

RESOLUTION NO. 111-95

AUTHORIZING THE CONVEYANCE OF CITY PROPERTY TO
GEORGE E. PREUSS AND DEBRA L. PREUSS

WHEREAS, the City of Grand Junction has entered into a contract with the Public Service Company of Colorado for the sale by the Public Service Company of Colorado and the purchase by the City of that certain real property described as Lot 17 through 26, inclusive, Block 134 of the Original Plat of the City of Grand Junction in the County of Mesa, State of Colorado; and

WHEREAS, in the event the City completes the purchase of the aforescribed Public Service property and in accordance with the terms and conditions of the attached Contract to Buy and Sell Real Estate, George E. Preuss and Debra L. Preuss have offered to purchase from the City, for the sum of \$20,000.00, Lots 17 and 18 in said Block 134 of the Original Plat of the City of Grand Junction; and

WHEREAS, the City Council has determined that said Lots 17 and 18 are not necessary for governmental purposes; and

WHEREAS, the City Council has determined that the sum of \$20,000.00 is a fair and reasonable purchase price for said Lots 17 and 18.

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

That the City Manager be authorized, on behalf of the City and as the act of the City, to sign all documents necessary and appropriate to convey said property to George E. Preuss and Debra L. Preuss upon receipt of \$20,000.00 on or before February 9, 1996; provided, however, that the City shall make no representation or warranties of any kind or nature whatsoever as to the physical condition of the Property, including, without limitation, any representations or warranties as to the environmental condition of the Property or statutory or implied warranties of merchantability or fitness for any purpose.

PASSED and ADOPTED this 6th day of December, 1995.

Attest:

/s/ Ron Maupin
President of the City Council

/s/ Stephanie Nye
City Clerk

CONTRACT TO BUY AND SELL REAL ESTATE
(Seller's Remedy Limited to Liquidated Damages)

THIS CONTRACT TO BUY AND SELL REAL ESTATE is entered into by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and George E. Preuss and Debra L. Preuss, hereinafter referred to as "the Purchasers".

WITNESSETH:

A. Pursuant to the Franchise Ordinance whereby the Public Service Company of Colorado ("PSCo") obtained the right to operate as a public utility within the city limits of the City of Grand Junction, in the event PSCo proposes to sell or dispose of any of its land or water facilities lying within the designated Grand Junction Service Area, the City has the right of first refusal to purchase the same, and that the City shall have ninety (90) days in which to exercise the right of first refusal and shall give written notice of its decision to PSCo.

B. The Purchasers, by contract dated September 15, 1995, offered to purchase the following described real property from PSCo and PSCo accepted the offer to sell the following described real property to the Purchasers for the purchase price of \$49,500.00:

Lots 17 through 26, inclusive, Block 134 of the Original Plat of the City of Grand Junction, hereinafter referred to as "the Contract Parcel".

C. The City has determined to exercise its first right to purchase the Contract Parcel for the purchase price of \$49,500.00, subject to the terms and conditions of a separate contract between the City and PSCo.

D. In the event City succeeds in acquiring title to the Contract Parcel under the terms and conditions of that certain contract between the City and PSCo, the Purchasers are desirous of purchasing from the City that certain portion of the Contract Parcel described as Lots 17 and 18 in Block 134 of the Original Plat of the City of Grand Junction, hereinafter referred to as "the Property".

NOW, THEREFORE, in consideration of the mutual covenants, benefits and burdens (if the City acquires the Contract Parcel from PSCo), the Purchasers hereby agree to purchase the Property from the City, and the City hereby agrees to sell the Property to the Purchasers, upon the terms and conditions stated herein.

1. The City hereby acknowledges having received from the Purchasers the sum of \$1,000.00, in the form of a check, to be held by Abstract & Title Company of Mesa County, Inc., Closing Agent for the City and the Purchasers, in said Closing Agent's escrow or trustee account, as earnest money and part payment for the Property. Said \$1,000.00 is non-refundable, except as otherwise provided herein, unless the City is unable to deliver merchantable title as set forth herein.

2. The purchase price for the Property shall be \$20,000.00, payable as follows: \$1,000.00 in earnest money as set forth above; the balance of \$19,000.00 in the form of "good

funds" shall be paid at closing. The City and the Purchasers each agree to pay their own closing costs according to local custom.

3. The purchase price shall include the Property and all improvements thereon or appurtenant thereto.

4. The date of closing shall be the date for delivery of deed as provided in paragraph 5. The hour and place of closing shall be as designated by the Closing Agent. Changes in time, place and date may be made with the consent of both the City and the Purchasers.

5. Title shall be merchantable in the City except subject to any reservations, liens, encumbrances and easements as are provided for in the special warranty deed by which the City obtains title from PSCo. Subject to payment or tender as above provided and compliance by the Purchasers with the other terms and provisions hereof, the City shall execute and deliver a good and sufficient special warranty deed to the Purchasers on July 8, 1996, or, by mutual agreement, at an earlier date.

6. Real and personal property taxes for the year of closing, based on the most recent levy and assessment, pre-paid rents, water rents and water assessments, sewer rents, FHA mortgage insurance premiums and interest on encumbrances, if any, shall be apportioned to date of delivery of deed; such apportionment shall be considered final settlement. The Purchasers shall be responsible for any sales, use or other taxes that may accrue because of this transaction.

7. Possession of the Property shall be delivered to the Purchasers on date of deed delivery, subject to the existing tenancy of All Good Mobile Homes. That portion of this tenancy which pertains to the Property will be assigned to the Purchasers at closing and, with respect to the Property, shall not be canceled by the City; provided, however, inasmuch that this tenancy also exists on the Contract Parcel, the City may, at any time and for any reason, cancel the tenancy with respect to said tenant's use or occupancy of the remainder of the Contract Parcel.

8. The Property will be sold by the City and purchased by the Purchasers in its existing condition without any representation or warranties of any kind or nature whatsoever as to the physical condition of the Property, including, without limitation, any representations or warranties as to the environmental condition of the Property or statutory or implied warranties of merchantability or fitness for any purpose. This contract is expressly contingent upon the Purchaser's approval and acceptance of the environmental condition of the Property and the Purchaser's promise to release the City, its officers, employees and agents from and with regard to any toxic, hazardous and/or regulated substances and materials which may be discovered, whether any such discovery is made prior to or after closing, on, under or about the Property. The provisions of this paragraph shall survive the closing and transfer of title to the Property.

9. In the event the Property shall be damaged by fire, flood or other casualty prior to time of closing, the City shall be under no obligation to repair the same.

10. The sale and purchase of the Property pursuant to this contract is expressly contingent upon: a) the Purchasers obtaining acceptable financing within 30 days from the date of the City's acceptance of this contract, and b) the successful closing and transfer of title to the City by PSCo.

11. Time is of the essence hereof. If any note or check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed as herein provided, there shall be the following remedies:

(a) IF THE PURCHASERS ARE IN DEFAULT, then all payments and things of value received hereunder shall be forfeited by the Purchasers and retained on behalf of the City and both parties shall thereafter be released from all obligations hereunder. It is agreed that such payments and things of value are LIQUIDATED DAMAGES, and (except as provided in subparagraph (c)) are the City's SOLE AND ONLY REMEDY for the Purchaser's failure to perform the obligations of this contract. The City expressly waives the remedies of specific performance and additional damages;

(b) IF THE CITY IS IN DEFAULT, the Purchasers may elect to treat this contract as (1) terminated, in which case all payments and things of value received hereunder shall be returned to the City and the City may recover such damages as may be proper, or (2) being in full force and effect and the Purchasers shall have the right to an action for specific performance or damages, or both.

(c) Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this contract, the court may award to the prevailing party all reasonable costs and expenses, including attorneys' fees.

12. Notwithstanding any termination of this Contract, the City and the Purchasers agree that, in the event of any controversy regarding the earnest money and things of value held by the Closing Agent, unless mutual written instructions are received by said Closing Agent, said Closing Agent shall not be required to take any action but may await any proceeding, or at said Closing Agent's option and discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction.

13. Inasmuch that the transaction hereby contemplated was brought about without the effort of any brokers, the Purchasers agree to defend, indemnify and hold the City harmless from any claim for real estate brokerage commissions or finder's fees asserted by any other party claiming to be entitled to brokerage commissions or finder's fees arising out of this transaction.

14. All notices or other communications between the parties hereto shall be delivered by United States Certified Mail, return receipt requested, and shall be deemed served upon the receiving party as of the date of mailing indicated on the postal receipt, addressed as follows:

To the City: City of Grand Junction

c/o City Property Agent
250 North 5th Street
Grand Junction, CO 81501-2668

To the Purchasers: George E. and Debra L. Preuss
978 24 Road
Grand Junction, CO 80205

15. Subject to paragraph 10, if this proposal is duly executed by both parties on or before May 10, 1996, this instrument shall become a contract between the City and the Purchasers and shall inure to the benefit of the heirs, successors and assigns of such parties.

16. This contract is non-recordable. In the event the Purchasers record this Contract, the City shall have the option to terminate this Contract and exercise any other remedy available in law or equity.

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. This Contract and the terms and conditions hereof apply to and are binding upon the heirs, successors and authorized assigns of both parties.

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

19. The Seller and the City have each obtained the advice of their own legal and tax counsel.

Purchasers:

George E. Preuss

Dated: _____

Debra L. Preuss

Dated: _____

Purchaser's Address & Telephone: 978 24 Road
Grand Junction, CO 81505
(970) 245-7700

The City of Grand Junction, Colorado

Mark K. Achen, City Manager

Dated: _____

City's Address & Telephone: c/o City Property Agent
250 North 5th Street
Grand Junction, CO 81501
(970) 244-1565

The undersigned Closing Agent acknowledges receipt of the earnest money deposit specified in Section 1.

By: _____

Dated: _____