION NO. 2

Located in the NW1/4 NE1/4 SECTION 32,
TOWNSHIP 1 NORTH, RANGE 1 WEST
UTE MERIDIAN, MESA COUNTY, STATE OF COLORADO

2 OF 2

Fire Station No. 7 Annexation

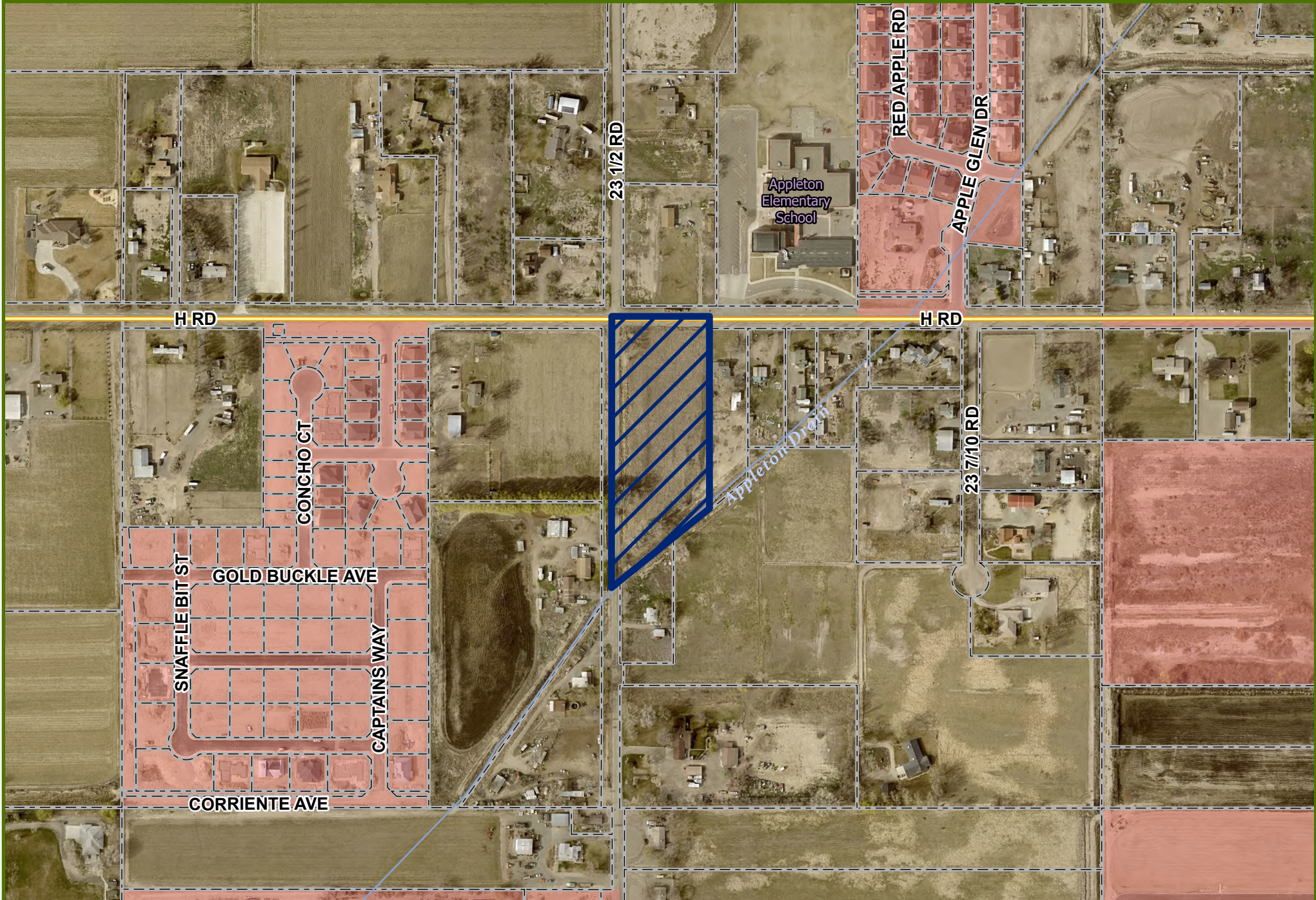


Annexation Site



City Limits

Fire Station No. 7 Annexation



0 0.05 0.1 Miles

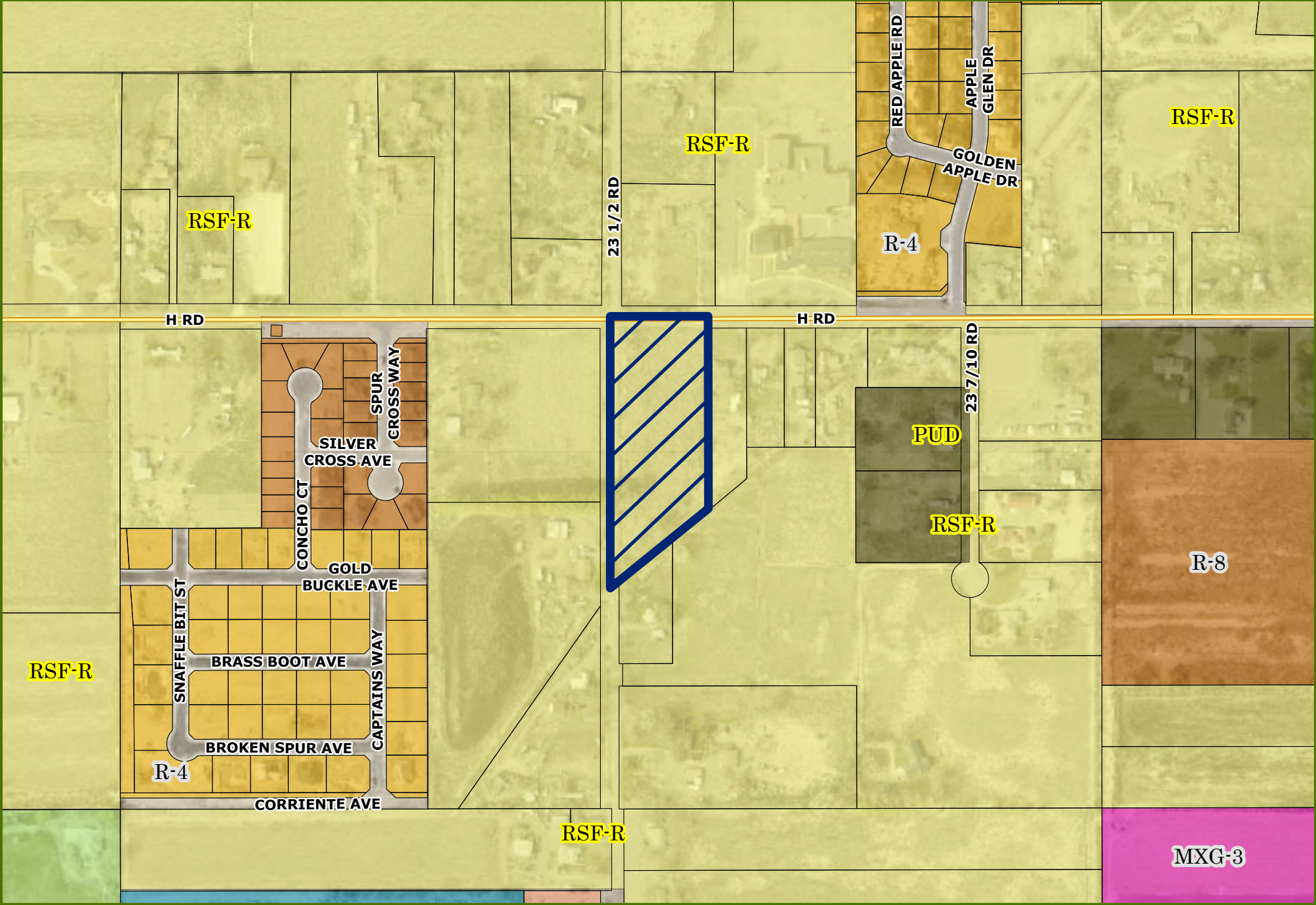


Annexation Site



City Limits

Fire Station No. 7 Annexation - Zoning



0 0.05 0.1 Miles



Annexation

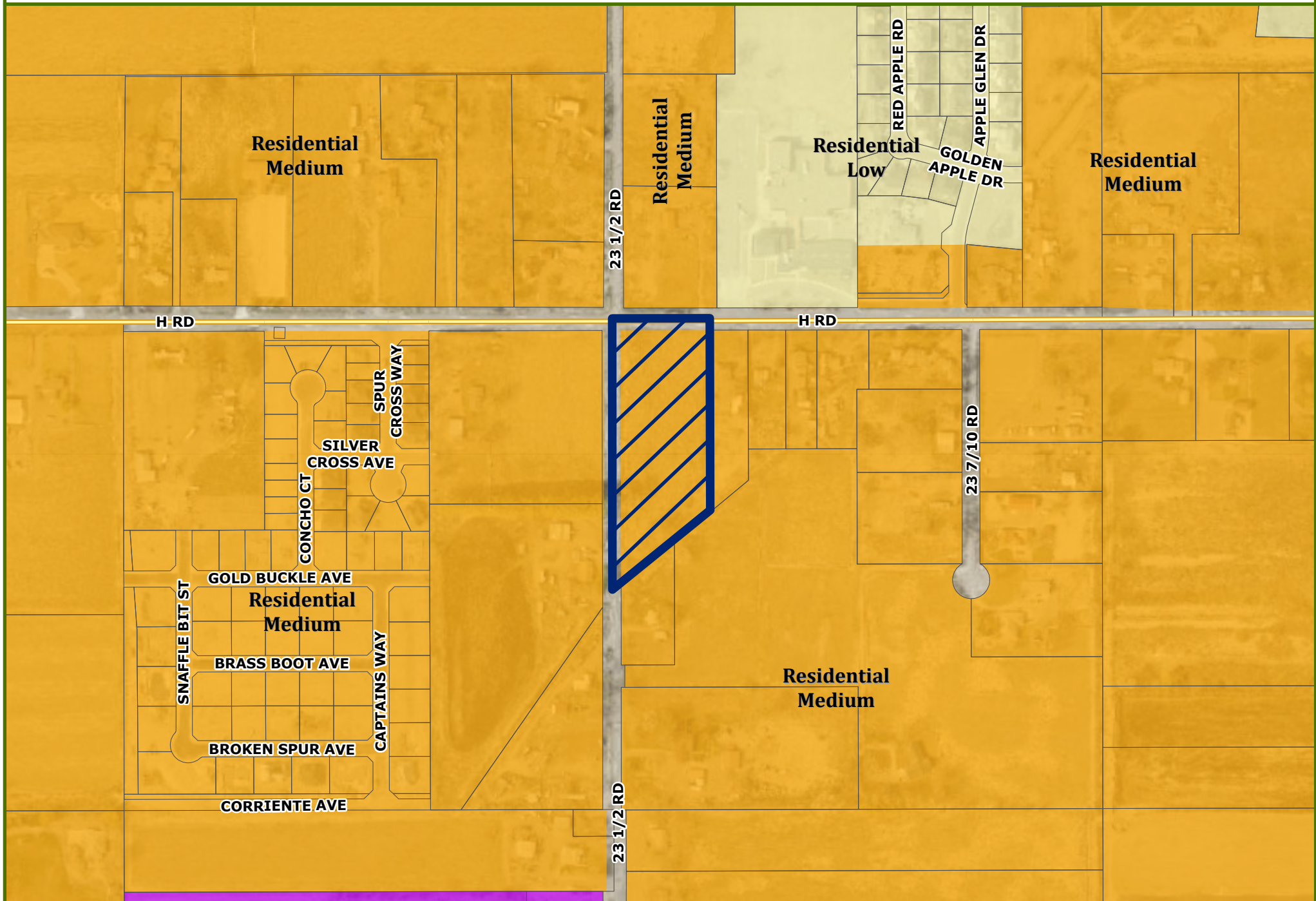
City Zoning

County Zoning

Date Created: 11/9/2023



Fire Station No. 7 Annexation - Land Use



0 0.05 0.1 Miles



Annexation Site
Packet Page 261

Date Created: 11/9/2023









FIRE STATION NO. 7 ANNEXATION SCHEDULE

February 21, 2024	Notice of Intent to Annex (30 Day Notice), Exercising Land Use
March 12, 2024	Planning Commission considers Zone of Annexation
March 20, 2024	Introduction of Ordinance on Annexation and Zoning by City Council
April 3, 2024	Public Hearing on Annexation and Zoning by City Council
May 5, 2024	Effective date of Annexation and Zoning

ANNEXATION SUMMARY

File Number:		ANX-2023-740
Location:		2351 H Road
Tax ID Numbers:		2701-321-00-081
# of Parcels:		1
Existing Population:		0
# of Parcels (owner occupied):		0
# of Dwelling Units:		0
Acres land annexed:		3.744
Developable Acres Remaining:		3
Right-of-way in Annexation:		0.499 acres (H Road)
Previous County Zoning:		RSF-R
Proposed City Zoning:		RM-8
Current Land Use:		Vacant
Comprehensive Plan Land Use:		Residential Medium
Values:	Assessed:	\$1,540
	Actual:	\$5,840
Address Ranges:		2351 to 2353 H Rd (odd only) & 788 to 798 23 1/2 Rd (even only)
Special Districts:	Water:	Ute Water Conservancy District
	Sewer:	City of Grand Junction
	Fire:	GJ Rural Fire District
	Irrigation/Drainage:	Grand Valley Irrigation Co & GV Drainage
	School:	District 51
	Pest:	Grand River Mosquito Control District
	Other:	Colorado River Water Conservancy

Fire Station No. 7
Neighborhood Meeting Notes
November 29, 2023

A meeting was held at Appleton Elementary School. There were 14 members of the public that attended along with two members of D51 staff and six staff from the City. School District 51 staff included Tim Leon and Eddie Mort. In attendance from the city were Chief Ken Watkins, Gus Hendricks and Ellis Thompson from the Fire Department, Dave Thornton from Community Development Department and Trent Prall, Kristen Armbruster and Eric Mocko from the City Engineering and Transportation Department.

City staff conducted the meeting with Chief Ken Watkins, Gus Hendricks from the Fire Department and Dave Thornton from Community Development presenting the proposed Fire Station and proposed annexation and zoning of the city owned property at 2351 H Road. The city's proposal is to annex and zone the property to R-8.

Public Comments/Questions

Public comments and questions included concerns with fire truck ingress and egress from the site and the noise that can come from emergency calls and leaving the station, and emergencies occurring during high traffic school drop off and pick up times.

Students drop off and pick up at Appleton Elementary School was discussed and the traffic with that already occurring as well as student safety in getting to and from school.

There were general concerns about the compatibility of the station with the neighborhood including discussions of buffering and setbacks from property lines. A question was asked about whether other locations that have less impact on surrounding neighbors were explored.

There were no concerns expressed about the annexation or zoning to R-8 of the fire station property at 2351 H Road.

GRAND JUNCTION PLANNING COMMISSION
March 12, 2024, 5:30 PM
MINUTES

The meeting of the Planning Commission was called to order at 5:31 p.m. by Chairman Teske.

Those present were Planning Commissioners; Ken Scissors, Shanon Secrest, Melanie Duyvejonck, Sandra Weckerly, Kim Herek, and Keith Ehlers.

Also present were Jamie Beard (City Attorney), Niki Galehouse (Planning Supervisor), Jessica Johnsen (Senior Planner), Dave Thornton (Principal Planner), Tim Lehrbach (Senior Planner), Madeline Robinson (Planning Technician), and Jacob Kaplan (Planning Technician).

There were 11 members of the public in attendance, and 1 virtually.

CONSENT AGENDA

1. Approval of Minutes

Minutes of Previous Meeting(s) from February 13, 2024.

REGULAR AGENDA

1. Ferree ROW Vacation

VAC-2023-111

Consider a request by Monument Ridge Estates LLC., Lawrence Balerio, to vacate 0.32 acres of Ferree Drive right-of-way.

Staff Presentation

Jessica Johnsen, Senior Planner, introduced exhibits into the record and provided a presentation regarding the request.

Representative Kim Kerk with Kim Kerk Land Consulting provided additional context on the request and was available for questions.

Questions for staff and applicant

Chairman Teske asked for confirmation that the vacated land would be granted to the property owner to the West and wondered if they had expressed any concerns with the vacation. He also asked for confirmation on the City's intent to maintain a utility easement over the entirety of the vacated area.

Commissioner Weckerly asked how sight distance would be retained following the vacation.

Commissioner Ehlers asked about the timeline of the ROW vacation in reference to the development of Monument Ridge Estates. He also asked if there would be any issues with the

vacation process should the referenced streets in Monument Villas change names before the vacation was completed.

Kim Kerk provided an update on the progress of development for Monument Ridge Estates.

Public Hearing

The public comment period was opened at 5:00 p.m. on Tuesday, March 5, 2024, via www.GJSpeaks.org.

There were no public comments.

The public comment period was closed at 5:50 p.m. on March 12, 2024.

Discussion

Motion and Vote

Commissioner Secrest made the following motion “Mr. Chairman, on the Ferree Drive – Public Right-Of-Way Vacation located north of Broadway (Hwy 340), on the southeastern portion of Ferree Drive, City file number VAC-2023-111, I move that the Planning Commission forward a recommendation of approval to City Council with the findings of fact and conditions as listed in the staff report.”

Commissioner Ehlers seconded; motion passed 7-0.

2. Fire Station #7 Annexation

ANX-2023-740

Consider a request by the City of Grand Junction to zone 3.744 acres from County RSF-R (Residential Single Family Rural) to RM-8 (Residential Medium 8) located at 2351 H Road.

Staff Presentation

Dave Thornton, Principal Planner, introduced exhibits into the record and provided a presentation regarding the request.

Questions for staff and applicant

Public Hearing

The public comment period was opened at 5:00 p.m. on Tuesday, March 5, 2024, 2024, via www.GJSpeaks.org.

Dylan Frye called attention to the irrigation canal on the South side of the property.

The public comment period was closed at 6:02 p.m. on March 12, 2024.

Discussion

Motion and Vote

Commissioner Scissors made the following motion “Mr. Chairman, on the Zone of Annexation request for the property located at 2351 H Road, City file number ANX-2023-740, I move that the Planning Commission forward a recommendation of approval to City Council with the findings of fact as listed in the staff report.”

Commissioner Secrest seconded; motion passed 7-0.

3. Monument Villas Comp Plan Amendment & Rezone CPA-2023-783 & RZN-2023-784

Consider a request by D&B Broadway Monument, LLC for a Comprehensive Plan Amendment for 4.23 acres from Commercial to Residential Medium (5.5 to 12 du/ac) and rezone the 4.23 acres from Mixed Use Neighborhood (MU– 1) to RM-8 (Residential Medium - 8).

Staff Presentation

Dave Thornton, Principal Planner, introduced exhibits into the record and provided a presentation regarding the request.

Jeffrey Fleming with Colorado Land Advisor Ltd., expanded on the staff presentation and was available for questions.

Questions for staff and applicant

Public Hearing

The public comment period was opened at 5:00 p.m. on Tuesday, March 5, 2024, via www.GJSpeaks.org.

There were no public comments.

The public comment period was closed at 6:28 p.m. on March 12, 2024.

Discussion

Discussion ensued about the minimum density requirements in the MU-1 zone district.

Commissioner Ehlers agreed with the staff that this area had not developed as a neighborhood center as projected in the 2010 Comp Plan so the rezone to strictly residential made sense.

Motion and Vote

Commissioner Scissors made the following motion “Mr. Chairman, on the Comprehensive Plan Amendment request for the property located at 2152 Broadway & 2155 Monument Lane, City file number CPA-2023-783, I move that the Planning Commission forward a recommendation of approval to City Council with the findings of fact as listed in the staff report.”

Commissioner Weckerly seconded; motion passed 7-0.

Commissioner Scissors made the following motion “Mr. Chairman, on the Rezone request for the property located at 2152 Broadway & 2155 Monument Lane, City file number RZN-2024-784, I

move that the Planning Commission forward a recommendation of approval to City Council with the findings of fact as listed in the staff report and with the condition that City Council approves the Comprehensive Plan Land Use Map Amendment to Residential Medium.”

Commissioner Weckerly seconded; motion passed 7-0.

4. Lange Annexation ANX-2023-754

Consider a request by James N. Lange to zone 1.65 acres within the Lange Annexation to R-8 (Residential – 8 du/ac) located at 2908 Kennedy Avenue.

This item was rescheduled to a future meeting to be determined.

5. NAK Properties Rezone RZN-2024-57

Consider a request by NAK Property 2, LLC to rezone 0.43 acres from I-2 (Industrial General) to CG (Commercial General) located at 739 3rd Avenue.

Staff Presentation

Tim Lehrbach, Senior Planner, introduced exhibits into the record and provided a presentation regarding the request.

Applicant Nathan Krehbiel was present and available for questions.

Questions for staff

Public Hearing

The public comment period was opened at 5:00 p.m. on Tuesday, March 5, 2024, via www.GJSpeaks.org.

There were no public comments.

The public comment period was closed at 6:50 p.m. on March 12, 2024.

Discussion

Commissioners expressed their appreciation for staff’s presentation and their agreement with the rezone request.

Motion and Vote

Commissioner Secrest made the following motion “Mr. Chairman, on the rezone request for the property located at 739 3rd Avenue, City file number RZN-2024-57, I move that the Planning Commission forward a recommendation of approval to the City Council with the findings of fact as listed in the staff report.”

Commissioner Scissors seconded; motion passed 7-0.

OTHER BUSINESS

ADJOURNMENT

Commissioner Weckerly moved to adjourn the meeting.

The vote to adjourn was 7-0.

The meeting adjourned at 6:53 p.m.

DRAFT

CITY OF GRAND JUNCTION, COLORADO

RESOLUTION NO. ____

**A RESOLUTION ACCEPTING A PETITION
FOR THE ANNEXATION OF LANDS
TO THE CITY OF GRAND JUNCTION, COLORADO,
MAKING CERTAIN FINDINGS,
AND DETERMINING THAT PROPERTY KNOWN AS THE
FIRE STATION NO. 7 ANNEXATION**

**APPROXIMATELY 3.744 ACRES
LOCATED ON PROPERTY AT 2351 H ROAD**

IS ELIGIBLE FOR ANNEXATION

WHEREAS, on the 21st day of February, 2024, a petition was referred to the City Council of the City of Grand Junction, Colorado, for annexation to said City of the following property situate in Mesa County, Colorado, and described as follows:

FIRE STATION NO. 7 ANNEXATION

Perimeter Boundary Legal Description

**A Serial Annexation Comprising of Fire Station No. 7 Annexation No. 1 and Fire
Station No. 7 Annexation No. 2
EXHIBITS A & B**

Fire Station No. 7 Annexation No. 1 Legal Description

A parcel of land being a part of the Northwest Quarter of the Northeast Quarter (NW1/4 NE1/4) of Section 32, Township 1 North, Range 1 West, Ute Meridian, Mesa County, Colorado more particularly described as follows:

Commencing at the North 1/4 Corner of said Section 32 whence the East 1/16 Corner of said Section 32 bears S89°57'52"E, with all other bearings relative thereto; thence S00°05'07"W a distance of 2.00 feet along the west line of the Northwest Quarter of the Northeast Quarter of said Section 32 to the Point of Beginning; thence leaving said west line S89°57'52"E a distance of 263.00 feet along the south line of the SOUTH TWENTY ANNEXATION NO. 1, ORDINANCE NO. 4836 ; thence leaving said north line S00°05'07"W a distance of 502.50 feet to the centerline of the Appleton drain; thence along said centerline S47°12'08"W a distance of 2.73 feet; thence leaving said centerline, N00°05'07"E a distance of 502.36 feet; thence N89°57'52"W a distance of 261.00 feet to the west line of the Northwest Quarter of the Northeast Quarter of said Section 32; thence along said west line N00°05'07"E, a distance of 2.00 feet, to the Point of Beginning.

Said Parcel of land CONTAINING 1528.88 Square Feet or 0.035 Acres, more or less.

Fire Station No. 7 Annexation No. 2 Legal Description

A parcel of land being a part of the Northwest Quarter of the Northeast Quarter (NW1/4 NE1/4) of Section 32, Township 1 North, Range 1 West, Ute Meridian, Mesa County, Colorado more particularly described as follows:

Commencing at the North 1/4 Corner of said Section 32 whence the East 1/16 Corner of said Section 32 bears S89°57'52"E, with all other bearings relative thereto; thence S00°05'07"W a distance of 4.00 feet along the west line of the Northwest Quarter of the Northeast Quarter of said Section 32 to the Point of Beginning; thence leaving said west line S89°57'52"E a distance of 261.00 feet along the south line of the FIRE STATION NO. 7 ANNEXATION NO. 1; thence leaving said south line S00°05'07"W a distance of 502.36 feet along the west line of the FIRE STATION NO. 7 ANNEXATION NO. 1, to the centerline of the Appleton drain; thence along said centerline S47°12'08"W a distance of 138.86 feet; thence continuing on said drain centerline, S50°08'18"W a distance of 207.72 feet, to a point on the west line of the Northwest Quarter of the Northeast Quarter of said Section 32; thence leaving said centerline along said west line N00°05'07"E, a distance of 730.00 feet, to the Point of Beginning.

Said Parcel of land CONTAINING 161,560.33 Square Feet or 0.3.709 Acres, more or less.

WHEREAS, a hearing on the petition was duly held after proper notice on the 7th day of June, 2023; and

WHEREAS, the Council has found and determined and does hereby find and determine that said petition is in substantial compliance with statutory requirements therefore, that one-sixth of the perimeter of the area proposed to be annexed is contiguous with the City; that a community of interest exists between the territory and the City; that the territory proposed to be annexed is urban or will be urbanized in the near future; that the said territory is integrated or is capable of being integrated with said City; that no land held in identical ownership has been divided without the consent of the landowner; that no land held in identical ownership comprising more than twenty acres which, together with the buildings and improvements thereon, has an assessed valuation in excess of two hundred thousand dollars is included without the landowner's consent; and that no election is required under the Municipal Annexation Act of 1965.

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

The said territory is eligible for annexation to the City of Grand Junction, Colorado, and should be so annexed by Ordinance.

ADOPTED the ____ day of April 2024.

Anna M. Stout
President of the Council

ATTEST:

Amy Phillips
City Clerk

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO.

**AN ORDINANCE ANNEXING TERRITORY TO THE
CITY OF GRAND JUNCTION, COLORADO
FIRE STATION NO. 7 ANNEXATION**

**LOCATED ON PROPERTY AT 2351 H ROAD
APPROXIMATELY 3.744 ACRES**

WHEREAS, on the 21st day of February, 2024, the City Council of the City of Grand Junction considered a petition for the annexation of the following described territory to the City of Grand Junction; and

WHEREAS, a hearing on the petition was duly held after proper notice on the ____ day of _____, 2024; and

WHEREAS, the City Council determined that said territory was eligible for annexation and that no election was necessary to determine whether such territory should be annexed;

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

That the property situate in Mesa County, Colorado, and described to wit:

FIRE STATION NO. 7 ANNEXATION

Perimeter Boundary Legal Description

**A Serial Annexation Comprising of Fire Station No. 7 Annexation No. 1 and Fire Station No. 7 Annexation No. 2
EXHIBITS A & B**

Fire Station No. 7 Annexation No. 1 Legal Description

A parcel of land being a part of the Northwest Quarter of the Northeast Quarter (NW1/4 NE1/4) of Section 32, Township 1 North, Range 1 West, Ute Meridian, Mesa County, Colorado more particularly described as follows:

Commencing at the North 1/4 Corner of said Section 32 whence the East 1/16 Corner of said Section 32 bears S89°57'52"E, with all other bearings relative thereto; thence S00°05'07"W a distance of 2.00 feet along the west line of the Northwest Quarter of the Northeast Quarter of said Section 32 to the Point of Beginning; thence leaving said west line S89°57'52"E a distance of 263.00 feet along the south line of the SOUTH TWENTY ANNEXATION NO. 1, ORDINANCE NO. 4836 ; thence leaving said north line S00°05'07"W a distance of 502.50 feet to the centerline of the Appleton drain; thence

along said centerline S47°12'08"W a distance of 2.73 feet; thence leaving said centerline, N00°05'07"E a distance of 502.36 feet; thence N89°57'52"W a distance of 261.00 feet to the west line of the Northwest Quarter of the Northeast Quarter of said Section 32; thence along said west line N00°05'07"E, a distance of 2.00 feet, to the Point of Beginning.

Said Parcel of land CONTAINING 1528.88 Square Feet or 0.035 Acres, more or less.

Fire Station No. 7 Annexation No. 2 Legal Description

A parcel of land being a part of the Northwest Quarter of the Northeast Quarter (NW1/4 NE1/4) of Section 32, Township 1 North, Range 1 West, Ute Meridian, Mesa County, Colorado more particularly described as follows:

Commencing at the North 1/4 Corner of said Section 32 whence the East 1/16 Corner of said Section 32 bears S89°57'52"E, with all other bearings relative thereto; thence S00°05'07"W a distance of 4.00 feet along the west line of the Northwest Quarter of the Northeast Quarter of said Section 32 to the Point of Beginning; thence leaving said west line S89°57'52"E a distance of 261.00 feet along the south line of the FIRE STATION NO. 7 ANNEXATION NO. 1; thence leaving said south line S00°05'07"W a distance of 502.36 feet along the west line of the FIRE STATION NO. 7 ANNEXATION NO. 1, to the centerline of the Appleton drain; thence along said centerline S47°12'08"W a distance of 138.86 feet; thence continuing on said drain centerline, S50°08'18"W a distance of 207.72 feet, to a point on the west line of the Northwest Quarter of the Northeast Quarter of said Section 32; thence leaving said centerline along said west line N00°05'07"E, a distance of 730.00 feet, to the Point of Beginning.

Said Parcel of land CONTAINING 161,560.33 Square Feet or 0.3.709 Acres, more or less.

INTRODUCED on first reading this 21st day of February, 2024 and ordered published in pamphlet form.

ADOPTED on second reading this ____ day of April 2024 and ordered published in pamphlet form.

Anna M. Stout
President of the Council

ATTEST:

Amy Phillips
City Clerk

EXHIBIT A

FIRE STATION NO. 7 ANNEXATION NO. 1

Located in the NW1/4 NE1/4 SECTION 32, TOWNSHIP 1 NORTH, RANGE 1 WEST,
UTE MERIDIAN, COUNTY OF MESA, STATE OF COLORADO

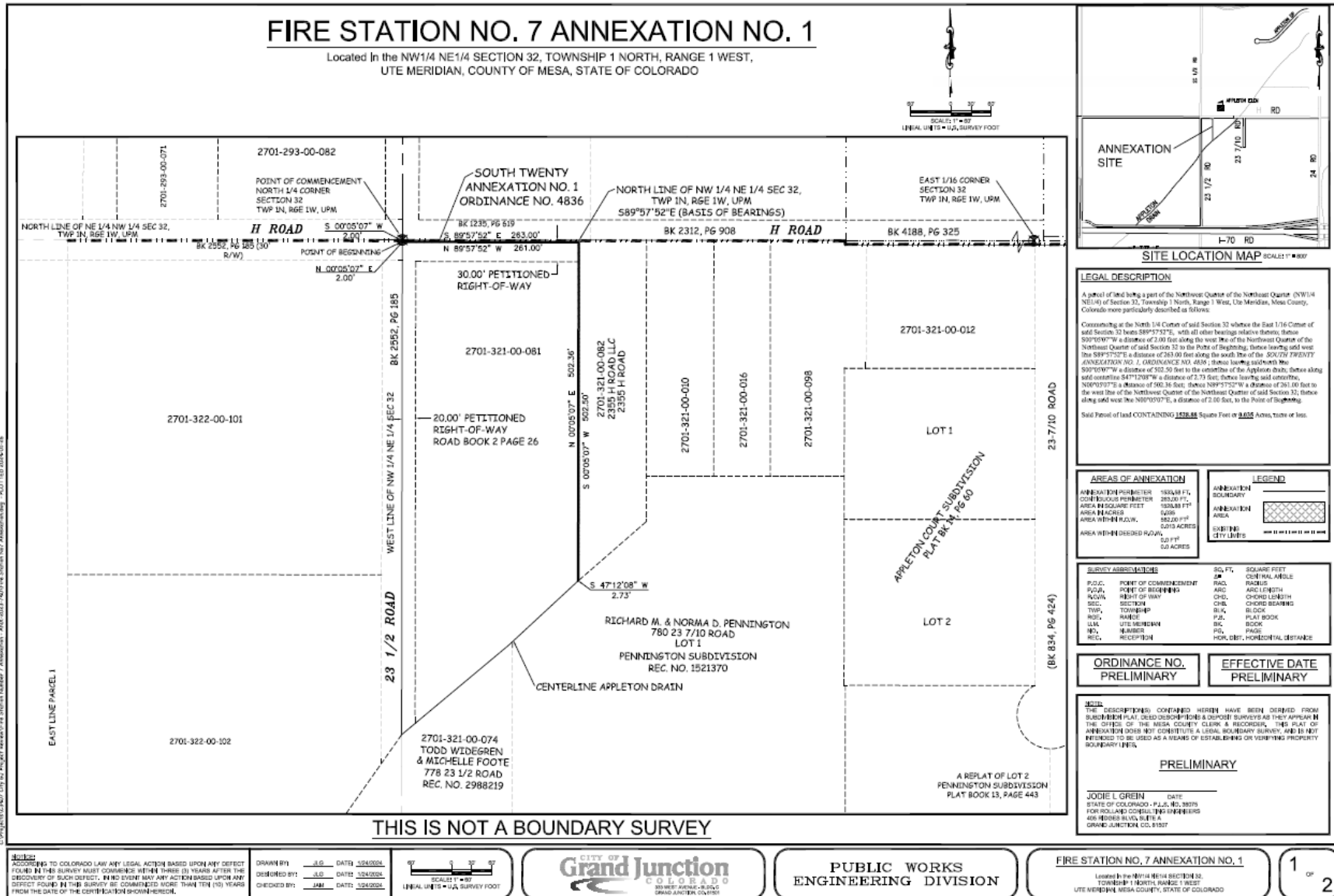
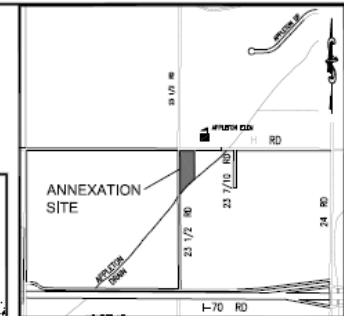
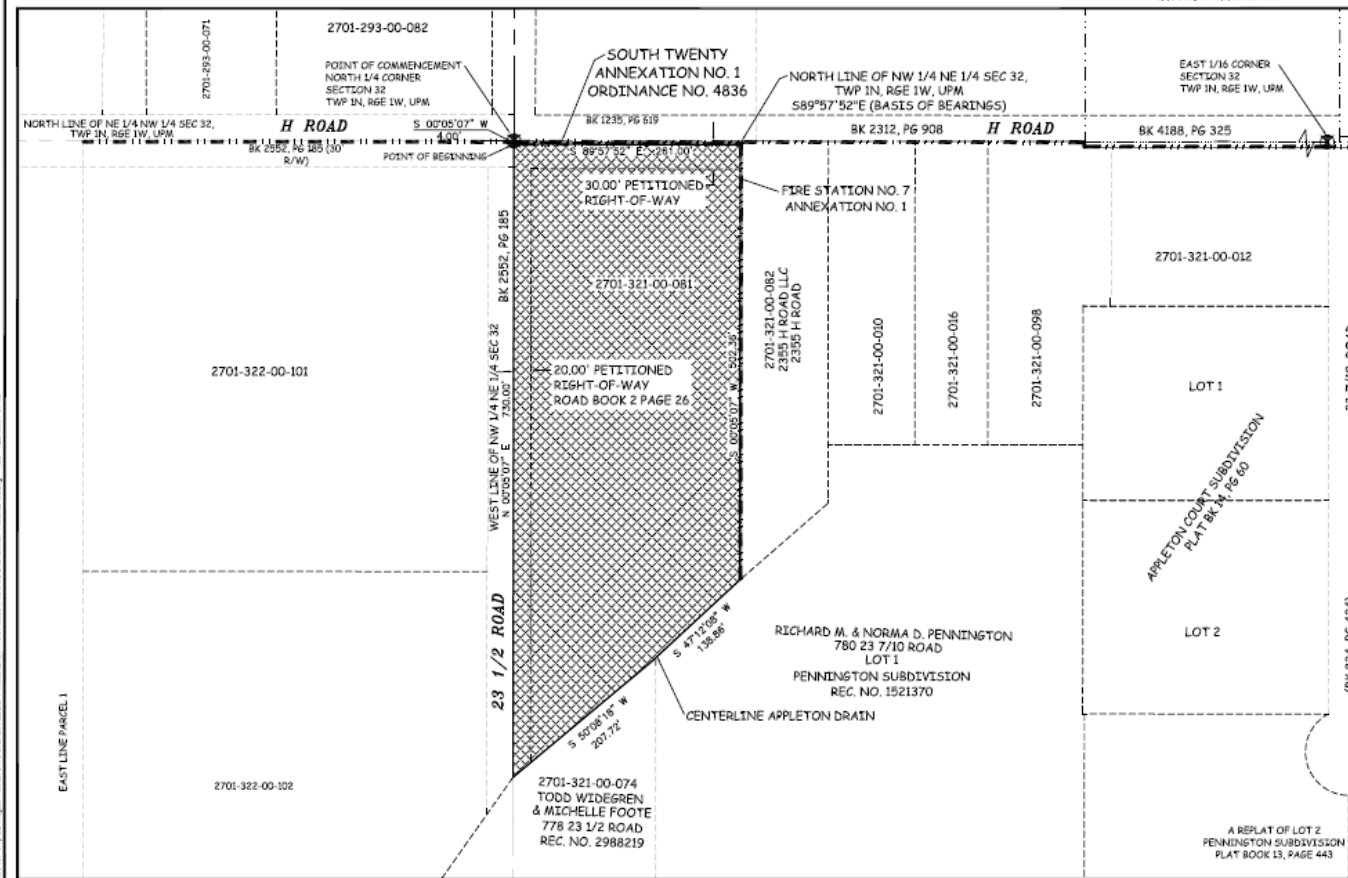


EXHIBIT B

FIRE STATION NO. 7 ANNEXATION NO. 2

Located in the NW1/4 NE1/4 SECTION 32, TOWNSHIP 1 NORTH, RANGE 1 WEST,
UTE MERIDIAN, COUNTY OF MESA, STATE OF COLORADO



LEGAL DESCRIPTION

A parcel of land being a part of the Northwest Quarter of the Northeast Quarter (NW1/4 NE1/4) of Section 32, Township 1 North, Range 1 West, One Meridian, Mesa County, Colorado more particularly described as follows:

Commencing at the North 1/4 Corner of said Section 32 where the East 1/16 Corner of said Section 32 bears S89°57'52\"

Said Parcel of land CONTAINING 181,583.33 Square Feet or 6.3799 Acres, more or less.

AREAS OF ANNEXATION

ANNEXATION PERIMETER	1,888.47 FT.
CORRESPONDING PERIMETER	782.30 FT.
AREA IN SQUARE FEET	181,583.33 FT ²
AREA IN ACRES	6.3799
AREA WITHIN PLZLN.	21,176.02 FT ²
SUBD. ACRES	0.66
AREA WITHIN DESIRED PLZLN.	5.0 FT
	50 ACRES

LEGEND

ANNEXATION BOUNDARY	Cross-hatched pattern
ANNEXATION AREA	Shaded area
SUBDIVISION CITY LIMITS	Line with 'X' marks

SURVEY ABBREVIATIONS	SQ. FT.	SQUARE FEET
P.O.C.	POINT OF COMMENCEMENT	ARC
P.O.B.	POINT OF BEGINNING	ARC
PLZLN.	PLAT	ARC
SEC.	SECTION	CHORD LENGTH
TWP.	TOWNSHIP	CHORD BEARING
R6E.	RANGE	BLK.
U.M.	UTE MERIDIAN	P.B.
NO.	NUMBER	BK.
REC.	RECORD	PG.
		HOR. DIST. HORIZONTAL DISTANCE

ORDINANCE NO.
PRELIMINARY

EFFECTIVE DATE
PRELIMINARY

THE DESCRIPTIONS CONTAINED HEREIN HAVE BEEN DERIVED FROM SUBDIVISION PLAT, DEED DESCRIPTIONS AND DEEDS AS THEY APPEAR IN THE OFFICE OF THE MESA COUNTY CLERK & RECORDER. THIS PLAT OF ANNEXATION DOES NOT CONSTITUTE A LEGAL BOUNDARY SURVEY, AND IS NOT INTENDED TO BE USED AS A MEANS OF ESTABLISHING OR VERIFYING PROPERTY BOUNDARY LINES.

PRELIMINARY

JODIE L. GREIN DATE
STATE OF COLORADO, P.L.S. NO. 3875
FOR RELEASE: CORRECTIONAL DEPARTMENT
408 REDDIE AVENUE, SUITE A
GRAND JUNCTION, CO. 81507

THIS IS NOT A BOUNDARY SURVEY

NOTICE: ACCORDING TO COLORADO LAW ANY LEGAL ACTION BASED UPON ANY DEFECT FOUND IN THIS SURVEY MUST COMMENCE WITHIN THREE (3) YEARS AFTER THE DISCOVERY OF SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT FOUND IN THIS SURVEY BE COMMENCED MORE THAN TEN (10) YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREIN.

DRAWN BY: JLG DATE: 10/24/2024
DESIGNED BY: JLG DATE: 10/24/2024
CHECKED BY: JAM DATE: 10/24/2024



PUBLIC WORKS
ENGINEERING DIVISION

FIRE STATION NO. 7 ANNEXATION NO. 2
Located in the NW1/4 NE1/4 SECTION 32,
TOWNSHIP 1 NORTH, RANGE 1 WEST,
UTE MERIDIAN, MESA COUNTY, STATE OF COLORADO

2 of 2

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO. _____

**AN ORDINANCE ZONING FIRE STATION NO. 7 ANNEXATION
TO RM-8 (RESIDENTIAL MEDIUM - 8) ZONE DISTRICT**

LOCATED ON PROPERTY AT 2351 H ROAD

Recitals:

The property owner has petitioned to annex their 3.744 acres into the City limits. The annexation is referred to as the "Fire Station No.7 Annexation."

After public notice and public hearing as required by the Grand Junction Zoning & Development Code, the Grand Junction Planning Commission recommended zoning the Fire Station No. 7 Annexation consisting of 3.744 acres from County RSF-R (Residential Single Family - Rural) to RM-8 (Residential Medium - 8) finding that both the RM-8 zone district conforms with the designation of Residential Medium as shown on the Land Use Map of the Comprehensive Plan and conforms with its designated zone with the Comprehensive Plan's goals and policies and is generally compatible with land uses located in the surrounding area.

After public notice and public hearing, the Grand Junction City Council finds that the RM-8 (Residential Medium - 8) zone district, is in conformance with at least one of the stated criteria of Section 21.02.140 of the Grand Junction Zoning & Development Code for the parcel as designated.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:

ZONING FOR THE FIRE STATION NO. 7 ANNEXATION

The Recitals are incorporated herein and the following parcels in the City of Grand Junction, County of Mesa, State of Colorado are hereby duly, and lawfully zoned RM-8 as follows:

FIRE STATION NO. 7 ANNEXATION

Perimeter Boundary Legal Description

**A Serial Annexation Comprising of Fire Station No. 7 Annexation No. 1 and Fire Station
No. 7 Annexation No. 2**

EXHIBITS A & B

Fire Station No. 7 Annexation No. 1 Legal Description

A parcel of land being a part of the Northwest Quarter of the Northeast Quarter (NW1/4 NE1/4) of Section 32, Township 1 North, Range 1 West, Ute Meridian, Mesa County, Colorado more particularly described as follows:

Commencing at the North 1/4 Corner of said Section 32 whence the East 1/16 Corner of said Section 32 bears S89°57'52"E, with all other bearings relative thereto; thence S00°05'07"W a distance of 2.00 feet along the west line of the Northwest Quarter of the Northeast Quarter of said Section 32 to the Point of Beginning; thence leaving said west line S89°57'52"E a distance of 263.00 feet along the south line of the SOUTH TWENTY ANNEXATION NO. 1, ORDINANCE NO. 4836 ; thence leaving said north line S00°05'07"W a distance of 502.50 feet to the centerline of the Appleton drain; thence along said centerline S47°12'08"W a distance of 2.73 feet; thence leaving said centerline, N00°05'07"E a distance of 502.36 feet; thence N89°57'52"W a distance of 261.00 feet to the west line of the Northwest Quarter of the Northeast Quarter of said Section 32; thence along said west line N00°05'07"E, a distance of 2.00 feet, to the Point of Beginning.

Said Parcel of land CONTAINING 1528.88 Square Feet or 0.035 Acres, more or less.

Fire Station No. 7 Annexation No. 2 Legal Description

A parcel of land being a part of the Northwest Quarter of the Northeast Quarter (NW1/4 NE1/4) of Section 32, Township 1 North, Range 1 West, Ute Meridian, Mesa County, Colorado more particularly described as follows:

Commencing at the North 1/4 Corner of said Section 32 whence the East 1/16 Corner of said Section 32 bears S89°57'52"E, with all other bearings relative thereto; thence S00°05'07"W a distance of 4.00 feet along the west line of the Northwest Quarter of the Northeast Quarter of said Section 32 to the Point of Beginning; thence leaving said west line S89°57'52"E a distance of 261.00 feet along the south line of the FIRE STATION NO. 7 ANNEXATION NO. 1; thence leaving said south line S00°05'07"W a distance of 502.36 feet along the west line of the FIRE STATION NO. 7 ANNEXATION NO. 1, to the centerline of the Appleton drain; thence along said centerline S47°12'08"W a distance of 138.86 feet; thence continuing on said drain centerline, S50°08'18"W a distance of 207.72 feet, to a point on the west line of the Northwest Quarter of the Northeast Quarter of said Section 32; thence leaving said centerline along said west line N00°05'07"E, a distance of 730.00 feet, to the Point of Beginning.

Said Parcel of land CONTAINING 161,560.33 Square Feet or 0.3.709 Acres, more or less.

INTRODUCED on first reading this ____ day of _____, 2024 and ordered published in pamphlet form.

ADOPTED on second reading this ____ day of _____, 2024 and ordered published in pamphlet form.

Anna M. Stout
President of the City Council

ATTEST:

Amy Phillips
City Clerk



Grand Junction City Council

Regular Session

Item #8.a.

Meeting Date: April 3, 2024

Presented By: Tamra Allen, Community Development Director

Department: City Manager's Office

Submitted By: Ashley Chambers, Housing Manager

Information

SUBJECT:

Letter of Intent to Purchase Property for Affordable and Attainable Housing at 450 28 Road, Grand Junction, Colorado

RECOMMENDATION:

Staff recommend adopting and approving the Resolution authorizing the Letter of Intent for EN-SIM QOG, LLC (Enstrom's) outlining the terms and conditions for the City of Grand Junction to purchase 21.45 acres for Affordable and Attainable Housing at 450 28 Rd, Grand Junction, CO.

EXECUTIVE SUMMARY:

A Letter of Intent (LOI) has been prepared for EN-SIM QOF, LLC (Enstrom's) outlining the proposed terms and conditions for the City's purchase of 21.45 acres of an existing 35.85 acre parcel. The property is currently zoned R-24 and could support up to 500 homes. Purchase price included in the LOI is \$3.2 million. The City is the recipient of a Colorado Housing and Finance Authority (CHFA) grant for assist in the purchase of this property in the amount of \$2.2 million.

The LOI stipulates that the City will contract for various street improvements through and adjacent to the development. Along with utilities, the current estimated cost of the improvements is estimated to total \$12.2 million; the LOI proposes the developer will pay back \$2 million towards their share of the street improvements and utility extensions.

BACKGROUND OR DETAILED INFORMATION:

A Letter of Intent (LOI) has been prepared for EN-SIM QOF, LLC (Enstrom's) outlining the proposed terms and conditions for the City's purchase of 21.45 acres of an existing 35.85 acre parcel. The property is currently zoned R-24 and could support up to 500

homes. Purchase price included in the LOI is \$3.2 million. The City is the recipient of a Colorado Housing and Finance Authority (CHFA) grant for assist in the purchase of this property in the amount of \$2.2 million.

The LOI stipulates that the City will contract for various street improvements through and adjacent to the development. Along with utilities, the current estimated cost of the improvements is estimated to total \$12.2 million; the LOI proposes the developer will pay back \$2 million towards their share of the street improvements and utility extensions.

In October 2021, City Council adopted 12 housing strategies to create a balanced approach for promoting both affordable housing and attainable housing. Affordable housing for the City has been defined as rental housing for households making less than 60 percent or for-sale units for households earning less than 100 percent AMI. Attainable housing is defined by the City as rental housing for households making between 60 percent AMI and 80 percent AMI and for-sale units for households earning between 60 percent and 120 percent AMI. As part of the strategies, the City adopted Strategy 6 which would “Allocate city-owned land and/or strategically acquire vacant or underutilized properties for affordable and mixed-income housing.” This strategy was intended to assist in meeting the shortage of affordable/attainable housing and to promote more opportunities for housing choices that meet the needs of people of all ages, abilities, and incomes.

Property and/or acquisition costs, especially in developed areas of the city, are a major component of the cost of developing affordable housing. In current markets, land and/or building acquisition is up to 20 percent of the overall project.

In November 2023, an application was submitted to the Colorado Housing and Finance Authority (CHFA) for Proposition 123: Land Banking Grant requesting a grant amount of \$2.2 million for a \$3.2 million property acquisition. On January 29, 2024, the City was awarded the Grant to assist with the purchase of the 21+ acres of the property.

The project includes the acquisition of 21.45 acres for future development by the City of Grand Junction and other non-profit and for-profit affordable/attainable housing providers. The project is located at 450 28 Road in the central part of the city along 28 Road between 1-70 Business Loop Rd and North Avenue which is a mixed-use central area of the city. The site is near major employers along the North Ave corridor including Walmart, restaurants, medical facilities, Colorado Mesa University, and the sports complex. The property is zoned R-24 that requires a minimum density of 16 dwelling units per acre and has no density maximum. The zoning requires that no less than 343 units be constructed on the property and the City is targeting between 343 and 500 mixed-income affordable and attainable units be developed on the property. The City anticipates future subdivision of the property as well as the construction of multiple housing types including rental and homeownership through the collaboration of multiple non-profit and housing developers through the City procurement (RFP and/or RFQ) process.

The City anticipates the construction of the site occurring over multiple phases in the next 10 years. The majority of the site would be used for providing affordable units while up to 25 percent of the site may be used for attainable housing; that will help fill additional known gaps in the local market.

As the Property is not subdivided the owner/seller, En-Sim QOF LLC, may not lawfully sell or offer to sell the proposed 21.45 acres of property; however, the City and En-Sim QOF LLC may enter into a letter of intent ("LOI") to affirm the intent to acquire the Property when the subdivision is complete. En-Sim QOF, LLC has committed to applying for the subdivision and anticipates submittal of the application documents in the forthcoming 90 days.

The LOI stipulates that the City will contract for various street improvements through and adjacent the development. Along with utilities, the current estimated cost of the improvements is \$12.2 million; the LOI proposes the developer will pay back \$2 million towards their share of the street improvements and utility extensions.

FISCAL IMPACT:

The total cost for the Salt Flats land acquisition is \$3.2 million. \$2.2 million will be sourced from the CHFA grant, while \$1 million was previously approved through Resolution 93-23 as a cash match for the acquisition, included in the 2024 Adopted Budget as part of the \$6,491,758 budgeted to execute adopted housing strategies.

SUGGESTED MOTION:

I move to (adopt/deny) Resolution 23-24 a resolution authorizing the City Manager to sign a Letter of Intent regarding property at 450 28 Road and to take further action consistent with the terms of the Letter of Intent.

Attachments

1. LOI-Salt Flats 20240401
2. RES-Salt Flats LOI 04.01.24



April 1, 2024

Ray Rickard
c/o RE/MAX 4000 Inc.
120 W. Park Drive, Suite 200
Grand Junction, CO 81505

RE: Letter of Intent Regarding 450 28 Road, Grand Junction, Colorado

Dear Mr. Rickard,

Please accept this letter of intent ("LOI") on behalf of the City of Grand Junction ("Buyer") regarding the possible purchase of a portion of certain real property owned by En-Sim QOF LLC ("Seller") commonly addressed as 450 28 Road, Grand Junction, Colorado ("Property").

The Buyer or its assign(s) is pleased to make the following expression of interest to purchase a portion of the Property. That portion of the Property, the legal description of which will be determined by and with a future, lawful subdivision in accordance with the laws, rules, and regulations of the Buyer, will for the purposes of this letter of intent ("LOI" or "Letter of Intent") be referred to as "TBD Lot". Collectively the Seller and the Buyer may be referred to as the Parties.

The Buyer is interested in purchasing fee title interest in the TBD Lot, along with all improvements, free of all liens and encumbrances. The terms on which the Buyer would be interested in proceeding to negotiate a mutually acceptable Purchase and Sale Agreement ("PSA" or "Purchase and Sale Agreement") relating to TBD Lot are stated below.

This LOI reflects the present concepts for the transaction described herein; a final and complete PSA will need to be negotiated. This LOI does not constitute, and shall not be construed to constitute, an enforceable agreement at this time. This LOI shall be superseded by the PSA, as agreed to, and executed by the Parties, if at all. Although this LOI is intended by the Parties to describe terms of the transaction contemplated herein at the time of its execution, nothing herein shall obligate or bind any party to any terms, conditions or agreements and no party shall assert a claim or incur any liability arising out of the execution of this LOI. The proposed terms and conditions include, but are not limited to, the following:

1. Property:

TBD Lot (the number assigned to that portion of the Property with the subdivision plat) shall be no less than 21.45 acres. TBD Lot shall be, by Seller, legally subdivided in accordance

with applicable laws, rules, and regulations, including but not limited to those of the City of Grand Junction (“Subdivision Process.”)

All improvements required by the Subdivision Process shall be guaranteed and constructed by Buyer which include but are not limited by this letter to be:

- a. Dedication of right of way and construction of approximately 1,700 feet Grand Avenue to a local commercial street standard.
- b. Dedication of a single lane right of way for roundabout at Grand and 28 Road
- c. Construction of approximately 600 feet of Minimum Access from Grand Avenue north to the existing asphalt surface on 28 ¼ Road
- d. Construction of other required public utilities including water, sewer, stormwater, electric, gas and internet.
- e. Although not required for purposes of the Subdivision Process, the Buyer will after conveyance of the TBD Lot to it propose that the Buyer include in its budget, and if the budget request is approved by the City Council, construct improvements to 28 ¼ Road from the improvements constructed in c., above) to a possible connection at I-70B.

2. Purchase Price:

The purchase price (“Purchase Price”) shall be \$3,200,000 or \$149,184.00 per acre with the amount due at Closing (defined below) from the Buyer being established based on the actual acreage of TBD Lot as platted.

3. Payment Terms:

The Purchase Price will, as provided in the PSA, be paid at Closing in cash or immediately available funds.

4. Purchase and Sale Agreement:

Following execution of this LOI and the platting of the Property/completion of the Subdivision Process, the Parties will draft the PSA. Upon completion of the platting of the Property/the Subdivision Process, the Parties may enter into the PSA subject to agreement by the Parties as to all terms and conditions

thereof. In addition to those terms and conditions set forth in this LOI, the PSA shall contain other terms and conditions customarily included in Colorado commercial, vacant land real estate contracts. The PSA, once drafted to the satisfaction of the Parties to this LOI will be subject to review and ratification, if accepted at a regular noticed meeting of the City Council. Ratification shall be in the form of a City Council resolution.

5. Earnest Money Deposit:

Within 10 days after the executed PSA Buyer shall provide for an earnest money deposit of \$250,000.00 ("Earnest Money") in accordance with and subject to the PSA.

6. Due Diligence/Inspection Period:

Purchaser shall conduct a due diligence review of the TBD Lot to determine, in Buyer's sole and absolute discretion, whether TBD Lot is acceptable to Buyer ("Due Diligence Review"). Buyer shall have a period of 30 days from the date the Purchase and Sale Agreement is fully executed ("Due Diligence Period") to conduct the Due Diligence Review. Purchaser, in its sole discretion, may give notice to the Seller that TBD Lot is acceptable prior to the end of the 30-day period. In such case, the Closing will be no later than 30 days from the effective date of such notice.

During the Due Diligence Period, the Seller shall provide Buyer and Buyer's agents, contractors, and subcontractors access to the Property as reasonably requested by the Buyer. The Seller shall provide Buyer with the opportunity to review and copy environmental and zoning records, and any covenants, conditions, and restrictions (CC&R's), if any, related to the Property. If the results of the Due Diligence Review are not satisfactory to the Buyer, it may terminate the PSA by notifying the Owner in writing of the same on or before the expiration of the Due Diligence Period. In the event of such termination, the Earnest Money shall be returned to Buyer and the PSA, and the Parties' obligations thereunder shall

have no further force and effect, except for those specific provisions which expressly survive the termination of the PSA.

Buyer shall be responsible for payment of all Due Diligence Review costs and fees, including, but not limited to all inspections, tests, surveys, engineering services and reports, development services and all other reports or services performed at Buyer's request.

7. Closing:

The Closing shall take place as provided in the PSA, no later than 30 days after the end of the Due Diligence Period.

8. Closing Costs:

a. The Seller shall bear the expense of a standard owner's title insurance policy on the TBD Lot for the benefit of Buyer. All other closing costs will be divided equally between the Parties. Each party shall be responsible for their own legal fees. Buyer is responsible for the payment for all fees and costs related to the due diligence performed during the term of the PSA.

b. At closing, Seller shall execute a promissory note in the amount of \$2,000,000 (two million dollars) of which \$1,000,000 (one million dollars) shall be due on or before January 1, 2026 and \$1,000,000 (one million dollars) due upon the Buyer's substantial completion, as determined by the Buyer, of the improvements required by the Subdivision Process.

9. Title

Upon the tender of the Purchase Price at Closing and satisfaction by the Parties of the terms and provisions of the PSA, the Seller shall transfer and convey the TBD Lot to the Buyer by general warranty deed free from any and all liens, claims, encumbrances or other defects of title, except those specific exceptions, if any, described by reference to recorded documents as reflected in the title documents accepted by Buyer in accordance with the PSA.

10. Contingent upon:

The PSA, when executed, and the obligation of the Buyer to proceed under its terms and conditions is expressly contingent upon the approval by resolution of the City Council of the City of Grand Junction. If not obtained on or before 60 days after the completion of the Subdivision Process, the Purchase and Sale Agreement shall be void and of no effect; and/or, the PSA, when executed, and the obligation of the Buyer to proceed under its terms and conditions is expressly contingent upon the execution of a PSA with the Colorado Affordable Housing Financing Fund (CHFA) and Office of Economic Development and International Trade (OEDIT).

11. Termination:

If the Parties are unable to agree to the terms of the PSA, either party may terminate this Letter of Intent upon 7 days' prior written notice to the other party.

This letter of intent is an expression of interest only, and neither party shall have any legal obligations to the other unless and until a binding PSA is executed and delivered by the Parties. This letter is intended solely for the purpose of setting forth the basic terms upon which Buyer would be willing to proceed to develop a PSA.

Regards,

Greg Caton
City Manager

pc:
John Shaver, City Attorney

1 RESOLUTION NO. __-24

2 A RESOLUTION CONFIRMING THE LETTER OF INTENT FOR THE POSSIBLE ACQUISITION OF
3 REAL PROPERTY LOCATED NEAR 450 28 ROAD FROM EN-SIM QOF LLC AND
4 ACKNOWLEDGING CERTAIN ACTIONS HERETOFORE TAKEN, TO BE TAKEN AND DIRECTING
5 FURTHER ACTIONS IN CONNECTION THEREWITH

6
7 RECITALS:

8 In 2022 the Grand Junction City Council allocated \$1,000,000 to support
9 implementation of the adopted housing strategies. In the 2023 adopted budget City
10 Council carried forward the \$1,000,000 for utilization for housing strategy
11 implementation. Additionally, the City applied for \$2,200,000 from the Colorado Housing
12 and Finance Authority (CHFA) Land Banking Program grant ("Grant") for the acquisition
13 of property in support of affordable housing ("Project"). The City had identified the
14 property at 450 28 Road, Grand Junction, ("Property") as an intended acquisition for
15 purposes of the Grant.

16 On January 29, 2024, the City was awarded the Grant to assist with the purchase of
17 21+/- acres of the Property. As the Property is not subdivided the owner/seller, En-Sim
18 QOF LLC, may not lawfully sell or offer to sell; however, the City and En-Sim QOF LLC
19 have entered into a letter of intent ("LOI") to begin to establish the next steps regarding
20 a possible sale of a portion of the Property when the subdivision is complete. Because
21 the subdivision and development transaction(s) will be complicated, and the City will
22 be making certain commitments regarding development, the City Council has
23 considered the LOI, and by and with this Resolution expresses its understanding and
24 support for the City continuing with the project in accordance with the terms and
25 understandings of the LOI. For purposes of this Resolution the terms and understandings
26 reflected in the Grant and the LOI are collectively referred to as the "Project."

27 As provided in the Grant application the Project includes the possible acquisition,
28 subject to a final purchase and sale contract being drawn and approved by the
29 Council, of approximately 21 acres for future development of between 323-500 mixed-
30 income affordable and attainable housing units. The City anticipates future subdivision
31 of the property as well as the construction of multiple housing types including rental and
32 homeownership units through the collaboration of multiple non-profit and housing
33 developers through the City's Request for Proposal (RFP) process. The construction of
34 the site occurring over multiple phases in the next ten years. The majority of the site
35 would be used for providing affordable units while up to 25 percent of the site may be
36 used for attainable housing; that will help fill additional gaps in the local market. The
37 property for the Project is between 28 and 28 ¼ Roads, to the South of North Avenue. It
38 is located in a high growth mixed-use central part of the city near major employers

39 along the North Ave Corridor including Walmart, restaurants, medical facilities,
40 Colorado Mesa University, and sports complex. Additionally, it is located within 2 miles of
41 downtown Grand Junction along one of the city's active transportation corridors which
42 include access to additional employment opportunities and services. Additionally,
43 Mesa County Workforce Center, Colorado Mental Health Center, and St. Mary's
44 Hospital are within three miles of the location. The Regional Veterans Hospital is within .4
45 miles of the site and within .5 miles from Link Park which includes the sports complex,
46 athletic events, community pool, and golf course. The site is also within walking distance
47 (.25 miles) to two childcare facilities, schools, and the District 51 Administration buildings.

48 As provided in the LOI the anticipated purchase price of the 21 +/- acres is \$3,200,000
49 (\$149,184.00 per acre) with the City contracted for various street and utility
50 improvements through and adjacent the development. E-Sim QOF LLC will execute a
51 promissory note in the amount of \$2,000,000 towards their share of the street
52 improvements and utility extensions payable to the City of which \$1,000,000 shall be
53 due on or before January 1, 2026, and \$1,000,000 due upon the City's substantial
54 completion of the improvements required by the subdivision process.

55 With approval of this Resolution the City Council will confirm, authorize, and endorse the
56 LOI and the continuation of the effort by City staff to bring to fruition the expression of
57 interest to purchase a portion of the Property as expressed in the LOI and the Grant.
58 The City Council confirmation, authorization, and endorsement of the LOI is subject to
59 and expressly conditioned on a purchase and sale agreement being brought to and
60 then considered and approved by the City Council as a precondition to purchase.

61 NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Grand Junction in
62 consideration of the Colorado Housing and Finance Authority (CHFA) Land Banking
63 Program grant ("Grant") in the amount of \$2,200,000 and the Letter of Intent, attached
64 hereto and confirmed, authorized and endorsed hereby, does hereby consent to and
65 direct the City Manager to proceed with the Letter of Intent for the possible purchase
66 of approximately 21 acres of the Property for the purposes described herein. The City
67 Council deems the purchase of the Property necessary and proper and that doing so
68 will advance the public health, safety, and welfare.

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

71 In consideration of the foregoing Recitals which are incorporated as if fully set forth, the
72 City Council finds that all actions heretofore taken by the officers, employees and
73 agents of the City relating to the Property, which are consistent with the provisions of
74 the attached Letter of Intent and this Resolution are confirmed, authorized, and
75 approved for the purposes stated and directed herein and hereby.

77 PASSED and ADOPTED this 3rd day of April 2023.

78

79

80

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82

83

84 Amy Phillips

85 City Clerk

Anna M. Stout

President of the City Council

DRAFT



Grand Junction City Council

Regular Session

Item #9.a.

Meeting Date: April 3, 2024

Presented By: Greg Caton, City Manager

Department: Finance

Submitted By: Randi Kim

Information

SUBJECT:

A Resolution Supporting the Contribution of Funds for the Acquisition and Permanent Protection of the Shoshone Water Rights

RECOMMENDATION:

Recommend approving a Resolution supporting the contribution of \$1,000,000 for the acquisition and permanent protection of the Shoshone Water Rights.

EXECUTIVE SUMMARY:

This item is to consider a request made by the Colorado River District for a contribution of City funds for the acquisition and protection of the Shoshone Water Rights. The Colorado River District is requesting consideration of \$1 million in funding from the City. Staff is recommending a contribution of \$1,000,000 with funding from the General Fund.

BACKGROUND OR DETAILED INFORMATION:

The Shoshone Hydro Plant, a unique run-of-the-river hydroelectric power plant, sits alongside the Colorado River in Glenwood Canyon, about eight miles east of Glenwood Springs. Owned by the Public Service Company of Colorado (PSCo), a subsidiary of Xcel Energy, it produces 15 megawatts of electricity, enough power to serve approximately 15,000 customers. Importantly, Shoshone also holds a senior (1902), nonconsumptive water right on the Colorado River, returning the flows it uses to the river after a short trip through the hydropower plant's penstocks and turbines. Shoshone's flows provide critical habitat to four fish listed under the Endangered Species Act, provide water security and quality to our Western Slope agriculture and many of our cities that utilize the mainstem of the Colorado for drinking water supplies and wastewater discharge.

The Shoshone call provides critical water supplies that drive the recreational economies supported by rafters, kayakers, and anglers from Eagle to Mesa County. For more than 20 years, the Colorado River District and 19 other western Colorado governments and water entities, including Summit, Grand, Eagle, Garfield, and Mesa Counties and many of the municipalities and major water organizations therein, have been working together to find a way to permanently preserve the Shoshone flows. In fact, the 2013 Colorado River Cooperative Agreement between Denver Water and 17 West Slope governments/water user organizations expressly recognizes the importance of – and memorialized the need to provide permanent protection of – the Shoshone flows.

On December 19, 2023, Xcel Energy and the Colorado River District signed a Purchase & Sale Agreement (PSA) to transfer ownership of the historic Shoshone water rights to the River District for \$98.5 million. As defined in the PSA, the “Shoshone Water Rights” to be acquired by the Colorado River District include both the senior Shoshone Power Plant water right in the amount of 1,250 cfs with an appropriation date of January 7, 1902, and the junior Shoshone Power Plant water right in the amount of 158 cfs with an appropriation date of May 15, 1929. The purchase price for the Shoshone Water Rights is \$98,500,000, with an additional \$500,000 payment for PSCo’s transaction costs for a total cost of \$99,000,000.

The funding strategy relies on a diverse partnership of local, state, and federal funding sources. The broad-based West Slope Coalition proposes to contribute at least \$30 million, \$20 million of which has already been approved and committed by the River District’s Board of Directors, made possible through increased property tax revenues approved by West Slope voters in 2020 following the passage of ballot question 7A. The remaining \$10 million is expected to come from West Slope governments and water entities. On January 29, 2024, the Colorado Water Conservation Board (CWCB) voted unanimously to recommend a \$20 million investment in the Shoshone Water Rights Preservation effort. In recognition of the critical importance of the Shoshone flows to the continued success of the Upper Colorado River Endangered Fish Species Recovery Program and other benefits to federal interests, the Colorado River District has initiated discussions with the Bureau of Reclamation to contribute the remaining \$49 million of the acquisition costs through funding made available as part of the Inflation Reduction Act.

To date, the following commitments have been made by local partners:

Local Funding Commitments (as of 3/20/2024)	
Ute Water Conservancy District	\$2,000,000
Clifton Water District	\$250,000
Grand Valley Irrigation District	\$250,000
Grand Valley Water Users Association	\$100,000
City of Rifle	\$100,000
Orchard Mesa Irrigation District	\$100,000
Basalt Water Conservancy District	\$100,000

Palisade Irrigation District	\$50,000*
West Divide Water Conservancy District	\$50,000
Total	\$3,000,000

**Anticipated commitment to be formalized on April 4, 2024.*

The Colorado River District requests that the City of Grand Junction consider a \$1 million financial commitment to support the acquisition and permanent protection of the Shoshone Water Rights.

FISCAL IMPACT:

A contribution of \$1,000,000 for the acquisition and permanent protection of the Shoshone Water Rights was not included in the 2024 Adopted Budget and would require supplemental appropriation approval by Council. The recommended funding sources for this contribution is the General Fund.

SUGGESTED MOTION:

I move to (adopt/deny) Resolution No. 24-24, a resolution supporting the contribution of \$1,000,000 for the acquisition and permanent protection of the Shoshone Water Rights.

Attachments

1. CRWCD - City of Grand Junction Materials_Revised
2. colorado-river-cooperative-agreement-with-addendum-1st-amendment
3. 20240327 GJ_UpdateMemo
4. RES-Shoshone Preservation Funding 20240402



COLORADO RIVER DISTRICT

PROTECTING WESTERN COLORADO WATER SINCE 1937

MEMORANDUM

TO: MEMBERS OF THE CITY COUNCIL, CITY OF GRAND JUNCTION

FROM: ANDY MUELLER, GENERAL MANAGER
ZANE KESSLER, DIRECTOR OF GOVERNMENT RELATIONS
AMY MOYER, DIRECTOR OF STRATEGIC PARTNERSHIPS

SUBJECT: SHOSHONE WATER RIGHTS PRESERVATION

DATE: FEBRUARY 16, 2024

I. SHOSHONE PERMANENCY PROJECT SUMMARY

The Shoshone Hydro Plant, a unique run of the river hydroelectric power plant, sits alongside the Colorado River in Glenwood Canyon, about eight miles east of Glenwood Springs. Owned by the Public Service Company of Colorado (PSCo), a subsidiary of Xcel Energy, it produces 15 megawatts of electricity, enough power to serve approximately 15,000 customers. Importantly, Shoshone also holds a senior (1902), nonconsumptive water right on the Colorado River, returning the flows it uses to the river after a short trip through the hydropower plant's penstocks and turbines. Shoshone's flows provide critical habitat to four fish listed under the Endangered Species Act, provide water security and quality to our Western Slope agriculture and many of our cities who utilize the mainstem of the Colorado for drinking water supplies and wastewater discharge. The Shoshone call provides critical water supplies that drive the recreational economies supported by rafters, kayakers, and anglers from Eagle to Mesa County.

For more than 20 years, the Colorado River District and 19 other western Colorado governments and water entities, including Summit, Grand, Eagle, Garfield, and Mesa Counties and many of the municipalities and major water organizations therein, have been working together to find a way to permanently preserve the Shoshone flows. In fact, the 2013 Colorado River Cooperative Agreement between Denver Water and 17 West Slope governments/water user organizations expressly recognizes the importance of – and memorialized the need to provide permanent protection of – the Shoshone flows.

We are now on the cusp of the unprecedented alignment of multiple factors that presents a real opportunity to finalize this long-standing goal. On December 19, 2023, Xcel Energy and the Colorado River District signed a Purchase & Sale Agreement (PSA) to transfer ownership of the historic Shoshone water rights to the River District for \$98.5 million. The historic agreement marks



a first step towards permanent protection of the historic flows and the resulting economic benefits provided by the Shoshone water rights.

Permanent protection of the Shoshone Flows will secure multiple benefits to the Colorado River water users on the West Slope and across the state such as:

Ecosystem Benefits and Endangered Species Act Compliance: The Colorado River downstream of Rifle is habitat for four fish listed under the Endangered Species Act. Without the exercise of the Shoshone call, the stretch of the Colorado River known as the 15-Mile Reach in and around Grand Junction would have significantly less flow during large periods of the year, especially in dry years, when Shoshone can contribute up to half of the flow in the 15-Mile Reach. All Colorado River water users rely upon the benefits of the Shoshone flows as a bedrock for the success of the Upper Colorado River Endangered Fish Recovery Program and continued compliance with the Endangered Species Act (ESA), which provides compliance protections for over 1,250 projects in Colorado.

Recreation Economy: Shoshone flows benefit Colorado communities both upstream and downstream of the call. Colorado's robust recreational economy relies heavily on the Colorado River mainstem, with Shoshone flows strengthening the state's iconic river recreation industry throughout Grand, Summit, Eagle, Garfield, and Mesa counties. River recreation in Colorado contributes \$14.6 billion annually to the state's GDP, with nearly \$4 billion coming directly from the Colorado River basin on the Western Slope. As temperatures rise and streams diminish, Shoshone permanency provides security for this economic industry, protecting the recreational fishery and boating that sustain local businesses and attract water-based recreators. The recently constructed recreationally oriented side channels and amenities at Las Colonias Park benefit from the Shoshone flows, particularly during dry years.

Agricultural Benefits: Shoshone flows support Colorado's \$11.9 billion agricultural economy in a number of important ways. Water security for Western Slope agriculture is intimately linked to the Upper Colorado Endangered Fish Recovery Program where continued cooperative water management allows for streamlined ESA compliance. Additionally, Shoshone permanency preserves Green Mountain Reservoir's Historic User Pool (HUP) water supplies. According to Colorado's Division of Water Resources, without Shoshone flows, the downstream Cameo call would be longer and deeper each year (up to 2,260 cfs vs. 1,950 cfs), triggering less opportunity for upstream agricultural diversions, a greater frequency of April calls, and an insufficient replacement of supplies for some West Slope augmentation plans.

Water Quality Improvements: Communities large and small along the Colorado River mainstem benefit from the enhanced water quality Shoshone flows provide. Without the higher flows of clean and cold headwater sourced supplies provided by the Shoshone call, a higher concentration of salinity and other water quality constituents creates increased costs for municipal drinking and wastewater treatment. In addition, Shoshone flows



provide additional water to the Eagle River diluting impacts from historic mining operations.

Maintaining Stream Flow Through Upper Colorado River Wild & Scenic Alternative Management Plan River Sections: The Shoshone water rights command higher flows and associated lower water temperatures through key segments with recreational fishing and wildlife habitat identified as Outstandingly Remarkable Values (ORVs) of the Upper Colorado River. The Upper Colorado River Wild & Scenic Stakeholder Group's Alternative Management Plan lists the Shoshone water right as one of four long-term protection measures for the streamflow influenced ORVs – thus providing a critical role in removing the burdens of a potential federal Wild and Scenic designation on the Colorado River from Kremmling to No Name.

II. PURCHASE AND SALE AGREEMENT

The Purchase and Sale Agreement (“PSA”) contemplates the conveyance of the Shoshone Water Rights from the Public Service Company of Colorado (PSCo) to the Colorado River District. As defined in the PSA, the “Shoshone Water Rights” to be acquired by the Colorado River District include both the senior Shoshone Power Plant water right in the amount of 1,250 cfs with an appropriation date of January 7, 1902, and the junior Shoshone Power Plant water right in the amount of 158 cfs with an appropriation date of May 15, 1929. The purchase price for the Shoshone Water Rights is \$98,500,000, with an additional \$500,000 payment for PSCo's transaction costs for a total deal cost of \$99,000,000.

To close the transaction and authorize the expenditure of public funds for the acquisition of the Shoshone Water Rights, the PSA contains four closing conditions that must be met by December 31, 2027, unless that deadline is extended by mutual agreement. The four closing conditions described in the PSA are as follows:

1. **Negotiation of an instream flow agreement with the CWCB.** The PSA contemplates that the River District and PSCo will negotiate with the CWCB for an agreement that authorizes the CWCB to use the Shoshone Water Rights for instream purposes when the rights are not being used for hydropower generation.
2. **A change of water right decree.** The PSA provides that the parties anticipate being co-applicants with the CWCB in the filing of an application for adjudication of a change of water right decree to allow the Shoshone Water Rights to be used by the CWCB for instream flow purposes in accordance with the terms of the instream flow agreement.
3. **Approval by the Colorado Public Utilities Commission.** The PSA contemplates that PSCo will petition the Colorado Public Utilities Commission (PUC) to approve the sale of the Shoshone Water Rights and the disposition of proceeds.
4. **Secured funding.** The PSA requires the River District to secure funding for the negotiated purchase price prior to the commencement of the PUC process.



III. FUNDING STRATEGY

Local Funding: The funding strategy relies on a diverse partnership of local, state, and federal funding sources. The broad-based West Slope Coalition proposes to contribute at least \$30 million, \$20 million of which has already been approved and committed by the River District's Board of Directors, made possible through increased property tax revenues approved by West Slope voters in 2020 following the passage of ballot question 7A.

State: On January 29, 2024, the Colorado Water Conservation Board (CWCB) voted unanimously to recommend a \$20 million investment in the Shoshone Water Rights Preservation effort. The funding commitment represents another key milestone in the campaign to permanently protect the historic, non-consumptive Shoshone water rights on the upper Colorado River for future generations, an outcome long sought by 20 Western Slope water entities and local governments.

Federal: In recognition of the critical importance of the Shoshone flows to the continued success of the Upper Colorado River Endangered Fish Species Recovery Program and other benefits to federal interests, we have initiated discussions with the Bureau of Reclamation to contribute the remaining \$49 million of the acquisition costs through funding made available as part of the Inflation Reduction Act. The Inflation Reduction Act provides \$4 billion in drought mitigation funding to support actions that deliver:

- (i) Compensation for temporary or multiyear voluntary reductions in diversion of water or consumptive water use; and
- (ii) Voluntary system conservation projects that achieve verifiable reductions in use of or demand for water supplies or provide environmental benefits in the Lower Basin or Upper Basin of the Colorado River; and
- (iii) Ecosystem and habitat restoration projects that address issues directly caused by drought in a river basin or inland water body.

This funding must be committed by September 30, 2026. The Shoshone Water Rights acquisition is in strong alignment with funding category (iii) given the measurable benefits, particularly evident in drought years, to the Colorado River ecosystem and critical habitat, which is important to meeting recovery requirements to maintain ESA compliance.

Recognizing the importance of Shoshone permanency to current and future water security on Colorado's Western Slope, West Slope partners are beginning to take action to formalize their own financial commitments to this project. Currently, the Ute Water Conservancy District Board of Directors has formally committed \$2 million, and Clifton Water District has formally committed \$250,000. While we have worked diligently to achieve the above funding strategy and believe that this project is well-positioned to be competitive for federal funding, it is far from guaranteed to receive the full funding request. We are therefore looking to our West Slope partners to fund a collective contribution of approximately \$10 - \$20 million. **The Colorado River District respectfully requests that the City of Grand Junction consider opportunities to formalize a financial commitment to support the acquisition and permanent protection of the Shoshone Water Rights.**

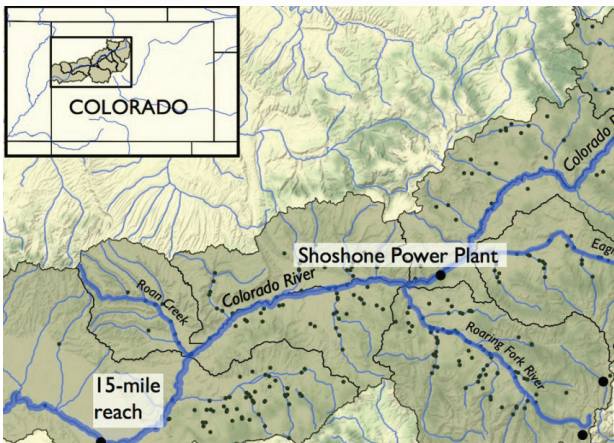


The \$98.5 million PSA to acquire the Shoshone water rights is no small price tag, but the one-time investment to protect Colorado River flows in perpetuity is a durable solution with priceless benefits for generations of water users to come. Under current water use demands in Colorado, the absence of the Shoshone call would mean that, in a dry-year such as 2012, 41,000 acre-feet of water would no longer flow through the critical 15-Mile Reach section of the Colorado River. Under increased future demands in a similar dry-year conditions like 2012, the protected amount increases to approximately 86,000 acre-feet. The Shoshone call impact is most realized in dry years but is also seen under wet-years and average-year hydrology contributing approximately 3,000 – 27,000 AF.



SHOSHONE

WATER RIGHT PRESERVATION



The Shoshone Water Right commands essential flows upstream and downstream of Glenwood Canyon on the Upper Colorado River. Credit: Antonia Hadjimichael/Cornell University.

SENIOR WEST SLOPE WATER RIGHTS

In Colorado, the right to divert and use water is governed by a legal priority system of water rights administered by the State of Colorado. Water is scarce in the arid West, more with climate change-induced aridification. The priority system is a means of rationing water when river flows subside after spring runoff. Shoshone holds the most senior, major water right on the mainstem Colorado River. This non-consumptive 1902 water right for 1,250 cubic feet per second makes the plant incredibly valuable to Western Colorado. This water right commands the flow of the Colorado River, making it essential for both upstream and downstream ecological and economic benefits in the face of ongoing drought.

THE SHOSHONE HYDRO PLANT IN COLORADO WATER HISTORY

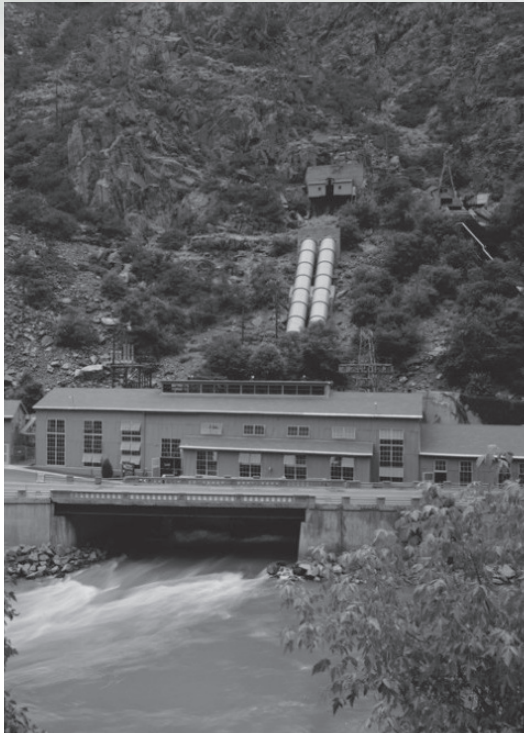
In 1902, 20 years after Glenwood Springs was first settled and about 14 years after the railroads reached the new town, the Colorado Power & Irrigation Company organized to furnish electrical power to various western Colorado towns. The selected position for a hydroelectric plant was at Shoshone Falls, eight miles east of Glenwood Springs in Glenwood Canyon.



Credit: Library of Congress.

When Central Colorado Power Company incorporated in 1906, construction of the plant began. A major engineering feat for its time, the Shoshone Hydropower Plant's construction employed up to 1,500 workers for two and a half years, and to this day operates from the run of the river rather than an upstream reservoir. Since its creation, the Shoshone Hydro Plant has been owned by the Colorado Power Company and the Public Service Company of Colorado, eventually absorbed by Xcel Energy.

WWW.KEEPSHOSHONEFLOWING.ORG



Credit: Library of Congress.

SHOSHONE HYDRO PLANT: HOW IT WORKS

The Shoshone Hydro Plant consists of four elements: a diversion dam, a 2.3-mile tunnel drilled through the north wall of Glenwood Canyon, a power plant with two turbines, and transmission lines.

The diversion dam is located at the Hanging Lake exit off Interstate 70. The dam directs water into a 2.3-mile tunnel drilled through the north wall of Glenwood Canyon. The tunnel is approximately 13 feet tall and 16-feet, 8-inches wide. The tunnel terminates at the hydro plant, 165 feet above the turbines. Water falls down two penstocks and the power created by the weight of the water falling turns two turbines, which in turn power two generators, producing up to 15 megawatts of electricity. The electricity benefits consumers across Western Colorado.

The water emerges from the plant unconsumed and ready to support the environment, recreation, and municipal uses. The famed Shoshone boat ramp is located right at the plant for this very reason, and remains a popular destination for recreational boaters.

A COMMAND OF THE RIVER TODAY & IN A HOTTER, DRIER FUTURE

The seniority of Shoshone's water right brings exceptional value for West Slope communities and water users. Without these flows, river levels would be lower, temperatures higher, and other interests upstream could take more water out of the natural river basin. Bolstered by Shoshone flows, the Colorado River supports a robust \$14.6 billion water-based recreational economy in Colorado from Grand County westward for rafters, kayakers, and anglers – both commercial and private.



Shoshone flows are also essential for maintaining both upstream and downstream environments for native fish and wildlife, including Colorado's four listed threatened and endangered fish: the humpback chub, the bonytail chub, the Colorado pikeminnow, and the razorback sucker - occupying critical habitat in the 15-Mile Reach near Grand Junction. Shoshone's senior water rights act as a bedrock for the success of the Upper Colorado Endangered Fish Recovery Program and continued, streamlined compliance with the Endangered Species Act (ESA). The consistent flow regime also helps sustain local agricultural producers and Colorado's \$11.9 billion agricultural economy through increased flows and higher water quality and provides water quality benefits for West Slope communities that rely on the Colorado River for drinking water.

WWW.KEEPSHOSHONEFLOWING.ORG

Securing our water future through permanent protection

Feb 4, 2024

By BOBBIE DANIEL and SCOTT McINNIS

On Dec. 19, 2023, at the Hotel Colorado in Glenwood Springs, a historic event took place that will define the future of Mesa County: Xcel Energy and the Colorado River District signed a purchase and sale agreement to transfer ownership of the Shoshone water rights to allow for the permanent protection of the most senior, non-consumptive water right on the Colorado River.

In an era where the unpredictability of Mother Nature is increasingly apparent, the Shoshone Hydropower Plant's assurance of water flow and stability is an essential lifeline for many communities across the state, especially Mesa County. With a 1902 priority date, these water rights protect Mesa County, helping to ensure water security for current and future generations of water users. Growing populations, reduced streamflow, and aging infrastructure put pressure on the river. By adding in-stream flow as a beneficial use to the Shoshone water rights and ensuring ownership of that right is held by our communities, this deal will keep the river flowing well and flowing west.

In Mesa County, the water called down by the Shoshone water rights is critical and supports our farms, powers our businesses and sustains our families. This water is vital for our agricultural success, our thriving recreational industry and the health of our river. The contrast between the lush landscapes south of I-70 and the barren lands to the north in the Grand Valley starkly illustrates the importance of these water rights.

The Shoshone water rights ensure the vitality of the 15-Mile Reach, a crucial habitat for endangered species. This stream segment begins in De Beque and ends where the Gunnison River merges with the Colorado River in Grand Junction. This area's environmental significance extends beyond Mesa County, impacting regulatory processes along the entire length of the Colorado River. What's at stake here is not just local agricultural prosperity or recreational activities. It's about the economic fabric of our region and the continuance of this essential ecological balance.

By securing the permanence of these flows, we are investing in the economic stability of our region, our people, our environment and, ultimately, our future. The legacy of Shoshone is a shared responsibility, transcending political and geographical divides. It is an invitation for every citizen, organization and leader to come together for the singular goal of preserving the vitality of our river.

This agreement is not just a local matter but a statewide concern. The Colorado River, a lifeline for many, touches all four corners of the state in one way or another. By ensuring the permanency of the Shoshone flows, we are protecting our local environment and economy and contributing to the well-being of the entire state.

We know that the purchase and sale agreement is just the first step in a longer process; however, to get it across the finish line, we must secure funding from our federal, state and local governments and all water users.

We extend our deepest thanks to the Colorado River District's current and past directors and the 19 other member organizations in the Shoshone Water Right Preservation Coalition for their unwavering dedication to this monumental achievement. Our gratitude also goes to Xcel Energy for its considerate partnership with western Colorado, demonstrating a profound commitment to our shared well-being.

This agreement is an example of the power of unity and collaboration. It's a victory in collective determination and a shared dream.

By advocating for preserving the Shoshone flows, we are making a promise to future generations that we value their legacy as dearly as we do our present.

Bobbie Daniel is a Mesa County commissioner and Scott McInnis is a former Mesa County commissioner and a member of the Colorado River District Board of Directors.

OPINION: OPINION COLUMNS

Opinion: Shoshone water rights offer once-in-a-lifetime opportunity for Colorado's namesake river that we must secure

With agreement in place, the state's lead water agency can help to protect these key senior rights for future generations



Julie McCluskie and Russell George

1:30 AM MST on Jan 25, 2024

At the narrowest point in Glenwood Canyon, where steep cliffs compress the Colorado River, the Union Pacific Railroad, and all four lanes of Interstate 70 into an area no more than 50 yards across, a small brown building houses the historic Shoshone Hydropower Plant. For more than a century, the turbines inside that building have spun Colorado River water into electricity for local communities. It may not look like much on the outside, but like so many places in our beautiful state, there is far more than meets the eye.

Today, the Shoshone Hydropower Plant still produces energy for Colorado's electric grid, but its true importance is on the river. The senior water rights tied to Shoshone's power production hold the key to a more secure water future not only for the Western Slope, but for the entire state of Colorado.

Shoshone's benefits are unique because its water rights are nonconsumptive, which means the water used for hydropower production — more than 1,400 cubic feet per second — returns entirely to the river after a short trip through its turbines.

Because of its nonconsumptive nature, communities large and small along the Colorado River benefit from the water security and water quality provided by Shoshone's flows. These water rights provide certainty for farmers, ranchers and recreational outfitters upstream and downstream of Glenwood Canyon. And all Colorado River water users — from Greeley and Colorado Springs to Grand Junction — benefit from the Shoshone's flows as a bedrock for the success of the Upper Colorado River Endangered Fish Recovery Program, which

provides Endangered Species Act compliance and protections for over 1,250 water projects on both sides of the Continental Divide.

In an increasingly arid West, where the Colorado River is stretched-thin, we believe that permanent protection of the Shoshone Water Rights presents a once-in-a-lifetime opportunity to preserve many of the values we hold dear as Coloradans — clean drinking water, productive agriculture, world-class recreation, a healthy environment and much more.

With these benefits in mind, an unlikely coalition of western Colorado governments and water users — including Summit, Grand, Eagle, Garfield and Mesa counties — have been working for decades with the Colorado River District to forge a path toward preservation of Shoshone’s flows. Together with Denver Water, many of these entities recognized Shoshone’s importance, and memorialized the need to protect it, in the **2013 Colorado River Cooperative Agreement**.

And now, for the first time, Colorado River water users and the state of Colorado have an opportunity to finalize this long-standing goal.

*** MORE IN OPINION**

Opinion: Colorado lawmakers have a chance to help formerly incarcerated people with a step up when they get out

1:30 AM MST on Feb 6, 2024

Zornio: Colorado doesn’t have a “migrant crisis,” we have a political circus

3:02 AM MST on Feb 5, 2024

Opinion: Closer look at evictions in Denver shows the good, the bad and the promising

1:30 AM MST on Feb 5, 2024

Just a few weeks ago, Xcel Energy, the owner and operator of the Shoshone hydropower plant, and the Colorado River District **signed a purchase and sale agreement** setting out a clear path to transfer ownership of the historic Shoshone water rights to the river district for \$98.5 million. This historic agreement marks the start of a broad-based effort to partner with the state of Colorado to protect the Shoshone water rights.

We strongly support the agreement reached between Xcel Energy and the Colorado River District, and we applaud the tireless efforts of Xcel, the river district and everyone else

involved in getting to this historic point.

In order to succeed, this effort will need the support and partnership of the state of Colorado through the Colorado Water Conservation Board. Gov. Jared Polis recently praised the deal, and next week the conservation board will decide whether to match the river district's investment of \$20 million and move forward toward permanent protection of Shoshone's flows. This presents an opportunity for the people of Colorado to come together to achieve durable and permanent protections for the Colorado River.

The \$98.5 million agreement to acquire the Shoshone water rights is no small price tag, but the one-time investment to protect Colorado River flows in perpetuity will provide priceless benefits for generations of water users to come. The effort aligns with the Colorado Water Plan's focus on healthy watersheds and vibrant communities, and we believe it is a true value — especially in view of the permanent protection that the funding will help to ensure.

The state- and basin-wide importance of this effort cannot be overstated. If the power plant were to cease operation without permanent protection of the water right, the negative economic and environmental impacts to Western Colorado and to the state of Colorado would be immediate and profound.

Colorado has a once-in-a-lifetime opportunity to permanently protect the most influential water right on our state's namesake river. We cannot let this opportunity pass us by, because we all depend on a healthy Colorado River — whether we live on the Front Range or the West Slope. Our fortunes are tied. Our futures are linked. When the Colorado River thrives, we all thrive.

Julie McCluskie is the speaker of the Colorado House and has served as a Representative since 2018 and was re-elected in 2022 to represent House District 13. She is the first woman Speaker elected from the Western Slope.

Russ George is a fourth generation resident of the Rifle area. He represented northwestern Colorado counties in the Colorado House for four terms, serving as Speaker from 1999-2000.

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Colorado Water Conservation Board Approves Funding for Continued Shoshone Preservation Efforts

January 29, 2024—The Colorado Water Conservation Board (CWCB) has voted to recommend \$20 million in funding to the Colorado River District as part of the annual Water Projects Bill contributing to a larger funding effort to secure Shoshone permanence and foster water security on the Colorado River.

“The CWCB Board considered this funding application very carefully. This is a significant step towards maintaining historic flows on the Colorado River,” said Lauren Ris, CWCB Director. “As an agency, we will continue to do our due diligence in this process, with the hope that these efforts can benefit the environment and give West Slope water users more certainty.”

The decision follows a special workshop held on January 25, and a final vote during CWCB’s January Board Meeting. On [December 19](#), 2023, the Colorado River Water Conservation District and Public Service Company signed an agreement that would allow the River District to purchase the water rights associated with the Shoshone power plant. The River District is also planning to seek funds from the Bureau of Reclamation and others.

In the coming months to years, CWCB will work with the River District to negotiate an instream flow agreement. If approved, the two entities would then seek a change in water right decree through Colorado Water Court. The CWCB’s Instream Flow Program secures instream flow water rights to protect streamflow to preserve the natural environment of streams and lakes where fish and other species live. The integrity of this long-standing program depends on a thorough review, so it’s critical CWCB staff follow public processes.

“We also greatly appreciate the hard work and dedication of CWCB staff in this effort and their positive recommendation of funding to the Board,” said Andy Mueller, Colorado River District General Manager. “We consider the state an integral partner in protecting Shoshone’s flows in perpetuity, and the \$20 million funding milestone brings this generational investment in Colorado water security one step closer to the finish line.”

“If completed, Shoshone water right preservation would help maintain flows on the Colorado River, and support the system as a whole,” said Dan Gibbs, Executive Director of the Colorado Department of Natural Resources. “Securing this water right and negotiating an instream flow use agreement could mean supporting healthy agriculture, providing clean drinking water, fostering healthy environments, and more. We look forward to working with the Colorado River District and Xcel Energy as this process enters the next phases of evaluation and approval.”

###



SHOSHONE
WATER RIGHT PRESERVATION

FOR IMMEDIATE RELEASE

Tuesday, December 19, 2023

CONTACT:

Xcel Energy, Tyler Bryant - 813.951.4169
GBSM, Sam Stookesberry - 303.981.8332
CRD, Lindsay DeFrates - 970.456.8973

Historic Agreement Reached to Advance Colorado Water Security

Shoshone Water Right Preservation Campaign kicks-off with Purchase & Sale Agreement to permanently protect flows in the Upper Colorado River.

Glenwood Springs, CO — This afternoon, Xcel Energy and the Colorado River District signed a Purchase & Sale Agreement (PSA) to transfer ownership of the historic Shoshone water rights to the River District for \$98.5 million. The agreement marks a first step towards permanent protection of the most senior, non-consumptive water right on the Colorado River, a project with a 20-year history of support from 19 western Colorado governments and water entities.

“This announcement is a critical first step in preserving the water rights that flow through our Shoshone Hydro Plant turbines on the Colorado River,” said Robert Kenney, president of Xcel Energy – Colorado. “This is an important agreement for the 1.6 million electric customers and communities we serve statewide by allowing us to continue generating clean electricity as part of our commitment to be good stewards of the Colorado River and all who rely on it.”

Leadership from Xcel Energy and the River District celebrated this milestone alongside a broad base of Shoshone Water Right Preservation campaign partners at the Hotel Colorado. Remarks from county commissioners, local and state elected officials, as well as environmental and recreation-based interests followed the official signing of the agreement.

“On behalf of the Colorado River District and the headwaters communities in Eagle County, we thank Xcel Energy for being a committed partner to the West Slope, our economy, and our environment,” said Colorado River District Board President and Eagle County Commissioner Kathy Chandler-Henry.

With the PSA signed, the Shoshone Water Right Preservation Coalition – a diverse and growing partnership of stakeholders – now begins a multi-year effort to secure funding for the purchase and to add an ‘instream flow’ benefit to the historic Shoshone water rights in water court. With its command of 1,408 cfs (or up to 1.02-million-acre feet of water per year) on the Colorado mainstem and benefits both upstream and downstream of Glenwood Canyon, Coalition members see Shoshone permanency as a generational investment in water security for Colorado’s environment, economy, and communities across the state.

“We now look forward to working alongside the State of Colorado, the Bureau of Reclamation, the U.S. Fish & Wildlife Service, and Colorado water users, all of whom will be integral partners in this effort’s success,” Commissioner Chandler-Henry added.

Central to the statewide benefit of the Shoshone water right is the vital role it plays in Endangered Species Act (ESA) compliance. Over 1,250 Colorado water projects on both sides of the divide rely on the Upper Colorado River Endangered Fish Recovery Program to maintain ESA compliance and continued operation. In dry years, Shoshone calls between 41,000 and 86,000-acre-feet (AF) of water downstream from the Shoshone Hydropower Plant, bolstering needed cold-water flows in the Grand Valley’s 15-Mile Reach – critical habitat for Colorado’s four native fish listed under the Endangered Species Act.

The consistent flow regime also helps sustain local agricultural producers and Colorado’s \$11.9 billion agricultural economy through increased flows and higher water quality. It also provides water quality benefits for West Slope communities that rely on the Colorado River for drinking water, and drives the state’s \$14.6 billion water-based recreation economy along the Colorado River.

“Protection of Shoshone’s flows presents a unique opportunity to protect the long-term viability of the Colorado River and the communities across the state that depend on it, many of which I represent,” said state Senator Dylan Roberts (SD-8). “There is still a lot of work to be done, but today is incredibly exciting. Taking action on behalf of current and future water users is absolutely worth it and should be a top priority.”

"Agriculture, recreation, and the environment all benefit from Shoshone’s flows. But it’s important to remember that the drinking water supplies for many of the communities in my district come directly from the Colorado River,” said State Representative Elizabeth Velasco (HD-57). “Towns like New Castle, Silt, Rifle, and others all benefit from the flows that Shoshone provides. Higher, consistent stream flows provide clean drinking water for thousands of people in my district and reduce the cost of water treatment for rural communities."

“Colorado has an opportunity with Shoshone permanency to take durable, decisive action on water security for the sake of our productive agriculture and our hard-working farmers and ranchers here in the Grand Valley,” stated Mesa County Commissioner Bobbie Daniel.

After today’s official kickoff, the Shoshone Water Right Preservation Campaign moves forward with in-depth public engagement planned across Colorado. Both West Slope and Front Range residents are encouraged to stay tuned in the coming year as local events are announced. Learn more at www.KeepShoshoneFlowing.org.

###

COLORADO RIVER COOPERATIVE AGREEMENT

This Agreement is entered into among the following listed Signatories, to become effective upon the first business day at least seven days after the last Signatory has signed this Agreement. The Effective Date of this Agreement is the 26th day of September, 2013. The Signatories acknowledge the mutual exchange of consideration in entering into this Agreement.

City and County of Denver, acting by and through its Board of Water Commissioners (Denver Water)
Board of County Commissioners, County of Eagle
Board of County Commissioners, County of Grand
Board of County Commissioners, County of Summit
Colorado River Water Conservation District
Middle Park Water Conservancy District
Clinton Ditch and Reservoir Company
Eagle Park Reservoir Company
Eagle River Water and Sanitation District
Upper Eagle Regional Water Authority
Grand Valley Water Users Association
Orchard Mesa Irrigation District
Ute Water Conservancy District
Palisade Irrigation District
Mesa County Irrigation District
Grand Valley Irrigation Company
City of Glenwood Springs
City of Rifle

This Colorado River Cooperative Agreement consists of the 51-page agreement dated May 15, 2012 (pages 44, 45, 50, and 51 dated January 7, 2013); Attachments A through T, which have varying dates; and the CRCA Addendum dated April 5, 2012.

Cover Page
5/15/2012

COLORADO RIVER COOPERATIVE AGREEMENT

ARTICLE I

Limitations on Denver Water's Water Supply Obligations

A. Geographic Limit on Service Area. All water available to Denver Water under its existing absolute and conditional water rights listed in Attachment A ("Attachment A Rights") shall be used within the City and County of Denver and Denver Water's current Service Area described in Attachment B ("Service Area"), except as provided in Article I.B. The Service Area shall not be expanded beyond the boundaries depicted in Attachment B.

B. Limits on Use of Attachment A Water Rights Outside Service Area.

1. Fixed-Amount Contracts. The Attachment A Rights may be used outside the current Service Area to provide up to 67,927 acre-feet of water under the existing contracts listed in Attachment C ("2010 Contracts"). In addition, Denver Water may enter into contracts to deliver an additional 4,000 acre-feet of water annually to be used in new permanent contractual arrangement not listed in Attachment C.

Of the 67,927 acre-feet currently obligated under 2010 Contracts, Denver Water may transfer up to 45,000 acre-feet from a pre-existing water delivery obligation under a 2010 Contract to a different recipient under a new permanent contract ("Future Contract"), subject to the following limitations.

- a. Previously Delivered Water. The amount of water transferred to a Future Contract recipient must fall within the volume of water previously delivered to the 2010 Contract holder during a prior calendar year, and Denver Water's obligation to the 2010 Contract holder must be reduced by a like amount. Some 2010 Contracts include an amount of water not previously delivered by Denver Water ("Unused 2010 Water"). A 2010 Contract holder may not substitute Unused 2010 Water for transferred water. The 2010 Contract holder may access the volume of Unused 2010 Water only at a rate equivalent to growth in demand in the holder's service area after the date of the transfer.
- b. Future Contract Service Area. The service area of any Future Contract recipient must be located in Adams, Arapahoe, Broomfield, Douglas or Jefferson County.

- c. Drought Reductions. All Future Contracts must provide for reductions in deliveries during such times as Denver Water imposes mandatory water use restrictions as part of a drought response program.
 - d. Reuse Under Future Contracts. If the 2010 Contract did not expressly grant to the recipient of the water the right of reuse or successive use, then the Future Contract may grant the right of reuse and successive use of the transferred water only if such reuse is subject to the provisions of Article I.B.2.e and Article II. Nothing in this paragraph shall prevent a recipient of a Future Contract from making an initial fully consumptive use of the transferred water that will not generate effluent or return flows.
 - e. Recycle Water Contracts. Any water transferred from one of the Recycle Water contracts listed on Attachment C shall retain recycled water as the source of water delivered under the Future Contract.
 - f. Payment of West Slope Charge. As a condition of receiving water under a Future Contract, any Future Contract holder shall enter into a West Slope Charge Agreement in substantially the form of Attachment D, and shall pay a West Slope Charge of 12.5%.
 - g. Prohibition on Seeking West Slope Supplies. Any recipient of water under a Future Contract must agree to comply with the Abstention Provisions.
2. Other Contractual Water Supply Obligations. Some of Denver Water's supply obligations to entities or areas outside the Service Area present unique circumstances or opportunities and are not included within the volumetric limit established in Article I.B.1. Denver Water may use the Attachment A Rights outside the Service Area to provide water under the following circumstances:
- a. Obligations to Littleton under Littleton's Total Service Distributor Contract dated March 9, 2011.
 - b. Water to be provided to Public Service Company and to West Slope entities in the event of a relaxation of the Shoshone Call under the provisions of the 2007 Shoshone Agreement or the provisions of Article VI of this Agreement.
 - c. Use of Denver Water's water rights on the West Slope: (1) for beneficial use by the West Slope entities; or (2) to meet regulatory obligations required for Denver Water's operations or projects; or (3) for other purposes specifically authorized under this Agreement.

- d. Water delivered from the potable water distribution system at Denver International Airport that would otherwise need to be discharged from the system to maintain the chlorine residual and avoid nitrification within the potable water system.
 - e. Reusable return flows in excess of Denver Water's obligations under Article II or not committed to a 2010 Contract may be used in Joint Use Projects, subject to the following limitations in this subsection. The use of reusable return flows under this section does not in any way diminish Denver Water's obligations under Article II. As a condition of such use, East Slope lessees or purchasers of Denver Water's reusable return flow for use outside the Service Area:
 - i. Shall enter into a West Slope Charge Agreement in substantially the form of Attachment D, and shall pay a West Slope Charge of 12.5%.
 - ii. Must comply with the Abstention Provisions.
 - iii. Will maximize using best efforts the reuse or successive use of reusable water available to them.
 - iv. Will adopt and implement a conservation plan that would achieve results similar or proportionately the same as Denver Water's.
3. Deliveries of Water on a Temporary Basis. Denver Water may use the Attachment A Rights to deliver water on a temporary basis outside the Service Area, as limited by the following provisions.
- a. For spot sales, subject to the following limitations:
 - i. Definition. The definition of a spot sale for purposes of this agreement is a lease of water available to Denver Water on a sporadic basis as a result of temporary hydrologic conditions or operational constraints, which is delivered to the recipient over a period no longer than 14 consecutive days.
 - ii. Holiday Restrictions: Spot sales of Blue River water will not be made for use during the Memorial Day, Fourth of July and Labor Day weekends. For purposes of this paragraph 11, Memorial Day and Labor Day weekends means Friday, Saturday, Sunday and Monday of that holiday. Fourth of July weekend means (1) if the holiday falls on a Thursday then the weekend is Thursday, Friday, Saturday, and Sunday; (2) if the holiday falls on either Friday, Saturday, Sunday, or Monday, then the weekend is Friday, Saturday, Sunday, and Monday; (3)

if the holiday falls on a Tuesday then the weekend is Saturday, Sunday, Monday, and Tuesday; and (4) if the holiday falls on a Wednesday, then the weekend is only on Wednesday.

- iii. Reservoir Level Restrictions: Spot sales of Blue River water will be made only when: (1) the Dillon Reservoir lake level is projected to be at or above the Frisco Marina elevation from June 18 to Labor Day weekend, and will not be reduced below that elevation as a result of the spot sales. For purposes of this paragraph 11, the Frisco Marina elevation means the elevation at which the Frisco Marina can be fully operational. At the time of execution of this agreement, the Signatories agree that the Frisco Marina elevation is 9012. However, Summit County and Denver Water may later agree that a lower elevation has become suitable as the result of physical changes to the Marina or the Reservoir.

If Denver Water makes a spot sale of Blue River water during the runoff season prior to June 18 based on projections of reservoir level, and the reservoir level fails to reach the Frisco Marina elevation by June 18 or falls below that elevation prior to Labor Day, then Denver Water will forfeit the revenue received from the spot sale and deposit an equivalent amount into the West Slope Fund for water supply and water quality projects.

- iv. Dillon Outflow Restrictions. Spot sales of Blue River water will not be made:
 - a) From Memorial Day weekend to the end of July, if outflow from Dillon Reservoir is less than 300 cfs during any diversion and delivery of spot sale water; or
 - b) At other times of the year, if outflow from Dillon Reservoir is less than 100 cfs during any diversion and delivery of spot sale water.
- v. Limit on Temporary Water Deliveries. The total combined volume of all spot sales and temporary leases of water resulting from the Attachment A Rights will not exceed a three-year running average of 7,300 acre feet, with an annual maximum of 12,300 acre-feet in a given year.
- vi. Payment by Recipients. Purchasers of spot sale water shall enter into a West Slope Charge Agreement in substantially the form of Attachment D, and shall pay a West Slope Charge of

15%.

- vii. Shoshone Call Restriction. Spot sales will not be made when the senior Shoshone call is subject to relaxation under the provisions of the 2007 Shoshone Agreement or the provisions of Article VI.E of this Agreement.
- b. For temporary leases, subject to the following limitations:
- i. The definition of temporary leases for purposes of this agreement is a lease of water for a duration not to exceed five consecutive years.
 - ii. Any lessee would be limited to no more than five years of water delivery in any ten year period under one or more temporary leases.
 - iii. The total volume of spot sales and temporary leases of water from west slope sources will not exceed 3,300 acre-feet in any given year.
 - iv. The total combined volume of all spot sales and temporary leases of water resulting from the Attachment A Rights will be limited as described in paragraph I(B)(3)(v).
 - v. Lessees shall enter into a West Slope Charge Agreement in substantially the form of Attachment D, and shall pay a West Slope Charge of 15%.
 - vi. All temporary leases must provide for reductions in deliveries during such times as Denver Water imposes mandatory water use restrictions as part of a drought response program.
4. WISE Partnership Agreement. The Attachment A Rights may be used to provide water under the WISE partnership agreement with the City of Aurora and the South Metro Water Authority, so long as the use of the rights is otherwise authorized under this Article I.B, and subject to the following limitations:
- a. The recipients of WISE water shall enter into a West Slope Charge Agreement in substantially the form of Attachment D, and shall pay a West Slope Charge of 12.5% on all water provided by Denver Water, regardless of which provision of Article I.B authorizes the use.
 - b. The recipients of WISE water must comply with the Abstention Provisions.

- c. The recipients of WISE water must maximize using best efforts the reuse or successive use of reusable water available to them.
- d. The recipients of WISE water must adopt and implement a conservation plan that would achieve results similar or proportionately the same as Denver Water's.

C. Other Water Rights.

1. Joint Use Projects. Denver Water may use its existing East Slope water rights listed in Attachment E in Joint Use Projects on the Front Range, so long as such use of the water rights does not result in a decrease in the supply of water available to Denver Water under the Attachment A Rights or in an increase in diversions of water by participants in the Joint Project, including Denver Water, from the West Slope to the East Slope. Participants in these projects must agree to comply with the Abstention Provisions.
2. New East Slope Water Rights. Denver Water may use outside the Service Area any water made available: (a) as a result of East Slope water rights appropriated or acquired after execution of this Agreement or (b) by means of contractual arrangements with East Slope entities entered into after execution of this Agreement involving East Slope water rights. Such use of the water shall not result in a decrease in the supply of water available to Denver Water under the Attachment A Rights, or in an increase in diversions of water by participants in the project, including Denver Water, from the West Slope to the East Slope.
3. West Slope Water Rights. After the Effective Date of this Agreement, Denver Water will not seek to: (a) develop any of its Division 5 water rights listed in Attachment E; or (b) create any new depletion, not caused by the exercise of the Division 5 water rights listed in Attachment A, from the Colorado River and its tributaries, for diversion to the East Slope; or (c) acquire any water right on the West Slope that would increase the yield Denver Water currently calculates based on the full use of the Division 5 water rights listed in Attachment A, without the prior approval of the River District and the County Commissioners for each county in which a new facility would be located or in which a new water right would be exercised.

Denver Water will not seek to appropriate or acquire any other water right on the West Slope, without first consulting in good faith with potentially affected

West Slope Signatories in order to identify and attempt to mitigate any potential adverse effect on West Slope interests, subject to the other provisions of this Agreement. The West Slope Signatories reserve the right to oppose any such development, appropriation or acquisition of water rights in water court, permit proceedings, or other forums.

ARTICLE II
Denver Water's Conservation and Reuse Commitments

- A. Reuse of Blue River Water. Denver agrees to reuse its Blue River water and other lawfully available reusable water through exchanges into its South Platte diversion and storage facilities and through its recycled water treatment plant that provides water for nonpotable purposes. For use within the Service Area and to provide up to 6,400 acre-feet of recycled water outside the Service Area under the Recycle Water contracts listed in Attachment C or Future Contracts resulting from the transfer of those contracts pursuant to Article I.B.1, Denver Water will fully construct its recycled water system with the capacity to provide 17,500 acre-feet annually and will maximize its exchanges within legal and water availability constraints.¹ To achieve this level of reuse, Denver Water will complete construction of at least 30,000 acre-feet of gravel pit storage or other functionally equivalent storage.² The fully constructed recycled water plant is scheduled to be operational in 2020. The 30,000 acre-feet of gravel pit storage is also anticipated to be completed in 2020. However, the timing of development of gravel pit storage is directly related, in part, to the need for aggregate for construction purposes in the metro area, and is not within Denver Water's control. Denver Water commits to construct sufficient infrastructure to achieve the volumes listed in this paragraph subject to the uncertainties of timing described in this paragraph.
- B. Conservation Plan. Denver Water's 1996 IRP predicted that 29,000 acre-feet of water could be saved through active conservation efforts by 2045. In 2006, the Denver Water Board mandated an accelerated conservation program to accomplish that level of savings by the end of 2016. Denver Water agrees to continue to implement its existing conservation program described in Attachment F to achieve the savings of 29,000 acre-feet contemplated by the 1996 IRP, in addition to natural replacement, consistent with its goal of achieving the targeted savings by the end of 2016. (It is often not possible to measure precisely the volume of water saved as a result of a specific action, e.g., requiring soil amendment, but Denver will implement the

¹ The volume of water that can be reused is determined by legal, regulatory and hydrologic conditions that vary significantly from year to year and over time, and may be fundamentally different in the future. Over the past 20 years with an annual average demand of 285,000 acre-feet, Denver Water's reuse by exchange and replacement has averaged 16,300 acre-feet per year, with a maximum of 29,900 acre-feet and a minimum of 5,800 acre-feet. With regard to future exchanges, Denver Water's computer simulation model predicts that, with an annual average demand of 345,000 acre-feet and completion of the storage described in this Article II.A, the annual average for exchanges and replacement will be 38,000 acre-feet. These modeled predictions are based on historic hydrology, past administrative practices and numerous operational assumptions, and consequently may not be construed as any sort of mandated or targeted operational requirement.

² If Denver Water's water rights cannot be exercised as anticipated to operate exchanges, making a portion of the proposed 30,000 acre-feet of storage not useful in maximizing Denver Water's exchanges, then Denver Water will notify the West Slope Signatories and identify the functionally equivalent storage, other infrastructure, or other means that it proposes to utilize to maximize its exchanges and the parties shall discuss in good faith whether to modify the provisions of this Article II.A.

conservation measures necessary to result in the volume of savings described in this paragraph.) Denver Water will inform the West Slope Signatories in an annual progress report if it decides to substitute a different conservation measure than the ones listed in Attachment F. Once Denver Water determines the conservation goal has been met, it will retain a reputable and qualified third party to confirm that the methodology used to quantify savings was reasonable. If the third party determines the methodology was not reasonable, Denver Water will correct the identified defects in the methodology, and if necessary, undertake additional conservation measures to achieve the goal.

- C. Commitment to Additional Efforts. In addition to taking actions necessary to achieve the results described in Articles II.A and II.B, Denver Water agrees to develop, for use within the Service Area and to satisfy the obligations listed in Article I.B, an additional 10,000 acre-feet on an average annual basis through reuse, including use of reusable sources of water for augmentation, and/or conservation measures not described in Articles II.A and II.B. The development of the additional 10,000 acre-feet will commence no later than the completion of the efforts described in Articles II.A and II.B, and are anticipated to be completed by the end of calendar year 2030. Once Denver Water determines the additional 10,000 acre-feet has been attained, it will retain a reputable and qualified third party to confirm that the methodology used to quantify the attainment was reasonable. If the third party determines the methodology was not reasonable, Denver Water will correct the identified defects in the methodology, and if necessary, undertake additional reuse or conservation measures to achieve the goal.

ARTICLE III
Denver Water's Other Commitments

A. General

1. Denver Water agrees to make a good faith effort to identify which of its West Slope conditional water rights might be needed and to abandon those conditional water rights that it deems are not needed.
2. As used in this Article III, "Resolution of Blue River Decree Issues" means the entry of final judgments and decrees no longer subject to appeals which make absolute 654 cfs in 06CW255, Water Division 5, and in 49-cv-2782, U.S. District Court, and 141,712 acre-feet in 03CW039, Water Division 5, in accord with the Amended Application to Make Absolute, filed with the court on February 16, 2006.
3. Use of Denver Water's Water Rights on West Slope.
 - a. Denver Water will be responsible for providing substitution water and power interference charges to Green Mountain Reservoir and replacement water to other senior downstream water rights as necessary to ensure that West Slope recipients of the water provided by Denver Water under this Article III may use the water as provided in this Agreement.
 - b. The signatories to this Agreement will cooperate to obtain such court decrees and approvals as are necessary to ensure that Denver Water's water that is made available to West Slope users under this Agreement, the 1985 Summit Agreement and the 1992 Clinton Agreement may be used on the West Slope for all uses, including but not limited to, fully consumptive uses, reuse and successive uses.
4. Replacement Water. Certain provisions of this Article III require recipients of water deliveries from Denver Water to make available to Denver Water "Replacement Water." Replacement Water may be made available to Denver Water from Green Mountain Reservoir, Wolford Mountain Reservoir, West Slope supplies of Windy Gap Project water, water made available to the West Slope from relaxation of the Shoshone Call pursuant to the 2007 Shoshone Agreement or the provisions of Article VI.E, water stored in Old Dillon Reservoir, water made available to West Slope water users pursuant to the 2003 Colorado Springs Substitution Agreement including return flows of such water, decreed consumptive use credits and reusable return flows, water diverted from Straight Creek into Dillon Reservoir by Summit County users, or any other substitution source reasonably acceptable to the Bureau of Reclamation and the Signatories. Where Replacement Water is required, Denver Water's delivery of water is contingent upon the Replacement Water

being on hand and physically and legally available for Denver Water's use for substitution purposes and will be provided to Denver Water for each acre foot of water delivered.

5. Escalation. The amounts of money that Denver Water is committed to pay under this Article III will be subject to escalation beginning on the fourth anniversary of the Effective Date of this Agreement, based on changes in the Consumer Price Index for All Urban Consumers ("CPI-U") for the Denver-Boulder-Greeley Metropolitan Area.

B. Summit County – Blue River

1. Payment by Denver Water. \$11 million will be paid by Denver Water, subject to the terms set forth below.
2. Waste Water Treatment Plant Fund. \$1 million of the \$11 million shall be deposited into an interest-bearing fund to be administered by Summit County to offset the impacts of lower Dillon Reservoir levels or reduced outflows from Dillon Dam on permitted wastewater dischargers in Summit County.
3. Environmental Enhancement Fund. \$1 million of the \$11 million shall be deposited into an interest-bearing fund to be used as 50% matching funds for Environmental Enhancement projects in Summit County. The Environmental Enhancement projects shall be selected by a committee composed of one representative from each of the five entities listed in Article III.B.4 below. If these entities cannot unanimously agree on a project or projects, then each entity will be entitled to use one-fifth of the funds for a 50% match for an Environmental Enhancement project selected by that entity.
4. Payments for Projects in Summit County. \$9 million of the \$11 million will be distributed in five equal shares to the following entities to offset the costs of the projects listed in Attachment G:
 - Town of Dillon
 - Town of Silverthorne
 - Town of Frisco/Frisco Sanitation District
 - Town of Breckenridge
 - Summit County/other water districts listed in Attachment G
5. Reallocation of Funds. Denver Water will not object to the reallocation of the \$9 million as may be agreed by these entities, and these entities will determine the allocation of these funds for the projects described in Attachment G without restrictions imposed by Denver Water. Funds can be used to reimburse the sponsoring entity for project costs incurred before the funding is to be provided by Denver Water under Article III.B.6 below.

6. Timing of Payments. The schedule for payment of the \$11 million is as follows:
- a. \$4.5 million of the \$9 million described in Article III.B.4 above within one year of Resolution of Blue River Decree issues.
 - b. \$4.5 million of the \$9 million described in Article III.B.4 above within six months upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project.
 - c. The \$1 million for Environmental Enhancements under Article III.B.3 will be deposited into the interest-bearing fund at the time of execution of the Agreement. These funds would be immediately available as matching funds whenever an Environmental Enhancement project is selected pursuant to Article III.B.3.
 - d. The \$1 million dedicated to assisting wastewater treatment plants under Article III.B.2 will be deposited into the interest-bearing fund at the time of execution of this Agreement.

7. 250 Acre Feet of Dillon Storage Water. Upon Resolution of Blue River Decree Issues, Denver Water will provide an additional 250 feet per year of water from Dillon Reservoir with a yield as reliable as the yield available to Denver Water at Dillon Reservoir. This water will be allocated as follows:

Town of Silverthorne	=	60 acre feet
Summit County	=	56 acre feet
Snake River Water District	=	45 acre feet
Town of Dillon	=	45 acre feet
Copper Mt. Metro District	=	29 acre feet
Dillon Valley Metro District	=	15 acre feet

There shall be no Replacement Water or other compensation for this Dillon storage water.

8. Montezuma Shaft.
- a. Denver Water is willing to consider, on a case-by-case basis, use of the Montezuma Shaft by the Snake River Water District, East Dillon Water District and Summit County Government on a space available basis when the Roberts Tunnel is operating. Any such future use will be subject to written acknowledgement by all water users that the supply is interruptible and will be subject to Denver Water's ability, in its sole discretion, to take the Roberts Tunnel out of service for maintenance, inspection and operational needs.

- b. Any water resulting from use of the Montezuma Shaft as described in the preceding paragraph will come out of the users' allocations of water under the 1985 Summit Agreement, the 1992 Clinton Agreement or this Agreement.
9. Old Dillon Reservoir. Denver Water will not object to the construction and operation of Old Dillon Reservoir in accordance with permits issued by the U.S. Forest Service and U.S. Army Corps of Engineers. Nothing herein shall be construed as a subordination to the operation of this project of any of Denver Water's decreed water rights and exchanges. Upon execution of the agreement between Denver Water and Old Dillon Reservoir Water Authority, Denver Water will withdraw its statements of opposition to all pending Old Dillon Reservoir water court applications by Summit County and Towns of Dillon and Silverthorne.
10. Dillon Reservoir Levels. Denver Water agrees to use its best efforts to maintain the water level of Dillon Reservoir for recreational and aesthetic purposes at or above 9012 feet in elevation, above mean sea level, from June 18 to Labor Day of each year. This is a target elevation that may not be achieved, depending upon various factors, and is subject to Denver Water's water supply obligations. Under the Blue River Decree, Denver Water's diversions are limited to municipal purposes only. Denver Water will continue to comply with the Blue River Decree and to operate the Roberts Tunnel to meet its water supply obligations and not solely for recreational or hydropower purposes.
11. Town of Frisco. Denver Water has allowed the Town of Frisco to use its Future Dillon Water under the 1985 Summit Agreement as a source of augmentation supply for snowmaking at its winter sports area pursuant to the Future Dillon Water Agreement dated November 18, 2009 between Denver Water and Frisco. Denver Water and Frisco agree to participate in a joint study on the amount and timing of snowmaking return flows from the winter sports area and to cooperate in maximizing the amount of snowmaking return flows in any Water Court proceeding.
12. Additional Exchanges. Denver Water will allow additional exchanges through Dillon Reservoir for the benefit of Summit County users, so long as Denver Water's firm yield is kept whole, such exchanges do not interfere with Denver Water's operations, and Denver Water is afforded an opportunity to protect its interests in any legal or administrative proceeding.
13. Temporary Storage. At its sole discretion, Denver Water will allow Summit County entities to temporarily store additional water in Dillon Reservoir on a space available basis.

14. Additional 1493 Acre Feet.

a. Upon resolution of Blue River Decree issues, Denver Water will provide to the entities listed below 1493 acre feet per year from Dillon Reservoir with a yield as reliable as the yield available to Denver Water at Dillon Reservoir. This water shall be made available directly in Dillon Reservoir each year or, at the option of an individual recipient, the portion of this water to which the recipient is entitled shall be provided in Clinton Gulch Reservoir (the Clinton Bookover Water¹) in lieu of an equal amount of water that would be available to such recipient in Dillon Reservoir, by operating Denver Water's Blue River Diversion Project water rights to allow storage of the Clinton Bookover Water in Clinton Reservoir. In the event Denver Water does not have an account balance in Clinton Gulch Reservoir pursuant to the terms of the 1992 Clinton Agreement, the Clinton Bookover Water shall be booked over to the recipient from water in storage in Clinton Gulch Reservoir, pursuant to separate operating procedures to be agreed upon by Denver Water and the Reservoir Company. In the event Denver Water has an account balance in Clinton Reservoir pursuant to the terms of the 1992 Clinton Agreement, the Clinton Bookover Water shall be booked over to that recipient from Denver Water's account in Clinton Gulch Reservoir. Any Clinton Bookover Water may not be carried over in Clinton Gulch Reservoir from year to year. Such water will be allocated as follows:

- Vail Summit Resorts (Keystone) = 302 acre feet (1)
- Unallocated future supply pool = 175 acre feet (2)
- Copper Mountain Resort = 142 acre feet (1)
- Town of Silverthorne = 140 acre feet
- Summit County = 134 acre feet
- Vail Summit Resorts (Breckenridge) = 126 acre feet (1)
- Town of Breckenridge = 108 acre feet (3)
- Town of Dillon = 105 acre feet
- Snake River Water District = 105 acre feet
- Copper Mountain Metropolitan District = 69 acre feet
- Arapahoe Basin Ski Area = 52 acre feet (1)
- Dillon Valley Metro District = 35 acre feet

¹This water may be used for snowmaking purposes and is entitled to a snowmaking ratio of not more than 5 to 1 (or such other ratio based on the amount of credited snowmaking return flows established by subsequent decrees.) Denver Water and each ski area agree to participate in joint studies on the amount and timing of snowmaking return flows from each ski resort using the foregoing water, and to cooperate in maximizing the amount of snowmaking return flows in any Water Court proceeding. The combined

volume of water for snowmaking amounts under this Article III, excluding snowmaking by the Town of Frisco under Article III.B.11, and the 1992 Clinton Agreement shall not exceed the 6000 acre feet limit on snowmaking water contained in the 1992 Clinton Agreement.

²The unallocated pool will be administered by a board consisting of one representative from the Towns of Breckenridge, Dillon, Frisco and Silverthorne and the Summit County Commissioners

³A portion of this water is entitled to the snowmaking ratio described in note 1 above. Denver Water and the ski area agree to participate in a joint study on the amount and timing of snowmaking return flows from the ski resort, and to cooperate in maximizing the amount of snowmaking return flows in any Water Court proceeding. The combined volume of water for snowmaking amounts under this Article III, excluding snowmaking by the Town of Frisco under Article III.B.11, and the 1992 Clinton Agreement shall not exceed the 6000 acre feet limit on snowmaking water contained in the 1992 Clinton Agreement.

- b. The recipients of this water shall provide to Denver Water Replacement Water for each acre foot of the yield water. The ratio shall be 1 acre foot of Replacement Water for each acre foot of water delivered above or into Dillon Reservoir and 1.4 acre feet of Replacement Water for each acre-foot made available below Dillon Reservoir.
- c. The Summit County users shall be responsible for accounting for the use of all water provided by Denver Water under this Agreement. This accounting will be coordinated by a single engineering firm with accounting under the 1985 Summit Agreement and the 1992 Clinton Agreement.

15. Place of Use. The place of use of any of the water provided under this Article III.B will be a matter of internal agreement among Summit County water users and will not be limited by Denver Water, provided that any water booked over to Denver Water under the 1992 Clinton Agreement will be retained in Clinton Reservoir.

16. Dillon Bypass Flows. Denver Water's release of water from Dillon Reservoir is subject to the terms of its 1966 right-of-way from the Department of Interior for Dillon Reservoir. Upon resolution of Blue River Decree issues, Denver Water agrees: (1) to waive its right to reduce releases under section 2 (C) of the 1966 right-of-way; and (2) to add the following new limitation upon its ability to reduce releases in addition to the conditions described in the right of way: Denver Water will not reduce releases below those required by section 2 (A) of the right of way unless an emergency

declaration banning residential lawn watering during the irrigation season is in force within its Service Area. Nothing herein shall alter or amend Denver's ability to reduce bypasses under paragraph 2(A) of the right of way during an emergency or during temporary periods of time involving maintenance or repairs on the water facilities involved. Nothing herein shall alter or amend any other obligation of Denver Water with respect to releases from Dillon Reservoir, including, without limitation, the terms of the Record of Decision for the Wolford Mountain (Muddy Creek) Reservoir; the Memorandum of Agreement among the U.S. Bureau of Reclamation, Northern Colorado Water Conservancy District, Colorado River Water Conservation District, and Denver Water dated December 30, 1991, regarding substitutions from Wolford Mountain Reservoir (MOA No. 2-AG-60-01550); the decree in Case No. 91CW252, Water Division No. 5 (also entered in Consolidated Case Nos. 2782, 5016, and 5017, U.S. District Court, District of Colorado); and the 1992 Clinton Agreement.

17. Silverthorne's Dillon Storage Water. Upon resolution of Blue River Decree issues, Denver Water and Summit County will amend the 1985 Summit Agreement to eliminate the current restrictions on the use of the 300 acre feet of Dillon Storage Water made available to the Town of Silverthorne. A form of the revisions to the 1985 Summit Agreement to accomplish this result is attached as Attachment H. The Silverthorne RICD will not be used to prevent or otherwise limit the exchange or substitution of any replacement or exchange water into Dillon Reservoir under this Agreement, the 1985 Summit Agreement or the 1992 Clinton Agreement.
18. Colorado Springs Substitution Agreement. Denver Water will agree to support extension of the Colorado Springs substitution agreement adjudicated in Case No. 03CW320, Water Division 5, as long as it is in substantially the same form as the present agreement.

C. Clinton Reservoir Agreements.

1. Upon the execution of this Agreement, the 1992 Clinton Agreement shall be amended to add a new whereas clause after the second whereas clause to read as follows:

Whereas, by decree of the District Court in and for Water Division No. 5, State of Colorado, in Case No. 98CW57, Clinton Reservoir was granted a Use Enlargement and Second Filling in the amount of 4,250 acre feet for domestic, municipal, industrial, snowmaking, recreation, fish and wildlife propagation and augmentation purposes, both on the eastern and western slopes of Colorado, and an application is pending in Case No. 06CW252 for Clinton Gulch Reservoir 1st Enlargement and Refill Right for an additional

210 acre feet. All references to Clinton Reservoir herein collectively refer to the storage rights decreed in Case Nos. W-2559, 98CW57 and 06CW252;

2. Upon the execution of this Agreement, paragraph 1(b) of the 1992 Clinton Agreement shall be amended to read as follows:
 - (b) Clinton Reservoir will retain for the uses set forth in paragraph 1(c) below any water stored in an accounting year if an allowable fill occurs. An allowable fill occurs each year except: (i) when Green Mountain Reservoir does not fill under its own right and the Water Board is required to provide substitution water to Green Mountain Reservoir in order to retain water diverted at Dillon Reservoir; or (ii) when the contents of Dillon Reservoir are less than 100,000 acre feet on August 1 for reasons other than the Water Board's maintenance or repair of its Dillon Reservoir facilities and the total combined contents of the Water Board's Dillon, Gross, Cheesman, Eleven Mile and Antero Reservoirs are less than 51% of their total usable capacity on August 1. Subject to the provisions of Paragraph 9 below, if an allowable fill does not occur in a given accounting year, the water stored in Clinton Reservoir during that accounting year will be credited to the Water Board's account and retained in Clinton Reservoir until the contents of Dillon Reservoir as measured above the invert of the west portal of the Roberts Tunnel are 100,000 acre feet or less, in which event the water shall be released from Clinton Reservoir to Dillon Reservoir when requested by the Water Board, or until an allowable fill occurs, whereupon the Water Board's account balance of water stored in Clinton Reservoir will be reset to zero. The release of the Water Board's water stored in Clinton Reservoir shall be scheduled in such a manner as to meet the Water Board's needs in a timely manner and also to avoid the erosion of the Clinton Canal.
3. Clinton Flood Control Exchanges. At its sole discretion, Denver Water will allow the Clinton Ditch & Reservoir Company to temporarily store Clinton Reservoir water released from storage for flood control purposes in Dillon Reservoir, limited to a space available basis, and to use the stored water as an exchange supply, pursuant to operating procedures to be agreed upon at the time of the proposed exchange.
4. Clinton Reservoir Dead Storage Pool. Upon execution of this Agreement, Denver Water and the Clinton Ditch & Reservoir Company will enter into the Interim Agreement regarding the Clinton Reservoir dead storage pool attached hereto as Attachment I. Upon Resolution of Blue River Decree Issues, Denver Water and the Clinton Ditch & Reservoir Company will enter into the permanent Agreement regarding the Clinton Reservoir dead storage pool attached hereto as Attachment J. The interim agreement will renew on a

year-to-year basis so long as the Signatories are still engaged in efforts to achieve Resolution of Blue River Decree Issues.

5. Denver Water Opposition. Upon the execution of this Agreement, Denver Water will consent to the decree in Water Division No. 5 Case No. 06CW252 attached hereto as Attachment K for a total reservoir capacity of 4460 acre feet which includes a dead storage pool of 801 acre feet.
6. Spillway Enlargement Water. Upon Resolution of Blue River Decree Issues, Denver Water and the Clinton Ditch & Reservoir Company will modify their existing 1992 Clinton Agreement to add the spillway enlargement water (up to a maximum of 500 acre feet). The water from the total reservoir capacity, including the dead storage pool and spillway enlargement, will be allocated to existing shareholders of the Clinton Ditch & Reservoir Company on a pro rata basis as either fourth year supply, or one-third of that amount will be so allocated as an increase in the "Reservoir Yield" of Clinton Reservoir, as that term is defined in the 1992 Clinton Agreement.
7. Upon the execution of this Agreement, paragraph 10(a) of the 1992 Clinton Agreement shall be amended to read as follows:
 - (a) Whenever water cannot be diverted from the Snake River or its tributaries because of decreed instream flows, or the operation of the instream flow memorandum of agreement between Keystone Resorts Management, Inc. ("Keystone") and the Department of Natural Resources, or the water quality of the Snake River, Keystone may pump up to 1500 acre feet of water from September 1 of each year to March 31 of the following year from the Montezuma Shaft of the Roberts Tunnel, subject to the provisions of this paragraph.

D. Eagle County.

1. Any development and use of Wolcott Reservoir shall be in compliance with the terms of the settlement agreement between Denver Water and the Eagle River Water & Sanitation District and Upper Eagle Regional Water Authority and the subsequent decrees in Water Division No. 5 Case Nos. 02CW125 and 07CW126.
2. Denver Water will not seek any new appropriation of water in the Eagle River basin or pursue or participate in any acquisition of water rights or any project that would result in any new depletion from the Eagle River basin without the prior approval of the Eagle County Commissioners, the River District, the Eagle Park Reservoir Company, the Eagle River Water & Sanitation District, and the Upper Eagle Regional Water Authority.

In addition, the Abstention Provisions applied in Article I of this Agreement provide that any entity receiving water from Denver Water under any Future Contract or any contract for Reusable Return Flows will not seek any new appropriation of water, or pursue or participate in any project that would result in any new depletion from the Eagle River basin.

3. Denver Water will not oppose any future interconnect between Clinton and Eagle Park Reservoirs, provided that the water in Clinton Reservoir that has been booked over to Denver Water pursuant to the terms of the 1992 Clinton Agreement remains in Clinton Reservoir.
4. Upon execution of this Agreement, Denver Water will withdraw its pending motion and statement of opposition in Water Division No. 5 Case No. 02CW403.

E. **Grand County and Fraser, Williams Fork and Upper Colorado River Basins**

I. **General Provisions for Article III.E.**

- a. **Relationship to Moffat Project Permitting Process.** Denver Water has applied for a permit for the Moffat Project from the Corps of Engineers (“COE”) under Section 404 of the Clean Water Act. The Moffat Project involves enlargement of Gross Reservoir located in Boulder County and the diversion of additional water from the Upper Colorado, Williams Fork and Fraser River watersheds in Grand County. Grand County is a consulting agency in that permitting process and has submitted comments to COE that are a part of the regulatory record. As part of the permitting process, the COE will approve a Mitigation Plan designed to avoid, minimize, or mitigate any new impacts to the stream environment that might be caused by the Moffat Project.
 - i. **Mitigation.** The provisions of this Article III.E are not intended to define and do not substitute for the Mitigation Plan that will be required by COE. Denver Water will comply with the Mitigation Plan approved by COE in addition to fulfilling the commitments contained in this Article III.E. The funds committed by Denver Water in Articles III.E.2 and III.E.3 are subject to proportional reduction if the Mitigation Plan required in the permitting process mandates funds for the purposes described in those sections.
 - ii. **Improvements.** Denver Water’s commitments in sections E.5 through E.24 include several measures designed to improve current stream conditions (“Improvements”) and do not represent mitigation for the Moffat Project. The Signatories agree that they shall not represent

that the Improvements are designed or intended to avoid, minimize, or mitigate any impacts associated with the Moffat Project..

- b. Water Rights Issues. The Signatories to this Agreement will cooperate to implement such legal mechanisms and to obtain such administrative and judicial approvals as Denver Water, Grand County, the River District, and Middle Park agree are necessary to ensure that the water provided under this Article III.E will be physically and legally available for the intended purposes of protecting and enhancing stream flows in the Fraser, Williams Fork, and Colorado Rivers and their tributaries. Denver Water agrees not to divert any water through the Moffat Project for storage in an enlarged Gross Reservoir until such time that the water committed by Denver Water pursuant to this Article III.E is legally available for use by Grand County.
 - c. Responsibility for Infrastructure. Several provisions of this Article III.E require Denver Water to deliver or make water available for various uses within Grand County. Except for the funding for water projects pursuant to Article III.E.14, Denver Water will not be responsible for the costs of any new infrastructure required to deliver or make the water available.
2. \$2 million to Address Water Quality Upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project, Denver Water will provide \$2 million to pay for measures to address water quality, including but not limited to improvements to the capacity of wastewater treatment plants. If the Mitigation Plan required in the permitting process for the Moffat Project mandates funds for nutrient removal/water quality, then the direct funding to Grand County under this paragraph would be proportionately reduced. For example, if the mitigation plan requires the expenditure of \$500,000 for nutrient removal/water quality, then the direct funding to Grand County would be reduced to \$1.5 million. The water quality funds will be allocated and administered by a board consisting of one representative from each of the following entities: Grand County Commissioners, Town of Fraser, Grand County Water and Sanitation District No. 1, Winter Park Water and Sanitation District, Tabernash Meadows Water and Sanitation District, Granby Sanitation District, and Winter Park Ranch Water and Sanitation District.
3. \$1 Million for Aquatic Habitat. Upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project, Denver Water will provide \$1 million to be used in the Cooperative Effort process described in Article III.E.6 for the purpose of improving aquatic habitat in the Upper Colorado, Fraser and Williams Fork River basins. If the Mitigation Plan required in the permitting process for the Moffat Project mandates funds for this purpose, then the direct funding to Grand County under this paragraph would be proportionately reduced.
4. Berthoud Pass Sedimentation Pond. Denver Water has entered into an agreement with CDOT to construct a sediment catch basin above Denver's diversion structure on the Fraser River. Denver Water has agreed to operate and maintain the project

and has also contributed \$50,000 for this effort. Grand County agrees that Denver Water may seek mitigation credit for sediment removal in the Fraser River from COE for its participation in the sediment project.

5. Environmental Pool in Gross Enlargement. Denver Water has entered into an agreement with the Cities of Boulder and Lafayette dated February 24, 2010, to create a 5,000 acre-foot Environmental Pool within the enlargement of Gross Reservoir as part of the Moffat Project. Denver Water agrees not to store water, directly or by exchange, any of its West Slope water rights listed in Attachments A and E in the Environmental Pool in Gross Reservoir, unless the River District, Middle Park and Grand County have agreed in advance and in writing.
6. Cooperative Effort for Aquatic Environment. Denver Water, the River District, Middle Park, and Grand County agree to execute an intergovernmental agreement establishing the Learning by Doing Cooperative Effort ("Cooperative Effort") to protect, restore, and when possible enhance, the aquatic environment in the Upper Colorado, Fraser and Williams Fork River basins. Denver Water and Grand County will jointly request that the COE acknowledge the Learning by Doing IGA in the Record of Decision for the Moffat Project.
7. Additional \$1 Million for Aquatic Habitat. Upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project, Denver Water will provide \$1 million to Grand County, in addition to the funds committed in Article III.E.3, to be used in the Cooperative Effort process for the purpose of improving aquatic habitat.
8. \$2 Million for Future Environmental Enhancements. Denver Water will place \$2 million in an interest bearing account acceptable to the Management Committee established as part of the Cooperative Effort within two years after the Moffat Project becomes operational to address potential future environmental enhancements in Grand County as part of the Cooperative Effort.
9. Funds for Windy Gap Pumps to Provide Environmental Flows. Beginning with the year the Moffat Project becomes operational, Denver Water will place \$500,000 into an interest bearing fund (WG Pumping Fund) acceptable to and controlled exclusively by Grand County. Two years after the fund is established, Denver Water will place a second \$500,000 into the Fund. The WG Pumping Fund shall be used by Grand County for the sole purpose of paying up to 50% of the annual costs for using the Windy Gap Pumps to pump water for environmental purposes. The WG Pumping Fund may increase over time due to interest income and lower-than-expected use of the Fund, and will be capped at \$2 million dollars. Any amount in excess of \$2 million at the end of a calendar year will be transferred to the Cooperative Effort established in Article III.E.6 above for environmental improvement projects identified in that process. Grand County, in its sole discretion, can elect to transfer all or a portion of the WG Pumping Fund to the Cooperative

Effort if Grand County determines that such a transfer would provide greater environmental value.

10. Annual Bypasses on Fraser River Collection System. Each calendar year beginning with the year the Moffat Project becomes operational, Denver Water agrees to make available to Grand County 1,000 acre feet of water from its Fraser Collection System ("Fraser 1,000 af") for use for environmental purposes and any incidental recreational benefit. The Fraser 1,000 af shall be in addition to bypasses of water by Denver Water required under the Amendatory Decision and existing contracts.
 - a. As referenced in Article III.E.1.b, Denver Water will cooperate with Grand County and the other Signatories to implement such legal mechanisms, including the possibility of augmenting instream flows and making deliveries to downstream demands, and to obtain such court decrees and approvals as are necessary to protect the Fraser 1,000 af in the Fraser and Colorado Rivers so that it reaches critical stream segments and is not diverted directly or by exchange by intervening structures within Grand County.
 - b. The Fraser 1,000 af shall be bypassed from Denver Water's existing facilities in coordination with the Cooperative Effort, at times, in locations and in the amounts requested by Grand County for environmental purposes. As part of the Cooperative Effort and on a case-by-case basis, Denver Water agrees to consider making available more than 1000 acre feet in a calendar year.
 - c. The Fraser 1,000 af shall be measured at appropriate points of measurement for bypasses from the Fraser Collection System and shall be converted to acre feet with the standard factor, i.e. 1 cfs for 24 hours = 1.983 af.
 - d. Upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project, Denver Water will undertake voluntary pilot projects using the Fraser 1,000 af for environmental purposes.
11. Annual Releases from Williams Fork. Each calendar year beginning with the year the Moffat Project becomes operational, if a portion of the Fraser 1,000 af is made available during a call on the river or when a Shoshone Outage Protocol is in effect as described in Article VI, Denver Water agrees to make available for release a like amount of water, up to 1,000 acre feet of water per year, from Williams Fork Reservoir ("Williams Fork 1,000 af") to Grand County for environmental purposes and any incidental recreational benefit. The Williams Fork 1,000 af shall be in addition to releases of water by Denver Water required under pre-existing contracts and other legal obligations.
 - a. As referenced in Article III.E.1.b, Denver Water agrees to cooperate with Grand County and the other Signatories to implement such legal mechanisms, including augmenting instream flows and deliveries to downstream demands, and to obtain such court decrees and approvals as are necessary to protect the

Williams Fork 1,000 af in the Williams Fork and Colorado Rivers so that it reaches critical stream segments and is not diverted directly or by exchange by intervening structures within Grand County.

- b. The Williams Fork 1,000 af releases shall be coordinated with the Cooperative Effort and shall be made available at times and in the amounts requested by Grand County for use in the stream.
 - c. The Williams Fork 1,000 af shall be measured at the gage immediately below Williams Fork Reservoir and converted to acre feet with the standard factor, i.e. 1 cfs for 24 hours = 1.983 af.
 - d. All or part of the Williams Fork 1,000 af, up to 2500 acre-feet, may be carried over in Williams Fork Reservoir by Grand County into subsequent years, subject to space available, payment of pro rata evaporative loss, and so long as the carryover does not count against the Reservoir's fill or otherwise jeopardize Denver Water's decreed water rights. The Williams Fork 1,000 af and any amount carried over shall be the first to spill from Williams Fork Reservoir. Denver Water will notify Grand County as soon as it reasonably can that Williams Fork Reservoir is anticipated to spill, so that Grand County can determine whether to request a release prior to the anticipated spill.
 - e. In addition to carrying over all or part of the Williams Fork 1,000 af, as described in Article III.E.11.d above, Grand County may also exchange or substitute into the 2,500 acre-feet of carryover capacity in Williams Fork Reservoir, water Grand County has introduced to the river upstream of the confluence of the Colorado and the Williams Fork Rivers. The additional water stored in the carryover capacity will be subject to all the provisions of Article III.E.11.d.
 - f. Upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project, Denver Water will undertake voluntary pilot projects using up to 1,000 acre-feet of releases from Williams Fork Reservoir, for environmental purposes.
12. Limits on Ability to Reduce USFS Bypass Flows. Denver Water is required by the United States Forest Service or the Bureau of Land Management to bypass the natural inflow at its points of diversion on the Fraser River, Vasquez Creek, St. Louis Creek and Ranch Creek under the stipulations 3(a), 3(b), 3(c), and 3(d) of the Amendatory Decision dated April 22, 1970, Serial No. 027914 (the "Amendatory Decision"). Beginning with the year the Moffat Project becomes operational, Denver Water agrees not to reduce bypasses of water as authorized by stipulations 3(e) and 5 of the Amendatory Decision, except when Denver Water has banned residential lawn watering during the irrigation season. However, Denver Water will not reduce the bypass flow on a particular stream to an extent that would cause a municipal water provider in Grand County to impose mandatory restrictions on

indoor water use, unless Denver Water is also imposing mandatory restrictions on indoor water use within its Service Area. Prior to the Moffat Project becoming operational, Denver Water agrees to undertake voluntary pilot projects limiting its ability to reduce bypass flows as described in this paragraph.

13. Ditch Operational Changes. Denver has acquired several irrigation water rights in Grand County and agrees to make those water rights available to enhance environmental flows.
 - a. Big Lake Ditch. Upon execution of this Agreement, Denver Water will participate in a joint study of how to maintain the historic agricultural uses of the Big Lake Ditch so as to maximize the environmental benefits, while substantially preserving the yield for Denver Water that it has paid for and is counting on by retiring the Big Lake Ditch demand. If the study finds the balance described in this paragraph, then Denver Water will implement the study beginning with the year the Moffat Project becomes operational.
 - b. Rich Ditch and Hammond No. 1 Ditch. Upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project Denver Water and Grand County agree to fund a study to determine how best to enhance stream flows with Denver Water's rights in the Rich Ditch and Hammond No.1 Ditch. Any enhancements would be in addition to the Fraser 1,000 af and would begin with the year the Moffat Project becomes operational.
14. Financial Contribution to Infrastructure Projects in Grand County. Denver Water agrees to pay the following amounts to offset the costs of the water supply projects listed in Attachment L. The funds will be distributed by Grand County.
 - a. Denver Water will place \$1.95 million in the water supply project fund upon execution of an Article III Implementation Agreement in the form set forth in Attachment M by the recipients of those funds.
 - b. Denver Water will place \$2 million in the water supply project fund within six months after Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project or Resolution of the Blue River Decree issues, whichever occurs later.
15. Year-Round Deliveries of Clinton Bypass Water. Upon the signing of an Article III Implementation Agreement by all recipients of Clinton Bypass Water, Denver Water will provide Clinton Bypass Water under the 1992 Clinton Agreement on a year round basis if the Grand County Water Users provide replacement water in accordance with the Replacement Water criterion of 4/3 to 1 in the summer, and if that water is in-hand and usable by Denver Water. Grand County Water and Sanitation District No. 1, Winter Park Water and Sanitations District, Town of Granby and Town of Fraser have previously dedicated to Denver Water Replacement Water in Welford Mountain Reservoir at a ratio of 2/3 to 1 for winter use. If any of

those entities opts to take their Clinton Bypass Water in the summer, that entity would be credited with the previously dedicated 2/3 acre-foot, and would only owe an additional 2/3 of an acre-foot of Replacement Water for summer releases. Denver Water agrees that the Grand County Operating Plan can be amended to add the Jim Creek diversion as a point of delivery for the Clinton Bypass Water.

16. Twenty Percent Water. Denver Water has had a policy whereby any party who purchases water rights for conveyance to the east slope through Denver Water's system will make 20% of that water available to in-basin users in the Fraser River Basin. Denver Water agrees to make the temporary 20% contracts permanent after the snowmaking return flow recapture plan described in the Grand County Operating Plan is implemented, and provided that snowmaking is within the 6,000 acre-foot limit established by the 1992 Clinton Agreement.
17. Municipal Use of Denver's Facilities. On a case-by-case basis, Denver Water may allow water treatment plants on the Fraser River to use Denver Water's Fraser River Collection System to convey water as a temporary source of supply, if a back up supply is available and the necessary infrastructure has been installed.
18. Use of Unused Capacity. Denver Water is willing to explore, on a case-by-case basis, the possibilities for using its system to benefit Grand County if Denver Water's yield and operational needs are not impacted and its costs are not materially increased.
19. Future West Slope Water Rights Development. In addition to the limitations on Denver Water provided by Article I.C.3, Denver Water further agrees that it will not undertake any future water development projects or appropriations or acquisitions of water rights located in Grand County without the prior approval of the Grand County Commissioners and the River District.
20. Grand County 375 Acre-Feet of Water. Upon Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project, Denver Water agrees to make an additional 375 acre feet of water available to Grand County Water Users, to be managed in accordance with the 2012 Grand County Operating Plan with a Replacement Water ratio of 4/3 to 1 summer and 2/3 to 1 winter.
 - a. One hundred acre feet of the 375 acre feet will be allocated to the Winter Park Recreational Association for use in connection with the Winter Park Ski Area and Resort. Any use of the 100 acre-feet for snowmaking will be governed by the provisions of footnote 1 in Article III.B.14; and snowmaking return flows must be above the Denver Water system.
 - b. The remaining 275 acre feet will be allocated in equal shares of 68.75 acre feet to the Town of Fraser, the Town of Granby, the Grand County Water and Sanitation District No. 1, and the Winter Park Water and Sanitation District.

21. Water Supply for Grand County from Vail Ditch Shares. A group of governmental entities in Grand County has formed the Grand County Mutual Ditch and Reservoir Company (GCMD&RC), which has acquired shares in the Grand County Irrigated Land Company (Vail Ditch shares), and may acquire additional shares in the future. Upon execution of an Article III Implementation Agreement by GCMD&RC, Denver Water agrees to allow GCMD&RC's Vail Ditch shares to be traded for a like amount of water in Denver Water's Fraser Collection System and carried through that system for delivery and use in the headwaters of the Fraser River Basin, without any increase or decrease in yield to Denver Water's system, provided that GCMD&RC pays for any necessary new infrastructure and reimburses Denver Water for any additional operational costs.

Denver Water agrees not to oppose any changes of Vail Ditch shares or such other legal or administrative mechanisms that allow the GCMD&RC to use this water. Denver Water may file statements of opposition to such change applications for the limited purpose of ensuring compliance with the obligations of this agreement. Denver Water will cooperate in seeking Englewood's approval for use of its system to transport Vail Ditch shares. If GCMD&RC is able to divert the Vail Ditch shares at other locations, Denver Water agrees not to object to such alternative diversions, provided that there is no adverse impact to Denver Water's supply or operations.

22. Denver Water Lands for Habitat or Access. Denver Water and Grand County will study which of Denver Water's lands in Grand County may have potential value for wildlife habitat and public fishing access without impacting present and future operational needs. Within one year of Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project, Denver Water will decide which identified lands should be set aside for these purposes and what mechanism should be used.
23. Support for CWCB Filing. If information made available on the locations being considered, the impacts of the Wild and Scenic River issues, and the purpose and amounts of the filing demonstrates the lack of an impact on Denver Water's operations, Denver Water agrees not to oppose CWCB instream flow filings on those segments of the Colorado River below the confluence of the Blue River where currently there are no instream flow rights.
24. Support for RICD. If information made available on the locations being considered, the impacts to the Wild and Scenic River issues, and the purpose and amount of the filing demonstrate the lack of an impact on Denver Water's operations, Denver Water agrees not to oppose a Recreational In-Channel Diversion ("RICD") filing for the Colorado River below Gore Canyon in the Pumphouse reach above the Grand/Eagle County line.

F. Grand Valley.

Denver Water shall pay \$1.5 million into a fund (the “Grand Valley Fund”) to be designated by and controlled by the Grand Valley Signatories to this Agreement (the “Grand Valley Entities”). The following provisions shall apply to the Grand Valley Fund:

1. The Grand Valley Fund and any accruals to the Grand Valley Fund shall be used for water supply, water quality and/or water infrastructure projects in or benefiting the Grand Valley. Subject to such limitation, the projects for which the money in the Grand Valley Fund will be used shall be determined in the sole discretion of the Grand Valley Entities.
2. Denver Water shall pay the \$1.5 million into the Grand Valley Fund pursuant to the following schedule:
 - a. \$1 million shall be paid within 2 years after resolution of Blue River Decree issues.
 - b. \$500,000 shall be paid within 2 years after the Effective Date of this Agreement.

G. **Middle Colorado River.**

1. Within two years after the Effective Date of this Agreement , Denver Water shall place \$500,000 in an interest-bearing account to offset additional operation and maintenance costs or the costs of upgrading diversion structures of water treatment plants in Garfield County, pursuant to the provisions of Article VI.E.3.
2. Within one year of issuance of an acceptable permit for the Moffat Project, Denver Water agrees to place \$1 million in a fund for flow-related projects to protect Wild & Scenic Outstandingly Remarkable Values, and to propose this contribution as an element of the Mitigation Plan described in Article III.E.1.a.

ARTICLE IV
Agreements Regarding Denver Water's Water Rights

- A. Blue River Decree. The West Slope Signatories shall support and cooperate in any legal or administrative proceedings necessary to implement the provisions of this Agreement related to the Blue River Decree.
1. Current Water Court Proceedings. The West Slope Signatories shall not contest and the Signatories that are parties to the case will stipulate to the entry of the proposed decrees included in Attachment N in Case No. 2006CW255 (Roberts Tunnel) making 654 cfs absolute and finding diligence for the remaining conditional amount; and Case No. 2003 CW039 (Dillon Refill) making 141,712 acre-feet absolute in accord with the Amended Application to Make Absolute, filed with the court on February 16, 2006, and finding diligence for the remaining conditional amounts and uses.
 2. Waiver of Claims Related to Blue River Decree. The West Slope signatories agree that claim preclusion applies to all claims and objections to Denver Water's operations under the Blue River Decrees raised or which could have reasonably been raised in Case Nos. 06CW255 and 03CW039, or which could have reasonably been raised in previous diligence proceedings for these water rights. The Signatories agree that the resolution of the current diligence proceeding constitutes an adjudication on the merits of their statements of opposition.
 3. Claims Not Precluded. The West Slope signatories may file statements of opposition in future proceedings under the Blue River Decree limited to: 1) Denver Water's compliance with this Agreement, and 2) claims that were not and could not reasonably have been raised in prior proceedings.
- B. East Slope Storage of Blue River Water. "Imported Blue River Water" means any water transported through the Roberts Tunnel that was diverted under the Blue River Diversion Project direct flow or Dillon Reservoir storage priorities decreed in C.A. Nos. 1805 and 1806 and Civil Nos. 2782, 5016 and 5017, including water diverted under the decrees in Case Nos. 87CW376 and 91CW252 and water exchanged pursuant to paragraph IV.C.1 below. Denver Water may store any Imported Blue River Water, whether released from Dillon Reservoir or diverted directly through the Roberts Tunnel at any existing or future storage facility on the East Slope; provided that the amount of Imported Blue River Water in storage on the East Slope does not exceed 400,000 acre feet at any point in time. This provision and limitation on the amount of Imported Blue River Water does not apply to the storage of return flows from the use or reuse of Imported Blue River Water either directly or by exchange to any existing or future storage facility.

C. Denver Water's Exchanges.

1. Decreed Exchanges. The West Slope Signatories agree that Denver Water may operate its exchanges from Williams Fork Reservoir to Dillon Reservoir decreed in the Blue River Decrees, Civil Action No. 657, and C.A. 1430, and Case No. 88CW382; and from Williams Fork Reservoir to Williams Fork Diversion Project (Jones Pass) and to the Fraser River Diversion Project decreed in Civil Action Nos. 657 and 1430).
2. Undecreed Exchanges from Dillon Reservoir. The West Slope Signatories will not object to Denver Water's continued operation of and a decree for exchanges from Dillon Reservoir to Williams Fork Reservoir with an appropriation date of April 25, 1983, and to existing points of diversion for the Fraser River and Williams Fork Diversion Projects with an appropriation date of September 20, 1966, provided that the exchanges are exercised and operated and the decree contains terms and conditions that are at least as protective as the following;
 - a. An application for the exchanges was filed in Case No. 11CW21, the exchanges will be administered with a priority date of 2010, and the priority date or dates of the exchanges will not be antedated pursuant to C.R.S. § 37-92-305(10). The West Slope Signatories may file a statement of opposition but shall limit their opposition to ensuring that the protective conditions in this paragraph are part of the decree.
 - b. The maximum amount of the exchange to the Williams Fork Reservoir is limited to a rate of 148 cfs (absolute) based on diversions on April 25, 1983 and an annual volume of 6,095 af (absolute) based on diversions in water year 1990. The maximum amount of the exchange to the existing points of diversion on Fraser River and Williams Fork River Diversion Projects is limited to a rate of 56 cfs (absolute) based on diversions on September 9, 1985 and an annual volume of 8,747 af (absolute) based on diversions in water year 1967.
 - c. The exchanges from Dillon Reservoir to Williams Fork Reservoir or from Dillon Reservoir to the Fraser River and Williams Fork River Diversion Projects shall not be exercised or operated if the Division 5 Engineer advises Denver Water that curtailment of the exchanges is required to satisfy all senior instream flows existing in 2009, and located in the applicable stream reach affected by the diversion, including the following CWCB instream flow decrees:
 - 1) Colorado River (80CW448, 80CW446, 80CW447)
 - 2) Williams Fork River 79CW185, 79CW183, 79CW181, 79CW180, 79CW175, 79CW173, 79CW172, 79CW170, 79CW169, 79CW168, 79CW165)

(a) Bobtail Creek (79CW164, 79CW163)

(b) Steelman Creek (79CW167, 79CW166).

3) Fraser River (90CW308B, 90CW308, 90CW315, 90CW307, 90CW302, 90CW289)

(a) St. Louis Creek (90CW316, 90CW317A, 90CW317, 90CW304)

(b) Vasquez Creek (90CW318)

(c) Ranch Creek (90CW305, 90CW306A, 90CW306, 90CW314)

(d) Cabin Creek (90CW312)

(e) Hamilton Creek (90CW311)

(f) Meadow Creek (90CW310, 90CW309)

- d. The provisions in this paragraph IV. C.2. shall apply irrespective of whether any of the CWCB instream flow decrees listed in Article IV.C.2.c above contain provisions that might otherwise protect Denver Water's existing exchanges through these reaches from impairment by CWCB instream flows in the reaches.

- D. 1978 Judgment and Decree. The Signatories agree that operations by which Denver Water diverts under its 1946 Roberts Tunnel direct flow right prior to the completion of the annual fill of Green Mountain Reservoir are consistent with the Blue River Decree, including the Supplemental Judgment and Decree entered in the Consolidated Cases on February 9, 1978, so long as such operations are in accordance with the Green Mountain Reservoir Administrative Protocol (Attachment R-1). The Signatories will cooperate to obtain such administrative and judicial approvals as are necessary to ensure that the Protocol is made legally binding and enforceable and is implemented.
- E. Substitution Agreements. The West Slope Signatories agree to support and execute, as appropriate, all future renewals of the Memorandum of Agreement among the U.S. Bureau of Reclamation, Northern Colorado Water Conservancy District, Colorado River Water Conservation District, and Denver Water dated December 30, 1991, regarding substitutions from Wolford Mountain Reservoir (MOA No. 2-AG-60-01550), provided that such renewals are consistent with this Agreement and are reasonably the same in form and substance as the existing MOA, as modified by the July 21, 1992 Agreement Amending Lease Agreement between Colorado River Water Conservation District and City and County of Denver. The West Slope Signatories reserve the right to object to the addition of new substitution, exchange or replacement sources, or amounts other than those specified in Article III.A.4 not currently decreed for such use by Denver Water

- F. Straight Creek Project. Summit County agrees to extend and not challenge the validity of the 1041 permit for Denver Water's Straight Creek project dated July 17, 1985, so that a new permit will not be required for Denver Water to proceed with the project as permitted in 1985 as described in Attachment O. Consistent with its 1996 Resource Statement, Denver Water agrees that it will develop the Straight Creek project only with the prior approval of the Summit County Commissioners and the River District.
- G. Wolford Mountain Reservoir.
1. Repayment Water. With regard to the 1000 acre feet of Repayment Water ("WMR 1KAF") referenced in paragraph 20(b) of the Agreement Amending Lease Agreement between the River District and Denver Water, dated July 12, 1992 ("Wolford Agreement"), the River District and Denver Water agree that the River District shall provide and account for the WMR 1KAF as follows:
 - a. The first 500 acre feet of the WMR 1KAF, along with the 613 acre feet of water available to Denver Water under paragraph 20(c) of the Wolford Agreement, shall be made available every year and used by Denver Water for substitution purposes.
 - b. The remaining 500 acre-feet of the WMR1KAF shall be stored and used for substitution purposes in the same manner as the water storage attributable to Denver Water's 40% interest in the Wolford Mountain Reservoir water right and storage space (a volume of 24,000 acre-feet), on a pro rata basis (500 acre-feet = 0.83% of 60,000 acre-feet, so water would be stored at a rate of 40.83%).
 2. Second Enlargement of Wolford. Denver Water agrees to waive any right to participate in the second enlargement of Wolford Mountain Reservoir, in the same or a lesser amount as claimed in Case No. 03CW302, Water Division 5. The River District agrees that Denver Water is not obligated to pay any capital or OM&R costs associated with a second enlargement.
 3. 1041 Permit for Wolford. The River District and Denver Water agree to work cooperatively as co-permittees to obtain any amendment to the Grand County 1041 permit for Wolford Mountain Reservoir that may be necessary (1) to address current operations of Wolford Mountain Reservoir under the Wolford Agreement; and (2) to effectuate the applicable provisions of this Agreement. Upon application for such a permit amendment, Grand County agrees to cooperate to process an amendment as quickly as possible.
 4. Replacement Water. In addition to water in Wolford Mountain Reservoir that Denver Water is currently entitled to use for substitution and other purposes, this Agreement requires that Replacement Water be available to Denver Water as a condition of several water deliveries under Article III.

The estimated maximum volume of Replacement Water that might be required under this Agreement is 2,590 acre-feet in any single substitution year. Under the 1992 Clinton Agreement and the 1985 Summit Agreement, West Slope entities have agreed to provide Replacement Water to Denver Water in an amount estimated to be 1,249 acre-feet annually, which could be supplied from Wolford. The Signatories wish to ensure that Wolford Mountain Reservoir could be used to provide the full 3,839 acre feet of Replacement Water, even though it is anticipated that Replacement Water will be provided to Denver Water from other sources. The Signatories agree to cooperate to implement acceptable amendments or approvals as might be necessary to ensure that the 1991 MOA between the Bureau of Reclamation, Denver Water, the Colorado River Water Conservation District and the Northern Colorado Water Conservancy District; the decree in Case No. 91CW252; and the 1041 permit for Wolford Mountain Reservoir allow the use of the full 3,839 acre feet of Replacement Water, in addition to the water in Wolford the Denver Water is currently entitled to use for substitution and other purposes.

The West Slope Signatories agree that Replacement Water provided by the West Slope to Denver Water from Wolford Mountain Reservoir as Replacement Water under the 1985 Summit Agreement, the 1992 Clinton Agreement and this Agreement is a permissible use of Wolford Mountain Reservoir by Denver Water.

- H. Storage in Gross and Ralston Reservoirs. The West Slope Signatories shall not contest Denver Water's storage of Williams Fork and Cabin-Meadow Creek water as decreed in Case No. 657, in Gross and Ralston Reservoirs. The agreement of the West Slope Signatories in this paragraph is premised on circumstances and consideration unique to this Agreement.
- I. Deliveries of Water to the City of Golden. The West Slope Signatories shall not contest whether Denver Water's delivery of water to the City of Golden under the contract dated May 10, 2007, is consistent with Denver's water rights decrees.
- J. Moffat Project Permitting. With the exception of Grand County (which is a consulting agency in the NEPA process for the Moffat Project), the West Slope Signatories agree that the concerns raised in the comment letters they submitted on the October 2009 Draft EIS for the Moffat Project will be resolved by the combination of (1) the benefits that will accrue to the West Slope pursuant to the terms of this Agreement, plus (2) the environmental mitigation requirements and conditions that will be imposed by the federal and state permitting agencies in the permits and approvals issued for the Moffat Project. Accordingly, the West Slope Signatories other than Grand County agree not to oppose the issuance of any local, state and federal approvals for the Moffat Project, including those permits listed in Attachment P. Nothing in this paragraph IV.J shall affect Grand County's continuing actions as a consulting agency in the NEPA process on the Moffat Project. Nor shall anything in this paragraph IV.J be deemed a waiver of rights a Signatory may have

upon any breach of this Agreement.

- K. Water Rights in Eagle River Basin. The West Slope Signatories that are parties to the cases involving Denver Water's Eagle-Colorado water rights agree to implement the settlement of Denver Water's Eagle-Colorado diligence case and to facilitate the water court case changing the location of Denver Water's Piney River water right to State Bridge. All the West Slope Signatories agree not to oppose a water court application changing the location of Denver Water's Piney River water right to State Bridge.
- L. Water Rights in Williams Fork Basin. The West Slope Signatories shall not contest and West Slope Signatories that are parties to the cases will stipulate to the entry of the proposed decrees included as Attachment Q in Case No. 2007CW031 (Jones Pass) making 245 cfs absolute and finding diligence for the remaining conditional amount; and finding diligence in Case Nos. 2007CW030 (Carr Ditch) and 2007CW029 (Darling Creek, Williams Fork Power, Moffat Tunnel).
1. Waiver of Claims. The West Slope Signatories agree that claim preclusion applies to all claims and objections to Denver Water's operations under the decrees listed in this Article IV.L raised or which could have reasonably been raised in the cases listed above, or which could have reasonably been raised in previous diligence proceedings for these water rights. The signatories agree that the resolution of the current diligence proceeding constitutes an adjudication on the merits of their statements of opposition.
 2. Claims Not Precluded. The West Slope Signatories may file statements of opposition in future proceedings under the water rights listed above limited to: 1) Denver Water's compliance with this Agreement, and 2) claims that were not and could not reasonably have been raised in prior proceedings.

ARTICLE V

Green Mountain Reservoir Administration

- A. Resolution of Disputes. The Signatories agree that resolution of long-standing disputes regarding the proper administration of water rights adjudicated in the Blue River Decree, including the water rights of Green Mountain Reservoir and the Green Mountain Powerplant, will provide significant benefits for water users on both the east and west slopes of Colorado, including maximizing beneficial use of the waters of the state, reducing litigation costs, and providing clarity as to water rights administration. Certain Signatories have negotiated with other entities a protocol to resolve the long-standing disputes, entitled the Green Mountain Reservoir Administrative Protocol ("Protocol"), a copy of which is attached to this Agreement as Attachment R-1.

The primary purpose of the Protocol is to clarify and implement certain provisions of the Blue River Decree by (1) setting forth a protocol for, among other things: (a) the preparation, review, and modification of a fill schedule for Green Mountain Reservoir; (b) definition and administration of the fill season for the 1935 First Fill Storage Right; (c) administration of water rights during the fill season; and (d) operation of the Green Mountain Reservoir Water Rights and the Cities' water rights in response to downstream calls senior to the Cities' water rights; (2) making as much water as possible available for upstream use, including use by the Cities, without impairment of the fill of Green Mountain Reservoir; (3) providing a clear definition of the Cities' replacement obligation operations, including Denver Water's obligations to the City Contract Beneficiaries as defined in Attachment R-1; (4) ensuring that the administration of water rights does not allow the water rights of the Cities to "hide behind" or otherwise benefit from the Green Mountain Reservoir Water Rights; (5) eliminating or reducing as much as possible, the extent to which the Green Mountain Reservoir 60 cfs bypass is accounted against the fill of the Green Mountain Reservoir Storage Rights; and (6) addressing the relative priority of the Green Mountain Water Rights, the Cities' water rights, and the Climax's C.A. 1710 rights in a manner agreed by the Blue River Decree parties and Climax; all in a manner that is consistent with the Blue River Decree.

- B. Implementation of Green Mountain Administrative Protocol. The following Signatories are among the parties to an agreement entitled the Green Mountain Reservoir Administrative Protocol Agreement (the "Protocol Agreement", a copy of which is attached to this Agreement as Attachment R-2: Denver Water, the River District, Middle Park Water Conservancy District, Grand Valley Water Users Association, Orchard Mesa Irrigation District, Ute Water Conservancy District, Palisade Irrigation District, and Grand Valley Irrigation Company. The Protocol Agreement provides, among other terms and conditions, that these Signatories (and certain other parties to the Protocol Agreement) approve the Protocol and agree to its implementation. Nothing in this Agreement shall modify the obligations of the parties to the Protocol Agreement in accordance with the terms and conditions contained therein.
- C. Non-opposition to Green Mountain Administrative Protocol. The following Signatories are not parties to the Protocol Agreement: the Boards of County Commissioners of Eagle, Grand, and Summit Counties, Clinton Reservoir Company, Eagle Park Reservoir Company, Eagle River Water and Sanitation District, Upper Eagle Regional Water Authority, Mesa County Irrigation District, City of Glenwood Springs, and City of Rifle. These Signatories agree not to oppose the implementation of the Protocol in any adjudication or other proceeding deemed necessary by the parties to the Protocol Agreement to make the Protocol legally binding and effective, or to confirm the consistency of the Protocol with the Blue River Decree, so long as the Protocol is substantially consistent with Attachment R-1. These Signatories may support the Protocol in any proceedings in which they have standing to participate.

ARTICLE VI

Shoshone Call

A. Shoshone Call.

1. The Shoshone Power Plant, which is owned and operated by Public Service Company of Colorado, d/b/a/ Xcel Energy ("Xcel"), is located on the mainstem of the Colorado River in Glenwood Canyon. The Shoshone Power Plant produces hydroelectric energy by means of two water rights, the 1902 Shoshone Senior Right in the amount of 1250 cfs and the 1929 Shoshone Junior Right in the amount of 158 cfs (together, "Shoshone Water Rights").
2. When the Shoshone Power Plant is operating, the Shoshone Water Rights command the flow in the river by exercising the Senior Shoshone Call against upstream junior water rights. When the Senior Shoshone Call is on, upstream reservoirs cannot store water and junior water rights cannot divert unless they provide an equal volume of replacement water to the stream. Over the years, many water users have come to rely on the river flow regime created by the Senior Shoshone Call ("Shoshone Call Flows").
3. Whenever the Shoshone Power Plant is subject to a shutdown for repair, maintenance, or other reasons ("Shoshone Outage"), the Shoshone Call cannot be exercised, and Shoshone Call Flows may not be present in the river.
4. The Signatories agree that a Shoshone Outage could adversely affect water users and recreation interests on the Colorado River. Accordingly, the Signatories agree to implement the operational procedures described in this section during a Shoshone Outage (the "Shoshone Outage Protocol") to mitigate such potential adverse effects. The Signatories also agree to cooperate to achieve permanent management of the flows of the Colorado River as described in Article VI.C, whether or not the Shoshone Power Plant remains operational.

B. Shoshone Outage Protocol.

1. Outage During Irrigation Season. If a Shoshone Outage occurs during the period from March 25 through November 10 (Irrigation Season) and results in a flow of the Colorado River at the Dotsero Gauge below 1,250 cfs (not including any water released for endangered fish species purposes), then the River District, Middle Park and Denver Water agree that they will operate their systems as if the Senior Shoshone Call were on the River, resulting in a flow of not more than 1250 cfs at the Dotsero Gauge (not including any water released for endangered fish species purposes). The Shoshone Outage Protocol

will not apply to Shoshone Outages that occur during certain very dry Irrigation Seasons, as described in the following subparagraphs.

- a. The very dry Irrigation Seasons occur when the two conditions for a water shortage, as defined in paragraph 2 of the 2007 Shoshone Agreement, are met. Denver Water will make projections in March prior to March 25, and again in early May and late June to determine whether a water shortage is occurring.
 - b. If a projection made under subparagraph a above in March or May meets the conditions for a water shortage, then the Shoshone Outage Protocol will not apply during the period from that projection to the next projection. If a projection made in March or May does not meet the conditions for a water shortage, then the Shoshone Outage Protocol will apply during the period from that projection to the next projection; provided, however, that the Shoshone Outage Protocol will not apply during any period when the Shoshone Call is relaxed under the 2007 Shoshone Agreement.
 - c. If the projection made in June under subparagraph a above meets the conditions for a water shortage, then the Shoshone Outage Protocol will not apply during the remainder of the Irrigation Season that year. If the projection made in June does not meet the conditions for a water shortage, then the Shoshone Outage Protocol will apply during the remainder of the Irrigation Season that year.
2. Green Mountain Reservoir. The Signatories will cooperate with one another and use their best efforts to negotiate a separate agreement with the U. S. Bureau of Reclamation ("Reclamation") pursuant to which Reclamation would agree that if a Shoshone Outage occurs, it will continue to operate Green Mountain Reservoir as if the Senior Shoshone Call were on the river. Such agreement with Reclamation shall be subject to terms and conditions as to which the Signatories and Reclamation shall agree, including the following
- a. Any water released from storage in Green Mountain Reservoir would be debited to the appropriate account within the reservoir's 100,000 Acre-Foot Pool to which the releases were attributed, e.g., the historic users pool identified in paragraph 2 of Reclamation's January 23, 1984 Operating Policy for Green Mountain Reservoir,
 - b. Water that would have been released from the 52,000 Acre-Foot Replacement Pool had the Senior Shoshone Call been on the river shall be debited as discretionary power releases from the 100,000 Acre-Foot

Pool, unless other arrangements are made with Reclamation and the Northern Colorado Water Conservancy District.

- c. Reclamation will not be obligated to make releases from storage pursuant to this provision if water is not available in the 100,000 Acre-Foot Pool or if the total volume of Green Mountain Reservoir storage accounts is less than an amount to be agreed upon by the West Slope Signatories and Reclamation.

- 3. Outage During Winter Season. If a Shoshone Outage occurs during the period from November 11 to March 24 (Winter Season): (1) as a result of conditions other than scheduled maintenance on the Shoshone power plant facilities, and (2) if flows at the Dotsero Gauge are at or below 900 cfs, the River District and Denver Water agree that they will operate their systems as if the Senior Shoshone Call were on the river, subject to the following:

The Shoshone Outage Protocol will not apply fully to Shoshone Outages that occur during certain very dry Winter Seasons, when the overall storage in Denver Water's system is less than 79% of capacity on November 1. For purposes of this paragraph, the reservoirs that will be considered in determining overall storage are those reservoirs listed in Exhibit A to the 2007 Shoshone Agreement, but excluding any reservoirs under storage restrictions due to maintenance, repairs or orders from the Colorado State Engineer.

- a. If the storage is less than 79%, but more than 63%, then the Shoshone Outage Protocol will be applied at half the normal effect during that Winter Season. For example, if Denver Water would be required to bypass or replace 60 c.f.s. under the full operation of the Shoshone Outage Protocol, Denver Water would be required to bypass or replace 30 c.f.s. if the Shoshone Outage Protocol is applied at half the normal effect.
- b. If the storage is equal to or less than 63%, but more than 49%, then the Shoshone Outage Protocol will be applied at one-fourth the normal effect during that Winter Season.
- c. If the storage is equal to or less than 49%, then the Shoshone Outage Protocol will not be applied during that Winter Season.

- 4. The Signatories will cooperate with one another and use their best efforts to:

- a. Obtain the agreement of other diverters to participate in the Shoshone Outage Protocol.
- b. Obtain the agreement of the State of Colorado water administration officials to shepherd water released from upstream reservoirs or

otherwise bypassed from upstream water rights under the Shoshone Outage Protocol to the Grand Valley under a donated instream flow, a municipal recreation delivery contract or other acceptable arrangement, and to refrain from accounting for releases from storage under the Shoshone Outage Protocol as storable inflow.

C. Permanency of Shoshone Call Flows.

1. It is the goal of the Signatories to achieve permanent management of the flow of the Colorado River so that the flow mimics the Shoshone Call Flows, whether or not the Senior Shoshone Call is on the river and whether or not the Shoshone Power Plant remains operational.
2. Denver Water and the River District agree to operate their systems on a permanent basis under the Shoshone Outage Protocol described in Article VI.B, even if the Shoshone Power Plant ceases operations altogether, and regardless of whether the plant is acquired under Article VI.D, subject to the following conditions:
 - a. The relaxation provisions described in Article VI.E below remain in full force and effect.
 - b. The Shoshone Outage Protocol would not apply for 17 cumulative days during the Winter Season, to duplicate the effect of the current scheduled outages for maintenance.
3. The Signatories agree to use their best efforts to work with Xcel Energy, other diverters, Reclamation and the State of Colorado water administration officials to devise and implement a mechanism or combination of mechanisms that will permanently preserve the Shoshone Call Flows. In addition to the amounts provided in Article VI.E.1.c., Denver Water agrees to pay one-third of the costs, not to exceed \$100,000, incurred by West Slope Signatories to begin the process of implementing a mechanism to preserve the Shoshone Call Flows on a permanent basis. If total costs exceed \$300,000, the Signatories will confer with regard to further actions.

D. West Slope Acquisition of Shoshone Assets

1. West Slope water users believe that one means to ensure the permanent maintenance of the Shoshone Call is the acquisition and operation of the Shoshone Power Plant and Shoshone Water Rights (the "Shoshone Assets") by a West Slope governmental entity that is mutually acceptable to the West Slope Signatories ("West Slope Governmental Entity").
2. Within twenty-four (24) months after the effective date of this Agreement ("Investigation Period"), any of the West Slope Signatories may agree among

themselves and at their own cost, to undertake and complete an investigation of the viability of purchasing the Shoshone Assets and operating the Shoshone Power Plant (the "Initial Investigation"). The Initial Investigation may include direct negotiations with Xcel; the hiring of consultants necessary to evaluate the Plant's physical and financial condition and the value of the Shoshone Assets; an evaluation of the legal and regulatory requirements that must be met in order to transfer the Shoshone Assets to a West Slope Governmental Entity; an evaluation of the appropriate West Slope Governmental Entity to acquire and operate the Shoshone Assets and the steps necessary to create such an entity, if a new entity is to be created; and any other matters that the West Slope Signatories believe are necessary or desirable. Denver Water shall assist the West Slope Signatories upon request in undertaking and completing the investigations during the Investigation Period. The West Slope Signatories may agree among themselves to extend the Investigation Period.

3. If the Initial Investigation determines that it is feasible for a West Slope Governmental Entity to acquire and operate the Shoshone Assets and if Xcel is willing to sell or otherwise transfer the Shoshone Assets to a West Slope Governmental Entity, the West Slope Governmental Entity may pursue the transfer of the Shoshone Assets. Denver Water agrees that it will support such acquisition and will take such reasonable actions as may be necessary to assist the West Slope Governmental Entity in completing the acquisition of the Shoshone Assets. Upon notification by any of the West Slope Governmental Entity of its intent to acquire the Shoshone Assets, Denver Water agrees not to assert its right under paragraph 13 of the 2007 Shoshone Agreement regarding the method of disposition of the Shoshone Water Rights.
4. Denver Water shall not be obligated to pay any of the purchase price for the Shoshone Assets if other mechanisms are reasonably available to preserve the Shoshone Call Flows. If other mechanisms are not reasonably available, and purchase of the Shoshone Assets is determined to be the best viable option to preserve the Shoshone Call Flows, then Denver Water agrees to contribute to the purchase price in a negotiated amount that is proportionate to its share of the overall benefits created by the purchase, and reasonable as compared to the financial contributions to the purchase price by other parties.
5. If a West Slope Governmental Entity acquires the Shoshone Assets, the Shoshone Call relaxation provisions described in Section VI.E below, shall remain permanently in effect.

E. Relaxation of Shoshone Call.

1. Existing Call Relaxation Agreement. Denver Water and Xcel are parties to the 2007 Shoshone Agreement, a copy of which is attached as Attachment S.

The 2007 Shoshone Agreement currently is set to expire on December 31, 2032. The Signatories agree that the Shoshone Call relaxation provisions of the 2007 Shoshone Agreement shall remain in effect during its term and any renewal thereof.

- a. Denver Water agrees that, except as provided in Articles V and VI.E.2, it will not seek any relaxation of the Shoshone Call, other than a renewal of the specific provisions of the 2007 Shoshone Agreement beyond the year 2032.
- b. The West Slope Signatories will not oppose a renewal of the 2007 Shoshone Agreement, provided that the Shoshone Outage Protocol remains in effect.
- c. If the relaxation of the Shoshone Call is made permanent and Denver Water's yield is increased as a result, Denver Water agrees that 500 acre-feet of the increased yield (Relaxation Water) will be made available as potable water for use as blending water in a project using reusable return flows as described in Article I.B.2.e. The water supply created by the Relaxation Water will be added to the list of permissible fixed-amount contracts listed in Article I.B.1. In return for the availability of the Relaxation Water, the recipients must agree to pay the 2010 System Development Charge (SDC) applicable to potable water served outside the Combined Service Area. Denver Water will transmit the SDCs attributable to the Relaxation Water into a Relaxation Water Fund to be used (a) to contribute to the acquisition of the Shoshone Assets under Article VI.D; or (b) to implement a mechanism or combination of mechanisms that will permanently preserve the Shoshone Call Flows. It is anticipated that advance financing may be needed to accomplish the purposes described in this paragraph. The Signatories agree to consult with each other on an appropriate financing mechanism, should one be needed. It is also anticipated that the SDCs for the Relaxation Water may be paid pursuant to a payment schedule. If the Relaxation Water Fund is not fully expended for the purposes described in this paragraph, the money shall be used to contribute to the costs of a future cooperative project, determined by the River District and Denver Water to be beneficial to both the West Slope and the East Slope.

2. Expansion of Call Relaxation Period for Severe Drought Conditions. The 2007 Shoshone Agreement provides that the Shoshone Call may be relaxed during the period from March 14 until May 20, inclusive ("Call Relaxation Period"), under the conditions specified in the 2007 Shoshone Agreement. Denver Water desires to extend the Call Relaxation Period back into the winter months during extreme drought periods. The West Slope Signatories agree to support the amendment of the 2007 Shoshone Agreement to provide

for the relaxation of the Senior Shoshone Call down to 704 cfs (a “one-turbine call”) for an expanded period during the winter months (“Expanded Call Relaxation Period”), subject to the following terms and conditions:

- a. An Expanded Call Relaxation Period may occur under either of the following circumstances:
 - i. The Senior Shoshone Call may be relaxed to a one-turbine call beginning on November 11 if Denver Water has banned outdoor residential lawn watering beginning no later than August 1, and the ban has remained in effect continuously from its inception through November 11.
 - ii. The Senior Shoshone Call may also be relaxed to a one-turbine call beginning three (3) days after the date that the Denver Water Board formally adopts a drought declaration requiring that outdoor residential lawn watering be prohibited during the following irrigation season. The call relaxation under this section only applies to the period from November 11 until March 14 of the following year.
- b. Denver Water will pay for power replacement costs as provided for in the 2007 Shoshone Agreement.
- c. Denver Water will provide ten percent (10%) of the net water savings as defined in the 2007 Shoshone Agreement for use by West Slope Signatories. The West Slope Signatories will allocate the 10% as they may determine pursuant to any future agreement among them.
- d. The Expanded Call Relaxation Period will end the earlier of:
 - i. The date Denver Water rescinds its ban on outdoor residential lawn watering; or
 - ii. The date a Cameo Call is placed on the river; or
 - iii. March 14 of the year following implementation of the Extended Call Relaxation Period if implementation occurs on or prior to December 31; or March 14 of the year in which the Expanded Call Relaxation Period was implemented if implementation occurs on or after January 1.
- e. Any relaxation of the Shoshone Call after March 14 of any given year shall occur only as provided in the 2007 Shoshone Agreement.

3. Call Relaxation Mitigation. The \$500,000 to be placed in a special fund by Denver Water pursuant to Article III.G of this Agreement shall be managed and utilized as follows:
 - a. The proceeds of this fund will be used to help offset the impacts of, or prepare for, a call relaxation pursuant to the 2007 Shoshone Agreement or during the Expanded Call Relaxation Period, or a Shoshone Outage during the Winter Season pursuant to Section VI.B.3, above.
 - b. In order for a municipal water provider to access the funds described in this subsection, the provider must either be a signatory to this Agreement or must be located in Garfield County and agree to be bound by the terms and conditions of this Agreement.
 - c. The West Slope Signatories at their discretion may utilize funds available to any of them pursuant to Article III of this Agreement or the West Slope Fund to either replace or increase the funding for this special fund as may be necessary or desirable from time to time.
- F. Environmental and Recreational Pilot Project. The Signatories agree to evaluate a pilot project to determine the feasibility of implementing a partial Shoshone Call relaxation in non-critical winter months and dedicating the saved water to environmental and recreation purposes.
- G. Support for Glenwood Springs RICD. The City of Glenwood Springs currently has whitewater features located below the confluence of the Colorado River and the Roaring Fork River near Glenwood Springs, Colorado. Glenwood Springs currently does not have an adjudicated water right for these white water features but anticipates filing for one at some point in the future. In addition, Glenwood Springs anticipates creating additional white water features on the reach of the Colorado River between the Shoshone Power Plant and South Canyon on the main stem of the Colorado River. Denver Water will not oppose the filing of a water rights application for a Recreational In-Channel Diversion ("RICD") for the existing and proposed structures by Glenwood Springs; provided that any such application filed for any proposed structure above the confluence of the Roaring Fork and Colorado Rivers does not: (1) Claim a flow rate that exceeds the amount of water needed to satisfy the senior Shoshone Call for 1,250 cfs at the Dotsero gage; (2) Seek an amount of water in excess of that needed to replicate historic operations under the Senior Shoshone Call; or (3) Impair Denver's ability to divert under Article VI.

As to structures located below the confluence of the Roaring Fork and Colorado Rivers, Denver and Glenwood Springs recognize that the contributing flows of the two rivers make it difficult to predict the exact effect of a RICD on flows above the confluence. Glenwood Springs agrees to consult with Denver regarding such application prior to filing.

ARTICLE VII
Bilateral Commitments

- A. Water Rights Peace Pact. With regard to all conditional water rights presently owned by the Signatories to this Agreement, and listed in Attachment T, the Signatories agree to withdraw any statements of opposition in each others' pending diligence filings and not to oppose each other's pending or future diligence applications, including applications to make the listed conditional rights absolute, provided, however, that the parties may file statements of opposition to such applications for the limited purpose of ensuring compliance with the obligations of this agreement.
- B. Water Conservation. The Signatories to this Agreement will cooperate to develop and promote best management practices for water conservation appropriate for the various types of water use and regional geographic locations within the state. The Signatories agree to adopt any best management practices developed under this paragraph for their own water uses.
- C. Compact Curtailment Plan. The Signatories agree to cooperate in good faith toward the development of a plan to avoid a potential curtailment of existing Colorado water rights under the provisions of the 1922 Colorado River Compact and the 1948 Upper Colorado River Compact, and to mitigate the impacts of any unavoidable curtailment. If joint efforts do not result in agreement on such a plan, each Signatory will take such actions as it may deem necessary to protect its water rights from curtailment.
- D. Freedom to Operate. So long as the Signatories meet all of their obligations under this Agreement, their independent legal obligations and any contemporaneous implementing agreements, the Signatories agree that they do not have an obligation to operate their system or to conduct their decision-making in any particular way.
- E. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Signatories, and nothing contained in this Agreement shall give or allow any such claim to a right of action by any third person. It is the expressed intention of the Signatories that any person other than a signatory receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- F. No Precedent. The various commitments and agreements of the Signatories to this agreement are premised on circumstances and considerations unique to this Agreement. Nothing in this Agreement shall be construed as establishing any legal precedent regarding any matters not expressly addressed in this Agreement. The Signatories agree that they do not intend this Agreement to have the effect of precedent or preclusion on any factual or legal issues in any matter not expressly addressed in this Agreement.
- G. Risk Sharing. A fundamental premise of this Agreement is that the Signatories will not actively seek to undermine, or encourage others to undermine, the Signatories' respective interests and resources that have been committed, compromised, dedicated, or otherwise addressed in this Agreement. For purposes of this paragraph, "Adverse Action" means an action of a legislature, court, administrative agency, regulatory body or other governmental

entity that would cause a material adverse impact to a Signatory's interests or resources that have been committed, compromised or otherwise addressed in this Agreement. In the event that an Adverse Action is proposed or is likely to occur, the Signatory whose interests or resources would suffer a material adverse impact will notify the other Signatories. The Signatories will meet and discuss in good faith the potential detrimental effect of such Adverse Action, with the goal of determining whether any action by one or more Signatories could avoid the Adverse Action or mitigate its impact on the affected Signatory. Each party agrees to evaluate in good faith whether it can implement changes in its operations or undertake other efforts that would achieve this goal, and to implement any such efforts as may be agreed to by the Signatories.

- H. Preservation of Governmental Powers. Except as specifically provided herein, nothing in this Agreement shall be construed as a limitation on or waiver of any review, approval, or permit authority, or a predetermination of any action taken thereunder, by any governmental or quasi-municipal entity including, without limitation, the legislative or quasi-judicial power or authority of Eagle, Grand and Summit Counties and the City and County of Denver, acting by and through its Board of Water Commissioners.
- I. No Property Interest Created. Any rights created by this Agreement are contractual rights. This Agreement does not create and shall not be construed to create or convey any property interest, including any covenant, easement or servitude, in the real property of any Signatory.
- J. Implementation of this Agreement.
 - 1. In Article IV.A.1, the West Slope Signatories agree not to contest or to stipulate to the entry of the two proposed decrees included in Attachment N, in Case No. 2006CW255 (Roberts Tunnel – N1) and Case No. 2003 CW039 (Dillon Refill – N2), and to support and cooperate in any proceedings necessary to implement the provisions of this Agreement related to the Blue River Decree. The Signatories agree that, upon execution of this Agreement, Denver Water will file an amended application in 2006CW255 (Roberts Tunnel) for approval of the proposed Roberts Tunnel decree in Attachment N1 and publish supplemental notice thereof in the Division 5 Water Court. The Signatories agree that the amended application in Case No. 2006CW255 and the proposed Roberts Tunnel decree in Attachment N1 are among the mechanisms that will be used to implement Article III.A.3. If statements of opposition are filed as a result of the supplemental notice, the Signatories agree to cooperate to resolve any issues raised by such statements and to finalize the proposed Robert Tunnel decree in 2006 CW255.
 - 2. The Signatories agree that the proposed Roberts Tunnel decree in Attachment N1 will not be presented to the federal court for entry of final judgment until the earlier of the following:
 - a. The U. S. Bureau of Reclamation has executed the “separate agreement” described in Article VI.B.2, pursuant to which it agrees “that if a Shoshone

Outage occurs, it will continue to operate Green Mountain Reservoir as if the Senior Shoshone Call were on the river.”

- b. The Signatories agree that the goal of Article VI.C.3 has been achieved, such that the Signatories, other water users, and the State of Colorado water administration officials have devised and implemented “a mechanism or combination of mechanisms that will permanently preserve the Shoshone Call Flows.” If the agreed-upon mechanism requires a water court application, achievement of the goal for purposes of this paragraph 2.b is defined as the entry of a final decree approving the mechanism by the water court, which is no longer subject to appeals.
 3. Several provisions of this Agreement are contingent upon the Resolution of Blue River Decree Issues, which is defined in Article III.A.2 and the Definitions as the entry of final judgments and decrees no longer subject to appeals in 06CW255 and 03CW039. The Signatories acknowledge that any delay required by Article VII.J.2 above in the entry of a final judgment will cause an equivalent delay in implementing the various provisions of this Agreement that are contingent upon Resolution of Blue River Decree Issues.
 4. The Signatories acknowledge that they are contractually bound upon the Effective Date of this Agreement, regardless of any delay in the entry of a final judgment in Case No. 06CW255 required by Article VII.J.2 above.
 5. The Signatories agree to coordinate and provide reasonable assistance to each other in obtaining any necessary license, permit or approval to carry out this Agreement, including those described in this Article VII.J. The Signatories agree that not every issue and problem can be foreseen and dealt with in advance, and that cooperation will be needed to handle future events that might impair implementation of particular provisions of this Agreement. If such an impairment of a particular provision occurs, the Signatories agree to cooperate in good faith in a reasonable manner to develop alternative means to accomplish as nearly as possible the desired outcome of the provision in question.
- K. Severability or Reform of Invalid Provisions. Wherever possible each provision of this Agreement shall be interpreted and implemented in such manner as to be effective and valid under applicable law. If any provision or portion of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in full force and effect unless the remaining provision’s effectiveness is explicitly dependent upon the invalid or unenforceable provision. The Signatories agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision. The provisions of this Agreement shall be reasonably and liberally construed to achieve the intent of the Signatories.
- L. Venue. Venue for resolution of any dispute of water matters under this Agreement resulting in litigation shall be the District Court, Colorado, for the appropriate Water Division or federal district court, as appropriate under the Blue River Decree. Venue for all other matters under this Agreement resulting in litigation shall be the Colorado District Court for the county in which any defendant resides.

- M. Conflict Resolution. The Signatories agree that if a dispute arises between Denver Water and a West Slope Signatory, the affected Signatories will confer in good faith and endeavor to resolve the concern. If the affected Signatories reach an impasse, they will select a neutral third party mediator who would seek an acceptable voluntary solution to the conflict. For conflicts that involve a technical or scientific matter, the neutral third party mediator may select an independent technical or scientific expert, acceptable to the Signatories involved in the mediation, to review and make a recommendation on the matter. If the conflict cannot be resolved through the efforts of the mediator, then the affected Signatories may pursue any available legal or administrative recourse.
- N. Information Sharing. The Signatories shall maintain records in accordance with their normal procedures with regard to their respective obligations under this Agreement, and shall make such records available to each other upon reasonable request.

Article VIII
Definitions

TERM	DEFINITION
1985 Summit Agreement	Agreement between Summit County Board of Commissioners and Denver Water, dated September 19, 1985
1992 Clinton Agreement	Clinton Reservoir - Fraser River Water Agreement, dated July 21, 1992
2007 Shoshone Agreement	Agreement between Denver Water and Public Service Company of Colorado d/b/a Xcel Energy, effective January 1, 2007, concerning reduction of the Shoshone Call
Abstention Provisions	a. Abstain permanently from pursuing or participating in any project that would result in any new depletion from the Colorado River and its tributaries above the confluence with the Gunnison River, including without limitation the Eagle River (with the exception of the Eagle River MOU for Aurora and the Upper Colorado Cooperative Project). Pursuing or participating in a project means seeking formal approval of any aspect of a project in a regulatory or judicial forum, but does not include conducting various planning activities such as feasibility studies. b. Abstain from pursuing or participating in any project that would result in diversions from the Colorado River Basin within Water Divisions Nos. 4 and 6, or downstream from the confluence of the Gunnison and Colorado Rivers in Water Division No. 5 for a period of 25 years. Pursuing or participating in a project means seeking formal approval of any aspect of a project in a regulatory or judicial forum, but does not include conducting various planning activities such as feasibility studies. This abstention period would be reduced to 15 years if, within the first 10 years following execution of this agreement, the NEPA permitting process for the Upper Colorado Cooperative Project has not been initiated. If construction of a cooperative project commences within 20 years from the date of this agreement, then the abstention period under this paragraph would be extended for an additional 10 years (a total of 35 years).
Blue River Decree	The stipulations, judgments, decrees and orders entered in Consolidated Civil Nos. 2782, 5016 and 5017, United States District Court, District of Colorado including determinations of diligence and to make absolute.
Cameo Call	A request to the state water officials to curtail diversions of junior water rights to satisfy any or all of the water rights legally divertible for irrigation and power purposes at the headgates of the Grand Valley Project's Government Highline Canal near Cameo and the Grand Valley

	Irrigation Company's Grand Valley Canal near Palisade. The water rights divertible at these headgates are owned and/or operated by Grand Valley Irrigation Company, Grand Valley Water Users Association, Mesa County Irrigation District, Palisade Irrigation District and Orchard Mesa Irrigation District and are listed on Exhibits A and B to the Stipulation and Agreement dated as of September 4, 1996, in the "Orchard Mesa Check Case," Case No. 91CW247.
Eagle River MOU	The agreement effective December 1, 1997 among the Cities of Aurora and Colorado Springs, Colorado River Water Conservation District, Cyprus Climax Metals Company, and the Vail Consortium consisting of the Eagle River Water and Sanitation District, Upper Eagle Regional Water Authority and Vail Associates, Inc.
Effective Date	The first business day at least seven days after the last Signatory has signed this Agreement.
Environmental Enhancement Project	A project that involves aquatic and riparian species habitat protection or enhancement; wetland creation or enhancement for (1) mined land reclamation or (2) other water quality protection; or watershed protection, including, without limitation, fuel reduction, erosion control or revegetation.
Fraser Collection System	Denver's Water system of diversions, canals, tunnels and other infrastructure located in the headwaters of the Fraser River Basin in Grand County
Grand County Operating Plan	Exhibit B to the 1992 Clinton Agreement
Grand County Water Users	Those entities listed in paragraph 4(c) of the Clinton Agreement
IRP	Denver Water's Integrated Resource Plan, prepared pursuant to the Denver Water Board's October 15, 1996 water resource statement, published in 1997 and updated in 2002
Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project	The permits necessary for the Moffat Project are defined to be the 404 permit by the Corps of Engineers; the license amendment by FERC; the section 4(e) conditions and special use permit by the U. S. Forest Service; the 401 certification from the Colorado Water Quality Control Division; and the Boulder County 1041 permit, if one is required. The Denver Water Board must decide, in its sole discretion, whether to accept the permits within 6 months after the last final agency action regarding the permits on this list. If a permit is appealed during the six-month approval period, the deadline for Denver Water to decide whether to accept the permits will be extended until 30 days after the final resolution of the appeal.
Joint Use Project	A water supply project located on the East Slope agreed to by Denver Water and one or more East Slope water suppliers

Moffat Project	Denver Water's Moffat Collection System Project, which is the subject of permit application NWO-2002-80762-DEN, filed with the U. S. Army Corps of Engineers
Moffat Project becomes operational	The capacity of Gross Reservoir has been enlarged, and water has been diverted and stored in the enlarged portion of Gross Reservoir
Resolution of Blue River Decree Issues	The entry of final judgments and decrees in 06CW255, Water Division 5, and in 49-cv-2782, U.S. District Court, and in 03CW039, Water Division 5, that are no longer subject to appeals, in the form of the proposed decrees set forth as Attachment N to this Agreement.
Reusable Return Flows	Flows that return to the river system after the initial beneficial use of water, including reusable effluent, which may be reused or successively used, either directly or by exchange.
Reuse	Use of return flows or effluent directly or by exchange for the same or a different purpose as the initial use.
Senior Shoshone Call	A request to the state water officials to curtail diversions of junior water rights to produce a flow at the Dotsero Gauge of 1250 cfs for power purposes at the Shoshone Power Plant
Service Area	Denver Water's 2010 Service Area as depicted in the map in Attachment B.
Shoshone Call	A request to the state water officials to curtail diversions of junior water rights to produce a flow at the Dotsero Gauge of 1408 cfs for power purposes at the Shoshone Power Plant.
Shoshone Junior Rights	The water rights decreed for and associated with the Shoshone Power Plant (aka the Glenwood Power Canal), adjudicated for 158 cfs on February 7, 1956, with an appropriation date of May 15, 1929.
Shoshone Senior Right	The water right decreed for and associated with the Shoshone Power Plant (aka the Glenwood Power canal), adjudicated for 1,250 cfs on December 9, 1907 with and appropriation date of January 7, 1902.
Signatories	Denver Water, Colorado River Water Conservation District, Middle Park Water Conservancy District, Boards of County Commissioners of Eagle, Grand, and Summit Counties, Clinton Reservoir Company, Eagle Park Reservoir Company, Eagle River Water and Sanitation District, Upper Eagle Regional Water Authority, Grand Valley Water Users Association, Orchard Mesa Irrigation District, Ute Water Conservancy District, Palisade Irrigation District, Mesa County Irrigation District, Grand Valley Irrigation Company, City of Glenwood Springs, and City of Rifle.
Upper Colorado Cooperative Project	A water supply project located on the West Slope, agreed to by Denver Water and the West Slope Signatories to this Agreement, and designed to

	produce water for use on the East and West Slopes, including at least 20,000 acre-feet of average annual diversions for use on the East Slope.
West Slope Charge	A per-acre-foot charge that East Slope recipients of water under Articles I.B.1, I.B.2.e, I.B.3, and I.B.4 agree to pay into the West Slope Fund, to be collected by Denver Water pursuant to a West Slope Charge Agreement, in substantially the form of Attachment D. The payment will be equivalent to the stated percentage of the then-current standard rate for nonpotable or potable water, as applicable, charged by Denver Water to customers outside its Service Area.
West Slope Fund	A fund to be established within six months of the Effective Date of this Agreement to serve as the depository of payments of the West Slope Charge. The West Slope Fund will be managed by the Colorado River Water Conservation District, or other manager acceptable to the parties, and will be used solely for water supply, watershed and water quality projects that benefit the West Slope. No money from the West Slope Fund may be used for litigation costs. a. One-fifth of the West Slope Charge imposed under Articles I.B.1, I.B.2.e, and I.B.4, or 2.5% of the 12.5% (Forest Restoration Funds) will be dedicated to accomplishing the following activities in the watersheds in which Denver Water's facilities in Grand and Summit counties are located: Forest thinning, prescribed fire, tree planting, riparian vegetation improvements, road decommissioning, road improvements, mine reclamation, and other forest and watershed health treatments that benefit water flows or water quality within and below the watershed; and Aquatic restoration or improvement activities that address sediment loading or other water flow or water quality issues caused directly or indirectly by the pine beetle infestation or other forest health issues. b. The Forest Restoration Funds shall be split equally into two interest-bearing accounts, one for Summit County and one for Grand County, to be managed by the River District. The River District shall distribute Forest Restoration Funds from the accounts as directed by the counties. c. During the term of the Memorandum of Understanding between Denver Water and the USDA, Forest Service Rocky Mountain Region (USFS) dated July 29, 2010 (MOU), the Forest Restoration Funds shall be used for projects consistent with USFS activities in the Sulphur and Dillon Ranger Districts that are included in the August 19, 2010 5-Year Operating Plan that supports the MOU, as determined by agreement between Denver Water and the Board of

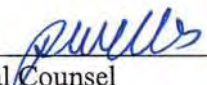
	County Commissioners of each county for projects located in that county. This use of Forest Restoration Funds will be in addition to, and will not reduce the total amount of planned contributions of Denver Water and USFS under the MOU and the Operating Plan. The Forest Restoration Funds may be used on non-USFS lands. d. Following termination of the MOU, Forest Restoration Funds from Grand County's account will be added to the resources available for use in the Learning by Doing Cooperative Effort established in Article III.E.6. Decisions on how best to use the funds will follow the decision process outlined in the Learning by Doing IGA. The use of Forest Restoration Funds from Summit County's account will be determined by agreement between Summit County and Denver Water.
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Colorado River Cooperative Agreement
Counterpart Signature Page

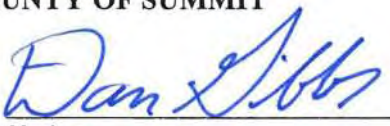
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Secretary

APPROVED AS TO FORM:


General Counsel

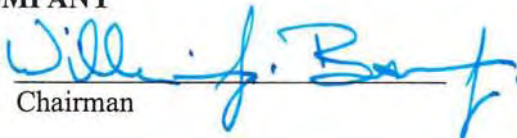
BOARD OF COUNTY COMMISSIONERS,
COUNTY OF SUMMIT

By: 
Chairman

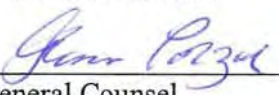
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By: 
Gary Martinez, Summit County Manager

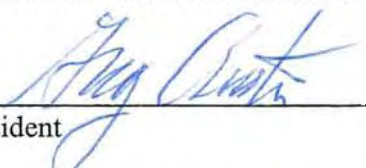
CLINTON DITCH & RESERVOIR
COMPANY

By: 
Chairman

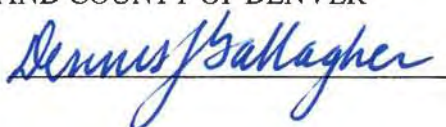
AND ITS ATTORNEYS

By: 
General Counsel

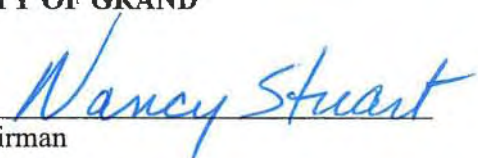
CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS


President

REGISTERED AND COUNTERSIGNED:
Dennis J. Gallagher, Auditor
CITY AND COUNTY OF DENVER

By: 

BOARD OF COUNTY COMMISSIONERS,
COUNTY OF GRAND

By: 
Chairman

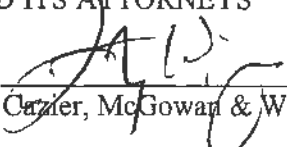
ATTEST:

By: 
Grand County Clerk and Recorder

MIDDLE PARK WATER CONSERVANCY
DISTRICT

By: 
President

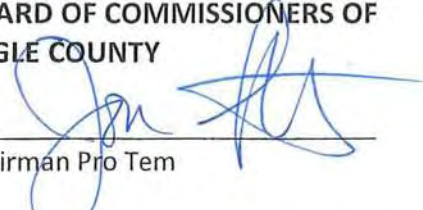
AND ITS ATTORNEYS

By: 
Cazier, McGowan & Walker

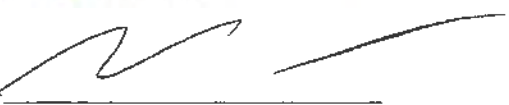
5/15/2012

Colorado River Cooperative Agreement
Counterpart Signature Page

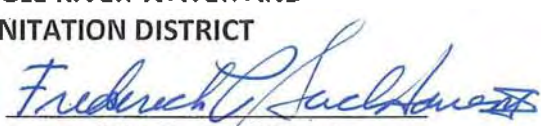
BOARD OF COMMISSIONERS OF
EAGLE COUNTY

By: 
Chairman Pro Tem

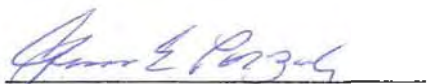
AND ITS ATTORNEYS

By: 

EAGLE RIVER WATER AND
SANITATION DISTRICT

By: 
Chairman of the Board of Directors

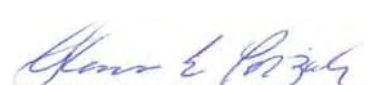
AND ITS ATTORNEYS

By: 
Glenn E. Porzak
Porzak Browning & Bushong LLP

UPPER EAGLE REGIONAL WATER
AUTHORITY

By: 
Chairman of the Board of Directors

AND ITS ATTORNEYS

By: 
Glenn E. Porzak
Porzak Browning & Bushong LLP

EAGLE PARK RESERVOIR
COMPANY

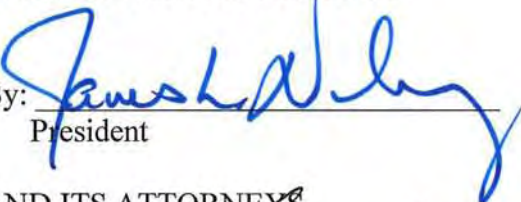
By: 
President

AND ITS ATTORNEYS

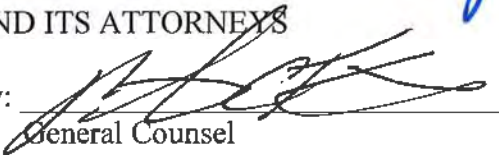
By: 
Glenn E. Porzak
General Counsel

Colorado River Cooperative Agreement
Counterpart Signature Page

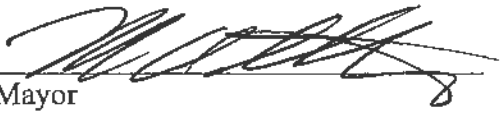
**COLORADO RIVER WATER
CONSERVATION DISTRICT**

By: 
President

AND ITS ATTORNEYS

By: 
General Counsel

CITY OF GLENWOOD SPRINGS

By: 
Mayor

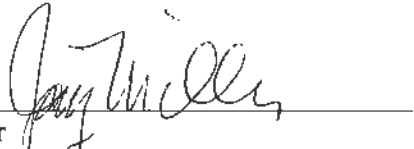
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By: 
City Clerk

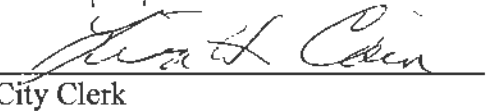
APPROVED AS TO FORM:

By: 
Karp Neu Hanlon PC

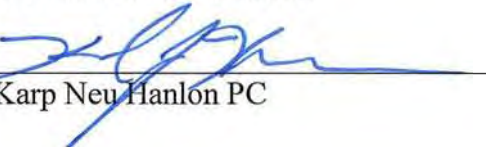
CITY OF RIFLE

By: 
Mayor

ATTEST:

By: 
City Clerk

APPROVED AS TO FORM:

By: 
Karp Neu Hanlon PC



Colorado River Cooperative Agreement
Counterpart Signature Page

GRAND VALLEY IRRIGATION COMPANY

By: Robert Dugard 9-18-13
President Date

AND ITS ATTORNEYS

By: [Signature]
Frederick G. Aldrich
Aldrich Law Firm, LLC

GRAND VALLEY WATER USERS
ASSOCIATION

By: D. Kim Albertson 8/28/2013
President Date

AND ITS ATTORNEYS

By: Mark A. Hermundstad 9/6/2013
Mark A. Hermundstad
Williams, Turner & Holmes, P.C.

MESA COUNTY IRRIGATION DISTRICT

By: Dave Voorhees 9/9/13
President Date

AND ITS ATTORNEYS

By: Nathan A. Kever 9/5/13
Nathan A. Kever
Dufford, Waldeck, Milburn & Krohn, LLP

PALISADE IRRIGATION DISTRICT

By: John Kryman 9/9/13
President Date

AND ITS ATTORNEYS

By: Nathan A. Kever 9/5/13
Nathan A. Kever
Dufford, Waldeck, Milburn & Krohn, LLP

ORCHARD MESA IRRIGATION DISTRICT

By: Harvey Keller 8-29-13
President Date

AND ITS ATTORNEYS

By: Mark A. Hermundstad 9/6/2013
Mark A. Hermundstad
Williams, Turner & Holmes, P.C.

UTE WATER CONSERVANCY DISTRICT

By: [Signature] 8/30/13
President Date

AND ITS ATTORNEYS

By: Mark A. Hermundstad 9/6/2013
Mark A. Hermundstad
Williams, Turner & Holmes, P.C.

Attachment A

Division/District and Name of Structure or Water Right Name		Source	Appropriation Date	Decree Date	Amount	Case No.
Water Division No. 1						
	Lawn Irrigation Return Flow Project	Reusable return flow	N/A	Pending	200 cfs	2004CW121
District No. 2 Storage Rights						
	Denver Water/South Adams County Reservoir Water Supply Project					
	North Reservoir Complex - Fill and refill	South Platte River	10/15/1996	8/8/2011	17,747 AF	2001CW286
	South Reservoir Complex - Fill and refill	South Platte River	10/15/1996	8/8/2011	2,400 AF	2001CW286
	South Reservoir Complex - Enlargement	South Platte River	10/15/1996	Pending	1,129 AF	2009CW264
	Lupton Lakes Storage Complex - Fill and refill	South Platte River	7/12/2006	Pending	11,400 AF	2007CW322
District No. 2 Direct Flow Rights						
	DIA Wetlands	South Platte River trib flow	4/1/2000	12/27/2006	22.16 AF	2003CW129
	DIA Wetlands	Box Elder Creek	7/1/2000	1/14/2004	16.32 AF	2002CW386
	Gravel Pit Exchange	South Platte River	10/15/1996	Pending	80 cfs	2009CW123
	Recycling Plant Intake	South Platte River	10/15/1996	12/6/2011	70.0 cfs	2001CW287
	Recycling Plant Intake exch. and subs.	South Platte River	10/15/1996	12/6/2011	70.0 cfs	2001CW287
	5K Direct Flow Right	South Platte River	10/31/1999	10/25/2011	150 cfs	2001CW285
	Farmers and Gardeners Ditch	South Platte River	03/15/1863	04/28/1883	13.72 cfs ^K	2009CW84
	1st Enlargement	South Platte River	04/01/1874	04/28/1883	10.28 cfs ^K	2009CW84
District No. 6 Storage Rights						
	Gross Reservoir					
	Storage Right	South Boulder Creek	05/10/1945	09/28/1953	113,078 AF ^D	C.A.12111
	Refill Right	South Boulder Creek	05/10/1945	09/28/1953	113,078 AF ^D	C.A.12111
	Ralston Creek Reservoir					
	Priority 31 Storage Right	South Boulder Creek	01/01/1930	09/28/1953	11,000 AF	C.A.12111
	Priority 31 Storage Right	South Boulder Creek	10/31/1932	09/28/1953	1,758 AF	C.A.12111
District No. 6 Direct Flow Rights						
	South Boulder Diversion Conduit	South Boulder Creek	01/01/1930	09/28/1953	461 cfs	C.A.12111
District No. 7 Storage Rights						
	Ralston Creek Reservoir	Ralston Creek	01/01/1930	10/18/1978	7,394 AF	W-7561
	Ralston Creek Reservoir	Ralston Creek	01/01/1930	10/18/1978	3,382 AF ^H	W-7561
	Long Lake No. 1 (Upper)	Ralston Creek	05/29/1873	10/04/1884	890 AF	Not given
	Long Lake No. 1 (Upper)	Ralston Creek	06/06/1909	05/13/1936	557 AF	C.A. 60052
	Long Lake No. 1 (Upper)	Ralston Creek	06/06/1909	05/13/1936	72 AF ^H	C.A. 60052
	Long Lake No. 2 (Lower)	Ralston Creek	06/06/1909	05/13/1936	292 AF	C.A. 60052
District No. 7 Direct Flow Rights						
	Ralston Creek Intake	Ralston Creek	01/01/1930	10/18/1978	212 cfs	W-7561
	Ralston Creek Intake	Ralston Creek	01/01/1930	10/18/1978	148 cfs ^H	W-7561
District No. 8 Storage Rights						
	Chatfield Reservoir					
	Storage	South Platte River	12/28/1977	08/29/1994	27,428 AF ^D	W-8783-77
	Exchange	South Platte River	12/28/1977	08/29/1994	27,428 AF ^D	W-8783-77
	Marston Reservoir	South Platte River	04/01/1911	06/16/1930	19,795 AF	C.A. 807

Attachment A

Division/District and Name of Structure or Water Right Name		Source	Appropriation Date	Decree Date	Amount	Case No.
	Platte Canyon Reservoir	South Platte River	09/05/1902	06/16/1930	905 AF	C.A. 807
	Strontia Springs Reservoir	South Platte River	03/21/1962	12/19/1983	7,700 AF	80CW406
	Refill Right	South Platte River	03/21/1962	02/28/1990	7,864 AF	87CW116
	District No. 8 Direct Flow Rights					
	Brown Ditch	South Platte River	11/30/1862	04/17/1990	8.75 cfs	86CW014
	Cherry Creek Park Well No. 1	Cherry Creek Alluvium	07/25/1989	10/24/2006	98 gpm	89CW198
	Cherry Creek Galleries (Well O)	Cherry Creek	05/01/1887	06/16/1930	14.02 cfs	C.A. 807
	Cherry Creek Galleries (Well O) Aug. Plan	Cherry Creek	05/01/1887	10/5/2007	2.45 cfs	2003CW234
	Exchange within Denver Water System	South Platte River	07/04/1921	05/18/1972	3,000 cfs ^{D.E.I}	C.A. 3635
	Four Mile House Well No. 1	Cherry Creek Alluvium	8/31/1948	8/29/1983	0.44 cfs	83CW095
	Snell Ditch	Cherry Creek Alluvium	9/30/1871	10/30/1991	31 gpm	85CW325
	Success Ditch	Cherry Creek Alluvium	4/30/1872	10/30/1991	169 gpm	85CW325
	Garland Park Well No. 1	Cherry Creek Alluvium	9/20/1991	3/7/2007	525 gpm	93CW110
	Success Ditch	Cherry Creek Alluvium	4/30/1872	3/7/2007	525 gpm	85CW325
	Intake Rights - Divertible at Conduit No. 20 Intake and Strontia Springs Reservoir/Conduit No. 26 (Foothills Tunnel) and other points					
	Transfer from Platte Canyon Ditch	South Platte River	07/30/1861	01/16/1984	4.70 cfs	80CW039
	Transfer from Platte Canyon Ditch	South Platte River	12/30/1863	01/16/1984	24.50 cfs	80CW039
	Transfer from Platte Canyon Ditch	South Platte River	12/30/1864	01/16/1984	17.30 cfs	80CW039
	Transfer from Borden Ditch	South Platte River	05/01/1866	01/16/1984	8.70 cfs	80CW039
	City Right	South Platte River	12/20/1870	01/16/1984	3.00 cfs	80CW039
	City Right	South Platte River	12/31/1874	01/16/1984	3.78 cfs	80CW039
	Transfer from Weed Ditch	South Platte River	05/01/1875	01/16/1984	2.31 cfs	80CW039
	City Right	South Platte River	09/10/1878	01/16/1984	13.22 cfs	80CW039
	Transfer from Weed Ditch	South Platte River	06/01/1879	01/16/1984	3.65 cfs	80CW039
	City Right	South Platte River	06/30/1880	01/16/1984	10.00 cfs	80CW039
	Transfer from Love and Raynor Ditch	South Platte River	05/08/1881	01/16/1984	1.71 cfs	80CW039
	Transfer from Little Channel Ditch	South Platte River	05/01/1882	01/16/1984	0.48 cfs	80CW039
	Transfer from Island Ditch	South Platte River	05/20/1885	01/16/1984	2.04 cfs	80CW039
	City Right	South Platte River	10/01/1889	01/16/1984	12.38 cfs	80CW039
	City Right	South Platte River	09/01/1892	01/16/1984	25.33 cfs	80CW039
	City Right	South Platte River	05/01/1899	01/16/1984	38.08 cfs	80CW039
	City Right	South Platte River	12/06/1910	01/16/1984	42.72 cfs	80CW039
	Foothills Tunnel and Conduit No. 26	South Platte River	03/21/1962	12/19/1983	774 cfs ^{D.I}	80CW408
	John F. Kennedy Golf Course Wells and Plan for Augmentation					
	John F. Kennedy Well 1 (51765-F)	Cherry Creek	01/13/1961	06/24/1985	1.23 cfs	81CW404
	John F. Kennedy Well 2 (51764-F)	Cherry Creek	02/13/1961	06/24/1985	1.53 cfs	81CW404
	John F. Kennedy Well 3 (42580-F)	Cherry Creek	03/27/1990	12/04/2006	700 gpm	93CW033
	JFK Augmentation Plan	Cherry Creek	01/13/1961	06/20/1986	535 AF	81CW405
	JFK Golf Course Expansion	Cherry Creek	03/27/1990	12/04/2006	571 AF	93CW033
	Last Chance Ditch No. 2					
	Priority No. 14	South Platte River	12/30/1863	02/24/1993	1.74 cfs	92CW014
	Priority No. 19	South Platte River	12/30/1865	02/24/1993	0.2 cfs	92CW014
	Priority No. 39	South Platte River	03/03/1868	02/24/1993	6.54 cfs	92CW014
	Nevada Ditch (Excludes amounts diverted at Farnell Lane Wells)					
	Priority No. 4	South Platte River	08/30/1861	08/17/1992	13.06 cfs	90CW172
	Priority No. 19	South Platte River	12/30/1865	08/17/1992	16.0 cfs	90CW172

Attachment A

Division/District and Name of Structure or Water Right Name		Source	Appropriation Date	Decree Date	Amount	Case No.
	Overland Golf Course Pumping Plant and Plan for Augmentation					
	Epperson Ditch	South Platte River	05/01/1860	04/26/1993	0.34 cfs	91CW030
	Overland Golf Course Pumping Plant	South Platte River	05/09/1958	02/17/1993	2.25 cfs	91CW029
	Plan for Augmentation	South Platte River		05/24/1993	2.25 cfs	91CW028
	District No. 9 Storage Rights					
	Harriman Reservoir Priority No 1 Original Cons.	Bear & Turkey Creeks	05/01/1873	02/04/1884	18.09 cfs	C.A. 6832
	Harriman Reservoir Priority No 2 1st Enlargement	Bear & Turkey Creeks	04/01/1875	02/04/1884	37.58 cfs	C.A. 6832
	Marston Reservoir	Bear Creek	08/15/1892	09/24/1935	19,795 AF	C.A. 91471
	Soda Lakes Reservoirs					
	Priority No. 5 (Domestic)	Bear Creek	02/11/1893	09/24/1935	598 AF	C.A. 91471
	District No. 9 Direct Flow Rights					
	Harriman (Arnett) Ditch					
	Priority No. 21	Turkey Creek	04/15/1868	05/13/1998	5.7 cfs	91CW103
	Priority No. 23	Bear Creek	03/16/1869	05/13/1998	4.21 cfs	91CW103
	Priority No. 25	Bear Creek	05/01/1871	05/13/1998	13.54 cfs	91CW103
	Priority No. 30	Bear Creek	03/01/1882	05/13/1998	6.82 cfs	91CW103
	Priority No. 67 Domestic (irrigation season)	Bear Creek	12/05/1889	09/24/1935	25.50 cfs	C.A. 91471
	Priority No. 68 Domestic (non-irrigation season)	Bear Creek	12/05/1889	09/24/1935	148.35 cfs	C.A. 91471
	Priority No. 69 Domestic (irrigation season)	Turkey Creek	02/01/1890	09/24/1935	4.805 cfs	C.A. 91471
	Priority No. 70 Domestic (non-irrigation season)	Turkey Creek	02/01/1890	09/24/1935	29.97 cfs	C.A. 91471
	Priority No. 77 Domestic (irrigation season)	Bear Creek	08/15/1892	09/24/1935	19.16 cfs	C.A. 91471
	Priority No. 78 Domestic (irrigation season)	Turkey Creek	08/15/1892	09/24/1935	4.50 cfs	C.A. 91471
	Priority No. 79 Domestic (non-irrigation season)	Bear Creek	08/15/1892	09/24/1935	76.65 cfs	C.A. 91471
	Priority No. 80 Domestic (non-irrigation season)	Turkey Creek	08/15/1892	09/24/1935	18.03 cfs	C.A. 91471
	Hodgson Ditch					
	Priority No. 3	Bear Creek	06/01/1861	05/13/1998	1.55 cfs	91CW102
	Priority No. 9	Bear Creek	05/31/1862	05/13/1998	0.39 cfs	91CW102
	Pioneer-Union Ditch					
	Priority No. 5	Bear Creek	12/10/1861	05/13/1998	4.98 cfs	91CW100
	Priority No. 11	Bear Creek	09/01/1862	05/13/1998	3.26 cfs	91CW100
	Priority No. 15	Bear Creek	03/15/1865	05/13/1998	10.09 cfs	91CW100
	Robert Lewis Ditch	Bear Creek	10/01/1865	05/13/1998	6.96 cfs	91CW105
	Simonton Ditch	Bear Creek	12/25/1860	05/13/1998	19.67 cfs	91CW106
	Warrior Ditch					
	Priority No. 4	Bear Creek	12/01/1861	05/13/1998	4.46 cfs	91CW109
	Priority No. 8	Turkey Creek	04/16/1862	05/13/1998	1.03 cfs	91CW109
	Priority No. 14	Bear Creek	10/31/1864	05/13/1998	9.21 cfs	91CW109
	Priority No. 16	Bear Creek	04/01/1865	05/13/1998	4.16 cfs	91CW109
	District No. 23 Storage Rights					
	Antero Reservoir	South Fork South Platte River	10/08/1907	05/31/1913	85,564 AF	C.A. 1678
	Antero Reservoir Refill Right	South Fork South Platte River	12/31/1929	03/24/1953	20,046 AF	C.A. 3286
	Antero Reservoir Exchange Right	South Fork South Platte River	04/01/1935	03/24/1953	20,046 AF	C.A. 3286
	Eleven Mile Canon Reservoir	South Fork South Platte River	07/10/1926	03/24/1953	81,917 AF	C.A. 3286
	1st Enlargement	South Fork South Platte River	10/07/1957	04/27/1972	15,862 AF	C.A. 3701
	Refill Right	South Fork South Platte River	12/31/1929	03/24/1953	81,917 AF	C.A. 3286
	Exchange Right	South Fork South Platte River	04/01/1935	03/24/1953	81,917 AF	C.A. 3286

Attachment A

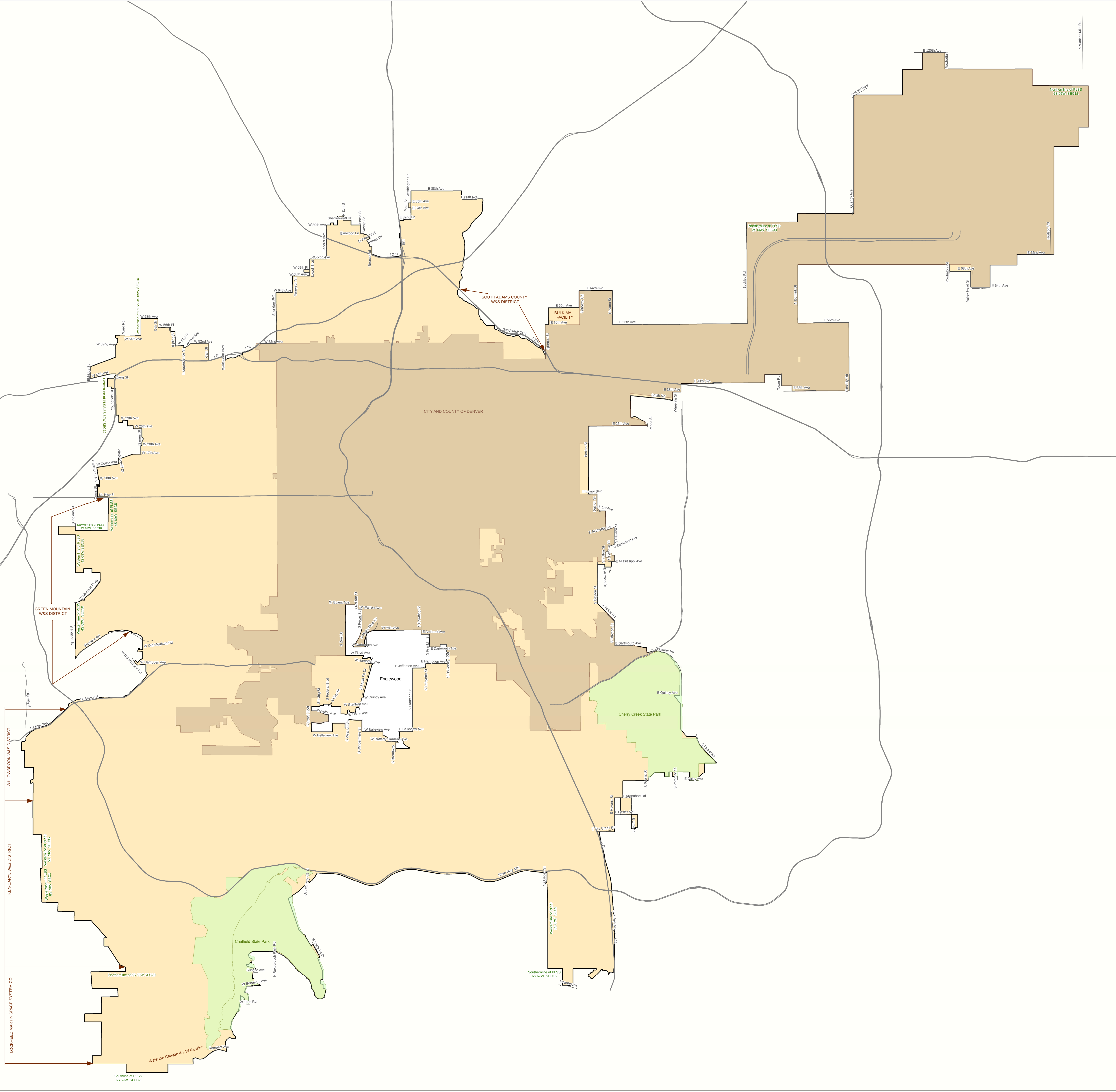
Division/District and Name of Structure or Water Right Name		Source	Appropriation Date	Decree Date	Amount	Case No.
	Cheesman Reservoir	South Fork South Platte River	06/27/1889	05/22/1913	30,691 AF	C.A. 1636
	1st Enlargement	South Fork South Platte River	09/24/1893	05/22/1913	48,373 AF	C.A. 1636
	Refill Right	South Fork South Platte River	12/31/1929	03/24/1953	79,064 AF	C.A. 3286
	Exchange Right	South Fork South Platte River	04/01/1935	03/24/1953	79,064 AF	C.A. 3286
District No. 23 Direct Flow Rights						
	Beery Ditch	Four Mile Creek, South Platte R	06/15/1861	07/14/1976	13.0 cfs	W-7739-74
	Four Mile No. 9 Ditch	Four Mile Creek, South Platte R.	06/01/1868	11/12/1982	7.00 cfs	80CW313
Water Division No. 5						
Exchange Rights from Williams Fork Reservoir to:						
	Dillon Reservoir and Roberts Tunnel	Blue R, Snake R, Ten Mile Cr	06/24/1946	03/10/1952	252,678 AF	Cons. 2782, 5016, 5017
	Dillon Reservoir and Roberts Tunnel	Blue R, Snake R, Ten Mile Cr	06/24/1946	05/30/1972	93,637 AF	C.A. 1430
	Dillon Reservoir and Roberts Tunnel	Blue R, Snake R, Ten Mile Cr	06/24/1946	11/10/1992	96,822 AF	88CW382
	Fraser River Diversion Project ^C	Fraser River and tributaries	11/10/1935	11/05/1937	93,637 AF	C.A. 657
	Williams Fork Diversion Project ^C	Williams Fork River & tributaries	11/10/1935	11/05/1937	93,637 AF	C.A. 657
	Cabin- Meadow Creek System ^L	Cabin-Meadow Creek and tribs.	07/02/1932	10/12/1955	70 cfs/5,100 AF	Cons. 2782, 5016, 5017
District No. 36 Storage Rights						
	Dillon Reservoir ^J	Blue R, Snake R, Ten Mile Cr	06/24/1946	03/10/1952	252,678 AF	C.A. 1806
	Refill Right ^J	Blue R, Snake R, Ten Mile Cr	01/01/1985	08/23/1999	15,000 AF ^{D,F}	87CW376
District No. 36 Direct Flow Rights						
	Blue River Diversion Project ^J	Blue R, Snake R, Ten Mile Cr	06/24/1946	03/10/1952	788 cfs ^{A,D}	Cons. 2782, 5016, 5017
District No. 51 Storage Rights						
	Williams Fork Reservoir ^C	Williams Fork River	11/10/1935	11/05/1937	93,637 AF	C.A. 657
	Williams Fork Reservoir	Williams Fork River	10/09/1956	05/30/1972	93,637 AF	C.A. 1430
	Meadow Creek Reservoir ^L	Meadow Creek	07/02/1932	11/05/1937	5,100 AF	C.A.657
	Meadow Cr Res - Moffat Tunnel Collection Sys.	Meadow Creek	08/30/1963	05/30/1972	5,100 AF	C.A.1430
	Wolford Mountain Reservoir ^G	Muddy Creek	12/14/1987	12/20/1989	23,997 AF	87CW283
	Enlargement	Muddy Creek	01/16/1995	12/31/1995	2,400 AF	95CW281
	Substitution	Muddy Creek		03/05/1996	200 cfs	91CW252
	Emergency Exchange	Muddy Creek	03/03/1987	03/05/1996	200 cfs	91CW252
District No. 51 Direct Flow Rights						
	Fraser River Diversion Project ^C	Fraser River & Tributaries	07/04/1921	11/05/1937	1280 cfs ^D	C.A.657
	Cabin - Meadow Creek System					
	Hamilton- Cabin Creek Ditch ^L	Fraser River Tributaries	07/02/1932	11/05/1937	70 cfs	C.A.657
	Extension and Enlargement Hamilton Ditch ^L	Fraser River Tributaries	07/02/1932	11/05/1937	25 cfs	C.A.657
	Moffat Tunnel Collection System	Fraser River & Tributaries	08/30/1963	05/30/1972	100.0 cfs	C.A.1430
	Williams Fork Diversion Project ^C	Williams Fork River & Tribs	07/04/1921	11/05/1937	245 cfs ^B	C.A.657
	Grand County CRCA Environmental Flow	Fraser and Williams Fork Rivers	09/23/2010	Pending	1,375 a.f.	2011CW152
	Dillon Reverse Exchanges	Fraser and Williams Fork Rivers	Varies	Pending	56 cfs/ 148 cfs	2011CW021
NOTE: The information contained in this Attachment A is for descriptive purposes only, and is not intended to represent an interpretation, admission or modification of any of the water right decrees.						
A. Pending claim in Case No. 2006CW255 to make 654 cfs absolute.						
B. Pending claim in Case No. 2007CW031 to make 245 cfs absolute. Conditional water rights associated with the enlargement and extension of the Williams Fork Diversion Project will be developed cooperatively with West Slope Entities pursuant to Articles I.C.3 and III.E.19.						

Attachment A

Division/District and Name of Structure or Water Right Name	Source	Appropriation Date	Decree Date	Amount	Case No.
C. Reuse of return flows generated by diversion and importation through the Moffat and Jones Pass Tunnels of this water right are subject to the ruling in Case No. 81CW405, Water Division No. I. If the agreement or ruling is modified such that Denver Water is able to reuse these return flows, such return flows shall be subject to Articles I and II.					
D. Water right is partially absolute and partially conditional.					
E. Pending application in Case No. 2008CW159 to make 672 cfs absolute.					
F. Pending application in Case No. 2003CW039 to make 141,712 acre feet absolute. Under the decree in 87CW376, Denver may import through the Roberts Tunnel 150,000 af over any consecutive 10 year period.					
G. By agreement dated July 21, 1992, Denver Water has 40% interest in Woford Mountain Reservoir capacity and water right. Although Woford Mountain Reservoir water is not physically used on the east slope, Denver Water operates an intergrated system and Woford Mountain enables it to more fully use its Colorado River basin supplies.					
H. Amount is for portion of conditional right, which when added to the amount absolute, equals the physical capacity of the facility.					
I. Applies to only that portion of the water right needed to satisfy Denver Water's obligations under Articles I.A and I.B.					
J. Water provided to Denver Water pursuant to the terms of paragraph 9 of the May 15, 2003 Memorandum of Agreement Regarding Colorado Springs Substitution Operations shall be used for the same uses and locations as the rights listed on this Attachment A.					
K. May be used to satisfy Denver Water's obligations stemming from the ruling in Case No. 81CW405 in addition to use under Articles I.A and I.B.					
L. Denver Water's interests in this water right are the setforth in an agreement dated August 11, 1995 between Denver Water, City of Englewood and Climax Metals Company.					

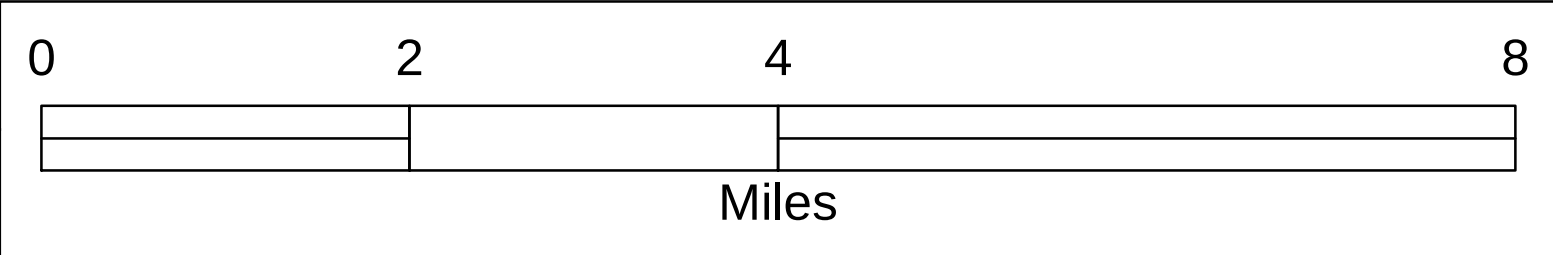
City and County of Denver Board of Water Commissioners

Denver Water Service Area



Attachment B

- Service Area
- City and County of Denver
- State Parks
- Primary Interstate



Service Area boundaries were produced from GIS shapefiles, which can be accessed through a GIS data request to Denver Water.



Attachment C
Fixed Amount Contracts
Article I.B.1

<u>Raw Water</u>	<u>Maximum Annual Demand (acre feet)</u>	<u>Contract/ Stipulation Date</u>
5K Agreement	5,000	08/31/1999
Agricultural Ditch	200	04/02/1936
Antero Contracts (delivered through High Line Canal)	354.82	
Unassigned contracts	59.18	various dates
Arvada	19,000	05/25/1965
Arvada	3,000	12/07/1999
Arvada	531	09/01/2004
Arvada/Long Lakes Ranch (Sports Complex)	400	12/16/1997
Aurora	300	04/18/1995
Centennial W&S District	1,000	12/20/1994
Consolidated Mutual	1,853	05/02/2000
Englewood	700	08/11/1995
Englewood/Cabin Meadow Creek	3,200	08/11/1995
Englewood (Replacement for 1953 Agreement)	750	08/05/1991
Englewood - stipulation in Case No. 80CW039	60	02/24/1992
Girls Scouts	1.46	10/11/1988
Golden/Vidler	360	05/10/2007
Inverness	568	08/05/1997
Lockheed Martin (Ridge Riders)	6	06/07/1994
North Table Mountain	6,000	01/19/1988
Rocky Mountain Arsenal	300	04/09/2008
U.S. Department of Energy (Rocky Flats-Dow Chemical)	1,396	04/09/1985
Westminster	3,500	01/24/1984
Westminster	1,000	09/21/1993
Total Raw Water	49,539	

Treated Water - Outside Service Area

(Excludes Emergency Interconnect Agreements and miscellaneous Connector Agreements.)^B

Broomfield	6,500	11/01/1994
East Cherry Creek Valley	771	05/15/2002
Inverness	598	08/05/1997
South Adams County W&S District	4,000	11/30/1998
Rocky Mountain Arsenal	50	11/30/1998
Chatfield South	69	03/23/1999
Total Treated Water	11,988	

Attachment C

Fixed Amount Contracts

Article I.B.1

<u>Recycle Water</u>	<i>Maximum Annual Demand (acre feet)</i>	<i><u>Contract/ Stipulation Date</u></i>
Rocky Mountain Arsenal	700	04/09/2008
Xcel Energy (Cherokee Plant)	5,200	12/16/1997
Recycle Water Unassigned	500	
Total Recycle Water	6,400	
Grand Total	67,927	

^A Significant effort was made to assure this is a complete list of all of Denver's water delivery obligations under Fixed Contracts outside the Service Area in the South Platte River Basin. It does not include various delivery obligations Denver has in the Colorado River Basin, including:

- Grand County Water and Sanitation District dated October 6, 1960 and November 24, 1986
- Winter Park Water and Sanitation District dated January 23, 1980
- Summit County dated September 18, 1985
- Clinton Reservoir - Fraser River Water Agreement dated July 21, 1992
- Colorado Division of Wildlife dated May 27, 1993
- Cyprus Climax Metals dated August 11, 1995
- Taussig Ranch (Big Lake Ditch) dated March 30, 1998

^B Connector Agreements provide for water service to single premises outside Denver through metered taps without specifying a fixed limit. Water supplied under Emergency Interconnect Agreements and Connector Agreements is permissible under Article I.A.

^C Water formerly under contract to Rocky Mountain Arsenal and available for use under Article II.A.

ATTACHMENT D

WEST SLOPE CHARGE AGREEMENT

Agreement between Recipient, River District and Denver Water.

1. Recipient agrees to pay into the West Slope Fund the West Slope Charge for each acre-foot of water provided by Denver Water, as provided in Recipient's water supply contract with Denver Water.

- The West Slope Charge will be 12.5% or 15% of the standard nonpotable or potable water rate, as applicable, charged by Denver Water to customers outside its Service Area.
- The appropriate percentage will be determined by provision of the CRCA that authorizes the source of water [Future Contract (Article I.B.1); reusable return flows (Article I.B.2.e); spot sale (Article I.B.3.a); or temporary lease (Article I.B.3.b)].
- Recipient agrees that payment of the West Slope Charge is a contractual obligation to the River District, established at the defined percentage. Parties agree that the West Slope Charge is not a cost-based rate, but a contractual obligation, and is not governed by rate provisions in Denver Water's water supply contracts and leases.
- Recipient agrees that nonpayment of the West Slope Charge may constitute breach of this contract and may result in suspension of water deliveries.

2. Billing and payment

- Denver Water agrees to be responsible for billing and collection of the West Slope Charge on behalf of the River District.
- Whenever Denver Water adjusts the rates charged to customers outside the service area [usually annually], it will notify the River District in the same manner as it notifies its customers. The River District will respond in writing, requesting that Denver Water be responsible for billing and collection of the West Slope Charge based on the adjusted rate.
- Recipient will pay the West Slope Charge as part of its payment for water provided.
- Denver Water will follow its normal procedures for providing notice of nonpayment.
- Denver Water will transmit the collected West Slope Charge payments to the River District on a regular schedule determined by the payment schedule.

3. Default for nonpayment

- If Recipient fails to pay the West Slope Charge within the period allowed by Denver Water's normal collection procedures, Denver Water will send a written notice to the River District.
- The River District will send written notice to Recipient, with a copy to Denver Water, of breach of contract for failure to pay the West Slope Charge. The notice of breach shall include a reasonable period during which the Recipient may cure the breach.

- The River District will undertake such measures as it deems necessary to collect the unpaid West Slope Charge.
 - If other efforts fail and the River District deems it necessary, the River District will send a notice of proposed suspension of water delivery to the Recipient and a notice of default to Denver Water requesting that Denver Water suspend delivery of water on a proposed date of suspension, which shall be no less than 10 days following the date of the notice. [For spot sales, the notice to Denver Water will request that the recipient be disqualified from future spot sales until the default is cured.]
 - If payment is not received prior to the end of the noticed period, Denver Water agrees to suspend deliveries of water [or disqualify Recipient from future spot sales] as requested by the River District, until such time as the West Slope Charge is paid and the River District requests Denver Water to resume deliveries.
 - Denver Water will not suspend deliveries of water to a Recipient unless the written notice of default includes a certification from the River District that it will take full responsibility for any damages to Recipient resulting from suspension of service requested by River District that is later determined to be unlawful or to be invalid by reason of an error committed by the River District, and to hold Denver Water harmless for any such damages and costs incurred by Denver Water, if any, in defending itself. The River District will assume no responsibility for an error committed by Denver Water.
4. For Recipients who receive water from reusable return flows and Future Contracts
- Agree to Abstention Provisions.

ATTACHMENT D

WEST SLOPE CHARGE AGREEMENT For WISE project – Article I.B.4

Agreement between Authority, River District and Denver Water.

1. Authority agrees to pay into the West Slope Fund the West Slope Charge for each acre-foot of water provided by Denver Water, as provided in Authority's water supply contract with Denver Water.

- The West Slope Charge will be 12.5% of the standard nonpotable or potable water rate, as applicable, charged by Denver Water to customers outside its Service Area.
- Authority agrees that payment of the West Slope Charge is a contractual obligation to the River District, established at the defined percentage. Parties agree that the West Slope Charge is not a cost-based rate, but a contractual obligation, and is not governed by rate provisions in Denver Water's water supply contracts and leases.
- Authority agrees that nonpayment of the West Slope Charge may constitute breach of this contract and may result in suspension of water deliveries.

2. Billing and payment

- Denver Water agrees to be responsible for collection of the West Slope Charge on behalf of the River District.
- Whenever Denver Water adjusts the rates charged to Authority [usually annually], it will notify the River District in the same manner as it notifies its customers. The River District will respond in writing, requesting that Denver Water be responsible for billing and collection of the specified revised West Slope Charge based on the adjusted rate.
- Authority will pay the West Slope Charge as part of its payment for water provided.
- Denver Water will follow its normal procedures for providing notice of nonpayment.
- Denver Water will transmit the collected West Slope Charge payments to the River District on a regular schedule determined by the payment schedule.

3. Default for nonpayment

- If Authority fails to pay the West Slope Charge within the period allowed by Denver Water's normal collection procedures, Denver Water will send a written notice to the River District.
- The River District will send written notice to Authority, with a copy to Denver Water, of breach of contract for failure to pay the West Slope Charge. The notice of breach shall include a reasonable period during which the Authority may cure the breach.
- The River District will undertake such measures as it deems necessary to collect the unpaid West Slope Charge.

- If other efforts fail and the River District deems it necessary, the River District will send a notice of proposed suspension of water delivery to the Authority and a notice of default to Denver Water requesting that Denver Water suspend delivery of water on a proposed date of suspension, which shall be no less than 10 days following the date of the notice.
- If payment is not received prior to the end of the noticed period, Denver Water agrees to suspend deliveries of water as requested by the River District, until such time as the West Slope Charge is paid and the River District requests Denver Water to resume deliveries.
- Denver Water will not suspend deliveries of water to the Authority unless the written notice of default includes a certification from the River District that it will take full responsibility for any damages to the Authority resulting from suspension of service requested by River District that is later determined to be unlawful or to be invalid by reason of an error committed by the River District, and to hold Denver Water harmless for any such damages and costs incurred by Denver Water, if any, in defending itself. The River District will assume no responsibility for an error committed by Denver Water.

4. Agree to Abstention Provisions and agree to enforce Abstention Provisions against WISE Participants, as required in the Participation Agreement between the Authority and the WISE Participants, relevant portions of which are attached.

Attachment E

Division/District and Name of Structure or Water Right Name		Source	Appropriation Date	Decree Date	Amount	Case No.
Water Division No. 1						
	33 Tributary Wells located in W.D. 1	South Platte River	1910 - 1965	5/17/1983	0.067 - 3.33 cfs	W-5406
	Non-tributary and Not Non-tributary Underground Water	Not Non-trib. Upper Arapahoe Aquifer	N/A	3/25/2010	1,972 AF	2003CW186
		Non-trib. Upper Arapahoe Aquifer	N/A	3/25/2010	4,187 AF	2003CW186
		Non-trib. Lower Arapahoe Aquifer	N/A	3/25/2010	6,213 AF	2003CW186
		Non-trib. Laramie Fox-Hills Aquifer	N/A	3/25/2010	16,723 AF	2003CW186
District No. 6 Storage Rights						
	Ralston Creek Reservoir					
	Priority 33C Storage Right	South Boulder Creek	10/31/1932	09/28/1953	3,210 AF ^C	C.A.12111
District No. 6 Direct Flow Rights						
	South Boulder Diversion Conduit	South Boulder Creek	01/01/1930	09/28/1953	789 cfs ^C	C.A.12111
	Denver Power Conduit No. 1	South Boulder Creek	05/10/1945	09/28/1953	350 cfs ^E	C.A.12111
	Denver Power Conduit No. 1	South Boulder Creek	05/10/1945	09/22/2010	350 cfs ^E	2009CW124
District No. 7 Storage Rights						
	Ralston Creek Reservoir	Ralston Creek	01/01/1930	10/18/1978	673 AF ^C	W-7561
	Long Lake No. 1 (Upper)	Ralston Creek	06/06/1909	05/13/1936	503.8 ^C	C.A. 60052
	Long Lake No. 2 (Lower)	Ralston Creek	06/06/1909	05/13/1936	716.3 ^C	C.A. 60052
District No. 8 Storage Rights						
	Chatfield Reservoir					
	Storage (Recreational Uses)	South Platte River	05/29/1975	12/31/1975	24,000 AF	W-7997-75
	Storage	South Platte River	12/28/1977	08/29/1994	27,572 AF ^C	W-8783-77
	Storage	South Platte River	12/28/1977	08/29/1994	156,200 AF ^C	W-8783-77
	Exchange	South Platte River	12/28/1977	08/29/1994	27,572 AF ^C	W-8783-77
	Exchange	South Platte River	12/28/1977	08/29/1994	156,200 AF ^C	W-8783-77
	Two Forks Reservoir	South Platte River	01/18/1905	03/24/1953	145,133 AF ^C	C.A. 3286
	Two Forks Reservoir	South Platte River	05/01/1926	03/24/1953	191,235 AF ^C	C.A. 3286
	Two Forks Reservoir Exchange	South Platte River	04/01/1935	03/24/1953	336,369 AF ^C	C.A. 3286
	Two Forks Reservoir Refill Right	South Platte River	12/31/1929	03/24/1953	336,369 AF ^C	C.A. 3286
District No. 8 Direct Flow Rights						
	City Ditch ^H					
	Priority No. 1	South Platte River	11/28/1860	12/10/1883	30.0 cfs	Not Given
	Exchange w/in Denver Water System	South Platte River	07/04/1921	05/18/1972	3,000 cfs ^{D,F,G}	C.A. 3635
	Foothills Tunnel and Conduit No. 26 ^G	South Platte River	03/21/1962	12/19/1983	774 cfs ^{D,G}	80CW408
	High Line Canal ^H	South Platte River	01/18/1879	12/10/1883	600 cfs	C.A. 61540
Nevada Ditch - Farnell Lane Wells - C.A. 1029						
	Priority No. 4	South Platte River	08/30/1861	08/17/1992	1.23 cfs	90CW172
	Priority No. 19	South Platte River	12/30/1865	08/17/1992	1.50 cfs	90CW172
Strontia Springs Power Conduit		South Platte River	03/21/1962	12/19/1983	72.0 cfs	80CW407
Waterton Canyon Management		South Platte River	8/16/1978	Pending	7,864 AF	2005CW316
District No. 23 Storage Rights						
	Antero Reservoir Refill Right	South Fork South Platte River	12/31/1929	03/24/1953	65,483 AF	C.A. 3286
	Antero Reservoir Exchange Right	South Fork South Platte River	04/01/1935	03/24/1953	65,483 AF	C.A. 3286
Eleven Mile Canon Reservoir						

Attachment E

Division/District and Name of Structure or Water Right Name		Source	Appropriation Date	Decree Date	Amount	Case No.
	2nd Enlargement	South Fork South Platte River	12/09/1957	04/27/1972	17,810 AF ^C	C.A. 3701
Water Division No. 5						
District No. 36 Direct Flow Rights						
	Straight Creek Unit Roberts Tunnel ^I	Straight Creek	1/21/1957	1/21/1987	115 cfs ^C	C.A. 2371
District No. 37 Storage Rights						
	Eagle-Colorado Project ^I					
	Eagle River Unit ^I	Eagle River	12/31/2007	9/17/2010	500 cfs ^C	2007CW214
	Colorado River Unit ^I	Colorado River	12/31/2007	9/17/2010	600 cfs ^C	2007CW214
	Eagle - Colorado Reservoir ^I	Eagle and Colorado Rivers and Alkali Cr.	12/31/2007	9/17/2010	350,000 AF ^C	C.A. 1529 & 1548
District No. 51						
	Fraser River Diversion Project					
	Vasquez Reservoir ^{A,I}	Fraser River & Tributaries	07/04/1921	11/05/1937	275 AF ^C	C.A. 657
	Vasquez Reservoir Enlargement ^{A,I}	Fraser River & Tributaries	07/07/1936	11/05/1937	6,341 AF ^C	C.A. 657
	St. Louis Reservoir ^{A,I}	Fraser River & Tributaries	07/04/1921	11/05/1937	1,150 AF ^C	C.A. 657
	Williams Fork Power Conduit	Williams Fork River & Tribs	10/09/1956	05/30/1972	400 cfs ^D	C.A.1430
	Williams Fork Diversion Project ^{A,I}	Williams Fork River & Tribs	07/04/1921	11/05/1937	355 cfs ^{B,C}	C.A.657
	Darling Creek Enlargement ^I	Darling Creek & Williams Fork River Tribs	08/26/1953	05/30/1972	90 cfs ^C	C.A. 1430
District No. 70 Storage Rights						
	Sulphur Gulch Reservoir	Colorado River	12/10/1999	10/8/2007	16.000 AF ^C	99CW279

NOTE: The information contained in this table is for descriptive purposes only, and is not intended to represent an interpretation, admission or modification of any of the water right decrees.

A. Reuse of return flows generated by diversion and importation through the Moffat and Jones Pass Tunnels of this water right are subject to the ruling in Case No. 81CW405, Water Division No. I. If the agreement or ruling is modified such that Denver Water is able to reuse these return flows, such return flows shall be subject to Articles I and II.

B. Pending claim in Case No. 2007CW031 to make 245 cfs absolute. Only existing portion of Williams Fork Diversion Project, which includes Bobtail, Steelman, McQueary and Jones Creeks, is included in Attachment A. Conditional water rights associated with the enlargement and extension of the Williams Fork Diversion Project is not limited to use within the Service Area, but is subject to Article I.C.3.

C. Water right is conditional for the amount shown and exceeds Denver Water's existing ability to divert.

D. Water right is partially conditional and partially absolute.

E. Application to make 260 cfs absolute pending in Case No. 2008CW290

F. Pending application in Case No. 2008CW159 to make 672 of the 3,000 cfs absolute.

G. Applies to only that portion of the water right not needed to satisfy existing obligations under Articles I.A and I.B. This water right shall not be used to displace capacity that can be used to meet existing obligations under Articles I.A and I.B.

H. The City Ditch and High Line Canal are both currently used to meet demands outside the Service Area. Should the use of these rights ever be changed, they will be used in the same way as water rights on Attachment A.

I. This water right will only be developed cooperatively with West Slope Entities pursuant to Articles I C.3 and III.E.19.

DENVER WATER'S CONSERVATION PLAN

As the Denver metropolitan area continues to grow, it's important that Denver Water plans for a sustainable water supply for the future. Successful stewardship of this resource is critical to our community's welfare and is a vital component of the state's economy.

No single water resource is sufficient to meet this challenge. Denver's Board of Water Commissioners recognizes the need to invest in and manage a diverse portfolio of resources to meet its future needs. That is why Denver Water is increasing water supply through recycled water and the development of new water supplies and decreasing demand through conservation.

10-year Conservation Goal

In September 2005, a Board resolution stated its 10-year conservation goal, which was to develop a conservation plan "capable of achieving consumption that is less than or equivalent on a per capita basis to the long-term water conservation goals in the current Integrated Resources Plan."

Denver Water's conservation goal is to reduce water use from 211 gallons per person per day (pre-drought average) to 165 gallons per person per day, which is a 22 percent reduction of treated water use from pre-2002 drought levels by the end of 2016. Gallons per person per day is a calculation of the sum of all treated water delivered from the treatment plants in one year divided by the population served in the combined service area and the number of days in the year.

The goal has several components to it:

- Accelerated Natural replacement – In 1994, federal plumbing codes were changed to set minimum standards for toilets, showerheads and faucet aerators. Over time, older, inefficient water fixtures will be replaced with new ones that meet the new federal standards.
- Active conservation – Denver Water's Integrated Resource Plan targets a conservation goal that could be achieved with direct measures by Denver Water. These measures are described in this conservation plan.
- Higher density – In the future, experts predict residential lot sizes will decrease as a result of a growing population. Half of residential water use is outdoors; therefore, smaller yards and less landscape will mean households use less water.
- Cultural and behavior change – encouraging customers to change how they value water to make long-lasting behavior changes that decrease water waste

The conservation plan seeks to achieve 29,000 acre-feet of savings, plus an amount from the natural replacement of fixtures, from each of the four areas mentioned above, but its primary goal is to fully achieve the conservation goal with measures described in this plan. The various components of the plan mirror much of Colorado's Guidebook of Best Practices for Water Conservation. Those components are as follows:

ATTACHMENT F

Best Practice	Denver Water Programs
Metering, conservation-oriented rates	Denver Water has a fully metered system, provides monthly water bills that include a consumption graph showing demand over the last year so that customers can compare water use and set goals for reductions. A steeply increasing block rate structure for residential customers provides incentive to use less to avoid higher per unit costs. Commercial and industrial customers are charged via a seasonal rate structure that rises steeply during the six-month irrigation season and sends a strong price signal to irrigate only when necessary.
Integrated resources planning, goal setting, and demand monitoring	Denver Water uses a comprehensive integrated resources planning method that encompasses least-cost analysis of demand and supply options that compares supply-side and demand-side measures (water conservation) on a level playing field and results in meeting essential planning objectives. Conservation goals are a significant portion of the integrated resources planning efforts.
System water loss control	Denver Water has a leak detection unit and regularly exceeds the American Water Works Association standards for leak detection and remediation. Water loss control involves system auditing, loss tracking, infrastructure maintenance, leak detection and leak repair for the water system. In addition, Denver Water monitors its own use of water for irrigation at its properties to ensure that efficiency standards are met.
Conservation coordinator	Denver Water has assigned an entire section of the Public Affairs Division to be responsible for the successful implementation of its water conservation programs.
Water waste ordinance	Denver Water has adopted regulations to prohibit water waste by its customers. Operating rules prohibiting water waste are in effect, and a structure of fines for water waste is used to enforce the rule. Among other provisions, the rule states that from May 1 to September 30 Denver Water customers may not water more than three days per week, and may not water between the hours of 10 a.m. and 6 p.m.
Public information and education	A cornerstone of Denver Water's conservation plan is outreach to the public about the value of water and the importance of wise stewardship and efficiency. This effort includes an extensive advertising campaign, publications, community involvement, education materials, marketing program, and information specific to different types of customers and water use.
Water efficient design, installation and maintenance practices for new and existing landscapes	Denver Water requires the incorporation of soil amendment for new development. New development is inspected to ensure that the proper amount of compost is added to the soil so that installed landscaping will have a good start and will need approximately 20 percent less water.
Landscape water budgets, information and customer feedback	Irrigation customers are provided with an opportunity to receive an irrigation system audit. As a follow-up Denver Water provides annual report cards on how efficient the customer is compared a baseline efficiency number. Customers can access an online tool to develop their own landscape water budgets, and can access their water use online to develop goals and receive feedback on their water use.
Irrigation efficiency evaluations	Customers may request an irrigation system evaluation at no cost. Trained technicians will audit the system, making note of problems and make

ATTACHMENT F

	suggestions on proper irrigation scheduling. This is available as requested by all customers, but large irrigators are targeted for these evaluations and must receive them in order to take advantage of incentive programs.
High-efficiency fixture and appliance replacement for residential and non-residential sectors	The goal of this program is to increase the installation rate of water efficiency fixtures and appliances and to remove inefficient and wasteful devices from the service area. There are two programs in use. The first involves a direct rebate to the customer for a fixture, such as a high efficiency toilet. These rebate programs are available to both residential and non-residential customers. The second is a direct installation, such as in Denver Water's program to retrofit low income housing with high efficiency toilets, faucet aerators and showerheads.
Residential water surveys and evaluations, targeted at high demand customers	Denver Water offers its high demand customers a free audit of their water use to determine whether fixture and appliance retrofits and/or process changes can help lower their water use. Following this process, these customers are eligible for a financial incentive if they invest in water saving practices that lower their water demand by a set minimum amount. In addition, customers who deem their water use to be above the norm can request a free high bill audit to determine whether there are leaks occurring that are driving their water use up.

ATTACHMENT G

SUMMIT COUNTY PROJECTS Article III.B.4

Entity	Project
Town of Dillon	Pipeline/siphon into the Town of Dillon through Dillon Reservoir or alternative facilities for access to Salt Lick Gulch flow rights and storage capacity in Old Dillon Reservoir.
	Dillon Marina improvements - shoreline stabilization and wharf structure
	Improvements to wastewater treatment plant operated by Silverthorne/Dillon Joint Sewer Authority
Town of Frisco	Frisco Bay Marina pier redevelopment
	Dredging and excavation of Frisco Marina boat mooring and dock areas
Frisco Sanitation District	Installation of ultra-violet disinfection system and dome enclosures over equalization basins at the Frisco wastewater treatment plant
	Upgrade WWTP to meet standards to discharge to Miners Creek or relocate effluent outfall to discharge into Dillon Reservoir at a location that satisfies discharge permit conditions
Town of Silverthorne	Blue River improvements for fish habitat at low flows and recreation
	Straight Creek Watershed Protection
	Staged release structure for Dillon Dam
	Blue River erosion protection
	Improvements to wastewater treatment plant operated by Silverthorne/Dillon Joint Sewer Authority
Town of Breckenridge	Upper Blue River pumpback project and/or storage facilities, including Upper Blue River treatment plant
	Watershed protection plan for Blue River and Goose Pasture Tarn
Summit County	Lower and Upper Blue River stream habitat improvements and wetlands mitigation projects
	Improvements to Snake River wastewater treatment plant
	Mitigation of mine discharge in Upper Blue River basin
	Winterization of Upper Blue Reservoir
Buffalo Mountain Metropolitan District	Deepen existing wells
East Dillon Water District	Construct direct intake in Dillon Reservoir
	Study of surface water treatment options
Hamilton Creek Metropolitan District	Interconnection between Hamilton Creek system and Silverthorne system at Angler Mountain Ranch
Mesa Cortina Water and Sanitation District	Facilities to transfer water to Mesa Cortina through Buffalo Mountain Metro District or Silverthorne water system

ATTACHMENT H

6. Dillon Reservoir Storage. (a) The Town of Silverthorne has contracted with the Middle Park Water Conservancy District for 250 acre feet of water per year from Granby/Windy Gap Reservoir derived by virtue of the Northern Colorado Agreement. Additionally, the Town of Silverthorne has 125 acre feet of water available to it in WOLFORD Mountain Reservoir, and has contracted with the Bureau of Reclamation for 250 acre feet in Green Mountain Reservoir. Denver agrees to release up to 300 acre feet per year to the Blue River from Dillon Reservoir for Silverthorne's benefit at Silverthorne's written request. Such water may be used for any beneficial use including augmentation of depletions attributable to other beneficial uses. In consideration of Denver's agreement to release such water, Silverthorne will provide for Denver's use by exchange from either Granby, WOLFORD Mountain, or Green Mountain Reservoirs, or another source acceptable to Denver if the foregoing sources are not available, 1.4 acre feet of water for each acre foot of water released from Dillon for Silverthorne's benefit.

Attachment I

INTERIM AGREEMENT

This Agreement dated _____, 2010, is between the City and County of Denver acting by and through its Board of Water Commissioners ("Denver") and the Clinton Ditch and Reservoir Company (the "Reservoir Company").

Recitals

A. Denver and the predecessors of the Reservoir Company have previously entered into the Clinton Reservoir - Fraser River Water Agreement dated July 21, 1992 (the "Clinton Agreement"), which among other matters governs the "Reservoir Yield" of Clinton Gulch Reservoir as defined in paragraph 1(a) of the Clinton Agreement.

B. The Reservoir Company desires to utilize the dead storage pool of Clinton Gulch Reservoir under the Clinton Agreement to increase the Reservoir Yield.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Denver agrees to allow the Reservoir Company to utilize the dead storage pool of Clinton Gulch Reservoir to increase the Reservoir Yield. The capacity of the dead storage pool of Clinton Gulch Reservoir that can be accessed by pumping is 801 acre feet.

2. The 801 acre feet of water associated with the dead storage pool shall be considered an additional 267 acre feet of Reservoir Yield under paragraph 1(a) of the Clinton Agreement. Alternately, at the election of the Reservoir Company, all or a portion of the 801 acre feet of the dead storage pool can be used to produce up to 67% of the existing 1200 acre feet of Reservoir Yield in the fourth year of four consecutive years that are not allowable fill years. Under either alternative, such water will be available for use in the same manner, and may be used for the same purposes and in the same manner, as are established in the Clinton Agreement, including repayment water owed to Denver.

3. To effectively provide water from the dead storage pool, the Reservoir Company will be responsible for the installation and operation of a pumping system sufficient to deliver up to 801 acre feet to Ten Mile Creek. The Reservoir Company may only utilize water from the dead storage pool as Reservoir Yield during periods when the pumping system is operational.

4. The term of this Agreement shall be for one year from the date of this Agreement.

5. Except as expressly modified by this Agreement, the Clinton Agreement shall remain in full force and effect.

Executed as of the date first set forth above.

CLINTON DITCH AND RESERVOIR
COMPANY

ATTEST:

Secretary

President

CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS

Manager

Attachment J

AGREEMENT

This Agreement dated _____, 2010, is between the City and County of Denver acting by and through its Board of Water Commissioners ("Denver") and the Clinton Ditch and Reservoir Company (the "Reservoir Company").

Recitals

A. Denver and the predecessors of the Reservoir Company have previously entered into the Clinton Reservoir - Fraser River Water Agreement dated July 21, 1992 (the "Clinton Agreement"), which among other matters governs the "Reservoir Yield" of Clinton Gulch Reservoir as defined in paragraph 1(a) of the Clinton Agreement.

B. The Reservoir Company desires to utilize the dead storage pool of Clinton Gulch Reservoir under the Clinton Agreement to increase the Reservoir Yield.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Denver agrees to allow the Reservoir Company to utilize the dead storage pool of Clinton Gulch Reservoir to increase the Reservoir Yield. The capacity of the dead storage pool of Clinton Gulch Reservoir that can be accessed by pumping is 801 acre feet.

2. The 801 acre feet of water associated with the dead storage pool shall be considered an additional 267 acre feet of Reservoir Yield under paragraph 1(a) of the Clinton Agreement. Alternately, at the election of the Reservoir Company, all or a portion of the 801 acre feet of the dead storage pool can be used to produce up to 67% of the existing 1200 acre feet of Reservoir Yield in the fourth year of four consecutive years that are not allowable fill years. Under either alternative, such water will be available for use in the same manner, and may be used for the same purposes and in the same manner, as are established in the Clinton Agreement, including repayment water owed to Denver.

3. To effectively provide water from the dead storage pool, the Reservoir Company will be responsible for the installation and operation of a pumping system sufficient to deliver up to 801 acre feet to Ten Mile Creek. The Reservoir Company may only utilize water from the dead storage pool as Reservoir Yield during periods when the pumping system is operational.

4. The term of this Agreement shall be perpetual.

5. Except as expressly modified by this Agreement, the Clinton Agreement shall remain in full force and effect.

Executed as of the date first set forth above.

CLINTON DITCH AND RESERVOIR
COMPANY

ATTEST:

Secretary

President

CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS

Manager

Attachment K

DISTRICT COURT, WATER DIVISION NO. 5, STATE OF COLORADO 109 8 th Street, Suite 104 Glenwood Springs, CO 81601	▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CLINTON DITCH & RESERVOIR COMPANY IN THE BLUE RIVER AND ITS TRIBUTARIES, IN SUMMIT COUNTY, COLORADO	
Porzak Browning & Bushong LLP Glenn E. Porzak (#2793) Thomas W. Korver (#36924) 929 Pearl Street, Suite 300 Boulder, CO 80302 Tel: 303-443-6800 Fax: 303-443-6864 Email: gporzak@pbblaw.com	
DECREE OF THE WATER COURT	

The application in this case was filed on December 22, 2006, and was referred by the Water Judge for the District Court in and for Water Division No. 5, State of Colorado (the "Water Court") to the Referee of the Water Court in accordance with Article 92 of Chapter 37, Colorado Revised Statutes, known as the Water Right Determination and Administration Act of 1969. This matter was rereferred to the Water Judge by Order dated September 8, 2009.

The Water Judge, having made such investigations as are necessary to determine whether or not the statements in the application are true, and having become fully advised with respect to the subject matter of the application, does hereby enter the following as the Decree of the Water Court.

1. Application. This matter involves the Application for Water Rights filed by Clinton Ditch & Reservoir Company, whose address is P.O. Box 68, Breckenridge, Colorado 80424.

2. Jurisdiction. All notices required by law have been duly given, including publication in the Resume for Water Division No. 5. The Water Court has jurisdiction over the application and all parties affected thereby, whether or not they have chosen to appear.

3. Opposition. Statements of opposition to the application have been timely filed by the City of Colorado Springs, acting through Colorado Springs Utilities, the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver Water Board"), the Town of Frisco, Climax Molybdenum Company, and the Town of Silverthorne. All parties have consented to entry of this Ruling and Decree by way of Stipulations with the Applicant, approved and on file with the Water Court. The time for filing additional statements of opposition has now expired.

4. Name of Structures and Description of Water Right:

- a. Name of Reservoir: Clinton Gulch Reservoir 1st Enlargement and Refill Right.
- b. Legal Description of the Reservoir: The dam is located in Summit County in the SW $\frac{1}{4}$, NW $\frac{1}{4}$, Section 25, T. 7 S., R. 79 W., 6th P.M. at a point 2,358.6 feet from the North line and 1,057.2 feet from the West line of said Section 25.
- c. Source: Clinton Creek, tributary to Ten Mile Creek, tributary to the Blue River.
- d. Date of Appropriation: May 20, 2005.
- e. Amount: 210 acre-feet, absolute, together with the right to refill this amount when water is available in priority.
- f. Use: Domestic, municipal, irrigation, industrial, snowmaking, recreation, fish and wildlife propagation, and augmentation purposes, both on the eastern and western slopes of Colorado.
- g. Surface Area at Normal High Water Line: 91.4 acres
 - (i) Maximum Height of Dam: 170 feet
 - (ii) Length of Dam: 1,550 feet
- h. Total Capacity of the Reservoir: 4,460 acre-feet
 - (i) Active Capacity: 3,659 acre-feet
 - (ii) Dead Storage: 801 acre-feet

5. Findings of the Water Judge. On October 14, 1979, the Water Court entered a decree in Case No. 79CW49 granting the absolute right to 4,250 acre-feet to be stored Clinton Gulch Reservoir for industrial, domestic, irrigation, recreation, and fish and wildlife propagation purposes. On September 17, 1998, the Water Court entered a decree in Case No. 98CW57 approving the Clinton Gulch Reservoir Use Enlargement and Second Filling for 4,250 acre-feet,

absolute, for the uses described in paragraph 4(f) above. Applicant seeks to conform the decreed capacity of the Reservoir to the surveyed, as-built capacity of the Reservoir.

By way of high resolution reservoir capacity surveys prepared by Applicant's engineers and by engineers of the Denver Water Board, the Water Judge finds the total Reservoir capacity to be 4,460 acre-feet at the spillway crest elevation of 11,058.0 feet. The Water Judge further finds that the Reservoir has filled and spilled and has been used for the claimed beneficial uses since the Reservoir was purchased by the Applicant in 1992.

6. Decree of the Water Court. The foregoing paragraphs are incorporated into and made a part of this Decree. The Water Judge, having examined the information submitted by the Applicant, and having completed the investigations necessary to make a determination in this matter, rules that the Applicant is entitled to an absolute water right in the amount of 210 acre-feet for the Clinton Gulch Reservoir 1st Enlargement and Refill Right for all decreed purposes described in paragraphs 4(f) above, which amount shall be in addition to the 4,250 acre-feet previously decreed absolute in Case Nos. 79CW49 and 98CW57. Accordingly, the Water Judge hereby rules that the Application should be, and hereby is approved.

The priorities awarded herein were filed in the Water Court in 2006 and shall be administered as having been filed in that year, and shall be junior to all priorities filed in previous years. As between all rights filed in the same calendar year, priorities shall be determined by historical dates of appropriation and not affected by the date of entry of decree.

It is accordingly ORDERED that this Decree shall be filed with the Water Clerk subject to Judicial review.

It is further ORDERED that a copy of this Decree shall be filed with the appropriate Division Engineer and the State Engineer.

Dated this ____ day of _____, 2010.

James B. Boyd, Water Judge
Water Division No. 5

ATTACHMENT L
WATER PROJECTS IN GRAND COUNTY
ARTICLE III. E. 14

JIM CREEK BYPASS AND PIPELINE. Bypass structure and pipeline from the Jim Creek Canal to the Fraser River above the diversion for Winter Park Water and Sanitation District's water treatment plant.

FRASER RIVER PUMP STATION AND PIPELINE AND DISCOVERY PARK POND. Diversion structure and pump station on the Fraser River, a pipeline from the diversion structure to the Vasquez Canal, a new primary pump house and pipeline to an approximate 40 acre-foot Discovery Park Storage Pond.

SMALL FRASER RIVER PUMPBACK AND PIPELINE. Diversion structure and pump station on the Fraser River above Winter Park Water and Sanitation District's wastewater treatment plant discharge point. Pipeline would carry water to point upstream of the District's water treatment plant diversion.

ATTACHMENT M

ARTICLE III IMPLEMENTATION AGREEMENT SUMMIT COUNTY

This Agreement is entered into between the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS (Denver Water); BOARD OF COMMISSIONERS OF THE COUNTY OF SUMMIT (County) and the TOWN OF DILLON [or Silverthorne, Frisco, Breckenridge] (Town) [or Frisco Sanitation District, Silverthorne-Dillon Joint Sewer Authority, Buffalo Mountain Metropolitan District, East Dillon Water District, Hamilton Creek Metropolitan District, Mesa Cortina Water and Sanitation District.(District)]

RECITALS

1. Denver Water has entered into the Colorado River Cooperative Agreement, dated _____, 2012 (Cooperative Agreement) with numerous West Slope entities (West Slope *Signatories*), including the County, that resolved longstanding issues between the parties.
2. In Article III of the Cooperative Agreement, the County negotiated for Denver Water to provide certain monetary and water supply benefits to entities located in Summit County, including Town/District, who are not West Slope *Signatories*.
3. This Agreement is intended to afford to Denver Water the consideration negotiated in the Cooperative Agreement in return for the benefits provided to Town/District.
4. Italicized terms in this Agreement shall have the same meaning as the corresponding term in the Cooperative Agreement.

NOW THEREFORE, Denver Water, County and Town/District agree as follows:

1. Pursuant to Article III of the Cooperative Agreement, Town/District will receive the following benefits:
 - a. Within one year of *Resolution of Blue River Decree Issues*, Denver Water will pay \$900,000 to Town/District to offset the costs of the projects listed in Attachment A **[list appropriate projects for Town/District from Attachment G to Cooperative Agreement]**.
 - b. Within six months of *issuance and acceptance by Denver Water of permits necessary for the Moffat Project* Denver will pay \$900,000 to Town/District to offset the costs of the projects listed in Attachment A.
 - c. Upon *Resolution of Blue River Decree Issues*, Denver Water will provide to Town/District [45] acre-feet of “Dillon Storage Water” annually pursuant to Article III(B)(7) of the Cooperative Agreement.

ATTACHMENT M

- d. Upon *Resolution of Blue River Decree Issues*, Denver Water will provide to Town/District [105] acre-feet of water annually from the “Additional 1493 Acre Feet”, pursuant to Article III(B)(14) of the Cooperative Agreement. Town/District shall provide *Replacement Water* to Denver Water in accordance with Article III(B)(14)(b).
- e. Accounting for the water provided to Town/District will be the collective responsibility of the water users listed in Article III(B)(14)(a) of the Cooperative Agreement, in accordance with the terms of Article III(B)(14)(c).
2. The Town/District agrees that the funds provided under paragraph 1 will be used only for the projects listed in Attachment A, including reimbursement of costs paid or incurred prior to the date of this Agreement, and agrees to provide to Denver Water and County upon request a written statement of the total cost of each project and the amount of Denver Water funds expended on each project.
3. In consideration for the benefits described in paragraph 1, Town/District agrees to comply with all the provisions of Articles IV and VII of the Cooperative Agreement that are applicable to West Slope *Signatories*. With regard to all conditional water rights presently owned by Town/District, which are listed in Attachment B, Denver Water agrees to withdraw any statements of opposition to Town/District’s pending diligence filings and not to oppose Town/District’s pending or future diligence applications, including applications to make the listed conditional rights absolute, provided, however, that Denver Water may file statements of opposition to such applications for the limited purpose of ensuring compliance with the obligations of this Agreement.
4. [Specific provisions applicable to certain West Slope parties, i.e., Town of Frisco under Article III.B.11, Town of Silverthorne under Article III.B.17]
5. In consideration for terms of this Agreement, the Town/District agrees that: it is not a third party beneficiary of or under the Cooperative Agreement; that it will not assert a claim to be a third party beneficiary of or under the Cooperative Agreement; any references to the Cooperative Agreement are strictly for the purposes set forth herein; and, that by all appropriate action it has ratified and approved this Agreement.
6. Venue for resolution of any dispute of water matters under this Agreement resulting in litigation shall be the District Court, Colorado, for the appropriate Water Division or federal district court, as appropriate under the Blue River Decree. Venue for all other matters under this Agreement resulting in litigation shall be the Colorado District Court for the county in which any defendant resides. This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado.
7. For the purposes of this Agreement, any notice shall be deemed received on the day the written notice is placed in the U.S. Mail, first class postage prepaid, addressed as follows:

To Denver Water:

ATTACHMENT M

Denver Water Board
Attention: Manager
1600 West 12th Avenue
Denver, CO 80204

To Town/District:

8. This Implementation Agreement may be executed in two or more counterparts, each of which shall be deemed an original, all of which shall constitute one and the same. Such counterparts may be transmitted by facsimile, the facsimile to have full force and effect as if it were an original.
9. Nothing contained herein shall be construed to be a waiver or partial waiver of the Parties governmental immunity.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective the ____ day of _____, 2012.

CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS

ATTEST:

Secretary

President

APPROVED AS TO FORM:

Legal Division

REGISTERED AND COUNTERSIGNED:
Dennis J. Gallagher, Auditor
CITY AND COUNTY OF DENVER

By: _____

TOWN/DISTRICT

Title: _____

ATTACHMENT M

ARTICLE III IMPLEMENTATION AGREEMENT GRAND COUNTY

This Agreement is entered into between the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS (Denver Water); BOARD OF COMMISSIONERS OF THE COUNTY OF GRAND (County) and the TOWN OF FRASER [or Granby] (Town) [or Winter Park Water and Sanitation District, Grand County Water and Sanitation District No. 1, Tabernash Meadows Water and Sanitation District, Granby Sanitation District, Winter Park Ranch Water and Sanitation District(District)] [or Grand County Mutual Ditch and Reservoir Company (Company)] [or Winter Park Recreational Association (Association)]

RECITALS

1. Denver Water has entered into the Colorado River Cooperative Agreement, dated _____, 2012 (Cooperative Agreement) with numerous West Slope entities (West Slope *Signatories*), including the County, that resolved longstanding issues between the parties.
2. In Article III of the Cooperative Agreement, the County negotiated for Denver Water to provide certain monetary and water supply benefits to entities located in Grand County, including Town/District/Company/Association, who are not West Slope *Signatories*.
3. This Agreement is intended to afford to Denver Water the consideration negotiated in the Cooperative Agreement in return for the benefits provided to Town/District/Company/Association.
4. Italicized terms in this Agreement shall have the same meaning as the corresponding term in the Cooperative Agreement.

NOW THEREFORE, Denver Water, County and Town/District/Company/Association agree as follows:

1. Pursuant to Article III of the Cooperative Agreement, Town/District/Company/Association will receive the following benefits:
 - a. A representative of [Town of Fraser and each of the Districts] will serve on the board established under Article III(E)(2) of the Cooperative Agreement, which will allocate and administer the water quality funds that Denver Water will provide *upon issuance and acceptance by Denver Water of permits necessary for the Moffat Project*. [Town of Fraser and each of the Districts] will be eligible to receive such funds.
 - b. As a project sponsor of one of the water supply projects described in Attachment L of the Cooperative Agreement, [only Association and Winter Park Water and Sanitation District??] will be eligible to receive funding for its project from the

ATTACHMENT M

following amounts to be paid into a fund by Denver Water under Article III(E)(14):

- i. \$1.95 million upon execution of this Article III Implementation Agreement.
 - ii. \$2 million within six months after *Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project* or *Resolution of the Blue River Decree issues*, whichever occurs later.
 - c. Upon execution of this Article III Implementation Agreement, Denver Water will provide Clinton Bypass Water to [Towns, Grand County W&S District No. 1, and Winter Park W&S District] on a year round basis, subject to the provisions of Article III(E)(15) of the Cooperative Agreement.
 - d. Upon *Issuance and Acceptance by Denver Water of Permits Necessary for the Moffat Project*, Denver Water will provide to [Towns, Grand County W&S District No. 1, and Winter Park W&S District 68.5 acre-feet][or Association 100 acre-feet] of water annually pursuant to Article III(E)(20) of the Cooperative Agreement. Town/District/Association shall provide *Replacement Water* to Denver Water in accordance with Article III(E)(20).
 - e. Upon execution of this Article III Implementation Agreement, Denver Water will allow Company's Vail Ditch shares to be traded for a like amount of water in Denver Water's Fraser Collection System and carried through that system for delivery and use in the headwaters of the Fraser River Basin, subject to the provisions of Article III(E)(21) of the Cooperative Agreement.
2. The Town/District/Association agrees that the funds provided under paragraph 1 will be used only for the projects approved by the board described in paragraph 1(a) or listed in Attachment L to the Cooperative Agreement.
3. In consideration for the benefits described in paragraph 1, Town/District/Company /Association agrees to comply with all the provisions of Articles IV and VII of the Cooperative Agreement that are applicable to West Slope *Signatories*. With regard to all conditional water rights presently owned by Town/District/Company/Association, which are listed in Attachment A, Denver Water agrees to withdraw any statements of opposition to pending diligence filings and not to oppose pending or future diligence applications, including applications to make the listed conditional rights absolute, provided, however, that Denver Water may file statements of opposition to such applications for the limited purpose of ensuring compliance with the obligations of this Agreement.
4. In consideration for terms of this Agreement, the Town/District/Company/Association agrees that: it is not a third party beneficiary of or under the Cooperative Agreement; that it will not assert a claim to be a third party beneficiary of or under the Cooperative Agreement; any references to the Cooperative Agreement are strictly for the purposes set forth herein; and, that by all appropriate action it has ratified and approved this Agreement.

ATTACHMENT M

5. Venue for resolution of any dispute of water matters under this Agreement resulting in litigation shall be the District Court, Colorado, for the appropriate Water Division or federal district court, as appropriate under the Blue River Decree. Venue for all other matters under this Agreement resulting in litigation shall be the Colorado District Court for the county in which any defendant resides. This Agreement shall be construed in accordance with and governed by the laws of the State of Colorado.

6. For the purposes of this Agreement, any notice shall be deemed received on the day the written notice is placed in the U.S. Mail, first class postage prepaid, addressed as follows:

To Denver Water:

Denver Water Board
Attention: Manager
1600 West 12th Avenue
Denver, CO 80204

To Town/District/Company/Association:

8. This Implementation Agreement may be executed in two or more counterparts, each of which shall be deemed an original, all of which shall constitute one and the same. Such counterparts may be transmitted by facsimile, the facsimile to have full force and effect as if it were an original.

9. Nothing contained herein shall be construed to be a waiver or partial waiver of the any Party's governmental immunity.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective the ____ day of _____, 2012.

CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS

ATTEST:

Secretary

President

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:
Dennis J. Gallagher, Auditor
CITY AND COUNTY OF DENVER

By: _____

12/7/2011

ATTACHMENT M

Legal Division

TOWN/DISTRICT/COMPANY
/ASSOCIATION

Title: _____

ATTACHMENT N
Blue River Decree

04/05/2012

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 49-cv-02782-MSK-CBS

Consolidated Civil Case Nos. 2782, 5016 and 5017 and

DISTRICT COURT, WATER DIVISION NO. 5 STATE OF COLORADO
Case No. 2006CW255

FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT and DECREE

CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS, IN SUMMIT COUNTY

THIS MATTER comes before the court upon the December 26, 2006 application of the City and County of Denver, acting by and through its Board of Water Commissioners (the “Applicant”) for finding of reasonable diligence and to make absolute a conditional water right (“Application”). Having reviewed and considered the pleadings, documentary and other evidence, the stipulation of the Parties, and the Parties’ proposed consent decree, the court finds, determines and declares the following:

I. FINDINGS OF FACT

A. GENERAL MATTERS

1. Applicant:

City and County of Denver, acting by and through its Board of Water
Commissioners
1600 W. 12th Avenue

Denver, Colorado 80204

303-628-6460

The Applicant is a home rule municipal corporation of the State of Colorado. The Applicant derives its authority and power to operate a water supply system under the state constitution, the Denver City Charter and provisions of state law. Pursuant to the Denver City Charter, the Applicant provides all treated and raw water necessary for the full development of land within the City and County of Denver. Pursuant to perpetual water service agreements, the Applicant serves as the water utility for other governmental entities outside the City and County of Denver, but within Applicant's Service Area depicted in Exhibit A ("Applicant's Service Area" or "Service Area"), providing all treated and raw water necessary to serve the full development of all land within the Service Area. The Applicant also has commitments to provide nearly 68,000 acre-feet of treated and raw water to customers outside its Service Area under perpetual fixed amount contracts listed in Exhibit B ("Applicant's Fixed Contractual Commitments"). The entities receiving water under fixed amount contracts are all located within the Counties of Adams, Arapahoe, Douglas and Jefferson and the City and County of Broomfield. From time to time, the Applicant provides treated and raw water to customers under temporary arrangements.

The Applicant operates an extensive raw water collection system including the South Platte Collection System, the Roberts Tunnel Collection System¹ and the Moffat Tunnel Collection System. On the South Platte, the Applicant typically stores water at Antero, Eleven Mile, Cheesman, and Chatfield reservoirs for delivery or exchange of water to either the Strontia Springs Diversion Facility or Conduit 20 intakes in Waterton Canyon. In the future, Applicant

¹ As decreed in Civil Action Nos. 1805 and 1806, Summit County District Court, the Blue River Diversion Project includes direct use and storage in Dillon Reservoir.

has plans to divert South Platte water and reusable return flows at its downstream storage facilities currently in place and under development for exchange and use to meet its water supply obligations; and to provide reusable return flows for use by others outside the Service Area in accordance with Article I and Article II of an agreement between Denver and a number of West Slope entities dated _____, 2012 (the “2012 Agreement”). The Applicant stores and diverts water from the Blue River, Ten Mile Creek and the Snake River and their tributaries at Dillon Reservoir and delivers this water through the Roberts Tunnel to the North Fork of the South Platte River above Strontia Springs for immediate use and storage, including storage by exchange in Antero, Eleven Mile and Cheesman Reservoirs, and through direct delivery for storage in downstream storage facilities such as Chatfield Reservoir and the Applicant’s downstream storage facilities. The Applicant also collects water from the Fraser and Williams Fork Rivers and South Boulder Creek for storage in Gross and Ralston Reservoirs. This water is delivered from Ralston Reservoir to the Moffat Treatment Plant for treatment and distribution or delivered to raw water customers.

Applicant also provides water stored under the Blue River Diversion Project water rights to users on the West Slope under the agreements described in this paragraph (collectively, “West Slope Agreements”), some of which have been incorporated into or are referenced in subsequent water court decrees. Under an Agreement between Summit County Board of Commissioners and the Applicant, dated September 19, 1985, Applicant provides 400 acre feet per year of water from Dillon Reservoir and allows up to 3,100 acre feet to be exchanged through Dillon Reservoir. Under the Clinton Reservoir - Fraser River Water Agreement, dated July 21, 1992, as amended, Applicant provides 351 acre feet per year of Future Dillon water from Dillon

Reservoir; bypasses annually from its Fraser River Diversion Project 920 acre feet of water converted from 1985 Summit County Agreement water; operates its Blue River Diversion Project water rights to allow Clinton Reservoir to store up to 3,650 acre feet per year; and augments by exchange from Williams Fork Reservoir snowmaking diversions up to 6,000 acre feet. In the 2012 Agreement, Applicant has agreed to provide an additional 1,743 acre feet/year of water from the Blue River Diversion Project, and its tributaries to users in Summit County; and has also agreed to operate its Blue River Diversion Project water rights to allow Clinton Reservoir to store up to 1,301 acre-feet per year of additional water associated with the dead storage pool and a spillway enlargement. Under the proposed Green Mountain Reservoir Administration Protocol, Applicant has also acknowledged that up to 80 acre feet of annual depletions may occur above Dillon Reservoir by beneficiaries of Senate Document 80 that do not benefit from the 1985 Summit County agreement or 1992 Clinton Reservoir - Fraser River Water Agreement. The West Slope Agreements include agreements between the Applicant and individual water users that implement the foregoing expressly identified agreements.

2. Previous Proceedings. The conditional water rights to the Blue River Diversion Project and Dillon Reservoir were originally decreed in Civil Action Nos. 1805 and 1806, Summit County District Court, on March 10, 1952. After appeal to the Colorado Supreme Court, Case Nos. 1805 and 1806 were remanded for further proceedings. In 1955, Case Nos. 1805 and 1806 were removed to the United States District Court for the District of Colorado where they were consolidated with Case No. 2782, and renumbered Case Nos. 5016 and 5017. On October 5, 1955, the parties to C.A. 2782, 5016 and 5017 entered into a stipulation which formed the basis for the Final Decree, which was entered by the court on October 12, 1955 (the 1955 Stipulation

and Final Decree are referred to jointly herein as the “Blue River Stipulation and Decree”).

Since 1955, the United States District Court has entered various orders, judgments and decrees including determinations on the Applicant’s previous applications for diligence and to make absolute, which have been adopted and incorporated into the Blue River Decree.

3. The Application and Amended Applications. On December 26, 2006, the Applicant filed an application for finding of reasonable diligence and to make absolute in Case No. 2006CW255 and in the Consolidated Cases C.A. Nos. 2782, 5016 and 5017. On January 26, 2009, the Applicant filed a motion for leave to file an amended application for finding of reasonable diligence and to make absolute a conditional water right and Applicant’s initial statement of affirmative defenses. The Applicant’s motion to amend was granted on May 5, 2009. On _____, 2012, the parties filed a joint motion for leave to file a second amended application, with a proposed stipulated decree, and a supplemental resume notice. That motion was granted on _____, 2012.

4. Jurisdiction. The court has subject matter jurisdiction over the Application and this proceeding, and personal jurisdiction over all persons who would have standing to appear as parties, regardless of whether they have appeared. When the Blue River Decree was entered on October 12, 1955, this court retained jurisdiction to effectuate the objectives of the Blue River Decree and over matters that could modify or interfere with the terms of the Blue River Decree. Final Decree, C.A. Nos. 2782, 5016 and 5017 at 17 (Oct. 12, 1955), as amended by Supplemental Order Dismissing Reserved Question and Amending Decree dated October 29, 1957; *City of Grand Junction v. Denver*, 960 P.2d 675, 682-685 (Colo. 1998). On August 4, 1977, the court further ordered that it “will act as the Water Judge provided for by the [Water

Right Determination and Administration Act of 1969] for Water Division No. 5 insofar as proceedings in connection with cases numbered 5016 and 5017 are concerned.” Order Regarding Further Proceedings Consonant with the Colorado Water Right Determination and Administration Act of 1969, C.A. Nos. 2782, 5016 and 5017 at ¶1 (D. Colo. August 4, 1977) (“1977 Order”). In addition, the court has jurisdiction in this matter under the court’s December 4, 2000 Findings of Fact, Conclusions of Law, Judgment and Decree, which provides that “[p]ursuant to § 37-92-301(4), 10 C.R.S. (1999), the Applicant shall file an Application for Finding of Reasonable Diligence on or before the last day of December, 2006 so long as the Applicant desires to maintain these conditionally decreed water rights, or until a determination has been made that these conditionally decreed water rights have become absolute water rights by reason of the completion of the appropriation.” Decree, Case No. 99CW044 at 18 (Dec. 14, 2000).

5. Notice. Notice of the Application was provided in the January, 2007 water resume, the Summit County Journal on January 26, 2007, the Glenwood Springs Post Independent on January 30, 2007, and the Grand Junction Daily Sentinel on January 27, 2007. The application was adequate to provide the inquiry notice required by law, C.R.S. § 37-92-302 (2006). Supplemental notice of the amended application was provided in the ____ water resume, the Summit County Journal on ____, and the Grand Junction Daily Sentinel on _____. Supplemental notice of the second amended application was provided in the _____ water resume, the Summit County Journal on _____, and the Grand Junction Daily Sentinel on _____. Timely and adequate notice of the application, the

amended application, and the second amended application was given in the manner required by law.

6. Summary of Consultation. The Division Engineer for Water Division No. 5 prepared a summary of consultation dated May 10, 2007 regarding the original Application. Applicant served the Summary of Consultation on all parties on June 11, 2007.

7. Not within a Designated Ground Water Basin. The water rights that are the subject of this Decree are not included within the boundaries of a designated groundwater basin.

8. Opposers. The following Opposers filed timely statements of opposition: Colorado River Water Conservation District (“River District”); Town of Frisco (“Frisco”); Grand Valley Water Users Association (“GVWUA”); Palisade Irrigation District (“Palisade”); Ute Water Conservancy District (“Ute Water”); Orchard Mesa Irrigation District (“OMID”); Grand Valley Irrigation Company (“GVIC”); Middle Park Water Conservancy District (“Middle Park”) and Climax Molybdenum Company (“Climax”). Northern Colorado Water Conservancy District filed a late statement of opposition pursuant to a motion to intervene which was granted on February 22, 2010. On ____, the United States Bureau of Reclamation and the Colorado State Engineer filed statements of opposition. The time for filing statements of opposition to the Applicant’s application, as amended, has expired.

9. Withdrawals of Statements of Opposition. The Town of Frisco withdrew its Statement of Opposition on February 21, 2008.

10. Stipulations.

(a) The Colorado River Water Conservation District, Grand Valley Water Users Association, Orchard Mesa Irrigation District, Grand Valley Irrigation Company, Palisade

Irrigation District, Ute Water Conservancy District, and the Middle Park Water Conservancy District (“West Slope Objectors”) have entered into a stipulation with the Applicant, dated _____ (the “West Slope Stipulation”). The 2012 Agreement is the basis upon which the West Slope Objectors have entered the West Slope Stipulation and provided their consent to these Findings of Fact, Conclusions of Law, and Judgment and Decree.

(b) Any others?

B. THE BLUE RIVER DIVERSION PROJECT

11. Description of Underlying Decrees. The Blue River Diversion Project was decreed in Case Nos. 1805 and 1806 in the District Court in the County of Summit on March 10, 1952, with a priority date of June 24, 1946. After appeal to the Colorado Supreme Court, Case Nos. 1805 and 1806 were remanded for further proceedings. Thereafter the cases were removed to this court and given Civil Action Nos. 5016 and 5017 to correspond to Summit County District Court Nos. 1805 and 1806. In this court, the cases were consolidated with already pending Civil Case No. 2782. On October 12, 1955, the Summit County District Court Decrees of March 10, 1952, in Case Nos. 1805 and 1806 were incorporated in and confirmed by Findings of Fact, Conclusions of Law and the Judgment and Decree entered by this court in the consolidated cases, Civil Action Nos. 2782, 5016 and 5017, insofar as those decrees described the rights to the use of water adjudicated to Applicant.

12. Court. District Court for the County of Summit and the United States District Court in and for the District of Colorado.

13. Location. The Blue River Diversion Project stores water in Dillon Reservoir and diverts water from the Blue River, the Snake River, and Ten Mile Creek and their tributaries

through the Harold D. Roberts Tunnel, the west portal of which is located at a point whence the East quarter corner of Section 18, Township 5 South, Range 77 West of the 6th P.M. bears South 81°07' East 941.6 feet.

14. Source. The sources of water for the Blue River Diversion Project are the Blue River, the Snake River, and Ten Mile Creek, all of which are tributaries of the Colorado River; and the waters naturally tributary thereto.

15. Appropriation Date: June 24, 1946. The Blue River Diversion Project was decreed conditional priorities 139(c) and 366(c) for 788 cubic feet per second from the Blue River; conditional priorities 140(c) and 367(c) for 788 cubic feet per second from the Ten Mile Creek; and conditional priorities 141(c) and 368(c) for 788 cubic feet per second from the Snake River providing no more than 788 cubic feet per second shall be taken through any combination of the above described sources. In addition, Dillon Reservoir was decreed conditional reservoir priorities 80(c) and 8(c) for 252,678 acre feet.

16. Physical Works. This court has previously determined in 1978 that the physical works necessary for diversion and storage pursuant to the water rights referred to above have been completed by the Applicant. The as-constructed capacity of Dillon Reservoir is 254,036 acre feet of water and the as-constructed capacity of the Blue River Diversion Project (Roberts Tunnel) is in excess of 1000 cubic feet of water per second of time. Decree and Determination, Case No. W-741-77 at 2, ¶ 6 (Sept. 15, 1978).

17. Amounts Made Absolute in Prior Proceedings and Amounts Remaining Conditional. This court has previously made absolute amounts of water stored in Dillon Reservoir and diverted through the Roberts Tunnel and therefore has as a matter of law

determined that such amounts were placed to lawful beneficial use in accordance with the requirements of the Blue River Decree.

(a) Dillon Reservoir. In 1978, the Dillon Reservoir storage right was made absolute for all beneficial uses authorized in the decrees entered in Case Nos. 1805 and 1806 in the amount of 252,678 acre feet pursuant to this court's September 15, 1978 Decree and Determination. Decree and Determination, Consolidated Civil Nos. 2782, 5016 and 5017 and Case No. W-741-77, Water Division No. 5 at ¶ 8 (D. Colo. Sept. 15, 1978).

(b) Roberts (Montezuma) Tunnel. In 1993, this court ordered and decreed that 520 cfs of the Roberts Tunnel direct flow right had been made absolute and placed to beneficial use in the Denver Municipal Water System in the court's March 11, 1993 Findings of Fact, Conclusions of Law, Decree and Order. Consolidated Civil Nos. 2782, 5016 and 5017 and Case No. 1990CW112, Water Division No. 5. As of the court's March 11, 1993 Decree, 268 cfs of the Roberts Tunnel direct flow water right remained conditional:

520 cfs	absolute
<u>268 cfs</u>	<u>conditional</u>
788 cfs	total

18. Use. All municipal uses including domestic use, mechanical use, manufacturing use, fire protection, street sprinkling, watering of parks, lawns and grounds. The water rights which are the subject of this Application are those direct flow water rights appropriated for immediate use through the Roberts Tunnel with an appropriation date of June 24, 1946, for a total rate of flow of 788 cfs. The Roberts Tunnel has been completed so as to be able to carry

Water to its decreed capacity of 788 cfs, provided that improvements are made to the tunnel's outlet works as described subsequently in this decree. The water provided by Applicant under the West Slope Agreements, in the volumes described in paragraph 1, is fully consumable water from the Blue River and its tributaries that may be used by West Slope water users on the West Slope pursuant to those Agreements for municipal, domestic, irrigation, industrial, recreation, piscatorial, snowmaking, wastewater treatment, augmentation, and exchange uses, including reuse and successive use to extinction in Summit County; provided that prior to the reuse or successive use of such water, the plan for such reuse and/or successive use shall be incorporated into an approved water court decree or substitute supply plan.

C. CLAIM TO MAKE ABSOLUTE

The court finds that on June 23, 2006, the Applicant legally diverted and put to beneficial use 654 cfs of water under the Roberts Tunnel direct flow right, in compliance with the Water Rights Determination and Administration Act of 1969, C.R.S. §§ 37-92-101 – 37-92-602 (the “1969 Act”) and the Blue River Stipulation and Decree.

19. 654 cfs Made Absolute. On June 23, 2006, the Applicant diverted 654 cfs through the Roberts Tunnel and subsequently placed the water to beneficial use to customers within the geographic area depicted in Exhibit A and to fixed amount customers set forth in Exhibit B. On June 23, 2006 at approximately 12:30 p.m. a peak discharge of 654 cfs was recorded at the gage located at the East Portal of the Roberts Tunnel. The water conveyed through the Roberts Tunnel on June 23, less stream carriage losses of 5 percent assessed by the Division Engineer, was delivered to Strontia Springs Reservoir. From Strontia Springs Reservoir a portion of the water was conveyed to the Foothills Water Treatment Plant where the water

underwent treatment for distribution. The remaining portion of Roberts Tunnel water was delivered to Marston Reservoir where it was temporarily stored and eventually treated at the Applicant's Marston Treatment Plant for distribution to and beneficial use by the Applicant's customers. The water diverted through the Roberts Tunnel was used in Applicant's Service Area and to supply Applicant's Fixed Contractual Commitments for municipal purposes either directly or by augmentation, exchange and replacement.

20. Point of Diversion.

(a) On June 23, 2006, the Applicant diverted the Roberts Tunnel direct flow right through the West Portal of the Roberts Tunnel. The Applicant accomplished this diversion by means of the West Portal of the Roberts Tunnel. Although the decree entered by the Summit County District Court in C.A. 1805 and 1806 ("Summit County Decree") lists specific points of direct flow diversion on the Snake, Blue and Ten Mile Rivers, the Summit County Decree also contemplates that Dillon Reservoir would inundate the listed points of diversion and that the West Portal would eventually become the point of diversion for the Dillon Reservoir storage right and the Roberts Tunnel direct flow right.

(b) The Applicant's original plan and intent in 1927 was to divert the Roberts Tunnel direct flow right by means of the three listed points of diversion on the streams, but only until Dillon Reservoir could be constructed, at which point the Applicant intended to utilize the West Portal as the primary point of diversion for the Blue River Diversion Project. When the Applicant filed its Statement of Claim for the Blue River Diversion Project in 1942, the Applicant intended to construct the Blue River Diversion

Project in two stages. The first stage involved the construction of a system of feeder ditches and canals that would allow the Applicant to divert its direct flow right into Roberts Tunnel until Dillon Reservoir could be completed. The second stage involved the construction of Dillon Reservoir, which upon its construction, would inundate the feeder ditches and canals. Statement of Claim, C.A. 1805 and 1806 at ¶4 (County of Summit Nov. 16, 1942). When the Applicant solicited bids for the construction of the Blue River Diversion Project in 1959, the Applicant received a bid that allowed for the construction of Dillon Reservoir in a single stage, eliminating the need to construct the system of feeder ditches and canals. Thus, when the Applicant built Dillon Reservoir, the West Portal of the Roberts Tunnel became the controlling point of diversion for the Roberts Tunnel direct flow right.

(c) The three described points of diversion were based upon the Applicant's Exhibit B in C.A. 1805 and 1806 which was offered in support of a 1927 priority.

(d) The trial court rejected the Applicant's claim for a 1927 priority. Rather the trial court awarded the Applicant a 1946 priority based upon work commenced in 1946 for Dillon Reservoir and the single point of diversion depicted on a 1942 filing map offered as Exhibit D and a report dated February 16, 1946 (Denver Exhibit T).

(e) The 1946 priority confirmed by the Supreme Court contemplated the Dillon Reservoir configuration and the single point of diversion at the West Portal. No mandate was issued to conform the decree to the configuration based upon the 1946 priority.

(f) The Applicant has engaged in a course of conduct whereby it has diverted its direct right through the West Portal of the Roberts Tunnel under a 1946 priority since the tunnel went into operation on July 17, 1964.

(g) This court has previously decreed the West Portal of the Roberts Tunnel as the primary point of diversion for the Roberts Tunnel direct flow right in the Blue River Decree itself and in the subsequent decrees entering amounts made absolute. Findings of Fact and Conclusions of Law and Final Decree, Civil Action Nos. 2782, 5016, and 5017 at 43, ¶ 19 (D. Colo. Oct. 12, 1955); Finding and Order Concerning Due Diligence of the City and County of Denver, Civil Action Nos. 2782, 5016 and 5017 at 2 (D. Colo. Apr. 6, 1964); Supplemental Finding and Decree of 1966 for the City and County of Denver, Civil Action Nos. 2782, 5016 and 5017 at 2 (D. Colo. Feb. 6, 1966); Decree and Determination, Civil Action Nos. 2782, 5016 and 5017 (W-741-77) at 2, ¶4 (D. Colo. Sept. 15, 1978); Findings of Fact, Conclusions of Law, Decree and Order, Civil Action Nos. 2782, 5016 and 5017 (82CW129 WD5) at ¶ 6(b) (D. Colo. Oct. 3, 1985); Findings of Fact, Conclusions of Law, Decree and Order, Civil Action Nos. 2782, 5016 and 5017 (86CW132 WD5) at ¶ 6(b) (D. Colo. June 2, 1987); Findings of Fact, Conclusions of Law, Decree and Order, Civil Action Nos. 2782, 5016 and 5017 (90CW112 WD5) at ¶ 5(b) (D. Colo. Mar. 11, 1993).

(h) For the above stated reasons, the court finds that the West Portal of the Roberts Tunnel is the primary point of diversion for the Roberts Tunnel direct flow right under the 1946 priority.

21. Green Mountain Reservoir Not Impaired. The Applicant complied with Paragraphs 4(a) of the Blue River Stipulation and Decree, Paragraph 4 of the April 16, 1964 Stipulation, and Paragraphs 2, 3 and 4 of the Supplemental Judgment and Decree of February 9, 1978, when the Applicant diverted 654 cfs under the Roberts Tunnel direct flow right on June 23, 2006. Green Mountain Reservoir had already achieved its annual fill prior to the Applicant's diversions under its Roberts Tunnel direct flow right on June 23, 2006. The Applicant's diversions on June 23, 2006 therefore did not impair the ability of Green Mountain Reservoir to fulfill its function as set forth in the Manner of Operation of Project Facilities and Auxiliary Features, contained in Senate Document No. 80, 75th Congress, 1st Session.

22. Payment for Power Interference.

(a) Paragraph 4(b) of the Blue River Stipulation and Decree requires that the Applicant deliver electric energy to the United States in substantially the same amounts, at approximately the same hours and at substantially the same rates of delivery that would have been generated by the Green Mountain Power Plant had it not been for the diversions of the waters by the Applicant and under the West Slope Agreements.

(b) The power loss to Green Mountain Reservoir caused when the Applicant and users under the West Slope Agreements divert water from the Blue River is termed power interference. The Applicant currently repays this power interference through two agreements with the Western Area Power Administration ("WAPA"), an agency of the United States Department of Energy.

(c) Under a September 30, 1987 contract with WAPA, the Applicant purchases firm electric service generated by WAPA (Contract No. 87-LAO-110) in order

to offset power interference caused to Green Mountain Reservoir by storage at Dillon Reservoir. Under this agreement, the Applicant purchases approximately 7 gigawatt hours of energy per year.

(d) The Applicant also entered into a September 21, 1990 Interchange Agreement with WAPA to bank surplus power with WAPA until the power is required by the Applicant to pay off its interference obligations (89-LAO-512). The Interchange Agreement allows the Applicant to deposit and withdraw power in order to pay back its power interference. Excess power can be banked for later use and any deficit in the account can be paid off by the Applicant in cash at WAPA's "average value of seasonal purchases."

(e) The United States Bureau of Reclamation and the Applicant account for the power interference on a monthly basis. In order to determine the amount of potential power interference, the Applicant accounts for depletions to the Blue River caused by the Applicant and by deliveries to water users under the West Slope Agreements. Such depletions to the Blue River are accounted for by calculating the change in storage at Dillon Reservoir, plus amounts of water diverted through the Roberts Tunnel, plus net evaporation, plus depletions made in accordance with the West Slope Agreements that are not reflected in Dillon Reservoir change in storage. The Applicant and the Bureau currently assume that the power interference amount is the equivalent of 210 kilowatt hours per acre-foot diverted. Thus, for example, assuming Dillon Reservoir diverts 100 acre feet, the Applicant owes interference of 21,000 kilowatt hours (100 acre-feet x 210 kilowatt hours per acre-foot). The computed interference is also distributed into on-peak

and off-peak hours. Current interference accounting allocates about 56% of the power interference to on-peak demand hours, and 44% to off-peak hours.

(f) Since the Blue River Decree was entered, the Applicant has acquired numerous electrical credits through its Agreements with WAPA and other entities, including Public Service Company of Colorado. The Applicant has also supplied electrical power generated by its own hydroelectric facilities. During the most recent diligence period, the Applicant paid for its power interference through the energy credits purchased from WAPA that were banked through the Interchange Agreement.

(g) The court therefore finds, the Applicant has accounted and paid for all power interference owed to the Bureau of Reclamation under paragraph 4(b) of the Blue River Stipulation and Decree for power interference that occurred during the month of June 2006, when the Applicant diverted 654 cfs.

23. Place of Use.

All water provided by Applicant on the East Slope from the Blue River Diversion Project is used within the six counties of Denver, Arapahoe, Jefferson, Adams, Broomfield and Douglas. In the 2012 Agreement, the Applicant agreed to limit the volumes of water it provides and the geographic area in which recipients of the water are located. Under the West Slope Agreements, Applicant has also agreed to provide water under the Blue River Diversion Project to water users located in Summit County.

(a) Article I of the 2012 Agreement defines the areas in which the Applicant may provide water on the East Slope as the Service Area depicted in Exhibit A and the areas served by the entities listed in Exhibit B under fixed amount contracts. Article I.B

of the 2012 Agreement also provides for the use of water outside of the Service Area under specified contracts or other defined limitations. Water provided by Applicant to customers on the East Slope in accordance with the limitations of Article I and Article II.A of the 2012 Agreement is used in the City and County of Denver and areas adjacent to and reasonably integrated with the development of the City and County of Denver, which is defined in the Blue River Decree as the Denver Metropolitan Area. The Blue River Decree does not require that the Applicant own all the pipes or facilities that convey water to individual customers.

(b) In order to address some of the impacts of its diversions on the West Slope, the Applicant has also agreed to provide water either directly or from storage under the Blue River Diversion Project to water users in Summit County as described in paragraph 1 pursuant to the West Slope Agreements and any decrees that may incorporate or rely on one or more of the West Slope Agreements.

For these reasons, the court finds that the Applicant placed the water diverted under the Roberts Tunnel direct flow right in June 2006, to beneficial use within the Denver Metropolitan Area as required by Paragraph 4(g) of the Blue River Stipulation. Based on the unique circumstances described above, the Applicant's use of water derived from the Blue River Diversion Project pursuant to the West Slope Agreements to address impacts of its diversion on the West Slope is a lawful beneficial use that is not contrary to the terms of the Blue River Stipulation and Decree.

24. Type of Use. The court finds that the Applicant complied with Paragraph 4(g) of the Blue River Stipulation and Decree by placing the water diverted on June 23, 2006 under the Roberts Tunnel direct flow right only to municipal uses. The 654 cfs diverted by the Applicant

through the Roberts Tunnel was put to beneficial use and all uses for which the water was beneficially used constituted municipal uses, including augmentation, exchange and replacement. The water was treated at the Foothills and Marston Water Treatment Plants, and distributed through its system for potable water use by the Applicant's customers within the Service Area and under potable contracts listed in Exhibit B. The Applicant also supplies nonpotable water for municipal use to customers located within the Service Area pursuant to the nonpotable water contracts listed in Exhibit B. In addition, water is delivered to the Applicant's customers by augmentation, exchange and replacement and used by them for municipal purposes. None of the water was delivered for agricultural purposes. The court finds that uses of the water rights decreed for the Blue River Diversion Project under the West Slope Agreements for fully consumable municipal, domestic, irrigation, industrial, recreation, piscatorial, snowmaking, wastewater treatment, augmentation, and exchange uses, including reuse and successive use to extinction in Summit County do not violate paragraph 4(g) of the Blue River Stipulation and Decree.

25. Reuse. The court finds that in diverting the 654 cfs, which the Applicant seeks to make absolute, the Applicant complied with the Paragraph 4(e) and (f) of the Blue River Stipulation and Decree:

(a) The Applicant does not need to show that specific molecules of Colorado River water were reused to meet its obligations to utilize return flows from the Colorado River System by exchange or otherwise under ¶¶ 4(e) and (f) of the Blue River Stipulation and Decree. The Applicant has shown that it has complied with the terms and conditions in ¶¶ 4 (e) and (f) of the Blue River Stipulation and Decree.

(b) The Applicant has constructed, and is in the process of constructing, a number of facilities to increase its ability to reuse water from the Colorado River System. The Applicant is constructing an estimated total of 30,000 acre feet of gravel pit storage to capture additional return flows from the Colorado River System which it is currently unable to utilize. The Applicant has constructed a water recycling plant which, at build out, will be able to treat 45 million gallons per day of water diverted directly from the effluent returning to the South Platte, for non-potable industrial and landscape irrigation uses within the Denver Metropolitan Area. In addition, Applicant is in the process of adjudicating an application in Water Division 1 to reuse and exchange lawn irrigation return flows resulting from reusable water applied to lawns and landscaping. Certain obligations regarding Denver's reuse of water are specified in Articles II(A) and II(C) of the 2012 Agreement in furtherance of the implementation of the Blue River Decree.

(c) During the diligence period and pursuant to paragraph 4(f) of the Blue River Stipulation and Decree, the Applicant submitted to the Secretary of the Interior annual reports showing by month for the respective water years, the quantities of water diverted from the Colorado River System, the extent such water was used directly or placed in storage, the quantities of return flow from municipal uses of such Colorado River water accruing to the South Platte River, and the steps, by legal action or otherwise, taken during the period covered by the report to utilize such return flow by exchange or otherwise. The Secretary accepted the Applicant's annual reports without any expression of disapproval.

(d) During the diligence period, the United States did not apply to the court for injunctive or other remedial orders pursuant to paragraph 4(f) of the Blue River Stipulation and Decree, and the court finds the Applicant made reasonable efforts, in view of legal limitations and economic feasibility, in establishing, enforcing, utilizing or operating a plan designed to accomplish reduction of its Blue River water use.

(e) Further, the Applicant's plan to provide water derived from Colorado River return flows to entities outside the Service Area in accordance with the limitations of Article I and Article II of the 2012 Agreement comports with paragraphs 4(e) and (f), and paragraph 4(g) of the Blue River Stipulation and Decree.

26. Reasonable Number of Gauging Stations. The Applicant has developed a procedure by which it measures and accounts for its return flows attributable to Colorado River sources. These measurements are reported annually to the Secretary of the Interior. The Applicant utilizes a reasonable number of gauging stations for the purposes of measuring (1) the quantities of water actually diverted from the Blue River; and (2) the increased return flow water into the South Platte River and other streams by reason of the diversion of its Colorado River System. For these reasons, the court finds that the Applicant has complied with paragraph 4(h) of the Blue River Stipulation and Decree.

27. Roberts Tunnel Seepage. When diverting water on June 23, 2006 through the Roberts Tunnel, the Applicant accounted for ground water seepage in the Roberts Tunnel. Ground water seepage in the Roberts Tunnel is administered by the State Engineer as 100 percent tributary to the Colorado River. Accordingly, when the Applicant diverts water under the 1946 priority for the Roberts Tunnel direct flow right, and the right is in priority, the

Applicant is diverting the ground water in accordance with the prior appropriation system, as was the case on June 23, 2006. When the Applicant's Dillon Reservoir storage right or Roberts Tunnel direct flow water right is not in priority, the Applicant accounts for the Roberts Tunnel seepage as water depleting the Colorado River. Whether in or out of priority, the Applicant pays power interference for all seepage into the Roberts Tunnel pursuant to Paragraph 4(b) of the Blue River Stipulation and Decree and provides that water to Green Mountain Reservoir in substitution years.

D. CLAIM FOR FINDING OF REASONABLE DILIGENCE

The court finds that the Applicant has been reasonably diligent in developing the conditional portion of the Roberts Tunnel direct flow right.

28. Physical Works. As the court has previously determined, the physical works necessary for diversion of the Roberts Tunnel direct flow rights have been completed and the facilities necessary to bring about the application of the water appropriated to beneficial use are in a continuous pattern of development and construction. Decree and Determination, Case No. W-741-77 at ¶9 (September 15, 1978). Since 1978, the physical works of the Roberts Tunnel direct flow right have been continuously maintained and the Applicant is currently capable of diverting up to 684 cfs.

29. Diligence Activities. The Blue River Diversion Project is an integral part of the entire water collection, distribution, treatment and delivery system, designed and constructed to provide water for municipal use within the Denver Metropolitan Area. The activities listed in the amended application are incorporated herein by this reference. The court finds that the activities listed in the amended application are evidence of the Applicant's continued reasonable diligence

in developing the conditional portion of the Roberts Tunnel direct flow right. These activities evidence the continuous efforts of development and construction of the facilities necessary to divert, store and use waters from the Blue River, Snake River and Ten Mile Creek including the diversion, storage and use of these waters by water users in Summit County to help mitigate the impacts of its diversions on the West Slope.

30. Capability. The Applicant is capable of developing the conditional portion of the Roberts Tunnel direct flow right.

(a) Existing Structure. The Blue River Diversion Project is an existing facility consisting of Dillon Reservoir and the Roberts Tunnel.

(b) Water Availability. The Applicant presented a water availability analysis showing that water is available in sufficient amounts and frequency so as to allow it to divert the remaining conditional portion of its Roberts Tunnel direct flow right. In most years during the Applicant's 1988-2007 study period, water is available for diversion in the amount of 788 cfs by the Roberts Tunnel direct flow right. On average there were approximately 13 days per year that an amount equal to or greater than 788 cfs was available to the Roberts Tunnel direct flow water right, with 788 cfs of water available a maximum of 34 days in 2006. Water was available for diversion at the 788 cfs threshold in 17 out of the 20 years during the Applicant's 1988-2007 study period.

(c) Roberts Tunnel Capacity. The tunnel is concrete lined with a diameter of 10' 3" with a capacity of 1,000 cfs when the water level in Dillon Reservoir is 9017 feet. The outlet works consists of a 90" wye branch off the tunnel. The 90" outlet pipe continues approximately 243 feet to a 66" x 42" x 66" trifurcation. The center of the

trifurcation consists of a 42” butterfly valve with a 36” hollow-jet valve to release the water. In 1975, the Applicant installed a 20” cone valve, a 12” Howell-Bunger discharge valve and a 20” Howell-Bunger discharge valve. The calculated discharge through the current outlet works is approximately 684 cfs. On June 23, 2006, 654 cfs was measured discharging from the outlet works. The outlet works are physically capable of accommodating a 78” butterfly valve, 66” piping and a 66” hollow-jet valve in addition to the 42” butterfly valve for a potential calculated discharge capacity of approximately 944 cfs.

(d) Power Interference. The Applicant currently holds agreements with the Western Area Power Administration (“WAPA”), an agency of the United States Department of Energy, to purchase electrical energy from WAPA to pay power interference to the Bureau of Reclamation. The Applicant’s agreement to purchase electrical energy does not expire until September 30, 2024. The Applicant also has an Interchange Agreement with WAPA to “bank” electrical power to use to repay the Bureau for power interference. This agreement also is set to expire on September 30, 2024. Based on these contractual arrangements, the court finds that the Applicant is capable of meeting its power interference obligations under the Blue River Decree.

(e) North Fork Capacity. The North Fork of the South Platte River below the outlet works of the Roberts Tunnel is currently capable of carrying 680 cubic feet per second on a sustained basis and 1020 cubic feet per second for short periods of time. The Applicant has established design flows, design criteria for channel improvement, completed construction of improvements, and continued maintenance of the channel

which has increased the carrying capacity of the North Fork of the South Platte River to an amount in excess of 788 cubic feet per second, in addition to the natural flow, from the Roberts Tunnel at Grant downstream to its South Platte River intake.

(f) Capacity of South Platte Facilities. The Applicant's evidence shows that it will have the capacity to directly divert and put to beneficial use up to 967 cfs through the Foothills Tunnel and Conduit 26 for use at the Foothills Water Treatment Plant and through Conduit 20, which diverts water from the South Platte to Marston Reservoir. The Applicant is also able to store Blue River water by exchange in Cheesman Reservoir under its decree entered into C.A. 3635. Roberts Tunnel water can also be stored directly in Strontia Springs Reservoir, Chatfield Reservoir, and the Applicant's South Platte gravel pit reservoirs. In addition, Roberts Tunnel Water can be delivered directly via the South Platte River to holders of temporary and long-term contract users.

(g) Financial ability. The Applicant is the largest municipal water supplier in the state, serving nearly one quarter of the state's population. The Applicant is authorized to issue municipal bonds and generally issues approximately \$50 million in bonds each year. As of end of the year 2006, its capital assets were valued at \$1.6 billion and its total operating revenues were over \$200 million. The Applicant annually maintains a cash reserve of \$150-200 million. Unless some catastrophe occurs in the future, the Applicant has and will continue to have the financial ability to store, divert and use the water under the Blue River Stipulation and Decree.

(h) Two Forks.

i. To date, Two Forks Reservoir has not been constructed. The Applicant can fully utilize its importations from the Blue River with or without Two Forks Reservoir by storing the same water in other east slope facilities or by direct delivery to Conduit 26 Intake, Conduit 20 Intake, Last Chance Ditch Intake and Chatfield Reservoir manifold or pump.

ii. Further, the Applicant currently holds a right of way for Two Forks Reservoir. The 1989 veto of Two Forks by EPA did not foreclose the Applicant from applying for permits of different size or location. In June 2003, the Applicant entered into the South Platte Protection Plan as an alternative to the proposed Wild and Scenic designation. Pursuant to Attachment F of this plan, the Applicant agreed to a 20 year moratorium on permit applications to construct Two Forks to allow it to pursue alternative projects to develop Two Forks water. The Applicant further agreed to relinquish its right of way when development of the Right of Way becomes impractical because alternative development of the Two Forks waters has reduced the economic value of the Right of Way below meaningful value. To date, alternative projects have not been developed that have reduced the economic value of the right of way below meaningful value. Further, the Applicant secured a finding of reasonable diligence on September 2, 2005 in Case No. 2003CW357 Water Division 1 for the Two Forks Reservoir South Platte storage right. The court finds, for purposes of this diligence proceeding, that the Applicant has not abandoned the development of Two Forks Reservoir.

(i) East Slope Place of Storage. The Applicant is currently physically able to store water in Antero, Eleven Mile, Cheesman, Strontia Springs, Chatfield, Platte Canyon, Marston, Gross, and Ralston Reservoirs and will in the future be able to store water in the downstream gravel lake complexes, which are under construction or will be constructed. All of these facilities are part of the Denver Municipal Water System. The Applicant is or will be capable of placing Blue River water into all of these structures either directly or by exchange. In accordance with Article IV(B) of the 2012 Agreement and the Blue River Decree and Stipulation, the Applicant may store any imported Blue River water, whether released from Dillon Reservoir or diverted directly through the Roberts Tunnel at any existing or future storage facility on the East Slope; provided that the amount of imported Blue River Water in storage on the East Slope does not exceed 400,000 acre feet at any point in time. This provision and limitation on the amount of imported Blue River water does not apply to the storage of return flows from the use or reuse of imported Blue River water either directly or by exchange to any existing or future storage facility.

31. Need. Based on the evidence considered by the court in connection with the following factors, the court finds that the Applicant continues to have a non-speculative need for the conditional portion of the Roberts Tunnel direct flow right that is the subject of this Decree.

(a) The Applicant performs regular water supply planning. The Applicant's Integrated Resources Plan prepared in 2002 identifies that the Applicant has not developed enough water to serve the projected future growth of Applicant's Service Area, depicted in Exhibit A. Further in 2006, the Applicant identified various events and

developments that make the Applicant's ability to meet projected future water demands and supply even more difficult. The Applicant reasonably anticipates that it will rely more and more upon this water right to fulfill the future needs of its customers.

(b) The Applicant has a Reasonable Water Supply Planning Period. The Applicant's current water supply planning period extends to 2050. The court finds that this is a reasonable water supply planning period, particularly considering the size of the Applicant's Service Area, both in population and geography, and the extent of the Applicant's contractual commitments outside of its Service Area.

(c) The Applicant's Substantiated Population/Rate of Growth Projections. The Applicant bases its demand projections on a n econometric model that relies on numerous factors, including population growth within the Denver Metropolitan Area as predicted by the Denver Regional Council of Governments ("DRCOG") in 2030, and the U.S. Census Bureau as projected in 2050. The court finds that Applicant reasonably relied on the rate of population growth used by DRCOG and the U.S. Census Bureau. Population growth factor is one of several factors considered by the Applicant's model. The Applicant relies on a model that interrelates water usage with demographics and various other socio-economic factors. This includes the rate of usage for single-family households in the future, so that total single-family usage can be determined by multiplying that usage rate by the future number of single-family households. The model uses a projected growth rate of 1.0 percent per year for the years 2005 through 2050, and a population of 1.74 million residents in 2050. In addition, the model projects employment in the service area to increase to a total of 1.25 million jobs by 2050,

reflecting an average annual job growth rate of just under 0.9 percent from 2005 through 2050. The court finds that the model assumes a water demand projection based on a reasonable rate of population and employment growth.

(d) Water Required to Meet the Applicant's Reasonably Anticipated Needs.

The Applicant demonstrated that the remaining amounts conditionally decreed for the direct flow right in the Roberts Tunnel are reasonably necessary to serve the reasonably anticipated needs of the Applicant for the planning period, above its current water supply.

i. Implementation of Reasonable Water Conservation Measures

During Planning Period. The Applicant has adopted an accelerated conservation plan intended to achieve by 2016 the 29,000 acre-feet of savings targeted in the 1996 IRP for 2045. To achieve these goals, the Applicant has instituted a new customer information system that provides customers with access to monthly consumption information rather than the bi-monthly consumption data historically provided by the Applicant to its customers. The Applicant offers rebates and incentives to encourage customers to convert to low water use appliances, plumbing fixtures, irrigation systems and more efficient landscapes. The Applicant has developed an increasing block rate structure that encourages conservation through price signals, and allows for more effective demand management during peak summer irrigation use and severe droughts. In addition, the Applicant is engaged in educational outreach to provide customers with information to reduce their consumption through best-practices for irrigation and other water use. During the period 2002-2006, the Applicant spent approximately

\$16,600,000 on conservation programs. Since 2007, the Applicant has spent over \$31,000,000 on these conservation activities. Article II(B) and II(C) of the 2012 Agreement describe additional obligations regarding Denver's water conservation efforts. The court finds that these conservation measures are reasonable.

ii. Reasonably Expected Land Use Mixes during the Planning Period.

The Applicant's demand model considers three types of customers, which could be characterized as land use mixes. These uses include (1) single-family residences; (2) commercial, multi-family and industrial users; (3) and government and institutional users. The court finds that these are reasonable land use mixes to consider for the planning period.

iii. Reasonably Attainable Per Capita Usage Projections for Indoor and Outdoor Use Based on the Land Use Mixes During the Planning Period. In year 2000, the Applicant's system-wide metered water use was 220 gallons per capita per day. The Applicant's forecast projects that system-wide metered use will decline to 181 gallons per capita per day by 2050. Along with other economic and demographic factors, this decline reflects the impact of natural replacement of older, less efficient fixtures. Traditionally, 60 percent of the Applicant's use is for indoor purposes and 40 percent is for outdoor purposes. The Applicant's projections represent the exercise of informed judgment.

iv. Amount of Consumptive Use Reasonably Necessary to Serve the Increased Population. The court finds that the Applicant's past and planned

future demands account for a reasonable amount of consumptive use to serve its customers.

(e) The Applicant's Current Water Supply. The Applicant's projected future demands are in excess of the water supply currently available from its Municipal Water System. The Applicant generally uses its direct flow water rights first before using its reservoir storage to meet its water supply needs. During the period of 1998-2003, the Applicant's storage declined to a point where the Applicant's storage reserves were drawn down to less than its annual demand. The Blue River Diversion Project water rights are a key part in meeting future demand and as the population increases in the future or as hydrologic conditions change, Applicant will increase its draw on Dillon Reservoir storage right and Roberts Tunnel direct flow right to meet its future demands, subject to various regulatory requirements, the 2012 Agreement, and other contractual commitments.

(f) The Applicant's Future Demand Projections. The Applicant presented an econometric demand model and projections of future water demands for the Applicant's Service Area and Fixed Contractual Commitments. The model, which projects unconstrained water demand, meaning water demand without emergency water restrictions, forecasts the Applicant's water demands through 2050 by utilizing socioeconomic forecasts, historical data, and U.S. Census data. Specifically, the model relies on socioeconomic projections made by DRCOG, which projects future population as far as 2030, and then extends the socioeconomic forecasts through 2050 based on national projections from the U.S. Census Bureau and other sources, such as historic

relationships between service area growth and national trends. To determine, the Applicant's 2050 demand, the DRCOG data is extended forward to 2050 using U.S. Census Bureau data and projections. In order to accurately forecast the Applicant's demand, the model uses separate equations to measure (1) single family water use per household customers; (2) multi-family, commercial and industrial customers; and (3) institutional (governmental) customers. The data for these three types of customers is based on annual water use data collected by the Applicant and its distributors from 1973 to 1999. The Applicant's model projects that its 2050 treated water demand at the customers' meters would be 370,000 acre feet, including a five percent calibration adjustment. To estimate the Applicant's total system-wide demand water requirements a number of adjustments must be made. First, system losses and unaccounted for water use, which is estimated to average six percent, must be added (22,000 acre feet). Second, 39,000 acre feet must be subtracted to account for improved efficiency of water using fixtures. Third, 67,000 acre feet for Applicant's Fixed Contractual Commitments must be added. Fourth, pursuant to the Applicant's policy of maintaining a 30,000 acre foot safety factor, 30,000 acre feet was added. With these adjustments the Applicant's total system-wide demand in 2050 is 450,000 acre feet. Applicant has analyzed these demand forecast results. Such analysis included evaluation of overall usage and demographic metrics of the forecast in comparison to historical statistics. The court concludes that the Applicant has engaged in a thoughtful planning process and has properly taken into account both its own experience and expertise, and analysis by outside experts.

(g) Safety Factor. The court finds that the Applicant's current 30,000 acre foot safety factor (30,000 acre feet/year of a four year drought) is a reasonable and prudent amount of water to store in reserve in light of the large number of customers who rely on the Applicant's system and the importance of the Applicant to the economic development of the State.

II. CONCLUSIONS OF LAW

Based upon and fully incorporating the Findings of Fact set forth above, this court concludes as a matter of law that:

32. Application was Timely. The Application for a Finding of Diligence and to Make Absolute was timely filed with the Water Clerk pursuant to C.R.S. §37-92-301(4) (2006).

33. Notice. The Applicant satisfied all requirements for notice under C.R.S. §37-92-302(3) (2006).

34. Perfection of Water Rights. The court concludes and determines that the Applicant perfected 654 c.f.s. of the Roberts Tunnel direct flow right by lawfully: (1) capturing, possessing, and controlling water; and (2) applying the water to a beneficial use. *City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961-962 (Colo.1998) (citing *City & County of Denver v. Northern Colo. Water Conservancy Dist.*, 276 P.2d 992, 998-99 (Colo. 1954)). The Applicant has petitioned the court to declare the right absolute in the amount of 654 c.f.s. for purposes of fixing the appropriator's place in the priority system in relation to all other appropriators in a manner consistent with the 1969 Act. *New Anderson Ditch Co.*, 962 P.2d 962; C.R.S. § 37-92-306.

35. Points of Diversion.

(a) Only those diversions at the decreed point of diversion or at decreed alternate points of diversion may be utilized to make absolute a decreed conditional water right. *Broyles v. Fort Lyon Canal Co.*, 638 P.2d 244, 251 (Colo. 1981).

(b) As it has continuously since inundation in 1964, the Applicant diverted the Roberts Tunnel direct flow right by means of the West Portal, which the court determines is an acceptable point of diversion under the decrees entered in C.A. 1805 and 1806, and in Consolidated Case Nos. 2782, 5016 and 5017.

(c) The Decrees entered in C.A. 1805 and 1806 found and decreed that the Blue River Diversion Project would divert through a system of intakes, feeder ditches and canals located at three distinct points of diversion on the Snake, Blue, and Ten Mile Rivers. Judgment and Decree, C.A. 1805/1806 at p.2 ¶6(a)-(c); p. 5 ¶1(a)-(c) (Summit County Mar. 10, 1952). The Summit County District Court decrees also decreed that the Applicant would construct Dillon Reservoir, in an area defined under the decrees, which would inundate the three points of diversion. Judgment and Decree, C.A. 1805/1806 at p. 4 ¶7(a); p. 6 ¶1(d) (Summit County Mar. 10, 1952). Further, the Summit County District Court decree in C.A. 1806 includes a finding that “[i]n its final form, the [Blue River Diversion] Project will provide the means of diverting water at the points of diversion hereinabove mentioned at the maximum rate of 788 cubic feet per second of time, transmitting the same to the North Fork of the South Platte River through a tunnel approximately twenty-three miles in length known as the Montezuma Tunnel, which has a maximum carrying capacity of 788 cubic feet of water per second of time and the West

Portal of which is located at a point whence the East quarter corner of Section 18, Township 5 South, Range 77 West of the 6th Principal Meridian bears South 81° 07' East, 941.6 feet.” Judgment and Decree, CA 1806 at p. 2, ¶ 4 (Mar. 10, 1952). As determined in *City and County of Denver v. Northern Colorado Water Conservancy Dist.*, 276 P.2d 992, 1003 (Colo. 1955), the June 24, 1946 priority date for the Blue River Diversion Project was fixed based on the selection of a project involving “a large reservoir at Dillon near the confluence of the Blue with the Ten Mile and the Snake, and with a new single point of diversion in the reservoir which captured waters more than a mile below the former proposed points of diversion.” In addition, this court has historically recognized the West Portal of the Roberts Tunnel as the primary point of diversion for the Roberts Tunnel direct flow right in the Final Decree entered by this court on October 12, 1955 and in subsequent diligence proceedings. Final Decree and Stipulation, CA 2782, 5016 and 5017 at ¶19 (D. Colo. Oct. 12, 1955); Finding and Order Concerning Due Diligence of the City and County of Denver at 2 (D. Colo. Apr. 6, 1964); Decree and Determination, CA 2782, 5016 and 5017 (Case No. W-741-77) at 2 ¶ 4 (D. Colo. Sept. 15, 1978).

(d) Because the Summit County District Court decrees award the Applicant a June 24, 1946 priority date based on the use of a single point of diversion at the Roberts Tunnel, and because this court’s decree entered in 1955 and in later diligence matters referred to the Roberts (Montezuma) Tunnel as the point of diversion for the direct flow right, the court concludes that Applicant’s diversion under a 1946 priority can legally be made at the point of diversion described as the West Portal of the Roberts Tunnel. Based

on the court's findings in this regard, the court concludes that the West Portal of the Roberts Tunnel was intended to become the primary point of diversion for the Blue River Diversion Project upon the construction of Dillon Reservoir and is therefore the appropriate point of diversion for the Blue River Diversion Project.

(e) All previous findings of amounts made absolute also affirm the West Portal of the Roberts Tunnel as the point of diversion for the direct flow right. Under *Taussig v. Moffat Tunnel Water & Development Company*, 106 P.2d 363 (Colo. 1940), the precise location of the point of diversion of a conditional water right is not essential until the water is placed to beneficial use. When the conditional water right is made absolute then the decree must take on the elements of definiteness and certainty.

(f) Based on the foregoing, the court concludes and determines that the Applicant diverted the 654 cfs at the decreed point of diversion for the Roberts Tunnel direct flow right.

36. Place of Use.

(a) Municipal appropriations are made to serve a growing population. *City and County of Denver v. Sheriff*, 96 P.2d 836, 841 (Colo.1939) (stating that a specified tract of land does not increase in size, but populations do, and in short periods of time).

(b) Unlike agricultural water rights, which are appropriated for a fixed area of land, *In re Water Rights of Central Colorado Water Conservancy Dist.*, 147 P.3d 9, 14 (Colo. 2006), municipal water rights must serve a growing population, which can expand and increase in size. *Sheriff*, 96 P.2d at 841.

(c) The geographic area where the Applicant serves and provides water, including water diverted on June 23, 2006, is the area within and adjacent to the City and County of Denver, and is within Denver Metropolitan Area, that being the area reasonably integrated with the development of the City and County of Denver (as defined by the Blue River Decree), subject to the limitations of Article I and Article II of the 2012 Agreement.

(d) Because Applicant diverts water from the West Slope to the East Slope it has voluntarily agreed through the West Slope Agreements to supply water for beneficial use by water users in Summit County to help address the impacts of its diversions on the West Slope. The court therefore finds that the amounts and uses of water deliveries from the Blue River Diversion Project made available voluntarily by the Applicant under the West Slope Agreements effectuate the objectives of the Blue River Decree and Stipulation and, under these unique circumstances, are lawful municipal uses of such water under the Blue River Decree and Stipulation. The water provided by Applicant under the West Slope Agreements is fully consumable water from the Blue River and its tributaries that may be used by West Slope water users on the West Slope pursuant to those Agreements for municipal, domestic, irrigation, industrial, recreation, piscatorial, snowmaking, wastewater treatment, augmentation, and exchange uses, including reuse and successive use to extinction in Summit County; provided that prior to the reuse or successive use of such water, the plan for such reuse and/or successive use shall be incorporated into an approved water court decree or substitute supply plan. No additional amount of water from the Blue River Diversion Project under the decrees entered in CA

1805 and 1806 and Consolidated Case Nos. 2782, 5016 and 5017 shall be used for these West Slope purposes. This decree shall not be considered precedent or persuasive authority with regard to any other water right or any other matter unrelated either to the operation of the Blue River Diversion Project water rights as contemplated under this decree or enforcement of this decree.

(e) The Applicant's plans to provide water derived from Colorado River return flows to entities located outside the Applicant's Service Area, but within the six counties listed in paragraph 23 of this decree in accordance with Article I and Article II of the 2012 Agreement are lawful and effectuate the objectives of the Blue River Stipulation and Decree.

37. Diligence. The measure of reasonable diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system. C.R.S. § 37-92-301(4)(b) (2010).

(a) A water court makes a case-by-case consideration of several factors to determine whether the applicant has made the required effort. *See City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961 (Colo.1998) (citing *Dallas Creek v. Huey*, 933 P.2d 27, 36 (Colo.1997)).

(b) These factors include but are not limited to: (1) economic feasibility; (2) the status of requisite permit applications and other required governmental approvals; (3)

expenditures made to develop the appropriation; (4) the ongoing conduct of engineering and environmental studies; (5) the design and construction of facilities; and (6) the nature and extent of land holdings and contracts demonstrating the water demand and beneficial uses which the conditional right is to serve when perfected. *Dallas Creek*, 933 P.2d at 36.

(c) All acts necessary to complete the appropriation need not be accomplished in the same diligence period. What must be demonstrated is continued intent and progress toward finalizing the conditionally decreed appropriation. The existence of a plan, capability, and need for the water is examined periodically by the water court, at the close of each diligence period, to determine whether the applicant is entitled to retain the antedated priority. Monitoring of use and need for the conditional appropriation is a proper role of the water court in a diligence proceeding. *Dallas Creek*, 933 P.2d at 36.

(d) Based on the foregoing diligence activities, the court determines that the Applicant has demonstrated reasonable diligence in the development of the conditional portion of the Roberts Tunnel direct flow right.

38. Economic Conditions and Governmental Permits. Applicant has obtained all necessary governmental permits to construct facilities necessary to date to divert the Roberts Tunnel direct flow right and put water diverted under the right to beneficial use. Neither current economic conditions beyond the control of the applicant which adversely affect the feasibility of perfecting a conditional water right or the proposed use of water from a conditional water right nor the fact that one or more governmental permits or approvals have not been obtained shall be

considered sufficient to deny a diligence application, so long as other facts and circumstances which show diligence are present. C.R.S. § 37-92-301(4)(c).

39. Can and Will.

(a) To show reasonable diligence in the development of a conditional right, an applicant must demonstrate that the waters “can and will” be stored and beneficially used and that the project “can and will” be completed with diligence and within a reasonable time. See C.R.S. § 37-92-305(9)(b). *Municipal Subdistrict, Northern Colorado Water Conservancy District v. OXY, Inc.* 990 P.2d 701 (Colo. 1999).

(b) C.R.S. § 37-92-305(9)(b) (2010) provides: “No claim for a conditional water right may be recognized or a decree therefore granted except to the extent that it is established that the water can be and will be diverted, stored, or otherwise captured, possessed, and controlled and will be beneficially used and that the project can and will be completed with diligence and within a reasonable time.”

(c) The Can and Will doctrine requires that a conditional water right applicant show a “substantial probability that within a reasonable time the facilities necessary to affect the appropriation can and will be completed with diligence, and that as a result water will be applied to a beneficial use.” *Board of County Comm'rs of County of Arapahoe v. United States*, 891 P.2d 952, 961 (Colo.1995). Proof of such a substantial probability necessarily involves imperfect predictions of future events and conditions. *City of Black Hawk v. City of Central*, 97 P.3d 951 (Colo. 2004).

(d) The can and will requirement should not be applied rigidly to prevent beneficial uses where an applicant otherwise satisfies the legal standard of establishing a

non-speculative intent to appropriate for a beneficial use. *City of Black Hawk v. City of Central*, 97 P.3d 951, 957 (Colo. 2004). Further, the existence of contingencies does not prevent the can and will test from being satisfied. *Id.*; *City of Thornton v. Bijou Irr. Co.*, 926 P.2d 1, 43-45 (Colo. 1996).

(e) The Applicant has demonstrated satisfaction of C.R.S. §37-92-305(9) (2010) based on its showing that water remains available to be developed, physically and legally, under the conditional portion of the Roberts Tunnel direct flow right. The court further determines that the North Fork of the South Platte River is currently capable of conveying the full amount of the Roberts Tunnel direct flow right, and that the Applicant is capable of enlarging facilities necessary to divert the full amount of the Roberts Tunnel direct flow right, including the Roberts Tunnel valves and the Foothills Treatment Plant. In addition, there is no evidence that the Applicant is not capable of continuing to meet its obligations under the Blue River Decree, including payment of power interference.

40. Anti-Speculation.

(a) An appropriator must have a legally vested interest in the lands or facilities to be served “*unless such appropriator is a governmental agency or an agent in fact for the persons proposed to be benefited by such appropriation.*” C.R.S. § 37-92-103(3)(a)(I) (2010).

(b) Because a conditional right may become speculative over time, the anti-speculation doctrine continues to apply in later diligence proceedings. *Municipal Subdistrict, Northern Colorado Water Conservancy District v. OXY, Inc.* 990 P.2d 701 (Colo. 1999).

(c) The test for determining need with regard to a municipality was stated in *Pagosa Area Water & Sanitation District v. Trout Unlimited*, 170 P.3d 307, 309-310, 312 (Colo. 2007): A governmental agency must demonstrate that its intent to make a non-speculative conditional appropriation of unappropriated water is based on (1) a reasonable water supply planning period; (2) that its substantiated population projections are based on a normal rate of growth for that period; and (3) the amount of available unappropriated water is reasonably necessary to serve the reasonably anticipated needs of the governmental agency for the planning period, above its current water supply.

(d) The Applicant is a governmental entity and has satisfied the anti-speculation test. The Applicant is a municipal corporation and a political subdivision of the state, under the control of a Board appointed by the Mayor of Denver. Charter of the City and County of Denver, Article X. *Bennett Bear Creek Farm Water and Sanitation District v. Denver Board of Water Commissioners*, 928 P.2d 1254, 1265, 1273 (Colo. 1996). As such, it is governed by the Denver Charter and other laws applicable to governmental entities. As dictated by the Denver Charter, all revenues received by the Board are placed in the Water Works Fund. The Board must “deposit all receipts into a bank account. . . . Monies shall be paid out of the account only upon the authority of the Board.” Denver Charter, § 10.1.7. Article XX of the Colorado Constitution grants the City and County of Denver home rule power to legislate on local and municipal matters and to operate water works “within or without its territorial limits.” *Colo. Const. Art. XX, §§ 1 and 6*. The Denver Charter grants the Board “all the powers of the City and County of Denver including those granted by the Constitution and by the law of the State of

Colorado and by the Charter[.]” *Exhibit 3, Denver Charter, § 10.1.5*. Specifically, the Charter gives the Applicant “complete charge and control of a water works system and plant for supplying the City and County of Denver and its inhabitants with water for all uses and purposes.” *Id.*, § 10.1.1. The Applicant, when providing contractually based water service, has been determined by the Supreme Court to be “a governmental entity acting pursuant to a legislative grant of authority.” *Bennett Bear Creek*, 928 P.2d at 1274 n. 17, citing *Board of County Comm’rs of Arapahoe County v. Denver Board of Water Comm’rs*, 718 P.2d 235, 245 (Colo. 1986). The court determines that because of the Applicant’s status as a governmental entity, it is entitled to the anti-speculation exception afforded to governmental entities. C.R.S. § 37-92-103(3)(a)(I) (2010).

(e) The Applicant does not have speculative intent with regard to the Roberts Tunnel direct flow right. Applicant is a governmental agency which will serve persons proposed to be benefited by the Roberts Tunnel direct flow right, and therefore does not need to demonstrate a legally vested interest in the lands or facilities to be served. C.R.S. § 37-92-103(3)(a)(I) (2010). Applicant also demonstrated its intent to make a non-speculative conditional appropriation of unappropriated water based on (1) a reasonable water supply planning period; (2) that its substantiated population projections are based on a normal rate of growth for that period; and (3) the amount of available unappropriated water is reasonably necessary to serve the reasonably anticipated needs of the governmental agency for the planning period, above its current water supply. C.R.S. § 37-92-103(3)(a) (2010). *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 219 P.3d 774, 780 (Colo. 2009); *Pagosa Area Water & Sanitation District v. Trout*

Unlimited, 170 P.3d 307, 309-310, 312 (Colo. 2007). The court determines that the Applicant has a specific plan and intent to divert, store, or otherwise capture, possesses, and control the full amount of 788 cfs under the Roberts Tunnel direct flow right for specific decreed beneficial uses.

III. JUDGMENT AND DECREE

41. The foregoing Findings of Fact and Conclusions of Law are incorporated herein.

42. The Applicant has been reasonably diligent in the development of the conditional water rights for the Blue River Diversion Project described above for the diligence period December 14, 2000 to December 26, 2006 and the conditionally decreed water right and priorities are hereby continued in full force and effect and no order or decree is direct or entered for the cancellation of them in whole or in part.

43. The Applicant lawfully diverted 654 cfs of the Roberts Tunnel direct flow right in compliance with the Judgments and Decrees entered in CA 1805 and 1806 and Consolidated Case Nos. 2782, 5016 and 5017, and under the Water Right and Administration Act of 1969, and put the water to beneficial use by customers in areas in and adjacent to the City and County of Denver and reasonably integrated with the development of the City and County of Denver. Further, Applicant's voluntary provision of water from the Blue River Diversion Project for use in Summit County under the West Slope Agreements is lawful and effectuates the objectives of the Final Decree and Stipulation in Civil Case Nos. 2782, 5016 and 5017. The amount remaining conditional under the Roberts Tunnel direct flow right is 134 cfs.

44. Pursuant to C.R.S. § 37-92-301(4), the Applicant shall file an Application for Finding of Reasonable Diligence on or before the last day of _____ 201_, so long

as the Applicant desires to maintain these conditionally decreed water rights, or until a determination has been made that these conditionally decreed water rights have become absolute water rights by reason of the completion of the appropriation.

DATED this ____ day of _____.

BY THE COURT:

Marcia S. Krieger
United States District Judge

Attachment N
Dillon Reservoir Refill Right

04/04/2012

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO
Consolidated Civil Case Nos. 2782, 5016 and 5017
and

District Court Water Division No. 5, Colorado Garfield County Courthouse 109 8 th Street, #104 Glenwood Springs, Co 81601-3303	April 4, 2012 DRAFT ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: THE CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS IN SUMMIT COUNTY.	Case Number: 2003CW039 (Part 2 of 2) (1987CW376; 2003CW39 (Part 1 of 2) WD5) Division 5 Courtroom
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE TO MAKE ABSOLUTE	

THIS ACTION comes before the Court upon an application for Finding of Reasonable Diligence and to Make Absolute filed by the City and County of Denver, acting by and through its Board of Water Commissioners for Dillon Reservoir refill right. This conditional water right was originally adjudicated in Case No. 87CW376, Water Court Water Division 5 on February 13, 1997 and confirmed and approved by the United States District Court, District of Colorado on September 23, 1999.

I. FINDINGS OF FACT

The Court has made such investigations as are necessary to determine whether the statements in the application are true and is fully advised with respect to the subject matter of this application. The Court, under the standards codified at §§ 37-92-301(4) and 37-92-305(9), 10 C.R.S. finds, determines, and rules as follows:

GENERAL INFORMATION

1. Name, address, telephone number of Applicant:

City and County of Denver, acting by and through its Board of Water Commissioners
("Applicant" or "Denver")
1600 West 12th Avenue,
Denver, Colorado 80204-3412
(303) 628-6460

2. Application. The Applicant filed an Application for a Finding of Diligence and to Make Absolute with the Water Clerk on February 28, 2003 pursuant to § 37-92-302, 10 C.R.S. and this Court's decree in Case No. 87CW376 dated February 13, 1997. The Applicant also filed the Application with the United States District Court, District of Colorado for confirmation and approval that this decree does not adversely affect the objectives of the Final Decree in Consolidated Case Nos. 2782, 5016 and 5017. Applicant filed an amended application to make an amount absolute on February 16, 2006.

3. Notice and Jurisdiction. Notice of the Application was given in the manner required by 37-92-302(3), 10 C.R.S. The Water Court has jurisdiction over the subject matter of this proceeding and over all persons and property affected by this application, regardless of whether those persons or owners of property have appeared. The United States District Court has jurisdiction under its continuing jurisdiction in Consolidated Case Nos. 2783, 5016 and 5017.

4. Statements of Opposition. The following parties filed timely statements of opposition: Middle Park Water Conservancy District ("Middle Park"), Colorado River Water Conservation District ("River District"), Board of County Commissioners of the County of Summit ("Summit County"), Orchard Mesa Irrigation District ("Orchard Mesa"), Grand Valley Water Users Association ("GVWUA") and Ute Water Conservancy District ("Ute Water").

5. Summary of Consultation. The Division Engineer, Water Division No. 5 consulted on the Application and issued a report on November 13, 2003. On November 18, 2003 and February 27, 2004, the Applicant served copies of the Division Engineer's Report/Summary of Consultation on all parties.

6. Stipulation. By stipulation dated August 1, 2003, Summit County and the River District consented to an entry of a decree for diligence and Denver agreed, if not otherwise settled by separate stipulation, to not seek a final determination on the amount made absolute until after March 1, 2005. Denver further agreed to bifurcate its claim to make absolute. On or about November 2, 2003, the water court granted the motion to bifurcate. The water court entered a diligence decree (Part 1 of 2) on October 29, 2004 and the United States District Court subsequently approved the diligence decree on November 15, 2004.

DESCRIPTION OF DILLON RESERVOIR REFILL RIGHT

7. Name of structure. Dillon Reservoir (Refill).
8. Description of the conditional water right ("Original Decree").
 - A. Date of Original Decree and Case Number. February 13, 1997, by the District Court for Water Division No. 5, Case No. 87CW376.
 - B. Legal description. The reservoir is located in Sections 7, 8, 17, 18, 19, 20, 21, 30, 31, T5S, R77W of the 6th P.M., and Sections 13, 23, 24, 25, 26, 35 and 36, T5S, R78W of the 76th P.M. The dam is located across the channel of the Blue River, with the easterly end located at a point whence the E 1/4 corner of Section 18, T5S, R77W of the 6th P.M. bears South 59° 00' East 5507.7 feet.
 - C. Sources. The sources of water supply for storage in Dillon Reservoir are the Blue River, the Snake River, and Ten Mile Creek, all of which are tributaries of the Colorado River and the waters which would naturally become a part of said streams.
 - D. Date of appropriation. January 1, 1985.
 - E. Amount.
141,712 acre feet, ABSOLUTE
33,288 acre feet, conditional
175,000 acre feet, total
 - F. Uses. All municipal uses, including domestic use, mechanical use, manufacturing use, fire protection, street sprinkling, watering of parks, lawns and grounds. This water right may also be used for flood control. Denver's use of waters stored under this refill priority shall comply with and be subject to the Blue River Decree and any stipulations, orders or judicial decisions entered in Consolidated Case Nos. 2782, 5016 and 5017.

CLAIM TO MAKE ABSOLUTE

9. Date. April 1, 1996- March 31, 1997.
10. Amount. 141,712 acre feet.
11. Use. During the period April 1, 1996 through March 31, 1997, 141,712 acre feet of water was used to: (1) replenish and recover water originally stored under Denver's June 24, 1946 storage right, from which water was released to the Blue River for flood control under

paragraphs 11(A) and (B) of the Original Decree; (2) bypass refill water for flood control under paragraph 11(C) of the Original Decree; and (3) store water and replace evaporation losses after the first fill under paragraph 11(D) of the Original Decree. Pursuant to paragraph 17(D) water in storage under the refill right on April 1 of any administrative year was considered and accounted for as water stored under the first fill decree in that administrative year.

12. Place of use where water is applied to beneficial use. The Applicant subsequently delivered through the Roberts Tunnel the water stored in Dillon Reservoir under the refill water right to areas served by the Denver Municipal Water System as depicted in the map attached and incorporated hereto as Exhibit A.

II. CONCLUSIONS OF LAW

Based upon and fully incorporating the Findings of Fact set forth above, this Court concludes as a matter of law that:

13. Application was Timely. The Application for a Finding of Diligence and to Make Absolute was timely filed with the Water Clerk pursuant to C.R.S. § 37-92-301(4) (2010).

14. Notice. Denver Water satisfied all requirements for notice under C.R.S. § 37-92-302(3) (2010).

15. Can and Will. No claim for a water right may be recognized or a decree therefor granted except to the extent that the waters have been diverted, stored, or otherwise captured, possessed, and controlled and have been applied to a beneficial use. C.R.S. § 37-92-305(9)(a) (2010).

16. Perfection of Water Rights. In order to perfect the conditional right, the applicant must satisfy the following criteria: (1) capturing, possessing, and controlling water; and (2) the application of the water to a beneficial use. *City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961-962 (Colo.1998) (citing *City & County of Denver v. Northern Colo. Water Conservancy Dist.*, 276 P.2d 992, 998-99 (Colo. 1954)). The applicant may then petition the water court to declare the right absolute for purposes of fixing the appropriator's place in the priority system in relation to all other appropriators. *New Anderson Ditch Co.*, 962 P.2d 962; C.R.S. § 37-92-306 (2010).

17. Application is lawful. The Applicant has satisfied all statutory and legal requirements to make absolute a portion of the conditional water right adjudicated in Case No. 87CW376, Water Division 5.

III. JUDGMENT AND DECREE

The foregoing Findings of Fact and Conclusions of Law are incorporated herein.

18. THIS COURT DETERMINES AND RULES that the Applicant placed to beneficial use 141,712 acre feet in accordance with the Original Decree and is entitled to that amount being made absolute.

19. THE COURT FURTHER DETERMINES AND RULES that pursuant to the terms of the decree entered in Case No. 03CW039 (Part 1 of 2) the remaining conditionally decreed water rights and priorities are hereby continued in full force and effect and no order or decree is directed or entered for the cancellation of them in whole or in part.

DATED this ____ day of ____, 2010.

Holly K. Strabilzky
Water Referee
Water Division No. 1

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.

THE FOREGOING RULING IS CONFIRMED AND APPROVED AND IS HEREBY
MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: _____

James Boyd
Water Judge
Water Division No. 5
State of Colorado

THE WITHIN FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE DO NOT ADVERSELY AFFECT THE OBJECTIVES OF THE FINAL DECREE ENTERED BY THIS COURT IN CONSOLIDATED CASE NOS. 2782, 5016 AND 5017; AND THE DECREE IS APPROVED AND CONFIRMED.

DATED: _____

BY THE COURT

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Attachment O

RESOLUTION NO. 85-56

Before the Board of County Commissioners of the
County of Summit
State of Colorado

GRANTING THE DENVER WATER BOARD A "1041" PERMIT FOR STRAIGHT CREEK

WHEREAS, the Denver Water Board wishes to construct a connection to an existing diversion structure to divert certain flows from Straight Creek above Dillon Valley and wishes to construct a pipeline to carry the water into Dillon Reservoir, and

WHEREAS, the County's land use regulations require a "1041" permit for the expansion of a water collection and delivery system, and

WHEREAS, the Denver Water Board has submitted the necessary information to secure a "1041" permit, and

WHEREAS, the Board of County Commissioners has given proper public notice and held a public hearing on granting the Denver Water Board a "1041" permit, and

WHEREAS, the Board of County Commissioners has considered the recommendations of the Snake River Planning Commission, and the Planning Department staff as well as all comments submitted at the public hearing.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO, that:

- 1) The application complies with the criteria for permit issuance in section 4-306 of the County's "Guidelines and Regulations for Activities of State Interest" adopted May 4, 1982, and amended August 3, 1982.
- 2) The Board of County Commissioners is authorized to sign and issue the attached "1041" permit for Straight Creek along with the "conditions" and mutual "understandings" of the permit.

ADOPTED this 17th day of July, 1985

BOARD OF COUNTY COMMISSIONERS
OF SUMMIT COUNTY, COLORADO

ATTEST:

Colleen Richmond
Colleen Richmond, Clerk and Recorder

BY

Don Peterson
Don Peterson, Chairman

B
RECEIVEDAttachment O
SUMMIT COUNTY
COLORADO

PERMIT FOR AN ACTIVITY OF STATE INTEREST

1982 1985

A PERMIT FOR THE EXPANSION OF A WATER COLLECTION AND DELIVERY SYSTEM
SUMMIT COUNTY
D. of County Commissioners

Is hereby issued to the Denver Water Board for the construction of a connection to an existing diversion structure to divert certain flows from Straight Creek above Dillon Valley, and for the construction of a pipeline to carry the water into Dillon Reservoir, and to construct outlet works in the Reservoir below the intersection of Tenderfoot Street and Highway 6. The pipeline will be approximately 1.8 miles long. The required right-of-way is about 30 feet in width. The majority of the pipeline will be located within the Oro Grande No. 2 canal.

This permit is granted with the following conditions which must be met:

- 1) The Denver Water Board shall mitigate the phosphorus and sediment loading of Dillon Reservoir above normal background levels resulting from the Straight Creek Diversion. For the purposes of this condition "mitigation" shall mean the removal of phosphorus on a pound for pound basis. "Background level" is defined as the 1982 phosphorus concentration in Dillon Reservoir. It is understood that "background" for other water years can be computed by comparing the water yield and phosphorus loading rate to the 1982 water yield and phosphorus loading rate. Before construction begins the Denver Water Board shall submit and receive County approval for a phosphorus mitigation plan. The mitigation plan may be approved and implemented in more than one phase. Denver will participate with the County in a program to monitor phosphorus loading from Straight Creek.
- 2) The Denver Water Board recognizes the need for minimum streamflows in the Blue River below Dillon Dam. The Denver Water Board will not divert water out of Straight Creek at any time that the inflow to Dillon Reservoir falls below 50 cubic feet per second (cfs), or when the flow in Straight Creek falls below agreed-upon minimum flows necessary for that stream. Denver shall provide for a minimum stream flow of either:
 - i) 2 cfs or
 - ii) the minimum flow required by the Army Corps of Engineers, whichever is greater, to be measured immediately below the existing structure on Straight Creek.
- 3) Adverse impacts due to soil disturbance and erosion, as a result of construction shall be mitigated. Before commencing construction the Denver Water Board will prepare and submit an erosion control and revegetation plan for review and approval by the County. Mitigation shall include successful revegetation of all disturbed areas. The County planning staff will have access to all disturbed areas for the purpose of monitoring erosion control and revegetation.
- 4) This permit is effective upon the date of execution of the agreement between the City and County of Denver and Summit County concerning water quantity and water quality matters and the operation of Dillon Reservoir, a draft copy of which has been made a part of the public hearing record.

- Attachment Q
- 4) If further reviews or more detailed data developed before commencement of construction should require changes through the project plans or disclose impacts not previously anticipated, the Denver Water Board agrees to cooperate with Summit County in modifying the understandings and conditions contained herein.

This permit is granted based on the following understandings:

- 1) The Board of County Commissioners has considered the following: information provided by the Denver Water Board describing the project; the recommendations of the Snake River Planning Commission; the recommendation from the Planning and Engineering Department, and information presented at the public hearing held July 17, 1985, including, inter alia:
 - a) "Modeling the Effects of Proposed Diversions from Straight Creek into Lake Dillon", prepared by Dr. William Lewis and James Saunders, June 1985, and
 - b) "Fishery Impacts of the Proposed Straight Creek Water Collection System", prepared by Chadwick & Associates, June 1985.
- 2) Any documents evaluating environmental impacts of the Straight Creek Diversion, which may be prepared pursuant to the National Environmental Policy Act, will be forwarded by the Denver Water Board to Summit County for review.
- 3) The Denver Water Board will submit the construction drawings for the diversion pipeline and improvements to Summit County for review by the County prior to the commencement of construction.
- 4) The Denver Water Board recognizes the need to mitigate the loss and degradation of wetlands along Straight Creek below the diversion point that could result from the proposed diversion. Special attention will be paid to water quality and wildlife values of the existing wetlands. Construction of sedimentation ponds or infiltration galleries in the Straight Creek Basin below Dillon Valley, and vegetation enhancement in the existing wetland area should be considered as means of mitigation.
- 5) The Straight Creek fishery will be maintained and, if possible, enhanced. The Denver Water Board will cooperate with the Colorado Division of Wildlife to solicit ideas and advice regarding enhancement of the fishery.
- 6) The Denver Water Board and its contractor will pay special attention to dust, noise control and hours of operation during construction. The Denver Board will develop plans to meet those concerns and submit them to the County prior to construction.
- 7) The Denver Water Board will pay special attention to the loss of access to Straight Creek for emergency fire flow, and will submit a plan to the County to address concerns about fire flows prior to construction. The review of these plans conducted by the County shall involve second alarm fire districts who depend on Straight Creek.

Attachment O

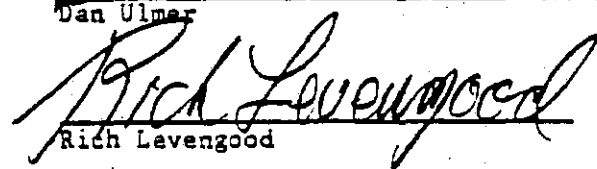
- 8) An emergency response plan will be developed in cooperation with the Towns of Dillon and Silverthorne, Dillon Valley, and the Buffalo Mountain Metro District, for handling adverse impacts from hazardous materials which may be spilt from I-70 into Straight Creek above the Denver diversion. This plan will include information on how the diversion will be shut down to prevent contamination of the reservoir and the Town of Dillon water supply, notification of appropriate agencies, and containment and clean-up activities. The plan shall be submitted to the County prior to commencement of construction.
- 9) The Denver Water Board will participate with the County in keeping the flood channel of Straight Creek clear of brush and debris which would have been daterred from growing or debris which would have been flushed out if the diversion had not been built. The Denver Water Board will construct the diversion so it does not increase any flood hazards. Flood hazard maps shall be updated by the Denver Water Board as appropriate, and supplied to the County.
- 10) Recreational values in the immediate area of the diversion right-of-way will be maintained and enhanced. The Denver Water Board will cooperate in establishing public access to the Tenderfoot Trail, a bicycle path easement along that section of shoreline of Dillon Reservoir between the Town of Dillon and the Summerwood Subdivision, and public fishing access to the reservoir.
- 11) It is anticipated that construction of the pipeline will occur by 1995.

Executed this 17th day of July 1985.

By:


Don Peterson, Chairman


Dan Ulmer

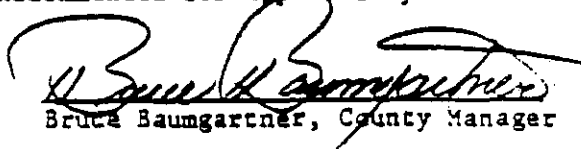

Rich Levengood

ATTEST:


Colleen Richmond, Clerk & Recorder

SEAL

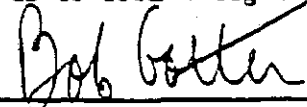
Recommended for approval by:


Bruce Baumgartner, County Manager


Pam Sheldon, Planning Director

Approved as to form & legality:

By:


Bob Golden, County Attorney

ATTACHMENT P

List of Possible Federal and State Permits and Approvals for the Moffat Project

U.S. Army Corps of Engineers

- Permit to Discharge Dredged or Fill Material (Section 404 Permit)

Federal Energy Regulatory Commission (FERC)

- Amendment to FERC hydropower license

U.S. Forest Service

- Federal Power Act – Section 4e Conditions
- Federal Land Policy and Management Act of 1976 – Special Use Permit

U.S. Fish and Wildlife Service

- Endangered Species Act (Section 7) Compliance

U.S. Department of the Interior – Advisory Council on Historic Preservation and Office of Archaeology and Historic Preservation, Colorado State Historic Preservation Officer (SHPO)

- Cultural Resource Compliance (Section 106 of the National Historic Preservation Act)

Colorado State Engineer's Office, Division of Water Resources

- Dam Safety Permit
- Permit to Construct Facility (Dam)
- Reservoir Storage Permit

Department of Public Health and Environment, Air Pollution Control Division

- Land Development Permit (Fugitive Dust Control Plan)

Department of Public Health and Environment, Water Quality Control Division

- General Permit for Stormwater Discharges Associated with Construction Activity
- Section 401 Water Quality Certification
- Construction Dewatering Permit

Colorado Wildlife Commission/Colorado Water Conservation Board

- Fish and Wildlife Mitigation Plan pursuant to CRS 37-60-122.2

ATTACHMENT Q

DISTRICT COURT, WATER DIVISION 5, COLORADO Garfield County Courthouse 109 8 th Street, Suite 104 Glenwood Springs, CO 81601	<u>DRAFT</u> April 5, 2012 CRE 408: FOR PURPOSES OF COMPROMISE AND SETTLEMENT ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS IN GRAND COUNTY, COLORADO	
Case No: 2007CW029 (C.A. No. 1430; W-3757; Case Nos. 82CW127; 86CW129; 90CW116; 98CW189 WD5) Div.: Water Division No. 5	
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE WATER COURT	

THIS MATTER comes before the Court concerning the Application for Finding of Reasonable Diligence for the Darling Creek Enlargement and Extension of the Williams Fork Diversion project, Williams Fork Power Conduit, and the Moffat Tunnel Collection System by the Applicant, City and County of Denver, acting by and through its Board of Water Commissioners (hereinafter “Denver Water”). Having reviewed and considered the pleadings, documentary and other evidence, the stipulations of several parties, and the arguments of counsel, the Court finds, determines and decrees that:

I. FINDINGS OF FACT

The Court having received and considered all evidence offered, pleadings, and arguments by counsel, hereby makes the following findings:

GENERAL MATTERS

1. Applicant.

City and County of Denver,
acting by and through its
Board of Water Commissioners
("Applicant" or "Denver")
1600 West 12th Avenue,
Denver, Colorado 80204
(303) 628-6000

Denver Water is a home rule municipal corporation of the State of Colorado. Denver Water derives its authority and power to operate a water supply system under the state constitution, the Denver City Charter and provisions of state law. Pursuant to the Denver City Charter, Denver Water provides all treated and raw water necessary for the full development of land within the City and County of Denver. Pursuant to perpetual water service agreements, Denver Water serves as the water utility for other governmental entities outside the City and County of Denver, but within Denver Water's Service Area, providing all treated and raw water necessary to serve the full development of all land within the Service Area depicted in Exhibit _____. Denver Water also has commitments to provide nearly 68,000 acre-feet of treated and raw water to customers outside its Service Area under perpetual fixed amount contracts listed on Exhibit _____. The entities receiving water under fixed amount contracts are all located within the Counties of Adams, Arapahoe, Douglas and Jefferson and the City and County of Broomfield. From time to time, Denver Water provides treated and raw water to customers under temporary arrangements.

Denver Water operates extensive raw water collection systems including the South Platte Collection System, the Roberts Tunnel Collection System, the Moffat Tunnel Collection System and the Williams Fork Diversion System. On the South Platte River, Denver Water typically stores water at Antero, Eleven Mile, Cheesman and Chatfield reservoirs for delivery or exchange of water to either Strontia Springs Reservoir or Conduit 20 intakes in Waterton Canyon. Denver Water stores and diverts Colorado River water at Dillon Reservoir and delivers this water through the Roberts Tunnel to the North Fork of the South Platte River above Strontia Springs Reservoir. Denver Water also collects water from the Fraser and Williams Fork Rivers for delivery through the Moffat Tunnel for storage in Gross Reservoir and delivery to Ralston Reservoir via the South Boulder Diversion Canal.

Raw water diverted from these systems is treated at Foothills, Marston and Moffat treatment plants and delivered to Denver Water's customers in the metropolitan area. Denver Water also delivers raw water to a number of customers. After indoor use by customers, the water is discharged back to the South Platte River as treated effluent from the

Littleton-Englewood or the Metropolitan Reclamation District Wastewater Treatment Plant. Water used outdoors returns to the South Platte River by means of lawn irrigation return flows. Denver Water possesses and controls water from the various streams and rivers by diversion, storage, treatment and delivery and also through contractual provisions in its treated and raw water leases with various water suppliers.

Denver Water operates exchanges of its water to and from various facilities in its system including Strontia Springs Diversion facility (a/k/a Roxborough Diversion facility), Cheesman Reservoir and Chatfield Reservoir. Denver Water diverts by exchange water otherwise out of priority, replacing an equivalent amount of water to the river to satisfy the calling senior water right. Denver Water has various types of replacement water available in its system, including releases from storage, Colorado River sources, reusable wastewater return flows and lawn irrigation return flows.

2. Water Rights at Issue. The water rights at issue in this matter are the water rights decreed in Civil Action No. 1430, Grand County District Court, November 7, 1974 (collectively referred to as the “Subject Water Rights”).

3. Application. The Application at issue in this matter is the Application filed by Denver Water on February 27, 2007, for finding of reasonable diligence in Case No. 2007CW029.

4. Jurisdiction. The Court has subject matter jurisdiction over the Application and this proceeding, and personal jurisdiction over all persons who would have standing to appear as parties, regardless of whether they have appeared.

5. Notice. Timely and adequate notice of the pendency of this proceeding in rem has been given in the manner required by law. The Application was published in the March 2007 resume. Newspaper notice of the Application was also provided in the Grand Junction Daily Sentinel, the Glenwood Springs Post Independent, and the Granby Sky-High News during the month of March 2007. Denver Water also provided notice to owners or reputed owners of land upon which any new diversion or storage structures, including the City of Englewood, Bureau of Land Management, the United States of America, and Climax Molybdenum Company.

6. Statements of Opposition. The following Objectors filed timely statements of opposition: Trout Unlimited; Climax Molybdenum Company; Grand Valley Water Users Association; Orchard Mesa Irrigation District; Middle Park Water Conservancy District; City of Englewood; Intrawest-Winter Park Operations Corporation; and the Colorado River Water Conservation District.

7. Withdrawals of Statements of Opposition. On May 7, 2007, Intrawest-Winter Park Operations Corporation withdrew its statement of opposition in this matter.

8. Stipulations. The following Objectors have stipulated to a form of this Decree under stipulations entered into with Denver Water: Grand Valley Water Users Association; Orchard Mesa Irrigation District; Middle Park Water Conservancy District; and the Colorado River Water Conservation District. These Objectors and other West Slope entities entered into an agreement with Denver Water dated _____, 2012, which is the basis upon which the Objectors have entered the stipulations and provided their consent to these Findings of Fact, Conclusions of Law, and Judgment and Decree.

9. Summary of Consultation. A Summary of Consultation by the Division Engineer for Water Division 5 was entered on May 11, 2007. Denver Water served the Summary of Consultation on all parties to this matter on June 8, 2007.

10. Re-referral. On October 5, 2007, Climax Molybdenum Company moved to re-refer this matter to the Water Court. An order of re-referral was entered October 23, 2007.

DESCRIPTION OF SUBJECT WATER RIGHTS

11. Name of Structures and Systems. The following structures and systems are at issue in this matter: (1) Darling Creek Enlargement and Extension of the Williams Fork Diversion Project; (2) Williams Fork Power Conduit; (3) Moffat Tunnel Collection System.

12. Locations of Points of Diversion and Places of Storage.

(1) Darling Creek Enlargement and Extension of the Williams Fork Diversion Project. Locations of the several points of diversion of the canals of the Darling Creek Enlargement and Extension of the Williams Fork Diversion Project are as follows:

(a) West Branch of Darling Creek – a point on the South bank of the West branch of Darling Creek whence the southeast corner of Section 8, Township 3 South, Range 77 West, of the 6th P.M., bears South 39°27' West a distance of 11,939 feet.

(b) The North Fork of Darling Creek – a point on the North bank of the North Fork of Darling Creek whence the southeast corner of Section 8,

Township 3 South, Range 77 West, of the 6th P.M., bears South 49°53' West a distance of 16,640 feet.

(c) The South Fork of Darling Creek – a point on the South bank of the South Fork of Darling Creek whence the southeast corner of Section 8, Township 3 South, Range 77 West, of the 6th P.M. bears South 59°39' West a distance of 15,368 feet.

(d) Eleventh Creek – a point on the South bank of Eleventh Creek, whence the southeast corner of Section 8, Township 3 South, Range 77 West, of the 6th P.M. bears South 67°16' West a distance of 12,705 feet.

(e) Those points along the unnamed streams described under sources where the project facilities intersect said streams.

The places of storage in Water Division 1 are as follows:

(f) Gross Reservoir – a dam constructed across the bed of South Boulder Creek in Boulder County, Colorado located in Tracts 48 and 49, Township 1 South, Range 71 West, 6th P.M. (where the North one-half (N1/2) of the Southeast quarter of Section 20, Township 1 South, Range 71 West, the 6th P.M. would be located by ordinary survey practices), and will create a reservoir covering parts of Tracts 47, 48, 49, 44, 45, 63, 107, 108, 109, 110, the South half (S1/2) of the South half (S1/2) of Section 18, Section 19, Section 30, the South half (S1/2) of the Northeast quarter (NE1/4) of Section 25, and the East half (E1/2) of the Southeast quarter (SE1/4) of Section 24, all in Township 1 South, Range 71 West, of the 6th P.M. in Boulder County, Colorado.

(g) Ralston Reservoir – the dam for which is located on or near the East side of the Northeast quarter (NE1/4) of the Southeast quarter (SE1/4) of Section 32, Township 2 South, Range 70 West, of the 6th P.M. and creates a reservoir which covers parts of Section 32, Township 2 South, Range 70 West, of the 6th P.M., and Sections 5 and 6, Township 3 South, Range 70 West of the 6th P.M., in Jefferson County, Colorado.

(h) Marston Reservoir – a dam for which is located in Jefferson County, Colorado in Township 5 South, Range 69 West, of the 6th P.M..

(i) Two Forks Reservoir – a dam to be constructed across the South Platte River at one of the following places:

i. A dam located in Section 30, Township 7 South, Range 69 West, 6th P.M. in the bed of the South Platte River, or

ii. A dam to be located in Section 1, Township 8 South, Range 70 West, 6th P.M. across the bed of the South Fork of the South Platte River.

(j) Cheesman Reservoir – is formed by a dam across the South Fork of the South Platte River located in the Southwest quarter (SW1/4) of Section 6, Township 10 South, Range 70 West, of the 6th P.M., in Douglas and Jefferson Counties.

(k) Eleven Mile Canon Reservoir – located in the stream above an arch type dam across the bed of the South Fork of the South Platte River located near the center of the Southwest quarter (SW1/4) of Section 20, Township 13 South, Range 72 West, 6th P.M., in Park County, Colorado.

(l) Antero Reservoir – located in the stream above a dam across the bed of the South Fork of the South Platte River in Sections 21 and 28, Township 12 South, Range 76 West, 6th P.M. in Park County, Colorado.

(2) Williams Fork Power Conduit. The point of diversion for the Williams Fork Power Conduit is located in the Williams Fork Reservoir Dam, the Southeast end of the dam which is at a point whence Southeast corner of Section 23, Township 1 North, Range 79 West, 6th P.M. bears South 24°53' East a distance of 2,175 feet.

(3) Moffat Tunnel Collection System.

Points of Diversion:

(a) Meadow Creek Meadow Creek – a point on the South bank of said creek from which point the Northwest corner of Section 15, Township 1 North, Range 75 West, 6th P.M., bears North 44°14.2' West 2,689.6 feet.

(b) Trail Creek – a point on the South bank of said creek from which point the Southeast corner of Section 15, Township 1 North, Range 75 West, 6th P.M., bears South 60°26.5' East 1,149.3 feet.

(c) Hurd Creek – a point on the South bank of said creek from which point the Southwest corner of Section 26, Township 1 North, Range 75 West, 6th P.M., bears South 83°8.4' West a distance of 2,105.5 feet.

(d) Hamilton Creek – a point on the South bank of said creek from which point the Northeast corner of Section 2, Township 1 South, Range 75 West, 6th P.M., bears North 76°52.1' East 2,642.8 feet.

(e) Cabin Creek – a point on the North bank of said creek from which point the Northeast corner of Section 2, Township 1 South, Range 75 West, 6th P.M., bears North 21°29.2' East 4,930.4 feet.

(f) Little Cabin Creek – a point on the South bank of said creek from which point the Northeast corner of Section 11, Township 1 South, Range 75 West 6th P.M., bears North 20°27.5' East 2,580.4 feet.

(g) Beaver Creek – a point on the North bank of said creek from which point the Southeast corner of Section 14, Township 1 South, Range 75 West, 6th P.M., bears South 7°38.3' East 2,633.4 feet.

Places of storage in Water Division No. 5:

(h) Meadow Creek Reservoir – a dam to be constructed across Meadow Creek, the right abutment of which is at a point from which the Northwest corner of Section 14, Township 1 North, Range 75 West, 6th P.M., bears North 84°09.1' West 4,226.1 feet.

(i) Cabin Creek Reservoir – a dam to be constructed across Cabin Creek, the right abutment of which is at point from which the Northeast corner of Section 2, Township 1 South, Range 75 West, 6th P.M., bears North 17°21' East a distance of 4,517.8 feet.

Places of storage in Water Division No. 1:

(j) Gross Reservoir – a dam constructed across the bed of South Boulder Creek in Boulder County, Colorado located in Tracts 48 and 49, Township 1 South, Range 71 West, 6th P.M. (where the North half (N1/2) of the Southeast quarter of Section 20, Township 1 South, Range 71 West, the 6th P.M., would be located by ordinary survey practices) and will create a

reservoir covering parts of Tracts 47, 48, 49, 44, 45, 63, 107, 108, 109, 110, the south half (S1/2) of the south half of Section 18, Section 19, Section 30, South half (S1/2) of the Northeast quarter (NE1/4) of Section 25, the East half (E1/2) of the Southeast quarter (SE 1/4) of Section 24, all in Township 1 South, Range 71 West, of the 6th P.M. in Boulder County, Colorado.

(k) Ralston Reservoir – a dam for which is located on or near the East side of the Northeast quarter (NE1/4) of the Southeast quarter (SE1/4) of Section 43, Township 2 South, Range 70 West, of the 6th P.M., and creates a reservoir which covers parts of Section 32, Township 2 South, Range 70 West, 6th P.M., in Sections 5 and 6, Township 3 South, Range 70 West, of the 6th P.M., in Jefferson County, Colorado.

(l) Marston Reservoir – the dam for which is located in Jefferson County, Colorado in Township 5 South, Range 69 West, of the 6th P.M.

(m) Two Forks Reservoir – a dam to be constructed across the South Platte River at one of the following places:

i. A dam located in Section 30, Township 7 South, Range 69 West, 6th P.M., in the bed of the South Platte River; or

ii. A dam to be located in Section 1, Township 8 South, Range 70 West, of the 6th P.M., across the bed of the South Fork of the South Platte River.

(n) Cheesman Reservoir – is formed by a dam across the South Fork of the South Platte River located in the Southwest quarter (SE1/4) of Section 6, Township 10 South, Range 70 West, 6th P.M., in Douglas and Jefferson Counties.

(o) Eleven Mile Cañon Reservoir – located in the stream above an arch-type dam across the bed of the South Fork of the South Platte River located near the center of the Southwest quarter (S1/4) of Section 20, Township 13 South, Range 72 West, 6th P.M., in Park County, Colorado.

(p) Antero Reservoir – located in the stream above a dam across the bed of the South Fork of the South Platte River in Sections 21 and 28, Township 12 South, Range 76 West, 6th P.M., in Park County, Colorado.

13. Source.

(1) Darling Creek Enlargement and Extension of the Williams Fork Diversion Project. West Branch of Darling Creek, North Fork of Darling Creek, South Fork of Darling Creek, Eleventh Creek and tributary and intervening tributary drainage thereto and unnamed streams between those streams which are named and the point of connection of the system with Claimant's present facilities at McQueary Creek.

(2) Williams Fork Power Conduit. Williams Fork River.

(3) Moffat Tunnel Collection System. Tributaries of the Fraser River and intervening drainage thereto.

14. Appropriation Dates.

(1) Darling Creek Enlargement and Extension and Extension of the Williams Fork Diversion Project. August 26, 1953

(2) Williams Fork Reservoir Power Conduit. October 9, 1956

(3) Moffat Tunnel Collection System. August 30, 1963

15. Amount.

(1) Darling Creek Enlargement and Extension of the Williams Fork Diversion Project.

(a) For direct and immediate use from.

(i) West Branch Darling Creek. 5 c.f.s., conditional

(ii) North Fork of Darling Creek. 25 c.f.s., conditional

(iii) South Fork of Darling Creek. 25 c.f.s., conditional

(iv) Eleventh Creek and tributary drainage. 35 c.f.s., conditional

Total: 90 c.f.s., conditional

(b) For Storage for later use, the following amounts to be stored in.

- (i) Gross Reservoir. 113,078 ac. ft.
- (ii) Ralston Reservoir. 12,758 ac. ft.
- (iii) Marston Reservoir. 19,800 ac. ft.
- (iv) Two Forks Reservoir. 600,000 ac. ft.
- (v) Cheesman Reservoir. 79,000 ac. ft.
- (vi) Eleven Mile Canon Reservoir. 97,779 ac. ft.
- (vii) Antero Reservoir. 85,564 ac. ft.

(2) Williams Fork Reservoir Power Conduit.

For direct and immediate use:

105 c.f.s., conditional
295 c.f.s., absolute
400 c.f.s. total

(3) Moffat Tunnel Collection System for direct and immediate use.

(a) For direct and immediate use from.

100 c.f.s., conditional

(b) For storage and alter use, the following amounts to be stored in.

- (i) Meadow Creek Reservoir. 5,100 ac. ft.
- (ii) Cabin Creek Reservoir. 4,250 ac. ft.
- (iii) Gross Reservoir. 113, 078 ac. ft.

- (iv) Ralston Reservoir. 12,758 ac. ft.
- (v) Marston Reservoir. 19,800 ac. ft.
- (vi) Two Forks Reservoir. 600,000 ac. ft.
- (vii) Cheesman Reservoir. 79,000 ac. ft.
- (viii) Eleven Mile Canon Reservoir. 81,917 ac. ft.
- (ix) Antero Reservoir. 85,564 ac. ft.

16. Use:

(1) Darling Creek Enlargement and Extension of the Williams Fork Diversion Project. All municipal uses, including domestic use, mechanical use, manufacturing use, generation of electric power, power generally, fire protection, use for sewage treatment, street sprinkling, watering of parks, lawns and grounds, maintaining of adequate storage reserves, irrigation, exchange, replacement and the adjustment and regulation of the units of the Denver Municipal Water System within themselves and with other water users.

(2) Williams Fork Reservoir Power Conduit. The mechanical purpose of generating electric energy, and in part as an adjunct to additional uses, through exchange for the following purposes:

All municipal uses, including domestic use, mechanical use, manufacturing use, generation of electric power, power generally, fire protection, sewage treatment, street sprinkling, watering of parks, lawns and grounds, maintaining of adequate storage reserves, irrigation, exchange, replacement and the adjustment and regulation of the units of the Denver Municipal Water System within themselves and with other water users.

(3) Moffat Tunnel Collection System. All municipal uses, including domestic use, mechanical use, manufacturing use, generation of electric power, power generally, fire protection, sewage treatment, street sprinkling, watering of parks, lawns and grounds, maintaining of adequate storage reserves, irrigation, exchange, replacement and the adjustment and regulation of the units of the Denver Municipal Water System within themselves and with other water users.

17. Integration with Existing Municipal Water System. The water collected in the Darling Creek Enlargement of the Williams Fork Collection System can be transported through the Jones Pass Tunnel to Clear Creek or redirected at the Vasquez Tunnel for transportation to the Moffat Tunnel to South Boulder Creek. Water diverted in the Moffat Tunnel Collection System facilities connects to Denver Water's Ranch Creek collection system for transportation to the Moffat Tunnel to South Boulder Creek. Once in the South Platte watershed, Denver Water can directly store the Subject Water Rights in Gross and Ralston Reservoirs; and by exchange, to Strontia Springs Reservoir, the proposed Two Forks Reservoir; Cheesman, Eleven Mile Cañon, and Antero Reservoirs. Denver Water can then deliver these waters to its intake structures on South Boulder Creek or Waterton Canyon (Strontia Springs or Conduit 20) for treatment at Moffat, Foothills or Marston Water Treatment Plants. After treatment, Denver Water can deliver potable water to any part of its service area by means of conduits, pumping plants, and clear water reservoirs. Effluent from the use of water diverted under the Subject Water Rights can be recaptured at Denver Water's gravel pit reservoirs for exchange into its municipal water system or treated at Denver Water's Recycle Water Plant for further non-potable uses. Power generated at the Williams Fork Power Plant is used to pay power interference under the Blue River Decree.

APPLICANT'S CLAIM FOR FINDING OF REASONABLE DILIGENCE

18. Denver has been Reasonably Diligent. On February 2, 2001, the Water Judge for Water Division No. 5, in Case No. 98CW189, confirmed and approved the ruling of the referee, which found that Denver Water had diligently prosecuted work toward the completion of the Subject Water Rights. In finding that Denver Water had been reasonably diligent in the development of the Subject Water Rights, the court continued the conditional Subject Water Rights in full force and effect and ordered Denver Water to file an Application for Finding of Reasonable Diligence on or before the last day of February 2007. On February 27, 2007, Denver Water filed this Application for a finding of reasonable diligence and to make absolute, in accordance with the Order of the court dated February 2, 2001, and C.R.S. § 37-92-301(4).

19. The Subject Water Rights are Part of Denver Water's Integrated System. The Fraser River Diversion Project and the Williams Fork Diversion Project are integral parts of the Denver Municipal Water System. The projects are large and intricate, require extensive scientific research and development, and necessarily take many years to complete in a sequence established and executed by Denver Water and its employees to bring about the complete utilization of all the waters involved, expeditiously and with reasonable diligence. Denver Water has demonstrated a steady application of effort to complete the appropriation of the Subject Water Rights. Work on the facilities necessary to put the subject waters to

their decreed beneficial uses has progressed continuously and without interruption, and in the most expedient and efficient fashion possible under the circumstances. Work accomplished toward the completion of the Subject Water Rights and application of water to the beneficial uses for which they are decreed includes work which has been done on the design, construction, and integration of structures for the storage, treatment, distribution, and reuse and successive use of the waters which are the subject of this proceeding. Such work has progressed continuously and without interruption and with reasonable dispatch.

20. Diligence Activities. The Darling Creek Enlargement and Extension of the Williams Fork Diversion Project, the Williams Fork Power Conduit and the Moffat Tunnel Collection System are an integral part of the Denver Municipal Water Works System. Denver Water has regularly operated the Williams Fork Power Conduit and the Moffat Tunnel Collection System during the diligence period. Completion of the conditional portions of the Subject Water Rights will depend upon future hydrologic circumstances and demands in the Denver Municipal Water System. No evidence was presented of any circumstance that would prevent waters under the conditional water right from being diverted, stored, or otherwise captured, possessed and controlled and applied to beneficial use within a reasonable time. The activities completed by Denver Water during the most recent diligence period are set forth in paragraph 4 of the Application filed in this matter. The diligence activities described in the Application and are incorporated herein by this reference.

21. Need. Based on the evidence considered by the court in connection with the following factors, the court finds that Denver Water continues to have a non-speculative need for the conditional portion of the Subject Water Rights that are the subject of this decree.

(1) Denver Water has a Reasonable Water Supply Planning Period. Denver Water's current water supply planning period extends to 2050. The court finds that this is a reasonable water supply planning period, particularly considering the size of Denver Water, both in population and geography, and Denver Water's contractual commitments within and outside of its service area.

(2) Denver Water's Substantiated Population/Rate of Growth Projections. Denver Water bases its demand projections on an econometric model that relies on numerous factors, including population growth within the Denver Metropolitan Area as predicted by the Denver Regional Council of Governments ("DRCOG") in 2030, and the U.S. Census Bureau as projected in 2050. The court finds that Denver Water reasonably relied on the rate of population growth used by DRCOG and the U.S. Census Bureau. Population growth factor is one of several factors considered by

Denver Water's model. Denver Water relies on a model that interrelates water usage with demographics and various other socio-economic factors. This includes the rate of usage for single-family households in the future, so that total single-family usage can be determined by multiplying that usage rate by the future number of single-family households. The model assumes a rate of growth of 0.8 percent per year from 2005 through 2050, and a population of 1.57 million residents in 2050. In addition, the model projects employment in the service area to increase to a total of 1.33 million jobs by 2050, reflecting an average annual job growth rate of a little over 0.9 percent from 2005 through 2050. The court finds that the model assumes a water demand projection based on a reasonable rate of population and employment growth.

(3) Water Required to Meet Denver Water's Reasonably Anticipated Needs. Denver Water demonstrated that the remaining amount of conditionally decreed water is reasonably necessary to serve the reasonably anticipated needs of Denver Water for the planning period, above its current water supply.

(a) Implementation of Reasonable Water Conservation Measures During Planning Period. Denver Water has adopted an accelerated conservation plan intended to achieve by 2016 the 29,000 acre-feet of savings targeted in its 1996 Integrated Resource Plan for 2045. To achieve these goals, Denver Water has instituted a new customer information system that provides customers with access to monthly consumption information rather than the by-monthly consumption data historically provided by Denver Water to its customers. Denver Water has also instituted a rebates and incentives program to encourage customers to convert to low water use appliances, plumbing fixtures, irrigation systems and more efficient landscapes. Denver Water has developed a rate structure that encourages conservation through price signals, and allows for more effective demand management during peak summer irrigation use and severe droughts. In addition, Denver Water is engaged in educational outreach to provide customers with information to reduce their consumption through best-practices for irrigation and other water use. The court finds that these conservation measures are reasonable

(b) Reasonably Expected Land Use Mixes during the Planning Period. Denver Water's demand model considers three types of customers, which could be characterized as land use mixes. These uses include: (1) single-family residences; (2) commercial, multi-family and industrial users; (3) and government and institutional users. The court finds that these are reasonable land use mixes to consider for the planning period.

(c) Reasonably Attainable Per Capita Usage Projections for Indoor and Outdoor Use Based on the Land Use Mixes During the Planning Period. In year 2000, Denver Water's system-wide metered water use was 204 gallons per capita per day. Denver Water's forecast projects that system-wide metered use will decline to 171 gallons per capita per day by 2050. Along with other economic and demographic factors, this decline reflects the impact of natural replacement of older, less efficient fixtures. Traditionally, 60 percent of Denver Water's use is for indoor purposes and 40 percent is for outdoor purposes. Denver Water's projections represent the exercise of informed judgment.

(d) Amount of Consumptive Use Reasonably Necessary to Serve the Increased Population. The court finds that Denver Water's past and planned future demands account for a reasonable amount of consumptive use to serve its customers.

(e) Denver Water's Future Demand Projections. Denver Water presented an economic demand model and projections of future water demands for Denver Water's service area and its fixed-amount contractual commitments. The model, which projects unconstrained water demand, meaning water demand without emergency water restrictions, forecasts Denver Water's water demands through 2050 by utilizing socioeconomic forecasts, historical data, and U.S. Census data. Specifically, the model relies on socioeconomic projections made by DRCOG, which projects future population as far as 2030, and then extends the socioeconomic forecasts through 2050 based on national projections from the U.S. Census Bureau and other sources, such as historic relationships between service area growth and national trends. To determine, Denver Water's 2050 demand, the DRCOG data is extended forward to 2050 using U.S. Census Bureau data and projections. In order to accurately forecast Denver Water's demand, the model uses separate equations to measure (1) single family water use per household customers; (2) multi-family, commercial and industrial customers; and (3) institutional (governmental) customers. The data for these three types of customers is based on annual water use data collected by Denver Water and its distributors from 1973 to 1999. Denver Water's model projects that Denver Water's 2050 treated water demand at the customers' meters would be 370,000 acre feet, including a 5 percent calibration adjustment. To estimate Denver Water's total system-wide demand water requirements a number of adjustments must be made. First, system losses and unaccounted for water use, which is estimated to average six percent, must be added

(22,000 acre feet). Second, 39,000 acre feet must be subtracted to account for improved efficiency of water using fixtures. Third, 67,000 acre feet in fixed and special commitments with customers outside of Denver Water's service area must be added. Fourth, pursuant to Denver Water's policy of maintaining a 30,000 acre foot safety factor, 30,000 acre feet was added. With these adjustments Denver Water's total system-wide demand in 2050 is 450,000 acre feet. Denver Water analyzed the demand forecast results. Such analysis included evaluation of overall usage and demographic metrics of the forecast in comparison to historical statistics. The court concludes that the Applicant has engaged in a thoughtful planning process and has properly taken into account both its own experience and expertise, and analysis by outside experts.

(4) Denver Water's Current Water Supply. Denver Water's future projected demands are in excess of the water supply currently available from its Municipal Water System. Denver Water generally uses its direct flow water rights first before using its reservoir storage to meet its water supply needs. During the period of 1998-2007, Denver Water's storage declined to a point where Denver Water's storage reserves were drawn down to less than its annual demand. The Subject Water Rights are a key part in meeting this future demand.

(5) Safety Factor. The court finds that Denver Water's 30,000 acre foot safety factor (30,000 acre-feet/year of a four-year drought) is reasonable and prudent amount of water to store in reserve in light of the number of customers which rely on Denver Water's system and the importance of Denver Water to the economic development of the State.

II. CONCLUSIONS OF LAW

Based upon the Findings of Fact set forth above, this Court concludes as a matter of law that:

22. Incorporation of Findings of Fact. The foregoing Findings of Fact are incorporated herein to the extent they constitute Conclusions of Law.

23. Denver Water has been Reasonably Diligent. Denver Water has been reasonably diligent in developing the Subject Water Rights. The measure of reasonable diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the

development of water rights for all features of the entire project or system. C.R.S. § 37-92-301(4)(b) (2010).

A water court makes a case-by-case consideration of several factors to determine whether an applicant has made the required effort. *See City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961 (Colo.1998) (citing *Dallas Creek v. Huey*, 933 P.2d 27, 36 (Colo.1997)). These factors include but are not limited to: (1) economic feasibility; (2) the status of requisite permit applications and other required governmental approvals; (3) expenditures made to develop the appropriation; (4) the ongoing conduct of engineering and environmental studies; (5) the design and construction of facilities; and (6) the nature and extent of land holdings and contracts demonstrating the water demand and beneficial uses which the conditional right is to serve when perfected. *Dallas Creek*, 933 P.2d at 36.

All acts necessary to complete the appropriation need not be accomplished in the same diligence period. What must be demonstrated is continued intent and progress toward finalizing the conditionally decreed appropriation. The existence of a plan, capability, and need for the water is examined periodically by the water court, at the close of each diligence period, to determine whether the applicant is entitled to retain the antedated priority. Monitoring of use and need for the conditional appropriation is a proper role of the water court in a diligence proceeding. *Dallas Creek*, 933 P.2d at 36. Denver Water has shown a continued intent and progress toward finalizing the conditional decreed appropriation, and has established that it has a plan, capability and need for the water.

24. Can and Will. Denver Water can and will divert, store, or otherwise capture, possess, and control and beneficially use the Subject Water Rights. C.R.S. § 37-92-305(9)(b) (2010). Denver Water demonstrated a “substantial probability that within a reasonable time the facilities necessary to affect the appropriation can and will be completed with diligence, and that as a result water will be applied to a beneficial use. *Id.* Proof of such a substantial probability necessarily involves imperfect predictions of future events and conditions. The can and will requirement should not be applied rigidly to prevent beneficial uses where an applicant otherwise satisfies the legal standard of establishing a non-speculative intent to appropriate for a beneficial use. Further, the existence of contingencies does not prevent the can and will test from being satisfied. *City of Black Hawk v. City of Central*, 97 P.3d 951 (Colo. 2004); *City of Thornton v. Bijou Irr. Co.*, 926 P.2d 1, 43-45 (Colo. 1996). Neither current economic conditions beyond the control of the applicant which adversely affect the feasibility of perfecting a conditional water right or the proposed use of water from a conditional water right nor the fact that one or more governmental permits or approvals have not been obtained shall be considered sufficient to deny a diligence application, so long as other facts and circumstances which show diligence are present. C.R.S. § 37-92-301(4)(c) (2010).

25. Anti-Speculation. Denver Water does not have speculative intent in using the remaining conditional portions of the Subject Water Rights. Denver Water is a governmental agency which will serve persons proposed to be benefited by the Subject Water Rights, and therefore does not need to demonstrate a legally vested interest in the lands or facilities to be served. C.R.S. § 37-92-103(3)(a)(I) (2010). Denver Water demonstrated its intent to make a non-speculative use of the conditional appropriation based on: (1) a reasonable water supply planning period; (2) that its substantiated population projections are based on a normal rate of growth for that period; and (3) the amount of conditionally decreed water is reasonably necessary to serve the reasonably anticipated needs of the governmental agency for the planning period, above its current water supply. C.R.S. § 37-92-103(3)(a) (2010). *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 219 P.3d 774, 780 (Colo. 2009); *Pagosa Area Water & Sanitation District v. Trout Unlimited*, 170 P.3d 307, 309-310, 312 (Colo. 2007).

26. Burden of Proof Met. Denver Water has complied with all requirements and met all standards and burdens of proof, including but not limited to C.R.S. §§ 37-92-302(1); 37-92-103(3); 37-92-305(9) (2010) to adjudicate its claim for the Subject Water Rights and is therefore entitled to a conditional decree confirming and approving its conditional water storage rights as described in the Findings of Fact.

27. All other requirements. Denver Water has satisfied all other statutory and legal requirements to support a finding of reasonable diligence.

III. JUDGMENT AND DECREE

The Court incorporates its findings of fact and concludes that Denver Water has met the requirements of law for a finding of diligence.

28. The foregoing Findings of Fact and Conclusions of Law are incorporated herein.

29. Denver Water has been reasonably diligent in the development of the remaining conditionally decreed water rights in C.A. 1430; namely, Darling Creek Enlargement and Extension of the Williams Fork Diversion Project, Williams Fork Power Conduit and the Moffat Tunnel Collection System since the last Finding of Diligence, and the said conditionally decreed water rights and priorities are hereby continued in full force and effect and no order or decree is directed or entered for the cancellation of them in whole or in part.

30. Pursuant to C.R.S. § 37-92-301(4), Denver Water shall file an Application for Finding of Reasonable Diligence on or before the last day of _____, 2017, so long as Denver Water desires to maintain those conditionally decreed water rights or until a determination has been made that these conditionally decreed water rights have become absolute water rights by reason of the completion of the appropriation.

DATED this ____ day of _____, 2011.

James Boyd
Water Judge
Water Division No. 5
State of Colorado

ATTACHMENT Q

DISTRICT COURT, WATER DIVISION 5, COLORADO Garfield County Courthouse 109 8th Street, Suite 104 Glenwood Springs, CO 81601	<u>DRAFT</u> April 5, 2012
CONCERNING THE APPLICATION FOR WATER RIGHTS OF:	CRE 408: FOR PURPOSES OF COMPROMISE AND SETTLEMENT
THE CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS	▲ COURT USE ONLY ▲
IN GRAND COUNTY.	Case No: 2007CW30 (CA657; 80CW162; 84CW087; 88CW209; 98CW214) Div.: 5
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE WATER COURT	

THIS MATTER comes before the Court concerning the Application for Finding of Reasonable Diligence for the Carr No. 2 Ditch b y the Applicant, City and County of Denver, acting by and through its Board of Water Commissioners (hereinafter “Denver Water”). Having reviewed and consider ed the pleadings, documentary and other evidence, the stipulations of several parties, and the argu ments of counsel, the Court finds, determines and decrees that:

I. FINDINGS OF FACT

The Court having received and considered all evidence offered, pleadings, and arguments by counsel, hereby makes the following findings:

GENERAL MATTERS

1. Applicant.

City and County of Denver,
acting by and through its
Board of Water Commissioners
1600 West 12th Avenue,
Denver, Colorado 80204

(303) 628-6000

Denver Water is a home rule municipal corporation of the State of Colorado. Denver Water derives its authority and power to operate a water supply system under the state constitution, the Denver City Charter and provisions of state law. Pursuant to the Denver City Charter, Denver Water provides all treated and raw water necessary for the full development of land within the City and County of Denver. Pursuant to perpetual water service agreements, Denver Water serves as the water utility for other governmental entities outside the City and County of Denver, but within Denver Water's Service Area, providing all treated and raw water necessary to serve the full development of all land within the Service Area depicted in Exhibit _____. Denver Water also has commitments to provide nearly 68,000 acre-feet of treated and raw water to customers outside its Service Area under perpetual fixed amount contracts listed on Exhibit _____. The entities receiving water under fixed amount contracts are all located within the Counties of Adams, Arapahoe, Douglas and Jefferson and the City and County of Broomfield. From time to time, Denver Water provides treated and raw water to customers under temporary arrangements.

Denver Water operates extensive raw water collection systems including the South Platte Collection System, the Roberts Tunnel Collection System, the Moffat Tunnel Collection System and the Williams Fork Diversion System. On the South Platte River, Denver Water typically stores water at Antero, Eleven Mile, Cheesman and Chatfield reservoirs for delivery or exchange of water to either Strontia Springs Reservoir or Conduit 20 intakes in Waterton Canyon. Denver Water stores and diverts Colorado River water at Dillon Reservoir and delivers this water through the Roberts Tunnel to the North Fork of the South Platte River above Strontia Springs Reservoir. Denver Water also collects water from the Fraser and Williams Fork Rivers for delivery through the Moffat Tunnel for storage in Gross Reservoir and delivery to Ralston Reservoir via the South Boulder Diversion Canal.

Raw water diverted from these systems is treated at Foothills, Marston and Moffat treatment plants and delivered to Denver Water's customers in the metropolitan area. Denver Water also delivers raw water to a number of customers. After indoor use by customers, the water is discharged back to the South Platte River as treated effluent from the Littleton-Englewood or the Metropolitan Reclamation District Wastewater Treatment Plant. Water used outdoors returns to the South Platte River by means of lawn irrigation return flows. Denver Water possesses and controls water from the various streams and rivers by diversion, storage, treatment and delivery and also through contractual provisions in its treated and raw water leases with various water suppliers.

Denver Water operates exchanges of its water to and from various facilities in its system including Strontia Springs Diversion facility (a/k/a Roxborough Diversion facility), Cheesman Reservoir and Chatfield Reservoir. Denver Water diverts by exchange water otherwise out of priority, replacing an equivalent amount of water to the river to satisfy the calling senior water right. Denver Water has various types of replacement water available in its system, including releases from storage, Colorado River sources, reusable wastewater return flows and lawn irrigation return flows.

2. Water Rights at Issue. The water rights at issue in this matter are the Carr No. 2 Ditch water rights decreed in Civil Action No. 657, Grand County District Court, November 5, 1937 (the “Subject Water Rights”).

The Carr No. 2 Ditch water right was one of several water rights acquired by Denver Water in the mid-1980’s in connection with the purchase of the John Kemp Ranch, located near Williams Fork Reservoir, in Grand County, Colorado. The point of diversion for the Carr No. 2 Ditch is downstream of Williams Fork Reservoir near a point on the east bank of the Williams Fork River in the SW1/4, Section 13, T1N, R79W of the 6th P.M., in Grand County, Colorado.

In 1985, Denver Water acquired the Kemp Ranch, comprised of approximately 1,783 acres of land, and numerous water rights that diverted from Williams Fork River, the Colorado River, Little Muddy Creek and Smith Gulch. Included in this acquisition was the Carr Ditch and the Carr No. 2 Ditch that had been previously decreed 5.4 cfs absolute, and the 16 cfs (power portion) as conditional.

The Carr Ditch and Carr Ditch No. 2 have historically diverted water from the Williams Fork River downstream of Williams Fork Reservoir. The Carr No. 2 Ditch was used to irrigate land east of the Williams Fork River. The Carr No. 2 Ditch was originally decreed for 21.4 cfs, conditional, of which 5.4 cfs was for irrigation purposes and 16.0 cfs was for power purposes to raise the irrigation water approximately 65 feet in elevation to the lands irrigated.

After Denver Water’s acquisition of the Kemp Ranch and associated water rights in 1985, the property and certain water rights were conveyed to the Colorado Division of Wildlife in 1993, while Denver Water retained ownership of the Carr and Carr No. 2 Ditches. Denver Water entered into a lease agreement with the Colorado Division of Wildlife for the continued use of the Carr Ditch on the Kemp Ranch property. The conveyance allowed public access to the Williams Fork River downstream of Williams Fork Dam that had previously been closed to the public.

The Carr No. 2 Ditch was originally decreed in CA -657, Water Division No. 5, with the claimant William Carr. By that decree, it was granted an appropriation

date of October 15, 1933, with a conditional Priority No. 22 on the Williams Fork River. As such, the Carr No. 2 Ditch is senior to Williams Fork Reservoir, but junior to Shoshone and Cameo Colorado River main stem calls. John Kemp subsequently acquired the ranch and water rights in the mid-1960's, and, in Case 80CW162, Water Division No. 5, was granted a decree declaring 3.0 cfs as absolute diverted for irrigation of about 70 acres, with the remaining 18.4 cfs as conditional.

John Kemp then was granted an additional 2.4 cfs as absolute, totaling 5.4 cfs absolute, and the remaining 16 cfs conditional, in Case No 84CW087. It was determined that the applicant at the time had exercised reasonable diligence efforts that included purchase of a water pump, aluminum water pipe, a fuel tank for the water pump and construction work on the penstock for the water power system.

Since Denver Water's acquisition of the Kemp Ranch and associated water rights in 1985, Denver Water has secured diligence decrees in Case No.'s 88CW209 and 98CW214. The State Engineer's Office 2001 Abandonment List included the 5.4 cfs of the Carr No. 2 Ditch that had previously been decreed absolute. Denver Water did not protest this inclusion of this portion of the Carr No. 2 Ditch on the abandonment list. The 16.0 cfs conditional water right remains an active water right.

3. Application. The Application at issue in this matter is the Application filed by Denver Water on February 27, 2007, for finding of reasonable diligence in Case No. 2007CW30.

4. Jurisdiction. The Court has subject matter jurisdiction over the Application and this proceeding, and personal jurisdiction over all persons who would have standing to appear as parties, regardless of whether they have appeared.

5. Notice. Timely and adequate notice of the pendency of this proceeding in rem has been given in the manner required by law. The Application was published in the March 2007 resume. Newspaper notice of the application was also provided in the Grand Junction Daily Sentinel, the Glenwood Springs Post Independent, and the Grandby Sky-High News during the month of March 2007. Denver Water also provided notice to owners or reputed owners of land upon which any new diversion or storage structures, including the United States of America, Bureau of Land Management; and State of Colorado, Division of Wildlife.

6. Statements of Opposition. The following Objectors filed timely statements of opposition: Trout Unlimited; Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise; Grand Valley Water Users Association; Orchard Mesa

Irrigation District; Intrawest-Winter Park Operations Corporation; and the Colorado River Water Conservation District.

7. Withdrawals of Statements of Opposition. On May 7, 2007, Intrawest-Winter Park Operations Corporation withdrew its statement of opposition in this matter.

8. Stipulations. The following Objectors have stipulated to a form of this Decree under stipulations entered into with Denver Water: Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise; Grand Valley Water Users Association; Orchard Mesa Irrigation District; and the Colorado River Water Conservation District. These Objectors and other West Slope entities entered into an agreement with Denver Water dated _____, 2012, which is the basis upon which the Objectors have entered the stipulations and provided their consent to these Findings of Fact, Conclusions of Law, and Judgment and Decree.

9. Summary of Consultation. A Summary of Consultation by the Division Engineer for Water Division 5 was issued on May 11, 2007. Denver Water served the Summary of Consultation on all parties to this matter on June 8, 2007.

DESCRIPTION OF SUBJECT WATER RIGHT

10. Description of Subject Water Right. On November 5, 1937, in Civil Action No. 657, the Grand County District Court awarded to Carr No. 2 Ditch, Structure No. 417, Priority No. 22 on the Williams Fork River, a conditional water right not to exceed 21.4 cubic feet of water per second of time for the purpose of operating a water wheel to elevate 5.4 cubic feet of water per second of time for the irrigation of 110 acres of land, with appropriation date of October 15, 1933.

11. Date of Original Decree and Case No. November 5, 1937, Civil Action No. 657, District Court of Grand County.

12. Location. The headgate is located at a point on the east bank of the Williams Fork River whence the Southwest corner of Section 13, Township 1, North, Range 79 West of the 6th P.M. bears South 56°45' West 1920 feet.

13. Source. Williams Fork River, tributary to the Colorado River.

14. Appropriation date. October 15, 1933.

15. Amount. 5.4 cfs absolute

16.0 cfs conditional

21.4 cfs total

16. Use. Irrigation and power purposes.

APPLICANT'S CLAIM FOR FINDING OF REASONABLE DILIGENCE

17. Denver Water has been Reasonably Diligent. On February 8, 2001, the Water Judge for Water Division No. 5, in Case No. 98CW214, confirmed and approved the ruling of the referee, which found that Denver Water had diligently prosecuted work toward the completion of the Subject Water Right. In finding that Denver Water had been reasonably diligent in the development of the Subject Water Right, the court continued the conditional Subject Water Right in full force and effect and ordered Denver Water to file an Application for Finding of Reasonable Diligence on or before the last day of February 2007. On February 27, 2007, Denver Water filed this application for a finding of reasonable diligence in accordance with the Order of the court dated February 8, 2001, and C.R.S. § 37-92-301(4).

18. Denver Water Operates an Integrated Waterworks System. Denver Water's Municipal Water System provides for the diversion, storage, purification, delivery, use, and reuse of the waters of the State of Colorado. These waters will be used for the various beneficial purposes to which Denver Water's municipal water system have been appropriated and deemed.

19. Activities Demonstrating Reasonable Diligence. The Carr No. 2 Ditch is an existing structure. Denver Water has regularly operated the Subject Water Right during the diligence period. Completion of this appropriation will depend upon future hydrologic circumstances and demands in the Denver Municipal Water System. No evidence was presented of any circumstance that would prevent waters under the conditional portion of the Subject Water Right from being diverted, stored, or otherwise captured, possessed and controlled and applied to beneficial use within a reasonable time. The activities completed by Denver Water during the most recent diligence period are set forth in paragraph 4 of the Application filed in this matter.

20. Can and Will. Denver Water can and will divert and put the remaining conditional portion of the Subject Water Right to beneficial use. Denver Water established that the waters can be and will be diverted, stored, or otherwise captured, possessed, and controlled and will be beneficially used and that the project can and will be completed with diligence and within a reasonable time.

21. No Speculative Intent. Denver Water is a governmental agency, and has a specific plan and intent to divert, store, or otherwise capture, possess, and control the conditional water right for specific beneficial uses decreed herein.

The Carr No. 2 Ditch power right for 16.0 cfs, conditional, could be an integral component of the hydro-electric power generating facility operation located at the base of Williams Fork Dam. The water right, if changed to a new point of diversion, specifically the Williams Fork Power Conduit, located approximately 4,000 feet upstream of the Carr No. 2 Ditch headgate, at the Williams Fork Dam, would allow for the beneficial use of this water right.

Under current administration by the Office of the State Engineer, a water user may store water whenever the water is physically available, its water right is in - priority, and the amount of the water storage right has not been satisfied. Under Colorado court decisions and current administrative practices, a reservoir may only be filled once during each year, unless a decree provides for refill rights or for storage in the reservoir under multiple rights with different priorities.

Because the Carr No. 2 Ditch water right is senior to Williams Fork Reservoir's 1935 and 1956 storage priorities, water used for power generation can be allocated to the Carr No. 2 water right, rather than allocated to Williams Fork storage priorities as bypassed storable inflow. If the water released from the reservoir for power generation is allocated as bypassed storable inflow then Williams Fork Reservoir would be administered as having achieved its first annual fill without actually physically filling with water. By allocating all or a portion of the water released from Williams Fork Reservoir for power generation towards the Carr No. 2 Ditch water right, rather than bypassed storable inflow, the ability for Williams Fork Reservoir to physically achieve its first annual fill is enhanced. The amount of water preserved under the Williams Fork Reservoir storage priorities is that amount of water used for power generation that would be allocated towards the Carr No. 2 Ditch water right. Based on the foregoing description of Denver Water's plan to utilize the conditional portion of the Carr No. 2 Ditch water right, the court finds that Denver Water has a non-speculative need for the Subject Water Right.

II. CONCLUSIONS OF LAW

Based upon and fully incorporating the Findings of Fact set forth above, this Court concludes as a matter of law that:

NOTICE AND JURISDICTION

22. Application was Timely. The Application for a Finding of Diligence and to Make Absolute was timely filed with the Water Clerk pursuant to C.R.S. §37-92-301(4) (2010).

23. Notice. Denver Water satisfied all requirements for notice under C.R.S. §37-92-302(3) (2010).

24. Denver Water has been Reasonably Diligent. Denver Water has been reasonably diligent in developing the Subject Water Right. The measure of reasonable diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system. C.R.S. § 37-92-301(4)(b) (2010).

A water court makes a case-by-case consideration of several factors to determine whether an applicant has made the required effort. *See City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961 (Colo.1998) (citing *Dallas Creek v. Huey*, 933 P.2d 27, 36 (Colo.1997)). These factors include but are not limited to: (1) economic feasibility; (2) the status of requisite permit applications and other required governmental approvals; (3) expenditures made to develop the appropriation; (4) the ongoing conduct of engineering and environmental studies; (5) the design and construction of facilities; and (6) the nature and extent of land holdings and contracts demonstrating the water demand and beneficial uses which the conditional right is to serve when perfected. *Dallas Creek*, 933 P.2d at 36.

All acts necessary to complete the appropriation need not be accomplished in the same diligence period. What must be demonstrated is continued intent and progress toward finalizing the conditionally decreed appropriation. The existence of a plan, capability, and need for the water is examined periodically by the water court, at the close of each diligence period, to determine whether the applicant is entitled to retain the antedated priority. Monitoring of use and need for the conditional appropriation is a proper role of the water court in a diligence proceeding. *Dallas Creek*, 933 P.2d at 36. Denver Water has shown a continued intent and progress toward finalizing the conditional decreed appropriation, and has established that it has a plan, capability and need for the water.

25. Can and Will. Denver Water can and will divert, store, or otherwise capture, possess, and control and beneficially use the Subject Water Right. C.R.S. § 37-92-305(9)(b) (2010). Denver Water demonstrated a “substantial probability that within a reasonable time the facilities necessary to affect the appropriation can and will be completed with diligence, and that as a result water will be applied to a beneficial use. *Id.* Proof of such a substantial probability necessarily involves imperfect predictions of future events and conditions. The can and will requirement should not be applied rigidly to prevent beneficial uses where an applicant otherwise satisfies the legal standard of establishing a non-speculative intent to appropriate for a beneficial use. Further, the existence of contingencies does not prevent the can and will test from being satisfied. *City of Black Hawk v. City of Central*, 97 P.3d 951 (Colo. 2004); *City of Thornton v. Bijou Irr. Co.*, 926 P.2d 1, 43-45 (Colo. 1996). Neither current economic conditions beyond the control of the applicant which adversely affect the feasibility of perfecting a conditional water right or the proposed use of water from a conditional water right nor the fact that one or more governmental permits or approvals have not been obtained shall be considered sufficient to deny a diligence application, so long as other facts and circumstances which show diligence are present. C.R.S. § 37-92-301(4)(c) (2010).

26. Anti-Speculation. Denver Water does not have speculative intent in appropriating the Subject Water Right. Denver Water is a governmental agency which will serve persons proposed to be benefited by the Subject Water Rights, and therefore does not need to demonstrate a legally vested interest in the lands or facilities to be served. C.R.S. § 37-92-103(3)(a)(I) (2010). Denver Water demonstrated its intent to make a non-speculative use of the conditional appropriation based on: (1) a reasonable water supply planning period; (2) that its substantiated population projections are based on a normal rate of growth for that period; and (3) the amount of conditionally decreed water is reasonably necessary to serve the reasonably anticipated needs of the governmental agency for the planning period, above its current water supply. C.R.S. § 37-92-103(3)(a) (2010). *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 219 P.3d 774, 780 (Colo. 2009); *Pagosa Area Water & Sanitation District v. Trout Unlimited*, 170 P.3d 307, 309-310, 312 (Colo. 2007).

27. Burden of Proof Met. Denver Water has complied with all requirements and met all standards and burdens of proof, including but not limited to C.R.S. §§ 37-92-302(1); 37-92-103(3); 37-92-305(9) (2010) to adjudicate its claim for the Subject Water Rights and is therefore entitled to a conditional decree confirming and approving its conditional water storage rights as described in the Findings of Fact.

28. All other requirements. Denver Water has satisfied all other statutory and legal requirements to support a finding of reasonable diligence.

III. JUDGMENT AND DECREE

The Court incorporates its findings of fact and concludes that Denver Water has met the requirements of law for a finding of diligence.

29. The foregoing Findings of Fact and Conclusions of Law are incorporated herein.

30. Denver Water has been reasonably diligent in the development of the Carr No. 2 Ditch water right since the last Finding of Diligence, and the said conditionally decreed water rights and priorities are hereby continued in full force and effect and no order or decree is directed or entered for the cancellation of them in whole or in part.

31. Pursuant to C.R.S. § 37-92-301(4), Denver Water shall file an Application for Finding of Reasonable Diligence on or before the last day of _____, 2017, so long as Denver Water desires to maintain those conditionally decreed water rights or until a determination has been made that these conditionally decreed water rights have become absolute water rights by reason of the completion of the appropriation.

DATED this ____ day of ____, 2012.

Holly K. Strabilzky
Water Referee
Water Division No. 1

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.

THE FOREGOING RULING IS CONFIRMED AND APPROVED AND IS
HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: _____

James Boyd
Water Judge
Water Division No. 5
State of Colorado

ATTACHMENT Q

DISTRICT COURT, WATER DIVISION 5, COLORADO Garfield County Courthouse 109 8th Street, Suite 104 Glenwood Springs, CO 81601	<u>DRAFT</u> April 5, 2012 CRE 408: FOR PURPOSES OF COMPROMISE AND SETTLEMENT ▲ COURT USE ONLY ▲
CONCERNING THE APPLICATION FOR WATER RIGHTS OF: THE CITY AND COUNTY OF DENVER ACTING BY AND THROUGH ITS BOARD OF WATER COMMISSIONERS IN GRAND COUNTY.	
Case No. 2007CW031 Div.: Water Division No. 5 (98CW190; 90CW113; 86CW218; 82CW125; W- 736-78; W-736-74; W-736; W-737; W-741; W-751; W- 155; W-156; C.A.657)	
FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE OF THE WATER COURT	

THIS MATTER comes before the Court concerning the Application for Finding of Reasonable Diligence and to Make Absolute by the Applicant, City and County of Denver, acting by and through its Board of Water Commissioners (hereinafter "Denver Water"). Having reviewed and considered the pleadings, documentary and other evidence, the stipulations of several parties, and the arguments of counsel, the Court finds, determines and decrees that:

I. FINDINGS OF FACT

The Court having received and considered all evidence offered, pleadings, and arguments by counsel, hereby makes the following findings:

GENERAL MATTERS

1. Applicant.

City and County of Denver,
acting by and through its
Board of Water Commissioners
1600 West 12th Avenue,
Denver, Colorado 80204
(303) 628-6000

Denver Water is a home rule municipal corporation of the State of Colorado. Denver Water derives its authority and power to operate a water supply system under the state constitution, the Denver City Charter and provisions of state law. Pursuant to the Denver City Charter, Denver Water provides treated and raw water for all uses and purposes necessary for the full development of land within the City and County of Denver. Pursuant to perpetual water service agreements, Denver Water serves as the water utility for other governmental entities outside the City and County of Denver, but within Denver Water's Service Area, providing all treated and raw water necessary to serve the full development of all land within the Service Area depicted in Exhibit _____. Denver Water also has commitments to provide nearly 68,000 acre-feet of treated and raw water to customers outside its Service Area under perpetual fixed amount contracts listed on Exhibit _____. The entities receiving water under fixed amount contracts are all located within the Counties of Adams, Arapahoe, Douglas and Jefferson and the City and County of Broomfield. From time to time, Denver Water provides treated and raw water to customers under temporary arrangements.

Denver Water operates extensive raw water collection systems including the South Platte Collection System, the Roberts Tunnel Collection System, the Moffat Tunnel Collection System and the Williams Fork Diversion System. On the South Platte River, Denver Water typically stores water at Antero, Eleven Mile, Cheesman and Chatfield reservoirs for delivery or exchange of water to either Strontia Springs Reservoir or Conduit 20 intakes in Waterton Canyon. Denver Water stores and diverts Colorado River water at Dillon Reservoir and delivers this water through the Roberts Tunnel to the North Fork of the South Platte River above Strontia Springs Reservoir. Denver Water also collects water from the Fraser and Williams Fork Rivers for delivery through the Moffat Tunnel for storage in Gross Reservoir and delivery to Ralston Reservoir via the South Boulder Diversion Canal.

Raw water diverted from these systems is treated at Foothills, Marston and Moffat treatment plants and delivered to Denver Water's customers in its Combined Service Area. Denver Water also delivers raw water to a number of customers outside of its Combined Service Area within the Denver Metropolitan Area. After indoor use by customers, the water is discharged back to the South Platte River as treated effluent from

the Littleton-Englewood or the Metropolitan Reclamation District Wastewater Treatment Plant. Water used outdoors returns to the South Platte River by means of lawn irrigation return flows. Denver Water possesses and controls water from the various streams and rivers by diversion, storage, treatment and delivery and also through contractual provisions in its treated and raw water leases with various water suppliers.

Denver Water operates exchanges of its water to and from various facilities in its system including Strontia Springs Diversion facility (a/k/a Roxborough Diversion facility), Cheesman Reservoir and Chatfield Reservoir. Denver Water diverts by exchange water otherwise out of priority, replacing an equivalent amount of water to the river to satisfy the calling senior water right. Denver Water has various types of replacement water available in its system, including releases from storage, Colorado River sources, reusable wastewater return flows and lawn irrigation return flows.

2. Water Rights at Issue. The water rights at issue in this matter are the Fraser River Diversion Project and Williams Fork Diversion Project water rights decreed in Civil Action No. 657, Grand County District Court, November 5, 1937, as modified and supplemented March 4, 1940, and April 15, 1946 (collectively referred to herein as the “Subject Water Rights”).

3. Application. The Application at issue in this matter is the Application filed by Denver Water on February 27, 2007, for finding of reasonable diligence and to make absolute in Case No. 2007CW031, Water Division 5.

4. Jurisdiction. The court has subject matter jurisdiction over the Application and this proceeding, and personal jurisdiction over all persons who would have standing to appear as parties, regardless of whether they have appeared.

5. Notice. Timely and adequate notice of the pendency of this proceeding in rem has been given in the manner required by law. The Application was published in the March 2007 resume. Newspaper notice of the Application was also provided in the Grand Junction Daily Sentinel, the Glenwood Springs Post Independent, and the Granby Sky-High News during the month of March 2007. Denver Water also provided notice to the United States of America, which is an owner or reputed owner of land upon which any new diversion or storage structures.

6. Statements of Opposition. The following Objectors filed timely statements of opposition: Trout Unlimited; Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise; Grand Valley Water Users Association; Orchard Mesa

Irrigation District; Middle Park Water Conservancy District; Intrawest-Winter Park Operations Corporation; and the Colorado River Water Conservation District.

7. Withdrawals of Statements of Opposition. On May 7, 2007, Intrawest-Winter Park Operations Corporation withdrew its statement of opposition in this matter.

8. Stipulations. The following Objectors have stipulated to a form of this Decree under stipulations entered into with Denver Water: Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise; Grand Valley Water Users Association; Orchard Mesa Irrigation District; Middle Park Water Conservancy District; and the Colorado River Water Conservation District. These Objectors and other West Slope entities entered into an agreement with Denver Water dated _____, 2012, which is the basis upon which the Objectors have entered the stipulations and provided their consent to these Findings of Fact, Conclusions of Law, and Judgment and Decree.

9. Summary of Consultation. A Summary of Consultation by the Division Engineer for Water Division 5 was entered on May 11, 2007. Denver Water served the Summary of Consultation on all parties to this matter on June 8, 2007.

DESCRIPTION OF SUBJECT WATER RIGHTS

10. Subject Water Rights. The water rights involved in this proceeding are those conditionally decreed to the Fraser River Diversion Project and the Williams Fork Diversion Project, by Decree of the District Court of Grand County, Colorado in Civil Action No. 657, entered November 5, 1937 as modified and supplemented March 4, 1940, and April 15, 1946.

11. Locations of Points of Diversion and Places of Storage.

(1) Fraser River Diversion Project.

(a) The location of the several points of diversion of the canals of the Fraser River Diversion Project are as follows:

(i) West Canal Line intake from the Fraser River at a point on the East bank of said river whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M. bears North 22°22' West 18,656 feet;

(ii) Jim Creek feeder at a point on the North bank of said creek whence the south east corner of Section 33, Township 1 south, Range 75 West, 6th P.M. bears North $41^{\circ}50'$ West 13,863 feet;

(iii) Little Vasquez Creek feeder at a point on the East bank of said creek whence angle point No. 2 of Tract 37, Township 2 South, Range 75 West, 6th P.M., bears South $63^{\circ}48'03''$ West 526.84 feet;

(iv) West Canal Line intake from Vasquez Creek at a point on the East bank of said creek whence angle point No. 2 of Tract 37, Township 2 South, Range 75 West, 6th P.M., bears North $37^{\circ}58'$ East 11,416.58 feet;

(v) West Canal Line intake from Cooper Creek at a point where said canal crosses said creek whence angle point No. 1 of Tract 37, Township 2 South, Range 75 West, 6th P.M., bears South $80^{\circ}56'$ West 729.10 feet;

(vi) West Canal Line intake from St. Louis Creek at a point on the East bank of said creek whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears North $69^{\circ}47'$ East 36,547 feet;

(vii) West Canal Line intake from West St. Louis Creek at a point on the East bank of said creek whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears North $79^{\circ}01'$ East 36,009 feet;

(viii) East Canal Line intake from Buck Creek at a point on the South bank of said creek where said canal crosses the creek 957 feet approximately due North of the mouth of the intake shaft of the Moffat Water Tunnel;

(ix) East Canal Line intake from Faun Creek at a point on the West bank of said creek whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears South $61^{\circ}35'$ West 7,801 feet;

(x) East Canal Line intake from South Ranch Creek at a point on the West bank of said creek whence the southeast corner of

Section 33, Township 1 South, Range 75 West, 6th P.M., bears South 45°37' West 13,221 feet;

(xi) East Canal Line intake from Ranch Creek at a point on the West bank of said creek whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears South 40°22' West 16,151 feet;

(xii) East Canal Line intake from North Ranch Creek at a point on the South bank of said creek whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears south 33°0' West 19,000 feet.

(b) The locations of the several western slope reservoirs of the Fraser River Diversion Project are as follows:

(i) Vasquez Reservoir in Sections 18 and 19, Township 2 South, Range 75 West, 6th P.M., with the east end of the dam at a point whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears North 45°3' East 15,551 feet.

(ii) St. Louis Reservoir in Sections 16 and 21, Township 2 South, Range 76 West, 6th P.M., with the East end of the dam at a point whence the southeast corner of Section 33, Township 1 South, Range 75 West, 6th P.M., bears North 69°47' East, 36,547 feet.

(c) The locations of the several eastern slope reservoirs in which the waters of the Fraser River Diversion Project are and will be stored are as follows:

(i) Ralston Creek Reservoir in Sections 32 and 33, Township 2 South, and Sections 5 and 6, Township 3 South, all in Range 70 West, 6th P.M.;

(ii) Cheesman Reservoir in Township 10 South, Ranges 70 and 71 West, 6th P.M.;

(iii) Eleven Mile Canyon Reservoir in Township 13 South, Ranges 72 and 73 West, 6th P.M.;

(iv) Marston Reservoir in Township 5 South, Range 69 West, 6th P.M.;

(v) Antero Reservoir in Township 12 South, Ranges 76 and 77 West, 6th P.M.;

(vi) Gross Reservoir in Township 1 South, Range 71 West, 6th P.M. in Boulder County, Colorado.

(2) Williams Fork Diversion Project.

(a) The locations of the several points of diversion of the canals of the Williams Fork Diversion Project are as follows:

(i) North Canal Line, Section 1 from McQueary Creek at a point on the South bank of said creek whence the United States Location Monument Wilson near Minnehaha Gulch, LaPlata mining district Grand County, Colorado, (hereinafter referred to as the Wilson Monument) bears South $31^{\circ}56'15''$ East 8,333.32 feet;

(ii) North Canal Line, Section 2, from Jones Creek at a point on the South bank of said creek whence the Wilson Monument bears South $66^{\circ}29'40''$ East 1,983.49 feet;

(iii) North Canal Line, Section 3 receives its water through Sections 1 and 2 and from tributary drainage and has no independent point of diversion on any stream;

(iv) South Canal Line, Section 1 from Bobtail Creek at a point on the East bank of said creek whence the Wilson Monument bears North $65^{\circ}34'50''$ East 2,007.47 feet;

(v) South Canal Line, Section 2, From Steelman Creek at a point on the East bank of said creek whence Wilson Monument bears North $78^{\circ}46'45''$ East 9,525.25 feet;

(vi) South Canal Line, Section 3 receives its water through Sections 1 and 2 and has no independent point of diversion on any stream;

(vii) South Canal Line, Section 4 from Bobtail Creek at a point on the East bank of said creek whence the Wilson Monument bears North 62°23' East 1,967.2 feet;

(viii) South Canal Line, Section 5 from Steelman Creek at a point on the East bank of said creek whence the Wilson Monument bears North 75°07' East 9,715.3 feet;

(ix) South Canal Line, Section 6 receives its water through Section 7 and from tributary drainage and has no independent point of diversion on any stream;

(x) South Canal Line, Section 7 from the Middle Fork of the Williams Fork River at a point on the East bank of said Middle Fork whence Ptarmigan Peak Monument bears South 73°33' East 23,868 feet;

(xi) South Canal Line, Section 8, from Allen Creek at a point on the North bank of said creek whence the Ptarmigan Monument bears North 86°07' East 20,897 feet;

(xii) South Canal Line, Section 9 receives its water through Section 8 and has no independent point of diversion on any stream;

(xiii) South Canal Line, Section 10 from the South Fork of the Williams Fork River at a point on the North bank of said South Fork whence the Ptarmigan Peak Monument bears North 50°47' East 11,999 feet;

(xiv) Middle Fork Feeder Ditch of the South Canal Line receives its water from tributary drainage and has no point of diversion on any stream.

(b) The locations of the several eastern slope reservoirs in which waters of the Williams Fork Diversion Project will be stored are as follows:

(i) Empire Reservoir in Section 29, Township 3 South, Range 74 West, 6th P.M.;

(ii) Cheesman Reservoir in Township 10 South, Ranges 70 and 71 West, 6th P.M.;

(iii) Eleven Mile Canon Reservoir in Township 13 South, Ranges 72 and 73 West, 6th P.M.;

(iv) Marston Reservoir in Township 5 South, Range 69 West, 6th P.M.;

(v) Antero Reservoir in Township 12 South, Ranges 76 and 77 West, 6th P.M.

(vi) Gross Reservoir in Township 1 South, Range 71 West, 6th P.M.

(vii) Ralston Creek Reservoir in Sections 32 and 33 , Township 2 South, and Sections 5 and 6, Township 3 South, all in Range 70 West, 6th P.M.

12. Dates of Appropriation.

(1) Fraser River Diversion Project. July 4, 1921 except as to the enlargement of the Vasquez Reservoir, which date is July 7, 1936.

(2) Williams Fork Diversion Project. July 4, 1921.

13. Amounts of Water.

(1) Fraser River Diversion Project:	352 cfs conditional
	<u>928 cfs absolute</u>
	1280 cfs total
(2) Williams Fork Diversion Project:	406 cfs conditional
	<u>214 cfs absolute</u>
	620 cfs total

See attached tables I, II, III and IV for amounts remaining conditionally decreed for direct flow and storage rights for each of the within described features of the Fraser River and Williams Fork Diversion Projects.

14. The Sources of Water and Amounts for Intake Rights.

(1) Fraser River Diversion Project. The Fraser River, a tributary of the Colorado River, and those of its several tributaries from which intakes have been or will be constructed and also tributary drainage.

(a) From St. Louis Creek, East St. Luis Creek, Fool Creek, King Creek, East King Creek, West Elk Creek, Elk Creek, and tributary drainage above the canal, the maximum amount of 700 c.f.s., through the West Canal Line intake from said St. Louis Creek;

(b) From West St. Louis Creek, Byers Creek, and tributary drainage above the canal, the maximum amount of 112 c.f.s., through the West Canal Line intake from said West St. Louis Creek;

(c) From Faun Creek, and tributary drainage above the canal, the maximum amount of 280 c.f.s., through the East Canal Line intake from said Faun Creek;

(d) From South Ranch Creek, and tributary drainage above the canal, the maximum amount of 180 c.f.s., through the East Canal Line intake from said South Ranch Creek;

(e) From Ranch Creek, and tributary drainage above the canal, the maximum amount of 112 c.f.s., through the East Canal Line intake from said Ranch Creek; and

(f) From North Ranch Creek, and tributary drainage above the canal, the maximum amount of 112 c.f.s., through the East Canal Line intake from said North Ranch Creek;

Provided that the total diversions by means of the twelve sources described above shall be limited at any one time to the maximum of 1280 c.f.s..

(2) Williams Fork Diversion Project. The Williams Fork River, a tributary of the Colorado River and its several tributaries from which intakes have been or will be constructed and also tributary drainage.

(a) From McQueary Creek, the maximum amount of 70 c. f.s., through the North Canal Line, Section 1;

(b) From Jones Creek, the maximum amount of 25 c.f.s., through the North Canal Line, Section 2;

(c) From McQueary and Jones Creeks, and tributary drainage above the canal, the maximum amount of 115 c.f.s., through the North Canal Line, Section 5;

(d) From Bobtail Creek, the maximum amount of 115 c.f.s., through the South Canal Line, Section 1;

(e) From Steelman Creek, the maximum amount of 90 c.f.s., through the South Canal Line, Section 2;

(f) From Bobtail Creek, the maximum amount of 195 c.f.s., through the South Canal Line, Section 4, but this amount shall be inclusive of the amount from said creek through Section 1 of the South Canal Line as mentioned in subsection (d) herein;

(g) From Steelman Creek, the maximum amount of 150 c.f.s., through the South Canal Line, Section 5, but this amount shall be inclusive of the amount from said creek through Section 2 of the south canal line as mentioned in subsection (e) herein;

(h) From the Middle Fork of the Williams Fork River and from tributary drainage above the canal, the maximum amount of 400 c.f.s., through the South Canal Line, Section 6, but this amount shall be inclusive of the amount from said Middle Fork through Section 7 of the South Canal Line as mentioned in subsection (j) herein;

(i) From the Middle Fork of Williams Fork River, the maximum amount of 350 c.f.s., through the South Canal Line, Section 7;

(j) From Allen Creek, the maximum amount of 250 c.f.s., through the South Canal Line, Section 8;

(k) From the South Fork of the Williams Fork River, the maximum amount of 200 c.f.s., through the South Canal Line, Section 10;

(l) From tributary drainage above the feeder, the maximum amount of 50 c.f.s., through the Middle Fork Feeder Ditch;

Provided, however, that the total diversions by means of the twelve priorities awarded in subsection (a) to (l), shall be limited at any one time to the maximum of 620 c.f.s., which is the total capacity of the Williams Fork Tunnel.

15. Storage Amounts and Sources.

(1) The following West Slope reservoirs of the Fraser River Diversion Project are entitled to store water from the following sources and in the following amounts, under the Reservoir Appropriation 11A and their respective priorities:

(a) In St. Louis Reservoir, from the waters of St. Louis Creek, Byers Creek and West St. Louis Creek, under and by virtue of original construction, the maximum amount of 50,000,000 cubic feet, 1,150 acre feet, under priority date July 4, 1921.

(b) In Vasquez Reservoir, from the waters of Vasquez, Elk West Elk, East King, King, Fool, East St. Louis, St. Louis, Byers and West St. Louis Creeks, under and by virtue of original construction the maximum amount of 12,000,000 cubic feet, 275 acre feet, under priority date of July 4, 1921;

(c) In Vasquez Reservoir, from the waters of Vasquez, Elk, West Elk, East King, King, Fool, East St. Louis, St. Louis, Byers and West St. Louis Creeks, under and by virtue of enlargement, the maximum amount of 276,201,400 cubic feet, 6,341 acre feet, under priority date July 7, 1936;

(2) The following Eastern Slope Reservoirs of the Denver Municipal Water System are entitled to store the following amounts of water under Reservoir Appropriation No. 11, as part of the Fraser River Diversion Project, for the benefit of the persons lawfully entitled thereto:

(a) In Ralston Creek Reservoir 12,758 acre feet;

(b) In Cheesman Reservoir 79,000 acre feet;

(c) In Eleven Mile Cañon Reservoir 81,971 acre feet;

- (d) In Marston Reservoir 19,800 acre feet;
- (e) In Empire Reservoir 6,494.39 acre feet;
- (f) In Gross Reservoir 113,077.7 acre feet; and
- (g) In Antero Reservoir 33,000 acre feet.

(3) The following Eastern Slope Reservoirs of the Denver Municipal Water System are entitled to store the following amounts of water under Reservoir Appropriation No. 25, as part of the Williams Fork Diversion Project, for the benefit of the persons lawfully entitled thereto:

- (a) In Empire Reservoir, 6,494.39 acre feet;
- (b) In Cheesman Reservoir, 79,000 acre feet;
- (c) In Eleven Mile Cañon Reservoir, 81,917 acre feet;
- (d) In Marston Reservoir, 19,800 acre feet;
- (e) In Antero Reservoir, 33,000 acre feet.
- (f) In Ralston Creek Reservoir 12,758 acre feet; and
- (g) In Gross Reservoir 113,077.7 acre feet.

16. Use. Municipal uses, including domestic use, fire protection, sewage treatment, sanitation, street sprinkling, watering of parks, lawns and grounds, mechanical uses and every other type of municipal uses, generation of electrical energy, and for maintaining adequate storage reserves, and regulation of direct flow of water to meet the exigencies of fluctuating demands for the above named uses; together with the right to fill, refill, regulate and replace losses by reason of evaporation for the listed purposes.

17. The Denver Municipal System is an Integrated System. Denver Water operates an integrated Municipal Water System. This system provides for the diversion, storage, purification, delivery, use, and reuse of the waters of the State of Colorado. These waters will be used for the various beneficial purposes to which Denver Water's municipal water system have been appropriated and decreed. The widely fluctuating and unpredictable flows of water in the streams of Colorado require the incorporation of

storage reservoirs into this system. These reservoirs must be able to store a sufficient amount of water that will guarantee a continuous annual supply of water for all municipal uses and purposes.

CLAIM TO MAKE ABSOLUTE

18. Denver's Claim to Make Absolute a Portion of the Williams Fork Diversion Project. The court finds that on June 4, 2006, Denver Water legally diverted and put to beneficial use 254 cfs of water under the Williams Fork Diversion Project, in compliance with the decree in C.A. 657.

19. Date water applied to beneficial use. June 4, 2006.

20. Amount. 254 cfs.

21. Use. All decreed beneficial uses.

22. Description of place of use where water was applied to beneficial use. The water was placed to beneficial use in the area served by the Denver Municipal Water System including areas served by fixed contracts.

CLAIM FOR FINDING OF REASONABLE DILIGENCE

23. Denver has been Reasonably Diligent. On February 2, 2001, the Water Judge for Water Division No. 5, in Case No. 98C W190, confirmed and approved the ruling of the referee, which found that Denver Water had diligently prosecuted work toward the completion of the Subject Water Rights. In finding that Denver Water had been reasonably diligent in the development of the Subject Water Rights, the court continued the conditional Subject Water Rights in full force and effect and ordered Denver Water to file an Application for Finding of Reasonable Diligence on or before the last day of February 2007. On February 27, 2007, Denver Water filed this Application for a finding of reasonable diligence and to make absolute, in accordance with the Order of the court dated February 2, 2001, and C.R.S. § 37-92-301(4).

24. The Subject Water Rights are Part of Denver Water's Integrated System. The Fraser River Diversion Project and the Williams Fork Diversion Project are integral parts of the Denver Municipal Water System. The projects are large and intricate, require extensive scientific research and development, and necessarily take many years to complete in a sequence established and executed by Denver Water and its employees to bring about the complete utilization of all the waters involved, expeditiously and with

reasonable diligence. Denver Water has demonstrated a steady application of effort to complete the appropriation of the Subject Water Rights. Work on the facilities necessary to put the subject waters to their decreed beneficial uses has progressed continuously and without interruption, and in the most expedient and efficient fashion possible under the circumstances. Work accomplished toward the completion of the Subject Water Rights and application of water to the beneficial uses for which they are decreed includes work which has been done on the design, construction, and integration of structures for the storage, treatment, distribution, and reuse and successive use of the waters which are the subject of this proceeding. Such work has progressed continuously and without interruption and with reasonable dispatch.

25. Activities Demonstrating Reasonable Diligence. In support of its Application, Denver Water performed activities and made expenditures during this last diligence period sufficient to demonstrate reasonable diligence toward the development of its conditionally decreed water rights. The activities referred to in this paragraph are listed in the Application and are incorporated herein by this reference. The activities listed in the Application are evidence of Denver Water's continued reasonable diligence in developing the conditional portion of the Subject Water Rights, and evidence the continuous efforts of development and construction of the facilities necessary to divert, store and use the Subject Water Rights.

26. Need. Based on the evidence considered by the court in connection with the following factors, the court finds that Denver Water continues to have a non-speculative need for the conditional Subject Water Rights that are the subject of this decree.

(1) Denver Water has a Reasonable Water Supply Planning Period. Denver Water's current water supply planning period extends to 2050. The court finds that this is a reasonable water supply planning period, particularly considering the size of Denver Water's Combined Service Area, in population and geography, and Denver Water's contractual commitments outside of its Combined Service Area.

(2) Denver Water's Substantiated Population/Rate of Growth Projections. Denver Water bases its demand projections on an econometric model that relies on numerous factors, including population growth within the Denver Metropolitan Area as predicted by the Denver Regional Council of Governments ("DRCOG") in 2030, and the U.S. Census Bureau as projected in 2050. The court finds that Denver Water reasonably relied on the rate of population growth used by DRCOG and the U.S. Census Bureau. Population growth factor is one of

several factors considered by Denver Water's model. Denver Water relies on a model that interrelates water usage with demographics and various other socio-economic factors. This includes the rate of usage for single-family households in the future, so that total single-family usage can be determined by multiplying that usage rate by the future number of single-family households. The model uses a projected growth rate of 1.0 percent per year for the years 2005 through 2050, and a population of 1.74 million residents in 2050. In addition, the model projects employment in the service area to increase to a total of 1.25 million jobs by 2050, reflecting an average annual job growth rate of just under 0.9 percent from 2005 through 2050. The court finds that the model assumes a water demand projection based on a reasonable rate of population and employment growth.

(3) Water Required to Meet Denver Water's Reasonably Anticipated Needs. Denver Water demonstrated that the remaining amount of conditionally decreed water is reasonably necessary to serve the reasonably anticipated needs of Denver Water for the planning period, above its current water supply.

(a) Implementation of Reasonable Water Conservation Measures During Planning Period. Denver Water has adopted an accelerated conservation plan intended to achieve by 2016 the 29,000 acre-feet of savings targeted in its 1996 Integrated Resource Plan for 2045. To achieve these goals, Denver Water has instituted a new customer information system that provides customers with access to monthly consumption information rather than the bi-monthly consumption data historically provided by Denver Water to its customers. Denver Water offers rebates and incentives to encourage customers to convert to low water use appliances, plumbing fixtures, irrigation systems and more efficient landscapes. Denver Water has developed a rate structure that encourages conservation through price signals, and allows for more effective demand management during peak summer irrigation use and severe droughts. In addition, Denver Water is engaged in educational outreach to provide customers with information to reduce their consumption through best-practices for irrigation and other water use. The court finds that these conservation measures are reasonable.

(b) Reasonably Expected Land Use Mixes during the Planning Period. Denver Water's demand model considers three types of customers, which could be characterized as land use mixes. These uses include (1) single-family residences; (2) commercial, multi-family and industrial users;

(3) and government and institutional users. The court finds that these are reasonable land use mixes to consider for the planning period.

(c) Reasonably Attainable Per Capita Usage Projections for Indoor and Outdoor Use Based on the Land Use Mixes During the Planning Period. In year 2000, Denver Water's system-wide metered water use was 220 gallons per capita per day. Denver Water's forecast projects that system-wide metered use will decline to 181 gallons per capita per day by 2050. Along with other economic and demographic factors, this decline reflects the conservation savings from natural replacement of older, less efficient fixtures. Traditionally, 60 percent of Denver Water's use is for indoor purposes and 40 percent is for outdoor purposes. Denver Water's projections represent the exercise of informed judgment.

(d) Amount of Consumptive Use Reasonably Necessary to Serve the Increased Population. The court finds that Denver Water's past and planned future demands account for a reasonable amount of consumptive use to serve its customers.

(4) Denver Water's Future Demand Projections. Denver Water presented an econometric demand model and projections of future water demands for Denver Water's Service Area and its fixed-amount contractual commitments. The model, which projects unconstrained water demand, meaning water demand without emergency water restrictions, forecasts Denver Water's water demands through 2050 by utilizing socioeconomic forecasts, historical data, and U.S. Census data. Specifically, the model relies on socioeconomic projections made by DRCOG, which projects future population as far as 2030, and then extends the socioeconomic forecasts through 2050 based on national projections from the U.S. Census Bureau and other sources, such as historic relationships between service area growth and national trends. To determine Denver Water's 2050 demand, the DRCOG data is extended forward to 2050 using U.S. Census Bureau data and projections. In order to accurately forecast Denver Water's demand, the model uses separate equations to measure (1) single family water use per household customers; (2) multi-family, commercial and industrial customers; and (3) institutional (governmental) customers. The data for these three types of customers is based on annual water use data collected by Denver Water and its distributors from 1973 to 1999. Denver Water's model projects that Denver Water's 2050 treated water demand at the customers' meters would be 370,000 acre feet, including a 5 percent calibration adjustment. To estimate Denver Water's total system-wide demand water requirements a number of adjustments

must be made. First, system losses and unaccounted for water use, which is estimated to average six percent, must be added (22,000 acre feet). Second, 39,000 acre feet must be subtracted to account for improved efficiency of water using fixtures. Third, 67,000 acre feet in fixed and special commitments with customers outside of Denver Water's Combined Service Area must be added. Fourth, pursuant to Denver Water's policy of maintaining a 30,000 acre foot safety factor, 30,000 acre feet was added. With these adjustments Denver Water's total system-wide demand in 2050 is 450,000 acre feet. Denver Water has analyzed the demand forecast results. Such analysis included evaluation of overall usage and demographic metrics of the forecast in comparison to historical statistics. The court concludes that the Applicant has engaged in a thoughtful planning process and has properly taken into account both its own experience and expertise, and analysis by outside experts.

(5) Denver Water's Current Water Supply. Denver Water's projected future demands are in excess of the water supply currently available from its Municipal Water System. Denver Water generally uses its direct flow water rights first before using its reservoir storage to meet its water supply needs. During the period of 1998-2007, Denver Water's storage declined to a point where Denver Water's storage reserves were drawn down to less than its annual demand. The Subject Water Rights are a key part in meeting this future demand.

(6) Safety Factor. The court finds that Denver Water's 30,000 acre foot safety factor (30,000 acre-feet/year of a four-year drought) is reasonable and prudent amount of water to store in reserve in light of the number of customers which rely on Denver Water's system and the importance of Denver Water to the economic development of the State.

27. Capability. The structures necessary to divert the waters of the Fraser River Diversion Project and the Williams Fork Diversion Project to the beneficial uses for which the appropriations are decreed have been constructed at the locations described in the Decree as nearly as reasonably may be, or are of a nature or location such as not to create a greater burden on the watershed of the Fraser River and its tributaries and the Williams Fork River and its tributaries than as provided for in said Decree.

All facilities required to directly divert the Subject Water Rights have been constructed and are in operation. All of the storage facilities have also been constructed and are currently operational and capable of storing the Subject Water Rights, except for Empire Reservoir, which has not been constructed. However, there are no

insurmountable hurdles which would prevent the permitting and construction of Empire Reservoir.

Denver Water has demonstrated that the remaining conditionally decreed amounts can and will be diverted, stored or otherwise captured, possessed, and controlled; and that the waters will be beneficially used.

II. CONCLUSIONS OF LAW

Based upon the Findings of Fact set forth above, this Court concludes as a matter of law that:

28. The foregoing Findings of Fact are incorporated herein to the extent they constitute Conclusions of Law.

29. Denver Water has been Reasonably Diligent. Denver Water has been reasonably diligent in developing the Subject Water Rights. The measure of reasonable diligence is the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system. C.R.S. § 37-92-301(4)(b) (2010).

A water court makes a case-by-case consideration of several factors to determine whether an applicant has made the required effort. *See City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961 (Colo.1998) (citing *Dallas Creek v. Huey*, 933 P.2d 27, 36 (Colo.1997)). These factors include but are not limited to: (1) economic feasibility; (2) the status of requisite permit applications and other required governmental approvals; (3) expenditures made to develop the appropriation; (4) the ongoing conduct of engineering and environmental studies; (5) the design and construction of facilities; and (6) the nature and extent of land holdings and contracts demonstrating the water demand and beneficial uses which the conditional right is to serve when perfected. *Dallas Creek*, 933 P.2d at 36.

All acts necessary to complete the appropriation need not be accomplished in the same diligence period. What must be demonstrated is continued intent and progress toward finalizing the conditionally decreed appropriation. The existence of a plan, capability, and need for the water is examined periodically by the water court, at the close

of each diligence period, to determine whether the applicant is entitled to retain the antedated priority. Monitoring of use and need for the conditional appropriation is a proper role of the water court in a diligence proceeding. *Dallas Creek*, 933 P.2d at 36. Denver Water has shown a continued intent and progress toward finalizing the conditional decreed appropriation, and has established that it has a plan, capability and need for the water.

30. Can and Will. Denver Water can and will divert, store, or otherwise capture, possess, and control and beneficially use the Subject Water Rights. C.R.S. § 37-92-305(9)(b) (2010). Denver Water demonstrated a “substantial probability that within a reasonable time the facilities necessary to affect the appropriation can and will be completed with diligence, and that as a result water will be applied to a beneficial use.” *Id.* Proof of such a substantial probability necessarily involves imperfect predictions of future events and conditions. The can and will requirement should not be applied rigidly to prevent beneficial uses where an applicant otherwise satisfies the legal standard of establishing a non-speculative intent to appropriate for a beneficial use. Further, the existence of contingencies does not prevent the can and will test from being satisfied. *City of Black Hawk v. City of Central*, 97 P.3d 951 (Colo. 2004); *City of Thornton v. Bijou Irr. Co.*, 926 P.2d 1, 43-45 (Colo. 1996). Neither current economic conditions beyond the control of the applicant which adversely affect the feasibility of perfecting a conditional water right or the proposed use of water from a conditional water right nor the fact that one or more governmental permits or approvals have not been obtained shall be considered sufficient to deny a diligence application, so long as other facts and circumstances which show diligence are present. C.R.S. § 37-92-301(4)(c) (2010).

31. Anti-Speculation. Denver Water does not have speculative intent in using the remaining conditional portions of the Subject Water Rights. Denver Water is a governmental agency which will serve persons proposed to be benefited by the Subject Water Rights, and therefore does not need to demonstrate a legally vested interest in the lands or facilities to be served. C.R.S. § 37-92-103(3)(a)(I) (2010). Denver Water demonstrated its intent to make a non-speculative use of the conditional appropriation based on: (1) a reasonable water supply planning period; (2) that its substantiated population projections are based on a normal rate of growth for that period; and (3) the amount of conditionally decreed water is reasonably necessary to serve the reasonably anticipated needs of the governmental agency for the planning period, above its current water supply. C.R.S. § 37-92-103(3)(a) (2010). *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 219 P.3d 774, 780 (Colo. 2009); *Pagosa Area Water & Sanitation District v. Trout Unlimited*, 170 P.3d 307, 309-310, 312 (Colo. 2007).

32. Perfection of Water Rights. With regard to its claim to make absolute, Denver Water demonstrated that it: (1) captured, possessed, and controlled water; and (2) the applied the water to a beneficial use. *City of Lafayette v. New Anderson Ditch Co.*, 962 P.2d 955, 961 -962 (Colo.1998) (citing *City & County of Denver v. Northern Colo. Water Conservancy Dist.*, 276 P.2d 992, 998-99 (Colo. 1954)). Denver Water has lawfully petitioned the Water Court to declare the right absolute for purposes of fixing its place in the priority system in relation to all other appropriators. *New Anderson Ditch Co.*, 962 P.2d 962; C.R.S. § 37-92-306 (2010).

33. Burden of Proof Met. Denver Water has complied with all requirements and met all standards and burdens of proof, including but not limited to C.R.S. §§ 37-92-302(1); 37-92-103(3); 37-92-305(9) (2010) to adjudicate its claim for the Subject Water Rights and is therefore entitled to a conditional decree confirming and approving its conditional water storage rights as described in the Findings of Fact.

34. All other requirements. Denver Water has satisfied all other statutory and legal requirements to support a finding of reasonable diligence.

III. JUDGMENT AND DECREE

The Court incorporates its findings of fact and concludes that Denver Water has met the requirements of law for a finding of diligence.

35. The foregoing Findings of Fact and Conclusions of Law are incorporated herein.

36. Denver Water has been reasonably diligent in the development of the Fraser River and Williams Fork Diver Projects since the last Finding of Diligence, and the said conditionally decreed water rights and priorities are hereby continued in full force and effect and no order or decree is directed or entered for the cancellation of them in whole or in part.

37. Denver Water demonstrated that it lawfully diverted the amount of 254 c.f.s. under the Williams Fork Diversion Project and put said amount to beneficial use by customers served by the Denver Municipal Water System. The amount of 254 c.f.s., as depicted on Exhibit A, is hereby decreed absolute, and no additional showing of diligence is required with regard to said amount.

38. Pursuant to C.R.S. § 37-92-301(4), Denver Water shall file an Application for Finding of Reasonable Diligence on or before the last day of _____, 2017, so long as the Applicant desires to maintain those conditionally decreed water rights or until

a determination has been made that these conditionally decreed water rights have become absolute water rights by reason of the completion of the appropriation.

DATED this ____ day of ____, 2011.

Holly K. Strabilzky
Water Referee
Water Division No. 1

THE COURT FINDS: NO PROTEST WAS FILED IN THIS MATTER.

THE FOREGOING RULING IS CONFIRMED AND APPROVED AND IS
HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

Dated: _____

James Boyd
Water Judge
Water Division No. 5
State of Colorado

ATTACHMENT Q

TABLE I
(Case No. 07CW31 WD5)
FRASER RIVER DIVERSION PROJECT
Amounts Conditionally Decreed for Direct Flow Diversion

Paragraph No. in Decreed Portion of Original Decree Civil Action No. 657	Sources	Amount Conditionally Decreed in cubic feet per second	Amount Remaining Conditionally Decreed in cubic feet per second
1(a-f) & 1a	Fraser River, Jim, Little Vasquez, Vasquez, Cooper and Buck	335	260.0
2(a)	St. Louis Creek, East St. Louis, Fool, King, East King, West, Elk and Elk Creeks, and tributary drainage above the West Canal	700	486.0
2(b)	West St. Louis Creek, Byers Creek and tributary drainage above the East Canal	112	70.0
2(c)	Faun Creek (shown as South Ranch Creek on current U.S.G.S. mapping) and tributary drainage above the East Canal	280	230.0
2(d)	South Ranch Creek (shown as Middle Ranch Creek on current U.S.G.S. mapping) and tributary drainage above the East Canal	180	114.0
2(e)	Ranch Creek and tributary drainage above the East Canal	112	63.0
2(f)	North Ranch Creek and tributary drainage above the East Canal	112	79.0
6	Total diversion through the Moffat Tunnel from all sources described in paragraphs 1 and 2 of Civil Action No. 657	1,280	352.0

TABLE II
(Case No. 07CW31 WD5)
FRASER RIVER DIVERSION PROJECT
Amounts Conditionally Decreed for Storage

Paragraph No. in Decreed Portion of Original Decree Civil Action No. 657	Name	Sources	Amount Remaining Conditionally Decreed c.f.s.
3(a)	St. Louis Reservoir	St. Louis, Byers, West St. Louis Creeks	1,150.0

3(b)	Vasquez Reservoir	Vasquez, Elk, West Elk, East King, King, Fool, East St. Louis, St. Louis, Byers, West St. Louis Creeks	275.0
3(c)	Vasquez Reservoir	Vasquez, Elk, West Elk, East King, King, Fool, East St. Louis, St. Louis, Byers, West St. Louis Creeks	6,341.0
5	Antero Reservoir	Fraser River and its tributaries diverted by Fraser River Diversion Project	33,000.0
*	Gross Reservoir	Fraser River and its tributaries diverted by Fraser River Diversion Project	71,266.70

*Gross Reservoir, originally known as Reservoir No. 22, was decreed in “Supplemental Finding and Decree for Other Than Irrigation Purposes Respecting Reservoir No. 22 of the City and County of Denver” in Civil Action No. 657 by Decree of the Court entered April 15, 1946.

TABLE III
(Case No. 07CW31 WD5)
WILLIAMS FORK DIVERSION PROJECT
Amounts Conditionally Decreed for Direct Flow Diversion

Paragraph No. in Decreed Portion of Original Decree Civil Action No. 657	Sources	Amount Conditionally Decreed in cubic feet per second	Amount Remaining Conditionally Decreed in cubic feet per second
1(a)	McQueary Creek	70	21.4
1(b)	Jones Creek	25	3.5
1(c)	McQueary Creek and Jones Creek and tributary drainage of McQueary Creek and Jones Creek	115	45
1(f)	Bobtail Creek plus tributary drainage	195	80
1(g)	Steelman Creek plus tributary drainage	150	60
1(h)	Middle Fork – Williams Fork River	550	550
		350	350

1(i)	Middle Fork – Williams Fork River plus tributary drainage		
1(j)	Allen Creek	250	250
1(k)	South Fork Williams Fork River	200	200
1(l)	Middle Fork Feeder and tributary drainage	50	50
Last paragraph under paragraph 1 on page 8	Total diversions through the Williams Fork Tunnel by means of priorities listed in subsections (a) to (l) of paragraph 1 of the decree	620	366.00

TABLE IV
(Case No. 07CW31 WD5)
WILLIAMS FORK DIVERSION PROJECT
Amounts Conditionally Decreed for Storage

Paragraph No. in Decreed Portion of Original Decree Civil Action No. 657	Name	Sources	Amount Remaining Conditionally Decreed c.f.s.
2(a)	Empire Reservoir	Williams Fork River and its tributaries	6,494.39
2(e)	Antero Reservoir	Williams Fork River and its tributaries	33,000.00

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

I. BLUE RIVER DECREE BACKGROUND

I.A. Definitions. The following definitions apply for purposes of this Administrative Protocol ("Protocol"). In addition, terms defined elsewhere in this Protocol shall have the meanings there provided.

I.A.1. "Blue River Decree": means the Findings of Fact, Conclusions of Law, and Final Judgment entered on October 12, 1955, in Consolidated Cases No. 5016 and 5017 and the Findings of Fact and Conclusions of Law and Final Decree entered on October 12, 1955, in Consolidated Cases Nos. 2782, 5016, and 5017 ("Consolidated Cases") by the United States District Court, District of Colorado ("1955 Decree"), and all supplemental or amendatory orders, judgments, and decrees in said cases, including, without limitation, the Decree entered on April 16, 1964, therein ("1964 Decree") and the Supplemental Judgment and Decree dated February 9, 1978 ("1978 Judgment").

I.A.2. "Blue River Decree Parties": means, for purposes of this Protocol, the following: the United States of America ("United States"), the Cities, the Northern Colorado Water Conservancy District, the Colorado River Water Conservation District, the Grand Valley Water Users Association, the Orchard Mesa Irrigation District, the Palisade Irrigation District, the Grand Valley Irrigation Company, and the Middle Park Water Conservancy District.

I.A.3. "Blue River Decree Stipulations" or "Stipulations": means the 1955 Stipulation and 1964 Stipulation entered into among the parties to the Consolidated Cases in connection with the Blue River Decree, which are further defined as follows:

I.A.3.a. "1955 Stipulation": means the Stipulation among the parties to the Consolidated Cases entered into on October 5, 1955, and amended on October 10, 1955, which is set forth in full in paragraph 17 of the Findings of Fact and Conclusions of Law of the 1955 Decree.

I.A.3.b. "1964 Stipulation": means the Stipulation among the Stipulating Parties dated April 16, 1964, in the Consolidated Cases.

I.A.4. "Bypassed Storage Water": means bypasses of inflow to Green Mountain Reservoir between the Start of Fill Date and End of Fill Season that have been accounted toward the 1935 First Fill Storage Right pursuant to direction from the Division Engineer because they were neither used to generate electrical energy at the Green Mountain Reservoir Powerplant nor bypassed to satisfy senior water rights. Bypasses made at any time to the extent necessary to satisfy a legal demand or call of a senior downstream water right and bypasses of up to 60 c.f.s. made from May 1st through the end of the irrigation season shall not be considered Bypassed Storage Water, nor shall such bypasses be accounted toward any of the Green Mountain Reservoir Storage Rights.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

I.A.5. “C.A. 1710 Water Rights”: means those water rights decreed on October 26, 1937, by the Summit County District Court in Civil Action No. 1710, including water rights adjudicated by Climax Molybdenum Company, a Delaware Corporation (“Climax”), for milling and mining purposes at the Climax mine near Leadville, Colorado (“Climax C.A. 1710 Water Rights”). The Climax C.A. 1710 Water Rights are as follows:

Water Right	Appropriation Date	Adjudication Date	Amount
<u>Supply Canal No. 1</u>			
Humbug Creek	08-15-1935	10-26-1937	20.0 cfs
Mayflower Creek	08-15-1935	10-26-1937	30.0 cfs
Clinton Creek	08-15-1935	10-26-1937	50.0 cfs
Other Drainages into Canal	08-15-1935	10-26-1937	20.0 cfs
<u>Supply Canal No. 2</u>			
Searle Gulch	08-15-1935	10-26-1937	35.0 cfs
Kokomo Gulch	08-15-1935	10-26-1937	25.0 cfs
Other Drainages into Canal	08-15-1935	10-26-1937	10.0 cfs
<u>Tenmile Diversion Ditch No. 1</u>			
McNulty Ditch	06-04-1936	10-26-1937	15.0 cfs
Transferred to West Gravity Line	06-04-1936	10-26-1937	20.0 cfs
<u>Tenmile Diversion Ditch No. 2</u>			
Transferred to West Gravity Line	06-04-1936	10-26-1937	20.0 cfs
<u>Storage of the amounts above in:</u>			
Robinson Reservoir			3,136 ac-ft
Chalk Mountain Reservoir			204.1 ac-ft

The water rights listed above are subject to the change of water rights decreed January 8, 2001, in consolidated Cases No. 92CW233 and 92CW336.

I.A.6. “Cities”: means the City and County of Denver, acting by and through its Board of Water Commissioners (“Denver Water”), and the City of Colorado Springs, acting through its Utilities Enterprise (“CS-U”).

I.A.7. “Cities’ Depletions”: means diversions or storage by the Cities in the exercise of their decreed water rights pursuant to the Blue River Decree and Blue River Decree Stipulations. The Cities must pay power interference charges to the United States on account of the Cities’ Depletions in accordance with the Power Interference Agreements, and must hold water in storage to the extent of the Cities’ Depletions and provide replacement water to assure the satisfaction of the 1935 First Fill Storage Right. In certain circumstances as provided in this Protocol, all or part of the Cities’ Depletions may be considered to “Deplete Against the 1935 First Fill Storage Right.” The Cities’ Depletions are separate from the Contract Depletions.

I.A.8. “Cities’ Replacement Obligation”: is defined in Paragraph IV.A.1.b of this Protocol.

I.A.9. “Contract Depletions”: means depletions resulting from diversions or storage upstream from Green Mountain Reservoir by certain West Slope water users (“City

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

Contract Beneficiaries”) pursuant to contractual arrangements by which Denver Water or CS-U replaces such depletions (“City Replacement Contracts”). The Cities must pay power interference charges to the United States on account of the Contract Depletions in accordance with the Power Interference Agreements, and must hold water in storage to the extent of the Contract Depletions and provide replacement water to assure the satisfaction of the 1935 First Fill Storage Right. Responsibility for payment of power interference charges, as between the Cities and the City Contract Beneficiaries, shall be in accordance with the City Replacement Contracts, and nothing in this Protocol is intended to alter the terms of the City Replacement Contracts. In certain circumstances as provided in this Protocol, all or part of the Contract Depletions may be considered to “Deplete Against the 1935 First Fill Storage Right.” The Contract Depletions are separate from the Cities’ Depletions.

I.A.10. “CS-U’s 1948 Blue River Water Rights”: means the following water rights:

I.A.10.a. “Continental-Hoosier Project storage rights”: means the May 13, 1948 storage water rights adjudicated to Upper Blue Lake, Lower Blue Lake, Spruce Lake Reservoir, and Mayflower Lake Reservoir in Civil Actions No. 1805 and 1806 by the Summit County District Court on March 10, 1952, and confirmed by the Blue River Decree.

I.A.10.b. “Continental-Hoosier Project direct flow water rights”: means the May 13, 1948 direct flow water rights through the Crystal Ditch, Spruce Ditch, McCullough Ditch, East Hoosier Ditch, Hoosier Ditch, and Hoosier Tunnel adjudicated in Civil Actions No. 1805 and 1806 by the Summit County District Court on March 10, 1952, and confirmed by the Blue River Decree.

I.A.11. “Deplete Against the 1935 First Fill Storage Right”: means the method, pursuant to the 1955 Stipulation, 1955 Decree, paragraph 4 of the 1964 Decree, and the Power Interference Agreements, by which the Cities may, with the approval of the Secretary, notwithstanding a river call instituted by the United States pursuant to this Protocol, deplete water upstream from Green Mountain Reservoir through exercise of the Cities’ water rights pursuant to the Blue River Decree and Stipulations in an amount up to the volume the United States would otherwise have stored in Green Mountain Reservoir pursuant to the 1935 First Fill Storage Right, without simultaneously releasing water from replacement storage. Water that the Cities Deplete Against the 1935 First Fill Storage Right is not accounted toward the satisfaction of the 1935 First Fill Storage Right, but is included in the determination of the End of Fill Season pursuant to the provisions of Paragraph II.A.3.b.v below. The provisions of Paragraph II.D below apply in the administration of the 1935 First Fill Storage Right when the Cities’ Depletions and Contract Depletions are considered to Deplete Against the 1935 First Fill Storage Right.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

I.A.12. “Denver Water’s 1946 Blue River Water Rights”: means the following water rights¹:

I.A.12.a. “1946 Dillon Reservoir storage right”: means the June 24, 1946 storage water right adjudicated in Civil Action Nos. 1805 and 1806 by the Summit County District Court on March 10, 1952, and confirmed by the Blue River Decree.

I.A.12.b. “1946 Blue River Diversion Project direct flow water right”: means the June 24, 1946 direct flow water right through the Harold D. Roberts Tunnel (a/k/a Montezuma Tunnel) adjudicated in Civil Action Nos. 1805 and 1806 by the Summit County District Court on March 10, 1952, and confirmed by the Blue River Decree.

I.A.13. “Discretionary Power Diversions”: is defined in Paragraph IV.A.1.f of this Protocol.

I.A.14. “End of Fill Season”: means the date on which the Fill Season for the 1935 First Fill Storage Right is deemed ended, pursuant to Paragraph II.A.3 of this Protocol.

I.A.15. “Exchange and Deplete Upstream”: means the method by which the Cities, in accordance with Paragraph II.C below, and subject to the approval of the Secretary, may, in the exercise of the Cities’ water rights, release water from replacement storage (e.g., Williams Fork Reservoir) to satisfy² the requirements of a calling water right downstream on the Colorado River and, to the extent that such replacement water is made available to meet the requirement of such calling right,³ deplete an equivalent volume of water, at an equivalent rate of flow, at their facilities. In certain circumstances, the Cities may Exchange and Deplete Upstream to effectuate their obligations to the City Contract Beneficiaries under the City Replacement Contracts.

I.A.16. “Fill Level”: means the water level elevation in Green Mountain Reservoir determined by the Secretary, in the exercise of the Secretary’s reasonable discretion pursuant to applicable law, to be the fill of Green Mountain Reservoir for that water year. The Fill Level is determined by the Secretary, and is not necessarily determined by any restriction or limitation on the maximum operating water surface elevation that may be maintained in Green Mountain Reservoir in a given year because of maintenance, repairs, or dam safety. The Fill Level is not a storage volume.

I.A.17. “Fill Schedule”: is defined in Paragraph II.A.1.a of this Protocol.

¹ Nothing in this Protocol should be construed or applied to preclude Denver Water’s exercise of its Dillon Reservoir Refill water right adjudicated in Case No. 87CW376 (Water Division No. 5).

² As used in this Protocol, the term “satisfy” in relation to calls by senior water rights refers to the amount of water required to be bypassed or delivered to the calling right and not necessarily the amount needed to supply the full decreed rate of flow of the calling right.

³ Nothing in this Protocol shall limit the Division Engineer’s authority to assess reasonable transit losses on the delivery of replacement water as provided by law.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

I.A.18. **"Fill Season"**: means the period between the Start of Fill Date and the End of Fill Season.

I.A.19. **"Green Mountain Reservoir Storage Rights"**: means the 1935 First Fill Storage Right, the 1935 Senior Refill Storage Right, and the Junior Refill Storage Right.

I.A.20. **"Green Mountain Reservoir Water Rights"**: means the following water rights:

I.A.20.a. **"1935 First Fill Storage Right"**: means the Green Mountain Reservoir storage right with a priority date of August 1, 1935, from the Blue River and its tributaries⁴ in the amount of 154,645 acre-feet.

I.A.20.b. **"1935 Senior Refill Storage Right"**: means the Green Mountain Reservoir storage refill right with a priority date of August 1, 1935, from the Blue River and its tributaries in the amount of 6,316 acre-feet.⁵

I.A.20.c. **"1935 Direct Flow Power Right"**: means the Green Mountain Reservoir Powerplant direct flow right with a priority date of August 1, 1935, from the Blue River and its tributaries in the amount of 1,726 cubic feet per second ("c.f.s.") for the generation of electrical power at the Green Mountain Reservoir Powerplant.

I.A.20.d. **"Junior Refill Storage Right"**: means the Green Mountain Reservoir storage refill right with an appropriation date of January 1, 1985, from the Blue River and its tributaries in the amount of 154,645 acre-feet.⁶

I.A.21. **"Power Interference Agreements"**: means the agreements entered into between the United States and the Cities as part of, or pursuant to, the Blue River Decree and Stipulations for replacement of, or compensation for, electrical energy at the Green Mountain Reservoir Powerplant.

I.A.22. **"Probable Run-off"**: is defined in Paragraph II.A.1 of this Protocol.

I.A.23. **"Secretary"**: means the Secretary of the Interior, or the Secretary's designee.

⁴ For purposes of the definitions in this Paragraph I.A.20, "the Blue River and its tributaries" means all tributaries of the Blue River upstream of Green Mountain Reservoir, as well as Elliott Creek by diversion through the Elliott Creek Feeder Canal, which has a decreed capacity of 90 c.f.s.

⁵ The administration and accounting for the United States' exercise of the 1935 Senior Refill Storage Right is not addressed by this Protocol. Agreements among the Blue River Decree Parties regarding water stored pursuant to the 1935 Senior Refill Storage Right are addressed in Section IV.

⁶ The administration and accounting for the United States' exercise of the Junior Refill Storage Right is not addressed by this Protocol.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

I.A.24. “Senate Document 80”: means Senate Document No. 80, 75th Congress, 1st Session, January 15, 1937, entitled “Colorado-Big Thompson Project, Synopsis of Report on Colorado-Big Thompson Project, Plan of Development and Cost Estimate Prepared by the Bureau of Reclamation, Department of the Interior.”

I.A.25. “Start of Fill Date”: means the date between April 1st and May 15th fixed by the Secretary as the start of fill of Green Mountain Reservoir under the 1935 First Fill Storage Right.

I.A.26. “Substitution Agreements”: means the following agreements, as they may be renewed:

I.A.26.a. Memorandum of Agreement No. 2-AG-60-01560 dated December 30, 1991, “Establishing Principles for the Substitution of Water between Green Mountain Reservoir and Williams Fork Reservoir”;

I.A.26.b. Memorandum of Agreement No. 2-AG-60-01550 dated December 30, 1991, “Among the City and County of Denver, the U. S. Bureau of Reclamation, Northern Colorado Water Conservancy District, and the Colorado River Water Conservation District”;

I.A.26.c. Memorandum of Agreement No. 09AG6C0027 dated February 22, 2010, “Between the United States of America and Colorado Springs Utilities Establishing Principles for the Substitution of Water to Green Mountain Reservoir”, and ratifying and approving the Plan of Substitution set forth in:

I.A.26.d. Memorandum of Agreement effective May 15, 2003, between CS-U, the Colorado River Water Conservation District, Denver Water, the Northern Colorado Water Conservancy District, the County of Summit, Vail Summit Resorts, Inc., and the Town of Breckenridge; and in:

I.A.26.e. Memorandum of Agreement effective October 15, 2003, between CS-U, the County of Summit, Vail Summit Resorts, Inc., and the Town of Breckenridge.

I.A.27. “Upstream of Dillon Junior Beneficiary Rights”: are defined in Paragraph I.B.3 of this Protocol and are identified in Exhibit 1 attached hereto.

I.A.28. “Ute”: means the Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise (“Ute Water Conservancy District”).

I.B. Cities’ Operations.

I.B.1. Pursuant to the Blue River Decree and Stipulations, in order to divert water of the Blue River during the Fill Season notwithstanding their respective priority dates, the Cities must hold water in storage to the extent of the Cities’ Depletions and the Contract Depletions until such time as (a) Green Mountain Reservoir achieves a fill pursuant to paragraph 4 of the 1964 Decree; or (b) the Secretary advises the Cities that such water is not necessary to

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

assure the fill. Further, if Green Mountain Reservoir does not achieve a fill, the Cities must provide replacement water to assure the fill. The obligations of the Cities to hold water in storage and to provide replacement water, if necessary, are express conditions on the exercise of the Cities' water rights under the Blue River Decree and this Protocol. The determination, accounting, and operation of the Cities' Replacement Obligation under the Blue River Decree and Stipulations and Substitution Agreements are governed by the terms of those documents and of decrees providing for such substitution operations. The methodology to calculate the volume of replacement water to be provided by the Cities to satisfy their replacement obligations is addressed in Section IV of this Protocol.

I.B.2. The Cities have entered into the City Replacement Contracts, by which they undertake to replace Contract Depletions or store water for the benefit of the City Contract Beneficiaries upstream of Green Mountain Reservoir as a part of the Cities' Replacement Obligation. Accordingly, for the purposes of this Protocol, the Cities' Replacement Obligation includes the Contract Depletions, and, therefore, the Contract Depletions are excluded from the Senate Document 80 "beneficiary" depletions that are addressed in paragraphs II.A.3.a.iii, II.A.3.b.iii, II.B.1.d, II.B.2.b, II.B.6, II.D.1.c, II.E.1, II.E.2, IV.A.3.a.ii, and IV.A.3.b.i.(c) of this Protocol.

I.B.3. To ensure the satisfaction of paragraph 2 of the 1964 Stipulation, the Cities have agreed to permit certain West Slope water rights that are (a) located upstream of Dillon Reservoir; (b) junior in priority to June 23, 1946; and (c) not City Contract Beneficiaries (the "Upstream of Dillon Junior Beneficiary Rights") to divert by exchange against the 1946 Dillon Reservoir storage right or the 1946 Blue River Diversion Project direct flow right under certain circumstances and to the extent of a maximum of 80 acre feet of depletions annually. Such diversions and depletions are addressed in Paragraph II.B.3 and Section IV of this Protocol.

I.B.4. Operations by the Cities pursuant to Sections I, II, and III of this Protocol are consistent with the terms and conditions of the Blue River Decree. Section IV of this Protocol addresses the Cities' Replacement Obligation in order to meet certain requirements of the Stipulations and Blue River Decree.

I.C. Downstream Calls. Pursuant to the Blue River Decree and Stipulations, in order to divert water of the Blue River notwithstanding their priority dates, the Cities must at all times bypass water in quantities sufficient to meet all legal calls of downstream water rights on the Blue River and within Colorado below the confluence of the Blue River and the Colorado River. To satisfy this obligation, the Cities are permitted under the Blue River Decree and Stipulations either: (1) to bypass the lesser of (a) inflow or (b) flow sufficient to satisfy the call, at the Cities' respective diversion structures subject to the call; or (2) with the approval of the Secretary, to provide replacement water to satisfy such legal calls by exchanges from replacement storage in the upper Colorado River basin. To effectuate these operations in satisfaction of the Cities' obligation, such legal calls by water rights with priorities senior to those of the Cities will be administered through Green Mountain Reservoir to curtail the Cities' diversions as provided for herein, regardless of whether the Green Mountain Reservoir Storage Rights are then being exercised.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

I.C.1. Paragraph 7(a) of the 1955 Stipulation provides for CS-U to exercise CS-U's Blue River Water Rights notwithstanding the exercise of Denver Water's 1946 Blue River Water Rights, subject to certain terms and conditions. To ensure satisfaction of this provision at times when Denver Water's 1946 Blue River Water Rights are subject to partial curtailment in response to a downstream call, Denver Water and CS-U will operate as provided in Paragraph II.C.3 below.

I.D. No Exchanges Adjudicated. While this Protocol recognizes that certain exchanges may occur pursuant to the Blue River Decree, the Stipulations, and Substitution Agreements, judicial approval or adjudication of this Protocol shall not adjudicate any appropriative rights of exchange and shall not form the basis for appropriation or adjudication of any appropriative rights of exchange.

II. ADMINISTRATIVE PROTOCOL

II.A. The Fill Schedule and the End of Fill Season.

II.A.1. Preparation of the Fill Schedule. Pursuant to paragraphs 4.A and 4.B of the 1964 Decree, and paragraph 4(a) of the 1955 Stipulation, the Secretary shall prepare a fill schedule for Green Mountain Reservoir as follows: each year the Secretary shall determine the quantity of water required to fill Green Mountain Reservoir as of the Start of Fill Date and the probable run-off of the Blue River above Green Mountain Reservoir ("Probable Run-off"), and shall prepare a schedule for the filling of Green Mountain Reservoir in accordance with the United States' rights as provided for in the Blue River Decree. For purposes of this Protocol, the Secretary is not limited to any particular level of probability in determining the Probable Run-off.

II.A.1.a. Satisfaction of the 1935 First Fill Storage Right requires that there be an amount of water (after provision for all prior rights) that, added to the water in storage in Green Mountain Reservoir on the Start of Fill Date (excluding water held in temporary storage pursuant to excess capacity or "if and when" contracts), would equal 154,645 acre-feet. The Secretary shall prepare the fill schedule and a plan of operation based upon such fill schedule (together, referred to as the "Fill Schedule"), with the goals of achieving the fill of Green Mountain Reservoir as provided in Paragraph II.A.3.a below, and also, pursuant to paragraph 4 of the 1964 Decree, permitting as much water as possible to be available for upstream rights without impairment of the United States' right to fill Green Mountain Reservoir and to use that reservoir as provided in the documents (as that term is defined in the 1964 Decree), and without impairment of legal calls of downstream water rights.

II.A.1.b. To that end, the Fill Schedule will set forth: (i) the volume of Probable Run-off; (ii) the volume of water that, added to the water in storage in Green Mountain Reservoir on the Start of Fill Date (excluding water held in temporary storage pursuant to excess capacity or "if and when" contracts) would equal 154,645 acre-feet; (iii) the volume of Probable Run-off available and allocated for power generation during the Fill Season; and (iv) the projected date of fill of Green Mountain Reservoir.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL
February 22, 2013

II.A.2. Review and Modification of the Fill Schedule.

II.A.2.a. Prior to April 1st of each year, the Secretary will submit a preliminary operating plan for the ensuing Fill Season to the Blue River Decree Parties and the Division Engineer for their comments. At such time as the Secretary has determined a tentatively designated Start of Fill Date, the Secretary will provide notice to the Blue River Decree Parties and the Division Engineer of (1) the tentative Start of Fill Date and (2) whether the initial Fill Schedule is likely to include an allocation of some volume of water for power generation. Subsequently, the Secretary shall fix the Start of Fill Date and prepare the initial Fill Schedule, and shall provide such information to the Blue River Decree Parties and the Division Engineer. During any period between the tentative Start of Fill Date and the date the Secretary notifies the Division Engineer of the fixed Start of Fill Date and the initial Fill Schedule, the accounting and administration under Section II of this Protocol shall be based on the notice provided by the Secretary of the tentative Start of Fill Date and whether the Fill Schedule is likely to include an allocation of some volume of water for power generation.

II.A.2.b. The Secretary shall thereafter modify the Fill Schedule, including, but not limited to, the projected date of fill of Green Mountain Reservoir, from time to time during the snowmelt season as, and as frequently as, actual run-off conditions and other pertinent considerations indicate that the waters available for filling Green Mountain Reservoir and/or the Probable Run-off available for power generation are materially more or less than originally estimated. The Secretary shall notify the Blue River Decree Parties and the Division Engineer when material modifications have been made to the Fill Schedule.

II.A.3. The End of Fill Season. The End of Fill Season shall be the earlier of the dates established by Paragraphs II.A.3.a or II.A.3.b below:

II.A.3.a. The date when either the water level elevation in Green Mountain Reservoir reaches the Fill Level or the following volumes total 154,645 acre-feet:

II.A.3.a.i the water in storage in Green Mountain Reservoir (excluding water held in temporary storage pursuant to excess capacity or “if and when” contracts) on the Start of Fill Date; plus

II.A.3.a.ii the water stored in Green Mountain Reservoir under the 1935 First Fill Storage Right after the Start of Fill Date (including water so stored pursuant to Paragraph II.D.2 below); plus

II.A.3.a.iii the water depleted by exchange upstream of Green Mountain Reservoir, and accounted toward the satisfaction of the 1935 First Fill Storage Right, by Senate Document 80 “beneficiary” water rights with priority dates junior to June 23, 1946, after the Start of Fill Date; plus

II.A.3.a.iv Bypassed Storage Water.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

II.A.3.b. The date when a legal call by a water right with a priority date senior to August 1, 1935, fully curtails the 1935 First Fill Storage Right, for seven (7) consecutive days, after the following volumes total 154,645 acre-feet:

II.A.3.b.i the water in storage in Green Mountain Reservoir (excluding water held in temporary storage pursuant to excess capacity or “if and when” contracts) on the Start of Fill Date; plus

II.A.3.b.ii the water stored in Green Mountain Reservoir under the 1935 First Fill Storage Right after the Start of Fill Date (including water so stored pursuant to Paragraph II.D.2 below); plus

II.A.3.b.iii the water depleted by exchange upstream of Green Mountain Reservoir, and accounted toward the satisfaction of the 1935 First Fill Storage Right, by Senate Document 80 “beneficiary” water rights with priority dates junior to June 23, 1946, after the Start of Fill Date; plus

II.A.3.b.iv Bypassed Storage Water; plus

II.A.3.b.v the Cities’ Depletions and the Contract Depletions (either directly or by storage) after the Start of Fill Date.

II.A.3.c. After the End of Fill Season, the United States may no longer exercise the 1935 First Fill Storage Right until the next Start of Fill Date.

II.B. General Administration During and After the Fill Season.

II.B.1. Administration/Diversions During the Fill Season When the Fill Schedule Allocates Probable Run-off to Power Generation. At any time during the Fill Season when the Fill Schedule, as initially prepared or as modified during the snowmelt season, allocates Probable Run-off to power generation, water rights shall be administered as follows:

II.B.1.a. The 1935 First Fill Storage Right will be deemed satisfied, in the context of daily administration, in accordance with the contemplated satisfaction of the 1935 First Fill Storage Right pursuant to the Fill Schedule, as the same may be modified from time to time during the Fill Season; and

II.B.1.b. Water diverted by the United States through the Green Mountain Reservoir Powerplant (other than water released from storage) shall be considered to be diverted in exercise of the 1935 Direct Flow Power Right, with the United States exercising the 1935 Direct Flow Power Right against all water rights with priority dates junior to June 23, 1946, and such power right shall be deemed to be satisfied by flows available as a result of curtailment of

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

water rights with priority dates junior to June 23, 1946.⁷ This operation does not constitute, or result in, a subordination of the water right priority of the 1935 Direct Flow Power Right, the 1935 First Fill Storage Right, or the 1935 Senior Refill Storage Right, but allows “as much water as possible to be available for upstream rights without impairment of the United States’ right to fill Green Mountain Reservoir and to use that reservoir as provided in” the 1955 Decree and Senate Document 80, as directed by paragraph 4 of the 1964 Decree;

II.B.1.b.i Such water diverted through the Green Mountain Reservoir Powerplant shall neither be accounted toward, nor deemed to satisfy, the 1935 First Fill Storage Right; and

II.B.1.c. All water rights located upstream of Green Mountain Reservoir with priority dates between August 1, 1935, and June 23, 1946, shall be allowed to divert in priority unaffected by the exercise of the 1935 Direct Flow Power Right, and the depletions from such diversions shall neither be accounted toward, nor deemed to satisfy, the 1935 First Fill Storage Right; and

II.B.1.d. All Senate Document 80 “beneficiary” water rights with priority dates junior to June 23, 1946, that are located upstream of Green Mountain Reservoir and that are not Upstream of Dillon Junior Beneficiary Rights may continue to divert by exchange, and depletions from such diversions (other than Contract Depletions) shall be accounted toward the 1935 First Fill Storage Right; and

II.B.1.e. The Cities, with the authorization of the Secretary, may divert against the 1935 Direct Flow Power Right pursuant to the Blue River Decree and Stipulations and their Power Interference Agreements, and the City Contract Beneficiaries may continue to divert in accordance with their City Replacement Contracts. The Cities’ Depletions and the Contract Depletions shall be considered to be made against the 1935 Direct Flow Power Right and shall neither be accounted toward, nor deemed to satisfy, the 1935 First Fill Storage Right; provided:

II.B.1.e.i that at any time when the cumulative daily average rate of flow of (a) the United States’ diversions through the Green Mountain Reservoir Powerplant, (b) the Cities’ Depletions, and (c) the Contract Depletions exceeds 1,726 c.f.s., then that portion of the combined Cities’ Depletions and Contract Depletions that is diverted at a daily average rate of flow that, when added to the daily average rate of flow of the United States’ diversions through the Green Mountain Reservoir Powerplant, exceeds 1,726 c.f.s. shall be considered to Deplete Against the 1935 First Fill Storage Right, and the provisions of Paragraph II.D below shall apply; and

⁷ For the duration of the time when the 1935 First Fill Storage Right is being administered under an October 12, 1955 administrative priority pursuant to Paragraph II.D.2, the 1935 Direct Flow Power Right shall be administered under the same October 12, 1955 administrative priority.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

II.B.1.e.ii that on any day after the Start of Fill Date when the cumulative volume of (a) the Cities' Depletions (that are not, pursuant to Paragraph II.B.1.e.i above, considered to Deplete Against the 1935 First Fill Storage Right) and (b) the Contract Depletions (that are not, pursuant to Paragraph II.B.1.e.i above, considered to Deplete Against the 1935 First Fill Storage Right), and (c) the United States' diversions through the Green Mountain Reservoir Powerplant exceeds the volume of Probable Run-off that is allocated to power generation by the Fill Schedule as it exists on that day, then that portion of the cumulative volume of Cities' Depletions (that are not, pursuant to Paragraph II.B.1.e.i above, considered to Deplete Against the 1935 First Fill Storage Right) and Contract Depletions (that are not, pursuant to Paragraph II.B.1.e.i above, considered to Deplete Against the 1935 First Fill Storage Right) that exceeds the volume allocated to power generation by the Fill Schedule shall be considered to Deplete Against the 1935 First Fill Storage Right, and the provisions of Paragraph II.D below shall apply.

II.B.2. Administration/Diversions During the Fill Season When the Fill Schedule Does Not Allocate Probable Run-off to Power Generation. At any time during the Fill Season when the Fill Schedule, as initially prepared or as modified during the snowmelt season, does not allocate Probable Run-off to power generation, the United States shall be considered to be exercising the 1935 First Fill Storage Right; and

II.B.2.a. The Cities' Depletions and Contract Depletions shall be considered to Deplete Against the 1935 First Fill Storage Right and the provisions of Paragraph II.D below shall apply; and

II.B.2.b. All Senate Document 80 "beneficiary" water rights with priority dates junior to August 1, 1935, that are located upstream of Green Mountain Reservoir may continue to divert by exchange, and depletions from such diversions (other than Contract Depletions) shall be accounted toward the 1935 First Fill Storage Right.

II.B.3. Upstream of Dillon Junior Beneficiary Rights.

II.B.3.a. In satisfaction of paragraph 2 of the 1964 Stipulation, Upstream of Dillon Junior Beneficiary Rights may continue to divert, when a call is placed by the Cities that would otherwise curtail such diversions, by exchange against the 1946 Dillon Reservoir storage right, or the 1946 Blue River Diversion Project direct flow water right to the extent of a cumulative total of 80 acre-feet of depletions annually. The depletions from such diversions shall be accounted toward the annual fill of the 1946 Dillon Reservoir storage right.

II.B.3.b. The Upstream of Dillon Junior Beneficiary Rights are identified in Exhibit 1 attached hereto and incorporated herein by this reference (Exhibit 1 is not intended to determine, and shall not be interpreted to establish a definition of, or otherwise set criteria for, water rights that qualify as Senate Document 80 "beneficiaries"). Upon agreement of the United States, the Cities, the Colorado River Water Conservation District, and the Division Engineer for Water Division No. 5, qualifying water rights inadvertently not identified on Exhibit 1, or included but not qualifying, may be added to or removed from the Exhibit as Upstream of Dillon Junior Beneficiary Rights, subject, however, to the annual 80 acre feet limitation of depletions

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

from such rights that are accounted toward the annual fill of the 1946 Dillon Reservoir storage right as set forth in Paragraph II.B.3.a above.

II.B.4. Decreed Plans for Augmentation. The depletions of water rights located upstream of Green Mountain Dam that are fully replaced upstream of Green Mountain Dam pursuant to decreed plans for augmentation shall not be accounted toward the Green Mountain Reservoir Water Rights unless so provided in any such decreed plan for augmentation.

II.B.5. Cities' Replacement Obligation. In satisfaction of the Blue River Decree and Stipulations, the Cities shall be obligated to make replacement water available to Green Mountain Reservoir as addressed in Section IV of this Protocol. The Cities will coordinate the accomplishment of any required replacement with the Secretary and the Division Engineer.

II.B.6. Administration/Power Operations After the End of Fill Season. After the End of Fill Season, the United States may call for water to satisfy the 1935 Direct Flow Power Right. In such case, the Cities, with the authorization of the Secretary, may continue to divert against the 1935 Direct Flow Power Right pursuant to the Blue River Decree and Stipulations and their Power Interference Agreements, and the City Contract Beneficiaries may continue to divert in accordance with their City Replacement Contracts. When the Cities are so diverting, water diverted by the United States through the Green Mountain Reservoir Powerplant (other than water released from storage) shall be considered to be diverted in exercise of the 1935 Direct Flow Power Right, with the United States exercising the 1935 Direct Flow Power Right against all water rights with priority dates junior to June 23, 1946, and such power right shall be deemed to be satisfied by flows available as a result of curtailment of water rights with priority dates junior to June 23, 1946. Nothing in this paragraph shall alter or affect any rights of Senate Document 80 "beneficiary" water rights that are located upstream of Green Mountain Reservoir to divert against the 1935 Direct Flow Power Right in accordance with Senate Document 80, the Blue River Decree, Green Mountain Reservoir water service contracts, or Section I.B.3 of this Protocol.

II.B.6.a. Use of the 1935 Direct Flow Power Right after the End of Fill Season shall not restrict or limit the United States' ability or right, in the discretion of the Secretary, to exercise the 1935 Senior Refill Storage Right, to place a call under the 1935 Senior Refill Storage Right, to exercise the 1935 Senior Refill Storage Right without placing a call, or to exercise the 1935 Senior Refill Storage Right under a priority co-equal to the administrative priority of the 1935 Direct Flow Power Right.

II.C. Operation of Green Mountain Reservoir and the Cities' Water Rights in Response to Downstream Calls Senior to the Cities' Water Rights. If a call senior to the Cities' water rights is in effect during the Fill Season when the Fill Schedule (as initially prepared or as modified) has allocated water to power generation, then the administration of the United States' and the Cities' operations will vary, depending on whether 154,645 acre-feet has been accounted for in accordance with Paragraph II.A.3.b above, whether the call is senior to August 1, 1935, and whether the call fully or partially curtails the affected water rights.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

Accordingly, legal calls of water rights on the Blue River below Green Mountain Reservoir and on the Colorado River within Colorado below the confluence with the Blue River with priority dates senior to the priorities of the Cities' Blue River water rights will be administered as follows:

II.C.1. Call Before 154,645 Acre-Feet Has Been Accounted For in accordance with Paragraph II.A.3.b. If the call is in effect when the volumes specified in Paragraph II.A.3.b.i-b.v above total less than 154,645 acre-feet, then the following applies:

II.C.1.a. Senior Call; Full Curtailment of the 1935 First Fill Storage Right. During the time when the call by a water right with a priority senior to August 1, 1935, fully curtails the 1935 First Fill Storage Right, the United States cannot exercise the 1935 First Fill Storage Right, but may exercise the 1935 Direct Flow Power Right to divert the water that is passed to the calling right through the Green Mountain Reservoir Powerplant. In this circumstance, the Cities will:

II.C.1.a.i bypass the inflow at the Cities' respective diversion structures that are subject to the call (and the United States will pass the bypassed water and the water flowing into the Blue River between Dillon Reservoir and Green Mountain Reservoir ("Intervening Inflow") through Green Mountain Reservoir, while in its discretion exercising the 1935 Direct Flow Power Right to divert the water that is so passed to satisfy the calling right through the Green Mountain Reservoir Powerplant); and/or

II.C.1.a.ii Exchange and Deplete Upstream (and the volume of water Exchanged and Depleted Upstream shall not be accounted toward the satisfaction of the 1935 First Fill Storage Right, but shall be accounted, for purposes of the Cities' Power Interference Agreements, as a depletion against the 1935 Direct Flow Power Right).

II.C.1.b. Senior Call; 1935 First Fill Storage Right Partially Curtailed. During the time when the call by a water right with a priority senior to August 1, 1935, partially curtails the 1935 First Fill Storage Right, the United States will exercise the 1935 First Fill Storage Right to the extent not curtailed⁸, and will pass through Green Mountain Reservoir only such volume of water as is needed to satisfy the call. The United States may, in its discretion, exercise the 1935 Direct Flow Power Right to divert the water that is passed to the calling right through the Green Mountain Reservoir Powerplant. In this circumstance, the Cities will:

II.C.1.b.i bypass the inflow at the Cities' respective diversion structures that are subject to the call; and/or

II.C.1.b.ii Exchange and Deplete Upstream against the water the United States must pass through Green Mountain Reservoir to satisfy the call (and the volume of water

⁸ This operation will continue until such time as the volumes specified in Paragraph II.A.3.b.i-b.v total 154,645 acre feet, at which time Paragraph II.C.2 will apply.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL
February 22, 2013

Exchanged and Depleted Upstream shall not be accounted toward the 1935 First Fill Storage Right, but shall be accounted, for purposes of the Cities' Power Interference Agreements, as a depletion against the 1935 Direct Flow Power Right); and/or

II.C.1.b.iii Deplete Against the 1935 First Fill Storage Right, and the provisions of Paragraph II.D below shall apply.

II.C.1.c. Senior Call; 1935 First Fill Storage Right Not Curtailed, Cities Partially or Fully Curtailed. During the time when the call by a water right with a priority senior to August 1, 1935, partially or fully curtails the Cities' rights, but does not curtail the 1935 First Fill Storage Right, the United States will exercise an August 1, 1935 priority call under the 1935 First Fill Storage Right to store all flows legally available to that right.^{9 10} In this circumstance the Cities will:

II.C.1.c.i bypass at the Cities' respective diversion structures that are subject to the call the lesser of (a) the inflow, or (b) the flow sufficient to satisfy the call; and/or

II.C.1.c.ii Deplete Against the 1935 First Fill Storage Right, and the provisions of Paragraph II.D below shall apply.

II.C.1.d. Junior Call; Cities Partially or Fully Curtailed. During the time when the call by a water right with a priority between August 1, 1935, and June 23, 1946, partially or fully curtails the Cities' rights, the United States will exercise an August 1, 1935 priority call under the 1935 First Fill Storage Right to store all flows legally available to that right.¹¹ In this circumstance, the Cities will:

II.C.1.d.i bypass at the Cities' respective diversion structures that are subject to the call the lesser of (a) the inflow or (b) the flow sufficient to satisfy the call; and/or

II.C.1.d.ii Deplete Against the 1935 First Fill Storage Right, and the provisions of Paragraph II.D below shall apply.

II.C.1.e. Consensus Operations When There Is A High Probability of Fill. In the circumstances described in Paragraphs II.C.1.b, II.C.1.c, and II.C.1.d above, if the Secretary determines in the exercise of the Secretary's reasonable discretion, that there is a high probability

⁹ This operation will continue until such time as the volumes specified in Paragraph II.A.3.b.i-b.v total 154,645 acre feet, at which time Paragraph II.C.2 will apply.

¹⁰ In the event that the United States is unable to exercise the 1935 First Fill Storage Right due to physical operational limitations lawfully established by the Secretary or the State Engineer and instead passes water, then the Cities may Exchange and Deplete Upstream against the water that the United States otherwise would have stored in Green Mountain Reservoir (and the volume of water Exchanged and Depleted Upstream shall not be accounted toward the 1935 First Fill Storage Right, but shall be accounted, for purposes of the Cities' Power Interference Agreements, as a depletion against the 1935 Direct Flow Power Right).

¹¹ This operation will continue until such time as the volumes specified in Paragraph II.A.3.b.i-b.v total 154,645 acre feet, at which time Paragraph II.C.2 will apply.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

of filling Green Mountain Reservoir, then upon consultation with and the concurrence of the Blue River Decree Parties, Ute and the Division Engineer for Water Division No. 5, the United States may choose not to exercise the 1935 First Fill Storage Right to store all flows legally available to that right, and may instead exercise the 1935 Direct Flow Power Right. If the United States chooses to exercise the Green Mountain Reservoir Water Rights in this manner, such diversions shall be considered as Discretionary Power Diversions for purposes of determining the Cities' Replacement Obligation addressed in Section IV of this Protocol. In such circumstances, the Cities may Exchange and Deplete Upstream against the exercise of the 1935 Direct Flow Power Right.

II.C.2. Call After 154,645 Acre Feet Has Been Accounted For in Accordance With Paragraph II.A.3.b. If the call is in effect after the volumes specified in Paragraph II.A.3.b.i-b.v above total 154,645 acre-feet or more, but before the End of Fill Season, then the following applies¹²:

II.C.2.a. Senior Call; Full Curtailment of the 1935 First Fill Storage Right. During the time when the call by a water right with a priority senior to August 1, 1935, fully curtails the 1935 First Fill Storage Right, the United States cannot exercise the Green Mountain Reservoir Storage Rights, but may exercise the 1935 Direct Flow Power Right to divert water that is passed through the Green Mountain Reservoir Powerplant. In this circumstance, the Cities will:

II.C.2.a.i bypass the inflow at the Cities' respective diversion structures that are subject to the call (and the United States will pass the bypassed water and the Intervening Inflow through Green Mountain Reservoir, while in its discretion exercising the 1935 Direct Flow Power Right to divert water that is so passed to satisfy the calling right through the Green Mountain Reservoir Powerplant); and/or

II.C.2.a.ii Exchange and Deplete Upstream (and the volume of water Exchanged and Depleted Upstream shall not be accounted toward the 1935 First Fill Storage Right, but shall be accounted, for purposes of the Cities' Power Interference Agreements, as a depletion against the 1935 Direct Flow Power Right).

II.C.2.b. Senior Call; 1935 First Fill Storage Right Partially Curtailed. During the time when the call by a water right with a priority senior to August 1, 1935, partially curtails the 1935 First Fill Storage Right, the United States will pass through Green Mountain Reservoir such volume of water as is needed to satisfy the call, while in its discretion exercising the 1935 Direct Flow Power Right to divert the water that is so passed to satisfy the calling right through the Green Mountain Reservoir Powerplant. The United States may, in its discretion, exercise (a) the 1935 First Fill Storage Right to store water that is not passed to satisfy the call,

¹² The provisions of Paragraphs II.C.2.a-d only apply when the 1935 First Fill Storage Right is operating pursuant to its August 1, 1935 priority. When the 1935 First Fill Storage Right is operating under an October 12, 1955 administrative priority pursuant to Paragraph II.D.2, the provisions of Paragraph II.C.2.e apply.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

and/or (b) the 1935 Direct Flow Power Right to divert water that is not required to satisfy the call through the Green Mountain Reservoir Powerplant. In this circumstance, the Cities will:

II.C.2.b.i bypass the inflow at the Cities' respective diversion structures that are subject to the call; and/or

II.C.2.b.ii Exchange and Deplete Upstream (and the volume of water Exchanged and Depleted Upstream shall not be accounted toward the 1935 First Fill Storage Right, but shall be accounted, for purposes of the Cities' Power Interference Agreements, as a depletion against the 1935 Direct Flow Power Right).

II.C.2.c. Senior Call; 1935 First Fill Storage Right Not Curtailed; Cities Partially or Fully Curtailed. During the time when the call by a water right with a priority senior to August 1, 1935, partially or fully curtails the Cities' rights, but does not curtail the 1935 First Fill Storage Right, the United States will, to the extent that it can generate power through the exercise of the 1935 Direct Flow Power Right, pass through the Powerplant such volume of water as the Cities have bypassed to satisfy the call. With respect to any additional water at Green Mountain Reservoir that has not been bypassed and that is not required to be used to generate power in accordance with the preceding sentence, the United States may, in its discretion, exercise (a) the 1935 First Fill Storage Right to store such water, and/or (b) the 1935 Direct Flow Power Right to divert such water through the Green Mountain Reservoir Powerplant. In this circumstance, the Cities will:

II.C.2.c.i bypass at the Cities' respective diversion structures that are subject to the call the lesser of (a) the inflow or (b) the flow sufficient to satisfy the call; and/or

II.C.2.c.ii Exchange and Deplete Upstream (and the volume of water Exchanged and Depleted Upstream shall be accounted for in accordance with the provisions of Paragraph II.B.1.e above).

II.C.2.d. Junior Call; Cities Partially or Fully Curtailed. During the time when the call by a water right with a priority between August 1, 1935, and June 23, 1946, partially or fully curtails the Cities' rights, the Cities will:

II.C.2.d.i. bypass at the Cities' respective diversion structures that are subject to the call the lesser of (a) the inflow or (b) the flow sufficient to satisfy the call, and the United States may, in its discretion, exercise (a) the 1935 First Fill Storage Right to store flows legally available at Green Mountain Reservoir, and/or (b) the 1935 Direct Flow Power Right to divert flows through the Green Mountain Reservoir Powerplant; and/or

II.C.2.d.ii. Exchange and Deplete Upstream (and the volume of water Exchanged and Depleted Upstream shall be accounted for in accordance with the provisions of Paragraph II.B.1.e above), and the United States may, in its discretion, exercise (a) the 1935 First Fill Storage Right to store Intervening Inflow at Green Mountain Reservoir, and/or (b) the 1935 Direct Flow Power Right to divert the Intervening Inflow through the Green Mountain Reservoir Powerplant.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

II.C.2.e. Junior Call; 1935 First Fill Storage Right Operating Under an October 12, 1955 Administrative Priority is Fully or Partially Curtailed. When the 1935 First Fill Storage Right is operating under an October 12, 1955 administrative priority pursuant to Paragraph II.D.2., the provisions of Paragraphs II.C.2.a-d will not apply. During the time when the call by a water right with a priority senior to October 12, 1955, fully or partially curtails the 1935 First Fill Storage Right operating under an October 12, 1955 administrative priority, the United States will pass through Green Mountain Reservoir such volume of water as is needed to satisfy the call, while in its discretion exercising the 1935 Direct Flow Power Right to divert the water that is so passed to satisfy the calling right through the Green Mountain Reservoir Powerplant. The United States may, in its discretion, exercise (a) the 1935 First Fill Storage Right to store water that is not passed to satisfy the call, and/or (b) the 1935 Direct Flow Power Right to divert water that is not required to satisfy the call through the Green Mountain Reservoir Powerplant. In this circumstance, to the extent that the Cities are subject to the call, the Cities will:

II.C.2.e.i bypass the inflow at the Cities' respective diversion structures to the extent they are subject to the call; and/or

II.C.2.e.ii. Exchange and Deplete Upstream (and the volume of water Exchanged and Depleted Upstream shall not be accounted toward the 1935 First Fill Storage Right, but shall be accounted, for purposes of the Cities' Power Interference Agreements, as a depletion against the 1935 Direct Flow Power Right).

II.C.3. Swing Call on Cities. In satisfaction of paragraph 7(a) of the 1955 Stipulation, at times when either Denver Water's 1946 Blue River Water Rights or CS-U's 1948 Blue River Water Rights would be partially curtailed (e.g. a so-called "swing call") in response to a downstream call from a water right other than the Green Mountain Reservoir Water Rights, Denver Water's 1946 Blue River Water Rights will be deemed satisfied for the purposes of daily administration under an administrative priority co-equal with the May 13, 1948 priority of CS-U's 1948 Blue River Water Rights. This operation does not constitute, or result in, a subordination of Denver Water's 1946 Blue River Water Rights, but administratively implements paragraph 7(a) of the 1955 Stipulation during a swing call on the Cities. Under such administration, both CS-U and Denver Water will be partially curtailed, but both may continue to divert, provided that they satisfy the call by effectuating the following bypass obligations:

II.C.3.a. For purposes of this calculation, "Called Water" refers to the total flow of water required to be bypassed by the Cities for delivery to the calling right and "Potential Diversions" refers to the flow that could, absent the swing call, be depleted at Denver Water's and CS-U's respective Blue River facilities under their respective 1946 and 1948 Blue River Water Rights (but not including evaporation from Dillon Reservoir or from CS-U's Continental-Hoosier System, or flows that could not be diverted as a result of operational or system constraints).

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

II.C.3.b. The Denver Water bypass obligation equals: (Called Water) x (Denver Water Potential Diversions/ (Denver Water Potential Diversions plus CS-U Potential Diversions)).

II.C.3.c. The CS-U bypass obligation equals: (Called Water) x (CS-U Potential Diversions/ (Denver Water Potential Diversions plus CS-U Potential Diversions)).

II.C.3.d. The Cities will respond to downstream calls and satisfy their respective bypass obligations as provided in Paragraphs II.C.1 and II.C.2 above. In appropriate circumstances as provided in Paragraphs II.C.2 above, the Cities may satisfy such bypass obligations by Exchanging and Depleting Upstream.

II.C.3.e. By way of example, if the call is by the 1940 Shoshone power water right and the amount required to be delivered (Called Water) is 100 c.f.s. and the CS-U Potential Diversions and Denver Water Potential Diversions are 50 c.f.s. and 300 c.f.s. respectively, then Denver Water's bypass obligation is $100 \times (300/350)$, or 85.7 c.f.s., and CS-U's bypass obligation is $100 \times (50/350)$, or 14.3 c.f.s., and Denver Water may divert 214.3 c.f.s and CS-U may divert 35.7 c.f.s., and the Cities may satisfy their respective bypass obligations (totaling 100 c.f.s.), in whole or in part, by Exchanging and Depleting Upstream in accordance with the terms of Paragraphs II.C.1 or II.C.2 above, as applicable.

II.D. Administration If Water is Depleted Against the 1935 First Fill Storage Right. In any water year in which water is Depleted Against the 1935 First Fill Storage Right:

II.D.1. The 1935 First Fill Storage Right will be administered pursuant to an August 1, 1935 priority in accordance with the foregoing provisions of this Protocol until the following volumes total 154,645 acre-feet:

II.D.1.a. the water in storage in Green Mountain Reservoir (excluding water held in temporary storage pursuant to excess capacity or "if and when" contracts) on the Start of Fill Date; plus

II.D.1.b. the water stored in Green Mountain Reservoir under the 1935 First Fill Storage Right after the Start of Fill Date; plus

II.D.1.c. the water depleted by exchange upstream of Green Mountain Reservoir, and accounted toward the satisfaction of the 1935 First Fill Storage Right, by Senate Document 80 "beneficiary" water rights with priority dates junior to June 23, 1946, after the Start of Fill Date; plus

II.D.1.d. Bypassed Storage Water; plus

II.D.1.e. the water Depleted Against the 1935 First Fill Storage Right.

II.D.2. From the date when the volumes of water specified in Paragraph II.D.1.a-e above total 154,645 acre-feet until the End of Fill Season, the 1935 First Fill Storage Right will

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

be administered with an October 12, 1955 administrative priority and shall be deemed to be satisfied by flows available as a result of curtailment of water rights with priority dates junior to October 12, 1955. This operation does not constitute, or result in, a subordination of the water right priority of the 1935 First Fill Storage Right, but allows "as much water as possible to be available for upstream rights without impairment of the United States' right to fill Green Mountain Reservoir and to use that reservoir as provided in" the 1955 Decree and Senate Document 80, as directed by paragraph 4 of the 1964 Decree, and without impairment of legal calls of downstream water rights.

II.E. Operation of Senate Document 80 "Beneficiary" Water Rights During the Fill Season in Response to Calls Downstream of Green Mountain Reservoir Prior To, and After, 154,645 Acre-Feet Has Been Accounted For in accordance with Paragraph II.A.3.b.

II.E.1. If a call is placed by a water right downstream from Green Mountain Reservoir during the Fill Season but before the volumes specified in Paragraph II.A.3.b.i-b.v above total 154,645 acre-feet, then all Senate Document 80 "beneficiary" water rights with priority dates junior to August 1, 1935, that are located upstream of Green Mountain Reservoir, and that are otherwise subject to a call by the 1935 First Fill Storage Right or by the downstream calling water right, may continue to divert by exchange, and the depletions from such diversions (other than Contract Depletions) shall either (a) be accounted toward the 1935 First Fill Storage Right, or (b) be replaced to the downstream calling water right by release of water previously stored in Green Mountain Reservoir.

II.E.2. If a call is placed by a water right downstream from Green Mountain Reservoir during the Fill Season but after the volumes specified in Paragraph II.A.3.b.i-b.v total 154,645 acre-feet, (a) all Senate Document 80 "beneficiary" water rights with priority dates senior to June 23, 1946, and senior to such call may continue to divert as against the 1935 Direct Flow Power Right, and the depletions from such diversions shall not be accounted toward the 1935 First Fill Storage Right, and (b) all Senate Document 80 "beneficiary" water rights with priority dates junior to the downstream calling right that are located upstream of Green Mountain Reservoir, and that are not City Contract Beneficiaries, may continue to divert by exchange, and the depletions from such diversions shall either be (1) accounted toward the 1935 First Fill Storage Right, or (2) replaced to the downstream calling right by a release of water previously stored in Green Mountain Reservoir.

III. BLUE RIVER DECREE PRIORITY ADMINISTRATION IN WATER DISTRICT 36 AND WATER DIVISION NO. 5 (CLIMAX C.A. 1710 WATER RIGHTS)

III.A. The Final Judgment entered by the United States District Court on October 12, 1955, in Consolidated Cases No. 5016 and 5017 (removed Summit Court District Court Civil Action Nos. 1805 and 1806 ("C.A. 1805 and 1806"), which were supplemental general adjudication proceedings in former Water District No. 36) assigned priority numbers to the Elliott Creek Feeder Canal, Green Mountain Reservoir, and Green Mountain Reservoir Hydroelectric Plant water rights as if those water rights had been adjudicated in the removed Summit County District Court cases and junior to priorities adjudicated in prior proceedings in

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

Water District No. 36. At the same time, the Court also decreed all of the Colorado-Big Thompson Project ("C-BT") facilities, including the Elliott Creek Feeder Canal, Green Mountain Reservoir, and Green Mountain Reservoir Hydroelectric Plant water rights, as having an August 1, 1935 date of priority, and recognized these rights as senior in priority to Denver Water's facilities, including Williams Fork Reservoir in Water District No. 51, which has a date of appropriation of November 10, 1935. The Final Judgment of October 12, 1955, both confirms an August 1, 1935 priority without postponement for the C-BT facilities and postpones the priority for certain facilities within Water District No. 36.

III.B. In Case No. 88CW382, filed concurrently in the Division 5 Water Court and the United States District Court, the United States sought confirmation of appropriative water rights of exchange, using water provided from Green Mountain Reservoir's 52,000 acre-foot and 100,000 acre-foot pools to meet the needs of Senate Document 80 "beneficiaries," and requested that those exchanges be administered with an August 1, 1935 priority date, and without postponement. The decree entered on that application by the United States District Court specified both that the 1955 Decree "evidences the priority dates of the direct flow, storage and exchange water rights for the operation of the Colorado-Big Thompson Project as August 1, 1935, and those rights shall be administered with said priority date as though adjudicated in the first available adjudication following that date," and that the decree in Case No. 88CW382 "shall not modify or change the stipulations, judgments, orders and decrees" in the Consolidated Cases" Accordingly, to the extent that the Final Judgment of October 12, 1955, effected a postponement of the Green Mountain Reservoir Water Rights within Water District No. 36, such postponement was not affected by the decree in Case No. 88CW382.

III.C. Climax holds water rights decreed on October 26, 1937, by the Summit County District Court in Civil Action No. 1710 ("C.A. 1710"), an adjudication proceeding in Water District No. 36 prior to the removed C.A. 1805/1806 Summit County District Court cases. In order to effectuate the foregoing provisions of the 1955 Final Judgment in the removed Summit County District Court adjudication, the Blue River Decree, and the decree in Case No. 88CW382, the following shall apply: within former Water District No. 36, the C.A. 1710 Water Rights, including the Climax C.A. 1710 Water Rights, will be administered as senior to the Green Mountain Reservoir Water Rights when a water right call originating within Water District 36 is being administered. Such administration of the C.A. 1710 Water Rights as senior to the Green Mountain Reservoir Water Rights shall not affect the administration of C-BT facilities as having a priority date of August 1, 1935, outside of Water District No. 36. The Blue River Decree recognizes and decrees that the priority date for the C-BT facilities is senior to the priority dates for Denver Water's 1946 Blue River Water Rights and Williams Fork Reservoir, as well as CS-U's 1948 Blue River Water Rights. The Blue River Decree, as well as the Decree in Case No. 88CW382, require that the C-BT facilities decreed with an appropriation date of August 1, 1935, be administered with an August 1, 1935 date of priority without postponement. Administration of C-BT facilities, including Green Mountain Reservoir, with an August 1, 1935 date of priority without postponement, subject to the foregoing administration within Water District No. 36, is consistent with paragraph (g) of the Final Decree in the Consolidated Cases which provides, in part, that "the 100,000 acre-feet of storage in said reservoir shall be

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

considered to have the same date of priority of appropriation as that for water diverted or stored for transmountain diversion.”

III.D. In consideration of the agreement by the Blue River Decree Parties of the foregoing Paragraphs III.A – III.C, Climax, in settlement of disputed issues of priority, agrees to the following regarding the Climax C.A. 1710 Water Rights:

III.D.1. The water diverted pursuant to the Climax C.A. 1710 Water Rights during the Fill Season will be held in storage for non-consumptive purposes until there is a determination by the Secretary that the volumes of water set forth in Paragraph II.A.3.b.i through II.A.3.b.v plus Discretionary Power Diversions as defined in Paragraph IV.A.1.f of this Protocol will total 154,645 acre feet. The Secretary will provide timely notice to Climax of such determination. If the Secretary determines that the volumes of water set forth in Paragraph II.A.3.b.i through II.A.3.b.v plus Discretionary Power Diversions will total 154,645 acre feet, then Climax may consume water it has diverted under the Climax C.A. 1710 Water Rights during the Fill Season. If the Secretary determines that the volumes of water set forth in Paragraph II.A.3.b.i through II.A.3.b.v plus Discretionary Power Diversions will total less than 154,645 acre feet, then Climax shall provide substitution water to Green Mountain Reservoir as follows:

III.D.1.a. Climax shall provide substitution water in an amount equivalent to the amount of water that would be depleted under the Climax C.A. 1710 Water Rights that Fill Season. The first source of substitution water will be provided from a six-hundred acre foot account in either Williams Fork Reservoir, pursuant to contract between Denver Water and Climax, or the Henderson Mine’s East Branch Reservoir. The account will be filled with fully consumptive water owned or controlled by Climax from Henderson’s “Skylark Rights,” which were changed in Case No. 96CW3681 (Water Division No. 5), and which will be further changed to enable use for Green Mountain Reservoir substitution purposes, and for storage in Williams Fork Reservoir, including all municipal uses by Denver Water. The Parties to the Blue River Decree and Ute consent to such changes by Climax, provided that such parties may file statements of opposition in any proceeding to adjudicate such changes to ensure consistency with the terms and conditions of the decree in Case No. 96CW3681, and compliance with Colo. Rev. Stat. §§ 37-80-120(3) and 37-92-305(5). If any portion of the Climax C.A. 1710 Water Rights is transferred to an unaffiliated third party by Climax, Climax and/or the transferee (or its successors in interest) shall continue to provide substitution water using the Skylark Rights as provided herein, or shall provide substitution water from another source, provided that the substitution water is fully consumable and the water rights that will provide such substitution water are decreed for Green Mountain Reservoir substitution purposes. Any transferee shall secure any new source of substitution water in the order of preference set forth in Paragraph III.D.1.b below.

III.D.1.b. If Climax does not have sufficient water stored in the above-referenced storage account to offset the amount of the Climax C.A. 1710 Water Rights that otherwise would be depleted that year, then Climax will reduce its consumption of water diverted under the Climax C.A. 1710 Water Rights by the amount of the shortfall until such time

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

as (a) the Secretary determines that volumes of water set forth in Paragraph II.A.3.b.i through II.A.3.b.v plus Discretionary Power Diversions will total 154,645 acre feet, or (b) an acceptable and lawfully available replacement source is secured and notice of such source is provided to the United States and the Colorado River Water Conservation District ("River District"). The following sources of water shall be deemed acceptable replacement sources, in order of preference, and subject to the timely and good faith action of Climax, the River District, and the United States:

III.D.1.b.i A replacement source acceptable to Climax, the United States, and the River District located upstream from Shoshone;

III.D.1.b.ii A short-term contract for release of the shortfall from the River District's Ruedi Reservoir marketing supply;

III.D.1.b.iii A short-term contract for release of the shortfall from other sources located downstream from Shoshone.

III.D.1.c. If Climax does not obtain the substitution water from the above sources, it shall release the amount of the shortfall to Tenmile Creek from storage at the Climax Mine. Such releases shall be bypassed downstream (e.g., past Denver Water's Blue River System) to Green Mountain Reservoir or, subject to the Secretary's approval, substituted by Denver Water.

III.D.2. Climax's right of diversion and substitution of water pursuant to this Paragraph III.D shall be administered as senior in priority to the Cities' rights of diversion and substitution under the Blue River Decree, the Stipulations, and this Protocol.

III.D.3. The foregoing provisions of Paragraph III.D shall burden and benefit successors and assigns of the Climax C.A. 1710 Water Rights in perpetuity, and shall be a title covenant on the Climax C.A. 1710 Water Rights.

IV. THE CITIES' REPLACEMENT OPERATIONS

IV.A. Replacement Obligations – 1935 First Fill Storage Right.

IV.A.1. Definitions.

IV.A.1.a. "Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities": means bypasses of inflow to Green Mountain Reservoir between the Start of Fill Date (if the Start of Fill Date occurs prior to May 1) and May 1, up to a maximum volume of 120 acre-feet per day, that are accounted toward the 1935 First Fill Storage Right pursuant to direction from the Division Engineer because they are neither used to generate electrical energy at the Green Mountain Reservoir Powerplant nor bypassed to satisfy senior water rights.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

IV.A.1.b. “Cities’ Replacement Obligation”: means the collective Replacement Obligations of Denver Water and CS-U.

IV.A.1.c. “City Refill Water”: means the water the Cities must hold available for potential release to the United States on account of the Cities’ Depletions or Contract Depletions or storage that is accounted toward the satisfaction of the 1935 Senior Refill Right pursuant to Paragraph IV.B below.

IV.A.1.d. “CS-U’s Replacement Obligation”: means the volume of water CS-U is obligated to make available to the United States to assure the satisfaction of the 1935 First Fill Storage Right under the terms of the Blue River Decree and Stipulation, CS-U’s Substitution Agreements and decrees, and CS-U’s City Replacement Contracts, and to refill any Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities.

IV.A.1.e. “Denver Water’s Replacement Obligation”: means the volume of water Denver Water is obligated to make available to the United States to assure the satisfaction of the 1935 First Fill Storage Right under the terms of the Blue River Decree and Stipulation, Denver Water’s Substitution Agreements and decrees, and Denver’s City Replacement Contracts, and to refill any Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities.

IV.A.1.f. “Discretionary Power Diversions”: means the water diverted by the United States through exercise of the 1935 Direct Flow Power Right in excess of 60 c.f.s. during the Fill Season, but Discretionary Power Diversions do not include water passed through the Green Mountain Reservoir Powerplant (a) to meet legal calls by water rights senior to the 1935 First Fill Storage Right, (b) to meet the Cities’ obligations to water rights downstream of Green Mountain Reservoir pursuant to Paragraph II.C of this Protocol, or (c) to meet any flow requirements agreed to by the Secretary pursuant to any Shoshone Outage Protocol agreement consummated and effectuated among the appropriate parties (“SHOP”). Discretionary Power Diversions also do not include any Bypassed Storage Water.

IV.A.1.g. “Fill and Delivery Year”: means the Fill and Delivery Year for Green Mountain Reservoir that begins on the Start of Fill Date in one calendar year and continues until the Start of Fill Date in the following calendar year.

IV.A.1.h. “Fill Deficit”: means the volume of water that is computed by subtracting the volumes of water in Paragraphs IV.A.3.b.i(a),i(b),i(c),i(e),i(f),i(g) and i(h) of this Protocol from 154,645 acre-feet. This definition may not apply when a Maximum Water Elevation Limitation is imposed on Green Mountain Reservoir.

IV.A.1.i. “Maximum Water Elevation Limitation”: means a restriction or limitation on the maximum operating water surface elevation that may be maintained in Green Mountain Reservoir in a given year because of maintenance, repairs, or dam safety.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

IV.A.1.j. “Power Use Fill Shortage”: means the lesser of the Fill Deficit or the Discretionary Power Diversions.

IV.A.2. Replacement Obligation-Accounting Dates. Within ten days of the End of Fill Season, the Secretary shall initially calculate the Cities’ Replacement Obligation. The Secretary shall thereafter recalculate and adjust the obligation immediately prior to the commencement date described in Paragraph IV.A.7 below.

IV.A.3. Calculation of Replacement Obligation-Quantification.

IV.A.3.a. No Replacement Year. There is no Cities’ Replacement Obligation for a Fill and Delivery Year if the volume of water in storage in Green Mountain Reservoir (excluding water held in temporary storage pursuant to excess capacity or “if and when” contracts) on the Start of Fill Date, *plus* the amounts listed below, equals 154,645 acre-feet or achieves the Fill Level:

IV.A.3.a.i the volume of water physically stored in Green Mountain Reservoir during the Fill Season;

IV.A.3.a.ii the volume of water exchanged from Green Mountain Reservoir to Senate Document 80 “beneficiary” water rights that is accounted toward the fill of the 1935 First Fill Storage Right pursuant to the provisions of this Protocol; and

IV.A.3.a.iii the volume of water physically stored in Green Mountain Reservoir under the 1935 Senior Refill Storage Right and/or Junior Refill Storage Right to refill Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities as provided in Paragraph IV.A.5 below.

IV.A.3.b. Replacement Year. If the criteria set forth in Paragraph IV.A.3.a above are not satisfied, it is a Replacement Year, and the Cities’ Replacement Obligation¹³ shall be calculated as 154,645 acre-feet:

IV.A.3.b.i *minus* the following amounts:

IV.A.3.b.i(a) the volume of water in storage in Green Mountain Reservoir (excluding water held in temporary storage pursuant to excess capacity or “if and when” contracts) on the Start of Fill Date; and

IV.A.3.b.i(b) the volume of water stored in Green Mountain Reservoir under the 1935 First Fill Storage Right between the Start of Fill Date and the End of Fill Season; and

¹³ Provided, however, that this calculation of the Cities’ Replacement Obligation may not apply when a Maximum Water Elevation Limitation is imposed on Green Mountain Reservoir.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

IV.A.3.b.i(c) the volume of water exchanged from Green Mountain Reservoir to Senate Document 80 “beneficiary” water rights that is accounted toward the fill of the 1935 First Fill Storage Right pursuant to the provisions of this Protocol; and

IV.A.3.b.i(d) the volume of Discretionary Power Diversions; and

IV.A.3.b.i(e) the lesser of (1) 80 acre feet, or (2) the volume of water depleted by Upstream of Dillon Junior Beneficiary Rights that is accounted toward the annual fill of the 1946 Dillon Reservoir storage right pursuant to Paragraph II.B.3 above; and

IV.A.3.b.i(f) the difference between: (1) the volume of Bypassed Storage Water and (2) the volume of (a) Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities plus (b) any water released pursuant to a SHOP; and

IV.A.3.b.i(g) the volume of Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities that has been refilled through storage in Green Mountain Reservoir under the 1935 Senior Refill Storage Right or the Junior Refill Storage Right as provided in Paragraph IV.A.5 below; and

IV.A.3.b.i(h) the volume of City Refill Water that was released by the Cities on demand of the Secretary during the same Fill and Delivery Year as the City Refill Water accrued, and that was thereafter released from Green Mountain Reservoir prior to the Start of Fill Date of the ensuing Fill and Delivery Year solely for discretionary power purposes and/or for non-Project discretionary purposes;

IV.A.3.b.ii *plus* the Power Diversion Adjustment as determined pursuant to Paragraph IV.A.4 below;

IV.A.3.b.iii *subject* to such other reasonable adjustments as deemed appropriate by the Secretary; and

IV.A.3.b.iv *provided* that the Cities’ Replacement Obligation shall be no greater than the volume of the Cities’ Depletions and the Contract Depletions after the Start of Fill Date.

IV.A.4. Power Diversion Adjustment. Under normal operations, the Secretary prepares the Fill Schedule with the goals of filling Green Mountain Reservoir during the Fill Season without spilling water from the reservoir and of permitting as much water as possible to be available for upstream rights without impairment of legal calls of downstream water rights. While effectuating these goals, the United States may exercise the 1935 Direct Flow Power Right concurrently with the 1935 First Fill Storage Right, thereby making Discretionary Power Diversions during the Fill Season. However, over-estimating the amount of water available for Discretionary Power Diversions may result in a Power Use Fill Shortage. Accordingly, the Blue River Decree Parties, Climax, and Ute have agreed that the Cities’

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL
February 22, 2013

Replacement Obligation shall be increased by the amount of the Power Diversion Adjustment, which shall be calculated as follows:

IV.A.4.a. Normal Operations. Under normal operations, the Power Diversion Adjustment is one-half (50%) of the Power Use Fill Shortage.

IV.A.4.b. Conservative Operations-Power Loss Replacement Offer. By making a "Power Loss Replacement Offer" to pay power interference charges on account of power generation foregone when water that would be used to generate power under normal operations is either spilled at Green Mountain Reservoir or released through Green Mountain Reservoir at a rate that precludes power generation, the Cities may request that the United States shift to "Conservative Operations" and reduce Discretionary Power Diversions. Power Loss Replacement Offers and Conservative Operations will be effected as follows:

IV.A.4.b.i A Power Loss Replacement Offer shall require a commitment to compensate the United States for a specific volume of water, not less than 5,000 acre-feet, that may be spilled and/or released from Green Mountain Reservoir in a manner that precludes power generation as a result of the Conservative Operations. Power Loss Replacement Offers may be made jointly by both Denver Water and CS-U, or individually by one of the Cities.

IV.A.4.b.ii A Power Loss Replacement Offer may be made at any time; however, if the offer is made when it is not hydrologically and operationally possible for the United States to operate conservatively so as to store the full volume of water stated in the offer, then the "credit" described below shall be limited to the volume of additional storage actually achieved by the United States as a result of the Conservative Operations from the time the Power Loss Replacement Offer is made.

IV.A.4.b.iii If the Conservative Operations requested result in releases from Green Mountain Reservoir that preclude power generation (e.g., releases at a rate less than 100 c.f.s.), then the City making the offer, or the Cities if it is a joint offer, will, as a part of the Power Loss Replacement Offer, compensate the United States, in replacement power or money, for the loss of 120 acre-feet per day of power generation. Beyond such compensation, the power interference compensation due to the Conservative Operations will be determined based on the actual amount of water spilled or released from Green Mountain Reservoir in such manner as to preclude power generation.

IV.A.4.b.iv If the Power Loss Replacement Offer is for the minimum volume of 5,000 acre-feet, then the City making the offer, or the Cities if it is a joint offer, shall receive a credit of 5,000 acre-feet against any Power Use Fill Shortage, unless the credit is limited pursuant to Paragraph IV.A.4.b.ii above. If the Power Loss Replacement Offer exceeds 5,000 acre-feet, then the credit against the Power Use Fill Shortage shall be 5,000 acre-feet, plus the volume of water actually stored in excess of 5,000 acre-feet in Green Mountain Reservoir as a result of the Power Loss Replacement Offer, unless such credit is limited pursuant to Paragraph IV.A.4.b.ii above.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL
February 22, 2013

IV.A.4.b.v Under Conservative Operations as provided herein, the Power Diversion Adjustment to the Cities' Replacement Obligation will be computed as:

$(x + y)/2$ minus z = Power Diversion Adjustment (*this amount cannot be less than zero*), where:

x = Power Use Fill Shortage

y = additional amount stored as a result of the Conservative Operations

z = greater of 5,000 acre-feet (if hydrologically and operationally available¹⁴) or water stored under Conservative Operations due to the Power Loss Replacement Offer.

Examples of the application of this equation are provided in the attached Exhibit 2.

IV.A.4.b.vi If the Power Loss Replacement Offer is made by one City only, the resulting credit will be allocated to the City that made the offer, by adjusting the allocation of the Cities' Replacement Obligation among Denver Water and CS-U. Further, in case of a SHOP the Cities will adjust any requests for Conservative Operations to ensure consistency with such agreement.

IV.A.4.c. Colorado River Water Conservation District Offer: Nothing herein shall prevent the Colorado River Water Conservation District from making a Power Loss Replacement Offer to the United States on terms and conditions similar to those set forth in Paragraph IV.A.4.b above. The terms of any such Power Loss Replacement Offer will be negotiated among the United States, the Colorado River Water Conservation District and the Cities at such time as the offer is made.

IV.A.5. Green Mountain Reservoir Storage Rights – Bypassed Storage Water. As soon as possible after the End of Fill Season, the United States will exercise the 1935 Senior Refill Storage Right and/or the Junior Refill Storage Right to refill and store the volume of Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities. Pursuant to Paragraph IV.A.3.b.i(g) above, the amount of the Cities' Replacement Obligation that is attributable to Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities will be reduced by the volume of water so stored in Green Mountain Reservoir between the End of Fill Season and September 15.

IV.A.6. Quantification of Each City's Respective Replacement Obligation. Once the Cities' Replacement Obligation is quantified as described above, Denver Water's Replacement Obligation and CS-U's Replacement Obligation shall be quantified as each

¹⁴ If the water is not hydrologically or operationally available for storage under the Power Loss Replacement Offer, then z shall be limited to water actually stored under Conservative Operations.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

City's prorated share of the Cities' Replacement Obligation, taking account of: (1) their respective diversions; (2) the Contract Depletions for which each is responsible pursuant to the City Replacement Contracts; (3) the provisions of Paragraph II.B.3.a above (deduction of up to 80 acre-feet of depletions by Upstream of Dillon Junior Beneficiary Rights from Denver Water's Replacement Obligation); and (4) the provisions of Paragraph IV.A.4.b above (Power Loss Replacement Offers). The quantification of the Cities' respective shares of the Cities' Replacement Obligation herein is in substantial compliance with, and is contemplated by, the Substitution Agreements and decrees.

IV.A.7. Satisfaction of Replacement Obligations-Commencement Date.

The Cities shall satisfy their respective shares of the Cities' Replacement Obligation as provided in their respective Substitution Agreements and decrees, commencing on the date after the End of Fill Season when the Secretary directs the Cities to begin substitution operations to effectuate such satisfaction.

IV.B. 1935 Senior Refill Storage Right.

IV.B.1. Cities' Diversions. In accordance with this Paragraph IV.B, the United States will permit the Cities and the City Contract Beneficiaries to deplete and store water at their respective upstream facilities while the United States is exercising the 1935 Senior Refill Storage Right. If water so depleted or stored by the Cities and the City Contract Beneficiaries is accounted by the Division Engineer toward the satisfaction of the 1935 Senior Refill Storage Right, then the Cities will hold that volume of water ("City Refill Water") in storage and available for release (including, as necessary, release by substitution) to the United States if the United States is unable to refill a total of 6,316 acre-feet in Green Mountain Reservoir¹⁵ as follows:

IV.B.1.a. Administrative Priority of 1935 Senior Refill Storage Right. The United States will seek to store a total of 6,316 acre-feet of water in Green Mountain Reservoir by exercising the 1935 Senior Refill Storage Right pursuant to its August 1, 1935 priority, or pursuant to such junior administrative priority as may be authorized by the Division Engineer. The Blue River Decree Parties, Ute, and Climax will not oppose the use of an administrative priority date between August 1, 1935, and October 12, 1955, for the exercise of the 1935 Senior Refill Storage Right for the purpose of reducing or eliminating the Cities' obligation with regard to City Refill Water in accordance with IV.B.1.b.i below; provided that such administrative priority shall not affect the relative priorities of the Climax C.A. 1710 Water Rights described in Paragraph III.C.

IV.B.1.b. Reduction of City Refill Water. The City Refill Water will be reduced by the following amounts:

¹⁵ To the extent that the 1935 Senior Refill Storage Right is administered with a priority equal or junior to the Cities' water rights, and the Cities' Depletions and Contract Depletions are not accounted against the 1935 Senior Refill Storage Right, the provisions of this Paragraph IV.B.1 do not apply, although such depletions are still subject to repayment under the Power Interference Agreements.

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

IV.B.1.b.i the volume of water that is stored in Green Mountain Reservoir under a junior administrative priority that is consistent with Paragraph IV.B.1.a above authorized by the Division Engineer for the 1935 Senior Refill Storage Right;

IV.B.1.b.ii the volume of water that is stored in Green Mountain Reservoir under the Junior Refill Storage Right;

IV.B.1.b.iii the volume of City Refill Water that is released by the Cities on demand of the Secretary;

IV.B.1.b.iv the volume of water that is released from storage in Green Mountain Reservoir solely for discretionary power purposes and/or for non-Project discretionary purposes after the End of Fill Season but during the same Fill and Delivery Year in which the City Refill Water accrued, other than any volume that may be released pursuant to any SHOP; and

IV.B.1.b.v. the volume of water in excess of 60 c.f.s. that, after the End of Fill Season in the Fill and Delivery Year in which the City Refill Water accrued, and before the Start of Fill Date in the Fill and Delivery Year following the Fill and Delivery Year in which the City Refill Water accrued, is (1) diverted by the United States through exercise of the 1935 Direct Flow Power Right or (2) discretionarily bypassed by the United States and not used to generate electrical energy at the Green Mountain Reservoir Powerplant; *provided* that the City Refill Water will not be reduced if such water is (1) passed to meet legal demands or calls by water rights downstream of Green Mountain Reservoir; (2) passed to meet the Cities' obligations to satisfy legal demands or calls by water rights downstream of Green Mountain Reservoir; or (3) passed pursuant to a SHOP.

IV.B.2. Maximum City Refill Water Release.

IV.B.2.a. Release in Same Fill and Delivery Year. The Secretary may demand the release of the City Refill Water at any time in the Fill and Delivery Year in which the City Refill Water accrued. The maximum volume of City Refill Water that the Secretary may require the Cities to release in the same Fill and Delivery Year in which the City Refill Water accrued shall be the volume of City Refill Water remaining after any reduction pursuant to Paragraph IV.B.1.b above;

IV.B.2.b. Release in Subsequent Fill and Delivery Year. The maximum volume of City Refill Water that the Secretary may require the Cities to release in the Fill and Delivery Year after the Fill and Delivery Year in which the City Refill Water accrued shall be the least of:

IV.B.2.b.i the volume of City Refill Water remaining after any reduction pursuant to Paragraph IV.B.1.b above;

IV.B.2.b.ii the volume needed to achieve the Fill Level for the then-current Fill and Delivery Year; and

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

IV.B.2.b.iii the volume needed to bring the volumes in Paragraphs II.A.3.b.i-b.v above, minus the volume of Bypassed Storage Water Owed to Green Mountain Reservoir by the Cities that is not refilled pursuant to Paragraph IV.A.5 above, to 154,645 acre-feet in the then-current Fill and Delivery Year.

IV.B.2.c. If by the date when the Secretary directs the Cities to begin substitution operations or determines that it is not a Replacement Year in the Fill and Delivery Year following the Fill and Delivery Year in which the City Refill Water accrued, the Secretary makes no demand for the release of City Refill Water, then all remaining City Refill Water that accrued in the preceding Fill and Delivery Year shall be considered among the Blue River Decree Parties, Ute, and Climax to have been diverted pursuant to the Power Interference Agreements, and no further release by the Cities of such City Refill Water shall be required.

IV.B.3. Effect of Paragraph IV.B. Nothing in the depletion, accounting or management of the City Refill Water shall limit the exercise of the 1935 Senior Refill Storage Right in the Fill and Delivery Year following the accrual of any City Refill Water. Further, the Cities' agreement to guarantee the satisfaction of the 1935 Senior Refill Right as provided in this Paragraph IV.B is the result of a negotiated settlement and agreement, and shall not be taken as precedent regarding any party's interpretation of the rights or obligations related to the 1935 Senior Refill Storage Right.

IV.C. Other Provisions

IV.C.1. No Waiver Regarding the Power Use Fill Shortage. Nothing in this Section IV shall ever give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual or legal position regarding the obligation of the United States annually to complete the fill of the 1935 First Fill Storage Right.

IV.C.2. 60 c.f.s. Bypasses. The Blue River Decree Parties, Ute, and Climax agree among themselves that they shall not assert in any forum that bypasses of inflow to Green Mountain Reservoir up to 60 c.f.s. should be accounted toward the administrative fill of the Green Mountain Reservoir Storage Rights.

IV.C.3. No Modification of Sections I-III. Nothing in this Section IV is intended to modify the administrative and accounting provisions of Sections I, II, and III above.

IV.C.4. Consistency with the Blue River Decree. The operations, administration of water rights, and management of the Cities' Replacement Obligations set forth in Sections I, II, III, and IV of this Protocol are consistent with the terms and conditions of the Blue River Decree and Stipulations.

IV.C.5. Power Replacement. For the duration of the time when the 1935 First Fill Storage Right is being administered under an October 12, 1955 administrative priority pursuant to Paragraph II.D.2 above, the 1935 Direct Flow Power Right also may be administered under an identical date. To the extent that the 1935 Direct Flow Power Right is administered

GREEN MOUNTAIN RESERVOIR ADMINISTRATIVE PROTOCOL

February 22, 2013

with a priority date identical or junior to those of the Cities' water rights, the Cities' Depletions and Contract Depletions shall be treated, for purposes of the Cities' Power Interference Agreements, as depletions against the 1935 Direct Flow Power Right.

Exhibit 1
Upstream of Dillon Junior Beneficiary Rights

As Referred to in the Green Mountain Administrative Protocol, Paragraph II.B.3.b.

Water Right	Adjudication Date	Previous Adjudication	Apropriation Date	Case No.	Administration Number	rate absolute (cfs)	volume absolute (af)
ADRIAN THEATER WELL NO 1	12/31/1981	12/31/1980	6/1/1961	81CW0064	47847.40694	0.066	0
ALTIMARI WELL	12/31/1972		8/1/1968	W0843	43312	0.018	0
B AND L DITCH	5/31/1972	3/10/1952	5/31/1929	CA2371	37324.29005	5	0
BAKRS TNK PG SPRING	12/31/1972		8/12/1958	W0467	39670	0.001	0
BILLS RANCH LAKE	12/31/1971	12/31/1970	12/31/1933	W0380	44194.3068	0	16.83
BRECKENRIDGE WELL NO 1	12/31/1972		12/31/1963	W1338	41637	0.089	0
BURGER WELL	12/31/1972	12/31/1971	4/3/1962	W1475	44559.41	0.066	0
CHICAGO LODGE TUNNEL SPG	12/31/1972	12/31/1971	11/30/1969	W1647	44559.43798	0.015	0
CORONET SPG AND PL	5/31/1972	3/10/1952	5/8/1962	CA2371	41035	1.39	0
COUNTRY BOY MINE SPRING	12/31/1982	12/31/1981	3/15/1973	82CW0436	48212.44999	0.033	0
DAWDY WELL	12/31/1983	12/31/1982	6/12/1961	83CW0173	48577.40705	0.066	0
DILLON HI COUNTRY WELL 1	12/31/1972		6/30/1968	W1319	43280	0.044	0
DODGE WELL	12/31/1972		12/7/1967	W1354	43074	0.033	0
FRIDAY TUNNEL	12/31/1972		8/15/1972	W1660	44787	0.033	0
GBRSN BY FPL WELL	12/31/1972		12/3/1971	W0467	44531	0.002	0
GOODBODY WELL	12/31/1972		10/18/1966	W1305	42659	0.002	0
GUIDA WELL A	12/31/1972		6/3/1965	W1456	42157	0.033	0
HARRIS WELL	12/31/1972		6/15/1967	W0646	42899	0.044	0
HEATN BAY CG WELL	12/31/1972		12/31/1967	W0467	43098	0.011	0
HIGH COUNTRY WELL NO 1	12/31/1972		12/16/1970	W0994	44179	0.088	0
HIGH COUNTRY WELL NO 2	12/31/1972		4/13/1971	W0994	44297	0.067	0
HIGH TOR CONDO WELL	5/31/1972		12/27/1968	CA2371	43460	0.018	0
HYNA WELL	12/31/1972	12/31/1971	5/27/1966	W1491	44559.42515	0.045	0
INDRFT SPG 1	12/31/1972		12/31/1972	W0467	44925	0.003	0
JANKOVSKY WELL	12/31/1972		7/25/1962	W1370	41113	0.011	0
JEFFREY WELL	12/31/1972		7/31/1957	W1413	39293	0.022	0
KEYTOP WELL NO 1	12/31/1972		11/17/1969	W1365	43785	0.067	0
KEYTOP WELL NO 2	12/31/1972		11/30/1971	W1363	44528	0.067	0
LANCER WELL NO 1	12/31/1972		10/26/1967	W1418	43032	0.044	0
LANCER WELL NO 2	12/31/1972		10/18/1966	W1418	42659	0.022	0
LANCER WELL NO 3	12/31/1972		5/13/1961	W1418	40675	0.044	0
LOWRY AFB OC WELL	12/31/1972		9/20/1967	W0467	42996	0.005	0
MAID OF ORLEANS SPRING	12/31/1982	12/31/1981	10/19/1978	82CW0314	48212.47043	0.022	0
MEXICAN CREEK DITCH	12/31/1972	12/31/1971	12/31/1933	W1371	44559.3068	0.111	0
NORTHFIELD WELL	12/31/1972		5/11/1961	W0948	40673	0.067	0
OFFERSON WELL NO 1	12/31/1981	12/31/1980	8/22/1961	81CW0064	47847.40776	0.044	0
OFFICERS GULCH POND	12/31/1977	12/31/1976	12/31/1900	80CW0330	46386.18627	0	100
OLD IRONSIDES WELL	12/31/1980		10/5/1972	80CW0437	44838	0.033	0
PEAK ONE CG WELL	12/31/1972		6/11/1965	W0467	42165	0.008	0
PLYMOUTH SPRING	12/31/1972	12/31/1971	9/30/1950	W1410	44559.36797	0.066	0
PLYMOUTH WELL	12/31/1972		9/30/1950	W1412	36797	0.066	0
QUALY WELL	12/31/1972		3/19/1966	W0993	42446	0.088	0
RENETTE SPRINGS	12/31/1973	12/31/1972	1898-12-31	W1900	44925.17897	1.017	0
ROWLEY WELL	12/31/1972		3/17/1967	W0851	42809	0.011	0
SEYMOUR WELL	12/31/1972		12/31/1964	W0902	42003	0.033	0
SKI CLUB WELL	12/31/1972		7/31/1965	W1383	42215	0.044	0
STRAUSS WELL	12/31/1972		6/28/1967	W0883	42912	0.044	0
SWAN WELL	12/31/1972		12/31/1958	W1037	39811	0.044	0
TERRILL WELL NO 10309	12/31/1983	12/31/1982	9/10/1965	83CW0275	48577.42256	0.044	0

Exhibit 1**Upstream of Dillon Junior Beneficiary Rights**

As Referred to in the Green Mountain Administrative Protocol, Paragraph II.B.3.b.

Water Right	Adjudication Date	Previous Adjudication	Apropriation Date	Case No.	Administration Number	rate absolute (cfs)	volume absolute (af)
TOURNIER WELL	12/31/1979		1/15/1965	79CW0316	42018	0.077	0
TYROLLEAN TERRACE WELL#2	12/31/1972	12/31/1971	11/6/1965	W1496	44559.42313	0.022	0
UC OF C OC WELL	12/31/1972		9/15/1967	W0467	42991	0.005	0
VALLEY OF THE BLUE RES 1	12/31/1972	12/31/1971	10/19/1966	W1416	44559.4266	0	4.2
VER PLOEG SPRING	12/31/1974	12/31/1973	7/31/1963	W2230	45290.41484	0.011	0
WELL NO 18192	5/31/1972		9/11/1963	CA2371	41526	0.007	0
WELL NO 25607	5/31/1972		9/11/1963	CA2371	41526	0.022	0
WELL NO P-5389	5/31/1972		3/20/1964	CA2371	41717	0.111	0
WHATLEY SPRING NO 2	12/31/1982	12/31/1981	12/31/1938	82CW0047	48212.32506	0.044	0
WHEATON WELL NO 1	12/31/1972		3/21/1965	W1372	42083	0.009	0
WHEATON WELL NO 2	12/31/1972		3/31/1965	W1372	42093	0.007	0
WHEATON WELL NO 3	12/31/1972		3/31/1965	W1372	42093	0.022	0
WINCHELL WELL	12/31/1972		10/5/1968	W1260	43377	0.111	0

Notes:

1) During development of the Green Mountain Reservoir Administrative Protocol the water rights in this list were judged by the Cities, the Colorado River Water Conservation District and the Division Engineer to be Upstream of Dillon Junior Beneficiary Rights that hold priority dates junior to June 23, 1946, and are not City Contract Beneficiaries.

2) Upon agreement of the United States, the Cities, the Colorado River Water Conservation District, and the Division Engineer for Water Division No. 5, qualifying water rights inadvertently not identified on this Exhibit or included but not qualifying may be added to or removed from the Exhibit as Upstream of Dillon Junior Beneficiary Rights.

Exhibit 2
Power Diversion Adjustment Examples
(Reference Green Mountain Reservoir Administrative Protocol
Paragraph IV.A.4., Power Diversion Adjustment)

The Green Mountain Administrative Protocol in Paragraph IV.A.4. sets forth how the Cities' Replacement Obligation may be adjusted by the Power Diversion Adjustment when the Cities make a Power Loss Replacement Offer requesting that the United States shift to Conservative Operations to reduce Discretionary Power Diversions¹. This exhibit provides examples of how the Power Diversion Adjustment is calculated.

There are two types of Power Use Fill Shortage operations:

- “Normal Operations” means the Cities do not make a Power Loss Replacement Offer. Under Normal Operations the Power Diversion Adjustment is one-half (50%) of the Power Use Fill Shortage.
- “Conservative Operations” means the Cities make a “Power Loss Replacement Offer” whereby the Cities agree to pay for lost power generation that might occur in exchange for Reclamation agreeing to make less discretionary power. The minimum Power Loss Replacement Offer the Cities can make is 5,000 AF. That is, the Cities agree to pay for at least 5,000 AF of water if it is spilled and/or released from Green Mountain reservoir in a manner that precludes power generation as a result of Conservative Operations. The Power Loss Replacement Offer, together with the volume of additional storage achieved by the United States as a result of Power Loss Replacement Offer results in a “Power Diversion Adjustment” to the Cities' Replacement Obligation.

POWER DIVERSION ADJUSTMENT EQUATION

The methodology for calculating a Power Diversion Adjustment to the Cities' Replacement Obligation is set forth in paragraph IV.A.4.b. of the Green Mountain Administrative Protocol. In the event the Cities make a Power Loss Replacement Offer, the equation for calculating a Power Diversion Adjustment is:

$$[(x + y) \div 2] - z = \text{Power Diversion Adjustment}$$

Where:

- x = Volume of the Power Use Fill Shortage.
- y = additional volume stored as a result of the Conservative Operations
- z = the greater of 5,000 AF (if hydrologically and operationally available²) or the volume of water stored under Conservative Operations due to the Power Loss Replacement Offer.

¹ This exhibit uses multiple terms that are defined in the Green Mountain Administrative Protocol (e.g. Cities' Replacement Obligation, Power Diversion Adjustment, Power Loss Replacement Offer, Conservative Operations, Discretionary Power Diversions, Power Use Fill Shortage). The definition of the terms used in this exhibit is identical to the definition of the same terms in the Protocol.

² If the water is not hydrologically or operationally available for storage under the Power Loss Replacement Offer, then z is limited to water actually stored under Conservative Operations.

Exhibit 2
Power Diversion Adjustment Examples
(Reference Green Mountain Reservoir Administrative Protocol
Paragraph IV.A.4., Power Diversion Adjustment)

POWER DIVERSION ADJUSTMENT EXAMPLES

Examples are shown for both Normal Operations and Conservative Operations. Under Normal Operations, the Power Diversion Adjustment is one-half (50%) of the Power Use Fill Shortage. Under Conservative Operations the Power Diversion Adjustment varies as shown in the examples.

1. **Normal Operations:** Under normal operations, the Power Diversion Adjustment is one-half (50%) of the Power Use Fill Shortage.

Example: The Cities do not make a Power Loss Replacement Offer and there is a 12,000 AF Power Use Fill Shortage at the End of Fill Season.

Cities' Power Diversion Adjustment = 6,000 AF

2. **Conservative Operations:** The Cities may request that the United States reduce Discretionary Power Diversions (a shift to Conservative Operations) by committing to pay power interference charges on account of power generation foregone as a result of such reduced Discretionary Power Diversions (Power Loss Replacement Offer).

Example 1: The Cities offer to compensate the United States for 5,000 AF of lost power generation. Reclamation stores 5,000 AF rather than making discretionary power, and there is a 7,000 AF Power Use Fill Shortage at the End of Fill Season.

$$[(x + y) \div 2] - z = \text{Power Diversion Adjustment}$$

$$x = 7,000 \text{ AF}$$

$$y = 5,000 \text{ AF}$$

$$z = 5,000 \text{ AF}$$

$$[(7,000 \text{ AF} + 5,000 \text{ AF}) \div 2] - 5,000 \text{ AF} = 1,000 \text{ AF}$$

Cities' Power Diversion Adjustment = 1,000 AF

Example 2: The Cities offer 10,000 AF, Reclamation stores 5,000 AF, the entire amount hydrologically and operationally available, rather than making discretionary power. There is a 7,000 AF Power Use Fill Shortage at the End of Fill Season.

$$[(x + y) \div 2] - z = \text{Power Diversion Adjustment}$$

$$x = 7,000 \text{ AF}$$

$$y = 5,000 \text{ AF}$$

Exhibit 2
Power Diversion Adjustment Examples
(Reference Green Mountain Reservoir Administrative Protocol
Paragraph IV.A.4., Power Diversion Adjustment)

$$z = 5,000 \text{ AF}$$
$$[(7,000 \text{ AF} + 5,000 \text{ AF}) \div 2] - 5,000 \text{ AF} = 1,000 \text{ AF}$$

Cities' Power Diversion Adjustment = 1,000 AF

Example 3: The Cities offer 5,000 AF, Reclamation chooses to store only 3,000 AF even though the entire 5,000 AF was hydrologically and operationally available to store. There is a 9,000 AF Power Use Fill Shortage at the End of Fill Season.

$$[(x + y) \div 2] - z = \text{Power Diversion Adjustment}$$

$$x = 9,000 \text{ AF}$$
$$y = 3,000 \text{ AF}$$
$$z = 5,000 \text{ AF}$$

$$[(9,000 \text{ AF} + 3,000 \text{ AF}) \div 2] - 5,000 \text{ AF} = 1,000 \text{ AF}$$

Cities' Power Diversion Adjustment = 1,000 AF

Example 4: The Cities offer 5,000 AF, Reclamation stores 3,000 AF, the entire amount hydrologically and operationally available, rather than making discretionary power. There is a 9,000 AF Power Use Fill Shortage at the End of Fill Season.

$$[(x + y) \div 2] - z = \text{Power Diversion Adjustment}$$

$$x = 9,000 \text{ AF}$$
$$y = 3,000 \text{ AF}$$
$$z = 3,000 \text{ AF}$$

$$[(9,000 \text{ AF} + 3,000 \text{ AF}) \div 2] - 3,000 \text{ AF} = 3,000 \text{ AF}$$

Cities' Power Diversion Adjustment = 3,000 AF

Example 5: The Cities offer 10,000 AF, Reclamation stores 7,000 AF, rather than making discretionary power, even though 10,000 AF was hydrologically and operationally available. There is a 5,000 AF Power Use Fill Shortage at the End of Fill Season.

$$[(x + y) \div 2] - z = \text{Power Diversion Adjustment}$$

$$x = 5,000 \text{ AF}$$
$$y = 7,000 \text{ AF}$$

Exhibit 2
Power Diversion Adjustment Examples
(Reference Green Mountain Reservoir Administrative Protocol
Paragraph IV.A.4., Power Diversion Adjustment)

$$z = 7,000 \text{ AF}$$

$$[(5,000 \text{ AF} + 7,000 \text{ AF}) \div 2] - 7,000 \text{ AF} = -1,000 \text{ AF}$$

$$\text{Cities' Power Diversion Adjustment} = 0.0 \text{ AF}^3$$

Example 6: The Cities offer 10,000 AF, Reclamation stores 10,000 AF, rather than making discretionary power, and there is a 2,000 AF Power Use Fill Shortage at the End of Fill Season.

$$[(x + y) \div 2] - z = \text{Power Diversion Adjustment}$$

$$x = 2,000 \text{ AF}$$

$$y = 10,000 \text{ AF}$$

$$z = 10,000 \text{ AF}$$

$$[(2,000 \text{ AF} + 10,000 \text{ AF}) \div 2] - 10,000 \text{ AF} = -4,000 \text{ AF}^4$$

$$\text{Cities' Power Diversion Adjustment} = 0.0 \text{ AF}$$

³ The Cities Power Diversion Adjustment cannot be a negative volume. That is, the Cities Replacement Obligation cannot be reduced by more than ½ of the Power Use Fill Shortage that would have existed absent Conservative Operations. Regardless of the Cities Power Loss Replacement Offer, or the amount stored under Conservative Operations, the Cities Power Diversion Adjustment is limited to ½ of the Power Use Fill Shortage that would have existed without Conservative Operations.

⁴ *ibid*

Green Mountain Reservoir Administrative Protocol Agreement

THIS AGREEMENT is made and entered into as of the effective date (as defined in paragraph 17 below), by and among the United States of America ("United States"), the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver Water"), the City of Colorado Springs, acting through its enterprise Colorado Springs Utilities ("CS-U"), the Colorado River Water Conservation District ("CRWCD"), the Northern Colorado Water Conservancy District ("NCWCD"), the Middle Park Water Conservancy District ("MPWCD"), the Grand Valley Water Users Association ("GVWUA"), the Orchard Mesa Irrigation District ("OMID"), the Grand Valley Irrigation Company ("GVIC"), the Palisade Irrigation District ("PID"), Climax Molybdenum Company ("Climax"), the Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise ("Ute"), and the State Engineer and Division Engineer for Water Division 5, Colorado Division of Water Resources ("SEO") (each individually, a Party and collectively, the Parties).

RECITALS

A. The United States is the owner and operator of Green Mountain Reservoir, an on-channel reservoir located on the Blue River in Summit County, Colorado, and is a party to the Findings of Fact, Conclusions of Law, and Final Judgment in Consolidated Cases No. 5016 and 5017 and the Findings of Fact and Conclusions of Law and Final Decree in Consolidated Cases Nos. 2782, 5016, and 5017 ("Consolidated Cases"), United States District Court for the District of Colorado ("Federal Court"), dated October 12, 1955 ("Blue River Decree"), which adjudicated water rights for Green Mountain Reservoir and the Green Mountain Powerplant (together "Green Mountain Water Rights");

B. Denver Water is a home rule municipal corporation created and existing under Article XX, section 1 of the Colorado State Constitution, the Charter of the City and County of Denver and other applicable Colorado law and is a party to the Blue River Decree;

C. The City of Colorado Springs is a home rule city and municipal corporation of the State of Colorado and is a party to the Blue River Decree;

D. CRWCD is a political subdivision of the State of Colorado pursuant to Colo. Rev. Stat. (C.R.S.) §§ 37-46-101 et seq. and is a party to the Blue River Decree;

E. NCWCD is a water conservancy district organized pursuant to C.R.S. §§ 37-45-101 et seq. and is a party to the Blue River Decree;

F. MPWCD is a water conservancy district organized pursuant to C.R.S. §§ 37-45-101 et seq. and is a party to the Blue River Decree;

G. GVVUA, GVIC, OMID, and PID are parties to the Blue River Decree;

H. Climax is a Delaware corporation that owns water rights adjudicated by the Summit County District Court in Civil Action 1710 ("C.A. 1710") for use at the mine and mill located near Leadville, Colorado (the "Climax C.A. 1710 Water Rights");

I. The Ute Water Conservancy District is a water conservancy district organized pursuant to C.R.S. §§ 37-45-101 et seq.;

J. The SEO is responsible for the administration of water and water rights in the State of Colorado ("State") in Water Division No. 5;

K. Numerous disputes have arisen over the years as to how Green Mountain Water Rights should be administered under the Blue River Decree;

L. The SEO adopted an Interim Policy for the administration of the Green Mountain Water Rights under the Blue River Decree;

M. Some of the Parties have disagreed with the Interim Policy;

N. The United States, Denver Water, CS-U, CRWCD, NCWCD, MPWCD, GVVUA, GVIC, OMID, and PID (the "Blue River Decree Parties"), Ute, and Climax have negotiated an administrative protocol for the administration of the Green Mountain Water Rights and the Climax C.A. 1710 Water Rights ("Administrative Protocol"), a copy of which is attached hereto, which is intended and considered by them to be consistent with the terms of the Blue River Decree and the relative priorities of Green Mountain Water Rights and those water rights adjudicated in C.A. 1710, including the Climax C.A. 1710 Water Rights, and which is intended to reduce or eliminate the likelihood of expensive, protracted, and contentious litigation amongst the Parties;

O. The resolution of long-standing disputes regarding the proper administration of the Green Mountain Water Rights and the Blue River Decree provides significant benefits for water users on both the east and west slopes of the State, including, but not limited to, optimum utilization of the waters of the State, reducing litigation costs of the Parties, and providing clarity as to water rights administration;

P. The Blue River Decree Parties and Climax intend to seek judicial confirmation that the Administrative Protocol is consistent with the Blue River Decree and that the Climax C.A. 1710 Water Rights can be administered as provided in the Administrative Protocol without injury to the Green Mountain Water Rights or other water rights; and

Q. The Parties intend (1) that the Federal Court, consistent with its retained jurisdiction to interpret and implement the Blue River Decree, exercise such jurisdiction to determine whether the Administrative Protocol is consistent with the terms of the Blue River Decree; and (2) that all interested parties have notice and an opportunity to participate in such determination with regard to Sections I, II, and III, only, of the Administrative Protocol, pursuant to the procedures of the Colorado Water Right Determination and Administration Act of 1969, C.R.S. §§ 37-92-101 et seq. ("1969 Act"). To that end, the Parties agree to the judicial proceedings described herein, including the application by the Federal Court of the 1969 Act procedures in determining whether Sections I, II, and III of the Administrative Protocol are consistent with the terms of the Blue River Decree, which is consistent with the Federal Court's prior practice of proceeding in consonance with the 1969 Act in matters regarding the Blue River Decree.

NOW, THEREFORE, the Parties agree as follows:

1. Purposes of the Agreement. The intent of the Blue River Decree Parties, Ute, and Climax in agreeing to the Administrative Protocol is to clarify and implement certain provisions of the Blue River Decree by (1) setting forth a protocol for, among other things: (a) the preparation, review, and modification of a fill schedule for Green Mountain Reservoir; (b) definition and administration of a fill season for exercise of the 1935 First Fill Storage Right; (c) administration of water rights during the fill season; and (d) operation of the Green Mountain Water Rights and Denver Water and CS-U's (the Cities) water rights in response to downstream calls senior to the Cities' water rights; (2) making as much water as possible available for upstream use, including use by the Cities, without impairment of the fill of Green Mountain Reservoir and without impairment of legal calls of downstream water rights; (3) providing a clear definition of the Cities' replacement obligation operations; (4) ensuring that the administration of water rights

does not allow the water rights of the Cities to “hide behind” or otherwise benefit from the Green Mountain Reservoir Water Rights; (5) reducing as much as possible or potentially eliminating the extent to which the Green Mountain Reservoir 60 c.f.s. bypass is accounted toward the fill of the Green Mountain Reservoir Storage Rights, and assuring, to the extent possible, the refilling of Green Mountain Reservoir to the extent that such bypass is accounted toward the fill of the Green Mountain Reservoir Storage Rights; and (6) addressing the relative priority of the Green Mountain Water Rights, the Cities’ water rights, and Climax’s C.A. 1710 Water Rights in a manner agreed by the Blue River Decree Parties and Climax; all in a manner that is consistent with the Blue River Decree. The SEO has negotiated with the Blue River Decree Parties, Ute, and Climax regarding Sections I, II and III of the Administrative Protocol, and agrees to be bound by, and to administer, distribute, and regulate the waters of the State in accordance with a final judgment and decree as provided below.

2. Approval of Administrative Protocol by Blue River Decree Parties, Climax, and Ute. The Blue River Decree Parties, Climax, and Ute approve the Administrative Protocol attached hereto as Exhibit A and agree that the Administrative Protocol shall govern the matters set forth therein, unless it is disapproved or materially modified as a result of the proceedings described in paragraphs 3 and 4 below. In the event that the Federal Court or the District Court in and for Water Division 5 (“Water Court”) does not approve or materially modifies the Administrative Protocol, or refuses to rule on the proceedings filed by the Blue River Decree Parties and Climax, then paragraph 4 shall apply.

3. Judicial Proceedings. Within 60 days of the effective date of this Agreement, the Blue River Decree Parties and Climax will concurrently institute judicial proceedings in the Water Court and the Federal Court as follows:

3.1. Water Court Proceeding. The Blue River Decree Parties and Climax will file an application for determination of water right, pursuant to C.R.S. § 37-92-302(1)(a), requesting a determination that Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree (“Water Court Application”). Notice of the Water Court Application, including the full text of Sections I, II, and III of the Administrative Protocol, shall be provided in the resume of applications filed in Water Division No. 5 in accordance with C.R.S. § 37-92-302(3)(a), and by newspaper publication in Summit, Grand, Garfield, Eagle, Pitkin, Routt, Gunnison, Rio Blanco, and Mesa Counties as well as in any other county in which publication is ordered by the water judge.

3.1.1. Upon expiration of the statutory time for filing statements of opposition to the Water Court Application, the Blue River Decree Parties shall immediately move to stay the Water Court proceeding and shall pursue the Federal Court proceeding described in paragraph 3.2 below.

3.2. Federal Court Proceeding. The Blue River Decree Parties will file, concurrent with the filing of the Water Court Application, an application and/or petition, pursuant to the Federal Court's retained jurisdiction to interpret and implement the Blue River Decree, requesting (1) a determination that Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree; and (2) a determination that Section IV of the Administrative Protocol is consistent with the Blue River Decree ("Federal Court Application"). Immediately upon filing the Federal Court Application, the Blue River Decree Parties will request entry by the Federal Court of a procedural order specifying that the procedure set forth in the Federal Court's Order Regarding Further Proceedings Consonant With the Colorado Water Right Determination and Administration Act of 1969 entered on August 4, 1977, shall apply to that part of the Federal Court Application requesting a determination that Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree, and to that part of the Federal Court Application only. If the Federal Court makes a determination that Sections I, II, and III are consistent with the Blue River Decree, and no motion is filed pursuant to paragraph 4, the Blue River Decree Parties will request the Federal Court to serve its judgment or order on its determination regarding Sections I, II and III on the Clerk of the Water Court with a request that the Water Court enter such judgment or order as a judgment or decree of the Water Court.

3.3. Participation in Judicial Proceedings.

3.3.1. It is the intent of the Parties that all persons and entities filing statements of opposition (whether in the Water Court or the Federal Court) to the Water Court Application shall be entitled to participate fully in the judicial proceedings to determine whether Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree, but that the scope of any such party's participation (whether in the Water Court or the Federal Court) shall be limited to whether Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree. To that end, the Parties shall not challenge the standing of any person filing a timely statement of opposition to the Water Court Application (whether in the Water Court or the Federal Court), and shall not oppose any motion to intervene in proceedings regarding whether Sections I, II and III of the Administrative Protocol are consistent with the Blue River Decree that are filed prior to the due date for filing of the opposers' initial mandatory disclosures under the Rules of Civil Procedure applicable to the proceeding. The Blue

River Decree Parties acknowledge that Climax has a direct, substantial and legally protectable interest relating to the subject matter of the Federal Court Application that may be impaired or impeded if Climax does not have the ability to protect its interests as a party to the Federal Court determination that Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree. The Blue River Decree Parties therefore shall not oppose and shall consent to any motion to intervene by Climax in the Federal Court Application for the limited purpose of determining whether Sections I, II and III of the Administrative Protocol are consistent with the Blue River Decree. The Blue River Decree Parties will give Climax the opportunity to review and comment on drafts of the application and/or petition for the Federal Court Proceeding prior to its filing with the Federal Court for the purpose of insuring that such pleadings sufficiently acknowledge Climax's interests in Sections I, II, and III of the Administrative Protocol.

3.3.2. The Blue River Decree Parties, or their designated representative, shall serve the SEO and the First Attorney General of the Water Resources Unit of the Natural Resources and Environment Section of the Colorado Attorney General's Office (or such other attorney as designated in writing from time to time by the First Attorney General), with copies of all papers filed in either the Water Court or the Federal Court proceedings. The SEO shall not file a statement of opposition to, or otherwise file any documents opposing the determination (in either the Water Court or the Federal Court) that the Administrative Protocol is consistent with the Blue River Decree; provided that Sections I, II, and III of the Administrative Protocol are not materially modified during the course of, or as a result of, such proceedings in either the Water Court or the Federal Court. If those sections are modified, then the Blue River Decree Parties, Ute, Climax, and the SEO shall confer. If the Parties agree that the modification is material, the Blue River Decree Parties, Ute, and Climax shall not oppose upon any grounds, including timeliness, the intervention of the SEO either as an intervention of right or a permissive intervention under the applicable Rules of Civil Procedure in the original or any remanded judicial proceeding concerning Sections I, II, and III of the Administrative Protocol. If the Parties do not agree as to the materiality of the modification, their dispute shall be resolved by the presiding court in ruling upon any motion to intervene filed by the SEO. Upon intervention, the SEO shall limit its participation to matters raised by the material modification of Sections I, II, and III of the Administrative Protocol. The SEO may also move to intervene in the judicial proceedings in the event any provision of this Agreement is breached by any non-SEO Party, and the Parties shall not oppose such intervention upon any grounds. Subject to paragraph 4 below, the SEO shall not object to or appeal the entry of a final judgment and decree by either the Federal Court or the Water Court in response to the request for a determination that Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree. Pursuant to C.R.S. §§ 37-92-301(1), -304(8), and -501(1),

the SEO shall be bound by, and shall administer, distribute, and regulate the waters of the State in accordance with any final judgment and decree entered in response to the request for a determination that Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree, subject to any appellate review.

3.3.3. In order to become a party to the Water Court Application, Ute may file a statement of opposition in support of a determination that Sections I, II, and III of the Administrative Protocol are consistent with the Blue River Decree. Ute may also participate in the Federal Court proceeding to the same extent as any other party that files a statement of opposition in the Water Court proceeding. Notwithstanding the fact that a pleading filed by Ute is captioned as a statement of opposition, all Parties recognize and agree that Ute's position in the judicial proceedings herein will be aligned with the position of the Blue River Decree Parties and Climax. Prior to the filing of the judicial proceedings herein, the Blue River Decree Parties, Climax, and Ute will undertake to document their common interest herein by means of a formal common interest agreement allowing them to share confidential information and otherwise to cooperate in obtaining determinations from the Water Court and/or the Federal Court that the Administrative Protocol is consistent with the Blue River Decree.

3.4. Judicial Proceedings Inconsistent with the Intent of the Parties. In the event that the Federal Court determines that it lacks jurisdiction, or otherwise declines to exercise jurisdiction, to adjudicate the Federal Court Application in whole or in part, or the Water Court declines to stay the proceedings in Water Court, the Parties will confer and determine how to proceed in obtaining the participation and judicial confirmations contemplated herein.

3.5. No Precedent. While the Parties have agreed to follow the procedures set forth in this paragraph 3, and to request that such procedures be adopted and implemented by the Water Court and the Federal Court, nothing in this Agreement, or in the Parties' participation in those procedures in this instance, shall have the effect of precedent or preclusion on any Party in any other proceeding with respect to whether the Water Court or the Federal Court has primary jurisdiction over the subject matter of this Agreement and the Blue River Decree.

4. If a Party Believes a Judgment and Decree is Not Consistent With, Materially Modifies, or Does Not Approve the Administrative Protocol. Within 14 days of entry of any final judgment and decree or other court order in the proceedings contemplated in paragraph 3 of this Agreement, any Party may notify the other Parties that it believes the judgment and decree or other court order(s) is not consistent with, materially modifies, or does not approve the Administrative Protocol. Such Party shall

simultaneously file a motion under C.R.C.P. 59, F.R.C.P. 59, or other appropriate rule seeking a stay of the proceedings pending the negotiations or mediation contemplated by this paragraph and requesting an enlargement of time to file additional motions as appropriate. The other Parties shall be deemed to have consented to any such motion. Upon such notification, the Parties will confer in good faith and endeavor to resolve the inconsistency, modification, or failure of approval in a manner consistent with the Administrative Protocol or in a manner that comes as close as possible to the intention of the Administrative Protocol. If the Parties are not able to reach a unanimous consensus resolution to any inconsistency, material modification, or failure of approval, then the Parties shall submit the disputed issue to a third party mediator. If the disputed issue cannot be resolved through good faith mediation, then the Parties may pursue any available legal or administrative recourse, including but not limited to a motion for post-trial relief under C.R.C.P. 59 or F.R.C.P. 59, or for relief from judgment or order under C.R.C.P. 60 or F.R.C.P. 60, as appropriate, to vacate the judgment and decree or to request another court order.

5. Administration of CBT Project Priorities and Climax C.A. 1710 Water Priorities.

5.1. The Parties agree that, pursuant to the Stipulation for Decree in the United States District Court for the District of Colorado, Consolidated Case Nos. 2782, 5016, and 5017 and District Court, Water Division No. 5, State of Colorado, Case No. 88CW382, dated August 7, 1992, and pursuant to the Findings of Fact, Conclusions of Law and Judgment and Decree in the same matter, dated November 10, 1992, the direct flow, storage and exchange water rights for the operation of the Colorado-Big Thompson Project shall be administered with a priority date of August 1, 1935 as though adjudicated in the first available adjudication following that date, with the exception of a subsequent state or federal court confirmation of the limited exception within Water District 36 that is explicitly stated in Section III.C of the Administrative Protocol, and further subject to the provisions of the Blue River Decree and the provisions of the Manner of Operation Section of Senate Document No. 80. Notwithstanding the provisions of paragraphs 9 and 10 below, this Paragraph 5.1 shall survive any partial or complete invalidation of the Administrative Protocol and shall survive the termination of this Agreement.

5.2. The SEO further agrees that the administration within Water District 36 that is explicitly stated in Section III.C of the Administrative Protocol is consistent with Colorado law and may be implemented without injury to vested water rights. In consideration of the settlement of the disputed issues of priority in Water District 36, the Blue River Decree parties, Ute, and Climax agree to the administration specified in Section III.C of the Administrative Protocol contingent upon Climax and its successors

complying with Section III.D of the Administrative Protocol. Notwithstanding the provisions of paragraphs 9 and 10 below, the provisions of Section III of the Administrative Protocol, and the foregoing provisions of this paragraph regarding Sections III.C and III.D of the Administrative Protocol, shall, to the extent consistent with any judicial rulings regarding Section III of the Administrative Protocol in the Water Court or Federal Court proceedings under paragraph 3 above, survive (a) any partial or complete invalidation of Sections I and II of the Administrative Protocol, and (b) the termination of this Agreement.

6. No Assertion that Protocol or Protocol Agreement Violates Senate Document No. 80 or Blue River Decree. The Blue River Decree Parties, Ute, and Climax agree that they will never assert, in any forum or for any purpose, that either the Protocol Agreement or the implementation of the Administrative Protocol is a violation of any obligation of any of the Parties under Senate Document No. 80 or the Blue River Decree.

7. No Estoppel Except as Provided. The Blue River Decree Parties, Ute, and Climax agree that except as expressly provided in paragraphs 5 and 6 above, nothing herein shall ever give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual or legal position regarding the Parties' respective positions regarding the operation of the Colorado-Big Thompson Project, Senate Document No. 80, the 1938 Repayment Contract for the Colorado-Big Thompson Project, Reclamation Law, the Blue River Decree, the 1984 Green Mountain Operating Policy, or Colorado law.

8. Fees and Costs. The Parties shall each be responsible for their own attorneys' fees, engineering fees, and any other costs and fees associated with the Water Court and Federal Court proceedings discussed in paragraphs 3 and 4 above.

9. No Precedent in Other Matters. The Parties further agree that they do not intend this Agreement or the Administrative Protocol to have the effect of precedent or preclusion on any factual or legal issue in any other matter.

10. No Precedent if Decree is Determined No Force or Effect. In the event that all or a portion of any decree confirming the Administrative Protocol is determined to be of no force or effect, neither the existence of such decree, nor the fact that any Party was willing to sign this Agreement, or not to object to or otherwise challenge the decree or the Administrative Protocol, shall ever be used against any Party in any manner in any forum.

11. Reforming the Agreement. If any provision or part of this Agreement is held to be void or unenforceable by a court with jurisdiction, the Parties will confer in good faith and endeavor to reform the Agreement to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the void or unenforceable provision. The Parties acknowledge that such endeavors may not succeed in reforming the Agreement.

12. Appropriation and Spending Limitations. In accord with the Colorado Springs City Charter, performance of CS-U's obligations under this Agreement is expressly subject to appropriation of funds by the Colorado Springs City Council. In the event funds are not appropriated in whole or in part sufficient for performance of CS-U's obligations under this Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then CS-U will thereafter have no obligations in excess of CS-U's authorized appropriation for this Agreement or the applicable spending limit, whichever is less. CS-U will notify the other parties as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable. Any other Party subject to an appropriation or lawful expenditure limitation will likewise have no obligations in excess of its authorized appropriation for this Agreement or the applicable spending limit, whichever is less, and shall notify the other Parties as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.

13. Waiver. A waiver by any Party of a default by any other Party and/or of the performance of any other Party's obligations contained in this Agreement shall not be deemed a waiver of the performance of any other obligations or of any subsequent default in the performance of the same or any other obligation contained in this Agreement. Further, a waiver by any Party of a default by any other Party or of the performance of any other Party's obligations contained in this Agreement shall not constitute a waiver by any other Party.

14. Captions. The captions of the paragraphs hereof are for convenience only and shall not govern or influence the interpretation hereof.

15. Construction. All Parties were represented by counsel and participated in the drafting of this Agreement. Neither this Agreement nor any provision of this Agreement shall be construed against any Party, regardless of whether a Party drafted or participated in the drafting of any provision of this Agreement.

Green Mountain Reservoir
Administrative Protocol Agreement

16. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

17. Effective Date. The effective date of this Agreement shall be the date of the execution of this Agreement if executed by all the Parties on the same date. If the Agreement is not executed by all the Parties on the same date, then the effective date of this Agreement shall be the date on which all the Parties have executed this Agreement.

Dated this 16th day of August, 2013.

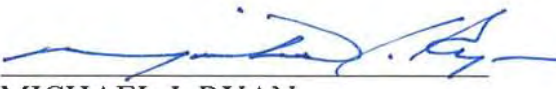
UNITED STATES OF AMERICA

ROBERT G. DREHER

Acting Assistant Attorney General

By: 
JAMES J. DUBOIS, #13206
U.S. Department of Justice
Environmental and Natural Resources
Division

Attorneys for the United States of America

By: 
MICHAEL J. RYAN
Regional Director, Great Plains Region
U.S. Bureau of Reclamation

Green Mountain Reservoir
Administrative Protocol Agreement
February 22, 2013

Dated this 1st day of March, 2013.

PALISADE IRRIGATION DISTRICT

By: John Krizman
President

AND ITS ATTORNEYS

By: Nathan A. Keever
Nathan A. Keever
Dufford, Waldeck, Milburn & Krohn, LLP

Green Mountain Reservoir
Administrative Protocol Agreement
February 22, 2013

Dated this 27th day of February 2013.

ATTEST:

THE CITY AND COUNTY OF DENVER,
acting by and through its BOARD OF
WATER COMMISSIONERS

BY: [Signature]
SECRETARY

BY: [Signature]
PRESIDENT

APPROVED:

BY: [Signature]
DIRECTOR OF PLANNING



APPROVED AS TO FORM:

BY: [Signature]
LEGAL DIVISION

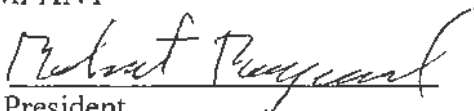
REGISTERED AND COUNTERSIGNED:

BY: [Signature]
AUDITOR
CITY AND COUNTY OF DENVER

Green Mountain Reservoir
Administrative Protocol Agreement
February 22, 2013

Dated this 14th day of March, 2013.

GRAND VALLEY IRRIGATION
COMPANY

By: 
President

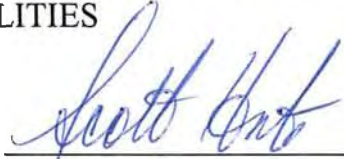
AND ITS ATTORNEYS

By: 
Frederick G. Aldrich
Aldrich Law Firm, LLC

Green Mountain Reservoir
Administrative Protocol Agreement
February 22, 2013

Dated this 26 day of March, 2013.

CITY OF COLORADO SPRINGS
ACTING BY AND THROUGH ITS
ENTERPRISE COLORADO SPRINGS
UTILITIES

By: 

Scott Hente
President of City Council

APPROVED AS TO FORM

OFFICE OF THE CITY ATTORNEY

By: 

Green Mountain Reservoir
Administrative Protocol Agreement
February 22, 2013

Dated this 28 day of April, 2013

MIDDLE PARK WATER
CONSERVANCY DISTRICT

By: Duane Shull
President

AND ITS ATTORNEYS

Stanley W. Cazier
Cazier, McGowan & Walker

Green Mountain Reservoir
Administrative Protocol Agreement
February 22, 2013

Dated this 15th day of April, 2013.

NORTHERN COLORADO WATER
CONSERVANCY DISTRICT

By: Mike Applegate
President and Chairman

AND ITS ATTORNEYS

By: Bennett Raley
Bennett Raley
Trout Raley Montano Witwer &
Freeman, PC

Green Mountain Reservoir
Administrative Protocol Agreement
February 22, 2013

Dated this 4th day of March, 2013.

ORCHARD MESA IRRIGATION
DISTRICT

By: Larry Sullen
President

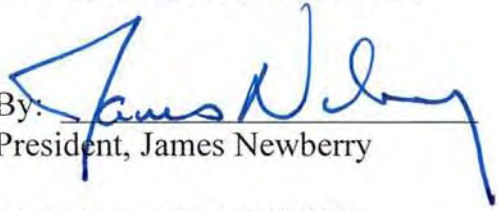
AND ITS ATTORNEYS

By: Mark A. Hermundstad
Mark A. Hermundstad
Williams, Turner & Holmes, P.C.

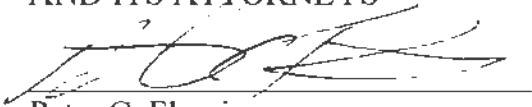
Green Mountain Reservoir
Administrative Protocol Agreement

Dated this 19th day of June, 2013.

COLORADO RIVER WATER
CONSERVATION DISTRICT

By: 
President, James Newberry

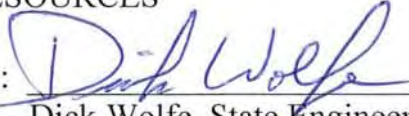
AND ITS ATTORNEYS


Peter C. Fleming
Colorado River Water Conservation
District

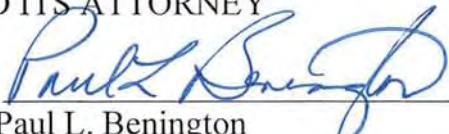
Green Mountain Reservoir
Administrative Protocol Agreement
February 22, 2013

Dated this 15th day of August, 2013.

COLORADO DIVISION OF WATER
RESOURCES

By: 
Dick Wolfe, State Engineer

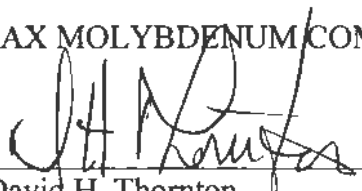
AND ITS ATTORNEY

By: 
Paul L. Benington
First Assistant Attorney General
Water Resources Unit
Natural Resources & Environment
Section
Colorado Department of Law

Green Mountain Reservoir
Administrative Protocol Agreement

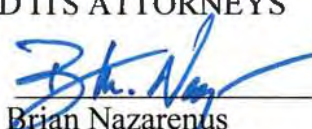
Dated this 17 day of September, 2013.

CLIMAX MOLYBDENUM COMPANY

By: 

David H. Thornton
President

AND ITS ATTORNEYS

By: 

Brian Nazareus
Ryley Carlock and Applewhite

Green Mountain Reservoir
Administrative Protocol Agreement
February 22, 2013

Dated this 13th day of March, 2013.

UTE WATER CONSERVANCY
DISTRICT, ACTING BY AND
THROUGH THE UTE WATER
ACTIVITY ENTERPRISE

By: Melvin Retting
President

AND ITS ATTORNEYS

By: Mark A. Hermundstad
Mark A. Hermundstad
Williams, Turner & Holmes, P.C.

Green Mountain Reservoir
Administrative Protocol Agreement
February 22, 2013

Dated this 7th day of March, 2013.

GRAND VALLEY WATER USERS
ASSOCIATION

By: D. Kim Albertson
President

AND ITS ATTORNEYS

By: Mark A. Hermundstad
Mark A. Hermundstad
Williams, Turner & Holmes, P.C.

ATTACHMENT S

Please reference the following
number on all billings or payments.

Contract # 10266A

AGREEMENT CONCERNING REDUCTION OF SHOSHONE CALL

This Agreement is between the City and County of Denver, acting by and through its Board of Water Commissioners (Board), and Public Service Company of Colorado d/b/a Xcel Energy (Company).

Recital

The Board's ability to store water in its reservoirs for beneficial use by its customers is adversely impacted, especially in dry years, by the Company's Shoshone Call. Following the drought year of 2002, a brief relaxation of the Shoshone Call during the spring of 2003 provided some benefit to storage reservoirs operated by both west slope and east slope entities, including the Board. Although a more comprehensive and long-term agreement on relaxation achieved through multi-party negotiations may be desirable, the Company and the Board agree to a relaxation of the Call under the provisions in this Agreement. The Company agrees to participate in developing a long-term program of relaxation, including a relaxation of the junior Shoshone Call, with the Board, other water users on the Colorado River and appropriate west slope entities.

Agreement

1. Agreement to Relax Call. When a water shortage occurs, as defined in Paragraph 2, the Company agrees to reduce the Shoshone Call to a one-turbine call of 704 cfs. If the Call is relaxed and the flow of the Colorado River at the Shoshone Power Plant, together with flows contributed by intervening tributaries, is not sufficient to meet the then-current demand of the major Grand Valley water rights, up to 1950 cfs (commonly referred to as the "Cameo Call"), then the level of the Shoshone Call will be adjusted to an amount greater than 704 cfs so as to avoid the initiation of a Cameo Call.

2. Water Shortage Defined. For purposes of this Agreement, a water shortage occurs when the following two conditions are met:

a. Using its regular methodology and based on the "normal" scenario, the Board predicts that reservoir storage in its system on July 1 will be at or below 80% full; and

b. The Most Probable forecast of streamflow prepared by the Natural Resources Conservation Service (NCRS) or jointly by NCRS and the Colorado Basin River Forecast Center indicates that the April – July flow of the Colorado River at the Kremmling gage will be less than or equal to 85% of average. If no forecast for the Kremmling gage is available, then the Dotsero gage will be used.

3. Timing of Relaxation of Call. If the two forecasts described in paragraph 2 occur in March, then the call will be relaxed beginning March 14 until May 20, inclusive, in accordance with this Agreement. If the two conditions described in paragraph 2 occur in April or May forecasts, then the Call will be relaxed in accordance with this Agreement until May 20, inclusive. The methodology that the Board uses to predict system storage shall be substantially the same as that described in the attached Exhibit A.

4. Power Interference. The Board agrees to pay power interference to compensate the Company for its incremental cost of replacement power and energy as a result of relaxing the Shoshone Call, regardless of which entity ultimately stores the water not called. The procedure for determining power interference is shown in Exhibit B.

5. Potential for Longer Call Relaxation. The Company agrees to consider a longer period of relaxation when water supplies are more severely impacted than described in paragraph 1, if such longer period is defined cooperatively between the Board, the Company and appropriate west slope entities.

6. Water for the Company's Facilities. The Board agrees to deliver water as described in this paragraph to the Company's Cherokee, Arapahoe, or Zuni Power Plants or a future Company power plant located within the Board's Combined Service Area. The Company will select the plant or plants to which the water will be delivered. Deliveries to the Arapahoe, Zuni or a future plant will be made to the South Platte River. Deliveries to the Cherokee plant will be made, at the Board's choice, to the South Platte River or through the Board's Recycled Water Plant. The Board may choose in its discretion the type of water delivered to these facilities, so long as the water is suitable for their use. The Board will not deliver water under this paragraph to the South Platte River downstream of the Cherokee plant's diversion structures. Any water delivered by the Board to the Company under this paragraph shall be used by the Company only at the plants listed in this paragraph 6 and only for purposes for which the Board's water rights have been decreed.

6.1 Amount of Water. The Board shall deliver under this paragraph 6 an amount of water equivalent to 15% of the "net water" it is able to store or divert as a direct result of the reduction of the Shoshone Call. "Net water" is defined as the total amount of water the Board is able to store or divert as a direct result of the reduction of the Shoshone Call at the following facilities, less any deductions described below:

- a. Water stored or diverted at the Board's Dillon Reservoir, less any water spilled from Dillon after filling and any water bypassed from Dillon for flood management purposes; and

- b. Water stored or diverted at the Board's Williams Fork Reservoir, less any water spilled from Williams Fork after filling and any water bypassed from Williams Fork for flood management purposes; and
- c. Water stored in the Board's account in Wolford Reservoir, less any water spilled from the Board's account after filling; and
- d. Water diverted through the Board's Moffat Tunnel, less any water spilled from the Fraser Collection System in excess of the Forest Service minimum bypass flow requirements; and
- e. Water stored or diverted at any western slope reservoir or storage account acquired or constructed by the Board after the date of this agreement, less any water spilled after filling and any water bypassed for flood management purposes.

6.2 Schedule for 15% Water Delivery. The Board shall make deliveries under this paragraph 6 between June 1 in the same calendar year as the Shoshone Call is reduced and March 31 of the following calendar year. The delivery schedule will be subject to approval by the Company.

6.3 Cost of Water Delivered. For each acre foot of water delivered to the Company under this paragraph 6, the Company shall reimburse the Board for the Board's power interference payments at the same rate per acre foot as the Board paid to the Company under paragraph 4.

7. Water for West Slope Entities. The Board agrees to make available to entities on the west slope, at no charge to the recipients, an amount of water equivalent to 10% of the "net water" it is able to store or divert as a direct result of the reduction of the Shoshone Call. "Net water" is defined in paragraph 6.1. The Board may choose in its discretion the method of delivery that is consistent with its water right decrees, so long as the delivery method is suitable for each recipient's desired use. The Board shall deliver the water in the same calendar year as the Shoshone Call is reduced. The Board agrees to cooperate with the Colorado River Water Conservation District to determine the particular west slope entities and the proportionate share of the water to be made available to each entity.

8. Additional East Slope Participants. The Board and the Company agree to make a good faith effort to secure commitments from the Municipal Subdistrict of the Northern Colorado Water Conservancy District, the City of Aurora and Colorado Springs Utilities to deliver to the Company, at no charge, 15% of their additional water diversions that result from a relaxation of the Shoshone Call, in accordance with paragraph 6, and to deliver 10% of the water diverted or stored to west slope entities in accordance with paragraph 7.

9. Priority System. Water made available by the relaxation of the Shoshone Call will be allocated in accordance with the priority system.

10. No Warranties. The Company is not warranting or representing that the diversion and use by the Board of additional water as a result of the relaxation of the Shoshone Call is administrable or lawful. To the extent that the State Engineer or a court with jurisdiction determines that the diversion and use by the Board of additional water as a result of the relaxation of the Shoshone Call is not administrable or lawful, the Company can continue to place the Shoshone Call notwithstanding this Agreement.

11. Increased Call for Company Operations. If the Company in its sole discretion determines that additional river flow is required for safe operation of the Shoshone Hydroelectric Station or the Company's electrical system, then the Company may increase the Call, notwithstanding this Agreement.

12. Operational Meeting. The Company agrees to meet with the Board each October to discuss operation of the Shoshone Call and any planned outages of the Shoshone Plant for repair or maintenance during the following twelve months so that the parties may better coordinate their activities.

13. Sale of Shoshone Water Rights. In the event the Company should determine that it is in its best interest to sell the Shoshone water rights, it agrees to do so only on an open bidding basis in which the Board shall have an equal opportunity to purchase the water rights as all others. If the Company sells the Shoshone water rights to an entity other than the Board, the new owner shall have the right to terminate this Agreement two years after closing of the sale.

14. Term. This Agreement shall be effective as of January 1, 2007 and will terminate on February 28, 2032.

15. Prior Agreement. The previous Letter Agreement between the Company and the Board dated April 14, 1986, is hereby terminated in its entirety.

IN WITNESS WHEREOF, the Board and the Company have executed this Agreement.

ATTEST:

PUBLIC SERVICE COMPANY OF
COLORADO d/b/a XCEL ENERGY

Asst. Carse J. Peterson
Secretary

By: P. C. Vithala
President and CEO
Public Service Company of Colorado

Reviewed
Legal

03/13/2006

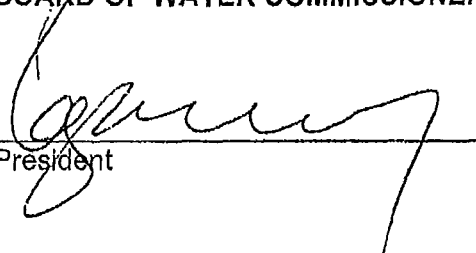
3/13/06 P. C. Vithala

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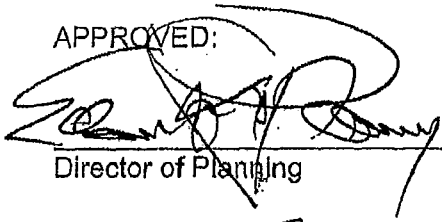
CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS

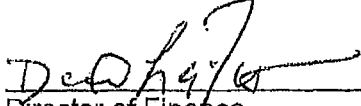
ATTEST:


Secretary


President

APPROVED:


Director of Planning


Director of Finance

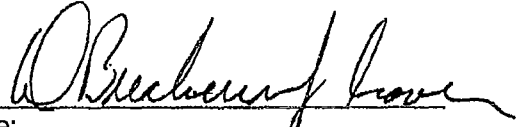
APPROVED AS TO FORM:


Legal Division

REGISTERED AND COUNTERSIGNED
Dennis J. Gallagher, Auditor

By:

Title:


Deputy Auditor

03/13/2006

5

Exhibit A

DESCRIPTION OF PROCEDURES USED BY THE BOARD FOR RESERVOIR PROJECTIONS

Denver Water projects future reservoir levels monthly in the springtime and less frequently throughout the rest of the year. Active storage levels (excluding the dead storage pools) for the 10 largest reservoirs in Denver's system (Antero, Eleven Mile, Cheesman, Marston, Chatfield, Gross, Ralston, Dillon, Williams Fork, and Wolford Mountain) are forecasted. Calculations of gross and net aggregate reservoir contents are made. The calculation of net reservoir contents excludes any water in Denver's system owed to others (primarily Green Mountain Reservoir). The net active storage of the 10 reservoirs will be used in the forecast for the Shoshone call reduction.

The reservoir projections are based on natural streamflow forecasts produced primarily by the Natural Resources Conservation Service (NRCS). However, streamflow forecasts produced by other organizations including the Colorado Basin River Forecast Center, the Bureau of Reclamation, the Northern Colorado Water Conservancy District and Denver Water are also used.

The reservoir projections utilize correlations between natural streamflow and divertible streamflow to estimate how much of the natural streamflow can be diverted under Denver's water rights. Other factors incorporated in the reservoir projections include projections of treated water use, raw water deliveries, evaporation (based on rates approved by the State Engineer's Office), minimum bypass and release requirements, carriage losses assessed by the State Engineer's Office, existing capacities of diversion and conveyance facilities, system outages and river calls. The assumed treated water use considers any water use restrictions approved by the Denver Water Board at the time of the forecast.

Usually, three levels of reservoir projections are produced. These projections are based on three scenarios after the forecast date: "dry", "normal" and "wet" conditions. The "dry" scenario is based on the "reasonable minimum" streamflow forecasts, which have a 90% chance of being exceeded. The "normal" scenario is based on the "most probable" streamflow forecasts, which have a 50% chance of being exceeded. The "wet" scenario is based on the "reasonable maximum" streamflow forecasts, which have a 10% chance of being exceeded. The "normal" scenario will be used for the Shoshone call reduction.

Exhibit B

COMPENSATION FOR POWER INTERFERENCE

The Board agrees to pay power interference to compensate the Company for its incremental cost of replacement power and energy as a result of relaxing the Shoshone Call. The procedure for determining power interference is shown below.

Depletions to Shoshone Power Plant

The Board will compensate the Company for each acre-foot of net turbine flow depletion caused to the Shoshone Power Plant through the relaxation of the Shoshone Call. Net depletions are defined as gross depletions caused by the Board and all other water users upstream of the Shoshone power plant, less any water subsequently released from Green Mountain and Wolford Reservoirs utilized to generate power at the Shoshone plant. Some of the water stored in Green Mountain and Wolford as a result of relaxation of the Call will later be released, run through the Shoshone Plant for power generation, and delivered for use below the plant; such amounts of water do not constitute a net depletion for purposes of calculating power interference. Similarly, amounts of water spilled from Dillon Reservoir, Williams Fork Reservoir, the Board's account in Wolford Reservoir, or a new west slope reservoir or storage account described in Paragraph 6.1(e), and run through the Shoshone Plant for power generation, do not constitute a net depletion for purposes of calculating power interference. Depletions will be calculated at the Shoshone plant and will be adjusted for stream carriage losses assessed by the State Engineer in water rights administration.

Reimbursement to Xcel

The Board will reimburse the Company for power interference at the rate of at least \$5.00 per acre-foot of the net depletion described above. The \$5.00 per acre-foot minimum will be adjusted on a monthly basis (but not below \$5.00 per acre-foot) by the change in the Price of Spot Gas Delivered to Pipelines for Colorado Interstate Gas, Rocky Mountain (Index) as published in "Platts Inside FERC Gas Market Report," compared to a baseline representing the average Index for the first three months of 2006.

Accounting and Payment.

After the Call relaxation has ended, the Board will prepare an accounting of the power interference and provide it to the Company for review. Once final accounting has been determined, the Board will make payment to the Company within 60 days. Upon mutual agreement and the development of mutually agreeable terms, the Board may substitute a delivery of energy to the Company for the payment of power interference.

ATTACHMENT T

MIDDLE PARK WATER CONSERVANCY DISTRICT WATER RIGHTS - CONDITIONAL

Structure	Adjudication	Appropriation Date	Use	Amount	Case No.
Haypark Canal Headgate No. 1	9/5/1964	8/5/1959	Irrigation, Municipal, Industrial, Recreation, Fisher, Domestic, Livestock	145 cfs (conditional) (Alternate point for 45 cfs (absolute) at East Fork Ditch Headgate)(Alternate) point for 30 cfs (absolute) at East For Ditch Headgate)	946 81CW269 83CW83
Haypark Canal Headgate No. 2	9/5/1964	8/5/1959	Irrigation, Municipal, Industrial, Recreation, Fisher, Domestic, Livestock	145 cfs (conditional) Alternate point for Headgate No. 1	946
Haypark Reservoir	9/5/1964	8/5/1959	Irrigation, Municipal, Industrial, Recreation, Fisher, Domestic, Livestock	20,115.9 ac ft (conditional)	946
Kirtz Ditch No. 2 Enlargement	9/5/1964	8/5/1959	Irrigation, Municipal, Industrial, Recreation, Fisher, Domestic, Livestock	82.55 cfs (conditional)	946
Kremmling Canal	9/5/1964	8/5/1959	Irrigation, Municipal, Industrial, Recreation, Fisher, Domestic, Livestock	35 cfs (conditional)	946

ATTACHMENT T**MIDDLE PARK WATER CONSERVANCY DISTRICT
WATER RIGHTS - CONDITIONAL**

Page 2

Structure	Adjudication	Appropriation Date	Use	Amount	Case No.
Fraser Valley Downstream Reservoir	08/20/1990	12/12/1986	Hydroelectric Power Production Replacement, Recreation, Domestic, Irrigation, Stock Watering, Industrial and Municipal	170 Acre Feet	86CW363
Fraser Valley Upstream Reservoir	08/20/1990	12/12/1986	Hydroelectric Power Production Replacement, Recreation, Domestic, Irrigation, Stock Watering, Industrial and Municipal	170 Acre Feet	86CW363
Fraser Valley Downstream Ditch No. 1	08/20/1990	12/12/1986	Hydroelectric Power Production Replacement, Recreation, Domestic, Irrigation, Stock Watering, Industrial and Municipal	170 cfs	86CW364
Fraser Valley Upstream Ditch No. 1	08/20/1990	12/12/1986	Hydroelectric Power Production Replacement, Recreation, Domestic, Irrigation, Stock Watering, Industrial and Municipal	170 cfs	86CW364

ATTACHMENT T

Grand County Conditional Water Rights

Water Right	Source	Amount	Application Date	Adjudication Date	Case No.
Landfill Well No.1 and Exchange	groundwater tributary to Colorado River	15 gpm	1/23/2006	10/5/2008	06CW217
Hot Sulphur Springs Whitewater Park	Colorado River	Not to exceed 900 cfs	12/21/2010	pending	10CW298
Gore Canyon Whitewater Park	Colorado River	Not to exceed 2,500 cfs	12/21/2010	Pending	10CW298
Gross Reservoir Storage Substitution	Fraser/Williams Fork Rivers and tributaries	1,375 af	09/23/2010	Pending	11CW152
Williams Fork Reservoir Storage	Williams Fork River	2,500 af	09/23/2010	Pending	11CW152
Wolford and Green Mountain Reservoirs Exchange and Substitution	Muddy Creek and Blue River	3,500 af	11/22/2011	Pending	11CW152

ATTACHMENT T

Summit County Conditional Water Rights

Name	Amount	Source	Appropriation Date	Case No.
Swan River Reservoir	11,560 AF, conditional	Swan River	July 22, 1982	06CW222 (82CW386, 93CW287, 00CW74)
Lower Mohawk Reservoir	1,530 AF, conditional	Spruce Creek		
Old Dillon Reservoir, First Enlargement	150 AF, at a rate of 10 c.f.s., conditional	Salt Lick Gulch	August 24, 1982	10CW102 (93CW288, 03CW36)
Windy Gap, Old Dillon Reservoir Exchange	10 c.f.s., conditional, with a total volumetric limit on exchange of 53.4 AF per year	Blue River and Salt Lick Gulch Replacement water from Granby Reservoir	December 23, 1993	
Summit County Augmentation Plan Exchanges	6 c.f.s. (2700 g.p.m.), conditional, limited to a total of 208.4 consumptive acre-feet per year	Various	September 18, 1985	10CW149 (95CW122)
Blumenhein Well Nos. 1 and 2	0.50 c.f.s. each, conditional	Ground water tributary to Blue River	June 26, 1972	07CW211 (pending) (W-1204, W-1204-76, 80CW268, 84CW211, 88CW243, 95CW007, 01CW153)
Old Dillon Reservoir, Second Enlargement	60 acre-feet, conditional, with a 10 c.f.s. rate of diversion for filling	Salt Lick Gulch	December 11, 2007	07CW223 (pending)
Summit County Old Dillon Reservoir Exchanges	8 c.f.s. conditional, with a total volumetric limit on the exchange of 388 acre-feet per year	Salt Lick Gulch Replacement water from Clinton Gulch, Dillon, and Upper Blue Reservoirs	December 11, 2007	07CW226 (pending)

Summit County
Conditional Water Rights
Page 2

Name	Amount	Source	Appropriation Date	Case No.
Old Dillon Reservoir, Third Enlargement	30 acre-feet, conditional, with a 10 c.f.s. rate of diversion for filling	Salt Lick Gulch	December 16, 2008	08CW201 (pending)
Old Dillon Reservoir, Refill	45 acre-feet, conditional , to replace gross evaporative loss, with a 10 c.f.s. rate of diversion for filling			
Summit County Wolford Mountain Reservoir to Old Dillon Reservoir Exchange	8 c.f.s., conditional, with a total volumetric limit on the exchange of 300 acre-feet per year	Blue River and Salt Lick Gulch Replacement water from Wolford Mountain Reservoir	December 16, 2008	08CW202 (pending)
Peru Creek Reservoir	2,050 acre-feet, conditional, together with a right to successive refills in the cumulative amount of 2,050 acre-feet, conditional	Peru Creek and its tributaries, tributary to the Blue River	February 23, 2010	10CW43 (pending)
Vidler – Peru Creek Reservoir Exchange	14.6 c.f.s., conditional	Peru Creek and its tributaries, tributary to the Blue River		
Vidler Tunnel Unit, diversion points G-ZZ	14.6 c.f.s., conditional	Various named and unnamed tributaries of Peru Creek, tributary to the Blue River	July 28, 1959	10CW44 (pending) (01CW177, 95CW06, 87CW246, 83CW78, W-3865, CA 2371)

ATTACHMENT T

Eagle Park Reservoir Company Conditional Water Rights

Water Right	Source	Amount Conditional	Case No.
Eagle Park Reservoir	East Fork of the Eagle River, including run-off, surface flow, and seepage from the area above the reservoir and tributary thereto; and water tributary to Tenmile Creek, a tributary of the Blue River, including water from Humbug Creek, Mayflower Creek, Searle Creek, and Kokomo Creek	2,152 af	92CW340
Eagle Park Reservoir First Enlargement	East Fork of the Eagle River, including run-off, surface flow, and seepage from the area above the reservoir and tributary thereto; and water tributary to Tenmile Creek, a tributary of the Blue River, including water from Humbug Creek, Mayflower Creek, Searle Creek, and Kokomo Creek	22,300 af	93CW301
Pando Feeder Canal	Eagle River and the East Fork of the Eagle River, including runoff, surface flow and seepage from the area above the reservoir and tributary thereto, and water from the Ten Mile Creek drainage, a tributary of the Blue River diverted through the Chalk Mountain Interceptor	80 cfs	Civil Action No. 1193
East Fork Pumping Plant Exchange	Various upstream and downstream terminus of exchange reaches	5,010.7 af	03CW211

ATTACHMENT T
Eagle River Water & Sanitation District
Conditional Water Rights

Water Right	Source	Amount Conditional	Case No.
Red Sandstone Reservoir	Red Sandstone Creek, trib. to Gore Creek	160 af	W-3667
Vail Valley Middle Creek Diversion System	Middle Creek Trib. to Gore Creek	60 cfs	81CW353
Vail Valley Reservoir	Middle Creek Trib. to Gore Creek	5,500 af	81CW353
Black Lake	Black Gore Creek trib. to Gore Creek	125 af	CA4003
Black Lake No. 2	Black Gore Creek trib. to Gore Creek	15.6 af	CA4003
Black Lake No. 2, 1 st Enl.	Black Gore Creek trib. to Gore Creek	51 af	CA4003
Gore Creek Intake for BCTP, 1 st Enlargement	Gore Creek	1.51 cfs	W-3730
Gore Creek Intake for BCTP	Gore Creek	0.81 cfs	W-2167
Main Gore Municipal Ditch & Pipeline	Gore Creek	6.9 cfs	CA1529
Plow Spring	Mill Creek trib. to Gore Creek	0.165 cfs	W-2167
Number 245 Pumphouse & Pond	Mill Creek trib. to Gore Creek	1.78 cfs	W-2167
Log Chute Pump Station	Mill Creek trib. to Gore Creek	0.09 cfs	W-2167
Hoyt Pipeline	Black Gore Creek trib. to Gore Creek	5.5 cfs	CA1529
KAC Reservoir	Gore Creek	72.2 af	W3603
ECDC Reservoir	Black Gore Creek trib. to Gore Creek	112 af	CA1529
Hoyt Reservoir	Black Gore Creek trib. to Gore Creek	240.25 af	CA1529
Wolcott Municipal Diversion	Eagle River	7 cfs	08CW77
The Town of Vail Whitewater Park	Gore Creek	Mar: 54 cfs, Apr: 227 cfs, May - Jul: 400 cfs, Aug: 218 cfs, Sept: 67 cfs, Oct: 48 cfs	00CW259

ATTACHMENT T**Upper Eagle Regional Water Authority (UERWA)
Conditional Water Rights**

Name of Structure	Source	Amount Conditional	Case No.
UERWA Pipeline (aka UERWA Point A)	Lake Creek	11.6 cfs	93CW291
Edwards Drinking Water Facility Diversion	Eagle River	0.40 cfs	02CW403
Arrowhead Dam	McCoy Creek	30 af	79CW360
HA Nottingham & Sons Water Treatment & Storage Project	Beaver Creek	3.0 cfs	W-327
Avon Metro Mun. Water System	Eagle River & Buck Creek	1.0 cfs	W-3666
Avon Metro Mun. Water System 1 st Enl.	Eagle River	5.0 cfs	84CW225
June Creek Ranch Well No. 1	Groundwater trib. to June Creek	0.1114 cfs	W-3999
June Creek Ranch Well No. 3	Groundwater trib. to June Creek	0.2227 cfs	W-3999
June Creek Ranch Well No. 4	Groundwater trib. to June Creek	0.2227 cfs	W-3999
June Creek Ranch Well No. 5	Groundwater trib. to June Creek	0.2227 cfs	W-3999
June Creek Ranch Well No. 6	Groundwater trib. to June Creek	0.379 cfs	W-3999
Cordillera Reservoir No. 1	Unnamed trib. of Squaw Creek	10 af	87CW309
Cordillera Reservoir No. 2	Unnamed trib. of Squaw Creek	10 af	87CW309
Cordillera Reservoir No. 3	Unnamed trib. of Squaw Creek	10 af	87CW309
Cordillera Reservoir No. 4	Unnamed trib. of Squaw Creek	10 af	87CW309
Cordillera Reservoir No. 5	Unnamed trib. of Squaw Creek	10 af	87CW309
Cordillera Reservoir No. 6	Unnamed trib. of Squaw Creek	10 af	87CW309
SCR Diversion Pt. No. 1	West Lake Creek	5.0 cfs	89CW218
SCR Diversion Pt. No. 7	Squaw Creek	5.0 cfs	91CW76
Eagle River Diversion Pt. No. 2	Eagle River	5.0 cfs	91CW76
Eagle River Diversion Pt. No. 3	Eagle River	5.0 cfs	91CW76
Squaw Creek Recreation Reservoir No. 6	Unnamed trib. of Squaw Creek	10 af	00CW76

Upper Eagle Regional Water Authority (UERWA)
Conditional Water Rights
Page 2

Squaw Creek Recreation Reservoir No. 7	Unnamed trib. of Squaw Creek	10 af	00CW76
Squaw Creek Recreation Reservoir No. 8	Unnamed trib. of Squaw Creek	10 af	00CW76
Stag Gulch Wellfield	Groundwater trib. to Eagle River	450 gpm	91CW77
Eagle-Vail Mun Water System	Stone Creek	2.332 cfs	W-3289
Edwards Water Dist Well No. 2	Groundwater trib. to Eagle River	0.13 cfs	81CW161
Edwards Water Dist Well No. 3	Groundwater trib. to Eagle River	0.44 cfs	81CW161
Edwards Village Mun Pipeline	Groundwater trib. to Lake Creek	0.686 cfs	80CW550
Williams Reservoir	Eagle River	8.0 af	W-3135
Edwards Village Pond No. 1	Lake Creek	2.4 af	80CW550
Edwards Village Pond No. 2	Lake Creek	1.7 af	80CW550
Edwards Village Pond No. 3	Lake Creek	0.7 af	80CW550
Edwards Village Pond No. 4	Lake Creek	0.7 af	80CW550
Edwards Village Pond No. 5	Lake Creek	0.5 af	80CW550
Homestead Reservoir	E. Fork Lake Creek trib. to Lake Creek	20.0 af	81CW266
Williams Ditch	Eagle River	0.5 cfs	W-3134
Creamery Ditch Homestead Res. Enl.	E. Fork of Lake Creek trib. to Lake Creek	5.0 af	81CW265
Metcalf Ditch Headgate	Eagle River	3.343 cfs	97CW306
Raw Water Booster Pump	Eagle River	3.333 cfs	97CW306
The Village (at Avon) Lake No. 1	Surface drainage trib. to Eagle River and Eagle River surface diversions	27 af	97CW306
The Village (at Avon) Lake No. 2	Surface drainage trib. to Eagle River and Eagle River surface diversions	27 af	97CW306

ATTACHMENT T
Ute Water Conservancy District
Conditional Water Rights

Name	Amount	Source	Appropriation Date	Case No. (Original Decree)
Atwell East Ditch, Supplemental Point of Diversion	2.82 c.f.s., abs. for irrigation, cond. for all other uses	Seeps and springs in an unnamed drain, tributary to Coon Creek, Plateau Creek, Colorado River.	September 21, 1978	W-3966 (Div 5)
Atwell Waste & Seep Ditch	0.30 c.f.s. absolute, 0.06 c.f.s., conditional	Spring Draw, Mesa Creek, Plateau Creek, Colorado River	May 1, 1908	CA 2635 (Mesa County District Ct)
Big Park Reservoir	5,650 AF, conditional	Leon Creek and Park Creek, Plateau Creek, Colorado River	September 17, 1970	W-253 (Div 5)
Bridges Switch Pumping Plant and Pipeline	30 c.f.s. conditional	Colorado River	June 2, 1981	81CW222 (Div 5)
Buzzard Creek Dam & Reservoir (Ute Water owns an undivided 22.5% interest)	20,000 AF conditional	Buzzard Creek Plateau Creek, Colorado River	April 17, 1964	CA 13368 (Mesa County District Ct)
Coon Creek Pipeline	4.1 c.f.s. absolute, 0.4 c.f.s. conditional	Coon Creek and/or Plateau Creek, Colorado River.	September 1, 1978	W-3921 (Div 5)
Coon Creek Pipeline Enlargement	1.5 c.f.s. conditional	Coon Creek Plateau Creek, Colorado River.	September 1, 1978	83CW223 (Div 5)
Jerry Creek Reservoir No. 2 (Jerry Creek Priority)	7,791 AF conditional	Jerry Creek Plateau Creek, Colorado River.	October 7, 1977	W-3884 (Div 5)
Kirkendall reservoir (aka Hunter Reservoir)	110 AF abs., 582.49 AF conditional	Leon Creek Plateau Creek, Colorado River	July 24, 1952 for conditional right.	CA 8303 (Mesa County District Ct)
Kirkendall Reservoir, Ute Water Enlargement	1,340 AF conditional	Leon Creek and springs and natural runoff, tributary to Plateau Creek, Colorado River.	December 12, 2001	06CW246 (Div 5)
Monument Reservoir No. 1, Ute Water Enlargement	4,682 AF, conditional	Monument Creek, springs and natural runoff, trib. to Leon Creek, Plateau Creek, Colorado River	July 1, 2005	09CW30 (Div 5) (Decree Pending)
Owens Creek Reservoir (Ute Water owns an undivided 22.5% interest)	31,786.10 AF, conditional	Owens Creek and Buzzard Creek, Plateau Creek, Colorado River	July 21, 1959	CA 13368 (Mesa County District Ct)
Ute Pumping Station & Pipeline	50 c.f.s. conditional	Colorado River	October 22, 1962	CA 13368 (Mesa County District Ct)
Willow Creek Reservoir	19,448 AF, conditional	Willow Creek and springs and natural runoff, tributary to Buzzard Creek, Plateau Creek, Colorado River.	July 1, 2007	09CW29 (Div 5) (Decree Pending)

ATTACHMENT T

City of Glenwood Springs Conditional Water Rights

Structure	Case No.	Amount	Appro. Date	Adjud. Date	Uses
Grizzly Creek Reservoir	CA 1416	3879.8 AF, conditional	9/13/1967	7/9/1960	Municipal
Four Mile Pipeline	CA 5884	2.91 c.f.s., conditional	11/5/1971	11/2/1967	Domestic, irrigation, municipal and other beneficial purposes
Atkinson Canal Diversion	94CW358	5.0 c.f.s., conditional	5/31/1987	1/7/1997	All municipal purposes, including domestic, irrigation, commercial, industrial, sanitary, recreation, fire protection and storage
Seventh Street Diversion Structure	94CW358	15.0 c.f.s., conditional (8.66 c.f.s.absolute, 6.34 c.f.s. conditional)	5/31/1987	1/7/1997	All municipal purposes, including domestic, irrigation, commercial, industrial, sanitary, recreation, fire protection and storage
South Glenwood Diversion Structure	94CW358	15.0 c.f.s., conditional	5/31/1987	1/7/1997	All municipal purposes, including domestic, irrigation, commercial, industrial, sanitary, recreation, fire protection and storage
South Glenwood Irrigation Structure	00CW213	4.0 c.f.s., conditional	8/19/1999	6/4/2001	All municipal purposes on approx 100 acres within the service area of GWS
Hughes Garden Ditch Exchange	00CW213	3.0 c.f.s., conditional	8/19/1999	6/4/2001	Irrigation
West Glenwood Spring No. 1	87CW210	1.0 c.f.s., conditional	9/9/1987	12/31/1987	Irrigation, municipal, industrial, commercial, fire protection
West Glenwood Spring No. 2	87CW245	1.0 c.f.s., conditional	10/30/1987	2/18/1988	Municipal, industrial, commercial, irrigation, fire protection

ATTACHMENT T

City of Rifle Conditional Water Rights

Structure	Case No.	Amount	Appropriation Date	Adjudication Date	Uses
Rifle Pipeline	CA 4004	15 c.f.s. (7.5 c.f.s. absolute, 7.5 c.f.s., conditional)	2/5/1949	9/5/1952	Municipal
Colorado Intake Enlargement	81CW437	23.1 conditional	12/16/1981	6/14/1982	Municipal
Rifle Pond Well	04CW193	0.07 c.f.s. (31.5 gpm), conditional	12/18/2002	1/16/2008	Evaporation, recreation & piscatorial

Attachment T

Denver Water's Conditional Water Rights

Division/District and Name of Structure or Water Right Name	Source	Appropriation Date	Decree Date	Amount	Case No.
Water Division No. 1					
Lawn Irrigation Return Flow Project	Reusable return flow	N/A	Pending	200 cfs	2004CW121
District No. 2 Storage Rights					
Denver Water/South Adams County Reservoir Water Supply Project					
North Reservoir Complex - Fill and refill	South Platte River	10/15/1996	Pending	17,747 AF	2001CW286
South Reservoir Complex - Fill and refill	South Platte River	10/15/1996	Pending	2,400 AF	2001CW286
South Reservoir Complex - Enlargement	South Platte River	10/15/1996	Pending	1,129 AF	2009CW264
Lupton Lakes Storage Complex - Fill and refill	South Platte River	7/12/2006	Pending	11,400 AF	2007CW322
District No. 2 Direct Flow Rights					
Gravel Pit Exchange	South Platte River	10/15/1996	Pending	80 cfs	2009CW123
Recycling Plant Intake	South Platte River	10/15/1996	Pending	70.0 cfs	2001CW287
Recycling Plant Intake exch. and subs.	South Platte River	10/15/1996	Pending	70.0 cfs	2001CW287
5K Direct Flow Right	South Platte River	10/31/1999	Pending	150 cfs	2001CW285
District No. 6 Storage Rights					
Gross Reservoir					
Storage Right	South Boulder Creek	05/10/1945	09/28/1953	113,078 AF ^A	C.A.12111
Refill Right	South Boulder Creek	05/10/1945	09/28/1953	113,078 AF ^A	C.A.12111
Ralston Creek Reservoir					
Priority 33C Storage Right	South Boulder Creek	10/31/1932	09/28/1953	3,210 AF	C.A.12111
District No. 6 Direct Flow Rights					
South Boulder Diversion Conduit	South Boulder Creek	01/01/1930	09/28/1953	789 cfs	C.A.12111
Denver Power Conduit No. 1	South Boulder Creek	05/10/1945	09/28/1953	350 cfs ^A	C.A.12111
District No. 7 Storage Rights					
Ralston Creek Reservoir	Ralston Creek	01/01/1930	10/18/1978	4,055 AF	W-7561
Long Lake No. 1 (Upper)	Ralston Creek	06/06/1909	05/13/1936	575.8 AF	C.A. 60052
Long Lake No. 2 (Lower)	Ralston Creek	06/06/1909	05/13/1936	716.3 AF	C.A. 60052
District No. 7 Direct Flow Rights					
Ralston Creek Intake	Ralston Creek	01/01/1930	10/18/1978	148 cfs	W-7561
District No. 8 Storage Rights					
Chatfield Reservoir					
Storage	South Platte River	12/28/1977	08/29/1994	55,000 AF ^A	W-8783-77
Storage	South Platte River	12/28/1977	08/29/1994	156,200 AF	W-8783-77
Exchange	South Platte River	12/28/1977	08/29/1994	55,000 AF ^A	W-8783-77
Exchange	South Platte River	12/28/1977	08/29/1994	156,200 AF	W-8783-77
Two Forks Reservoir	South Platte River	01/18/1905	03/24/1953	145,133 AF	C.A. 3286
Two Forks Reservoir	South Platte River	05/01/1926	03/24/1953	191,235 AF	C.A. 3286
Two Forks Reservoir Exchange	South Platte River	04/01/1935	03/24/1953	336,369 AF	C.A. 3286
Two Forks Reservoir Refill Right	South Platte River	12/31/1929	03/24/1953	336,369 AF	C.A. 3286
Exchange w/in Denver Water System	South Platte River	07/04/1921	05/18/1972	3,000 cfs ^A	C.A. 3635
Foothills Tunnel and Conduit No. 26	South Platte River	03/21/1962	12/19/1983	774 cfs ^A	80CW408
Waterton Canyon Management	South Platte River	8/16/1978	Pending	7,864 AF	2005CW316

Attachment T

Denver Water's Conditional Water Rights

Division/District and Name of Structure or Water Right Name	Source	Appropriation Date	Decree Date	Amount	Case No.
District No. 23 Storage Rights					
Eleven Mile Canon Reservoir					
2nd Enlargement	South Fork South Platte River	12/09/1957	04/27/1972	17,810 AF	C.A. 3701
Water Division No. 5					
District No. 36 Storage Rights					
Refill Right	Blue R, Snake R, Ten Mile Cr	01/01/1985	08/23/1999	175,000 AF ^A	87CW376
District No. 36 Direct Flow Rights					
Blue River Diversion Project	Blue R, Snake R, Ten Mile Cr	06/24/1946	03/10/1952	788 cfs ^A	Cons. 2782, 5016, 5017
Straight Creek Unit Roberts Tunnel	Straight Creek	1/21/1957	1/21/1987	115 cfs	C.A. 2371
District No. 37 Storage Rights					
Eagle-Colorado Project					
Eagle River Unit	Eagle River	12/31/2007	9/17/2010	500 cfs	2007CW214
Colorado River Unit	Colorado River	12/31/2007	9/17/2010	600 cfs	2007CW214
Eagle - Colorado Reservoir	Eagle and Colorado Rivers and Alkali Cr.	12/31/2007	9/17/2010	350,000 AF	C.A. 1529 & 1548
District No. 51 Storage Rights					
Meadow Creek Reservoir - Moffat Tunnel Collection System	Meadow Creek	08/30/1963	05/30/1972	5,100 AF	C.A.1430
Fraser River Diversion Project					
Vasquez Reservoir	Fraser River & Tributaries	07/04/1921	11/05/1937	275 AF	C.A. 657
Vasquez Reservoir Enlargement	Fraser River & Tributaries	07/07/1936	11/05/1937	6,341 AF	C.A. 657
St. Louis Reservoir	Fraser River & Tributaries	07/04/1921	11/05/1937	1,150 AF	C.A. 657
District No. 51 Direct Flow Rights					
Fraser River Diversion Project	Fraser River & Tributaries	07/04/1921	11/05/1937	1280 cfs ^A	C.A.657
Moffat Tunnel Collection System	Fraser River & Tributaries	08/30/1963	05/30/1972	100 cfs	C.A.1430
Williams Fork Power Conduit	Williams Fork River & Tribs	10/09/1956	05/30/1972	400 cfs ^A	C.A.1430
Williams Fork Diversion Project	Williams Fork River & Tribs	07/04/1921	11/05/1937	355 cfs	C.A.657
Darling Creek Enlargement	Darling Creek & Williams Fork River Tribs	08/26/1953	05/30/1972	90 cfs	C.A. 1430
Wolford Mountain Reservoir					
Substitution	Muddy Creek		03/05/1996	200 cfs	91CW252
Emergency Exchange	Muddy Creek	03/03/1987	03/05/1996	200 cfs	91CW252
District No. 70 Storage Rights					
Sulphur Gulch Reservoir	Colorado River	12/10/1999	10/8/2007	16,000 AF	99CW279

NOTE: The information contained in this table is for descriptive purposes only, and is not intended to represent an interpretation, admission or modification of any of the water right decrees.

A. Water right is partially conditional and partially absolute.

ATTACHMENT T

**COLORADO RIVER WATER CONSERVATION DISTRICT
(Colorado River District or CRWCD)
CONDITIONAL WATER RIGHTS
DECEMBER 2011**

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NAME OF STRUCTURE	DATE OF ORIGINAL DECREE	COURT/CASE NO.	SOURCE	APPROPRIATION DATE	CONDITIONAL AMOUNT
BASALT PROJECT (Water Division 5):					
Basalt Conduit	06/20/1958	Garfield, 4613	Fryingpan River	07/29/1957	446.7 c.f.s.
Basalt Power Plant & Penstock	06/20/1958	Garfield, 4613	Fryingpan River	07/29/1957	400 c.f.s.
Landis Canal	06/20/1958	Garfield, 4613	Fryingpan River	07/29/1957	78 c.f.s.
Ruedi Reservoir Second Filling	04/08/1985	W.D. 5, 81CW34	Fryingpan River	01/22/1981	101,280 a.f.
Spring Valley Siphon	06/20/1958	Garfield, 4613	Landis Canal	07/29/1957	¹
Stockmen's Ditch Ext. & Enlargement Headgates 1 & 2	06/20/1958	Garfield, 4613	Sopris Creek; Basalt Conduit; Landis Canal	07/29/1957	30 c.f.s
BATTLEMENT MESA PROJECT (Water Division 5):					
Brush Creek Canal	04/13/1972	Mesa, 13368	Buzzard Creek, tributary to Plateau Creek, tributary to Colorado River	01/13/1964	35 c.f.s.
Buzzard Creek Dam & Reservoir	04/13/1972	Mesa, 13368	Buzzard Creek, tributary to Plateau Creek, tributary to Colorado River	04/17/1964	20,000 a.f.
Colorado Canal	04/13/1972	Mesa, 13368	Buzzard Creek, tributary to Plateau Creek, tributary to Colorado River	07/21/1959	123 c.f.s.
Harrison Canal	04/13/1972	Mesa, 13368	Buzzard Creek, tributary to Plateau Creek, tributary to Colorado River	12/12/1963	65 c.f.s.
Owens Creek Reservoir	04/13/1972	Mesa, 13368	Owens & Buzzard Creek, tributary to Plateau Creek, tributary to Colorado River	07/21/1959	31,786.1 a.f.
BLUESTONE PROJECT (Water Division 5):					
Kobe Canal	11/10/1970	Garfield, C.A. 6404	Colorado River	06/30/1936	50 c.f.s.
Kobe Canal Alternate Point	02/28/1985	W.D. 5, 84CW348	Colorado River	06/30/1936	50 c.f.s.
Mount Logan Canal	11/10/1970	Garfield, C.A. 6404	Mt. Logan Dam & Reservoir	06/30/1936	40 c.f.s.
Mount Logan Dam & Reservoir	11/10/1970	Garfield, C.A. 6404	Roan Creek	06/30/1936	10,000 a.f. ²
Roan Creek Feeder Canal	11/10/1970	Garfield, C.A. 6404	Roan Creek	06/30/1936	75 c.f.s.
EAGLE VALLEY PROJECT (Water Division 5):					
Hat Creek Feeder Canal	07/09/1979	Eagle, 1529	Hat Creek, tributary to East Brush Creek	06/10/1966	27 c.f.s
Nolan Feeder Canal	07/09/1979	Eagle, 1529	Nolan Creek	06/10/1966	38.5 c.f.s
ELKHEAD PROJECT (Water Division 6):					
Elkhead Creek Reservoir	05/05/2005	Routt/Moffat, 02CW109	Elkhead Creek & its tributaries	10/16/2002	13,800 a.f.
Elkhead Creek Reservoir, 2 nd Enlargement	05/05/2005	Routt/Moffat, 02CW109	Elkhead Creek & its tributaries	10/16/2002	13,000 a.f.
Elkhead Creek Reservoir Enlargement Power Right	05/09/2005	Routt/Moffat, 02CW109	Elkhead Creek & its tributaries	10/16/2002	200 c.f.s.

¹ Located on the Landis Canal and serves only to convey water across Spring Valley to Spring Valley bench.

² 800 a.f. dead storage.

ATTACHMENT T

**COLORADO RIVER WATER CONSERVATION DISTRICT
(Colorado River District or CRWCD)
CONDITIONAL WATER RIGHTS
DECEMBER 2011**

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NAME OF STRUCTURE	DATE OF ORIGINAL DECREE	COURT/CASE NO.	SOURCE	APPROPRIATION DATE	CONDITIONAL AMOUNT
FLATTOPS PROJECT (Water Division 5):					
Strawberry Creek Pipeline	07/29/1974	W.D. 5, W-2137	White River	06/16/1972	400 c.f.s.
Strawberry Creek Dam & Reservoir	07/29/1974	W.D. 5, W-2140	White River and Strawberry Creek	06/16/1972	75,957 a.f.
Wray Gulch Dam & Reservoir	07/29/1974	W.D. 5, W-2138	Wray Gulch, tributary to White River	07/19/1972	29,374 a.f.
Wray Gulch Pipeline	07/29/1974	W.D. 5, W-2139	White River	07/19/1972	450 c.f.s.
Strawberry Creek Dam & Reservoir Alternate Point	12/16/1981	W.D. 5, W-3854	White River and Strawberry Creek	10/31/1961	75,957 a.f.
FRASER VALLEY PROJECT (Water Division 5):					
Fraser Feeder Canal	06/18/1987	W.D. 5, 84CW552	Fraser River	11/09/1984	150 c.f.s.
Fraser Pumping Plant & Pipeline	06/18/1987	W.D. 5, 84CW553	Fraser River	11/09/1984	35 c.f.s.
GREAT NORTHERN PROJECT (Water Division 6):					
California Park Reservoir	05/30/1972	Moffat, C.A. 2259	Elkhead Creek & its tributaries	08/07/1962	36,536.1 a.f.
Elkhead Canal	05/30/1972	Moffat, C.A. 2259	California Park Reservoir & N. Elkhead Crk	08/07/1962	145 c.f.s.
Elkhead Lateral	05/30/1972	Moffat, C.A. 2259	Elkhead Canal	08/07/1962	40 c.f.s.
Hansen Canal	05/30/1972	Moffat, C.A. 2259	Fortification Creek	08/07/1962	70 c.f.s.
North Elkhead Feeder Canal	05/30/1972	Moffat, C.A. 2259	North Elkhead Creek	08/07/1962	145 c.f.s.
Rampart Reservoir	05/30/1972	Moffat, C.A. 2259	Fortification Creek & its tributaries	08/07/1962	12,133.3 a.f.
Rampart Reservoir, 2 nd Filling	04/22/1982	Moffat, 81CW261	Yampa River & its tributaries	02/27/1981	11,692 a.f.
JUNIPER-CROSS PROJECT (Water Division 6):					
Cross Mountain Power Plant & Penstock	05/30/1975	Moffat, W-792-75	Cross Mountain Reservoir & Yampa River	07/25/1974	2,200 c.f.s.
Cross Mountain Power Plant & Penstock Enlargement	10/15/1981	Moffat, 79CW196	Cross Mountain Reservoir & Yampa River	08/14/1979	3,100 c.f.s.
Cross Mountain Reservoir	04/22/1975	Moffat, W-772-74	Yampa River & its tributaries	07/25/1974	142,000 a.f.
Cross Mountain Reservoir Enlargement	09/03/1981	Moffat, 79CW194	Yampa River & its tributaries	08/14/1979	66,000 a.f.
Cross Mountain Reservoir, 2 nd Filling	04/22/1982	Moffat, 81CW265	Yampa River & its tributaries	02/27/1981	125,500 a.f.
Deadman Bench Canal	09/01/1960	Moffat, C.A. 1278	Yampa River & its tributaries, Juniper Res.	07/06/1959	550 c.f.s.
Juniper Power Plant	09/01/1960	Moffat, C.A. 1278	Juniper Reservoir & Yampa River & its tributaries	07/06/1959	1,000 c.f.s.
Juniper Power Plant & Penstock Enlargement	10/15/1981	Moffat, 79CW195	Left abutment of Juniper Dam	08/14/1979	5,000 c.f.s.
Juniper Power Plant & Penstock, 2 nd Enlargement	01/28/1982	Moffat, 79CW205	Left abutment of Juniper Dam	12/05/1979	1,000 c.f.s.
Juniper Reservoir	09/01/1960	Moffat, C.A. 1278	Yampa River & its tributaries	07/06/1959	844,294 a.f.
Juniper Reservoir Enlargement	06/30/1975	Moffat, W-771-74	Yampa River & its tributaries	07/25/1974	235,700 a.f.
Juniper Reservoir Enlargement, 2 nd Filling	04/22/1982	Moffat, 81CW262	Yampa River & its tributaries	02/27/1981	1,006,768 a.f.
REDCLIFF PROJECT (Water Division 5):					
Cross Creek Extension of the Fall & Peterson Creek	01/31/1979	W.D. 5, W-3472	Cross Creek	07/01/1976	300 c.f.s.
Iron Mountain Reservoir	12/16/1965	Eagle, C.A. 1193	Homestake Creek, Eagle River, Peterson & Fall Creeks	08/10/1956	68,042.72 a.f.

ATTACHMENT T

**COLORADO RIVER WATER CONSERVATION DISTRICT
(Colorado River District or CRWCD)
CONDITIONAL WATER RIGHTS
DECEMBER 2011**

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NAME OF STRUCTURE	DATE OF ORIGINAL DECREE	COURT/CASE NO.	SOURCE	APPROPRIATION DATE	CONDITIONAL AMOUNT
REDCLIFF PROJECT (Water Division 5):					
Iron Mountain Reservoir, 2 nd Filling	06/18/1986	W.D. 5, 81CW345	Homestake Creek, Eagle River, Peterson & Fall Creeks	07/29/1981	68,043 a.f.
Pando Feeder Canal	12/16/1965	Eagle, C.A. 1193	Eagle River	08/10/1956	400 c.f.s.
SAVORY POTHOOK PROJECT (Water Division 6):					
Boone Lateral	05/27/1972	Moffat, C.A. 2269	Two Bar Canal	06/05/1959	16 c.f.s.
Deer Lodge Lateral	05/27/1972	Moffat, C.A. 2269	Two Bar Canal	06/05/1959	23 c.f.s.
Pothook Canal	06/23/1964	Moffat, C.A. 1598	Four Mile Creek	06/05/1959	260 c.f.s.
Pothook Canal Enlargement	05/30/1972	Moffat, C.A. 2504	Slater Creek	04/19/1966	400 c.f.s.
Pothook Reservoir	06/23/1964	Moffat, C.A. 1598	Slater Creek	06/05/1959	73,580.6 a.f.
Pothook Reservoir Enlargement	05/30/1972	Moffat, C.A. 2504	Slater Creek	04/19/1966	100,000 a.f.
Pothook Reservoir, 2 nd Filling	03/15/1982	Moffat, 81CW259	Slater Creek	04/19/1966	166,458.6 a.f.
Two Bar Canal	05/27/1972	Moffat, C.A. 2269	Storage releases from Savery Reservoir & Pot Hook Reservoir and direct flow of the Little Snake River	06/05/1959	100 c.f.s.
WEST DIVIDE PROJECT (Water Division 5):					
Avalanche Canal & Siphon	06/20/1958	Garfield, C.A. 4613	Crystal River and Avalanche Creek	04/22/1957	2,000 c.f.s.
Avalanche Power Plant	06/20/1958	Garfield, C.A. 4613	Crystal River	04/22/1957	170 c.f.s.
Dry Hollow Feeder Canal	03/20/1981	Garfield, W-3888	Colorado River	06/20/1958	250 c.f.s.
Dry Hollow Reservoir	03/20/1981	Garfield, 79CW308	East & West Divide Creeks, Crystal and Colorado Rivers	04/27/1957	45,000 a.f.
Four Mile Canal	11/05/1971	Garfield, C.A. 5884	N. Thompson Creek & Yank Creek Reservoir	08/11/1950	85 c.f.s.
Four Mile Canal & Siphon	06/20/1958	Garfield, C.A. 4613	Crystal River & Four and Three Mile Creeks	04/27/1957	830 c.f.s.
Horsethief Canal	07/09/1965	Garfield, C.A. 4954	W. Divide Creek & Canal, Kendig Reservoir, East Mamm Creek, Beaver Creek, Cache Creek & Battlement Creek	04/22/1957	750 c.f.s.
Kendig Reservoir	07/09/1965	Garfield, C.A. 4954	W. Divide Creek & Canal	04/22/1957	15,450 a.f.
Kendig Reservoir 1 st Enlargement	03/20/1981	Garfield, 79CW315	W. Divide Creek and Crystal and Colorado Rivers	06/18/1979	2,610 a.f.
Placita Reservoir	06/20/1958	Garfield, C.A. 4613	Crystal River	04/22/1957	62,009 a.f.
Placita Power Plant	06/20/1958	Garfield, C.A. 4613	Crystal River	04/22/1957	1,000 c.f.s.
West Mamm Creek Reservoir	07/09/1965	Garfield, C.A. 4954	W. Mamm Creek & Horsethief Canal	04/22/1957	6,500 a.f.
West Divide Canal	07/09/1965	Garfield, C.A. 4954	Garfield Creek & Tunnel, Baldy Creek, East Divide Creek	04/22/1957	300 c.f.s.
Yank Creek Reservoir	11/05/1971	Garfield, C.A. 5884	North Thompson Creek	08/11/1950	13,695.04 a.f.

ATTACHMENT T

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WOLCOTT PROJECT (Water Division 5):					
Wolcott Reservoir	07/09/1979	Eagle, C.A. 1529	Ute Creek & Eagle River	04/27/1966	65,975 a.f.
Wolcott Pumping Pipeline	07/09/1979	Eagle, C.A. 1529	Eagle River	04/27/1966	500 c.f.s.
WOLFORD MOUNTAIN RESERVOIR PROJECT (Water Division 5):					
Gunsight Pass Reservoir (WMR)	11/20/1989	W.D. 5, 87CW283	Muddy Creek tributary to the Colorado River	12/14/1987	59,993 a.f.
Gunsight Pass Reservoir Power Right (WMR)	11/20/1989	W.D. 5, 87CW284	Muddy Creek tributary to the Colorado River & Gunsight Pass Reservoir	12/14/1987	600 c.f.s.
WMR 2 nd Enlargement	Pending	W.D. 5, 03CW302	Muddy Creek tributary to the Colorado River	11/17/2003	9,775 a.f.
WMR Refill Right	07/06/2000	W.D. 5, 98CW237	Muddy Creek tributary to the Colorado River	11/17/1998	30,000 a.f.
WMR-GMR/Dillon/Roberts Exchange	03/05/1996	W.D. 5, 91CW252	Muddy Creek	03/03/1987 or 12/14/1987?	200 c.f.s. ³
WMR Wetlands Irrigation (Tyler Tailwater Ditch)	11/18/1999	W.D. 5, 98CW236	Muddy Creek tributary to the Colorado River	04/22/1998	5 c.f.s.
WMR Moser Exchange	04/14/2011	W.D. 5, 05CW265	Boulder Creek tributary to Blue River	10/15/2008	73 a.f.

³To a maximum exchange in any given year of 26,000 a.f.

Addendum to Colorado River Cooperative Agreement

The Signatories recognize that they have a history of cooperation with water users of all descriptions, adjusting their operations and providing water on a temporary basis to respond to the operational needs and emergency circumstances of others. The Signatories will work in good faith to support such cooperative efforts. Except as specifically described below, the following activities are not intended to be governed or constrained by the CRCA:

- Emergency potable water interconnect agreements that allow other municipal water providers to make a physical interconnection with the Denver Water's water system to allow the Denver Water's water to be delivered on a temporary basis to such provider during emergency conditions;
- Water made available temporarily by Denver Water without charge during an emergency situation that poses a risk to public safety, public health or the environment;
- Exchanges of water by Denver Water with another entity to accommodate operational constraints caused by maintenance, repair or other similar activities where the entity agrees to replace, rather than purchase, the water. Such exchanges shall be treated as spot sales for the purposes of and subject to Article I.B.3.a.ii, 3.a.iii, and 3.a.iv.

No failure on the part of a party to exercise, and no delay in exercising, any right, privilege or power under the CRCA shall ever give rise to any argument, claim, defense or theory of acquiescence, waiver, bar, merger, issue or claim preclusion, stare decisis, promissory estoppel, equitable estoppel, laches, unclean hands or any other similar position or defense concerning any factual or legal position, or to any administrative or judicial practice or precedent, by or against any of the Signatories.

**FIRST AMENDMENT TO THE COLORADO RIVER COOPERATIVE AGREEMENT
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)**

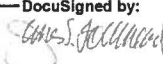
This Amendment dated September 30, 2018, is among the undersigned entities that are parties to the Colorado River Cooperative Agreement dated September 26, 2013 (the "CRCA").

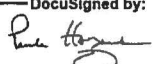
For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the CRCA to substitute the attached Agreement Regarding Use of Clinton Reservoir Dead Storage Pool as Exhibit J to the CRCA.

This Amendment may be executed in counterparts and is executed as of the date set forth above.

**CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS**

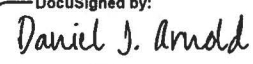
ATTEST:

DocuSigned by:

DEDE0A34B77B484
Secretary

DocuSigned by:

2DD3270B894843E
President

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:
Dennis J. Gallagher, Auditor
CITY AND COUNTY OF DENVER

DocuSigned by:

By: F251B67846FB43C
General Counsel

DocuSigned by:

By: DBED7E01F4174C0
DS
JAG

**BOARD OF COUNTY COMMISSIONERS,
COUNTY OF SUMMIT**

**BOARD OF COUNTY COMMISSIONERS,
COUNTY OF GRAND**

By: _____
Chairman

By: _____
Chairman

ATTEST:

ATTEST:

By: _____
Summit County Manager

By: _____
Grand County Clerk and Recorder

**FIRST AMENDMENT TO THE COLORADO RIVER COOPERATIVE AGREEMENT
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)**

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**CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS**

ATTEST:

Secretary

President

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:
Dennis J. Gallagher, Auditor
CITY AND COUNTY OF DENVER

By: _____
General Counsel

By: _____

**BOARD OF COUNTY COMMISSIONERS,
COUNTY OF SUMMIT**

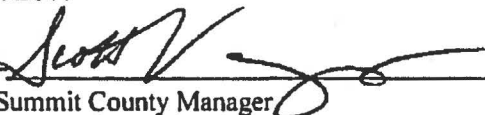
**BOARD OF COUNTY COMMISSIONERS,
COUNTY OF GRAND**

By: 
Chairman

By: _____
Chairman

ATTEST:

ATTEST:

By: 
Summit County Manager

By: _____
Grand County Clerk and Recorder

**FIRST AMENDMENT TO THE COLORADO RIVER COOPERATIVE AGREEMENT
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)**

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CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS

ATTEST:

Secretary

President

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:
Dennis J. Gallagher, Auditor
CITY AND COUNTY OF DENVER

By: _____
General Counsel

By: _____

**BOARD OF COUNTY COMMISSIONERS,
COUNTY OF SUMMIT**

**BOARD OF COUNTY COMMISSIONERS,
COUNTY OF GRAND**

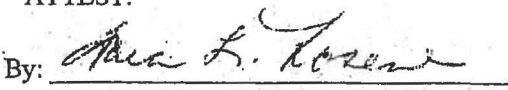
By: _____
Chairman

By: 
Chairman

ATTEST:

ATTEST:

By: _____
Summit County Manager

By: 
Grand County Clerk and Recorder

First Amendment to Colorado River Cooperative Agreement
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)
Counterpart Signature Page

**CLINTON DITCH & RESERVOIR
COMPANY**

By: Bruce Hodson
Chairman

**MIDDLE PARK WATER CONSERVANCY
DISTRICT**

By: _____
President

**BOARD OF COMMISSIONERS OF
EAGLE COUNTY**

By: _____
Chairman

**EAGLE RIVER WATER & SANITATION
DISTRICT**

By: Stephen B. Friel
Chairman

**UPPER EAGLE REGIONAL WATER
AUTHORITY**

By: George Gregory
Chairman

EAGLE PARK RESERVOIR COMPANY

By: George Gregory
President

**COLORADO RIVER WATER
CONSERVATION DISTRICT**

By: _____
President

CITY OF GLENWOOD SPRINGS

By: _____
Mayor

CITY OF RIFLE

By: _____
Mayor

ATTEST:

By: _____
City Clerk

ATTEST:

By: _____
City Clerk

First Amendment to Colorado River Cooperative Agreement
(Re: Exhibit J – Agreement Regarding Use of Clinton Reservoir Dead Pool Storage)
Counterpart Signature Page

**CLINTON DITCH & RESERVOIR
COMPANY**

By: _____
Chairman

**MIDDLE PARK WATER CONSERVANCY
DISTRICT**

By: 
President

**BOARD OF COMMISSIONERS OF
EAGLE COUNTY**

By: _____
Chairman

**EAGLE RIVER WATER & SANITATION
DISTRICT**

By: _____
Chairman

**UPPER EAGLE REGIONAL WATER
AUTHORITY**

By: _____
Chairman

EAGLE PARK RESERVOIR COMPANY

By: _____
President

**COLORADO RIVER WATER
CONSERVATION DISTRICT**

By: _____
President

CITY OF GLENWOOD SPRINGS

By: _____
Mayor

CITY OF RIFLE

By: _____
Mayor

ATTEST:

By: _____
City Clerk

ATTEST:

By: _____
City Clerk

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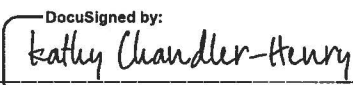
**CLINTON DITCH & RESERVOIR
COMPANY**

By: _____
Chairman

**MIDDLE PARK WATER CONSERVANCY
DISTRICT**

By: _____
President

**BOARD OF COMMISSIONERS OF
EAGLE COUNTY**

By:  _____
Chairman
DocuSigned by:
86A681FFE84403...

**EAGLE RIVER WATER & SANITATION
DISTRICT**

By: _____
Chairman

**UPPER EAGLE REGIONAL WATER
AUTHORITY**

By: _____
Chairman

EAGLE PARK RESERVOIR COMPANY

By: _____
President

**COLORADO RIVER WATER
CONSERVATION DISTRICT**

By: _____
President

CITY OF GLENWOOD SPRINGS

By: _____
Mayor

CITY OF RIFLE

By: _____
Mayor

ATTEST:

By: _____
City Clerk

ATTEST:

By: _____
City Clerk

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Chairman

**MIDDLE PARK WATER CONSERVANCY
DISTRICT**

By: _____
President

**BOARD OF COMMISSIONERS OF
EAGLE COUNTY**

By: _____
Chairman

**EAGLE RIVER WATER & SANITATION
DISTRICT**

By: _____
Chairman

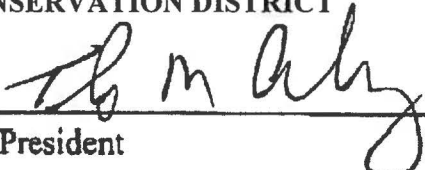
**UPPER EAGLE REGIONAL WATER
AUTHORITY**

By: _____
Chairman

EAGLE PARK RESERVOIR COMPANY

By: _____
President

**COLORADO RIVER WATER
CONSERVATION DISTRICT**

By:  _____
President

CITY OF GLENWOOD SPRINGS

By: _____
Mayor

CITY OF RIFLE

By: _____
Mayor

ATTEST:

By: _____
City Clerk

ATTEST:

By: _____
City Clerk

First Amendment to Colorado River Cooperative Agreement
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**CLINTON DITCH & RESERVOIR
COMPANY**

By: Bruce Hedson
Chairman

**MIDDLE PARK WATER CONSERVANCY
DISTRICT**

By: _____
President

**BOARD OF COMMISSIONERS OF
EAGLE COUNTY**

By: _____
Chairman

**EAGLE RIVER WATER & SANITATION
DISTRICT**

By: Stephen B. Friel
Chairman

**UPPER EAGLE REGIONAL WATER
AUTHORITY**

By: George Sugay
Chairman

EAGLE PARK RESERVOIR COMPANY

By: George Sugay
President

**COLORADO RIVER WATER
CONSERVATION DISTRICT**

By: _____
President

CITY OF GLENWOOD SPRINGS

By: [Signature]
Mayor

CITY OF RIFLE

By: _____
Mayor

ATTEST:

By: Catherine Hythen Fletcher
City Clerk

ATTEST:

By: _____
City Clerk

First Amendment to Colorado River Cooperative Agreement
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CLINTON DITCH & RESERVOIR
COMPANY

By: Bruce Hedstrom
Chairman

MIDDLE PARK WATER CONSERVANCY
DISTRICT

By: _____
President

BOARD OF COMMISSIONERS OF
EAGLE COUNTY

By: _____
Chairman

EAGLE RIVER WATER & SANITATION
DISTRICT

By: Stephen B. Friel
Chairman

UPPER EAGLE REGIONAL WATER
AUTHORITY

By: George Gregory
Chairman

EAGLE PARK RESERVOIR COMPANY

By: George Gregory
President

COLORADO RIVER WATER
CONSERVATION DISTRICT

By: _____
President

CITY OF GLENWOOD SPRINGS

By: _____
Mayor

CITY OF RIFLE

By: Baker Oll
Mayor

ATTEST:

By: _____
City Clerk

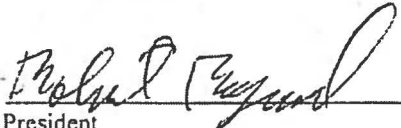
ATTEST:

By: Kathy Doll
City Clerk



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GRAND VALLEY IRRIGATION
COMPANY

By: 
President

GRAND VALLEY WATER USERS
ASSOCIATION

By: _____
President

MESA COUNTY IRRIGATION
DISTRICT

By: _____
President

PALISADE IRRIGATION DISTRICT

By: _____
President

ORCHARD MESA IRRIGATION
DISTRICT

By: _____
President

UTE WATER CONSERVANCY DISTRICT

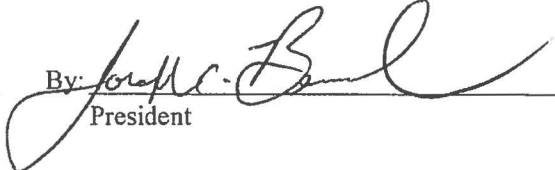
By: _____
President

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**GRAND VALLEY IRRIGATION
COMPANY**

By: _____
President

**GRAND VALLEY WATER USERS
ASSOCIATION**

By:  _____
President

**MESA COUNTY IRRIGATION
DISTRICT**

By: _____
President

PALISADE IRRIGATION DISTRICT

By: _____
President

**ORCHARD MESA IRRIGATION
DISTRICT**

By: _____
President

UTE WATER CONSERVANCY DISTRICT

By: _____
President

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COMPANY**

By: _____
President

**GRAND VALLEY WATER USERS
ASSOCIATION**

By: _____
President

**MESA COUNTY IRRIGATION
DISTRICT**

By: Dave Voorhees
President

PALISADE IRRIGATION DISTRICT

By: _____
President

**ORCHARD MESA IRRIGATION
DISTRICT**

By: _____
President

UTE WATER CONSERVANCY DISTRICT

By: _____
President

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COMPANY**

By: _____
President

**GRAND VALLEY WATER USERS
ASSOCIATION**

By: _____
President

**MESA COUNTY IRRIGATION
DISTRICT**

By: _____
President

PALISADE IRRIGATION DISTRICT

By: John Krizman
President

**ORCHARD MESA IRRIGATION
DISTRICT**

By: _____
President

UTE WATER CONSERVANCY DISTRICT

By: _____
President

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**GRAND VALLEY IRRIGATION
COMPANY**

By: _____
President

**GRAND VALLEY WATER USERS
ASSOCIATION**

By: _____
President

**MESA COUNTY IRRIGATION
DISTRICT**

By: _____
President

PALISADE IRRIGATION DISTRICT

By: _____
President

**ORCHARD MESA IRRIGATION
DISTRICT**

By: Bruce Johnson
President

UTE WATER CONSERVANCY DISTRICT

By: _____
President

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**GRAND VALLEY IRRIGATION
COMPANY**

By: _____
President

**GRAND VALLEY WATER USERS
ASSOCIATION**

By: _____
President

**MESA COUNTY IRRIGATION
DISTRICT**

By: _____
President

PALISADE IRRIGATION DISTRICT

By: _____
President

**ORCHARD MESA IRRIGATION
DISTRICT**

By: _____
President

UTE WATER CONSERVANCY DISTRICT

By:  _____
President

AGREEMENT REGARDING USE OF CLINTON RESERVOIR DEAD POOL STORAGE

This Agreement dated September 30, 2018, is between the City and County of Denver acting by and through its Board of Water Commissioners ("Denver") and the Clinton Ditch and Reservoir Company (the "Reservoir Company").

Recitals

A. Denver and the predecessors of the Reservoir Company have previously entered into the Clinton Reservoir - Fraser River Water Agreement dated July 21, 1992 (the "Clinton Agreement"), which among other matters governs the "Reservoir Yield" of Clinton Gulch Reservoir as defined in paragraph 1(a) of the Clinton Agreement.

B. The Reservoir Company desires to utilize the dead storage pool of Clinton Gulch Reservoir under the Clinton Agreement to increase the Reservoir Yield.

C. The Colorado River Cooperative Agreement ("CRCA") states that "Upon Resolution of Blue River Decree Issues, Denver Water and the Clinton Ditch & Reservoir Company will enter into the permanent Agreement regarding the Clinton Reservoir dead storage pool attached hereto as Attachment J." Resolution of the Blue River Decree Issues occurred on March 9, 2018.

D. Paragraph 3 of Exhibit J to the CRCA states that "To effectively provide water from the dead storage pool, the Reservoir Company will be responsible for the installation and operation of a pumping system sufficient to deliver up to 801 acre feet to Ten Mile Creek. The Reservoir Company may only utilize water from the dead storage pool as Reservoir Yield during periods when the pumping system is operational."

E. Since the effective date of the CRCA, the probability that the Reservoir Company would be required to physically pump from the dead pool storage is projected to remain lower than expected for approximately the next 20 to 25 years. This is in part due to the Reservoir Company's shareholders' current use of water, which is at 50% of total shares.

F. The Reservoir Company has issued "Class A" shares, which is associated with the original shares of stock that were issued per the 1992 Clinton-Fraser Agreement. There are 12,000 Class A shares in total. The Reservoir Company has also issued "Class B" shares, which represent storage that more recently became available in Clinton Reservoir's "dead pool". There are 2,670 Class B shares in total.

G. Because there remains capacity in the Clinton Reservoir for certain Reservoir Company shareholders to utilize a portion of their Class B shares in addition to Class A

shares for approximately the next 20 to 25 years, Denver and the Reservoir Company are willing to include terms in this Agreement providing for alternatives to use the Clinton Reservoir dead pool in lieu of first installing a pumping system.

H. With the Resolution of the Blue River Decree Issues, Denver and the Reservoir Company are now ready to execute this modified version of Exhibit J to the CRCA.

Agreement

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Denver agrees to allow the Reservoir Company to utilize the dead storage pool of Clinton Gulch Reservoir to increase the Reservoir Yield under the terms herein. The capacity of the dead storage pool of Clinton Gulch Reservoir that can be accessed by pumping is 801 acre feet.

2. The 801 acre feet of water associated with the dead storage pool shall be considered an additional 267 acre feet of Reservoir Yield under paragraph 1(a) of the Clinton Agreement. Alternately, at the election of the Reservoir Company, all or a portion of the 801 acre feet of the dead storage pool can be used to produce up to 67% of the existing 1,200 acre feet of Reservoir Yield in the fourth year of four consecutive years that are not allowable fill years. Under either alternative, such water will be available for use in the same manner, and may be used for the same purposes and in the same manner, as are established in the Clinton Agreement, including repayment water owed to Denver and the snowmaking ratio of not more than 5 to 1 (or such other ratio based on the amount of credited snowmaking return flow established by subsequent decrees); provided, however, that the combined annual volume of water for snowmaking amounts under the Clinton Agreement and this Agreement shall not exceed 6,000 acre feet.

3. To effectively provide water from the dead storage pool, the Reservoir Company will be responsible for the installation and operation of a pumping system sufficient to deliver up to 801 acre feet to Ten Mile Creek. The Reservoir Company may only utilize water from the dead storage pool as Reservoir Yield during periods when the pumping system is operational, subject to the provisions of paragraph 4, below.

4. If the pumping system is not yet operational at the time the Reservoir Company's shareholders desire to use water from the dead storage pool, the following terms will apply to the Reservoir Company's use of the dead pool storage:

a. The Reservoir Company shareholders may use water stored in the dead pool attributable to their Class B dead pool shares prior to the pumping system becoming fully operational until such time when the cumulative amount of storage in Clinton Gulch Reservoir that has been credited to Denver by the Reservoir Company's shareholders, including both Class A and Class B shares, totals 1,000 acre feet on or before August 1st of any Clinton Reservoir accounting year.

b. At such time that the volume of water credited to Denver in any one accounting year totals 1,000 acre feet, the Reservoir Company will construct infrastructure necessary for deploying and removing a submersible pump ("Removable Pump Infrastructure"), which includes, but is not limited to: the submersible pump sled (without pump) and pump discharge pipeline. Construction of these components will be deemed complete when the submersible pump sled (without pump), and submersible pipeline, connected to the outlet pipeline are in position at the bottom of the reservoir. The Reservoir Company will be solely responsible for the design and construction of the Removable Pump Infrastructure.

c. At such time when the cumulative amount of storage in Clinton Gulch Reservoir credited to Denver's account, including both Class A shares and Class B shares, totals at least 2,400 acre feet on or before August 1st of any Clinton Gulch Reservoir accounting year, the Reservoir Company shall limit its use of Clinton Gulch Reservoir during the ensuing accounting years. Such use shall be limited to the volume of water in Clinton Reservoir, excluding the dead pool less the total volume of water credited to Denver's account.

5. Alternatively, the shareholders may increase their use of Clinton Reservoir water in the ensuing accounting years, over and above the amount described in paragraph 4 above, through utilization of unused portions of the dead pool if the Reservoir Company has installed a pump on the submersible pump sled, connected the pump to the pump discharge pipeline, deployed the dead pool pumping system to the location in the reservoir from which it can pump the full 801 acre feet of dead pool volume, and demonstrated the dead pool pumping system is capable of delivering the full dead pool volume of water through the outlet pipeline to Ten Mile Creek over a period of not more than 70 days by the start of the accounting year (August 1st). For determining the capability of the dead pool pump station to deliver 801 acre feet in 70 days, the pumping system should be tested for a period of not less than six hours at a capacity of not less than 5.8 cubic feet per second ("cfs") before the system is deemed to satisfy the conditions set forth in this paragraph. The Reservoir Company will be solely responsible for completing the tasks identified above.

6. The Reservoir Company will notify Denver in writing when any of the conditions described in paragraphs 4.a-c, or 5 occur.

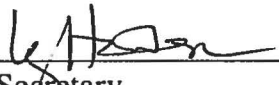
7. The term of this Agreement shall be perpetual. Nothing in this Agreement is deemed to modify or amend the Clinton Agreement, as amended by the CRCA. Denver and the Reservoir Company may modify this Agreement by written amendment of this Agreement.

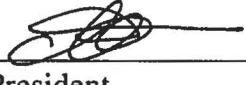
8. Except as expressly modified by this Agreement, the CRCA shall remain in full force and effect.

Executed as of the date first set forth above.

ATTEST:

**CLINTON DITCH AND RESERVOIR
COMPANY**

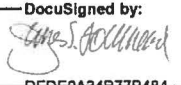
By: 
Secretary

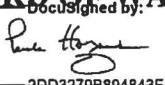
By: 
President

Date: 9/20/18

ATTEST:

**CITY AND COUNTY OF DENVER, acting
by and through its
BOARD OF WATER COMMISSIONERS**

DocuSigned by:

By: DEDE9A34B77B484...
Secretary

DocuSigned by:

By: 2DD3270B894843F...
President

Date: 11/8/2018

Approved as to Form:

DocuSigned by:
Daniel J. Arnold
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Office of General Counsel



COLORADO RIVER DISTRICT

PROTECTING WESTERN COLORADO WATER SINCE 1937

MEMORANDUM

TO: MEMBERS OF THE CITY COUNCIL, CITY OF GRAND JUNCTION

FROM: ANDY MUELLER, GENERAL MANAGER
ZANE KESSLER, DIRECTOR OF GOVERNMENT RELATIONS
AMY MOYER, DIRECTOR OF STRATEGIC PARTNERSHIPS

SUBJECT: SHOSHONE WATER RIGHTS PRESERVATION

DATE: MARCH 27, 2024

REQUESTED ACTION: The Colorado River District respectfully requests that the City of Grand Junction authorize a financial commitment subject to future annual appropriations to support the acquisition and permanent protection of the Shoshone Water Rights.

Securing a strong local funding commitment is a necessary requirement for the River District to close on the final \$99 million deal to acquire the Shoshone Water Rights. Under the current funding strategy, the Colorado River District proposes a local and state funding contribution of at least \$50 million, leaving approximately \$49 million remaining to be secured. The Colorado River District's current funding strategy is to seek \$49 million in funding from the federal government made available through the Inflation Reduction Act. While we have worked diligently to achieve this funding strategy and believe that this project is well-positioned to be competitive for federal funding, it is far from guaranteed to receive the full funding request. We are therefore looking to our coalition partners to fund approximately \$10 to \$20 million. These funding commitments will reduce our reliance on federal funding sources and better allow the West Slope to control our water security in the future. **Therefore, we respectfully request that the City of Grand Junction consider a funding commitment of at least \$1,000,000.**

To fulfill the River District's funding commitment under the Purchase and Sale Agreement (PSA) with Public Service Company of Colorado (PSCo), all coalition partners will need to deposit their committed funds into an interest-bearing escrow account within thirty days of the River District successfully obtaining a rights change decree in water court. While it is difficult to predict the anticipated length of a change case in water court, we are optimistic that the change decree will be entered before the end of 2026. Under the PSA, the funds deposited by coalition partners will accrue interest, which will be applied towards the purchase price of the Shoshone Water Rights at the time of closing. However, all funds deposited by partners and held in escrow are fully refundable (with interest) should the PSA be terminated for any reason.



LOCAL FUNDING UPDATE

The funding strategy relies on a diverse partnership of local, state, and federal funding sources. The broad-based West Slope Coalition proposes to contribute \$30 to \$40 million, \$20 million of which has already been approved and committed by the River District's Board of Directors.

Recognizing the importance of Shoshone permanency to current and future water security on Colorado's Western Slope, local partners are beginning to take action to formalize their financial commitments to this project.

Through initial conversations and anticipated commitments, the Colorado River District anticipates receiving between \$15 - \$20 million in local contributions. Since January 2024, River District Staff has presented to over 20 local partners. The following table indicates additional requests made to the five mainstem counties and partners; however, these amounts have not yet been formally committed and discussions are ongoing.

Local Funding Requests (as of 3/27/2024)

Garfield County	\$4 million
Mesa County	\$2 million
Eagle County	\$2 million
City of Glenwood Springs	\$2 million
Summit County	\$1 million
Grand County	\$1 million
City of Grand Junction	\$1 million
Upper Eagle Regional Water Authority	\$750,000
Eagle River Water and Sanitation District	\$750,000
Clinton Ditch and Reservoir Company	\$100,000
Mesa County Irrigation District	\$50,000
Total:	\$14.65M

Additionally, as of the date of this memo, local partners have formally committed nearly \$3 million shown on the following table on page 3.

Local Funding Commitments (as of 3/27/2024)

Ute Water Conservancy District	\$2 million
Clifton Water District	\$250,000
Grand Valley Irrigation Company	\$250,000
Grand Valley Water Users Association	\$100,000
City of Rifle	\$100,000
Orchard Mesa Irrigation District	\$100,000
Basalt Water Conservancy District	\$100,000
Palisade Irrigation District*	\$50,000*
West Divide Water Conservancy District	\$50,000
Total:	\$3M

**Anticipated commitment to be formalized on April 4th, 2024.*

RESOLUTION NO. ____-24

A RESOLUTION SUPPORTING A FINANCIAL COMMITMENT OF \$1,000,000 IN SUPPORT OF THE COLORADO RIVER DISTRICT EFFORT TO ACQUIRE THE SHOSHONE WATER RIGHT

Recitals:

The Shoshone Hydro Plant, a unique run-of-the-river hydroelectric power plant, sits alongside the Colorado River in Glenwood Canyon, about eight miles east of Glenwood Springs. Owned by the Public Service Company of Colorado (PSCo), a subsidiary of Xcel Energy, it produces 15 megawatts of electricity, enough power to serve approximately 15,000 customers. Importantly, Shoshone holds a senior (1902), nonconsumptive water right on the Colorado River, returning the flows it uses to the river after a short trip through the hydropower plant's penstocks and turbines. Shoshone's flows provide critical habitat to four fish listed under the Endangered Species Act, provide water security and quality to Western Slope agriculture and many of cities that utilize the mainstem of the Colorado for drinking water supplies and wastewater discharge.

The Shoshone call provides critical water supplies that drive the recreational economies supported by rafters, kayakers, and anglers from Eagle to Mesa County. For more than 20 years, the Colorado River District and 19 other Western Colorado governments and water entities, including Summit, Grand, Eagle, Garfield, and Mesa Counties and many of the municipalities and major water organizations therein, have been working together to find a way to permanently preserve the Shoshone flows. In fact, the 2013 Colorado River Cooperative Agreement between Denver Water and 17 West Slope governments/water user organizations expressly recognizes the importance of – and memorialized the need to provide permanent protection of – the Shoshone flows.

On December 19, 2023, Xcel Energy and the Colorado River District signed a Purchase & Sale Agreement (PSA) to transfer ownership of the historic Shoshone water rights to the River District for \$98.5 million. As defined in the PSA, the "Shoshone Water Rights" to be acquired by the Colorado River District include both the senior Shoshone Power Plant water right in the amount of 1,250 cfs with an appropriation date of January 7, 1902, and the junior Shoshone Power Plant water right in the amount of 158 cfs with an appropriation date of May 15, 1929. The purchase price for the Shoshone Water Rights is \$98,500,000, with an additional \$500,000 payment for PSCo's transaction costs for a total cost of \$99,000,000.

The funding of the purchase will rely on a diverse partnership of local, state, and federal sources. The broad-based West Slope Coalition proposes to contribute at least \$30 million, \$20 million of which has already been approved and committed by the River District's Board of Directors, made possible through increased property tax revenues approved by West Slope voters in 2020 following the passage of ballot

question 7A. The remaining \$10 million is expected to come from West Slope governments and water entities.

On January 29, 2024, the Colorado Water Conservation Board (CWCB) voted unanimously to recommend a \$20 million investment in the Shoshone Water Rights Preservation effort. In recognition of the critical importance of the Shoshone flows to the continued success of the Upper Colorado River Endangered Fish Species Recovery Program and other benefits to federal interests, the Colorado River District has initiated discussions with the Bureau of Reclamation to contribute the remaining \$49 million of the acquisition costs through funding made available as part of the Inflation Reduction Act.

The Colorado River District requested that the City of Grand Junction consider a \$1 million financial commitment to support the acquisition and permanent protection of the Shoshone Water Rights.

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

1. The Recitals are incorporated herein and in consideration of the same and with due deliberation the City Council expresses its support for a financial commitment by the City of \$1,000,000 dollars for the acquisition and permanent protection of the Shoshone Water Rights.
2. The City Council by and with this Resolution authorizes the City Manager to initiate supplemental budget appropriations to allocate \$1,000,000 from the General Fund to support the financial commitment.
3. The City Council by and with this Resolution authorizes the City Manager, in consultation with the City Attorney, to sign the necessary and appropriate agreement(s) on behalf of the City to commit funding to the Colorado River District for the acquisition of the Shoshone Water Rights.
4. This Resolution shall be in full force and effect from and after its passage and adoption in support of the purposes hereof and as herein provided subject to and conditioned on the Colorado River District securing commitments for the purchase as described herein.

Passed and adopted this 3rd day of April 2024.

Anna M. Stout
President of the City Council

ATTEST:

Amy Phillips
City Clerk

DRAFT



Grand Junction City Council

Regular Session

Item #9.b.

Meeting Date: April 3, 2024

Presented By:

Department: City Manager's Office

Submitted By:

Information

SUBJECT:

Discussion and Possible Direction Regarding a Contract for Interim City Manager

RECOMMENDATION:

EXECUTIVE SUMMARY:

BACKGROUND OR DETAILED INFORMATION:

FISCAL IMPACT:

SUGGESTED MOTION:

Attachments

None