

RESOLUTION NO. 105-07

**A RESOLUTION CONCERNING THE GRANTING OF A
NON-EXCLUSIVE UTILITIES EASEMENT
TO PUBLIC SERVICE COMPANY, A COLORADO CORPORATION
A/K/A XCEL ENERGY**

WHEREAS, the City of Grand Junction is the owner of certain real property situate in Sections 26 and in Government Lot 1, Section 27, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado; and

WHEREAS, Public Service Company, a Colorado Corporation, a/k/a/ Xcel Energy ("Xcel"), has requested a non-exclusive utility easement across said City property located on the City's Cemetery property and the City's lot immediately west of the Cemetery, commonly referred to as "Potter's Field", adjacent to B $\frac{3}{4}$ 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 Xcel a non-exclusive easement over and across the limits of the City property described therein.

PASSED and ADOPTED this 18th day of July, 2007.

Attest:

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

/s/: Stephanie Tuin
City Clerk

WHEN RECORDED RETURN TO:
City of Grand Junction
Real Estate Division
250 North 5th Street
Grand Junction, CO 81501

EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is made and entered into as of the 15TH day of DECEMBER, 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 **Public Service Company of Colorado, a Colorado corporation, ("PSCo")**, whose address is 1225 15th Street, Denver, Colorado 80202-5533.

RECITALS

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

situate in Sections 26 and in Government Lot 1, 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 PSCo, 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 PSCo 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, PSCo 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 terms 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 PSCo.
4. Express Limitations. PSCo'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. PSCo 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 PSCo'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 PSCo prior to the culmination of any litigation or the institution of any litigation.
6. Default. Should PSCo (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

PSCo
Document No. 190784

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

7. PSCo Acceptance Subject to Existing Conditions.

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

Stephanie Tuin
Stephanie Tuin, City Clerk



The City of Grand Junction,
a Colorado home rule municipality

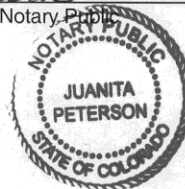
Laurie Kadrach
Laurie Kadrach, City Manager

State of Colorado)
)ss.
County of Mesa)

The foregoing instrument was acknowledged before me this 26th day of November, 2007, by Laurie Kadrach 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



Public Service Company of Colorado,
a Colorado corporation

By *Peter West*
Peter West, Managing Director
as Local Affairs, Xcel Energy Services, Inc.
Agent for Public Service Company of Colorado

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

The foregoing instrument was acknowledged before me this 15TH day of DECEMBER, 2007, by PETER WEST AS MANAGING DIRECTOR, LOCAL AFFAIRS, XCEL ENERGY SERVICES INC, AGENT for Public Service Company of Colorado, a Colorado corporation.

ALAN C. MORGANFIELD
NOTARY PUBLIC
STATE OF COLORADO

My commission expires: _____
My Commission Expires 07/21/2008

Witness my hand and official seal

Alan C. Morganfield
Notary Public

Exhibit "A"

Legal Description of Easement

A parcel of land, 20 feet in width, for utility easement purposes, lying in the Northwest Quarter of the Northwest Quarter (NW1/4NW1/4) of Section 26, and in Government Lot 1, Section 27, Township 1 South, Range 1 West of the Ute Principal Meridian, City of Grand Junction, County of Mesa, State of Colorado, the side lines of which being parallel with and 10 feet on each side of the following described centerline:

Commencing at the Northwest corner of said Section 26, and considering the North line of the NW1/4NW1/4 of said Section 26 to bear N89°55'25"E, with all bearings herein being relative thereto; thence N89°55'25"E, along the North line of said Section 26, a distance of 322.12 feet to the POINT OF BEGINNING; thence S45°15'11"W, a distance of 760.31 feet to Point "A"; thence S09°14'14"E, a distance of 753.98 feet to Point "B"; thence S09°14'14"E, a distance of 60.92 feet, more or less, to a point on the South line of the NW1/4NW1/4 of said Section 26 and the Point of Terminus of said centerline;

TOGETHER WITH the following three (3) easements, the side lines of which being parallel with and 1 foot on each side of the following described centerlines, in which to contain the existing guy wires:

- 1) Beginning at said Point "A"; thence N11°07'49"W, a distance of 20.00 feet to the point of terminus;
- 2) Beginning at said Point "A"; thence S46°55'11"W, a distance of 25.00 feet to the point of terminus;
- 3) Beginning at said Point "B"; thence S85°37'12"E, a distance of 20.00 feet to the point of terminus;

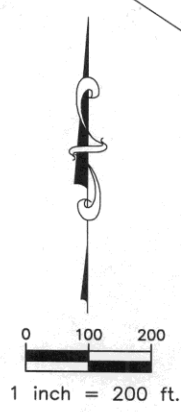
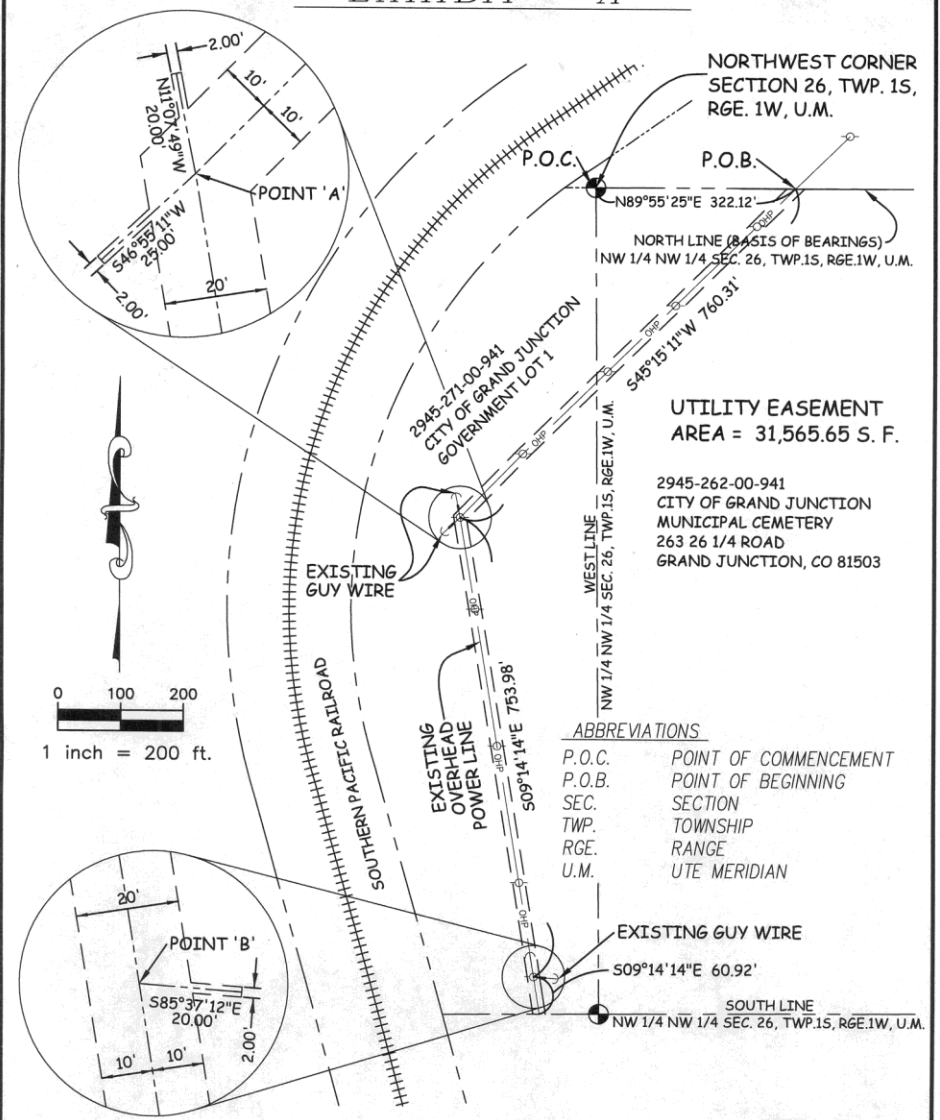
All containing 31,565.65 square feet, more or less, as described.

The sidelines of the above said 20-foot wide easement shall be lengthened or shortened to terminate at the property lines.

The purpose of the above described easement is to encompass an existing overhead power line and its guy wires;

END OF EXHIBIT "A"

EXHIBIT "A"



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.



DRAWN BY: CM
DATE: 4-9-2007
SCALE: 1" = 200'
APPR. BY: PTK

CITY OF GRAND JUNCTION
MUNICIPAL CEMETERY
UTILITY EASEMENT

