

RESOLUTION NO. 62-95

AUTHORIZING THE PURCHASE BY THE CITY OF GRAND JUNCTION,  
COLORADO, OF CERTAIN REAL PROPERTY;  
RATIFYING ACTIONS HERETOFORE TAKEN IN CONNECTION THEREWITH

WHEREAS, the City of Grand Junction made an offer to purchase approximately 2.49 acres of vacant land, located at the headwater of the Buthorn Drainage System lying north of Patterson Road and East of 28 Road in the County of Mesa, State of Colorado, from The First Church of the Nazarene of Grand Junction, for Regional Storm Water Management and other uses, including trails and green space; and

WHEREAS, the Church provided timely acceptance of the City's offer to purchase, subject to the amendments set forth in a Counter Offer to Agreement, a copy of which is attached hereto; and

WHEREAS, the City Council deems it necessary and proper that the City purchase said Property, subject to the conditions of this Resolution.

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

1. That the City Council hereby accepts the Counter Offer to Agreement from The First Church of the Nazarene of Grand Junction, except for the following provision as set forth in paragraph numbered 7 of the Counter Offer:

"If the Church's Property is annexed into the City, then for a period of 24 months after the date of substantial completion of Church's new church building on the Property, City shall waive any requirement that Church pave its parking area on the Property."

2. Subject to exclusion of paragraph numbered 7 of the Counter Offer, the City Council hereby authorizes the purchase of the Property by the City for a purchase price of \$36,162.00. 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 attached Agreement and the attached Counter Offer to Agreement (as amended by the City Council under Section 1 of this Resolution), are hereby ratified, approved and confirmed.

3. That the City Council hereby authorizes the expenditure of \$36,162.00 for the purchase of the Property, to be paid at closing on July 14, 1995, or by mutual agreement at an earlier date.

4. That the officers, employees and agents of the City are hereby authorized and directed to take all actions necessary and appropriate to effectuate the provisions of this Resolution, the attached Agreement and the attached Counter Offer to Agreement (as amended by the City Council under Section 1 of this Resolution), including, without limitation, the execution and delivery of such certificates and documents as may be necessary or desirable.

PASSED and ADOPTED this 21st day of June, 1995.

Attest:

/s/ Ron Maupin  
President of the City Council

/s/ Stephanie Nye  
City Clerk

## AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1995, between First Church of the Nazarene, whose address is 1000 North Ninth Street #8, Grand Junction, Colorado 81501 (hereinafter "the Church"), and the City of Grand Junction, a Colorado home rule municipality, whose address is 250 North 5th Street, Grand Junction, Colorado 81501 (hereinafter "the City").

### RECITALS

A. The Church owns a parcel of land situated at the Northeast Corner of 28 Road and Patterson Road, as more particularly described on Exhibit "A" which is attached hereto and incorporated herein by reference, hereinafter referred to as "the Property", and desires to develop and construct a church with related facilities on the Property.

B. The City is planning for implementation a Regional Storm Drainage Management Program for the health, safety and welfare of the inhabitants of the City of Grand Junction and County of Mesa, said program hereinafter referred to as "the Program". In order to proceed with Project, the City needs to acquire from the Church that certain tract of land containing 2.493 acres as described on Exhibit "B" attached hereto and incorporated herein by reference, said tract of land hereinafter referred to as "the Program Parcel".

Now, Therefore, in consideration of the recitals above and the mutual promises to be kept by the parties hereto, the parties agree as follows:

1. Subject to the provisions set forth herein, the City hereby agrees to purchase the Program Parcel, and the Church agrees to sell the Program Parcel upon the terms and conditions stated herein.

2. The purchase price for the Program Parcel shall be \$31,162.50 payable in "good funds" at closing. The City agrees to pay all closing costs which are incidental to the conveyance of the Program Parcel by the Church to the City.

3. Subject to payment or tender as above provided and compliance by the parties with the other terms and provisions hereof, the Church shall execute and deliver a good and sufficient general warranty deed to the City on July 14, 1995, or, by mutual agreement, at an earlier date, conveying the Program Parcel free and clear of all liens, including, but not limited to, liens for special improvements installed as of the date of the City's signature hereon, whether assessed or not; provided, however, that the City agrees to pay the general property taxes which have accrued against the Program Parcel during the period beginning on January 1, 1995, and ending on the date of closing.

4. The City shall obtain, at the City's expense, a current commitment for title insurance policy in an amount equal to the purchase price on or before June 30, 1995. The City shall pay the premium for said title insurance policy at closing. Except as stated in this paragraph and in paragraph 5, if title is not merchantable and written notice of defect(s) is given by the City to the Church on or before the date of closing, the Church shall use reasonable effort to correct said defect(s) prior to the date of closing. If the Church is unable to correct said defect(s) on or before

the date of closing, the date of closing shall be extended for a period not to exceed thirty (30) days for the purpose of correcting said defect(s). Except as stated in paragraph 5, if title is not rendered merchantable as provided in this paragraph 4, at the City's option, this agreement shall be void and of no effect and each party hereto shall be released from all obligations hereunder.

5. Any encumbrance required to be paid shall be paid at or before the time of settlement from the proceeds of this transaction or any other source. Provided, however, at the option of either party, if the total indebtedness secured by liens on the Program Parcel exceeds the purchase price, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder.

6. Subject to paragraph 7, possession of the Program Parcel shall be delivered to the City without exceptions, leases or tenancies, on the date of deed delivery. If the Church fails to deliver possession on the date herein specified, the Seller shall be subject to eviction and shall be liable for a daily rental of \$50.00 until possession is delivered.

7. The City intends to excavate the Program Parcel for the purpose of creating of a storm water detention facility. The City agrees that the Church may, at its sole cost and expense, conduct said excavation and use said excavated material as fill material for the development of the church to be constructed on the Property. Provided, however, that any and all excavations made by the Church shall conform to the engineering and design specifications of the City, as follows: (1) No excavation shall occur in the South 5.0 feet and the North 20.0 feet of the Program Parcel; (2) Side slopes shall be held to a uniform 4:1 slope; (3) The depth of the excavation shall not exceed 4.0 feet; (4) The east-west slope of the bottom of the excavated area shall be left at a slope of 1 percent (1.0%) to the west. Provided, further, that the City does not and will not warrant the sufficiency of said excavated material as being suitable for any use by the Church, and that the Church agrees to indemnify the City, its officers, employees and agents, and to hold the City, its officers, employees and agents harmless from and all costs, liabilities and damages resulting from the Church's use of said material.

8. The City agrees that the Church shall be authorized to utilize the excavated Program Parcel for storm water detention which may be imposed as a requirement for the proposed Church development, and that the Church shall be authorized discharge storm water from the Church development into the excavated Program Parcel. The City further agrees that the City shall be responsible for the operation, maintenance and repair of the excavated Program Parcel.

9. This entire agreement and the City's obligation to proceed under its terms and conditions is expressly conditioned upon the consent and approval of the City Council of the City of Grand Junction. If such consent and approval is not obtained on or before June 21, 1995, then this agreement shall automatically become void and of no effect.

10. Subject to paragraph 9, if this proposal is accepted by the Church in writing and the City receives notice of such acceptance on or before 3:00 o'clock p.m. on June 12, 1995, this instrument shall become a contract between the Church and the City and shall inure to the benefit of the heirs, successors and assigns of such parties.

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

To the Church: c/o Carl N. Baker  
1000 North 9th Street  
Grand Junction, CO 81501

12. The parties hereto represent to each other that the sale and purchase of the Program Parcel 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 sale and purchase of the Program Parcel. 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 other party as a result of dealings claimed to have been conducted with the respective party.

13. This agreement contains the entire understanding of the parties and is intended as a complete and final expression of their agreement and of the terms and conditions thereof. This agreement shall not be modified except by a writing signed the parties hereto or their duly authorized representatives.

14. Time is of the essence of this agreement, and in the event of the failure of either party to perform any term or condition hereof, including, but not limited to, terms pertaining to delivery of payment, such party shall be in default and the other party shall be entitled to all remedies provided by law and the terms of this agreement.

15. This agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for all actions connected herewith shall be in Mesa County, Colorado.

16. This agreement shall inure to the benefit of the successors and assigns of the parties.

17. The Church and the City have each obtained the advice of their own legal and tax counsel with respect to this agreement.

For the City of Grand Junction, a  
Colorado home rule municipality

\_\_\_\_\_  
Mark K. Achen, City Manager

Dated: \_\_\_\_\_

For the First Church of the Nazarene

\_\_\_\_\_  
By:

Dated: \_\_\_\_\_

EXHIBIT "A"

A tract of land located in the West 1/2 of Lot 7, Section 6, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, being more particularly described as follows:

Commencing at the Southwest corner of said Section 6 from whence the Northwest Corner of said Lot 7 bears N 00°03'19" E for a basis of bearings with all bearings contained herein being relative thereto; thence N 00°03'19" E along the West line of said Lot 7 a distance of 686.19 feet; thence S 89°59'07" E a distance of 40.00 feet to the True Point of Beginning;  
thence S 89°59'07" E a distance of 596.09 feet to a point on the East line of the West 1/2 of said Lot 7;  
thence S 00°01'54" W a distance of 636.03 feet to a point on the North right-of-way for F Road as described in Book 1557 at Pages 154-155 in the office of the Mesa County Clerk and Recorder;  
thence N 90°00'00" W a distance of 588.33 feet;  
thence N 45°00'00" W a distance of 11.33 feet to a point on the East right-of-way for 28 Road;  
thence N 00°03'19" E a distance of 628.17 feet to the True Point of Beginning.

EXHIBIT "B"

A parcel of land located in the West 1/2 of Lot 7, Section 6, Township 1 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, being more particularly described as follows:

Commencing at the Southwest corner of said Section 6 from whence the Northwest Corner of said Lot 7 bears N 00°03'19" E for a basis of bearings with all bearings contained herein being relative thereto; thence N 00°03'19" E along the West line of said Lot 7 a distance of 686.19 feet; thence S 89°59'07" E a distance of 40.00 feet to the True Point of Beginning; thence S 89°59'07" E a distance of 596.09 feet to a point on the East line of the West 1/2 of said Lot 7;  
thence S 00°01'54" W a distance of 165.00 feet;  
thence N 89°59'07" W a distance of 187.19 feet;  
thence S 00°01'06" E a distance of 25.00 feet;  
thence N 89°59'07" W a distance of 409.0 feet to a point on the East right-of-way for 28 Road;  
thence N 00°03'19" E a distance of 190.0 feet to the True Point of Beginning,

containing 2.493 acres as described.



## COUNTER OFFER TO AGREEMENT

This Counteroffer to Agreement (Counter Offer) is between The First Church of the Nazarene of Grand Junction (Church) and the City of Grand Junction, a Colorado home rule municipality (City).

1. This Counter Offer relates to an agreement signed by Mark K. Achen, City Manager, on behalf of the City, on May 17, 1995 (Agreement).
2. Church accepts the Agreement subject to the amendments set forth in paragraphs that follow.
3. The purchase price set forth in paragraph numbered 2 of the Agreement shall be Thirty-six Thousand One Hundred Sixty-two Dollars (\$36,162.00).
4. Paragraph numbered seven, commencing with the third full sentence, is amended to read as follows: "Provided, however, that any and all excavations made by the Church shall conform to the engineering design specifications of the City, as follows: (1) No excavation shall occur in the north 15.0 feet of the Program Parcel; (2) Side slopes shall be held to a uniform 4:1 slope; (3) The depth of the excavation shall not exceed 8.0 feet; (4) The east-west slope of the bottom of the excavated area shall be left at a slope of .80 percent to the west."
5. If the Church's Property (as defined in the Agreement) is annexed into the City, City shall waive any requirement that Church provide a separate water detention facility, in light of the parties' Agreement that Church may use the Program Parcel (as defined in the Agreement) to discharge storm water from Church's Property.
6. City shall pay all expenses related to boundary line changes, surveys and subdivision that are necessary in order for Church to sell the Program Parcel to the City.
7. If Church's Property is annexed into the City, then for a period of 24 months after the date of substantial completion of Church's new church building on the Property, City shall waive any requirement that Church pave its parking area on the Property.
8. City shall grant Church a written first right of refusal, permitting Church to acquire the Program Parcel at fair market value, should City ever decide to sell Program Parcel, so long as Church owns other real property adjacent to the Program Parcel.
9. All other terms and conditions of the Agreement shall remain the same.

10. This Counter Offer may be accepted, in writing, at any time before 5:00 p.m. on Thursday, June 22, 1995.

DATED this \_\_\_\_\_ day of June, 1995.

FIRST CHURCH OF THE NAZARENE

By

\_\_\_\_\_  
Carl Baker, Pastor

CITY OF GRAND JUNCTION

By

\_\_\_\_\_  
Mark K. Achen, City Manager