

RESOLUTION NO. 141-06

**A RESOLUTION CONCERNING THE GRANTING OF A
NON-EXCLUSIVE TELECOMMUNICATION EASEMENT
TO QWEST CORPORATION, A COLORADO CORPORATION**

WHEREAS, the City of Grand Junction 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, Qwest Corporation, a Colorado Corporation has requested a non-exclusive telecommunication easement across said City property located just inside the gate on the City's Cemetery property adjacent to B $\frac{3}{4}$ Road for the purposes of installing, operating, maintaining repairing and replacing telecommunication 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 Qwest a non-exclusive easement over and across the limits of the City property described therein.

PASSED and ADOPTED this 15th day of November, 2006.

Attest:

/S/: James J. Doody
President of the Council

/s/: Juanita Peterson
Deputy City Clerk

EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is made and entered into as of the _____ day of _____, 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 **QWEST Corporation, a Colorado corporation** ("**Qwest**"), whose address is 1801 California Street, Suite 520 , Denver, Colorado 80202.

RECITALS

A. The City 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 Qwest, 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 Qwest 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, Qwest 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 Qwest.
4. Express Limitations. Qwest'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. Qwest 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 attorney's 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 Qwest'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 Qwest prior to the culmination of any litigation or the institution of any litigation.

6. Default. Should Qwest (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 Qwest, 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 Qwest, including, but not limited to, the right of the City to obtain injunctive relief. If the City succeeds in such effort, Qwest shall pay the City's reasonable attorney's fees.

7. Qwest Acceptance Subject to Existing Conditions.

7.1 Qwest has inspected the Easement and accepts the same in its present condition and location. Qwest agrees that the condition of the Easement is sufficient for the purposes of Qwest. The City makes no warranties, promises or representations, express or implied, that the Easement is sufficient for the purposes of Qwest. 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 Qwest, 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 Qwest's 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

City Clerk Interim City Manager

**QWEST Corporation,
a Colorado corporation**

By _____
As _____
for **QWEST**

State of Colorado)
)ss.
County of Mesa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by David Varley as Interim 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 _____, 2006, by _____, as _____ for **QWEST Corporation, a Colorado corporation.**

My commission expires: _____
Witness my hand and official seal

Notary Public

Exhibit "A"

Legal Description of Easement

A certain perpetual utility easement lying in the Northwest Quarter of the Northwest Quarter (NW 1/4 NW 1/4) of Section 26, Township 1 South, Range 1 West of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

Commencing at the Southeast corner of the NW 1/4 NW 1/4 of said Section 26 and assuming the South line of the NW 1/4 NW 1/4 of said Section 26 to bear S89°41'11"W with all bearings contained herein relative thereto; thence N84°26'11"W a distance of 501.31 feet to the Point of Beginning; thence N89°50'49"W along a line being along an existing wood fence a distance of 35.02 feet; thence N00°09'11"E a distance of 10.00 feet; thence S89°50'49"E a distance of 35.00 feet to a point on the West line of an existing 10 foot wide Qwest easement, as described in Book 1146, Page 78; thence S00°02'57"W along said West line, a distance of 10.00 feet, more or less to the Point of Beginning.

Said parcel contains 350 square feet, more or less, as described.

END OF EXHIBIT "A"