

Grand Junction, Colorado

May 31, 1933

The City Council of the City of Grand Junction, Colorado, met in regular adjourned session at 7:30 o'clock P.M. These present and answering at roll call were: Councilmen Carson, Ross, Oates, Boston, Roberts, Hall, and President Holcombe. City Manager Soderstrum, City Attorney Bowie, and City Clerk Tomlinson.

The following resolution was presented and read:

RESOLUTION

WHEREAS, Application has been made to the City Council of the City of Grand Junction by Graces' Confectionery for license from said City Council to sell beer in said City under the terms of said act:

AND WHEREAS, The City Council has investigated each of said applicants, and finds and determines that each of said applicants is qualified under said act to receive such license.

NOW, THEREFORE, BE IT RESOLVED, That the City Manager and the City Clerk be and they are hereby ordered and directed to issue licenses to each of the above named persons for the term of one year, upon the payment by said applicant of the sum of eighty (\$80.00) dollars to the Clerk of the City, and upon the exhibition of the license of such applicant issued by the Treasurer of the State of Colorado, or upon the production of satisfactory evidence that the annual license fee of twenty-five (\$25.00) dollars required to be paid to said State Treasurer, has been transmitted to said official.

That pending the exhibition of such license from the State Treasurer he is hereby authorized and directed to receive from each of said applicants said license fee of \$80.00 and issue his receipt therefor, until such license shall be issued by the Council, upon the production of such license from the State Treasurer. That prior to the issuance of such license, the applicant be required to sign and verify a written application showing that said applicant is duly qualified under said Act, which application shall be filed in the office of the City Manager.

It was moved by Councilman Carson and seconded by Councilman Roberts that the resolution be passed and adopted and license granted to Grace's Confectionery to sell beer. Motion carried.

The following resolution was presented and read:

RESOLUTION

WHEREAS, By People's Ordinance No. 25, adopted June 1, 1932,

the City of Grand Junction granted to the Fulton Petroleum Corporation, its successors and/or assigns, a certain natural gas franchise, more particularly set forth in said Ordinance; which said Ordinance provides, among other things, that said Corporation shall complete construction of a pipe line from its gas well on the Carbonera (Garmesa) structure to said City, and install at least 6 miles of distributing pipes, so as to be able to deliver to consumers 200,000 cubic feet or more of gas per day, on or before November 1, 1933, provided that the City Councilman, at its discretion, upon showing of compelling emergency, extend up to 6 months time the date for completion thereof, also that said Corporation should furnish an acceptable surety company bond of \$25,000.00 guaranteeing that it will faithfully fulfill all of the development, construction and installation requirements of such franchise within the time therein set forth, which required bond, with the Union Indemnity Company, a Louisiana corporation, as surety thereon, was thereafter furnished by said Corporation and accepted by said City;

WHEREAS, said Union Indemnity Company has since become and is insolvent, and is in the hands of Receivers; and by reason thereof said City has no legal recourse against said Company upon said bond for any future default of the Fulton Petroleum Corporation under said franchise, other than its rights in and to a certain certificate of deposit of \$15,000.00 issued by The First National Bank of Seattle, of Seattle, Washington, which was given to the Union Indemnity Company by the Fulton Petroleum Corporation as security or indemnity on said bond; and is now held by said company for such purpose;

WHEREAS, at an adjourned regular meeting of the City Council on May 24, 1933, at which the Fulton Petroleum Corporation was represented by H. B. Chesser, its President, the City Council demanded of said Corporation that it furnish a new and acceptable surety company bond of \$25,000.00 or its personal bond secured by United States bonds of the par value of \$25,000.00, in lieu of the aforesaid bond, which demand was then definitely and finally refused by said Corporation, for the reason, as its said President represented, that is financially unable to obtain and furnish any such new bond or security;

WHEREAS, thereafter at the aforesaid meeting the Fulton Petroleum Corporation submitted to the City Council, the following proposal, to-wit:

PROPOSAL

"To the Honorable Members of the City Council of Grand Junction, State of Colorado.

Sirs:

The Fulton Petroleum Corporation, the owner of a gas franchise in your city, hereby presents to you the following

proposal to-wit:

(a) That the City Council of Grand Junction join in writing with the Fulton Petroleum Corporation in execution of necessary documents to release the Union Indemnity Company and its Receivers from any liability under the surety bond furnished by said Company in connection with the aforesaid franchise, providing the Union Indemnity Company will immediately pay to the joint order of the Fulton Petroleum Corporation and the City of Grand Junction the certain certificate of Deposit for \$15,000 originally issued to the Union Indemnity Company, by the First National Bank of Seattle, Seattle, Washington, and held by said Company as collateral security or indemnity for said bond;

(b) That the said certificate of deposit then be cashed, and the proceeds thereof be deposited in escrow in the Federal Reserve Bank of Denver, Colorado, if said Bank will accept said escrow; if not, then in the United States National Bank of Denver, Colorado, subject to the performance of the terms and conditions hereinafter described;

(c) That the escrow agreement provide that if the Fulton Petroleum Corporation, or its assignee or order, shall not have spent, or caused to be spent, from and after date of your acceptance hereof, at least the total sum of Twenty-five Thousand Dollars in the construction of a city gas distributing system in Grand Junction, and-or the laying and construction of a gas pipeline from its Garmesa gas well, in Section 8, Township 8 South, Range 102 West, Mesa County, Colorado, to Grand Junction, by November 1, 1933, then the said \$15,000 is to be paid by said escrow bank to the City of Grand Junction as payment in full for all obligations and/or damages due by the Fulton Petroleum Corporation or its assignee or order, and for the complete discharge and performance of said \$25,000 bond, and Fulton Petroleum Corporation, or its assignee or order, are to be released and forever relieved of any obligation under said bond and/or franchise, and the said franchise is to be thereupon cancelled and terminated.

(d) If, however, the Fulton Petroleum Corporation, or its assignee or order, shall have spent, or caused to be spent, from and after the date of your acceptance hereof, \$25,000, or more, on the construction of said city gas distributing system and/or gas pipe line by November 1, 1933, but is unable to fully complete by that date the construction required of it by said franchise, the City Council, upon application, will then extend the time for completion thereof for an additional period of six months from and after November 1, 1933; and if the gas pipe line and the city distributing system is completed in accordance with the terms and conditions of said franchise before the expiration of said six months from November 1, 1933, then the said \$15,000 is to be paid to Fulton Petroleum Corporation by said escrow bank, and the said bond shall thereupon be cancelled and terminated, and said City of Grand Junction shall have no right, title or interest in or to any

part of said \$15,000.

(e) If, however, the city gas distributing system and the gas pipe line are not completed in accordance with the terms and conditions of the said franchise before the expiration of six months from November 1, 1933, then the said escrow bank is to pay to the City of Grand Junction the \$15,000 as its property in settlement for all obligations due by Fulton Petroleum Corporation, or its assignee or order, under said bond and franchise, and Fulton Petroleum Corporation, or its assignee or order, is to be thereupon relieved and released of any further obligation under the bond and/or franchise;

(f) That at any time when not in default under the terms and conditions of said franchise, Fulton Petroleum Corporation may transfer and assign all of its right, title and interest in and to said franchise, but by said transfer and assignment Fulton Petroleum Corporation is not to be released or relieved of its obligation under said escrow or under said bond. However, it is understood that if the assignee of said franchise shall deposit with the City Council of Grand Junction a new \$25,000 performance bond, properly secured with cash collateral, which bond and collateral are to be first approved and accepted by the City Council of Grand Junction, then the Fulton Petroleum Corporation shall thereupon be relieved of all obligations under said \$25,000 bond, dated April 16, 1932, and the said escrow bank is to immediately deliver to Fulton Petroleum Corporation, as its sole property, the said \$15,000.

(g) That all accrued interest now due on said \$15,000 shall be the sole property of, and is to be paid to Fulton Petroleum Corporation, and all interest hereafter earned during the time said \$15,000 is placed in escrow with any bank under the terms of this proposal, shall at all times be the sole property of, and shall be paid to Fulton Petroleum Corporation, up to the time the same shall be disbursed by said escrow bank under the terms of the escrow agreement.

(h) That, in the event that this proposal is not accepted by the City of Grand Junction, the submission thereof shall not prejudice or decrease in any manner any of the rights or equities of the Fulton Petroleum Corporation in or to the said bond or franchise, and shall not increase its obligations in any manner whatsoever under said bond or franchise.

The writer has heretofore discussed the proposed terms and conditions with most of the members of the City Council, and if such is agreeable and convenient, we would like to have action at this meeting upon this proposal.

We thank you for such consideration as you may extend to us in pursuance hereof.

Respectfully submitted,  
Fulton Petroleum Corporation  
By H. B. Chessher, President

Whereas the Receivers of the Union Indemnity Company have indicated that they will pay over said certificate of deposit upon receipt of full release of liability, but that if claim is made against said Company on the aforesaid bond they will put said certificate of deposit with general assets of said Company, and will refuse to treat the same as a trust fund for the use and benefit of said City under said bond, which action would compel said City to engage in prolonged and expensive litigation for the enforcement of its rights and recovery of such funds.

Whereas the enforcement and collection of liability of the Fulton Petroleum Corporation on said bond in excess of said certificate of deposit would likewise compel the City to engage in prolonged and expensive litigation, and the recovery thereof is doubtful and uncertain;

Whereas, by reason of the aforesaid facts and circumstances, the City Council deems and finds it to be advisable and to the best interests of said City that the proposal of the Fulton Petroleum Corporation, above set forth, be accepted and effected, subject to certain qualifications hereinafter set forth;

It is Therefore Resolved by the City Council of the City of Grand Junction, as follows:

That the City of Grand Junction join with the Fulton Petroleum Corporation in the execution and delivery to the Union Indemnity Company of such release of said Company and its Receivers from liability under said bond as may be necessary to enable them to obtain from said Company the payment or surrender of said certificate of deposit to their escrow agent, hereinafter designated, and which release shall be conditioned upon the payment thereof to such escrow agent, as hereinafter provided;

That the City of Grand Junction, before the execution and delivery of such release, make and enter into an escrow agreement with the Fulton Petroleum Corporation containing the following provisions;

(a) That said parties designate, as their escrow agent for the purposes thereof, the Denver Branch of the Federal Reserve Bank, of Kansas City, or, in case of its refusal to act, the United States National Bank, of Denver, Colorado;

(b) That said certificate of deposit shall be endorsed and delivered by the Union Indemnity Company to the Denver Branch of the Federal Reserve Bank of Kansas City, as escrow agent, or, in case of its refusal to act, then to the United States National Bank of Denver, Colorado, as escrow agent; that said escrow agent shall thereupon cash said certificate of deposit and shall hold

the sum of \$15,000, obtained therefrom, with any and all interest accrued thereon for the purposes, and with the authority, hereinafter set forth; that the Fulton Petroleum Company shall withdraw any and all orders which it may have given to the First National Bank of Seattle, of Seattle, Washington, to stop payment of said certificate of deposit, and shall agree that it will not interpose any further order to stop payment thereof, and that it irrevocably waives any and all rights, or rights of action to stop payment of the same;

(c) That, unless and until the money represented by said certificate of deposit, with interest accrued thereon is deposited with said escrow agent, the City of Grand Junction shall have all the same rights in and to said certificate of deposit and the money represented thereby, as it now has, or as it might have in case of future default of the Fulton Petroleum Corporation to fully comply with the requirements of said franchise; but that upon deposit of such money with said escrow agent, the rights of the Fulton Petroleum corporation and said city in and to such funds shall be as contained in such escrow agreement;

(d) That if the Fulton Petroleum Corporation or its assignee, shall not have spent, or caused to be spent, from and after the date thereof, at least the total sum of \$25,000 in the construction of a city gas distributing system in Grand Junction and/or in the laying and construction of a gas pipe line from its gas well on the Carbonera (Garmesa) structure, in Mesa County Colorado, on or before November 1, 1933, then the sum of \$15,000 with accrued interest so deposited with and held by said escrow agent, as well as any subsequent accrual of interest thereon shall be paid by said escrow agent to the City of Grand Junction, forthwith upon proof acceptable to said escrow agent of the failure of the Fulton Petroleum Corporation or its assignee to comply with the aforesaid requirement, and such payment shall be accepted by the City of Grand Junction, as payment in full for all obligations and/or damages due from the Fulton Petroleum Corporation or its assignee, and for the complete discharge and performance of said bond, and the Fulton Petroleum Corporation or its assignee is to be then released and forever relieved of any obligation under said bond and/or franchise, and said franchise is to be thereupon cancelled and terminated;

(e) That, however, if the Fulton Petroleum Corporation, or its assignee, shall have spent or caused to be spent from and after the date thereof, the sum of \$25,000.00 or more on the construction of said city gas distributing system and/or gas pipe line by November 1, 1933, but is unable to fully complete by that date the construction required of it by said franchise, the City Council, upon application, will then extend the time for completion thereof for an additional period of six months from and after November 1, 1933; and if the gas pipe line and the City distributing system are completed in accordance with the terms and conditions of said franchise before the expiration of six months from and after November 1, 1933, then the \$15,000.00 and all

interest thereon held by said escrow agent, shall be paid to the Fulton Petroleum Corporation forthwith by said escrow agent, upon proof satisfactory to it of compliance with the aforesaid requirements and said bond shall thereupon be cancelled and terminated and said City of Grand Junction shall have no right, title or interest in or to any part of said escrow funds;

(f) That, however, if the city gas distributing system and the gas pipe line are not completed in accordance with the terms and conditions of said franchise before the expiration of six months from and after November 1, 1933, then said escrow agent is to pay to the City of Grand Junction the sum of \$15,000.00 and all interest accruals thereon, as the property of said City, in settlement of all obligations of the Fulton Petroleum Corporation or its assignee under said bond and franchise, and the Fulton Petroleum Corporation, or its assignee is to be thereupon relieved and released from any further obligation under said bond and/or franchise.

(g) That at any time when not in default under the terms and conditions of said franchise, Fulton Petroleum Corporation may transfer and assign all of its right, title, and interest in and to said franchise, but by said transfer and assignment, Fulton Petroleum Corporation is not to be released or relieved of its obligation under said escrow or under said bond. However, it is understood that if the assignee of said franchise shall deposit with the City Council of Grand Junction a new \$25,000 performance bond, properly secured with cash collateral, which bond and collateral are to be first approved and accepted by the City Council of Grand Junction, then the Fulton Petroleum Corporation shall thereupon be relieved of all obligations under said \$25,000 bond, dated April 16, 1932, and the said escrow bank is to immediately deliver to Fulton Petroleum Corporation, as its sole property, the said \$15,000.

(h) That in case of any default of the Fulton Petroleum Corporation to fulfill the aforesaid conditions required of it by such escrow agreement whereby said escrow funds become payable to the City of Grand Junction, as aforesaid, then and in that event the Fulton Petroleum Corporation waives any and all possible defenses to the payment thereof;

That the Fulton Petroleum Corporation shall join with the City of Grand Junction in the execution of the aforesaid release and escrow agreement with fifteen (15) days from and after this date; otherwise the City of Grand Junction shall have the right to withdraw and terminate the offer and proposals contained herein;

That the President of the City Council of said City be and is hereby authorized and directed to execute for and in the name of the City of Grand Junction, the aforesaid release and escrow agreement and any and all other instruments of writing which may be advisable or necessary for the accomplishment of the purposes hereinbefore set forth.

That the execution and delivery to the Union Indemnity Company of the release hereinbefore mentioned, shall not operate to release the Fulton Petroleum Corporation from any present or future liability under the aforesaid bond.

It was moved by Councilman Ross and seconded by Councilman Oates that the resolution as read be passed and adopted. Roll was called with the following result: Councilmen voting AYE - Carson, Ross, Oates, Boston, Roberts, Hall, Holcombe. Councilmen voting NO - None. All of the Councilmen voting AYE, the President declared the motion carried.

It was requested that the City Manager write a letter to the Fulton Petroleum Corporation requesting a statement of their financial condition - preferably a sworn statement, and that the agreement not be released until such statement is secured.

Mr. Soderstrum reported that he had received a letter from Carl Milliken, Manager of Safety & Excise, Denver, Colorado, stating that so far as he knew that there was no ordinance pending covering the licensing of fruit peddlers in Denver.

Councilman Hall moved and Councilman Ross seconded the motion that the City Manager be authorized to accept scrip, within certain limitations, on all bills due to the City, using his own discretion as to the limitations. Motion carried.

It was moved by Councilman Hall and seconded by Councilman Roberts that the meeting adjourn. Motion carried.

/s/ Helen C. Tomlinson  
City Clerk