

**RESOLUTION NO. 111-04**

**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 All of Lot 1 East of the Denver and Rio Grande Railroad Right-of-way situate in Section 27, 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 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 17<sup>th</sup> day of November, 2004.

Attest:

/s/: Bruce Hill  
President of the Council

/s/: Stephanie Tuin  
City Clerk

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Janice Ward CLK&REC Mesa County, CO  
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Document No. 172017

**EASEMENT AGREEMENT**

This Easement Agreement ("Agreement") is made and entered into as of the 26<sup>th</sup> day of JANUARY, 2006, 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 All of Lot 1 East of the Denver and Rio Grande Railroad Right-of-way situate in Section 27, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado; and
- B. 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:

1. 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.
2. Term. The initial term of this grant shall be twenty-five (25) years, beginning on the day and year first above written.
3. 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.
4. 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).

5. 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 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.

6. 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.

7. Public Service Acceptance Subject to Existing Conditions.

7.1 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.

7.2 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.

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

9. 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

Stephanie Tuin  
City Clerk

[Signature]  
City Manager



Public Service Company of Colorado,  
a Colorado corporation

By Peter West  
Peter West  
as Managing Director, Local Affairs

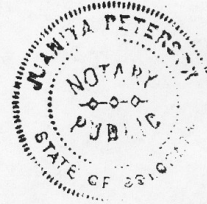
for Public Service Company of Colorado

State of Colorado )  
 )ss.  
County of Mesa )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of Feb., 2006, 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: 10-10-2009  
Witness my hand and official seal

Juanita Peterson  
Notary Public



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

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of JANUARY, 2006, by PETER WEST, as MANAGING DIRECTOR, LOCAL AFFAIRS for Public Service Company of Colorado, a Colorado corporation.

My commission expires: 7/21/08  
Witness my hand and official seal

ALAN C. MORGANFIELD  
NOTARY PUBLIC  
STATE OF COLORADO

My Commission Expires 07/21/2008

Alan C. Morganfield  
Notary Public

**Exhibit "A"**

Legal Description of Easement

A ten-foot wide non-exclusive easement, situated in Lot 1 of Section 27, Township 1 South, Range 1 West of the Ute Meridian, Mesa County, Colorado, lying five feet on each side of the following described centerline:

Commencing at the North one-sixteenth corner of the east line of said Section 27, whence the Northeast corner of said Section 27 bears North 00°22'16" West, and with all bearings herein relative thereto;

Thence North 56°50'14" West, a distance of 102.77 feet to the **Point of Beginning**;

Thence North 82°24'40" West, a distance of 20.00 feet to an existing electrical pole;

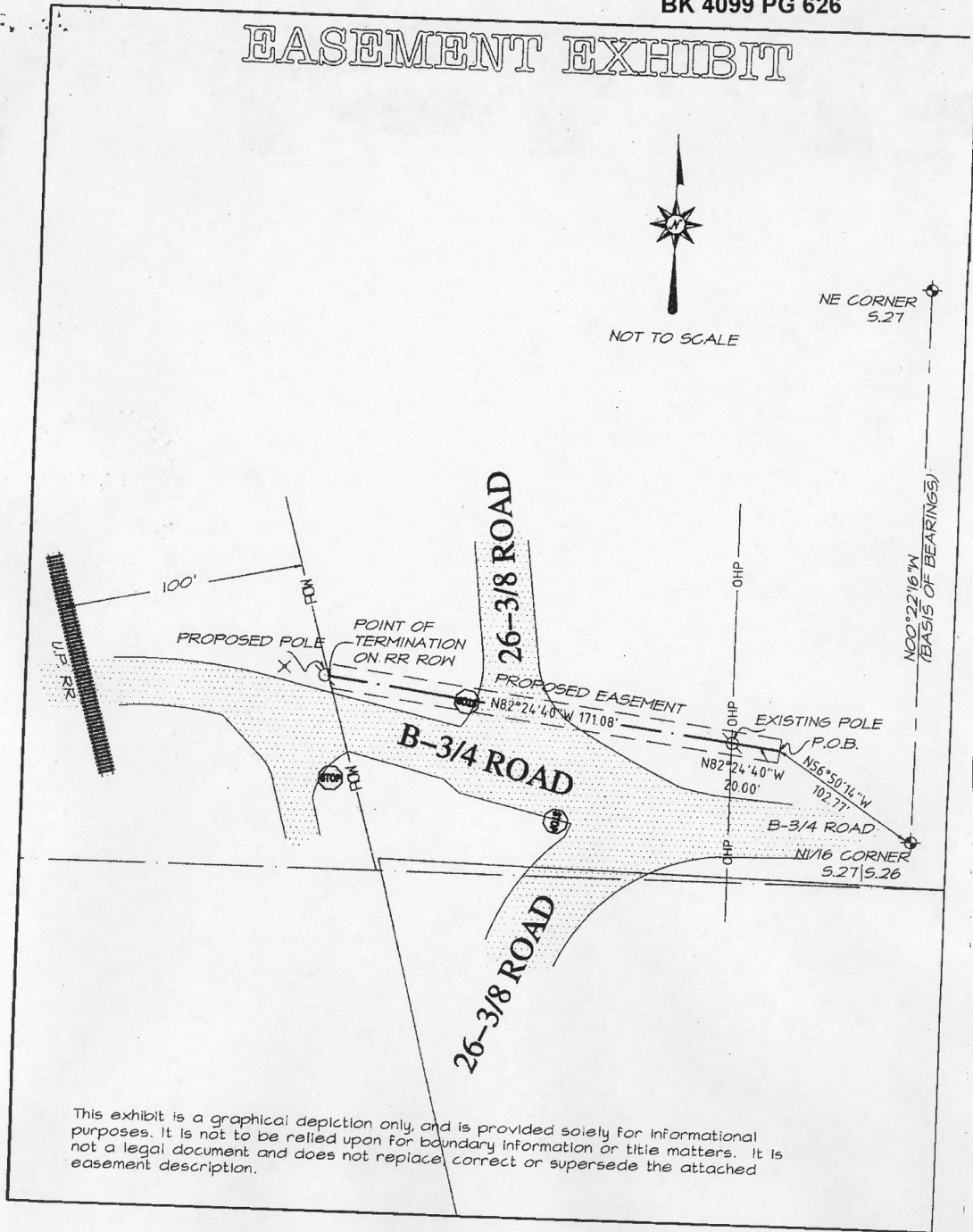
Thence North 82°24'40" West, a distance of 171.08 feet to the Easterly right-of-way line of the Union Pacific Railroad, the Point of Termination of the centerline herein described.

The sidelines of said easement shall be shortened or extended to intersect at the Union Pacific Railroad right-of-way line.

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**END OF EXHIBIT "A"**

# EASEMENT EXHIBIT



This exhibit is a graphical depiction only, and is provided solely for informational purposes. It is not to be relied upon for boundary information or title matters. It is not a legal document and does not replace, correct or supersede the attached easement description.