

RESOLUTION NO. 38-01

**CONCERNING THE ISSUANCE OF A REVOCABLE PERMIT TO
K.C. ASPHALT, L.L.C.**

Recitals.

1. K.C. Asphalt, L.L.C., a Colorado limited liability company, hereinafter referred to as the Petitioner, represents that it is the owner of that certain real property located at 202 Fourth Avenue in the City of Grand Junction, County of Mesa, State of Colorado, as identified by Mesa County Tax Schedule Number 2945-232-04-001, and has requested that the City Council of the City of Grand Junction issue a Revocable Permit to allow the Petitioner to install, operate, maintain and repair a private sanitary sewer service line within the limits of the following described real property owned by the City, said real property consisting of public right-of-way for Fourth Avenue and also real property which is owned by the City but does not constitute public right-of-way, to wit:

Commencing at a Mesa County Survey Marker for the southwest corner of the NW ¼ of the NW ¼ of Section 23, Township 1 South, Range 1 West of the Ute Meridian, City of Grand Junction, County of Mesa, State of Colorado, from whence a Mesa County Survey Marker for the southwest corner of the NE ¼ NW ¼ of said Section 23 bears S 89°58'01" E a distance of 1,310.05 feet; thence N 86°03'27" E a distance of 432.68 feet to a point on the north right-of-way line for said Fourth Avenue and the southerly boundary line of Lot 1 of D&RGW Railroad Subdivision Filing No. 1, said point being the True Point of Beginning; thence S 89°58'01" E a distance of 20.99 feet; thence S 17°43'44" W a distance of 400.15 feet; thence N 72°16'16" W a distance of 20.00 feet; thence N 17°43'44" E a distance of 393.77 feet to the Point of Beginning.

2. Based on the foregoing, the City Council has determined that such action would not at this time be detrimental to the inhabitants of the City of Grand Junction.

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

That the City Manager, on behalf of the City and as the act of the City, is hereby authorized and directed to issue the attached Revocable Permit to the above-named Petitioner for the purposes aforescribed and within the limits of the public right-of-way and city owned property aforescribed, subject to each and every term and condition contained in the attached Revocable Permit.

PASSED and ADOPTED this 18th day of April, 2001.

Attest:

/s/ Gene Kinsey
President of the City Council

/s/ Stephanie Nye
City Clerk

REVOCABLE PERMIT

Recitals

1. K.C. Asphalt, L.L.C., a Colorado limited liability company, hereinafter referred to as the Petitioner, represents that it is the owner of that certain real property located at 202 Fourth Avenue in the City of Grand Junction, County of Mesa, State of Colorado, as identified by Mesa County Tax Schedule Number 2945-232-04-001, and has requested that the City Council of the City of Grand Junction issue a Revocable Permit to allow the Petitioner to install, operate, maintain and repair a private sanitary sewer service line within the limits of the following described real property owned by the City, said real property consisting of public right-of-way for Fourth Avenue and also real property which is owned by the City but does not constitute public right-of-way, to wit:

Commencing at a Mesa County Survey Marker for the southwest corner of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 23, Township 1 South, Range 1 West of the Ute Meridian, City of Grand Junction, County of Mesa, State of Colorado, from whence a Mesa County Survey Marker for the southwest corner of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 23 bears S $89^{\circ}58'01''$ E a distance of 1,310.05 feet; thence N $86^{\circ}03'27''$ E a distance of 432.68 feet to a point on the north right-of-way line for said Fourth Avenue and the southerly boundary line of Lot 1 of D&RGW Railroad Subdivision Filing No. 1, said point being the True Point of Beginning; thence S $89^{\circ}58'01''$ E a distance of 20.99 feet; thence S $17^{\circ}43'44''$ W a distance of 400.15 feet; thence N $72^{\circ}16'16''$ W a distance of 20.00 feet; thence N $17^{\circ}43'44''$ E a distance of 393.77 feet to the Point of Beginning.

2. Based on the foregoing, the City Council has determined that such action would not at this time be detrimental to the inhabitants of the City of Grand Junction.

NOW, THEREFORE, IN ACCORDANCE WITH THE ACTION OF THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

There is hereby issued to the above-named Petitioner a Revocable Permit for the purposes aforescribed and within the limits of the public right-of-way and city owned property aforescribed; provided, however, that the issuance of this Revocable Permit shall be conditioned upon the following terms and conditions:

1. Petitioner's use and occupancy of the public right-of-way and city owned property as authorized pursuant to this Permit shall be performed with due care or any other higher standard of care as may be required to avoid creating hazardous or dangerous situations and to avoid damaging public roadways, sidewalks, utilities, or any other facilities presently existing or which may in the future exist in said right-of-way and city owned property.

2. The City hereby reserves and retains a perpetual right to utilize all or any portion of the aforescribed public right-of-way and city owned property for any purpose whatsoever. The City further reserves and retains the right to revoke this Permit at any time and for any reason.

3. The Petitioner, for itself and for its successors and assigns, agrees that it shall not hold, nor attempt to hold, the City of Grand Junction, its officers, employees and agents, liable for damages caused to any property of the Petitioner or any other party, as a result of the Petitioner's occupancy, possession or use of said public right-of-way and city owned property or as a result of any City activity or use thereof or as a result of the installation, operation, maintenance, repair and replacement of public improvements.

4. The Petitioner agrees that it shall at all times keep the above described public right-of-way and city owned property in good order, condition and repair.

5. This Revocable Permit shall be issued only upon concurrent execution by the Petitioner of an agreement that the Petitioner and the Petitioner's successors and assigns shall save and hold the City of Grand Junction, its officers, employees and agents harmless from, and indemnify the City, its officers, employees and agents, with respect to any claim or cause of action however stated arising out of, or in any way related to, the encroachment or use permitted, and that upon revocation of this Permit by the City the Petitioner shall, at the sole expense and cost of the Petitioner, within thirty (30) days of notice of revocation (which may occur by mailing a first class letter to the last known address), peaceably surrender said public right-of-way and city owned property and, at its own expense, remove any encroachment so as to make the aforescribed public right-of-way and city owned property available for use by the City or the general public. The provisions concerning holding harmless and indemnity shall survive the expiration, revocation, termination or other ending of this Permit .

6. This Revocable Permit, the foregoing Resolution and the following Agreement shall be recorded by the Petitioner, at the Petitioner's expense, in the office of the Mesa County Clerk and Recorder.

Dated this _____ day of _____, 2001.

Attest:

The City of Grand Junction,
a Colorado home rule municipality

City Clerk

City Manager

Acceptance by the Petitioner

AGREEMENT

K.C. Asphalt, L.L.C., a Colorado limited liability company, for itself and for its successors and assigns, does hereby agree to: Abide by each and every term and condition contained in the foregoing Revocable Permit; As set forth, indemnify the City of Grand Junction, its officers, employees and agents and hold the City of Grand Junction, its officers, employees and agents harmless from all claims and causes of action as recited in said Permit; Within thirty (30) days of revocation of said Permit, peaceably surrender said public right-of-way and city owned property to the City of Grand Junction and, at its sole cost and expense, remove any encroachment so as to make said public right-of-way and city owned property fully available for use by the City of Grand Junction or the general public.

Dated this _____ day of _____, 2001.

K.C. Asphalt, L.L.C.,
a Colorado limited liability company

By: _____

State of _____)
)ss.
County of _____)

The foregoing Agreement was acknowledged before me this _____ day of _____, 2001, by _____ of _____ as _____ of K.C. Asphalt, L.L.C., a Colorado limited liability company.

My Commission expires: _____

Witness my hand and official seal.

Notary Public