

RESOLUTION NO. 22-96

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO PROCEED WITH THE CREATION OF THE GRAND JUNCTION PUBLIC FINANCE CORPORATION.

WHEREAS, The City Council has authorized the purchase agreement with the Trust for Public Lands for the acquisition of approximately 215 acres for Parks and Open Space; and

WHEREAS, The City Council further authorized and directed staff to develop a long-term tax exempt financing mechanism for this purchase; and

WHEREAS, The creation of a non-profit Public Finance Corporation is an appropriate method of facilitating a lease purchase of the property, as allowed under Article X, Section 20 of the Colorado Constitution; and

WHEREAS, The Public Finance Corporation will authorize the issuance of Certificates of Participation (COPs) to be paid from lease payments the City will make to the Public Finance Corporation; and

WHEREAS, The cost of issuance of the COPs including bond counsel and underwriting costs, should be paid directly by the City to minimize the actual dollar size of the COPs.

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

a. the City Attorney is hereby directed to create the Grand Junction Public Finance Corporation at the earliest possible date with the following three individuals as the Board of Directors.

Mark Achen, City Manager

Lynn James, Citizen of Grand Junction

Bob Cron, Citizen of Grand Junction

b. the cost of issuance of the COPs and creation of the corporation are to be paid by a transfer from General Fund Contingency and the Finance Director is hereby so directed.

c. the Articles of Incorporation and Bylaws of the Grand Junction Public Finance Corporation, substantially in the form attached hereto are hereby approved.

ADOPTED AND APPROVED THIS 6th DAY OF MARCH, 1996.

APPROVED:

/s/ Ron Maupin
President of the Council

ATTEST:

/s/ Stephanie Nye
City Clerk

ARTICLES OF INCORPORATION

The undersigned incorporator, a natural person of the age of 21 years or more, desiring to form a nonprofit corporation under the provisions of the Colorado Nonprofit Corporation Act, Articles 20 through 29, inclusive, of Title 7 of the Colorado Revised Statutes, as amended, does execute, acknowledge, and deliver in duplicate to the Secretary of State of the State of Colorado the following Articles of Incorporation.

ARTICLE I - NAME

The name of the corporation shall be "Grand Junction Public Finance Corporation."

ARTICLE II - DURATION

The corporation shall exist in perpetuity, from and after the date of filing of these Articles of Incorporation with the Secretary of State of the State of Colorado, unless dissolved according to law.

ARTICLE III - PURPOSES

The purposes for which the corporation is organized are as follows:

(a) To acquire by purchase, lease or otherwise, real or personal property, including, without limitation, interests in real or personal property, or any combination thereof, to construct or install improvements, to renovate, expand and improve buildings, and to lease or otherwise convey interests in real or personal property or improvements or any combination thereof to the City of Grand Junction, Colorado (the "City").

(b) To borrow money, to become indebted, and to execute and deliver bonds, notes, or debentures or other securities, instruments or obligations for the purposes of acquiring such real or personal property, or interests in real or personal property, constructing or installing such improvements, renovating, expanding and improving such buildings, or any combination thereof, and for such other purpose or purposes as may be necessary or desirable to accomplish the

objectives of the corporation. Such indebtedness may be unsecured, may be secured by any mortgage, trust deed or other lien upon the property to be acquired or any other property of the corporation, or may be otherwise secured.

(c) To conduct the business of the corporation in a manner such that at the time that any indebtedness of the corporation is ultimately paid in full, the title and ownership of any property securing such indebtedness will be vested in the City.

(d) To otherwise assist in or facilitate the acquisition or financing of real or personal property or improvements for or to be used by the City and to assist in or facilitate any functions or services of the City.

(e) To exercise all powers, privileges and rights necessary or advisable to carry out the objects and purposes for which the corporation is formed, and the incorporator and directors hereby claim for the corporation all the benefits, privileges, rights and powers created, extended or conferred by the provisions of all applicable laws of the State of Colorado pertaining to corporations not for profit, as the same may be amended from time to time.

ARTICLE IV - ADDRESS AND REGISTERED AGENT

The address of the initial registered office of the corporation is City Hall, 250 North 5th Street, Grand Junction, Colorado 81501. The registered agent of the corporation is Dan Wilson, Esq. The address of the principal office of the corporation is City Hall, 250 North 5th Street, Grand Junction, Colorado 81501.

ARTICLE V - MEMBERSHIP AND CAPITAL STOCK

The corporation shall have no members, and the corporation shall issue no membership certificates and shall have no capital stock.

ARTICLE VI - BOARD OF DIRECTORS

The affairs and management of the corporation shall be under the control of a board of directors. The initial board of directors of the corporation shall consist of three directors, and the names and addresses of the persons who shall serve as the initial directors of the corporation until

the first meeting of the board and until their successors are elected and shall qualify are:

<u>NAME</u>	<u>ADDRESS</u>
Mark K. Achen	250 North 5th Street Grand Junction, CO 81501
Bob Cron	310 Dakota Drive Grand Junction, CO 81503
Dr. Lynn James	308 Mayfair Drive Grand Junction, CO 81501

The directors shall serve for terms of three years (except that the initial terms of such directors may be for a lesser period if so stated in the by-laws of the corporation); but any of the directors may be removed for cause by the City Council of the City (the "City Council"). Whenever a vacancy shall occur in the membership of the board of directors, such vacancy or vacancies shall be filled by appointment by the remaining member or members. If there are no remaining members of the board of directors, the vacancies shall be filled by the City Council of the City (the "City Council").

The number and method of appointment of the directors may be changed only by amendment of these Articles of Incorporation approved by the City Council as provided in Article XII hereof.

ARTICLE VII - INCORPORATOR

The name and address of the incorporator is Ann Marie Kennedy, 633 17th Street, Suite 3000, Denver, Colorado 80202.

ARTICLE VIII - REGULAR AND SPECIAL MEETINGS

The annual, regular and special meetings of the corporation, and the place, time and manner of giving notice of such meetings, shall be in accordance with applicable law and as prescribed by the by-laws of the corporation.

ARTICLE IX - INTEREST OF DIRECTORS

The directors of the corporation shall have no private or proprietary interest in the corporation. The directors shall serve as such without compensation, and no part of the corporation's net earnings, income or assets will inure to the benefit of any private entity or individual; provided, however, that the board of directors may allow reimbursement of reasonable expenses incurred by a director in the performance of his duties as a director or officer.

ARTICLE X - DISSOLUTION

In the event of the dissolution of the corporation, no part of its property shall be distributed to any private entity or individual, and any property of the corporation not required to pay corporate debts and corporate expenses shall be distributed only to the City.

ARTICLE XI - BY-LAWS OF THE CORPORATION

The directors shall have the power to adopt and amend by-laws of the corporation, as they may deem proper for the management of the affairs of the corporation, and which are not inconsistent with law or these Articles of Incorporation.

ARTICLE XII - AMENDMENT

These Articles of Incorporation may be amended from time to time by the affirmative vote of a majority of the directors; provided, however, that paragraph (c) of Article III, Article V, Article VI, Article IX and Article X shall not be amended or repealed without the approval of the City Council.

ARTICLE XIII - EXCULPATION AND INDEMNIFICATION

(a) No director of the corporation shall be personally liable to the corporation for monetary damages for breach of fiduciary duty as a director, but this provision shall not eliminate or limit the liability of a director to the corporation for monetary damages for (1) any breach of the director's duty of loyalty to the corporation, (2) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) acts specified in Section 7-24-111 of the Colorado Revised Statutes (involving loans to directors and officers), or (4) any transaction from which the director derived an improper personal benefit.

(b) Except as provided in paragraph (c) below, the corporation may indemnify against liability incurred in any proceeding to which an individual was made a party because the individual is or was a director if (1) such individual conducted himself or herself in good faith; (2) such individual reasonably believed (a) in the case of conduct in such individual's official capacity with the corporation, that such individual's conduct was in the corporation's best interests, or (b) in all other cases, that such individual's conduct was at least not opposed to the corporation's best interests; and (3) in the case of any criminal proceeding, such individual had no reasonable cause to believe such individual's conduct was unlawful. Indemnification under this paragraph (b) in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding. Indemnification under this paragraph (b) may not be made unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in the first sentence of this paragraph [b], and shall be made in accordance with the requirements of Section 7-109-106 of the Colorado Revised Statutes.

(c) The corporation may not indemnify a director under paragraph (b) either: (1) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation, or (2) in connection with any proceeding charging improper personal benefit to the director, whether or not involving an action in the director's official capacity, in which he or she was adjudged liable on the basis that personal benefit was improperly received by the director.

(d) A director or officer of the corporation who is or was a party to a proceeding

may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction, in either case in accordance with Section 7-109-105 of the Colorado Revised Statutes.

(e) The corporation shall indemnify a person who is or was a director of the corporation or who is an officer of the corporation and who was wholly successful, on the merits or otherwise, in defense of any proceeding to which such person was a party, against reasonable expenses incurred by such person in connection with the proceeding.

(f) The corporation may pay for or reimburse the reasonable expenses incurred by a director or officer of the corporation who is a party to a proceeding in advance of the final disposition of the proceeding if (1) the director or officer furnishes the corporation a written affirmation of the director's or officer's good faith belief that he or she has met the standard of conduct described in the first sentence of paragraph (b) of this Article Thirteen, (2) the director or officer furnishes the corporation a written undertaking, executed personally or on such person's behalf, to repay the advance if it is determined that such person did not meet such standard of conduct; and (3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this paragraph (f). The undertaking required by (2) above shall be an unlimited general obligation of the director or officer, but need not be secured and may be accepted without reference to financial ability to make repayment.

(g) In addition to the foregoing, the corporation may pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent in the proceeding.

(h) The corporation may indemnify and advance expenses to officers, employees or agents of the corporation to the extent permitted by law.

(i) The corporation may purchase and maintain insurance from any insurance company designated by the board of directors, on behalf of an individual who is or was a director, officer, employee, fiduciary, or agent of the corporation, and who, while a director, officer, employee, fiduciary, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, employee, fiduciary, or agent of any other foreign or domestic corporation or of any partnership, joint venture, trust, or other enterprise, or employee benefit plan against any

liability asserted against or incurred by such individual in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify such individual against such liability under the provisions of this Article Thirteen and the provisions of law.

(j) The terms "directors", "expenses", "liability", "official capacity", "party", and "proceeding" are intended to have the meanings given to such terms under Section 7-109-101 of the Colorado Revised Statutes.

These Articles of Incorporation, consisting of pages 1 to 7, inclusive, have been duly adopted by the incorporator.

IN WITNESS WHEREOF, the incorporator of the Grand Junction Public Finance Corporation has caused these Articles of Incorporation to be signed, this 22nd day of May, 1996.

/s/ Ann Marie Kennedy
INCORPORATOR

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BY-LAWS
OF
GRAND JUNCTION PUBLIC FINANCE CORPORATION

ARTICLE I
OFFICE OF THE CORPORATION

The principal office of the Grand Junction Public Finance Corporation (the "corporation") shall be located at City Hall, 250 North 5th Street, Grand Junction, Colorado 81501.

ARTICLE II
NATURE OF CORPORATION

Section 1. INTEREST OF OFFICERS AND DIRECTORS. No officer or director of the corporation shall have any right, title or interest in or to any real or personal property or other assets of the corporation either during its existence or upon its dissolution.

Section 2. NON-LIABILITY FOR DEBTS. The private property of the directors and officers shall be exempt from execution or other liability for any debts of the corporation and no director or officer shall be liable or responsible for the debts or liabilities of the corporation.

Section 3. INDEMNIFICATION OF DIRECTORS, OFFICERS AND EMPLOYEES; LIMITATION OF LIABILITY. The corporation shall indemnify any director, officer, employee or former director, officer or employee of the corporation, to the extent allowed by law and as provided in the articles of incorporation, against the obligation to pay a judgment, settlement, penalty, fine, or reasonable expense (including attorney fees) incurred with respect to the defense of any threatened, pending or completed action, suit, or proceeding, civil, criminal, administrative or investigative (whether formal or informal), or for any loss or claim resulting from such action, suit or proceeding, in which he is made a party by reason of being or having been a director, officer or employee. The corporation is authorized to obtain a policy or policies of insurance for the purpose of providing such indemnification of the directors, officers and employees of the corporation.

As provided in the Articles of Incorporation, except as otherwise provided by law,

no director shall have any personal liability to the corporation or its members (if there are ever any members) for monetary damages for breach of fiduciary duty as a director.

ARTICLE III
BOARD OF DIRECTORS

Section 1. GENERAL. The business and affairs of the corporation shall be managed by a board of directors consisting of three directors, as provided in the Articles of Incorporation. Those directors who shall serve as the first board of directors (as set forth in the Articles of Incorporation), shall hold office for the terms indicated below:

<u>Directors</u>	<u>Term</u>
Mark K. Achen	Until January 1, 1999
Bob Cron	Until January 1, 1999
Dr. Lynn James	Until January 1, 1998

Thereafter the terms of office for the three directors shall be for a period of three years, subject to removal for cause by the City Council (the "City Council") of the City of Grand Junction, Colorado (the "City") as provided in the Articles of Incorporation. Directors shall hold office until their successors have been appointed and qualified. A director may be appointed for one or more terms.

Section 2. ANNUAL MEETING. A regular annual meeting of the directors of the corporation shall be held at the principal place of business, or at such other place as a majority of the directors shall determine, on the second Tuesday of January in each year, at 7:00 p.m., or at such other time as a majority of the directors may determine, for the purpose of electing officers and for the transaction of such other business as may come before the meeting.

Section 3. SPECIAL MEETINGS. Special meetings of the directors may be called by any director, and it shall then be the duty of the Secretary-Treasurer to cause notice of such meeting to be given as hereinafter provided. Special meetings may be held at any place within the State.

Section 4. NOTICE OF MEETINGS. Written notice of the date, time and

place of each special meeting shall be delivered personally or mailed by first class United States mail to each director at least 24 hours prior to the meeting. Waiver of the notice of any meeting may be given by any director, either before or after the time of such meeting, and attendance at any meeting shall constitute a waiver of the notice of such meeting.

Section 5. TELEPHONE MEETINGS; ACTION WITHOUT MEETING. Notwithstanding any other provision of these by-laws, the board of directors may conduct any meeting by telephone conference call. Notwithstanding any other provision of these by-laws, all of the directors may execute written consents setting forth any action, in substitution for any meeting, and any action of the board of directors (not inconsistent with law or the Articles of Incorporation) evidenced by such a written consent shall be the valid action of the board of directors.

Section 6. QUORUM. A majority of the board of directors shall constitute a quorum for the transaction of business at any meeting. All resolutions or motions for the transaction of the business of the corporation shall require the affirmative vote of a majority of the board of directors.

Section 7. VACANCY. Whenever a vacancy shall occur in the membership of the board of directors, such vacancy or vacancies shall be filled by appointment by the remaining member or members of the Board. If there are no remaining members of the board of directors, the vacancies shall be filled by the City Council.

Section 8. COMPENSATION. No director of the corporation shall receive any salary or compensation for his services nor shall any director of the corporation receive from the corporation any pecuniary profit from the operations of the corporation; provided that any director may, from time to time, be reimbursed for his reasonable expenses incurred in the performance of his duties as a director or officer.

ARTICLE IV

OFFICERS

Section 1. OFFICERS. The officers of the corporation shall be a President, Vice President, and a Secretary-Treasurer.

Section 2. ELECTION AND TERM OF OFFICE. The initial officers of the corporation shall be elected by the board of directors at the organizational meeting. Officers shall thereafter be elected annually by the board of directors at the regular annual meeting, and upon the

appointment of one or more new directors. Each officer shall be a director and shall hold office until his successor as such officer shall have been duly elected as herein provided.

Section 3. PRESIDENT. The President shall be the principal executive officer of the corporation and shall in general supervise and control all of the business and affairs of the corporation. The President shall preside at meetings of the board of directors, and may sign, together with the Secretary-Treasurer or any other proper officer of the corporation authorized by the board of directors, or alone if no additional signature is required by the authorizing action of the board of directors, any leases, deeds, conveyances, mortgages, bonds, notes, debentures, securities, certificates, instruments, waivers, consents, obligations, agreements or contracts which the board of directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board of directors or by statute to some other officer or agent of the corporation; and in general the President shall perform all duties incidental to the office of President and such other duties as may be prescribed by the board of directors from time to time.

Section 4. VICE PRESIDENT. In the absence of the President or in the event of the inability or refusal of the President to act, the Vice President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall perform such other duties as from time to time may be assigned by the President or by the board of directors.

Section 5. SECRETARY-TREASURER. If required by the board of directors, the Secretary-Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the board of directors may determine. The Secretary-Treasurer shall have charge and custody of and be responsible for any funds and securities of the corporation unless otherwise provided by the board of directors; and in general perform all the duties incidental to the office of treasurer and such other duties as from time to time may be assigned by the President or by the board of directors. The Secretary-Treasurer shall keep the minutes of the meetings of the board of directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these by-laws and as required by law; be custodian of the corporate records and of the seal of the corporation and affix the seal of the corporation to all documents, the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these by-laws; and in general perform all duties incidental to the

office of secretary and such other duties as from time to time may be assigned by the President or by the board of directors. In the absence of the Secretary-Treasurer or in the event of the inability or refusal of the Secretary-Treasurer to act, the President may designate another director as Acting Secretary-Treasurer to assume the powers, duties and functions of the Secretary-Treasurer.

ARTICLE V

SEAL

The corporate seal of the corporation shall be in the form of a circle and shall have inscribed thereon the words "Grand Junction Public Finance Corporation" and the words "Corporate Seal" (or abbreviations thereof).

ARTICLE VI

FISCAL YEAR

The fiscal year of the corporation shall begin on the first day of January of each year and shall end on the thirty-first day of December of such year.

ARTICLE VII

AMENDMENTS

These by-laws may be altered, amended or repealed by the affirmative vote of a majority of the members of the board of directors voting at any special or regular meeting. Notwithstanding the foregoing, these by-laws may not be altered, amended or repealed so as to be inconsistent with the Articles of Incorporation, or with applicable law.

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