

CITY OF GRAND JUNCTION, COLORADO

Resolution No. 58-93

ACCEPTING A CONTRACT WITH CDOT FOR ISTE A ENHANCEMENT GRANT

WHEREAS, the Denver & Rio Grande Western railroad depot in downtown Grand Junction is listed on the National Register of Historic Places and is designated as a structure of statewide significance; and

WHEREAS, rehabilitation of the depot will maintain a local landmark which represents much of the history of the Grand Junction community; and

WHEREAS, on August 20, 1992 the Colorado Department of Transportation approved of a \$35,000 grant (80 percent to be Federal funds) to the City of Grand Junction for repair and stabilization of the Denver & Rio Grande Western Railroad depot; and

WHEREAS, the community has raised twenty percent of the grant (\$7,000) through private donations and a grant from the Colorado Historical Society State Historic Fund.

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

That the contract with the Colorado Department of Transportation for disbursement of the ISTE A enhancement grant for repair and stabilization of the Denver & Rio Grnade Western railroad depot is hereby approved subject to execution of an agreement between the City of Grand Junction and the Southern Pacific/Denver & Rio Grande Western Railroad.

PASSED and APPROVED this 15th day of September, 1993.

ATTEST:

City Clerk

President of City Council

AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of September, 1993, by and between the CITY OF GRAND JUNCTION, COLORADO hereinafter referred to as City, and the DENVER AND RIO GRAND WESTERN RAILROAD, a Delaware Corporation, hereinafter referred to as Railroad.

WHEREAS, the City has applied for certain grant funds to renovate the historic Denver and Rio Grande railroad depot in Grand Junction, Colorado, hereinafter referred to as the Depot; and

WHEREAS, the Railroad represents that it owns the Depot on the date hereof; and

WHEREAS, the parties have agreed that a substantial benefit will accrue to the Railroad by renovation of the Depot; and

WHEREAS, the parties have agreed that if the Depot is sold, transferred or alienated that a certain portion of the grant funds shall be repaid to the City;

IN CONSIDERATION OF THE FOREGOING UNDERSTANDING AND THE BURDENS AND BENEFITS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Scope of Services

The City has applied for Intermodal Surface Transportation Efficiency Act grant funds for the partial renovation of the Railroad's Depot. If and when the grant funds are awarded and all contingencies are met, the City will contract with a private construction firm to accomplish the renovations. The renovations may include, but are not necessarily limited to, building stabilization and weatherproofing. Selection of the contractor(s) to perform the renovation shall be in accordance with procurement practices of the City. The City shall administer the grant funds and shall monitor all aspects of the renovation to ensure that the work is performed in a satisfactory and proper manner and that all elements of the work plan are fully and completely discharged. The renovations and work plan are subject to the prior written approval of the Railroad, which approval shall not be unreasonably withheld. If not approved in writing, within 30 days from the date of the Railroad's receipt of the work plan, as evidenced by return receipt signed by the Regional Director of the Railroad Real Estate Department, or his designee, the Railroad shall be deemed to have consented as fully as if consent were in writing.

2. Time of Performance

The renovation project shall commence upon the execution of this agreement and shall be completed on or before August 15, 1994, unless otherwise terminated, modified or extended pursuant to ISTEA grant requirements or pursuant to agreement between the parties hereto. The parties' respective duties and obligations to indemnify and hold harmless, as set forth elsewhere in this agreement, shall survive this contract and its termination or conclusion.

3. Consideration

The City agrees to require no monetary compensation from the Railroad for the administration of the grant funds and renovation of the Depot.

The Railroad agrees to reimburse the City for both City and grant money in accordance with the following schedule, if the Depot is sold in the years indicated below, after completion, or the structure of the Depot is modified, developed or changed in use or character from that of an historic railroad depot during a ten year period from the date of completion.

If the Depot is not sold or the structure is not modified, developed or changed in use or character from that of an historic railroad depot then no reimbursement shall be required.

Date of completion to one year	- 100%
Year two	- 90%
Year three	- 80%
Year four	- 70%
Year five	- 60%
Year six	- 50%
Year seven	- 40%
Year eight	- 30%
Year nine	- 20%
Year ten	- 10%

The parties agree that the Railroad will own and maintain the renovations at the time of completion of the project and that such shall be its sole compensation.

4. Budget

All expenditures of grant funds by the City shall be in accordance with the established project budget which will be developed by the contractor selected by the City.

5. Audit

The City shall have audit obligations and responsibilities, including discretionary audit obligations in accordance with standard City policy or as specified in the grant documents.

The Railroad, through any of its authorized representatives, including an independent Certified Public Accountant, shall have the right to inspect, examine, and audit the City's records, books, accounts and other relevant documents for this project from the date of completion until two years thereafter. Such discretionary audit may be requested at any time upon five days advance written notice.

6. Modification and Amendment

A. Modification by Operation of the Law: This Contract is subject to such modifications as may be required by changes in Federal, State or Local law or regulations. Any such required modification shall be incorporated into this contract as if fully set forth herein.

B. Programmatic or Budgetary Modifications: The City shall provide written notice to the Railroad if project or budgetary modifications are needed or desired. Any such modifications

shall require City and Railroad to agree in writing and shall be properly executed and approved in accordance with applicable law.

C. Other Modifications: If either the City or the Railroad desires to modify the terms of this Agreement, other than as set forth in Paragraphs 7-A or 6-B above, written notice of the proposed modifications shall be given to the other party. No modifications shall take effect unless and until agreed to in writing by both parties in an amendment to this contract properly executed and approved in accordance with applicable law.

7. Termination

A. Termination Due to Loss of Funding: The parties hereto expressly recognize that the City is funding the project with grant funds, and therefore, the Railroad expressly understands and agrees that all its rights, demands, and claims to receive the benefits herein described and otherwise arising under this contract are contingent upon receipt of such funds by the City. In the event that such funds or any part thereof are not received by the City on or prior to May 15, 1994, the City or Railroad may immediately terminate all obligations hereunder.

8. Conflict of Interest

The City shall comply with the conflict of interest provisions of the grant and grant documents and shall ensure that no member of its staff, or of the governing body of the City, or any other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of the project, shall have any personal or financial interest, direct or indirect.

9. Compliance with Applicable Laws

At all times during the performance of this agreement, the City shall strictly adhere to all applicable Federal, State and Local laws, orders, standards, regulations, interpretations, or guidelines issued pursuant thereto and shall likewise require the same of any and all contractors.

The City shall require that any and all contractor or subcontractor or person doing or contracting to do any work contemplated by this agreement shall keep itself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of its contract or any extra work, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not such laws, ordinances or regulations are mentioned herein, and shall indemnify the City, its officers, agents and employees against any claim or liability arising from or based on the violation of, or alleged violation of, any such laws, ordinances or regulations.

10. Indemnification

The Railroad shall indemnify, save, hold harmless and defend the City and all of its officials, employees, agents and officers from:

A. Any and all claims, lawsuits, damages, or liabilities, including reasonable attorney's fees (or the reasonable value of an attorney's time) and court costs, which at any time may be or are stated, asserted, or made against the City, its officers, or employees by the State of Colorado, the Federal government or any agency thereof or any other third party whomsoever,

in any way arising out of, or related to, the renovation of the project contemplated by the grant funding and under this agreement, regardless of whether said claims are frivolous or groundless; and

B. Any and all liability, claims, demands, actions, debts, and attorney fees arising out of, claimed on account of, or in any manner predicated upon loss or damage to the property of, injuries to, or death of all persons whatsoever which may occur or be sustained in connection with the performance of this contract.

The City shall indemnify, save, hold harmless and defend the Railroad and all of its officials, employees, agents and officers from:

A. Any and all claims, lawsuits, damages, or liabilities, including reasonable attorney's fees (or the reasonable value of an attorney's time) and court costs, which at any time may be or are stated, asserted, or made against the Railroad, its officers, employees or agents, by the State of Colorado, the Federal government or any agency thereof or any other third party whomsoever, in any way arising out of, or related to the administration of the Grant.

11. Materials

The parties covenant and agree that they have carefully read the grant documents and agreement and all materials referenced in said documents and materials. The parties hereby covenant and agree that they understand each and every document and will abide by each and every provision thereof.

12. Assignment of Rights

The City hereby assigns to Railroad all of its rights against any contractor or sub-contractor or person doing or contracting to do any work contemplated by this Agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first written above.

CITY OF GRAND JUNCTION
RAILROAD

DENVER AND RIO GRAND WESTERN

by: _____ by: _____
Mark Achen
City Manager