

GAM09EST

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	MARK GAMBLE
SUBJECT/PURPOSE:	EXCHANGE REAL ESTATE (VACANT LAND)
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2009
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

CONTRACT TO EXCHANGE REAL ESTATE

THIS CONTRACT TO EXCHANGE REAL ESTATE ("Agreement" or "Contract") and/or rights in real estate is entered into by and between Mark L. Gamble, hereinafter "Owner" and the City of Grand Junction, a Colorado home rule city, hereinafter "City."

1. Owner agrees to convey to the City, by general warranty deed, the following real property in the County of Mesa, State of Colorado, to wit, hereinafter "Right of Way Property":

- (a) Legal description: Commencing at the Southeast corner of the NW1/4 SW1/4 Section 10, Township 1 South, Range 1 West, Ute Meridian, whence the Southwest corner NW1/4 SW1/4 of Said Section 10 bears S89°59'01"W, a distance of 1319.97 feet, with all the bearings contained herein relative thereto; thence S89°59'01"W, a distance of 218.79 feet; thence N00°00'59"W, to the north Right-Of-Way line of Independent Avenue, a distance of 30.00 feet; thence S89°59'01"W, along the said north Right-Of-Way line of Independent Avenue, a distance of 102.04 feet to the Point of Beginning; thence S89°59'01"W, a distance of 95.98 feet; along said north Right-Of-Way line; thence N44°59'01"E, a distance of 35.33 feet; thence N00°00'59"W, a distance of 55.49 feet; thence N28°37'01"E, a distance of 12.29 feet; to the south Right-Of-Way line of State Highway 6 & 50; thence along said south Right-Of-Line S61°22'59"E, a distance of 45.73 feet; thence S00°00'59"E, a distance of 44.37 feet; thence S45°00'59"E, a distance of 35.32 feet; to the Point of Beginning.
- (b) Address: No Address – Vacant Land. The above described parcel contains 4353 sq. feet.

2. The City agrees to convey to Owner, by vacation of an existing right of way, the following described real property in the County of Mesa, State of Colorado, to wit, hereinafter "City Property:"

- (a) Legal description for Tract A:

Commencing at the Southeast corner of the NW1/4 SW1/4 Section 10, Township 1 South, Range 1 West, Ute Meridian, whence the Southwest corner NW1/4 SW1/4 of Said Section 10 bears S89°59'01"W, a distance of 1319.97 feet, with all the bearings contained herein relative thereto; thence S89°59'01"W, a distance of 218.79 feet; thence N00°00'59"W, to the north Right-Of-Way line of Independent Avenue; a distance of 30.00 feet and the Point of Beginning; thence S89°59'01"W, along the said north Right-Of-Way line of Independent Avenue, a distance of 102.04 feet; thence N45°00'59"W, a distance of 35.32 feet; thence N00°00'59"W, to the south Right-Of-Way line of State Highway 6 & 50, a distance of 44.37 feet; thence S61°22'59"E along said south Right-Of-Way line, a distance of 144.71 feet to the Point of Beginning.

Address: No Address – Vacant Land. The above described parcel contains 4092 sq. feet.

(b) Legal description for Tract B:

Commencing at the Southeast corner of the NW1/4 SW1/4 of Section 10, Township 1 South, Range 1 West, Ute Meridian, whence the Southwest corner NW1/4 SW1/4 of Said Section 10 bears S89°59'01"W, a distance of 1319.97 feet, with all the bearings contained herein relative thereto; thence S89°59'01"W, a distance of 218.79 feet; thence N00°00'59"W, to the north Right-Of-Way line of Independent Avenue, a distance of 30.00 feet; thence S89°59'01"W, along the said north Right-Of-Way line of Independent Avenue, a distance of 216.97 feet and the Point of Beginning; thence N28°37'01"W, a distance of 91.69 feet; thence S00°00'59"E a distance of 55.49 feet; thence S44°59'01"W, a distance of 35.33 feet to said north Right-Of-Way line of Independent Avenue; thence S89°59'01"W, a distance of 18.95 feet; to the Point of Beginning.

Address: No Address – Vacant Land. The above described parcel contains 1456 sq. feet.

3. Conveyance of the Owner's Property and the City Property shall be free and clear of all taxes, special assessments, liens, mortgages and encumbrances; the conveyance or transfer also recognizes and includes, as consideration, the sufficiency of which is adequate to support the making of this Agreement:

- a. the right of Owner to separately apply for the relocation of an outdoor advertising structure (for purposes of this Agreement to be referred to as an "Electronic Graphic Sign" or "Billboard Structure") currently on the Property to a location to be determined. The final location and configuration of the replacement Billboard Structure shall be determined following the Owner's application to the City. The configuration of the Right of Way Parcel and Tracts A and B are all shown on the "Tract Exhibit", attached hereto and incorporated by this reference as if fully set forth. Consistent with the Tract Exhibit it is the expressed intention and agreement of the City and the Owner that, pursuant to and in accordance with this Agreement the Owner will receive legal right to Tracts A and B in exchange for the City receiving and having legal right to the area shown on the Tract Exhibit and described as Proposed ROW;
- b. the right of Owner to separately apply for an outdoor advertising sign (for purposes of this Agreement to be referred to as an "Electronic Graphic Sign" or "Billboard"), to be located at 2490 F Road. Final configuration, placement and approval of the Billboard at the F Road location shall be determined following Owner's application to the City. The Billboard may be of a "electronic graphic" type with no more than three (3) advertising messages; and
- c. the right of Owner to separately apply for an outdoor advertising sign to be located at 25 Road. Final configuration, placement and approval of the Billboard at the 25 Road location shall be determined following Owner's application to the City. The Billboard shall be of a traditional type with no electronic graphic copy.

4. A City road commonly known as Independent Avenue has historically been used for ingress and egress to and from Highway 6&50. In accordance with this Agreement, Independent Avenue will be realigned/reconfigured as shown on the Tract Exhibit. Owner acknowledges and agrees to the change and waives any rights or claims that he now has to the location of the access.

5. On or before January 18, 2009, Owner shall remove the current Billboard Structure from the Property. The Billboard Structure may be replaced on Tract B as provided herein and as otherwise determined by separate agreement of the Parties. For each day, or part of a day, after the third day after closing for which the Billboard or any portion thereof or other materials are on any portion of the Owner's Property, Owner shall pay to the City \$250.00 per day as a penalty.

6. Each party agrees to waive a current commitment for title insurance policy covering the respective property to be conveyed by such party. The parties stipulate and agree that all of the described areas (Tracts A and B and the Proposed ROW parcel shown on the Tract Exhibit) are being newly created and described. Accordingly Title Insurance is not required.

7. The date of closing shall be the date for delivery of deed as provided below. The hour and place of closing shall be designated by mutual agreement between the parties hereto, in Grand Junction. Changes in time, place and date may be made with the consent of both parties. Each party shall pay its respective closing costs at closing, except as otherwise provided herein. Each party shall sign and complete all customary or required documents at or before closing. Fees for real estate closing and settlement services shall be paid by the City. The parties designate Abstract & Title Co. of Mesa County, Inc. as Closing Agent.

8. Subject to full and complete compliance by both parties with the terms and provisions hereof, closing and possession shall occur on January 15, 2009 or, by mutual agreement, at an earlier date.

9. At closing, Owner shall execute and deliver a general warranty deed to the City and the City shall deliver an ordinance to be recorded vacating the Right of Way property. Each party shall deliver possession of such party's property to the other party, free and clear of:

- (a) all taxes;
- (b) all liens for special improvements installed as of the date of closing, whether assessed or not;
- (c) all liens, mortgages and encumbrances;
- (d) all fees and charges for utilities, association dues, water rents and water assessments; and
- (e) any covenants, restrictions or reversionary provisions not accepted by the receiving party and all tenancies and/or leasehold estates.

10. (a) Each party shall have the right to access the other party's property to be conveyed pursuant to this Agreement, and to make inspections thereof. Such inspections shall include, but not be limited to, boundary surveys, geological surveys and studies, and environmental surveys and studies. Said permitted access shall be for a period commencing the day after this Agreement is signed by both parties, and ends on January 15, 2009. The party making a physical inspection of the other

party's property is responsible and shall pay for any damage that occurs to the other party's property as a result of such inspections.

- (b) If written notice by either party of any unsatisfactory physical condition is given to the other party during the Inspection Period, and if the parties have not reached a written agreement in settlement thereof within a week after the expiration of the Inspection Period, this Agreement shall then terminate.
- (c) If any material regulated by state or federal law as a hazardous, regulated, dangerous or contaminated substance, material or residue, is discovered on either Property, the owner thereof shall be obligated to fully and completely remove same before closing, or provide for adequate security for the other party to do so after closing.
- (d) Except as provided in the preceding sub-paragraph (c), if either party fails to give notice of any unsatisfactory physical condition during the term of the Inspection Period, then the party failing to give such notice shall be deemed to have accepted the physical condition of the other party's property, as is, in its present condition.
- (e) Each party represents that it, he or they have no knowledge that his, their or its property before conveyance (including land, surface water, ground water and improvements) is contaminated by or contains, whether or not visible: (i) any "hazardous waste," "medical waste," "solid waste," "underground storage tanks," "petroleum," "regulated substances" or "used oil" as defined by the Solid Waste Disposal Act (42 U.S.C. § 6901, *et seq.*), as amended, and the Resource Conservation and Recovery Act (42 U.S.C. § 6991, *et seq.*), as amended, or by any regulations promulgated thereunder; (ii) any "hazardous substance" or "pollutant or contaminant" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*), as amended, or by any regulations promulgated thereunder; (iii) any "regulated substance", as defined by the Underground Storage Tank Act, C.R.S., § 25-18-101, *et seq.*, as amended, or by any regulations promulgated thereunder; (iv) any "hazardous waste" as defined by C.R.S., § 25-15-101, *et seq.*, as amended, or by any regulations promulgated thereunder; (v) any substance the presence of which on, in, under or about the property, is prohibited by any law similar to those set forth above; and (vi) any other substance which by law, regulation or ordinance requires special handling in its collection, storage, treatment or disposal.

11. Owner shall have the right and option to sell, remove and/or dispose of the Billboard Structure and any and all other buildings or structures situate upon the Owner's Property prior to closing. If Owner chooses to sell or remove the Billboard Structure, the Owner shall leave the ground adjacent to and under the structure(s) in a clean, neat, safe and level condition. All debris including but not limited to any portion of the structure(s) removed shall be cleaned, disposed of and rendered safe in a workmanlike manner.

12. Time and full performance are of the essence hereof. If any obligation hereunder is not performed as herein provided, the non-defaulting party shall have the following specified remedies, except as otherwise provided in this Agreement: to treat this Agreement as being in full force and effect together with the right to an action for specific performance, but no damages shall be recoverable.

13. If a party engages or pays for an attorney to pursue any remedy hereunder, such party shall pay for its own attorney's fees and charges.

14. The parties represent to each other that the exchange of these Properties was brought about without the efforts of any brokers or agents and that neither party has dealt with any brokers or agents in connection with the exchange of the Properties. Each party agrees to defend, indemnify and hold the other harmless from any claim for real estate brokerage commissions or finder's fees asserted by any third party as a result of the sale or exchange pursuant to this Agreement.

15. All notices and communications required or regarding this Agreement shall be in writing delivered to the parties by first class United States mail, certified with return receipt requested, and shall be deemed served upon the receiving party as of the date of receipt shown on the return receipt, addressed as follows:

To the City:	Mike Best Department of Public Works and Planning 250 North 5th Street Grand Junction, CO 81501-2668
With a copy to:	John Shaver City Attorney 250 North 5th Street Grand Junction, CO 81501-2668
To Owner:	Mark L. Gamble P. O. Box 2906 Grand Junction, CO 81502

The parties may, by notice as provided above, designate a different address to which notice shall be given.

17. This Contract embodies the complete agreement between the parties hereto and cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. No spoken or oral promises or changes to this Agreement will apply or be enforced. This Contract and the terms and conditions hereof apply to and are binding upon the heirs, successors and assigns of both parties.

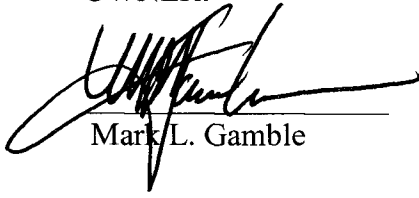
18. This Agreement shall be governed and construed by the laws of the State of Colorado. Venue for any action shall be in Mesa County, Colorado.

19. Each party has obtained the advice of its own legal and tax counsel and, therefore, the rule of construing ambiguities against the drafter shall have no application to this Agreement.

20. The promises, agreements to pay money, liabilities and other agreements herein that must be performed after the closing shall remain enforceable despite the transfer of title. The doctrine of merger shall not apply.

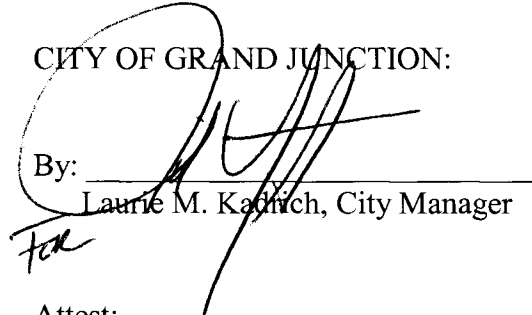
21. The allowance by the City of "electronic graphic" type signs, as consideration for this Agreement, shall not constitute a waiver by the City of its code(s) and/or the right to disallow that type of sign at other locations.

OWNER:



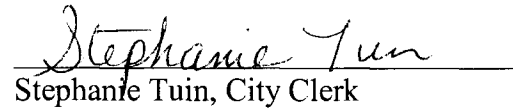
Mark L. Gamble

CITY OF GRAND JUNCTION:

By: 

Laurie M. Kadach, City Manager

Attest:



Stephanie Tuin, City Clerk



