

**RESOLUTION NO. 11-03**

**A RESOLUTION CONCERNING THE GRANTING OF A  
NON-EXCLUSIVE ELECTRIC UTILITY EASEMENT  
TO THE PUBLIC SERVICE COMPANY OF COLORADO**

WHEREAS, the City of Grand Junction believes it is the owner of certain real property described as Lot 1, Block 22 of The Ridges Filing No. Five, situate in Section 20, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado; and

WHEREAS, the Public Service Company of Colorado has requested a non-exclusive electric utility easement across said City property for the purposes of installing, operating, maintaining repairing and replacing underground electric utilities and facilities appurtenant thereto.

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

That the City Manager is hereby authorized, on behalf of the City and as the act of the City, to execute the attached Easement Agreement conveying to the Public Service Company of Colorado a non-exclusive easement over and across the limits of the City property described therein.

PASSED and ADOPTED this 5<sup>th</sup> day of February, 2003.

Attest:

/s/ Cindy Enos-Martinez  
President of the Council

/s/ Stephanie Tuin  
City Clerk

## EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between The City of Grand Junction, a Colorado home rule municipality ("City"), whose address is 250 North 5th Street, Grand Junction, Colorado 81501, and Public Service Company of Colorado, a Colorado corporation ("Public Service"), whose address is Seventeenth Street Plaza, 1225 17th Street, Denver, Colorado 80202-5533.

### RECITALS

- A. The City believes it is the owner of certain real property described as Lot 1, Block 22 of The Ridges Filing No. Five, situate in Section 20, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado.
- B. Public Service is proposing to install, operate and maintain underground electric lines and facilities appurtenant thereto to provide upgraded electric service to the community commonly known as The Ridges ("the Project").
- C. The parties desire to provide for the conveyance of a non-exclusive easement required for the Project pursuant to the terms and conditions stated in this Agreement.

NOW, THEREFORE, in consideration of the recitals above and the terms, covenants, conditions, restrictions, duties and obligations contained herein, the parties agree as follows:

- Consideration, Grant. For and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the City hereby grants and conveys to Public Service, by quit claim, a non-exclusive easement on, along, over, under, through and across the limits of the City Property described in Exhibit "A" attached hereto and incorporated herein by reference ("Easement"), and Public Service accepts such grant and conveyance subject to the terms and conditions of this Agreement.
- Term. The initial term of this grant shall be twenty-five (25) years, beginning on the day and year first above written.
- Option to Extend. Subject to the provisions of paragraph 5 below, Public Service shall be entitled to exercise successive extensions of this grant and conveyance, and the City hereby grants such right, for additional twenty-five (25) year periods ("later terms"). If the grant is extended for later terms, each such later term shall be upon the same terms and conditions of this Agreement or upon such other terms as may hereafter be negotiated between the City and Public Service.
- Abandonment/Automatic Termination. In the event of permanent abandonment of the Easement by Public Service, all rights, privileges and interests herein granted shall

automatically terminate. Permanent abandonment shall have occurred if Public Service shall fail to use the Easement for any twelve (12) consecutive month period.

5. Express Limitations. Public Service's utilization of the Easement shall be specifically limited to the installation, operation, maintenance and repair of underground electric service lines and facilities directly related or appurtenant thereto. The easement rights herein granted do not include the right to expand utilization of the Easement for any other purposes unless such uses are authorized by subsequent conveyance instrument(s).

6. General Indemnification. Public Service hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold the City, its officers, employees, agents and assets harmless from any and all claims, costs, judgments, awards or liability, including reasonable attorneys' fees and costs (except those caused by the City's gross negligence or its willful or wanton acts) to any person or with regard to any property, including claims arising from injury or death, resulting from Public Service's gross negligence or willful act or failure to act pursuant to this Agreement. The foregoing indemnification obligations shall extend to claims which are not reduced to a suit and any claim which may be compromised by Public Service prior to the culmination of any litigation or the institution of any litigation.

7. Default. Should Public Service (a) default in the performance of this Agreement and any such default continue for a period of ninety (90) days after written notice thereof is given by the City to Public Service, or (b) be declared bankrupt, insolvent, make an assignment for the benefit of creditors, or if a receiver is appointed, or (c) fail to timely cure such default, the City, at its option, may file an action to cancel and annul this Agreement and obtain an order from a court of competent jurisdiction to enter and take possession of the Easement. This Agreement shall then terminate upon such occupation. Nothing herein shall prejudice or be to the exclusion of any other rights or remedies which the City may have against Public Service, including, but not limited to, the right of the City to obtain injunctive relief. If the City succeeds in such effort, Public Service shall pay the City's reasonable attorneys' fees.

8. Public Service Acceptance Subject to Existing Conditions.

8.1 Public Service has inspected the Easement and accepts the same in its present condition and location. Public Service agrees that the condition of the Easement is sufficient for the purposes of Public Service. The City makes no warranties, promises or representations, express or implied, that the Easement is sufficient for the purposes of Public Service. If the Easement is damaged due to fire, flood or other casualty, or if the Easement is damaged or deteriorates to the extent that it is no longer functional for the purposes of Public Service, the City shall have no obligation to repair the Easement nor to otherwise make the Easement usable or occupiable, since such damages shall be at Public Services' own risk.

8.2 The City makes no representations or warranties regarding the presence or existence of any toxic, hazardous or regulated substances on, under or about the Easement, except to the extent that the City states it has not deposited or caused to be deposited any toxic, hazardous or regulated substances on, under or about the Easement.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

10. Total Agreement, Applicable to Successors. This Agreement contains the entire agreement between the parties and, except for automatic termination or expiration, cannot be changed or modified except by a written instrument subsequently executed by both parties. This Agreement and the terms and conditions hereof apply to and are binding upon the successors and authorized assigns of both parties.

IN WITNESS WHEREOF, the parties hereto have each executed and entered into this Easement Agreement as of the day and year first above written.

Attest:

The City of Grand Junction,  
a Colorado home rule municipality

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager

Public Service Company of Colorado,  
a Colorado corporation

By \_\_\_\_\_  
Nicholas B. Faes, Manager,  
Siting and Land Rights,  
Xcel Energy Services, Inc., Agent for  
Public Service Company of Colorado

State of Colorado            )  
  )ss.  
County of Mesa                )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2003, by Kelly Arnold as City Manager and attested to by Stephanie Tuin as City Clerk of the City of Grand Junction, a Colorado home rule municipality.

My commission expires: \_\_\_\_\_  
Witness my hand and official seal

\_\_\_\_\_  
Notary Public

State of Colorado            )  
  )ss.  
City and County of Denver    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2003, by Nicholas B. Faes, Manager, Siting and Land Rights, Xcel Energy Services, Inc., Agent for Public Service Company of Colorado, a Colorado corporation.

My commission expires: \_\_\_\_\_  
Witness my hand and official seal

\_\_\_\_\_  
Notary Public

## Exhibit "A"

### Legal Description of Easement

A non-exclusive easement situated upon Lot 1, Block 22 of The Ridges Filing No. Five, situate in Section 20, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, as recorded in Plat Book 12 at Pages 316 through 320 in the office of the Mesa County Clerk and Recorder, said Easement being more particularly described by metes and bounds as follows, to wit:

Beginning at the Southeasterly corner of Lot 1, Block 22 of The Ridges Filing No. Five, said point being located on the Northerly right-of-way line for Ridge Circe Drive at its intersection with Ridge Circle Drive;  
thence along the Southerly boundary line of said Lot 1 the following four (4) courses:

1. 49.01 feet along the arc of a curve concave to the North, having a radius of 171.65 feet, a central angle of  $16^{\circ}21'38''$ , and a long chord bearing  $S 56^{\circ}28'25'' W$  a distance of 48.85 feet;
2.  $S 64^{\circ}39'14'' W$  a distance of 300.61 feet;
3. 49.94 feet along the arc of a curve concave to the North, having a radius of 75.00 feet, a central angle of  $38^{\circ}09'00''$ , and a long chord bearing  $S 83^{\circ}43'44'' W$  a distance of 49.02 feet;
4.  $N 77^{\circ}11'46'' W$  a distance of 20.0 feet;

thence leaving the Southerly boundary line of said Lot 1,  $N 12^{\circ}48'14'' E$  a distance of 20.0 feet;  
thence  $S 77^{\circ}11'46'' E$  a distance of 20.0 feet;  
thence  $S 12^{\circ}48'14'' W$  a distance of 6.0 feet;  
thence parallel with and 14.0 feet Northerly of the Southerly boundary line of said Lot 1 the following three (3) courses:

1. 40.62 feet along the arc of a curve concave to the North, having a radius of 61.0 feet, a central angle of  $38^{\circ}09'00''$ , and a long chord bearing  $N 83^{\circ}43'44'' E$  a distance of 39.87 feet;
2.  $N 64^{\circ}39'14'' E$  a distance of 300.61 feet;
3. 44.17 feet along the arc of a curve concave to the North, having a radius of 157.65 feet, a central angle of  $16^{\circ}03'17''$ , and a long chord bearing  $N 56^{\circ}37'34'' E$  a distance of 44.03 feet to a point on the Easterly boundary line of said Lot 1;

thence  $S 45^{\circ}08'16'' E$  along the Easterly boundary line of said Lot 1 a distance of 14.03 feet to the Point of Beginning.

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**END OF EXHIBIT "A"**