

**RESOLUTION NO. 104-07**

**A RESOLUTION CONCERNING THE GRANTING OF A  
NON-EXCLUSIVE UTILITIES EASEMENT  
TO UNION PACIFIC RAILROAD COMPANY, A DELAWARE CORPORATION**

WHEREAS, the City of Grand Junction is the owner of certain real property situate in the Southwest Quarter of the Southwest Quarter (SW 1/4 SW 1/4) Section 10, Township 1 South, Range 1 West of the Ute Meridian, City of Grand Junction, Mesa County

WHEREAS, Union Pacific Railroad Company, a Delaware corporation, ("UPRR"), has requested a non-exclusive utility easement across said City property located on the City's property adjacent to West Independent Avenue and 25 Road for the purposes of installing, operating, maintaining, repairing and replacing 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 an act of the City, to execute the attached Easement Agreement conveying to UPRR a non-exclusive easement over and across the limits of the City property described therein.

PASSED and ADOPTED this 18<sup>th</sup> day of July 2007.

Attest:

/s/: Bonnie Beckstein  
President of the Council Pro Tem

/s/: Stephanie Tuin  
City Clerk

## EASEMENT AGREEMENT

This Easement Agreement (“Agreement”) is made and entered into as of the 5<sup>th</sup> day of November, 2007, 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 **Union Pacific Railroad Company, a Delaware corporation (“UPRR”)**, whose address is 1400 Douglas Street, Stop 1690, Omaha, Nebraska 68179-1690.

### RECITALS

A. The City is the owner of certain real property described as

Lot 1, West Independent Minor Subdivision at Book 3828, Page 12, as recorded in the office of Mesa County Clerk and Recorder, City of Grand Junction, Mesa County, State of Colorado; and

B. The parties desire to provide for the conveyance of a non-exclusive easement 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 UPRR, 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 UPRR 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, UPRR 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 UPRR.
4. Express Limitations. UPRR’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. UPRR 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 UPRR'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 UPRR prior to the culmination of any litigation or the institution of any litigation.

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

7. UPRR Acceptance Subject to Existing Conditions.

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



Union Pacific Railroad Company,  
a Delaware corporation

By /s/ Steve Sand

As Asst. Director – Acquisitions  
Union Pacific Railroad

State of Nebraska )

)ss.

County of Douglas )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of November, 2007, by Steve Sand, as Asst. Director – Acquisitions for Union Pacific Railroad Company, a Delaware corporation.

My commission expires: 12/20/09

Witness my hand and official seal

/s/ Paul G. Farrell  
Notary Public

SEAL

## **Exhibit "A"**

### Legal Description of Easement

A certain parcel of land for a utility easement located in the Southwest Quarter of the Southwest Quarter (SW 1/4 SW 1/4) Section 10, Township 1 South, Range 1 West of the Ute Meridian, City of Grand Junction, Mesa County, State of Colorado, being more particularly described as follows:

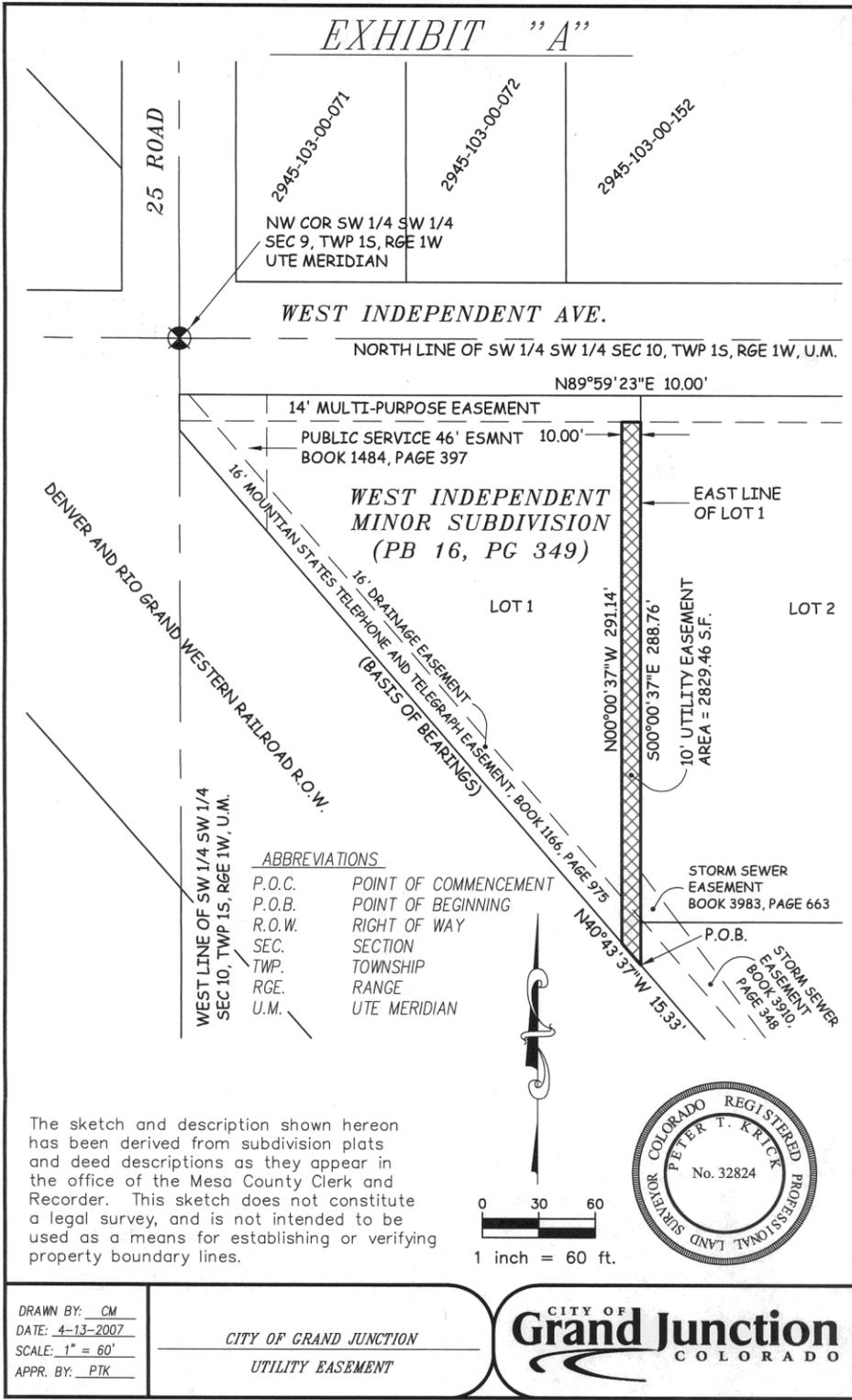
Beginning at the Southeast corner of Lot 1, West Independent Minor Subdivision, as same is recorded in Plat Book 16, Page 349 in the office of the Mesa County Clerk, and considering the Southerly line of said Lot 1 to bear  $N40^{\circ}43'37''W$ , with all bearings herein relative thereto; thence  $N40^{\circ}43'37''W$  along said Southerly line a distance of 15.33 feet; thence  $N00^{\circ}00'37''W$  along a line being 10.00 feet West of and parallel with the East line of said Lot 1 a distance of 291.14 feet to a point on a multi-purpose easement line being 14.00 feet South of and parallel with the North line of said Lot 1; thence  $N89^{\circ}59'23''E$  along said multi-purpose easement line a distance of 10.00 feet to a point on the East line of said Lot 1; thence  $S00^{\circ}00'37''E$  along said East line, a distance of 288.76 feet, more or less, to the point of beginning,

Containing 2,829.46 square feet, more or less, as described.

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**END OF EXHIBIT "A"**

# EXHIBIT "A"



2945-103-00-071

2945-103-00-072

2945-103-00-152

NW COR SW 1/4 SW 1/4  
SEC 9, TWP 1S, R6E 1W  
UTE MERIDIAN

WEST INDEPENDENT AVE.

NORTH LINE OF SW 1/4 SW 1/4 SEC 10, TWP 1S, R6E 1W, U.M.

N89°59'23"E 10.00'

14' MULTI-PURPOSE EASEMENT

PUBLIC SERVICE 46' ESMNT 10.00'  
BOOK 1484, PAGE 397

WEST INDEPENDENT  
MINOR SUBDIVISION  
(PB 16, PG 349)

EAST LINE  
OF LOT 1

LOT 1

LOT 2

DENVER AND RIO GRAND WESTERN RAILROAD R.O.W.

WEST LINE OF SW 1/4 SW 1/4  
SEC 10, TWP 1S, R6E 1W, U.M.

ABBREVIATIONS

- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING
- R.O.W. RIGHT OF WAY
- SEC. SECTION
- TWP. TOWNSHIP
- RGE. RANGE
- U.M. UTE MERIDIAN

16' MOUNTAIN STATES TELEPHONE AND TELEGRAPH EASEMENT BOOK 1166, PAGE 975

N00°00'37"W 291.14'

500'00'37"E 288.76'

10' UTILITY EASEMENT  
AREA = 2829.46 S.F.

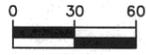
STORM SEWER  
EASEMENT  
BOOK 3983, PAGE 663

P.O.B.

STORM SEWER  
EASEMENT  
BOOK 3910,  
PAGE 348

N40°43'37"W 15.33'

The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder. This sketch does not constitute a legal survey, and is not intended to be used as a means for establishing or verifying property boundary lines.



1 inch = 60 ft.



DRAWN BY: CM  
DATE: 4-13-2007  
SCALE: 1" = 60'  
APPR. BY: PTK

CITY OF GRAND JUNCTION  
UTILITY EASEMENT

