

**GRAND JUNCTION CITY COUNCIL  
CITY HALL AUDITORIUM, 250 NORTH 5<sup>TH</sup> STREET  
AGENDA**

**WEDNESDAY, JANUARY 7, 2004, 7:30 P.M.**

**CALL TO ORDER**

Pledge of Allegiance

Invocation – Michael Torphy, Religious Science Church

**PRESENTATION OF CERTIFICATES OF APPOINTMENT**

TO VISITOR AND CONVENTION BUREAU BOARD OF DIRECTORS

**PROCLAMATIONS / RECOGNITIONS**

PROCLAIMING “100<sup>TH</sup> ANNIVERSARY” FOR THE EAGLES LODGE

PROCLAIMING JANUARY 16<sup>TH</sup> AS “ROCKY MOUNTAIN HEALTH PLANS DAY”

**\*\*\*APPOINTMENTS**

TO HISTORIC PRESERVATION BOARD

**SCHEDULED CITIZEN COMMENTS**

\*\*\* Tyler Peck, Ice Fishing Restrictions at Juniata Reservoir

**\*\*\* CONSENT CALENDAR \*\*\*®**

1. **Minutes of Previous Meeting**

[Attach 1](#)

*Action: Approve the Minutes of the December 17, 2003 Regular Meeting*

2. **Meeting Schedule and Posting of Notices**

[Attach 2](#)

State Law requires an annual designation of the City’s official location for the posting of meeting notices. The City’s Code of Ordinances, Sec. 2-26, requires

the meeting schedule and the procedure for calling special meetings to be determined annually by resolution.

Resolution No. 01-04 – A Resolution of the City of Grand Junction Designating the Location for the Posting of the Notice of Meetings and Establishing the City Council Meeting Schedule

®Action: *Adopt Resolution No. 01-04*

Staff presentation: Stephanie Tuin, City Clerk

3. **Setting a Hearing on Issuing Bonds for the Riverside Parkway** [Attach 3](#)

The City voters overwhelmingly approved the issuance of bonds up to \$80 million at the November 4, 2003 election. This debt is specifically approved for the construction of the Riverside Parkway from 24 Road to 29 Road, together with appropriate connections where needed and the completion of the 29 Road Corridor and new Interchange at 29 Road and I-70.

Proposed Ordinance Authorizing the Issuance of City of Grand Junction, Colorado, General Fund Revenue Bonds, Series 2004, and Pledging Certain Revenues of the City for the Payment of the Bonds

Action: *Introduction of Proposed Ordinance and Set a Hearing for January 21, 2004*

Staff presentation: Ron Lappi, Administrative Services and Finance Director

4. **Setting a Hearing on the Valley Meadows North Rezone Located at the North End of Kapota Street** [File # RZP-2003-153] [Attach 4](#)

Introduction of a proposed ordinance to rezone the Valley Meadows North property, located at the north end of Kapota Street, from the RSF-R, Residential Single Family Rural to RSF-4, Residential Single Family-4.

Proposed Ordinance Rezoning the Valley Meadows North property, located at the north end of Kapota Street, from Residential Single Family Rural (RSF-R) to Residential Single Family-4 (RSF-4)

Action: *Introduction of Proposed Ordinance and Set a Hearing for January 21, 2004*

Staff presentation: Lisa E. Cox, Senior Planner

5. **Setting a Hearing on the Amending Ordinance No. 3582 Gowhari Annexation Located at 563 20 ½ Road** [File # GPA-2003-183] [Attach 5](#)

Amending Ordinance No. 3582 for the Gowhari Annexation. The legal description in Ordinance No. 3582 is incorrect; the annexation should have been a serial annexation. When amended the annexation will be known as the Gowhari Annexations #1 & #2. The 24.473 acre Gowhari annexation consists of 3 parcels of land and 0.63 acres of 20 ½ Road right-of-way.

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado Gowhari Annexations #1 & #2, Approximately 25.103 Acres, Located At 563 20 ½ Rd, 573 20 ½ Rd, 2026 S. Broadway and Including a Portion of the 20 ½ Road Right-of-Way

*Action: Introduction of Proposed Ordinance and Set a Hearing for January 21, 2004*

Staff presentation: Senta Costello, Associate Planner

6. **Setting a Hearing on Zoning the Gowhari Annexation, Located at 563 20 ½ Road, 573 20 ½ Road and 2026 S. Broadway** [File # GPA-2003-183] [Attach 6](#)

Introduction of a proposed zoning ordinance to zone the Gowhari Annexation consisting of 25.103 acres and 3 parcels, located at 563 20 ½ Rd, 573 20 ½ Rd, 2026 S. Broadway.

Proposed Ordinance Zoning the Gowhari Annexation to RSF-2 Located at 563 20 ½ Rd, 573 20 ½ Rd, 2026 S. Broadway

*Action: Introduction of Proposed Ordinance and Set a Hearing for January 21, 2004*

Staff presentation: Senta Costello, Associate Planner

7. **Lease Extension of the Saccomanno Property, Located at Southwest Corner of 26 ½ Road and H Road** [Attach 7](#)

A resolution authorizing a one-year farm lease of the City's Saccomanno Park property, located at the southwest corner of 26 ½ Road and H Road, except the south 5-acres.

Resolution No. 02-04 – A Resolution Authorizing a One-Year Farm Lease of the “Saccomanno Park Property” to Robert H. Murphy

®Action: *Adopt Resolution No. 02-04*

Staff presentation: Joe Stevens, Parks and Recreation Director

8. **Lease Extension of Two Dry Grazing Areas Located South of Whitewater** [Attach 8](#)

Two proposed Resolutions will extend the terms of these two existing Dry Grazing Leases located south of Whitewater for William Arthur Mertz and Sally Marie Smith.

Resolution No. 03-04 – A Resolution Authorizing a Dry Grazing Lease of City Property to William Arthur Mertz

Resolution No. 04-04 – A Resolution Authorizing a Dry Grazing Lease of City Property to Sally Marie Smith

®Action: *Adopt Resolution Nos. 03-04 and 04-04*

Staff presentation: Mark Relph, Public Works and Utilities Director

**\*\*\* END OF CONSENT CALENDAR \*\*\***

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**\*\*\* ITEMS NEEDING INDIVIDUAL CONSIDERATION \*\*\***

9. **Construction Contract - 29 Road Improvements Phase III Utilities, Grand Valley Canal – Patterson Road** [Attach 10](#)

Award of a construction contract for the 29 Road Improvements Phase III Utilities to M. A. Concrete Construction, Inc. in the amount of \$532,234.66.

Action: *Authorize City Manager to Execute a Construction Contract for the 29 Road Improvements, Phase III Utilities, Grand Valley Canal – Patterson Road, with M.A. Concrete in the Amount of \$532,234.66*

Staff presentation: Mark Relph, Public Works and Utilities Director

10. **Purchase of Property for the Riverside Parkway** [Attach 9](#)

The City has entered into a contract to purchase the property at 2529 High Country Court. A portion of the property is needed for Riverside Parkway right-of-way. The building will be used as office space for the Riverside Parkway Team for the duration of the project and then sold at the end of the project.

Resolution No. 05-04 – A Resolution Authorizing the Purchase of Real Property Located at 2529 High Country Court for Use for the Riverside Parkway

®Action: *Adopt Resolution No. 05-04*

Staff presentation: Mark Relph, Public Works and Utilities Director

11. **Citizen Corp Grant Program Application** [Attach 11](#)

The Governors Commission on Community Service under Lt. Governor Jane Norton is accepting grant applications for the 2004 Citizen Corp Program. This program supports the establishment of Citizen Corp Councils, Neighborhood Watch, Community Emergency Response Teams, Volunteers in Police Service, and Medical Reserve Corp. The Grand Junction Police Department would like to establish a Citizen Corp Council and obtain funding to support the new Neighborhood Beat System. The Police Department would like to host quarterly meetings in each of the 63 neighborhood beats. Due to high service demands and staff shortages the neighborhood beat officers will be conducting these meetings on an overtime basis rather than pulling from patrol staffing. Additionally, this grant would allow the City to pay overtime to patrol officers to attend a four hour training block on how to host these neighborhood meetings. The total costs of the proposed project will be \$53,960 all of which would come from the Governors Commission on Community Service.

Action: *Authorization for the Grand Junction Police Department to Apply for the Citizen Corp Overtime Grant Program*

Staff presentation: Greg Morrison, Chief of Police

12. **Public Hearing - Vacating Right-of-Way on the Files Property Located at 631 26 ½ Road** [File #VR-2003-227] [Attach 12](#)

The petitioners, City of Grand Junction and the current property owners, Shirley Howard, Donald Files & Robert Files, wish to vacate an existing 30' right-of-way located west of 26 ½ Road, between the platted right-of-ways of F ½ Road and North Acres Road that was originally dedicated in 1969 but due to a legal description error, was incorrectly conveyed. The only utility that is located in this right-of-way is a sanitary sewer line that will be covered by the recording of a 20'

Public Utilities Easement. The proposed vacation has never been utilized or constructed as a road right-of-way. The Planning Commission recommended approval at its December 16<sup>th</sup>, 2003 meeting. The petitioners request approval of the Vacation Ordinance.

Ordinance No. 3593 - An Ordinance Vacating a 30' Wide Right-of-Way Located West of 26 ½ Road and South of the Grand Valley Canal and Reserving a 20' Public Utilities Easement Known as: 631 26 ½ Road

®Action: *Hold a Public Hearing and Consider Final Passage and Final Publication of Ordinance No. 3593*

Staff presentation: Scott D. Peterson, Associate Planner

13. **Public Hearing - Rezoning Blue Heron Meadows, Located at 2587 G ½ Road** [File #RZ-2003-212] [Attach 13](#)

A request for approval to rezone 18 acres of land from RSF-2 (Residential single-family, not to exceed 2 units per acre) to RSF-4 (Residential single-family, not to exceed 4 dwelling units per acre) and hold the Public Hearing on January 7, 2004.

Ordinance No. 3594 – An Ordinance Rezoning Blue Heron Meadows, 18 Acres of Land Located at 2587 G ½ Road from RSF-2 to RSF-4

®Action: *Hold a Public Hearing and Consider Final Passage and Final Publication of Ordinance No. 3594*

Staff presentation: Lori V. Bowers, Senior Planner

14. **Public Hearing - Westside Downtown Redevelopment Plan** [File #PLN-2003-247] [Attach 14](#)

Request to adopt the Westside Downtown Redevelopment Plan for the area generally bounded by Main Street, 5<sup>th</sup> Street and the Railroad.

Resolution No. 06-04 – A Resolution Adopting the Westside Downtown Redevelopment Plan

®Action: *Adopt Resolution No. 06-04*

Staff presentation: Kathy Portner, Planning Manager

15. **Agreements with Sanitation Districts**

[Attach 15](#)

Over the course of the last six months, the staff's and attorney's of three sanitation districts (Fruitvale, Central Grand Valley, and Orchard Mesa), Mesa County, and City of Grand Junction have been negotiating Intergovernmental Agreements (IGA) and Total Service Agreements (TSA) for a period of years that clearly delineates roles and responsibilities of each agency. This effort comes from the last Persigo Board meeting in July which the Board authorized the use of a third party to help facilitate negotiations.

*Action: Authorize the Mayor to Execute the IGA's and TSA's with Fruitvale Sanitation District, Central Grand Valley Sanitation District, and Orchard Mesa Sanitation District*

Staff presentation: Kelly Arnold, City Manager  
John Shaver, Interim City Attorney  
Mark Relph, Public Works and Utilities Director  
Greg Trainor, Utilities Manager

16. **NON-SCHEDULED CITIZENS & VISITORS**

17. \*\*\* **OTHER BUSINESS**

[Attach 16](#)

Discussion of the process for filling the position of City Attorney.

18. **ADJOURNMENT**

**Attach 1  
Minutes of December 17, 2003 Meeting**

**GRAND JUNCTION CITY COUNCIL  
MINUTES OF THE REGULAR MEETING**

**DECEMBER 17, 2003**

The City Council of the City of Grand Junction convened into regular session on the 17<sup>th</sup> day of December 2003, at 7:30 p.m. in the City Auditorium. Those present were Councilmembers Bruce Hill, Dennis Kirtland, Bill McCurry, Gregg Palmer, and President of the Council Pro Tem Harry Butler. Council President Jim Spehar and Councilmember Cindy Enos-Martinez were absent. Also present were City Manager Kelly Arnold, City Attorney Dan Wilson, Assistant City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Pro Tem Harry Butler called the meeting to order. Councilmember McCurry led in the pledge of allegiance. The audience remained standing for the invocation by Pastor Jim Hale, Spirit of Life Christian Fellowship.

**PRESENTATION OF CERTIFICATE OF APPOINTMENT**

TO FORESTRY BOARD MEMBER

Dutch Afman was present and received his certificate.

**PROCLAMATIONS / RECOGNITIONS**

PROCLAIMING JANUARY AS "VOLUNTEER BLOOD DONOR MONTH"

**APPOINTMENTS**

TO VISITOR AND CONVENTION BUREAU BOARD OF DIRECTORS

Councilmember Kirtland moved to reappoint Linda Smith, Jane Fine Foster, Kevin Reimer, and Steve Meyer to the Visitor and Convention Bureau Board of Directors for three-year terms, expiring December 2006. Councilmember Hill seconded the motion. Motion carried.

**SCHEDULED CITIZEN COMMENTS**

UPDATE ON THE D. O. E. LABORATORY CLOSURE



Bernie Buescher, President of the Riverview Technology Corporation (RTC), 2591 B ¾ Road, Grand Junction, reported that approximately two weeks ago it became clear that the RTC would not be able to keep the DOE Laboratory facility open. He was told Teledyne no longer has any interest in the project. He explained that the RTC has moved on to the next steps and is working with City Attorney Dan Wilson and the Department of Energy (DOE) to get the transfer documents completed. Once this process is completed, the DOE is obligated to tear down the building within 12 months. He said RTC is already in the bid process to install a new electric system in the building and the Public Service Company's charges have already been paid. Mr. Buescher said they are proceeding with an enhanced planning process, working with Tim Sarmo of DOLA, to submit a grant application for an Energy Impact Grant, along with a request for \$7,500 from the City of Grand Junction. He told Council they will ask for the County's participation too.

Councilmember Palmer asked what the purpose of the grant was. Mr. Buescher said it would be for long range planning.

Councilmember Kirtland asked what would happen to the existing equipment. Mr. Buescher said the equipment, if declared surplus by the DOE, could be transferred to a community-based organization such as Mesa State College, or through the Incubator program to a start up company, or possibly to the UTEC campus.

#### TIM COONEY and TOM McCLOSKY — BIKE LANES FOR MONUMENT ROAD and 7<sup>TH</sup> STREET

Tim Cooney accompanied by Tom McClosky, said they both are bicyclists, recreational and for exercise, and commuting. Mr. Cooney said he is a member of Grand Valley Bikes, and its main purpose is to promote bicycling safety and addressing cycling issues. He expressed his concern about the lack of bicycle lanes and the safety of bicyclists on Monument Road. He said that his organization is aware that the County would be applying for a grant for those improvements, but he wanted to state the concerns for this situation and would continue working with the County on this issue.

Mr. Cooney said, regarding 7<sup>th</sup> Street, which would be discussed later during tonight's meeting, Grand Valley Bikes, Mr. McClosky, and he would encourage the City to make improvements for bicyclists too. He said another concern were the east and west corridors, and they would continue to work with the Urban Trails Committee. He felt the current east-west corridors are very hodgepodge.

#### **CONSENT CALENDAR**

Councilmember Hill requested that Consent Calendar Item #8, regarding the historic preservation of the Hetland House, be moved to Items for Individual Consideration.

It was moved by Councilmember Hill, seconded by Councilmember Palmer, and carried by a roll call vote, to approve Consent Calendar Items #1 through #10, except for Item #8.

**1. Minutes of Previous Meetings**

*Action: Approve the Summary of the December 1, 2003 Workshop and the Minutes of the December 3, 2003 Regular Meeting*

**2. Advertising Services Contract Renewal**

This is the annual renewal of a contract with Hill & Company Integrated Marketing and Advertising to provide advertising services to the Visitor and Convention Bureau.

*Action: Authorize the City Manager to Sign a Contract with Hill & Company Integrated Marketing and Advertising in the Amount of \$375,000.00.*

**3. Special Event Funding Recommendations**

Fourteen applications for funding were received. After review and discussion, the Visitor and Convention Bureau Board recommends funding the following events:

\$ 2,500	Colorado Mountain Winefest
\$ 2,650	Downtown Car Show
\$ 2,000	Wells Fargo Art & Jazz Festival
\$ 5,000	Grand Valley Arts Festival
\$ 600	Rim Rock Run
\$ 1,500	2 <sup>nd</sup> Annual Spring Barrel Tasting
\$ 1,500	Holiday Wine & Food Pairing
\$ 1,000	Tour of the Vineyards
\$ 3,000	Grand River Indian Artists Gathering
\$ 500	Kokopelli Adventure Race
\$ 1,800	Fruita Fat Tire Festival
\$ 400	Rose Hill Rally
\$22,450	Total

*Action: Approve Funding Awards as Recommended*

**4. Setting a Hearing for the Tomkins Annexation Located at 2835 & 2837 D Road [File #ANX-2003-235]**

Resolution referring a petition for annexation and introduction of a proposed ordinance. The 13.360-acre Tomkins Annexation consists of 2 parcels of land.

A petition for annexation has been presented as part of a Preliminary Plan, in accordance with the 1998 Persigo Agreement with Mesa County.

**a. Referral of Petition, Setting a Hearing and Exercising Land Use Jurisdiction**

Resolution No. 119 -03 – A Resolution Referring a Petition to the City Council for the Annexation of Lands to the City of Grand Junction, Colorado, Setting a Hearing on Such Annexation and Exercising Land Use Control, Tomkins Annexation Located at 2835 and 2837 D Road

*Action: Adopt Resolution No. 119-03*

**b. Setting a Hearing of Proposed Ordinance**

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Tomkins Annexation, Approximately 13.360 Acres, Located at 2836 and 2837 D Road

*Action: Introduction of Proposed Ordinance and Set a Hearing for February 4, 2004*

**5. Setting a Hearing on Rezoning Blue Heron Meadows, Located at 2587 G ½ Road [File #RZ-2003-212]**

A request for approval to rezone 18 acres of land from RSF-2 (Residential single-family, not to exceed 2 units per acre) to RSF-4 (Residential single-family, not to exceed 4 dwelling units per acre) and set the Public Hearing for January 7, 2004.

Proposed Ordinance Zoning Blue Heron Meadows, 18 Acres of Land Located at 2587 G ½ Road

*Action: Introduction of Proposed Ordinance and Set a Hearing for January 7, 2004*

**6. Setting a Hearing for the Bogart Annexation Located at 563 22 ½ Road [File #ANX-2003-254]**

Resolution referring a petition for annexation and introduction of a proposed ordinance. The 4.791 acre Bogart Annexation consists of 1.409 acres parcel and 3.382 acres within the right-of-way. The Bogart Annexation is a part of a development proposal to split the property into 2 lots.

**a. Referral of Petition, Setting a Hearing and Exercising Land Use Jurisdiction**

Resolution No. 120-03 – A Resolution Referring a Petition to the City Council for the Annexation of Lands to the City of Grand Junction, Colorado, Setting a Hearing on Such Annexation and Exercising Land Use Control, Bogart Annexation, Located at 563 22 ½ Road and Including a Portion of the 22 ½ Road and Highway 340 Rights-of-Way

*Action: Adopt Resolution No. 120-03*

**b. Setting a Hearing of Proposed Ordinance**

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Bogart Annexation, Approximately 4.791 Acres, Located at 563 22 ½ Road and Including a Portion of the 22 ½ Road and Highway 340 Rights-of-Way

*Action: Introduction of Proposed Ordinance and Set a Hearing for February 4, 2004*

**7. Setting a Hearing on Vacating Right-of-Way on the Files Property Located at 631 26 ½ Road [File #VR-2003-227]**

The petitioners, City of Grand Junction and the current property owners, Shirley Howard, Donald Files & Robert Files, wish to vacate an existing 30' right-of-way located west of 26 ½ Road, between the platted right-of-ways of F ½ Road and North Acres Road that was originally dedicated in 1969 but due to a legal description error, was incorrectly conveyed. The only utility that is located in this right-of-way is a sanitary sewer line that will be covered by the recording of a 20' Public Utilities Easement. The proposed vacation has never been utilized or constructed as a road right-of-way. The Planning Commission recommended approval at its December 16<sup>th</sup>, 2003 meeting.

Proposed Ordinance Vacating a 30' Wide Right-of-Way Located West of 26 ½ Road and South of the Grand Valley Canal and Reserving a 20' Public Utilities Easement Known As: 631 26 ½ Road

*Action: Introduction of Proposed Ordinance and Set a Hearing for January 7, 2004*

8. **Designate the Hetland House to the City Register of Historic Sites, Structures and Districts** [File #HBD-2003-02.02] MOVED TO INDIVIDUAL CONSIDERATION

9. **Sewer Plant Investment Fees**

Effective January 1, 2004, the Wastewater Treatment Plant Investment (PIF) shall be increased by \$250 to \$1,250 for a single family equivalent.

Resolution No. 122-03 – A Resolution Adopting a Wastewater Plant Investment Fee Effective January 1, 2004

*Action: Adopt Resolution No. 122-03*

10. **Alley Improvement District 2003**

Improvements to the following alleys have been completed as petitioned by a majority of the property owners to be assessed:

- “T” Shaped Alley from 2<sup>nd</sup> to 3<sup>rd</sup>, between E. Sherwood Avenue and North Avenue
- “Cross” Shaped Alley from 6<sup>th</sup> to 7<sup>th</sup>, between Rood Avenue and White Avenue
- East/West Alley from 11<sup>th</sup> to 12<sup>th</sup>, between Rood Avenue and White Avenue
- East/West Alley from 13<sup>th</sup> to 14<sup>th</sup>, between Main Street and Colorado Avenue
- East/West Alley from 13<sup>th</sup> to 14<sup>th</sup>, between Chipeta Avenue and Ouray Avenue
- East/West Alley from 13<sup>th</sup> to 14<sup>th</sup>, between Hall Avenue and Orchard Avenue

A Public Hearing is scheduled for February 4, 2004.

Resolution No. 123-03 – A Resolution Approving and Accepting the Improvements Connected with Alley Improvement District No. ST-03

*Action: Adopt Resolution No. 123-03*

**\*\*\* ITEMS NEEDING INDIVIDUAL CONSIDERATION \*\*\***

**Designate the Hetland House to the City Register of Historic Sites, Structures and Districts** [File #HBD-2003-02.02]

Hospice and Palliative Care of Western Colorado, owner of the Lawrence and Amelia Miller residence located at 3090 North 12<sup>th</sup> Street, is requesting that the building be designated as historic in the City Register of Historic Sites, Structures and Districts.

Councilmember Hill explained his reason for taking this item off of the Consent Calendar. He applauded Hospice & Palliative Care of Western Colorado for keeping the original house in its improvement plan and for requesting the house be designated as historical.

Christy Whitney, President and CEO of Hospice & Palliative Care of Western Colorado, presented a brief slide show and gave a historical narrative on the property.

Kristen Ashbeck, Senior Planner, explained what a historic designation would mean for this property. She stated that this property was one of the oldest homes in the area. She said it met the criteria for historical designation as reviewed by the Historical Preservation Board.

Resolution No. 121-03 – A Resolution Designating the Lawrence and Amelia Miller Residence Located at 3090 North 12<sup>th</sup> Street in the City Register of Historic Sites, Structures and Districts

Councilmember Hill moved to adopt Resolution No. 121-03. Councilmember Palmer seconded the motion. Motion carried by a roll call vote.

### **CDOT Enhancement Grant Project**

Approval of application for enhancement funds for 7<sup>th</sup> Street Pedestrian and Landscaping Project from Grand Avenue to Ute Avenue, Main Street from 7<sup>th</sup> to 8<sup>th</sup> Street. Colorado Department of Transportation is requesting applications for local government enhancement projects for state fiscal years 2006, 2007, 2008. Applications are due to CDOT by December 26, 2003. Staff has prepared an application and resolution for Council consideration.

Mark Relph, Public Works and Utilities Director, reviewed this item. He stated that the resolution formalizes the discussion on the grant application that took place at a workshop meeting. He said once the application form is forwarded to CDOT, CDOT would review the application to ensure that it meets the requirements. He said then the grant application would be forwarded to the Regional Transportation Planning Office for final review prior to the actual submission of the grant application.

Councilmember Kirtland asked about available funds and how they would be distributed. Mr. Relph replied that about \$300,000 are available to the Valley. He explained the applications are reviewed and the funds are allocated throughout the valley for projects. He said the funds are typically for pedestrian and landscaping

projects. Mr. Relph said there are other project categories eligible for grant application, and historical preservation and environmental mitigation would be two other possibilities.

City Manager Kelly Arnold said the federal government is revamping this funding so the result of the application is unknown.

Councilmember Kirtland asked if bicycle related enhancements are considered from this funding. Mr. Relph was not sure if the final plan will address this area.

Councilmember Palmer noted that the DDA would also be participating in this project.

Harold Stalf, DDA Executive Director, encouraged adoption of the resolution and noted that the bonds closing on Monday would provide the DDA's funding portion for the project.

Resolution No. 124 -03 – A Resolution Supporting the Application for Enhancement Funds for 7<sup>th</sup> Street Streetscaping/Medians – Grand Avenue to Ute Avenue

Councilmember Kirtland moved to adopt Resolution No. 124-03. Councilmember Palmer seconded the motion. Motion carried by a roll call vote.

**Public Hearing- Washington Annexation and Zoning Located at 287 Coulson Drive** [File #ANX-2003-200]

Hold a public hearing and consider final passage of a Resolution for Acceptance of the Petition to Annex and Annexation Ordinance for the Washington Annexation located at 287 Coulson Drive and including a portion of the Unawep Avenue, Coulson Drive and Capitol Lane rights-of-way. The petitioner is seeking annexation in conjunction with a proposed residential simple subdivision, pursuant to the 1998 Persigo Agreement with Mesa County.

The Washington Annexation is comprised of one parcel of land of 1.317 acres and includes Unawep Avenue, Coulson Drive and Capitol Lane rights-of-way. The petitioner is requesting a zone of Residential Single Family with a density not to exceed four units per acre (RSF-4), which conforms to the Growth Plan Future Land Use Map. Planning Commission recommended approval at its November 25, 2003 meeting.

The public hearing was opened at 8:12 p.m.

Ronnie Edwards, Associate Planner, reviewed this item. She explained the surrounding zoning and stated that both the annexation and zoning requests met the required criteria.

There were no public comments.

The public hearing was closed at 8:15 p.m.

**a. Accepting Petition**

Resolution No. 125-03 - A Resolution Accepting a Petition to the City Council for the Annexation of Lands to the City of Grand Junction, Colorado, Washington Annexation, Located at 287 Coulson Drive and Including a Portion of UnawEEP Avenue, Coulson Drive and Capitol Lane Rights-of-Way

**b. Annexation Ordinance**

Ordinance No. 3590 - An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Washington Annexation, Located at 287 Coulson Drive and Including a Portion of UnawEEP Avenue, Coulson Drive and Capitol Lane Rights-of-Way, Approximately 1.317 Acres

**c. Zoning Ordinance**

Ordinance No. 3591- An Ordinance Zoning the Washington Annexation to Residential Single Family with a Density not to Exceed Four Units Per Acres (RSF-4) Located at 287 Coulson Drive

It was moved by Councilmember Kirtland, seconded by Councilmember McCurry, and carried by a roll call vote, to adopt Resolution No. 125-03, Ordinances No. 3590 and No. 3591 on Second Reading and ordered them published.

**NON-SCHEDULED CITIZEN COMMENTS**

There were none.

**OTHER BUSINESS**

Councilmember Hill expressed his appreciation for City Attorney Dan Wilson's work and wished him well for the future. He regretted missing the City's Award Dinner Party.

Councilmember Kirtland said it was his pleasure to work with Mr. Wilson. The rest of the Councilmembers agreed with Councilmembers Hill and Kirtland and expressed their appreciation too.

**Public Hearing – An Emergency Ordinance Amending the Amount of the Downtown Tax Increment Revenue Bonds**



An ordinance amending the TIF Ordinance No. 3585 to reduce the total amount of the bonds from \$3 million to \$2,995,000.

Councilmember Cindy Enos-Martinez joined the meeting at 8:20 p.m.

City Clerk Stephanie Tuin telephoned Council President Jim Spehar and he joined the meeting via telephone at 8:21 p.m.

Council President Pro Tem Butler opened the public hearing at 8:22 p.m.

Ron Lappi, Administrative Services and Finance Director, reviewed this item. He explained the reason for the emergency ordinance and the necessity of adopting it at this meeting. He explained the City has been involved in several bond issues, some of which counted toward the City's maximum of ten million dollars, and some of which did not. He explained that the prior approval of TIF Ordinance No. 3585 caused the City to exceed the amount that could be bank qualified by \$5,000.

There were no public comments.

The public hearing was closed at 8:25 p.m.

Ordinance No. 3592 - An Ordinance Amending Certain Provisions of the City's Ordinance No. 3585; Authorizing the Issuance of the City of Grand Junction, Colorado, Downtown Development Authority Tax Increment Revenue Bonds, Series 2003; and Declaring an Emergency

Councilmember Hill moved to adopt Ordinance No. 3592 on Second Reading and ordered it published. Councilmember McCurry seconded the motion. Motion carried by unanimous roll call vote with all Councilmembers present. The telephone connection with Council President Spehar was terminated.

## **ADJOURNMENT**

The meeting adjourned at 8:28 p.m.

Stephanie Tuin, MMC  
City Clerk

**Attach 2  
Meeting Schedule and Posting of Notices**

**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA							
Subject		Meeting Schedule and Posting of Notices					
Meeting Date		January 7, 2004					
Date Prepared		December 29, 2003					
Author		Stephanie Tuin		City Clerk			
Presenter Name		Stephanie Tuin		City Clerk			
Report results back to Council		X	No		Yes	When	
Citizen Presentation			Yes	X	No	Name	
	Workshop	X	Formal Agenda		X	Consent	Individual Consideration

**Summary:** State Law requires an annual designation of the City's official location for the posting of meeting notices. The City's Code of Ordinances, Sec. 2-26, requires the meeting schedule and the procedure for calling special meetings be determined annually by resolution.

**Budget:** None

**Action Requested/Recommendation:** Adopt resolution.

**Attachments:** Resolution

**Background Information:** In 1991, the Open Meetings Law was amended to include a provision that requires that a "local public body" annually designate the location of the public place or places for posting notice of meetings and such designation shall occur at the first regular meeting of each calendar year (24-6-402(2)(c) C.R.S.). The location designated is to be the glassed-in bulletin board outside the auditorium lobby at 250 N. 5<sup>th</sup> Street.

As of 1994, the revised City Code of Ordinances includes a provision whereby the City Council determines annually the City Council meeting schedule and the procedure for calling a special meeting.

CITY OF GRAND JUNCTION

RESOLUTION NO. \_\_\_\_-04

A RESOLUTION OF THE CITY OF GRAND JUNCTION  
DESIGNATING THE LOCATION FOR THE POSTING OF THE NOTICE  
OF MEETINGS, AND ESTABLISHING THE CITY COUNCIL  
MEETING SCHEDULE

Recitals.

The City Council of the City of Grand Junction is a "local public body" as defined in C.R.S. §24-6-402 (1)(a).

The City Council holds meetings to discuss public business.

The C.R.S. §24-6-402 (2)(c) provides that "Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than 24 hours prior to the holding of the meeting. The public place or places for posting of such notice shall be designated annually at the local public body's first regular meeting of each calendar year".

The Grand Junction Code of Ordinances, Section 2-26, provides that the meeting schedule and the procedure for calling of special meetings of the City Council shall be established by resolution annually.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO THAT:

1. The Notice of Meetings for the local public body shall be posted on the glassed-in exterior notice board at 250 N. 5<sup>th</sup> Street, City Hall.
2. The meeting schedule for the regular meetings of the City Council is the first and third Wednesday of each month, at the hour of 7:30 p.m.
3. Additional special meetings may be called by the President of the City Council for any purpose and notification of such meeting shall be posted twenty-four hours prior to the

meeting. Each and every member of City Council shall be notified of any special meeting at least twenty-four hours in advance.

Read and approved this \_\_\_\_ day of January, 2004.

\_\_\_\_\_  
President of the Council

ATTEST:

\_\_\_\_\_  
City Clerk

**Attach 3  
Setting a Hearing on Issuing Bonds for the Riverside Parkway**

**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA						
<b>Subject</b>	Ordinance Authorizing the Issuance of \$60 million in Bonds for the Riverside Parkway Project					
<b>Meeting Date</b>	January 7, 2004					
<b>Date Prepared</b>	December 19, 2003				<b>File #</b>	
<b>Author</b>	Ron Lappi			<b>Admin. Srvs. Director</b>		
<b>Presenter Name</b>	Ron Lappi			<b>Admin. Srvs. Director</b>		
<b>Report results back to Council</b>		<b>No</b>	<input checked="" type="checkbox"/>	<b>Yes</b>	<b>When</b>	March, 2004
<b>Citizen Presentation</b>		<b>Yes</b>	<input checked="" type="checkbox"/>	<b>No</b>	<b>Name</b>	
	<b>Workshop</b>	<input checked="" type="checkbox"/>		<b>Formal Agenda</b>	<input checked="" type="checkbox"/>	<b>Consent</b>
						<b>Individual Consideration</b>

**Summary:** The City voters overwhelmingly approved the issuance of bonds up to \$80 million at the November 4, 2003 election. This debt is specifically approved for the construction of the Riverside Parkway from 24 Road to 29 Road, together with appropriate connections where needed and the completion of the 29 Road Corridor and new Interchange at 29 Road and I-70.

**Budget:** These funds will be used for construction of the Riverside Parkway beginning in 2004. The debt service on these bonds together with the bonds to be issued in early 2007 will result in a level debt service for the City of Grand Junction that is already planned for in the Sales Tax CIP Fund. It is estimated that the total for both issues will approximate \$6.2 million annually with a lesser amount the first year or two of issuance.

**Action Requested/Recommendation:** Approve this bond ordinance on first reading January 7<sup>th</sup>, with a final reading and approval scheduled after a public hearing on January 21, 2004.

**Attachments:** Bond Ordinance Authorizing the Issuance of the Bonds

**Background Information:** The City voters overwhelmingly approved the issuance of bonds up to \$80 million at the November 4, 2003 election. This debt is specifically approved for the construction of the Riverside Parkway from 24 Road to 29 Road, together with appropriate connections where needed and the completion of the 29 Road Corridor and new Interchange at 29 Road and I-70. Our City engineers and outside consulting engineers have estimated that the City can spend up to the \$60 million in the first three years after bond issuance and closing, now set for March 2, 2004. This bond ordinance and related marketing and closing documents authorizes this first of at least two bond sales required to complete this project in six to eight years. The security pledged for the repayment of these bonds is all General Fund Revenues and specifically all Sales and Use Tax Revenues including the Sales Tax CIP Fund revenues. It is estimated that the annual debt service will only use a very small portion of these total revenues, and that pledged revenues exceed the annual debt service by a factor of 10 to 14 to one, even in the early years.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF GRAND JUNCTION, COLORADO, GENERAL FUND REVENUE BONDS, SERIES 2004, AND PLEDGING CERTAIN REVENUES OF THE CITY FOR THE PAYMENT OF THE BONDS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

**Definitions. Terms used in this Ordinance shall have the meanings specified in this section for all purposes of this Ordinance and of any ordinance amendatory hereof, supplemental hereto or relating hereto, and of any instrument or document appertaining hereto, except where the context by clear implication otherwise requires. All definitions include the singular and plural and include all genders. Certain terms are parenthetically defined elsewhere herein.**

Additional Bonds: the one or more series of bonds or other securities or obligations authorized to be issued by the City pursuant to Section 22 and 23 hereof and having a lien on the Pledged Sales and Use Tax Revenues on a parity with the lien thereon of the 2004 Bonds.

Additional Pledged Revenues: has the meaning set forth in Section 22.A.

Bond Account: the account by that name created by Section 19 hereof.

Bonds: the Outstanding 2004 Bonds and any Additional Bonds.

Business Day: a day on which banks located in the City and in the cities in which the principal offices of each of the Paying Agent and the Registrar are not required or authorized to be closed and on which the New York Stock Exchange is not closed.

Charter: the home rule Charter of the City, including all amendments thereto prior to the date hereof.

City: the City of Grand Junction, Colorado.

Closing Date: the date of delivery of payment for the 2004 Bonds.

Commercial Bank: any depository for public funds permitted by the laws of the State for political subdivisions of the State which has a capital and surplus of \$10,000,000 or more, and which is located within the United States.

Continuing Disclosure Certificate: the undertaking executed by officers of the City simultaneously with the delivery of the 2004 Bonds which enables the Purchasers to comply with Rule 15c2-12 promulgated by the Securities and Exchange Commission.

Council: the Council of the City or any successor in functions thereto.

Election: the City's election held on November 4, 2003.

Fiscal Year: the twelve months commencing on the first day of January of any calendar year and ending on the thirty-first day of December of such calendar year or such other twelve month period as may from time to time be designated by the Council as the Fiscal Year of the City.

General Fund: the General Fund of the City.

Governmental Obligations: any of the following which are noncallable and which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein:

**direct general obligations of, or obligations the payment of principal of and interest on which are unconditionally guaranteed by, the United States of America;**

**bonds, debentures, notes, or other evidences of indebtedness issued by the Export-Import Bank of the United States, the Federal Financing Bank, the Farmers Home Administration, the General Services Administration, the U.S. Maritime Administration, or the U.S. Department of Housing and Urban Development; or**

**evidences of ownership interests in obligations described in paragraph (i) or (ii) above.**

Letter of Representations: the Letter of Representations between the City and The Depository Trust Company.



Maximum Annual Debt Service Requirement: the maximum amount of all required payments of principal and interest on the 2004 Bonds and on each series of Additional Bonds, respectively, which will become due in any Fiscal Year.

Maturity-Rate: Bonds which are due on the same date and bear the same interest rate.

Ordinance: this Ordinance of the City, which provides for the issuance and delivery of the 2004 Bonds.

Outstanding: as of any date of calculation, all Bonds theretofore executed, issued and delivered by the City except:

**Bonds theretofore cancelled by the City, Registrar or Paying Agent, or surrendered to the City, Registrar or Paying Agent for cancellation;**

**Bonds in lieu of or in substitution for which other Bonds shall have been executed, issued and delivered by the City and authenticated by the Registrar unless proof satisfactory to the Registrar is presented that any such Bonds are duly held by the lawful Registered Owners thereof; or**

**Bonds deemed to have been paid as provided in Section 25 hereof or any similar provision of an ordinance authorizing the issuance of Additional Bonds.**

For purposes of this definition, the terms Registrar and Paying Agent shall include a registrar or paying agent for any Additional Bonds.

Owner or Registered Owner: the Registered Owner of any 2004 Bond as shown on the registration books kept by the Registrar, and, where the context so requires, the Registered Owner of any Additional Bond as shown on the registration books kept by the registrar for such bonds.

Paying Agent: The Bank of Cherry Creek, a branch of Western National Bank, being the agent for the City for the payment of the 2004 Bonds and interest thereon, or its successors and assigns.

Permitted Investment: any investment or deposit permitted by the Charter and ordinances of the City.

Person: any individual, firm, partnership, corporation, company, association, joint-stock association or body politic; and the term includes any trustee, receiver, assignee or other similar representative thereof.

Pledged Revenues:

**the revenues derived from the Pledged Sales and Use Tax;**

**all other additional monies deposited into the City's General Fund which are not by law, by contract, or otherwise restricted or required to be used for another purpose and are legally available for payment of the principal of, prior redemption premium, if any, and interest on the 2004 Bonds, provided however, that the Pledged Revenues shall not include monies deposited to the General Fund which are the proceeds of any increase in any existing tax and or any new tax, unless such pledge is expressly authorized by the City's electors at an election called for such purpose;**

**any additional funds or revenues which the City hereafter pledges to the payment of the 2004 Bonds;**

**proceeds of the 2004 Bonds or other legally available moneys deposited into and held in the Bond Account; and interest or investment income on the Bond Account;**

all to the extent that such moneys are at any time required by Section 19 hereof to be deposited into and held in the Bond Account.

Pledged Sales and Use Tax: the proceeds of the Sales and Use Tax. “Pledged Sales and Use Tax” does not include amounts withheld by retailers and vendors to cover their expenses in collecting and remitting the Pledged Sales and Use Tax, and Pledged Sales and Use Tax does not include amounts collected by the City and subsequently determined, pursuant to the applicable Sales and Use Tax Ordinances, to be subject to valid claims for refunds. “Pledged Sales and Use Tax” does not include the proceeds of any increase in the Sales and Use Tax which may be approved in the future, unless such increase is expressly pledged by the City. “Pledged Sales and Use Tax” does include the proceeds derived by the City from any legally available tax or taxes or fees (other than a general ad valorem tax) which replace or supersede the Pledged Sales and Use Tax, regardless of whether such tax or taxes or fees are imposed by the City or the State or other political subdivision thereof. “Pledged Sales and Use Tax” does not include incremental sales taxes which are pledged to the payment of obligations issued pursuant to an urban renewal plan as defined in Section 31-25-103(9), Colorado Revised Statutes, a plan of development as defined in Section 31-25-802(6.4), Colorado Revised Statutes, or a value capture plan as defined in Section 43-4-508, Colorado Revised Statutes

Pledged Sales and Use Tax Revenues: revenues derived from the Pledged Sales and Use Tax.

Project: the road improvements authorized at the Election.

Purchase Agreement: the Bond Purchase Agreement between the City and the Purchasers, executed by the Finance Director.

Purchasers: George K. Baum & Company and Kirkpatrick, Pettis, Smith, Polian Inc.

Rebate Account: the account by that name created by Section 19 hereof.

Registrar: The Bank of Cherry Creek, a branch of Western National Bank, being the agent for the City for the registration, transfer and exchange of the 2004 Bonds, or its successors.

Registrar Agreement: the Registrar Agreement between the City and the Registrar dated as of March 1, 2004.

Regular Record Date: the fifteenth day of the calendar month next preceding each interest payment date for the 2004 Bonds (other than a special interest payment date hereafter fixed for the payment of defaulted interest).

Sale Certificate: the certificate of the City authorized pursuant to the Supplemental Public Securities Act and described in Section 6 hereof.

Sales and Use Tax: the 2.75% tax upon the sale and use of goods and services which is being levied by the City pursuant to the Sales and Use Tax Ordinances and any future or amended tax levied by the City as a sales and use tax and pledged by the Council to the payment of the Bonds.

Sales and Use Tax Ordinances: the ordinances adopted by the Council of the City for the purpose of adopting and enforcing the Sales and Use Tax and which are in effect on the date of this Ordinance and as amended by this Ordinance or as later amended or supplemented.

Special Record Date: a special date fixed to determine the names and addresses of Registered Owners for purposes of paying interest on a special interest payment date for the payment of defaulted interest, all as further provided in Section 7 hereof.

State: the State of Colorado.

Supplemental Public Securities Act: Part 2 of Article 57 of Title 11, Colorado Revised Statutes, as amended.

Tax Code: the Internal Revenue Code of 1986, as amended to the date of delivery of the 2004 Bonds, and the regulations promulgated thereunder.

Term Bonds: 2004 Bonds that are payable on or before their specified maturity dates from sinking fund payments established for that purpose and calculated to retire such 2004 Bonds on or before their specified maturity dates.

Trust Bank: a Commercial Bank which is authorized to exercise and is exercising trust powers.

2004 Bonds: the City's General Fund Revenue Bonds, Series 2004, issued pursuant to this Ordinance.

**Recitals.**

***The City is a municipal corporation duly organized and existing under the City's Charter adopted pursuant to Article XX of the Constitution of the State of Colorado.***

***Section 85 of the Charter provides that indebtedness of the City shall be incurred and limited as provided in Article XI of the Colorado Constitution.***

***Article XI, Section 6 of the Colorado Constitution provides:***

**No political subdivision of the state shall contract any general obligation debt by loan in any form, whether individually or by contract pursuant to article XIV, section 18(2)(a) of this constitution except by adoption of a legislative measure which shall be irrevocable until the indebtedness therein provided for shall have been fully paid or discharged, specifying the purposes to which the funds to be raised shall be applied and providing for the levy of a tax which together with such other revenue, assets, or funds as may be pledged shall be sufficient to pay the interest and principal of such debt. Except as may be otherwise provided by the charter of a home rule city and county, city, or town for debt incurred by such city and county, city, or town, no such debt shall be created unless the question of incurring the same be submitted to and approved by a majority of the qualified taxpaying electors voting thereon, as the term "qualified taxpaying elector" shall be defined by statute.**

**Except as may be otherwise provided by the charter of a home rule city and county, city, or town, the general assembly**

shall establish by statute limitations on the authority of any political subdivision to incur general obligation indebtedness in any form whether individually or by contract pursuant to article XIV, section 18(2)(a) of this constitution.

Debts contracted by a home rule city and county, city, or town, statutory city or town or service authority for the purposes of supplying water shall be excepted from the operation of this section.

*Section 31-15-302(1)(d), C.R.S., limits the total amount of indebtedness of the City to 3% of the actual value of taxable property in the City except for debt incurred for supplying water.*

*The actual value of taxable property in the City is \$ 3,453,472,259.*

*There is currently no City debt outstanding which is subject to the debt limit.*

*Article X, Section 20 of the Colorado Constitution requires voter approval in advance for the creation of any multiple-fiscal year direct or indirect debt or other financial obligation.*

*The notice delivered to voters at the Election as required by Article X, Section 20 of the Colorado Constitution limits the issuance of the bonds authorized at the Election as follows:*

\$80,000,000	Principal Amount of Proposed Bonds: Not to exceed
7,500,000	Maximum Annual City Repayment Cost: Not to exceed \$
\$134,000,000	Total City Repayment Cost: Not to exceed

***At the Election, the City's electors approved the following question:***

SHALL CITY OF GRAND JUNCTION DEBT BE INCREASED \$80,000,000, WITH A REPAYMENT COST OF \$134,000,000 (WITHOUT ANY INCREASE OF ANY EXISTING TAXES AND WITHOUT IMPOSING ANY NEW TAXES) TO PROVIDE FINANCING FOR THE PURPOSE OF ACCELERATING AND COMPLETING ROAD IMPROVEMENTS KNOWN AS THE RIVERSIDE PARKWAY (FROM 24 RD. TO 29 RD.) AND THE 29 ROAD TRANSPORTATION CORRIDOR AND PAYING COSTS OF THE FINANCING, INCLUDING RESERVES; PROVIDED THAT THE SPECIFIC TERMS OF THE DEBT, INCLUDING A PROVISION FOR EARLY REPAYMENT WITH OR WITHOUT A PREMIUM, AND THE PRICE AT WHICH IT WILL BE SOLD SHALL BE DETERMINED BY THE CITY AS NECESSARY AND PRUDENT?

***The City imposes a Sales and Use Tax pursuant to the Charter and the Sales and Use Tax Ordinances.***

***The City has never pledged the Sales and Use Tax to the payment of any bonds or for any purpose. The Pledged Sales and Use Tax may now be pledged lawfully and irrevocably for the payment of the 2004 Bonds.***

***There have been presented to the Council the proposed forms of the following documents: the Purchase Agreement, the Registrar Agreement, the Letter of Representations, and the Continuing Disclosure Certificate.***

***The Council desires to cause the 2004 Bonds to be issued, to authorize and direct the application of the proceeds thereof as set forth herein, and to provide security for the payment thereof, all in the manner hereinafter set forth.***

**Ratification. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Council and other officers of the City in the imposition and collection of the Sales and Use Tax, financing the Project, and**

selling and issuing the 2004 Bonds for those purposes are ratified, approved and confirmed.

**Authorization of Project.** The Project is authorized at a cost not exceeding \$60,000,000 (excluding costs to be paid from sources other than the proceeds of the 2004 Bonds).

**Authorization of the 2004 Bonds.** Pursuant to the Election and Section 85 of the Charter, there hereby are authorized to be issued fully registered general fund revenue securities of the City, to be designated “City of Grand Junction, Colorado, General Fund Revenue Bonds, Series 2004,” to be payable and collectible, as to principal, prior redemption premium, if any, and interest, from the Pledged Revenues.

**Election to Apply Supplemental Public Securities Act to the 2004 Bonds.** Pursuant to Section 11-57-204 of the Supplemental Public Securities Act, the Council hereby elects to apply the Supplemental Public Securities Act in its entirety to the 2004 Bonds. Pursuant to such election and Section 11-57-205 of the Supplemental Public Securities Act, the Council hereby delegates to the City Manager or the Finance Director the power to make the following determinations with respect to the 2004 Bonds, without any requirement that the Council approve such determinations, subject to the parameters and restrictions contained in this Ordinance:

***Interest Rate. The rates of interest per annum to be borne by the 2004 Bonds, provided that the total repayment cost of the 2004 Bonds and the maximum annual repayment cost of the 2004 Bonds shall not exceed the amounts authorized at the Election.***

***Purchase Price. The price at which the 2004 Bonds will be sold to the Purchasers, provided that the price shall not be less than 99% of the aggregate principal amount of the 2004 Bonds.***



**Principal Amount.** *The aggregate principal amount of the 2004 Bonds, provided that such principal amount shall not exceed \$60,000,000.*

**Maturity Schedule.** *The amount of principal of the 2004 Bonds maturing, or subject to mandatory sinking fund redemption, in any particular year, provided that it shall not to be more than \$6,600,000 annually.*

**Optional Redemption Provisions B Dates and Price.** *The dates on which the 2004 Bonds may be called for optional redemption, provided that the first optional redemption date of the 2004 Bonds shall not be earlier than March 1, 2014, at a redemption price not to exceed 100%.*

Such determinations shall be evidenced by the Sale Certificate signed by the City Manager or the Finance Director and dated and delivered as of the Closing Date, which shall not be more than 60 days from the date of adoption of this ordinance.

**2004 Bond Details.** *The 2004 Bonds shall be issued in fully registered form (i.e., registered as to both principal and interest) initially registered in the name of Cede & Co. as nominee for The Depository Trust Company, and shall be issued in the denomination of \$5,000 or any integral multiple thereof (provided that no 2004 Bond may be in a denomination which exceeds the principal coming due on any maturity date, and no individual 2004 Bond will be issued for more than one maturity). The 2004 Bonds shall be numbered in such manner as the Registrar may determine. The 2004 Bonds shall be dated as of March 1, 2004, and shall bear interest from their dated date until maturity at the rates per annum set forth in the Sale Certificate, payable semiannually on March 1 and September 1 in each year, commencing on September 1, 2004, except that any 2004 Bond which is reissued upon transfer, exchange or other replacement shall bear interest from the most*

**recent interest payment date to which interest has been paid or duly provided for, or if no interest has been paid, from the date of the 2004 Bonds. The 2004 Bonds shall mature on the dates, or be subject to mandatory sinking fund redemption, and in the amounts set forth in the Sale Certificate.**

The principal of and prior redemption premium, if any, on any 2004 Bond shall be payable to the Registered Owner thereof as shown on the registration records kept by the Registrar, upon maturity thereof and upon presentation and surrender at the Paying Agent. If any 2004 Bond shall not be paid upon such presentation and surrender at or after maturity, it shall continue to draw interest at the same interest rate borne by said 2004 Bond until the principal thereof is paid in full. Payment of interest on any 2004 Bond shall be made by check or draft mailed by the Paying Agent, on or before each interest payment date (or, if such interest payment date is not a business day, on or before the next succeeding business day), to the Registered Owner thereof at the address shown on the registration records kept by the Registrar at the close of business on the Regular Record Date for such interest payment date; but any such interest not so timely paid or duly provided for shall cease to be payable to the person who is the Registered Owner thereof at the close of business on the Regular Record Date and shall be payable to the person who is the Registered Owner of the applicable Bond at the close of business on a Special Record Date for the payment of any such defaulted interest. Such Special Record Date and the date fixed for payment of the defaulted interest shall be fixed by the Registrar whenever moneys become available for payment of the defaulted interest. Notice of the Special Record Date and the date fixed for payment of the defaulted interest shall be given to the Registered Owners of the 2004 Bonds not less than ten days prior to the Special Record Date by first-class mail to each such Registered Owner as shown on the Registrar's registration records on a date selected by the Registrar, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. The Paying Agent may make payments of interest on any 2004 Bond by such alternative means as may be mutually agreed to between the Owner of such 2004 Bond and the Paying Agent (provided, however, that the City shall not be required to make funds available to the Paying Agent prior to the interest payment dates stated in this Section). All such payments

shall be made in lawful money of the United States of America without deduction for the services of the Paying Agent or Registrar.

Pursuant to Section 11-57-210 of the Supplemental Public Securities Act, the 2004 Bonds shall contain a recital that they are issued pursuant to certain provisions of the Supplemental Public Securities Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the 2004 Bonds after their delivery for value.

**Prior Redemption.**

***The 2004 Bonds may be subject to prior redemption, at the option of the City, on the dates set forth in the Sale Certificate in whole, or in part from any Maturity-Rate, in any order of maturity and by lot within a Maturity-Rate in such manner as the City may determine (giving proportionate weight to 2004 Bonds in denominations larger than \$5,000), at the price set forth in the Sale Certificate.***

***The Term Bonds, if any, shall be subject to mandatory sinking fund redemption at the times, in the amounts and at the prices provided in the Sale Certificate.***

On or before the thirtieth day prior to each such sinking fund payment date, the Registrar shall proceed to call the Term Bonds (or any Term Bond or Term Bonds issued to replace such Term Bonds) for redemption from the sinking fund on the next March 1, and give notice of such call without other instruction or notice from the City.

At its option, to be exercised on or before the sixtieth day next preceding each such sinking fund redemption date, the City may (a) deliver to the Registrar for cancellation Term Bonds subject to mandatory sinking fund redemption on such date in an aggregate principal amount desired or (b) receive a credit in respect of its sinking fund redemption obligation for any Term Bonds of the Maturity-Rate subject to mandatory sinking fund redemption on such date, which prior to said date have been redeemed (otherwise than through the operation of the sinking

fund) and canceled by the Registrar and not theretofore applied as a credit against any sinking fund redemption obligation. Each Term Bond so delivered or previously redeemed will be credited by the Registrar at the principal amount thereof on the obligation of the City on such sinking fund redemption date and the principal amount of Term Bonds to be redeemed by operation of such sinking fund on such date will be accordingly reduced. The City will on or before the sixtieth day next preceding each sinking fund redemption date furnish the Registrar with its certificate indicating whether or not and to what extent the provisions of (a) and (b) of the preceding sentence are to be availed with respect to such sinking fund payment. Failure of the City to deliver such certificate shall not affect the Registrar's duty to give notice of sinking fund redemption as provided in this paragraph B.

***In the case of 2004 Bonds of a denomination larger than \$5,000, a portion of such 2004 Bond (\$5,000 or any integral multiple thereof) may be redeemed, in which case the Registrar shall, without charge to the Owner of such 2004 Bond, authenticate and issue a replacement 2004 Bond or Bonds for the unredeemed portion thereof.***

***Notice of optional or mandatory sinking fund redemption by the City shall be given by the Paying Agent in the name of the City by sending a copy of such notice by first-class, postage prepaid mail, not more than 60 days and not less than 30 days prior to the redemption date to the Purchasers and to each Registered Owner of any 2004 Bond all or a portion of which is called for redemption at his address as it last appears on the registration books kept by the Registrar. Failure to give such notice by mailing to the Registered Owner of any 2004 Bond or to the Purchasers, or any defect therein, shall not affect the validity of the proceedings for the redemption of any 2004 Bonds.***

All official notices of redemption shall be dated and shall state:

**CUSIP numbers of 2004 Bonds to be redeemed;**

**the redemption date;**

**the redemption price;**

**if less than all Outstanding 2004 Bonds are to be redeemed, the identification of the 2004 Bonds (and, in the case of partial redemption, the respective principal amounts and interest rate) to be redeemed;**

**that on the redemption date the redemption price will become due and payable upon each such 2004 Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date; and**

**the place where such 2004 Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the Principal Office or such other office as shall be designated by the Paying Agent.**

Prior to any redemption date, the City shall deposit with the Paying Agent an amount of money sufficient to pay the redemption price of all the 2004 Bonds or portions of 2004 Bonds which are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the 2004 Bonds or portions of 2004 Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such 2004 Bonds or portions of 2004 Bonds shall cease to bear interest. Upon surrender of such 2004 Bonds for redemption in accordance with said notice, such 2004 Bonds shall be paid by the Paying Agent at the redemption price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for partial redemption of any 2004 Bond, there shall be prepared for the Registered Owner a new 2004 Bond or Bonds of the same maturity and interest

rate in the amount of the unpaid principal. All 2004 Bonds which have been redeemed shall be canceled and destroyed by the Registrar and shall not be reissued.

In addition to the foregoing notice, further notice may be given by the Paying Agent in order to comply with the requirements of any registered securities depository holding the 2004 Bonds, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed.

Notwithstanding the provisions of this section, any notice of redemption may contain a statement that the redemption is conditioned upon the receipt by the Paying Agent of funds on or before the date fixed for redemption sufficient to pay the redemption price of the 2004 Bonds so called for redemption, and that if such funds are not available, such redemption shall be canceled by written notice to the owners of the 2004 Bonds called for redemption in the same manner as the original redemption notice was mailed.

**2004 Bonds Equally Secured. The covenants and agreements herein set forth to be performed on behalf of the City shall be for the equal benefit, protection and security of the Owners of any and all of the Outstanding 2004 Bonds, all of which, regardless of the time or times of their maturity, shall be of equal rank without preference, priority or distinction of any of such securities over any other thereof, except as otherwise expressly provided in or pursuant to this Ordinance.**

**Special Obligations. All of the 2004 Bonds, together with the interest accruing thereon and any prior redemption premium, shall be payable and collectible solely out of the Pledged Revenues, which Pledged Revenues are hereby so pledged; the Owner or Owners of the 2004 Bonds may look only to the designated special accounts herein pledged for the payment of the principal of, prior redemption premium, if any, and interest on the 2004 Bonds. The full faith and credit of the City is not pledged to the payment of the 2004 Bonds; they shall constitute special, limited obligations of the City. The City has no obligation to**

increase any City taxes for the purpose of paying the principal of, prior redemption premium, if any, and interest on the 2004 Bonds.

**No Pledge of Property.** The payment of the 2004 Bonds is not secured by an encumbrance, mortgage or other pledge of property of the City, except for the Pledged Revenues and other funds and accounts pledged for the payment of the 2004 Bonds. No property of the City, subject to such exception, shall be liable to be forfeited or taken in payment of the 2004 Bonds.

**No Recourse Against Officers and Agents.** No civil recourse shall be available for the payment of the principal of, prior redemption premium, if any, and interest on the 2004 Bonds or for any claim based thereon or otherwise upon this Ordinance or any other ordinance pertaining hereto, against any individual member of the Council or any officer or agent of the City who acts in good faith, either directly or indirectly through the Council, or the City, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty or otherwise. By the acceptance of the 2004 Bonds and as a part of the consideration of their sale or purchase, any person purchasing or selling such 2004 Bonds specifically waives any such recourse.

**Form of 2004 Bonds and Registration Panel.** The 2004 Bonds and the registration panel shall be substantially as follows (provided that any portion of the 2004 Bond text may, with appropriate references, be printed on the back of the 2004 Bonds), with such omissions, insertions, endorsements, and variations as to any recitals of fact or other provisions as may be required by the circumstances, be required or permitted by this Ordinance, or be consistent with this Ordinance and necessary or appropriate to conform to the rules and requirements of any governmental authority or any usage or requirement of law with respect thereto:

(Form of Bond)

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the City or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Registered Owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA

STATE OF COLORADO

COUNTY OF  
MESA

CITY OF GRAND JUNCTION, COLORADO  
GENERAL FUND REVENUE BOND  
SERIES 2004

**R-** \_\_\_\_\_

\$ \_\_\_\_\_

INTEREST RATE

MATURITY DATE  
CUSIP

DATED DATE

\_\_\_\_\_%

March 1, 2004

REGISTERED OWNER:

PRINCIPAL AMOUNT:

The City of Grand Junction, in the County of Mesa and State of Colorado (the “City”), for value received, promises to pay to the Registered Owner specified above, or registered assigns, solely from the special funds and accounts provided therefor, the principal amount specified above, on the maturity date specified above (unless called for earlier redemption), and to pay from said sources interest thereon on March 1 and September 1 of each year, commencing on September 1, 2004, at the interest rate per annum specified above, until the principal sum is paid or payment has been provided therefor. This bond will bear interest from the most recent interest payment date to which interest has been paid or provided for, or, if no interest has been paid, from the date of this bond. This bond is one of an authorized series of



bonds (the “2004 Bonds”) issued pursuant to an ordinance of the Council adopted on January 7, 2004 (the “Bond Ordinance”). The 2004 Bonds are all issued under and equally and ratably secured by and entitled to the security of the Bond Ordinance. To the extent not defined herein, terms used in this bond shall have the same meanings as set forth in the Bond Ordinance. This bond bears interest, matures, is payable, is subject to redemption prior to maturity, and is transferable as provided in the Bond Ordinance.

The principal of and prior redemption premium, if any, on this bond is payable upon presentation and surrender hereof at the principal office of the Paying Agent. Interest on this bond will be paid on or before each interest payment date (or, if such interest payment date is not a business day, on or before the next succeeding business day), by check or draft mailed to the person in whose name this bond is registered in the registration records of the City maintained by the Registrar at its principal office and at the address appearing thereon at the close of business on the Record Date.

Reference is made to the Bond Ordinance for the provisions, among others, with respect to the custody and application of the proceeds of the 2004 Bonds, the receipt and disposition of the Pledged Revenues, the nature and extent of the security for the 2004 Bonds, the accounts, funds or revenues pledged to the 2004 Bonds, the terms and conditions under which additional obligations payable from the Pledged Revenues or Additional Bonds payable from the Pledged Sales and Use Tax Revenues may be issued, the rights, duties and obligations of the City and the Registrar and Paying Agent, the rights of the Owners of the 2004 Bonds, the events of default and remedies, the circumstances under which any 2004 Bond is no longer Outstanding, the ability to amend the Bond Ordinance; and by the acceptance of this bond the Owner hereof assents to all provisions of the Bond Ordinance. The principal of, prior redemption premium, if any, and the interest on this bond shall be paid, and this bond is transferable, free from and without regard to any equities between the City and the original or any intermediate Owner hereof or any setoffs or cross-claims.

**THE 2004 BONDS ARE ISSUED PURSUANT TO AND IN FULL COMPLIANCE WITH THE CONSTITUTION AND LAWS OF THE STATE OF COLORADO, THE CHARTER OF THE CITY, AND PURSUANT TO THE BOND ORDINANCE. THE FULL FAITH AND CREDIT OF THE CITY IS NOT PLEDGED TO THE PAYMENT OF THE 2004 BONDS, AND THEY CONSTITUTE SPECIAL, LIMITED**

OBLIGATIONS OF THE CITY, SECURED ONLY BY THE PLEDGED REVENUES. THE CITY HAS NO OBLIGATION TO INCREASE ANY CITY TAXES FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PRIOR REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE 2004 BONDS. NEITHER THE MEMBERS OF THE CITY NOR ANY PERSONS EXECUTING THIS BOND SHALL BE PERSONALLY LIABLE FOR THIS BOND.

It is certified, recited and warranted that all the requirements of law have been fully complied with by the proper officers of the City in the issuance of this bond; that it is issued pursuant to and in strict conformity with the Constitution and laws of the State, with the Charter of the City, and with the Bond Ordinance; and that this bond does not contravene any Constitutional, statutory or Charter limitation.

It is also certified, recited, and warranted that the 2004 Bonds are issued under the authority of the Bond Ordinance and the Supplemental Public Securities Act. It is the intention of the City, as expressed in the Bond Ordinance, that this recital shall conclusively impart full compliance with all of the provisions of the Bond Ordinance and shall be conclusive evidence of the validity and the regularity of the issuance of the 2004 Bonds after their delivery for value and that all of the 2004 Bonds issued are incontestable for any cause whatsoever after their delivery for value.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Registrar shall have duly executed the certificate of authentication hereon.

IN WITNESS WHEREOF, the Council of the City of Grand Junction has caused this bond to be signed and executed in its name and upon its behalf with a manual or facsimile signature of the President of the Council, and to be signed, executed and attested with a manual or facsimile signature of the City Clerk, and has caused a manual or facsimile impression of the seal of the City affixed hereon, all as of the date specified above.

( Manual or Facsimile Signature )  
President of the Council

(MANUAL OR FACSIMILE SEAL)

Attest:

( Manual or Facsimile Signature )  
City Clerk

(End of Form of Bond)

(Form of Registrar's Certificate of Authentication)

This is one of the 2004 Bonds described in the within-mentioned Bond Ordinance, and this bond has been duly registered on the registration records kept by the undersigned as Registrar for such 2004 Bonds.

THE BANK OF CHERRY CREEK, a branch of  
Western National Bank,  
as Registrar

Date of Authentication and Registration:	By: _____ Authorized Officer or Employee
---	---

(End of Form of Registrar's Certificate of Authentication)

(Form of Prepayment Panel)

The following installments of principal (or portion thereof) of this bond have been prepaid in accordance with the terms of the Bond Ordinance authorizing the issuance of this bond.

---

<u>Date of Prepayment</u>	<u>Principal Prepaid</u>	<u>Signature of Authorized Representative of the Depository</u>

---

(End of Form of Prepayment Panel)

MAY BE PRINTED ON THE BACK OF THE BOND AND THE FOLLOWING STATEMENT INSERTED -- REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE HEREOF; SUCH PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH HERE.

(Form of Assignment)

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within bond and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney, to transfer the same on the records of the Registrar, with full power of substitution in the premises.

\_\_\_\_\_

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_

Address of transferee:

\_\_\_\_\_

\_\_\_\_\_

Social Security or other tax  
identification number of transferee:

\_\_\_\_\_

NOTE: The signature to this Assignment must correspond with the name as written on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

EXCHANGE OR TRANSFER FEES MAY BE CHARGED

(End of Form of Assignment)

**Negotiability.** Subject to the registration provisions hereof, the 2004 Bonds shall be fully negotiable and shall have all the qualities of negotiable paper, and the Owner or Owners thereof shall possess all rights enjoyed by the holders or owners of negotiable instruments under the provisions of the Uniform Commercial Code-Investment Securities. The principal of, prior redemption premium, if any, and interest on the 2004 Bonds shall be paid, and the 2004 Bonds shall be transferable, free from and without regard to any equities between the City and the original or any intermediate Owner of any 2004 Bonds or any setoffs or cross-claims.

**Execution and Authentication of the 2004 Bonds.** The 2004 Bonds shall be executed in the name and on behalf of the City by the manual or facsimile signature of the President of the Council, shall be sealed with the corporate seal of the City or a facsimile thereof thereunto affixed, imprinted, engraved or otherwise reproduced, and shall be attested by the manual or facsimile signature of the City Clerk. Any 2004 Bond may be signed (manually or by facsimile), sealed or attested on behalf of the City by any person who, at the date of such act, shall hold the proper office, notwithstanding that at the date of authentication, issuance or delivery, such person may have ceased to hold such office. The President of the Council and the Clerk may adopt as and for his or her own facsimile signature the facsimile signature of his or her predecessor in office in the event that such facsimile signature appears on any of the 2004 Bonds. Before the execution of any 2004 Bond, the President of the Council and the Clerk shall each file with the Secretary of State of the State his or her manual signature certified by him or her under oath.

The authentication certificate upon the 2004 Bonds shall be substantially in the form and tenor provided in the form of the 2004 Bonds hereinbefore provided. No 2004 Bond shall be secured hereby or entitled to the benefit hereof, nor shall any 2004 Bond be valid or obligatory for any purpose, unless the certificate of authentication, substantially in such form, has been duly executed by the Registrar and such certificate of the Registrar upon any 2004 Bond

shall be conclusive evidence that such 2004 Bond has been authenticated and delivered hereunder. The certificate of authentication shall be deemed to have been duly executed by the Registrar if manually signed by an authorized officer or employee of the Registrar, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the 2004 Bonds. By authenticating any of the 2004 Bonds initially delivered pursuant to this Ordinance, the Registrar shall be deemed to have assented to the provisions of this Ordinance.

**Registration, Transfer and Exchange.**

***Except as provided in Section 17, records for the registration and transfer of the 2004 Bonds shall be kept by the Registrar, which is hereby appointed by the City as registrar (i.e., transfer agent) for the 2004 Bonds. Upon the surrender for transfer of any 2004 Bond at the Registrar, duly endorsed for transfer or accompanied by an assignment duly executed by the Registered Owner or his attorney duly authorized in writing, the Registrar shall enter such transfer on the registration records and shall authenticate and deliver in the name of the transferee or transferees a new 2004 Bond or Bonds of the same series, of a like aggregate principal amount and of the same Maturity-Rate, bearing a number or numbers not previously assigned. 2004 Bonds may be exchanged at the Registrar for an equal aggregate principal amount of 2004 Bonds of the series and the same Maturity-Rate of other authorized denominations. The Registrar shall authenticate and deliver a 2004 Bond or Bonds which the Registered Owner making the exchange is entitled to receive, bearing a number or numbers not previously assigned. The Registrar may impose reasonable charges in connection with such exchanges and transfers of 2004 Bonds, which***



**charges (as well as any tax or other governmental charge required to be paid with respect to such exchange or transfer) shall be paid by the Registered Owner requesting such exchange or transfer.**

**Except as provided in Section 17, the Registrar shall not be required to transfer or exchange (1) any 2004 Bond or portion thereof during a period beginning at the opening of business 15 days before the day of the mailing of notice of prior redemption as herein provided and ending at the close of business on the day of such mailing, or (2) any 2004 Bond or portion thereof after the mailing of notice calling such 2004 Bond or any portion thereof for prior redemption, except for the unredeemed portion of the 2004 Bonds being redeemed in part.**

**The person in whose name any 2004 Bond shall be registered on the registration records kept by the Registrar shall be deemed and regarded as the absolute Owner thereof for the purpose of making payment thereof and for all other purposes; except as may be otherwise provided in Section 7 hereof with respect to payment of interest; and, subject to such exception, payment of or on account of either principal or interest on any 2004 Bond shall be made only to or upon the written order of the Registered Owner thereof or his legal representative, but such registration may be changed upon transfer of such 2004 Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such 2004 Bond to the extent of the sum or sums so paid.**

***If any 2004 Bond shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such evidence, information or indemnity relating thereto as it and the City may reasonably require, authenticate and deliver a replacement 2004 Bond or Bonds of a like aggregate principal amount and of the same maturity, bearing a number or numbers not previously assigned. If such lost, stolen, destroyed, or mutilated 2004 Bond shall have matured or is about to become due and payable, the Registrar may direct the Paying Agent to pay such 2004 Bond in lieu of replacement.***

***The officers of the City are authorized to deliver to the Registrar fully executed but unauthenticated 2004 Bonds in such quantities as may be convenient to be held in custody by the Registrar pending use as herein provided.***

***Whenever any 2004 Bond shall be surrendered to the Paying Agent upon payment thereof, or to the Registrar for transfer, exchange or replacement as provided herein, such 2004 Bond shall be promptly cancelled by the Paying Agent or Registrar, and counterparts of a certificate of such cancellation shall be furnished by the Paying Agent or Registrar to the City.***

**Book Entry.**

***Notwithstanding any contrary provision of this Ordinance, the 2004 Bonds shall initially be evidenced by one 2004 Bond for each Maturity-Rate in which the 2004 Bonds mature in denominations equal to the aggregate principal amount of the 2004 Bonds maturing for that Maturity-Rate. Such initially delivered 2004 Bonds shall be***

***registered in the name of “Cede & Co.” as nominee for The Depository Trust Company, the securities depository for the 2004 Bonds. The 2004 Bonds may not thereafter be transferred or exchanged except:***

**to any successor of The Depository Trust Company or its nominee, which successor must be both a “clearing corporation” as defined in Section 4-8-102(5), Colorado Revised Statutes and a qualified and registered “clearing agency” under Section 17A of the Securities Exchange Act of 1934, as amended; or**

**upon the resignation of The Depository Trust Company or a successor or new depository under clause (1) or this clause (2) of this paragraph A, or a determination by the Council that The Depository Trust Company or such successor or new depository is no longer able to carry out its functions, and the designation by the Council of another depository institution acceptable to the Council and to the depository then holding the 2004 Bonds, which new depository institution must be both a “clearing corporation” as defined in Section 4-8-102(5), Colorado Revised Statutes and a qualified and registered “clearing agency” under Section 17A of the Securities Exchange Act of 1934, as amended, to carry out the functions of The Depository Trust Company or such successor new depository; or**

**upon the resignation of The Depository Trust Company or a successor or new depository under clause (1) or clause (2) of this paragraph A, or a determination of the Council that The**

Depository Trust Company or such successor or new depository is no longer able to carry out its functions, and the failure by the Council, after reasonable investigation, to locate another qualified depository institution under clause (2) to carry out such depository functions.

*In the case of a transfer to a successor of The Depository Trust Company or its nominee as referred to in clause (1) of paragraph A hereof or designation of a new depository pursuant to clause (2) of paragraph A hereof, upon receipt of the Outstanding 2004 Bonds by the Bond Registrar, together with written instructions for transfer satisfactory to the Bond Registrar, a new 2004 Bond for each Maturity-Rate of the 2004 Bonds then Outstanding shall be issued to such successor or new depository, as the case may be, or its nominee, as is specified in such written transfer instructions. In the case of a resignation or determination under clause (3) of paragraph A hereof and the failure after reasonable investigation to locate another qualified depository institution for the 2004 Bonds as provided in clause (3) of paragraph A hereof, and upon receipt of the Outstanding 2004 Bonds by the Bond Registrar, together with written instructions for transfer satisfactory to the Bond Registrar, new 2004 Bonds shall be issued in the denominations of \$5,000 or any integral multiple thereof, as provided in and subject to the limitations of Section 16 hereof, registered in the names of such persons, and in such authorized denominations as are requested in such written transfer instructions; however, the Bond Registrar shall not be*

***required to deliver such new 2004 Bonds within a period of less than 60 days from the date of receipt of such written transfer instructions.***

***The Council, the Bond Registrar and the Paying Agent shall be entitled to treat the Registered Owner of any Bond as the absolute Owner thereof for all purposes hereof and any applicable laws, notwithstanding any notice to the contrary received by any or all of them and the Council, the Bond Registrar and the Paying Agent shall have no responsibility for transmitting payments to the beneficial owners of the 2004 Bonds held by The Depository Trust Company or any successor or new depository named pursuant to paragraph A hereof.***

***The Council, the Bond Registrar and the Paying Agent shall endeavor to cooperate with The Depository Trust Company or any successor or new depository named pursuant to clause (1) or (2) of paragraph (A) hereof in effectuating payment of the principal amount of the 2004 Bonds upon maturity or prior redemption by arranging for payment in such a manner that funds representing such payments are available to the depository on the date they are due.***

**Delivery of 2004 Bonds and Disposition of Proceeds. When the 2004 Bonds have been duly executed by appropriate City officers and authenticated by the Registrar, the City shall cause the 2004 Bonds to be delivered to the Purchasers on receipt of the agreed purchase price. The 2004 Bonds shall be delivered in such denominations as the Purchasers shall direct (but subject to the provisions of Sections 16 and 17 hereof); and the Registrar shall initially register the 2004 Bonds in such name or names as the Purchasers shall direct.**

The proceeds of the 2004 Bonds, including the accrued interest thereon, shall be deposited promptly by the City and shall be accounted for in the following manner and are hereby pledged therefor, but the Purchasers of the 2004 Bonds or any subsequent Owner in no manner shall be responsible for the application or disposal by the City or any of its officers of any of the funds derived from the sale:

**All accrued interest, if any, received in respect of the 2004 Bonds shall be credited to the Bond Account to be applied to the payment of the 2004 Bonds.**

**All remaining proceeds of the 2004 Bonds shall be used by the City, together with any other available moneys therefor, to pay the costs of the Project, including costs incidental to the issuance of the 2004 Bonds. After payment of all costs of the Project, or after adequate provision therefor is made, any unexpended balance of the proceeds of the 2004 Bonds shall be deposited in the Bond Account and applied to the payment of the principal of, prior redemption premium, if any, and interest on the 2004 Bonds.**

**Use of Pledged Revenues. So long as any 2004 Bonds shall be Outstanding, either as to principal or interest, the Pledged Revenues shall, upon receipt by the City, be applied as follows:**

***Bond Account. First, there shall be credited from the Pledged Revenues to a special account of the City hereby created and to be known as the “City of Grand Junction Revenue Bond Account” the following amounts, provided however, that upon the issuance of Additional Bonds, the Pledged Sales and Use Tax Revenues pledged to the payment of each respective series of Bonds shall be credited concurrently:***

**Interest Payments. Monthly, commencing on the first day of the first month following the date of delivery of any of the Bonds, or commencing on the first day of the month six months next prior to the first interest payment date of any of the Bonds, whichever commencement date is later, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor and on deposit therein from whatever source, to pay the next maturing installment of interest on the Bonds then Outstanding.**

**Principal Payments. Monthly, commencing on the first day of the first month following the date of delivery of any of the Bonds, or commencing on the first day of the month one year next prior to the first principal payment date of any of the Bonds, whichever commencement date is later, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor and on deposit therein from whatever source, to pay the next installment of principal of the Bonds coming due at maturity, or pursuant to mandatory sinking fund redemption as provided in Section 8.B. hereof, if any.**

If prior to any interest payment date or principal payment date there has been accumulated in the Bond Account the entire amount necessary to pay the next maturing installment of interest or principal, or both, the payment required in subparagraph (1) or (2) (whichever is applicable) of this paragraph, may be appropriately reduced; but the required monthly amounts again shall be so credited to such account commencing on such interest payment date or principal payment date. The moneys in the Bond Account shall be used only to

pay the principal of, prior redemption premium, if any, and interest on the Bonds as the same become due.

**Termination of Deposits upon Maturity or Redemption Date.** *No payment need be made into the Bond Account if the amount therein totals a sum at least equal to the entire amount of the Outstanding Bonds, both as to principal and interest to their respective maturities, or to any redemption date on which the City shall have exercised its option to redeem the Bonds then Outstanding and thereafter maturing, including any prior redemption premiums then due, and both accrued and unaccrued requirements, in which case moneys in the Bond Account in an amount at least equal to such principal and interest requirements shall be used solely to pay such as the same accrue, and any moneys in excess thereof in the Bond Account may be used as provided in Paragraphs D and E of this Section.*

**Rebate Account.** *Third, there shall be deposited in a special account of the City hereby created and to be known as the "City of Grand Junction General Fund Revenue Bonds, Series 2004, Rebate Account" amounts required by Section 148(f) of the Tax Code to be held until such time as any required rebate payment is made. Amounts in the Rebate Account shall be used for the purpose of making the payments to the United States required by Section 148(f) of the Tax Code. Any amounts in excess of those required to be on deposit therein by Section 148(f) of the Tax Code shall be withdrawn therefrom and deposited into the Bond Account. Funds in the Rebate*



***Account shall not be subject to the lien created by this Ordinance to the extent such amounts are required to be paid to the United States Treasury. Upon the issuance of Additional Bonds, the City shall create sub-accounts in the Rebate Account.***

***Payment for Subordinate Obligations. After the payments required by Paragraphs A and C of this Section, the Pledged Revenues shall be used by the City for the payment of interest on and principal of any obligations secured by Pledged Revenues subordinate to the lien of the Bonds hereafter authorized to be issued, including reasonable reserves therefor.***

***Use of Remaining Revenues. After making the payments required to be made by this Section, any remaining Pledged Revenues may be used for any lawful purpose.***

Nothing in this Ordinance shall prevent the City from making refunds of amounts collected by the City and subsequently determined, pursuant to the applicable Sales and Use Tax Ordinances, to be subject to valid claims for refunds.

***General Administration of Accounts. The accounts designated in Section 19 hereof shall be administered as follows, subject to the limitations stated in Section 24.K. hereof:***

***Budget and Appropriation of Accounts. The sums provided to make the payments specified in Section 19 hereof are hereby appropriated for said purposes, and said amounts for each year shall be included in the annual budget and the appropriation ordinance or measures to be adopted or passed by the Council in each year respectively while any of the 2004 Bonds, either as to principal or interest, are Outstanding and unpaid. No provision of***

**any constitution, statute, charter, ordinance, resolution, or other order or measure enacted after the issuance of the 2004 Bonds shall in any manner be construed as limiting or impairing the obligation of the City to keep and perform the covenants contained in this Ordinance so long as any of the 2004 Bonds remain Outstanding and unpaid. Nothing herein shall prohibit the Council, at its sole option, from appropriating and applying other funds of the City legally available for such purpose to the Bond Account for the purpose of providing for the payment of the principal of, prior redemption premium, if any, and interest on the 2004 Bonds.**

**Places and Times of Deposits. Each of the special accounts created in Section 19 hereof shall be maintained as a book account kept separate and apart from all other accounts or funds of the City as trust accounts solely for the purposes herein designated therefor. For purposes of investment of moneys, nothing herein prevents the commingling of moneys accounted for in any two or more such book accounts pertaining to the Pledged Revenues or to such accounts and any other funds of the City to be established under this Ordinance. Moneys in any such book account shall be continuously secured to the fullest extent required by the laws of the State for the securing of public accounts. Each periodic payment shall be credited to the proper book account not later than the date therefor herein designated, except that when any such date shall be a Saturday, a Sunday or a legal holiday, then such payment shall be made on or before the next preceding business day.**

**Investment of Accounts. Any moneys in any account established by Section 19 of this Ordinance may be invested or reinvested in any Permitted Investment. Securities or obligations purchased as such an investment shall either be subject to redemption at any time at face value by the holder thereof at the option of such holder, or shall mature at such time or times as shall most nearly coincide with the expected need for moneys from the account in question. Securities or obligations so purchased as an investment of moneys in any such account shall be deemed at all times to be a part of the applicable account. The City shall present for redemption or sale on the prevailing market any securities or obligations so purchased as an investment of moneys in a given account whenever it shall be necessary to do so in order to provide moneys to meet any required payment or transfer from such account. The City shall have no obligation to make any investment or reinvestment hereunder, unless any moneys on hand and accounted for in any one account exceed \$5,000 and at least \$5,000 therein will not be needed for a period of not less than 60 days. In such event the City shall invest or reinvest not less than substantially all of the amount which will not be needed during such 60 day period, except for any moneys on deposit in an interest bearing account in a Commercial Bank, without regard to whether such moneys are evidenced by a certificate of deposit or otherwise, pursuant to this Section 20.C. and Section 20.E. hereof; but the City is not required to invest, or so to invest in such a manner, any moneys accounted for**

*hereunder if any such investment would contravene the covenant concerning arbitrage in Section 24.K. hereof.*

**No Liability for Losses Incurred in Performing Terms of Ordinance.** *Neither the City nor any officer of the City shall be liable or responsible for any loss resulting from any investment or reinvestment made in accordance with this Ordinance.*

**Character of Funds.** *The moneys in any fund or account herein authorized shall consist of lawful money of the United States or investments permitted by Section 20.C. hereof or both such money and such investments. Moneys deposited in a demand or time deposit account in or evidenced by a certificate of deposit of a Commercial Bank pursuant to Section 20.C. hereof, appropriately secured according to the laws of the State, shall be deemed lawful money of the United States.*

**Pledge Securing the 2004 Bonds.** *The Pledged Revenues and any moneys and securities paid or to be paid to or held or to be held in the Bond Account designated in Section 19 hereof are hereby pledged to secure the payment of the principal of, prior redemption premium, if any, and interest on the 2004 Bonds, subject only to moneys and securities held in the Rebate Account, to the extent such amounts are required to be paid to the United States. The pledge of the Pledged Sales and Use Tax Revenues (as part of the Pledged Revenues) to secure the payment of the principal of, prior redemption premium, if any, and interest on the 2004 Bonds is on a parity with the pledge of the Pledged Sales and Use Tax Revenues for and lien thereon of any Additional Bonds hereafter issued, as provided herein. This pledge of the Pledged Revenues shall be valid and binding from and after the date of the delivery of the 2004 Bonds, and the Pledged Revenues received by the City and hereby pledged shall immediately be subject to*

the lien of this pledge without any physical delivery thereof, any filing, or further act. The lien of this pledge of the Pledged Revenues shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City irrespective of whether such parties have notice thereof. The lien of this pledge on the Pledged Revenues and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities of the City, except with respect to any parity lien on the Pledged Sales and Use Tax Revenues which may be pledged to Additional Bonds hereafter authorized, as provided herein.

**Additional Bonds.**

***Limitations Upon Issuance of Additional Bonds. Nothing in this Ordinance shall prevent the issuance by the City of additional bonds or other obligations payable from and constituting a lien upon the Pledged Sales and Use Tax Revenues on a parity with the lien thereon of the 2004 Bonds (the "Additional Bonds"). Such Additional Bonds may be payable solely from Pledged Sales and Use Tax Revenues or they may be payable from Pledged Sales and Use Tax Revenues and another revenue or fund of the City ("Additional Pledged Revenues"). Regardless of whether payable solely from Pledged Sales and Use Tax Revenues or from Pledged Sales and Use Tax Revenues and Additional Pledged Revenues, such bonds or other obligations may be issued only if for the Fiscal Year immediately preceding the issuance of any Additional Bonds, the amount of Pledged Sales and Use Tax Revenues in such Fiscal Year equaled or exceeded 150% of the Maximum Annual Debt Service Requirement on the Outstanding Bonds and the Additional Bonds proposed to be***

*issued. For the purpose of satisfying the aforementioned 150% test, any sales and use tax, now existing or hereafter imposed, which legally becomes a part of the Pledged Sales and Use Tax Revenues during the Fiscal Year preceding the issuance of Additional Bonds, or any tax which is to legally become a part of the Pledged Sales and Use Tax Revenues immediately prior to the issuance of Additional Bonds, or any increase in the rate of any tax which is a part of the Pledged Sales and Use Tax Revenues which increase is imposed during the Fiscal Year preceding the issuance of Additional Bonds or any such increase which is to be imposed immediately prior to the issuance of Additional Bonds can be considered for its estimated effect on the amount of the Pledged Sales and Use Tax Revenues as if such tax or increase had been in effect for the Fiscal Year immediately preceding the issuance of such Additional Bonds. Any tax which is no longer in effect at the time of issuance of the Additional Bonds shall not be considered for purposes of satisfying such tests.*

**Certificate of Revenues.** *A written certification by an officer or employee of the City that the requirements of Paragraph A of this section have been met shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver said Additional Bonds with a pledge of the Pledged Sales and Use Tax Revenues on a parity with the pledge thereof to the 2004 Bonds herein authorized.*

**Superior Pledged Sales and Use Tax Revenue Obligations Prohibited.** Nothing in this Ordinance shall be construed so as to permit the City to hereafter issue obligations payable from the Pledged Sales and Use Tax Revenues having a lien thereon prior or superior to the 2004 Bonds.

**Subordinate Pledged Sales and Use Tax Revenue Obligations Permitted.** Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the City of additional obligations payable from and constituting a lien upon the Pledged Sales and Use Tax Revenues subordinate or junior to the lien of the 2004 Bonds.

**Superior, Parity, and Subordinate Revenue Obligations Permitted.** Nothing in this Ordinance shall be construed in such a manner as to prevent the issuance by the City of additional obligations payable from and constituting a lien upon any of the Pledged RevenuesB specifically excluding therefrom the Pledged Sales and Use Tax Revenues, superior to, on a parity with, or subordinate or junior to the lien thereon of the 2004 Bonds.

**Refunding Obligations.**

**Generally.** If at any time after the 2004 Bonds, or any part thereof, shall have been issued and remain Outstanding, the City shall find it desirable to refund any Outstanding Bonds, or any part thereof, such Bonds, or any part thereof, may be refunded, subject to the provisions of Paragraph B of this Section, if (1) the Bonds to be refunded, at the time of their required surrender for payment, shall

*then mature or shall then be callable for prior redemption at the City's option upon proper call, or (2) the Owners of the Bonds to be refunded consent to such surrender and payment.*

**Protection of Obligations Not Refunded.** *Any refunding obligations payable from the Pledged Revenues or from the Pledged Sales and Use Tax Revenues and any Additional Pledged Revenues shall be issued with such details as the Council may provide, so long as there is no impairment of any contractual obligation imposed upon the City by any proceedings authorizing the issuance of any unrefunded portion of Bonds payable from the Pledged Revenues or the Pledged Sales and Use Tax Revenues and any Additional Pledged Revenues; but so long as any Bonds are Outstanding, refunding obligations payable from the Pledged Sales and Use Tax Revenues may be issued on a parity with the unrefunded Bonds only if:*

**Prior Consent.** *The City first receives the consent of the Owner or Owners of the unrefunded Bonds; or*

**Requirements Not Increased.** *The refunding obligations do not increase by more than \$25,000, for any Fiscal Year prior to and including the last maturity date of any unrefunded Bonds, the aggregate principal and interest requirements evidenced by such refunding obligations and by any Outstanding Bonds not refunded, and the lien of any refunding parity obligations on the Pledged Sales and Use Tax Revenues is not raised to a higher priority than the lien thereon of any Bonds thereby refunded; or*



**Earnings Test.** The refunding obligations are issued in compliance with Paragraphs A and B of Section 22 hereof.

**Protective Covenants.** The City hereby additionally represents, covenants, and agrees with each and every Owner of the 2004 Bonds that:

***Use of 2004 Bond Proceeds.*** *The City will proceed with the Project without delay and with due diligence.*

***Payment of 2004 Bonds.*** *The City will promptly pay the principal of, prior redemption premium, if any, and interest on every 2004 Bond issued hereunder and secured hereby on the dates and in the manner specified herein and in said 2004 Bonds according to the true intent and meaning hereof. Such principal of, prior redemption premium, if any, and interest on the 2004 Bonds is payable solely from the Pledged Revenues.*

***Amendment of Certain Ordinances; Duty to Impose Sales and Use Tax; Impairment of Contract.*** *The Sales and Use Tax Ordinances are in full force and effect and have not been repealed or amended. The City will not repeal or amend said Sales and Use Tax Ordinances in any manner which would diminish the proceeds of the Pledged Sales and Use Tax by an amount which would materially adversely affect the rights of the Owners of the 2004 Bonds.*

Notwithstanding any other provision of this Section or this Ordinance, the City shall retain the right to make changes, without any consent of 2004 Bond Owners, in the Sales and Use Tax Ordinances, or any ordinance supplemental thereto or in substitution therefor, concerning the use of proceeds of the Pledged Sales and Use Tax remaining after the current requirements of all ordinances authorizing bonds or other securities payable from the Pledged Sales and Use Tax, or any portion thereof, have been met; or concerning changes in applicability,

exemptions, administration, collection, or enforcement of the Sales and Use Tax, if such changes do not materially adversely affect the security for the 2004 Bonds.

The foregoing covenants are subject to compliance by the City with orders of courts of competent jurisdiction concerning the validity, constitutionality or collection of such tax revenues, any legislation of the United States or the State or any regulation or other action taken by the federal government, any State agency or any political subdivision of the State pursuant to such legislation, in the exercise of the police power thereof for the public welfare, which legislation, regulation or action applies to the City as a Colorado home rule city and limits or otherwise inhibits the amount of such tax revenues due to the City. All of the Pledged Sales and Use Tax Revenues shall be subject to the payment of the principal of, prior redemption premium, if any, and interest on all Bonds payable from the Pledged Sales and Use Tax Revenues, including reserves therefor, as provided herein or in any instrument supplemental or amendatory hereof.

**Defense of Legality of Pledged Revenues. *There is not pending or threatened any suit, action or proceeding against or affecting the City before or by any court, arbitrator, administrative agency or other governmental authority which affects the validity or legality of this Ordinance, or the Sales and Use Tax Ordinances or the imposition and collection of the Sales and Use Tax, any of the City's obligations under this Ordinance or any of the transactions contemplated by this Ordinance or the Sales and Use Tax Ordinances.***

The City shall, to the extent permitted by law, defend the validity and legality of this Ordinance, the Sales and Use Tax and the Sales and Use Tax Ordinances against all claims, suits and proceedings which would diminish or impair the Pledged Revenues. Furthermore, the City shall amend from time to time the provisions of any ordinance or resolution of the City, as necessary to prevent impairment of the Pledged Revenues as required to meet the principal of, prior redemption premium, if any, and interest on the 2004 Bonds when due.

**Further Assurances. At any and all times the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver and file or record all and every such further instruments, acts, deeds, conveyances, assignments, transfers, other documents and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, the Pledged Revenues and other funds and accounts hereby pledged or assigned, or intended so to be, or which the City may hereafter become bound to pledge or to assign, or as may be reasonable and required to carry out the purposes of this Ordinance and to comply with any instrument of the City amendatory thereof, or supplemental thereto and the Charter. The City, acting by and through the Council, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Revenues and other funds and accounts pledged hereunder and all the rights of every Owner of any of the 2004 Bonds against all claims and demands of all Persons whomsoever.**

**Conditions Precedent. Upon the issuance of any of the 2004 Bonds, all conditions, acts and things required by the Constitution or laws of the United States, the Constitution or laws of the State, the Charter or this Ordinance, to exist, to have happened, and to have been performed precedent to or in the issuance of the 2004 Bonds shall exist, have happened and have been performed, and the 2004 Bonds, together with all other obligations of the City, shall not contravene any debt or other limitation prescribed by the**

*Constitution or laws of the United States, the Constitution or laws of the State, or the Charter of the City.*

**Maintenance of Records.** *So long as any of the 2004 Bonds remain Outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues and the accounts created by this Ordinance. Upon the issuance of any series of Additional Bonds, the City shall keep proper books of record and account showing complete and correct entries of all transactions relating to the Pledged Sales and Use Tax Revenues and accounts created or continued pursuant to the ordinance authorizing the issuance of such series of Additional Bonds.*

**Audits Required.** *The City further agrees that it will, within 210 days following the close of each Fiscal Year, cause an audit of such books and accounts to be made by a certified public accountant, who is not an employee of the City, showing the Pledged Revenues. The City agrees to allow the Owner of any of the 2004 Bonds to review and copy such audits and reports, at the City's offices, at his request. Copies of such audits and reports will be furnished to the Purchasers.*

**Performing Duties.** *The City will faithfully and punctually perform all duties with respect to the Pledged Revenues required by the Charter and the Constitution and laws of the State and the ordinances and resolutions of the City, including but not limited to*

***the proper collection and enforcement of the Sales and Use Taxes and the segregation of the Pledged Revenues and their application to the respective accounts herein designated.***

***Other Liens. As of the date of issuance of the 2004 Bonds, there are no liens or encumbrances of any nature whatsoever on or against any of the Pledged Revenues on a parity with or superior to the lien thereon of the 2004 Bonds.***

***Tax Covenant. The City covenants for the benefit of the Registered Owners of the 2004 Bonds that it will not take any action or omit to take any action with respect to the 2004 Bonds, the proceeds thereof, any other funds of the City or any facilities financed with the proceeds of the 2004 Bonds if such action or omission (i) would cause the interest on the 2004 Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Tax Code, (ii) would cause interest on the 2004 Bonds to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code except to the extent such interest is required to be included in adjusted current earnings adjustment applicable to corporations under Section 56 of the Tax Code in calculating corporate alternative minimum taxable income, or (iii) would cause interest on the 2004 Bonds to lose its exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present Colorado law. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the 2004 Bonds until the date on which all obligations***

*of the City in fulfilling the above covenant under the Tax Code and Colorado law have been met.*

**Corporate Existence.** *The City will maintain its corporate identity and existence so long as any of the 2004 Bonds remain Outstanding, unless another political subdivision by operation of law succeeds to the duties, privileges, powers, liabilities, disabilities, immunities and rights of the City and is obligated by law to receive and distribute the Pledged Revenues in place of the City, without materially adversely affecting the privileges and rights of any Owner of any Outstanding 2004 Bonds.*

**Performance of Duties.** *The City will faithfully and punctually perform or cause to be performed all duties with respect to the Pledged Revenues required by the laws of the State and the resolutions of the City, including without limitation the proper segregation of the Pledged Revenues as set forth in Section 19 hereof and their application to the respective accounts as herein provided.*

**Prompt Collections.** *The City will cause the Pledged Revenues to be collected promptly and accounted for in the accounts as herein provided.*

**Prejudicial Contracts and Action Prohibited.** *No contract will be entered into, nor will any action be taken, by the City by which the rights and privileges of any Owner are impaired or diminished.*

**Continuing Disclosure.** *The City further covenants for the benefit of the Owners of the Bonds to comply with the Continuing Disclosure Certificate.*

**Defeasance.** When the 2004 Bonds have been fully paid both as to principal and interest have been paid, all obligations hereunder shall be discharged and the 2004 Bonds shall no longer be deemed to be Outstanding for any purpose of this Ordinance, except as set forth in Section 24.K. hereof. Payment of any 2004 Bond shall be deemed made when the City has placed in escrow with a Trust Bank an amount sufficient (including the known minimum yield from Governmental Obligations) to meet all requirements of principal, interest, and any prior redemption premiums on such 2004 Bond as the same become due to maturity or a designated prior redemption date; and, if any 2004 Bond is to be redeemed prior to maturity pursuant to Section 8.A. hereof, when the City has given to the Registrar irrevocable written instructions to give notice of prior redemption in accordance with Section 8.D. hereof. The Governmental Obligations shall become due at or prior to the respective times on which the proceeds thereof shall be needed, in accordance with a schedule agreed upon between the City and such Trust Bank at the time of creation of the escrow and shall not be callable prior to their scheduled maturities by the issuer thereof.

In the event that there is a defeasance of only part of the 2004 Bonds of any maturity, the Registrar shall, if requested by the City, institute a system to preserve the identity of the individual 2004 Bonds or portions thereof so defeased, regardless of changes in bond numbers attributable to transfers and exchanges of 2004 Bonds; and the Registrar shall be entitled to reasonable compensation and reimbursement of expenses from the City in connection with such system.

**Delegated Powers.** The officers of the City shall be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance. The form, terms and provisions of the Registrar Agreement, the Letter of Representations, the Continuing Disclosure Certificate, and the Purchase Agreement hereby are approved, and the City shall enter into and perform its obligations under the Registrar Agreement, the Letter of Representations, the Continuing Disclosure Certificate, and the Purchase

**Agreement in the forms of each of such documents presented at this meeting with only such changes therein as are not inconsistent herewith or, with respect to the Purchase Agreement, with such changes as may be approved by the City Manager or Finance Director subject to the parameters and restrictions contained in this Ordinance; and the President of the Council is hereby authorized and directed to execute the Registrar Agreement, the Letter of Representations, the Continuing Disclosure Certificate, and the Purchase Agreement. The City Manager or Finance Director is hereby authorized and directed to execute and deliver the Sale Certificate and to determine and approve the final determinations contained therein for the 2004 Bonds. The City Clerk is hereby authorized to execute and to affix the seal of the City to the Registrar Agreement, and the Purchase Agreement, and the City Manager and Finance Director and the City Clerk are further authorized to execute and authenticate such other documents, instruments or certificates as are deemed necessary or desirable by bond counsel in order to issue and secure the 2004 Bonds. Such documents are to be executed in substantially the forms hereinabove approved, provided that such documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. Copies of all of the documents shall be delivered, filed and recorded as provided therein.**

The approval hereby given to the various documents referred to above includes an approval of such additional details therein as may be necessary and appropriate for their completion, deletions therefrom and additions thereto as may be approved by bond counsel prior to the execution of the documents. The execution of any instrument by the appropriate officers of the City herein authorized shall be conclusive evidence of the approval by the City of such instrument in accordance with the terms hereof.

The proper officers of the City are hereby authorized and directed to prepare and furnish to bond counsel certified copies of all proceedings and records of the City relating to the 2004 Bonds and such other affidavits and certificates as may be required to show the facts



relating to the authorization and issuance thereof as such facts appear from the books and records in such officers' custody and control or as otherwise known to them.

**Events of Default.** Each of the following events is hereby declared an "event of default:"

***Nonpayment of Principal.*** *If payment of the principal of any of the 2004 Bonds in connection therewith, shall not be made when the same shall become due and payable at maturity or by proceedings for prior redemption; or*

***Nonpayment of Interest.*** *If payment of any installment of interest on the 2004 Bonds shall not be made when the same becomes due and payable; or*

***Incapable to Perform.*** *If the City shall for any reason be rendered incapable of fulfilling its obligations hereunder; or*

***Default of any Provision.*** *If the City shall default in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the 2004 Bonds or in this Ordinance on its part to be performed, other than those delineated in Paragraphs A and B of this Section and Section 24.P. hereof, and if such default shall continue for 60 days after written notice specifying such default and requiring the same to be remedied shall have been given to the City by the Owners of not less than 25% in aggregate principal amount of the 2004 Bonds then Outstanding.*

**Remedies.** Upon the happening and continuance of any event of default as provided in Section 27 hereof, the Owner or Owners of not less than 25% in principal amount of the Outstanding 2004 Bonds, or a trustee therefor, may protect and enforce their rights hereunder by proper legal or equitable remedy

deemed most effectual including mandamus, specific performance of any covenants, the appointment of a receiver (the consent of such appointment being hereby granted), injunctive relief, or requiring the Council to act as if it were the trustee of an express trust, or any combination of such remedies. All proceedings shall be maintained for the equal benefit of all Owners. The failure of any Owner to proceed does not relieve the City or any person of any liability for failure to perform any duty hereunder. The foregoing rights are in addition to any other right available to the Owners of Bonds and the exercise of any right by any Owner shall not be deemed a waiver of any other right.

**Duties Upon Default.** Upon the happening of any of the events of default as provided in Section 27 of this Ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the Owners of the 2004 Bonds to protect and preserve the security created for the payment of the 2004 Bonds and to insure the payment of the principal of, prior redemption premium, if any, and interest on said 2004 Bonds promptly as the same become due. Proceeds derived from the Pledged Revenues, so long as any of the 2004 Bonds herein authorized, either as to principal or interest, are Outstanding and unpaid, shall be paid into the Bond Account pursuant to the terms hereof and to the extent provided herein, and used for the purposes herein provided. In the event the City fails or refuses to proceed as in this section provided, the Owner or Owners of not less than 25% in aggregate principal amount of the 2004 Bonds then Outstanding, after demand in writing, may proceed to protect and enforce the rights of such Owners as hereinabove provided.

**Replacement of Registrar or Paying Agent.** If the Registrar or Paying Agent initially appointed hereunder shall resign, or if the City shall reasonably determine that said Registrar or Paying Agent has become incapable of performing its duties hereunder, the City may, upon notice mailed to each Owner of any 2004 Bond at his address last shown on the registration records, appoint a successor Registrar or Paying Agent, or both. No resignation or dismissal of the Registrar or

Paying Agent may take effect until a successor is appointed. Every such successor Registrar or Paying Agent shall be the City or a bank or trust company having a shareowner's equity (e.g., capital, surplus, and undivided profits), however denominated, of not less than \$10,000,000. It shall not be required that the same institution serve as both Registrar and Paying Agent hereunder, but the City shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

**Severability.** If any one or more sections, sentences, clauses or parts of this Ordinance shall for any reason be held invalid, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, but shall be confined in its operation to the specific sections, sentences, clauses or parts of this Ordinance so held unconstitutional or invalid, and the inapplicability and invalidity of any section, sentence, clause or part of this Ordinance in any one or more instances shall not affect or prejudice in any way the applicability and validity of this Ordinance in any other instances.

**Repealer.** All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

**Amendment.** After any of the 2004 Bonds have been issued, this Ordinance shall constitute a contract between the City and the holders of the Bonds and shall be and remain irrevocable until the Bonds and the interest thereon have been fully paid, satisfied and discharged except as otherwise provided in this Section.

***The City may, without the consent of, or notice to the Owners of the 2004 Bonds, adopt such ordinances supplemental hereto (which supplemental amendments shall thereafter form a part hereof) for any one or more or all of the following purposes:***

**to cure any ambiguity, or to cure, correct or supplement any defect or omission or inconsistent provision contained in this Ordinance, or to make any provisions with respect to matters arising under this Ordinance or for any other purpose if such provisions are necessary or desirable and do not adversely affect the interests of the Owners of the 2004 Bonds;**

**to subject to the lien of this Ordinance additional revenues, properties or collateral;**

**to grant or confer upon the Registrar for the benefit of the Registered Owners of the Bonds any additional rights, remedies, powers, or authority that may lawfully be granted to or conferred upon the Registered Owners of the Bonds; or**

**to qualify this Ordinance under the Trust Indenture Act of 1939.**

***Exclusive of the amendatory ordinances permitted by Paragraph A of this Section, this Ordinance may be amended or supplemented by ordinance adopted by the Council in accordance with the law, without receipt by the City of any additional consideration but with the written consent of the Owners of 66% in aggregate principal amount of the 2004 Bonds Outstanding at the time of the adoption of such amendatory or supplemental ordinance; provided, however, that, without the written consent of the Owners of all of the 2004 Bonds adversely affected thereby, no such Ordinance shall have the effect of permitting:***

**An extension of the maturity of any 2004 Bond authorized by this Ordinance; or**

**A reduction in the principal amount of any 2004 Bond or the rate of interest thereon, or the prior redemption premium thereon; or**

**The creation of a lien upon or pledge of Pledged Revenues ranking prior to the lien or pledge created by this Ordinance; or**

**A reduction of the principal amount of 2004 Bonds required for consent to such amendatory or supplemental ordinance; or**

**The establishment of priorities as between 2004 Bonds issued and Outstanding under the provisions of this Ordinance; or**

**The modification of or otherwise affecting the rights of the Owners of less than all of the 2004 Bonds then Outstanding.**

**Approval of Official Statement. The preparation, distribution and use of Preliminary Official Statement relating to the 2004 Bonds is hereby authorized. The President of the Council or Finance Director is authorized and directed to approve, on behalf of the City, a final Official Statement for use in connection with the offering and sale of the 2004 Bonds. The execution of a final Official Statement by the President of the Council or Finance Director shall be conclusively deemed to evidence the approval of the form and contents thereof by the City.**

**Disposition of Ordinance. This Ordinance, as adopted by the Council, shall be numbered and recorded by the City Clerk in the official records of the City. The adoption and publication shall be authenticated by the signatures of the President of the Council and City Clerk, and by the certificate of publication.**

**Effective Date. This Ordinance shall be in full force and effect 30 days after publication following final passage.**

INTRODUCED, PASSED ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN PAMPHLET FORM January 7, 2004.

CITY OF GRAND JUNCTION, COLORADO

---

President of the Council

Attest:

---

City Clerk

INTRODUCED, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED IN PAMPHLET FORM January 21, 2004.

CITY OF GRAND JUNCTION, COLORADO

---

President of the Council

Attest:

---

City Clerk

STATE OF COLORADO )  
 )  
 COUNTY OF MESA ) SS.  
 )  
 CITY OF GRAND JUNCTION )

I, Stephanie Tuin, the City Clerk of the City of Grand Junction, Colorado (the “City”) and Clerk to the Council of the City (the “Council”), do hereby certify that:

1. The foregoing pages are a true, correct and complete copy of an ordinance (the “Ordinance”) which was introduced, passed on first reading and ordered published in full by the Council at a regular meeting thereof held on January 7, 2004 and was duly adopted and ordered published in full by the Council at a regular meeting thereof held on January 21, 2004 which Ordinance has not been revoked, rescinded or repealed and is in full force and effect on the date hereof.

2. The Ordinance was duly moved and seconded and the Ordinance was passed on first reading at the meeting of January 7, 2004, by an affirmative vote of a majority of the members of the Council as follows:

<u>Councilmember</u>	<u>Voting “Aye”</u>	<u>Voting “Nay”</u>	<u>Absent</u>	<u>Abstaining</u>
<b>Cindy Enos-Martinez</b>				
<b>Bruce Hill</b>				
<b>Dennis Kirtland</b>				
<b>Jim Spehar</b>				
<b>Gregg Palmer</b>				
<b>William McCurry</b>				
<b>Harry Butler</b>				

3. The Ordinance was duly moved and seconded and the Ordinance was finally passed on second reading at the meeting of January 21, 2004, by an affirmative vote of a majority of the members of the Council as follows:

<u>Councilmember</u>	<u>Voting "Aye"</u>	<u>Voting "Nay"</u>	<u>Absent</u>	<u>Abstaining</u>
<b>Cindy Enos-Martinez</b>				
<b>Bruce Hill</b>				
<b>Dennis Kirtland</b>				
<b>Jim Spehar</b>				
<b>Gregg Palmer</b>				
<b>William McCurry</b>				
<b>Harry Butler</b>				

4. The members of the Council were present at such meetings and voted on the passage of such Ordinance as set forth above.

5. The Ordinance was approved and authenticated by the signature of the President of the Council, sealed with the City seal, attested by the City Clerk and recorded in the minutes of the Council.

6. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of said Ordinance.

7. Notices of the meetings of January 7, 2004 and January 21, 2004 in the forms attached hereto as Exhibit A were posted at City Hall in accordance with law.

8. The Ordinance was published in pamphlet form in The Daily Sentinel, a daily newspaper of general circulation in the City, on January \_\_, 2004 and January \_\_, 2004 as required by the City Charter. Notice of the hearing on the Ordinance was published on \_\_\_\_\_, 2004. True and correct copies of the affidavits of publication are attached hereto as Exhibit B.

WITNESS my hand and the seal of the City affixed this \_\_\_\_ day of January, 2004.

---

City Clerk and Clerk to the Council

(SEAL)



EXHIBIT A

(Attach Notices of Meetings of January 7, 2004 and January 21, 2004)

EXHIBIT B  
(Attach Affidavits of Publication)



**Attach 4  
Setting a Hearing on Valley Meadows North Rezone Located at the North End of  
Kapota Street**

**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA							
<b>Subject</b>	Introduction of a proposed ordinance to rezone the Valley Meadows North property, located at the north end of Kapota Street, from RSF-R to RSF-4						
<b>Meeting Date</b>	January 7, 2004						
<b>Date Prepared</b>	December 24, 2003			<b>File #</b> RZP-2003-153			
<b>Author</b>	Lisa E. Cox, AICP		Senior Planner				
<b>Presenter Name</b>	same		same				
<b>Report results back to Council</b>	X	<b>No</b>		<b>Yes</b>	<b>When</b>		
<b>Citizen Presentation</b>		<b>Yes</b>	X	<b>No</b>	<b>Name</b>		
	<b>Workshop</b>	X	<b>Formal Agenda</b>		X	<b>Consent</b>	<b>Individual Consideration</b>

**Summary:** Introduction of a proposed ordinance to rezone the Valley Meadows North property, located at the north end of Kapota Street, from the RSF-R, Residential Single Family Rural to RSF-4, Residential Single Family-4.

**Budget:** N/A

**Action Requested/Recommendation:** Approval of first reading of the rezoning ordinance.

**Background Information:** See attached staff report

**Attachments:**

1. Staff Report
2. Site Location Map (Figure 1)
3. Aerial Photo Map (Figure 2)
4. Future Land Use Map (Figure 3)
5. Existing City and County Zoning Map (Figure 4)
6. City Council Minutes (excerpt only) from May 1, 2002
7. City Council Minutes (excerpt only) from June 26, 2002
8. City Council Minutes (excerpt only) from August 7, 2002
9. Rezone Ordinance

BACKGROUND INFORMATION					
Location:		North end of Kapota Street			
Applicants:		EDKA Land Company, LLC			
Existing Land Use:		Vacant			
Proposed Land Use:		Residential			
Surrounding Land Use:	North	Residential			
	South	Residential			
	East	Residential			
	West	Residential			
Existing Zoning:		RSF-R			
Proposed Zoning:		RSF-4			
Surrounding Zoning:	North	RSF-2			
	South	PD 2.9			
	East	RSF-R			
	West	RSF-4			
Growth Plan Designation:		Residential Medium-Low, 2-4 du/ac			
Zoning within density range?		X	Yes		No

PROJECT DESCRIPTION: Applicant has requested a rezone of approximately 7.65 acres located at the north end of Kapota Street from RSF-R to RSF-4.

## ANALYSIS:

### 1. Background

The subject property is located north of Kapota Street and east of 25 ½ Road (see site location maps in this report). The property is situated between an existing single family subdivision known as Moonrise East, zoned RSF-4 and developed at 3.8 dwelling units per acre to the west; parcels developed with single family residences (zoned RSF-2 and RSF-R) to the north and east, and a single family residential subdivision known as Valley Meadows East, zoned PD 2.9, to the south. Other subdivisions in the vicinity include Moonridge Falls located to the west directly across 25 ½ Road zoned PD 2.3; and Valley Meadows Subdivision, zoned PD 2.8, which is located west of 25 ½ Road and south of Moonridge Falls.

The property was annexed into the City on September 17, 2000 as a part of the G Road North enclave annexation. At the time of annexation, parcels with redevelopment potential were annexed into the City with their existing County zoning designation with the understanding that a rezone would be necessary at the time of development. The subject property was zoned RSF-R in the County and retained that zoning designation when annexed into the City in September, 2000.

A previous application requesting a rezone of this property was considered by the Planning Commission and City Council in March, 2002 through August, 2002. Although the Planning Commission recommended approval of the rezone request to City Council, the request to rezone was subsequently denied by City Council on May 1, 2002, under the applicant's initial application. This denial was reconsidered by City Council on June 26, 2002 and August 7, 2002, with the denial being upheld each time.

The applicant has submitted a second application requesting a rezone of the 7.65 acres from RSF-R to RSF-4.

### 2. Consistency with the Growth Plan

The applicant's request to rezone from RSF-R to RSF-4 is consistent with the density range called for in the Growth Plan and Future Land Use Map.

### 3. Section 2.6.A of the Zoning and Development Code

Rezone requests must meet all of the following criteria for approval:

1. **The existing zoning was in error at the time of adoption.** *As noted earlier in this report, properties with development or redevelopment potential were annexed into the City retaining their County zoning designation with the understanding that a rezone would be required at the time of development. The existing zoning is not in error, rather it was retained during the annexation process of September, 2000 with the understanding the future development would require rezoning of the property. The existing zoning of RSF-R is not consistent with the land use classification of Residential Medium-Low as shown on the Future Land*

*Use Map of the Growth Plan. The requested Residential Single Family-4 (RSF-4) zone district implements the Residential Medium-Low land use classification.*

2. **There has been a change of character in the neighborhood due to installation of public facilities, other zone changes, new growth trends, deterioration, development transition, etc.** *The property is located in an area that is developing in a residential manner consistent with the Growth Plan. Although some parcels (located to the north and east) have lower densities than indicated by the Growth Plan, these parcels have redevelopment potential and are anticipated to redevelop at densities consistent with the Growth Plan. The subject property is an example of property or a development where a public street and utilities have been stubbed to its southern property line in anticipation of future development.*
3. **The proposed rezone is compatible with the neighborhood and will not create adverse impacts such as: capacity or safety of the street network, parking problems, storm water or drainage problems, water, air or noise pollution, excessive nighttime lighting, or other nuisances.** *The proposed rezone to RSF-4 is within the allowable density range recommended by the Growth Plan. This criterion must be considered in conjunction with criterion 5 which requires that public facilities and services are available when the impacts of any proposed development are realized. Staff has determined that public infrastructure can address the impacts of any development consistent with the RSF-4 zone district, therefore this criterion is met.*
4. **The proposal conforms with and furthers the goals and policies of the Growth Plan, other adopted plans, and the policies, the requirements of this Code and other City regulations and guidelines.** *The request to rezone has been submitted in an effort to develop the property in a manner consistent with the density range identified by the Growth Plan and Future Land Use Map. In reviewing the Growth Plan, the request is consistent with many of the goals and policies, but not all.*

*Examples of goals and policies of the Growth Plan that support the rezone request include:*

**Policy 5.2:** *The City and County will encourage development that uses existing facilities and is compatible with existing development.*

**Policy 5.3:** *The City and County may accommodate extensions of public facilities to serve development that is adjacent to existing facilities. Development in areas which have adequate facilities in place or which provide*

*public*

*needed connections of facilities  
development areas will be encouraged.*

*between urban*

*Development that is separate from existing urban services (“leap-frog” development) will be discouraged.*

*Example of a Growth Plan policy that does not support the rezone request:*

**Policy 24.2:** *When improving existing or constructing new streets which pass through residential neighborhoods, the City will balance the desires of residents with the need to maintain a street system which safely and efficiently moves traffic throughout the community.*

5. **Adequate public facilities and services are available or will be made available concurrent with the projected impacts of the proposed development.** *Adequate public facilities are currently available and can address the impacts of development consistent with the RSF-4 zone district.*
6. **There is not an adequate supply of land available in the neighborhood and surrounding area to accommodate the zoning and community needs.** *The neighborhood has a limited amount of land that is undeveloped. The proposed development is a project which will utilize or extend existing public facilities.*
7. **The community or neighborhood will benefit from the proposed zone.** *The community will benefit from the infill development of this project and utilization of existing public facilities.*

## FINDINGS OF FACT/CONCLUSIONS

After reviewing the Valley Meadows North application, RZP-2003-153, request to rezone, the Planning Commission made the following findings of fact and conclusions:

1. The requested rezone is consistent with the majority of the goals and policies of the Growth Plan and Future Land Use Map.
2. The review criteria in Section 2.6.A of the Zoning and Development Code have all been met.

## PLANNING COMMISSION RECOMMENDATION

The Planning Commission voted 6-1 in favor of recommending approval to City Council of the request to rezone from RSF-R to RSF-4, for RZP-2003-153, Valley Meadows



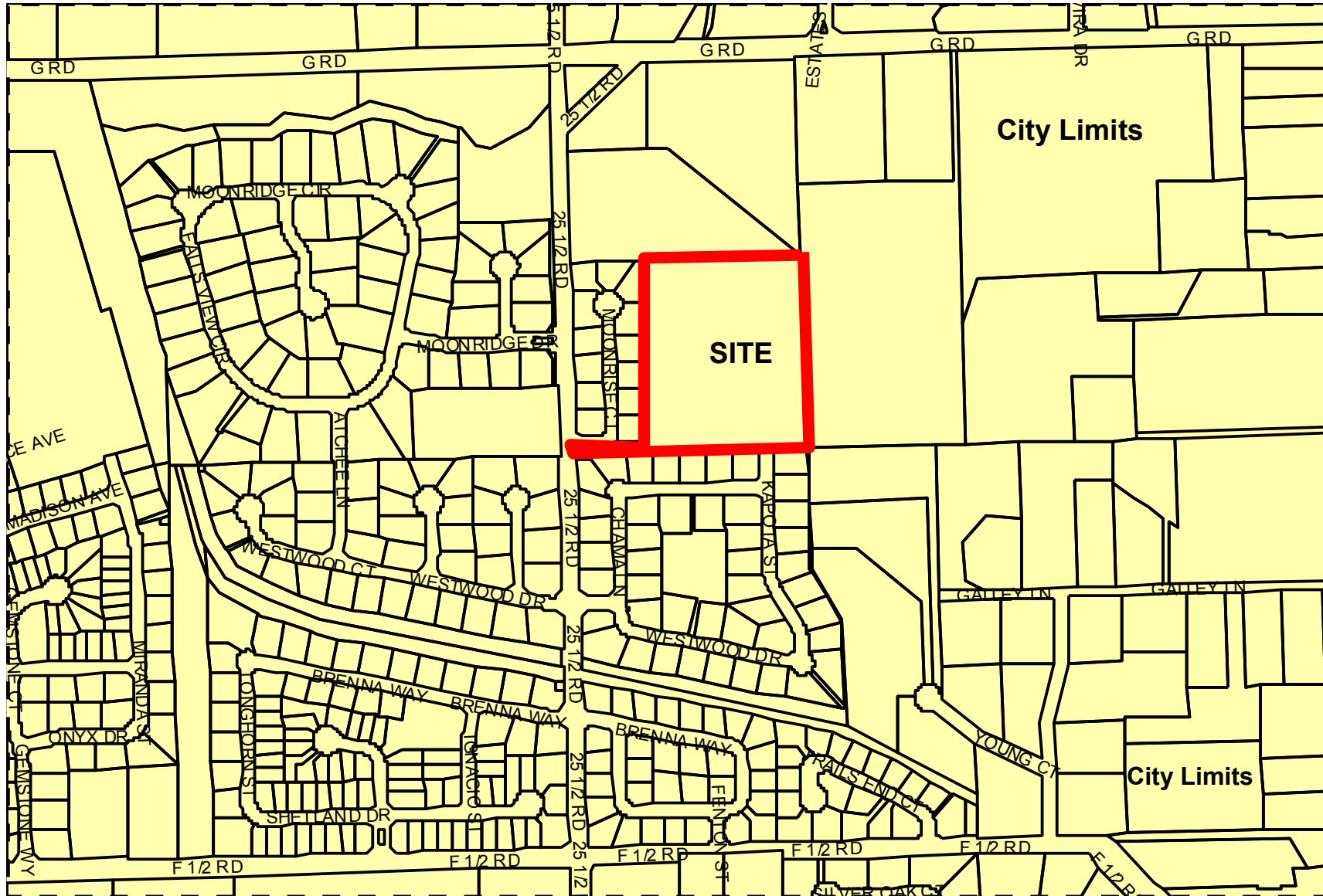
North, with the findings that the request is consistent with the goals and policies of the Growth Plan and all applicable sections of the Zoning and Development Code.

Attachments:

1. Site Location Map (Figure 1)
2. Aerial Photo Map (Figure 2)
3. Future Land Use Map (Figure 3)
4. Existing City and County Zoning (Figure 4)
5. City Council Minutes (excerpt only) from May 1, 2002
6. City Council Minutes (excerpt only) from June 26, 2002
7. City Council Minutes (excerpt only) from August 7, 2002
8. Rezone Ordinance

# Site Location Map

Figure 1



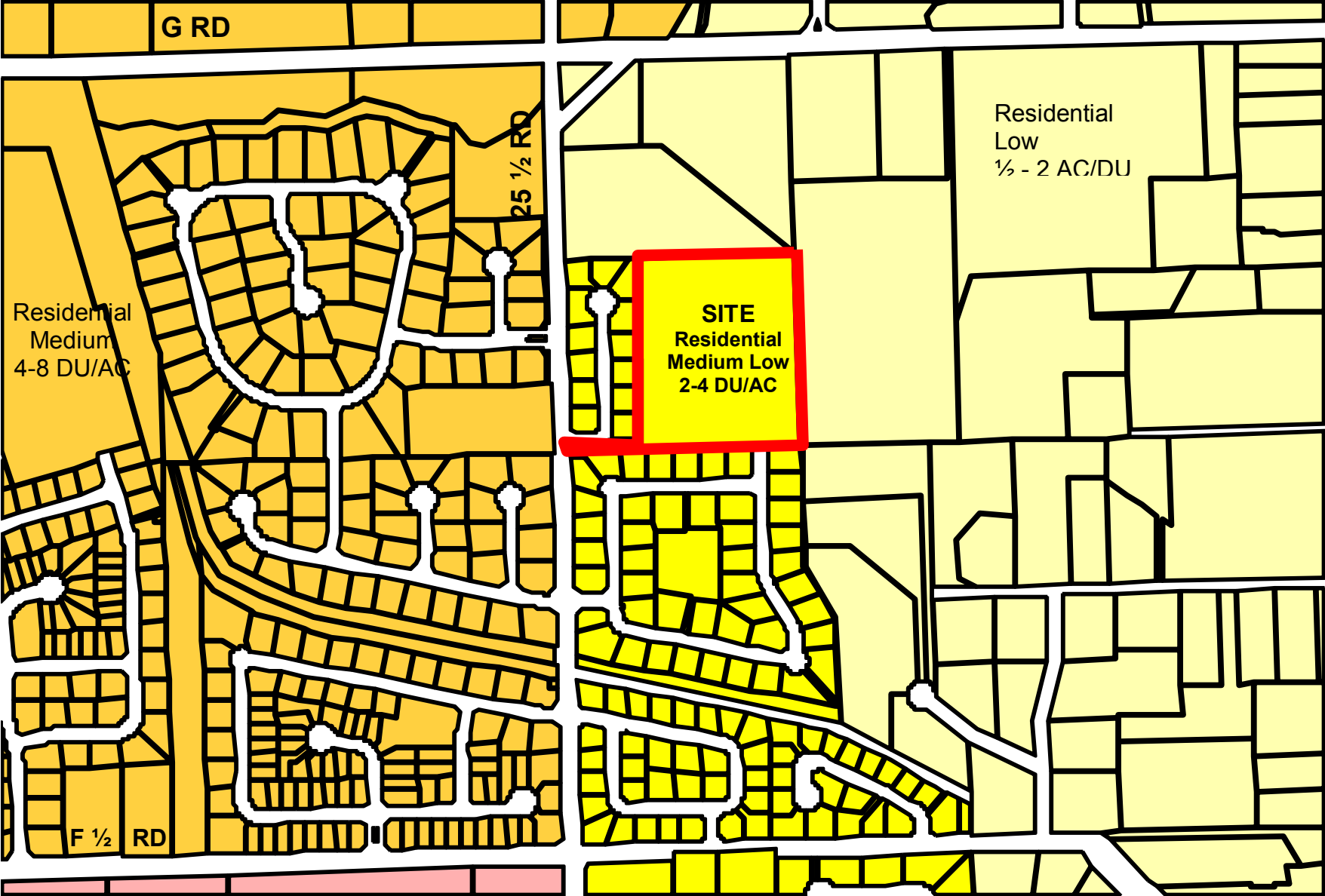
# Aerial Photo Map

Figure 2



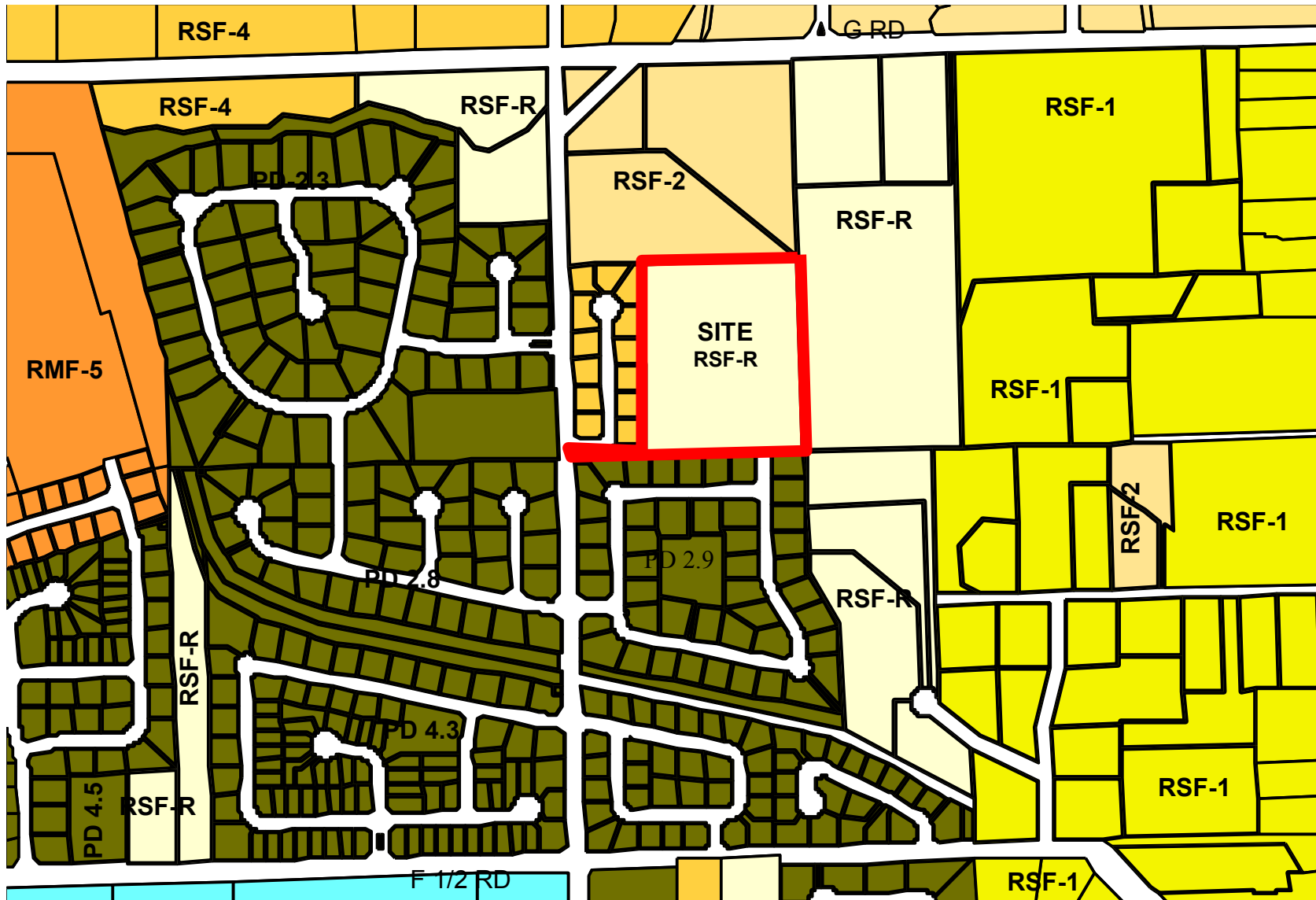
# Future Land Use Map

Figure 3



# Existing City and County Zoning

Figure 4



**GRAND JUNCTION CITY COUNCIL  
MINUTES OF THE REGULAR MEETING**

**May 1, 2002**

*(The following represents only an excerpt of the City Council Minutes from the May 1, 2002)*

**Public Hearing – Rezone Valley Meadows North Located at the North End of Kapota Street** [File #RZP-2002-019]

Second reading of the Rezoning Ordinance to rezone the Valley Meadows North property located at the north end of Kapota Street from Residential Single Family Rural (RSF-R) to Residential Single Family-4 (RSF-4)

Mayor Enos-Martinez recused herself as she has a contract with this developer.

Mayor Pro Tem Kirtland presided.

The public hearing was opened at 8:00 p.m.

Councilmember Terry requested that the department heads explain the process for this hearing.

Bob Blanchard, Community Development Director, explained that this hearing is on the rezone only and that in two weeks Council will hear an appeal of the Preliminary Plan, on the record only.

Councilmember Theobald asked if the drainage issue falls under the rezone or the Preliminary Plan.

Mark Relph, Public Works and Utilities Director said if this ordinance and the Preliminary Plan were approved, then the engineering details would be part of the Final Plan. He said that drainage did come up at the Preliminary Plan and so the Council would see that issue in the record.

Councilmember Theobald wanted to know what Council could change at the Final Plan stage.

Bob Blanchard, Community Development Director, said if the Final Plan is in substantial compliance with the Preliminary Plan then it's approved. Mark Relph, Public Works and Utilities Director, clarified that the Final Plan is an administrative process only. Residents could still appeal the approval to the Planning Commission.

Councilmember Theobold wanted to know that if drainage were not discussed at the Preliminary Plan, then what would the latitude be at the Final Plan.

Mark Relph, Public Works and Utilities Director, replied that there are enough drainage issues on the record that they would need to be addressed.

Lisa Gerstenberger, Senior Planner, reviewed this item. She pointed out the location of and the access to the property and identified the Future Land Use designation as Residential Medium-Low (2-4 du/ac). She said that the parcel is currently zoned RSF-R (Residential Single Family Rural). She also listed the surrounding zone districts. She reviewed and stated the results of the rezoning criteria noted in Section 2.6.A. of the Zoning and Development Code as Criteria:

#1. The existing zoning was in error at the time of adoption. – yes, the existing zoning does not meet the growth plan designation;

#2. There has been a change of character in the neighborhood due to installation of public facilities, other zone changes, new growth trends, deterioration, development transitions, etc. – yes;

#3. The proposed rezone is compatible with the neighborhood and will not create adverse impacts such as: capacity or safety of the street network, parking problems, storm water or drainage problems, water, air or noise pollution, excessive nighttime lighting, or other nuisances – yes;

#4. The proposal conforms with and furthers the goals and policies of the Growth Plan, other adopted plans, and the policies, the requirements of the Code and other City Regulations and Guidelines – some of the goals are met;

#5. Adequate public facilities and services are available or will be made available concurrent with the projected impacts of the proposed development. – yes;

#6. There is not an adequate supply of land available in the neighborhood and surrounding area to accommodate the zoning and community needs – yes; and

#7. The community or neighborhood will benefit from the proposed zone – yes.

Even though the Preliminary Plan was not being considered at this meeting, Ms. Gerstenberger reviewed the plan briefly to give the Council an idea of the density of the proposed development, i.e, as a visual aid only.

Ms. Gerstenberger said that Staff and the Planning Commission recommend approval of the rezoning request.

Councilmember Spehar questioned that in criteria #3, it states no adverse storm water and drainage problems would be created. Ms. Gerstenberger referred to Mr. Relph's comments that it would be addressed at Final Plan.

Mr. Relph said that the issues have been discussed and that they would be addressed in the Final Plan, and as far as the zoning is concerned, the drainage problem would be possible to solve. Councilmember Spehar thought that Council was told previously that drainage was not an issue, but actually according to the criteria, it does have to do with the rezone.

Bob Blanchard, Community Development Director, pointed out that at the rezoning request, the emphasis was on the proposed use, the physical site, the density of the site plan and if the technical issues could be resolved.

Councilmember Terry said that the criterion of drainage in item #3 was more definitive than previously understood. She asked Mr. Wilson to clarify that when and if there is a motion, if Council could state that this issue is not satisfactorily resolved.

Dan Wilson, City Attorney replied there could be instances where drainage problems couldn't be overcome, but that the Staff would ask if the uses in this area are appropriate, and denying the rezoning request on that basis would go against the current code.

Councilmember Spehar said Council might be compelled to deny the rezone until Council was convinced that the drainage issue has been resolved.

Councilmember Theobald noted if drainage is a problem inherent to this use then it is a rezone issue; if it is a problem of the plan, then it will be addressed at Final Plan.

Councilmember Terry recommended Council should just state that a drainage problem was not solved now, but that it would be at the Final Plan.

Rich Krohn, 744 Horizon Court, representing the applicant and current owner Ed Lenhart of Just Companies, Inc., who was also present, said that he didn't want to talk about drainage but could, and that their engineer was there and that he believes the issue was general and the land was not incompatible. He said that the drainage would require engineering, which was a different part of the process. The request to rezone was compatible with the Growth Plan and the Preliminary Plan density was 3.4 units per acre. He stated the zoning for adjoining properties is RSF-2; Moonrise East as RSF-4 and the 11 acres east are undeveloped and zoned RSF-R (holding zone). Valley Meadows East Subdivision was zoned as a Planned Unit Development (PUD) with 2.93 units per acre, and the lot sizes are very comparable to the current proposal. He has reviewed the rezone criteria, and as a single access, Kapota Street, a local residential street with full build-out, would be at less than 70% capacity. There was a possible



second access to an adjacent-yet-undeveloped property. The only policy not being met was meeting the desires of the neighborhood due to the single access.

Mayor Pro Tem Kirtland asked for public comments.

Helen Dunn, who lives at 2557 McCook Avenue, representing the Valley Meadows East Homeowners Association Committee, read the attached statement into the record (Exhibit "A").

Councilmember Theobald asked Ms. Dunn if she was representing the neighborhood.

Ms. Dunn answered that she was part of the Valley Meadows East Homeowners Association Committee.

Councilmember Terry asked her for a comparison of the lot sizes.

Ms. Dunn replied that because her subdivision was a PUD and had open space it gave one a feeling of openness.

Patricia Cleary, who resides at 662 Kapota Street, said that the biggest concern she had was that the homeowners cannot discuss drainage at this time, which seemed to be the largest issue, but the developer's lawyer has discussed various other issues. She wanted to know why was Council considering those issues but not the biggest issue, drainage.

Councilmember Terry replied that was what Staff tried to explain at the beginning of the public hearing.

Ms. Cleary said that it was not clear enough, and she couldn't understand why access, safety and compatibility are all zoning issues but drainage is not. Councilmember Terry said drainage may be part of the discussion. Councilmember Spehar agreed.

Councilmember Theobald asked Ms. Cleary how she felt about the drainage if the zoning was 2.93 units per acre. Ms. Cleary told Mr. Theobald that she didn't have enough information to answer his question.

Ms. Cleary then objected to language used in the Planning Committee's minutes. She said there was an issue of privacy because two-story homes would be allowed, a concern about safety plus a comment, which was made by Mr. Krohn, who had said that the proposed density was 70% of the density capacity. She said the subdivision was not a subdivision that could handle the additional traffic since they didn't have perpendicular roads and would be hard for emergency access. She also wanted to clarify that a Fire Department representative had said there would be a problem in the case of an extreme emergency.

John Chapman, who lives at 667 Kapota Street, was also concerned about the drainage. He said the plan was contrary to basic drainage laws and the plan would have to let traffic go in and out, plus let water go out. The developer's plan would destroy Valley Meadows East's existing drainage plus the storm sewer system wouldn't be able to handle it. The engineers need to leave space for more detention ponds and pumps and more drainage structures before siting house lots. He said the drainage report was faulty because it didn't mention the berm, and never said that they were going to reach this berm. It just showed up on the drawings and they made such statements, as there are no changes to the historical drainage for this project, which is not true. The drainage path could be seen by the swath it had left and he said there was a need to start over. He said he would provide a final report to the City Clerk for Council distribution.

Councilmember Spehar explained that once these improvements were accepted they then become community property.

Carol Chapman Bergman, who lives at 628 Sage Court, said the proposal was not compatible with the intent of the Growth Plan, and was not in an infill area when surrounding property was less dense. She noted that one couldn't compare a PUD to a straight zone due to the lack of a green belt. She said there was a greater density with no benefit, and there were no water rights, as the owner hadn't paid the irrigation company. Excess water would be dumped onto 25 Road. The canal breach had shown how much damage can happen and that the property acts as a natural detention pond.

Barry Chamberlain, who lives at 2553 McCook Avenue, stated he had no issue with the developer, but wanted to know if the zoning request were approved, what would happen if the property changed hands and Mr. Lenhart were no longer the developer. He said he had asked Mr. Lenhart the same question and was told that this could be a possibility. He wanted to know from Council what would prevent a future owner from increasing the actual density to the full RSF-4. .

Bob Blanchard, Community Development Director responded the site could be developed to up to four units per acre, but the plan would have to go through the process again.

Barry Chamberlain asked if the developer meets the criteria, could he go forward without the neighbors' input making reference to legal loopholes. Councilmember Terry told him this was the reason the rezone request goes through City Council.

Councilmember Spehar said the reason those kinds of standards are set is to create an expectation, and he thought it was not appropriate to say they are meeting legal loopholes. Those standards were created from public input in the review process, and

it wasn't fair of Mr. Chamberlain to make a negative characterization of a very positive effort, which benefits him and the development.

Barry Chamberlain wanted to know about even more development in the future on the adjacent Moran property.

Michael Lightfoot, who resides at 667 Chama Lane, and who is the president of the Valley Meadows East Homeowners Association, represented 44 homeowners. He said the plan was approved by the Planning Commission stating it met all the criteria, yet, drainage was an issue.

Jim Grisier, 690 25 ½ Road, supported the Homeowners Association of Valley Meadows East and agreed that their concerns are quite valid, and he encouraged denial of the rezone request. A rezone to RSF-2 (Residential Single Family-2) or planned zoning in the range of 3 would be more appropriate. He also appreciated the impacts on Valley Meadows East Subdivision. He said that some Councilmembers probably recall the difficult discussions on Moonrise East and the discussions about the single access.

Mr. Grisier stated the Moran's were asked specifically if they realized the effect on future development of the property in question and they had made that choice. It had been discussed that the outlot C would be maintained for irrigation access and also for a connecting pedestrian trail. No discussion was ever held for this with Valley Meadows North. Mr. Grisier said he would dedicate land to connect that trail.

Councilmember Theobald wanted to know if there was any irrigation water available and if Mr. Grisier had any connections with the irrigation company or had knowledge of such availability. Mr. Grisier said he was a member of Grand Valley Irrigation Company Board and although the Company has no shares for sale, he sees shares of water for sale often in the paper.

Mayor Pro Tem Kirtland asked for no more public comments and said the questions are now for Staff.

Councilmember Terry wanted to know about the 12-inch pipe capacity.

Mark Relph, Public Works and Utilities Director, replied this was pointed out to the applicant and they have looked at other alternatives, like retention or detention, and they would have to verify capacity.

Councilmember Terry asked about the U.S. Geological Survey report. Mr. Relph replied he was not familiar with it.

Councilmember Theobold wanted to know about the berm at the end of Kapota Street and its importance to drainage and in controlling drainage and the importance of cutting through or going over the berm. Mr. Relph said going over was impractical. It was possible to capture water there and move it to a detention facility but the capacity was an issue for review.

Councilmember Theobold asked if drainage could be handled even when cutting the berm. Mark Relph, Public Works and Utilities Director, said it was possible, but it was a final design detail.

Councilmember Theobold asked Mr. Relph if he remembered any of the discussions about the access through Moonrise East Subdivision.

Mark Relph, Public Works and Utilities Director, said he remembered the Moran's did not cooperate with additional access, which reduced their ability for more access to their property.

Councilmember Theobold asked to compare if additional access had occurred through Moonrise or Kapota and if it was a factor in traffic and also drainage. Mr. Relph replied he didn't know about drainage. He is certain about traffic for emergency access, but as far as capacity, that was not an issue. The road was at national standards and was acceptable.

Councilmember Spehar wanted to know about drainage.

Mr. Relph replied that he didn't know any specifics, but he thinks that Valley Meadows East probably could not handle any additional water.

Councilmember Theobold said on the Preliminary Plan there was a Moran Drive, which stubbed and he asked where that link could be hooked up to for additional access.

Mark Relph, Public Works and Utilities Director, said this stub isn't shown on the City's major street plan and that he hasn't looked at it. There would be a need to look at the size of parcels noting it could be a challenge.

Councilmember Terry wanted to know more about the trail access issue and the US Geological Report from Ms. Gerstenberger.

Lisa Gerstenberger, Senior Planner, said the trail issue was not an issue on this project. The trail was part of the PUD, as a benefit for getting approval for a planned development, where as the Valley Meadows North Subdivision was a straight zone and there are no pedestrian requirements, unless it was on the Master Trail Plan. If the owners would volunteer to include a trail, the City then would consider it. The Colorado Geological Survey showed soil conditions and drainage.

The development engineer did discuss these comments and they were addressed. The engineer was comfortable that they could be dealt with during the Final Plan.

Councilmember Spehar wanted to know from Ms. Gerstenberger if he was correct that two-story houses are not prohibited, but that they have to comply with the height standards. Ms. Gerstenberger said that Mr. Spehar was correct.

Councilmember Terry wanted to know more about the comments made by the Fire Department's representative. Ms. Gerstenberger replied that any comments were listed in the Staff Report and there were none.

Councilmember Kirtland asked if the petitioner would like to give a brief rebuttal.

Ed Lenhart of Just Companies, Inc. located at 2505 Foresight Circle, who is the developer of the property, said he was concerned with the canal breach and that the water had come right onto the Valley Meadows North property. He said the amount of water that flooded the area could only happen if the canal would break again. Since the canal was not engineered for that large a capacity, his engineers have gone over the design for the drainage of the area and the design would actually help the Valley Meadows East neighborhood. He stated he doesn't fill legal loopholes and it never was his intention, he lives here. Furthermore, they had two neighborhood meetings, and afterwards they reduced the density to be more compatible. He said it would be more advantageous to spend money on irrigation, but didn't have the conveyance system to bring it to the property. He said he intended to develop this property as designed. In the Moran's situation, the developer of Moonrise had intended to put a road to Valley Meadows North, but the Moran's couldn't get with Mr. Seligman. He showed Council that he had four letters and one map, which are attached as Exhibit "B", from the Morans. He said Mr. Seligman was unwilling to meet with the Morans.

Brian Hart from LANDESIGN, located at 244 N. 7th St, said the average lot size was 9,600 square feet, one lot is 8,110, some are around 8,500 square feet in the middle, and several lots were in the 9,500 – 10,000 square foot range.

Ed Lenhart, applicant and owner of Just Companies, Inc. said he felt a need to address the drainage issue and asked Mr. Hart, the engineer, to address that issue with Council.

Brian Hart, from LANDESIGN, explained that access would require the berm to be cut down since there was a steep section of the road and drainage would drain onto the road. The rest of drainage would have to be retained on the property and channeled to an off-site location, which would drain through their site into a pipe on 25 Road. The report was only preliminary, and the overflow could be drained to 25 ½ Road, to a limit.

There are combinations of methods to handle the drainage but no calculations have been done yet. If the capacity would be exceeded, they would have to install a storm

sewer. He said he was required by law to provide a plan that met standards. The final concerns would be dealt with at the Final Plan. If flow rates for the canal break are correct, then the flow was 7 to 10 times above the expected flow.

The Colorado Geological Survey's comments said more details are needed before a recommendation for approval would be issued. Mr. Hart said when he had a conversation with them, they were comfortable with his response and felt that their issues could be resolved.

He said there was an unimproved outlot in the Valley Meadows East Subdivision but that it was quite narrow and could not be used for a trail. As far as for the Fire Departments comments, he didn't recall anyone from the Fire Department being there at the Planning Commission meeting; the one who commented was Rick Dorris, a development engineer with the Grand Junction Public Works & Utilities Department. He also said that they did have a neighborhood meeting proposing a plan for 30 lots, but after the meeting they reduced their plan to 26 lots based on neighborhood concerns.

Rich Krohn, the developer's attorney, asked Council to focus on the rezone criteria.

The public hearing was closed at 10:25 p.m.

Councilmember Theobald wanted to hear more comments on the access to the Moonrise East Subdivision.

Dan Wilson, City Attorney, reviewed what happened in 1996 on the access issue. The subdivision was flip-flopped to accommodate the detention pond and access, because the Moran's could not come to contract terms with Mr. Seligman.

Councilmember Theobald explained that a lack of open space is not a reason to oppose, nor is the lack of irrigation water, since it is available. He continued, saying that the drainage issue is for the plan phase and the drainage capacity is a plan issue. On the other hand, access is the primary issue and since access is limited to some degree by the property owners who were well aware of the situation, the rezone request did not meet rezone criteria # 3. Therefore he would support a lower density development and he would vote no on RSF-4.

Councilmember Terry also addressed the density issue. She said if Valley Meadows East were building on lot sizes 8,700 to 12,245 square feet, that those lots were of a similar range as those in the Valley Meadows North Subdivision. So even if there was a perception of higher density, there was very little difference and it was not a significant element. But she was concerned about the access issue, and she didn't see Moran Drive as possible, plus the drainage issue had not been addressed sufficiently.

Councilmember Spehar said that the street was designed for that capacity, so traffic wasn't an issue, but he would like to see a second access. Since emergency services did not see access as an issue, he didn't see access as a denial reason. He said that one couldn't design for catastrophic events like the canal breach and therefore didn't see a reason to deny the request since it was part of city limits and the density was appropriate for the area.

Councilmember Terry asked Mr. Wilson if access could be a reason for denial.

Dan Wilson, City Attorney, told her yes, it would be a legitimate basis.

Councilmember Butler said that he also has a problem with access and would vote no.

Mayor Pro Tem Kirtland said development in this area will occur but he believes the capacity is impacted and the density bothers him. He would like to see about three or less per acre.

Ordinance No. 3395 - An Ordinance Rezoning the Valley Meadows North Property Located at the North End of Kapota Street from Residential Single Family Rural (RSF-R) to Residential Single Family-4 (RSF-4)

Upon motion made by Councilmember Theobald, seconded by Councilmember McCurry, with Councilmember Spehar voting YES if drainage issues were resolved, Ordinance No. 3395 failed with a roll call vote of 5 to 1. Councilmembers McCurry, Theobald, Butler, Kirtland and Terry voted no.

A recess was called at 10:45 p.m.

The City Council was back in session at 10:52 p.m. Mayor Enos-Martinez returned to presiding the meeting.

**GRAND JUNCTION CITY COUNCIL  
MINUTES OF THE REGULAR MEETING**

**June 26, 2002**

*(The following represents only an excerpt of the City Council Minutes from the June 26, 2002)*

8. **Setting a Hearing on Rezoning Valley Meadows North Located at the North End of Kapota Street** [File #RZP-2002-019]

Reconsideration and first reading of the Rezoning Ordinance for the Valley Meadows North property located at the north end of Kapota Street, from Residential Single Family Rural (RSF-R) to Residential Single Family-4 (RSF-4), and setting a hearing date of July 17, 2002. This hearing is for the purpose of reconsidering the rezone criteria.

Proposed Ordinance Rezoning the Valley Meadows North Property, Located at the North End of Kapota Street, from Residential Single Family Rural (RSF-R to Residential Single Family-4 (RSF-4)

*Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for July 17, 2002*



**RAND JUNCTION CITY COUNCIL  
MINUTES OF THE REGULAR MEETING**

**August 7, 2002**

*(The following represents only an excerpt of the City Council Minutes from the August 7, 2002)*

**Public Hearing - Reconsidering the Rezone Request for Valley Meadows North Development** [File #RZP-2002-019] CONTINUED FROM THE JULY 17, 2002 MEETING

Council President Enos-Martinez recused herself from this item. President Pro Tem Kirtland presided.

Reconsideration and second reading of the Rezoning Ordinance for the Valley Meadows North property Located at the North End of Kapota Street, from Residential Single Family Rural (RSF-R) to Residential Single Family - 4 (RSF-4).

The public hearing was opened at 8:05 p.m.

Lisa Gerstenberger, Senior Planner reviewed this item.

City Attorney Dan Wilson explained the specifics of this request and the reason the City Attorney is involved in this case. He explained what issues are addressed at the zoning consideration and what items are addressed at the subdivision/preliminary plat level. He said if the rezoning request is approved, then Council will be looking at the subdivision.

He also explained why a zoning of RSF-2 would be inappropriate in this case, since the maximum is 2 units per acre, but the minimum is also 2 units per acre. An amendment is probably needed for definition. Mr. Wilson said on a RSF-4 zoning the minimum is also 2 units per acre with a maximum of 4 units per acre. He said a RSF-4 zoning is a perfect fit for the property. He said and recommends procedurally, Council should solicit public input and listen to the neighbors, but also remind everybody that the level of detail comes at the next step in the review process.

Councilmember Terry asked if the strike-through areas in the revised staff report should not even be included. Mr. Wilson said yes, but the material had already been distributed and Council is therefore directed to disregard.

Councilmember Terry asked Mr. Wilson to clarify on how the rezone criteria should be used. Mr. Wilson said they should be considered altogether. If the issues listed under #3 can be reasonably solved prior to final plat, then the rezone meets the criteria. If the

engineers can say these are normal engineering issues. As written, items #3 and #5 conflict, #3 needs rewording and cannot stand alone. He said these changes would be included in the current code amendment process.

Rich Krohn, 744 Horizon Court, attorney for the developer Ed Lenhart, supported the descriptions in the staff report as to how the rezone criteria is met with one exception, the conflict with Policy 24.2. He did not feel that this is really a rezone policy.

Another point is that RSF-4 is the only zone that is consistent with the Growth Plan (3.3.d). RSF-2 has a ceiling of 2 units per acre, and it is almost impossible for a RSF-2 to be built at the Growth Plan density.

The surrounding zones are Planned Developments. Planned Developments are required to provide open space. A straight zone requires a fee in lieu of open space. Mr. Krohn said in order for a development to be a Planned Development, at least 30 acres are required.

Mr. Krohn then identified the densities in the surrounding subdivisions.

President Pro Tem Kirtland asked for public comments.

Helen Dunn, 2557 McCook Avenue, read a statement into the record (see attached Exhibit A).

John Chapman, 667 Kapota Street, also read a statement into the record (see attached Exhibit B). He asked that his presentation from May 1, 2002 be included into the record. It was provided to the City Clerk (see attached Exhibit C).

Councilmember Spehar asked what the density in the blue area on his map is indicating. Mr. Chapman replied the density is two or less units per acre.

Jim Grisier, 690 25 ½ Road, refuted Mr. Krohn's statement as to the size needed for a PUD. He reiterated that he is willing to make a trail contribution. He referred to rezone criteria #3 and #5 and said this is the way it is written and has an impact on the people who live in the area. He said once the zoning has been assigned, the neighborhood has no more say in the matter. He asked that the property be zoned either RSF-2 or PUD.

Russ Wiseman, 660 Kapota Street, addressed the street system and the bottlenecks created. He opposed the rezone.

There were no other public comments.

Councilmember Theobald asked Mr. Wilson that if the rezoning is approved, if the next step is the preliminary plan?

Mr. Wilson explained the next step will be to lay out the details and that plan will go to the Planning Commission for preliminary plat approval. If it meets the code, the Planning Commission is obligated to approve the plan. If the approval is then appealed, then Council asks the Planning Commission if it adequately looked at the criteria. Now the appeal is based solely on what was said at the Planning Commission meeting, i.e. the record.

Councilmember Theobald asked Mr. Wilson if the issues of drainage and their impacts are subjective issues, and if the Planning Commission addresses them, can Council only review those items if appealed and take no new testimony. Mr. Wilson replied that this is true but the final technical detailed work has not been done; that this is done at the staff level recommending the final engineering solutions.

Councilmember Theobald asked Mr. Wilson how to choose between adopting the code as written rather than as intended, as in the rezone criteria. Mr. Wilson said he disagreed with Mr. Grisier's characterization as to what he had said and one must read the seven criteria all together to form a judgment. However, Mr. Wilson agreed that the language could be better.

Councilmember Theobald said if he understands correctly then all of the criteria doesn't have to be met but that Council should look and judge on the big picture.

Councilmember Spehar said he voted in favor of the rezone last time. He felt those issues were considered and saw that those issues were solvable if there is a rezone. The plan has 3.4 units per acre and in order to solve this issue, the Planning Commission can require a lower density at Preliminary Plan.

Mr. Wilson said a RSF-4 zoning has 2 to 4 units per acre and takes into account the streets and all the infrastructure and facilities.

Councilmember Terry asked Mr. Wilson to explain the public input process for Preliminary Plan review.

Mr. Wilson said formal notice is given at the Planning Commission, and then is posted, published and on the agenda and that this is the key time for public input.

Councilmember Terry asked if irrigation is one of the considerations at Preliminary Plan. Mr. Wilson replied that the City doesn't mandate irrigation, but if the property will be irrigated, standards are in place and that issue is addressed at the Preliminary Plat.

Councilmember Terry asked about the open space requirement for a PUD. Mr. Wilson said the open space requirement is 10%. He explained that under the new code, the City

can choose open space dedication, if it makes sense, or a fee in lieu if the space is insufficient or not needed in that area.

Councilmember Terry wanted to know if that does preclude open space in a development of less than 30 acres. Mr. Wilson said the City's 3-acre minimum will usually control that decision.

Mr. Wilson clarified that under the new code, Planned Zones are the exception and therefore must provide some additional benefit to the community.

Councilmember Terry wanted a definition of RSF-2. Mr. Wilson compared the RSF-4 to the RSF-2 zoning. Councilmember Terry said then a RSF-2 would be out of compliance with the Growth Plan. Mr. Wilson said it would be barely compliant.

Councilmember Theobald requested more information on the surrounding density. Ms. Gerstenberger provided that information.

Councilmember Theobald noted that the property could then actually be zoned with the PUD designation and not be build out or it could be built out at a slightly lesser density.

Mr. Krohn, attorney for the developer Ed Lenhart, said he stands corrected on the open space requirement and asked that the notice be made a part of the record. He said the request is for a zoning of RSF-4, so Council can approve or deny the request, not decide on RSF-2. He then reviewed the surrounding zones, including the Planned Developments, and said they would all require RSF-4, none would fit RSF-2.

The public hearing was closed at 9:49 p.m.

Councilmember Terry said it was a good discussion and she felt that RSF-4 is a good fit, however, compatibility with the neighborhood is important. RSF-2 is also compatible so RSF-4 is not the best fit.

Councilmember Theobald said a RSF-4 zoning is the only real choice. He said his issues are more appropriate for another hearing and the critical question right now is whether Council is obligated under the implied criteria or obligated by its intent, and for Council to accept the attorney's advice and accept the other issues are topics for the next step.

Councilmember Spehar agreed with Councilmember Theobald and said the issues of concern are for the next phase and that RSF-4 is an appropriate zone, noting Council must be true to the Growth Plan. He said the neighbors need to know that a solution to be proposed for the problems might be to reduce the density. The opportunity to address those issues will be before the Planning Commission and under the current code there is no such zoning as RSF-3. He said a PUD is not a fit and therefore supports a RSF-4 zoning.

Councilmember Kirtland expressed his disappointment that a PUD could not work because there is no community benefit. Approving the zoning will only add an opportunity for a problem, therefore, he cannot support a RSF-4 zoning.

Ordinance No. 3452 – An Ordinance Rezoning the Valley Meadows North Property, Located at the North End of Kapota Street, from Residential Single Family Rural (RSF-R) to Residential Single Family-4 (RSF-4)

Upon motion made by Councilmember Spehar, seconded by Councilmember Theobold, to approve Ordinance No. 3452 on Second Reading, the motion failed with a roll call vote of 3 to 2. Councilmembers Butler, Kirtland and Terry voted no. Councilmembers Spehar and Theobold voted yes.

Council took a recess at 10:00 p.m.

Council reconvened at 10:10 p.m.

Council President Cindy Enos-Martinez returned and presided over the rest of the meeting.



COMMUNITY  
DEVELOPMENT

Ms. Helen Dunn  
President of Valley Meadows East HOA  
2557 McCook Avenue  
Grand Junction, CO 81505

December 22, 2003

Dear Ms. Dunn

Re: Letter of Appeal received December 22, 2003

In regards to your request of an appeal of the Planning Commission's recommendation of zoning for the Valley Meadows North rezoning, the zoning request will automatically be reviewed by the City Council at a public hearing. Appeal of the Planning Commission's action is therefore not appropriate and in fact is a mute point since the Planning Commission's action is a recommendation to Council, not a final action.

A copy of your letter protesting the proposed zoning will be included in the City Council's staff report packet along information submitted to the Planning Commission and any additional information received prior to distribution of the City Council staff reports.

If you have any additional questions regarding this letter, please feel free to contact me at (970) 244-1439, or the staff planner, Ms. Lisa Cox at (970) 256-4039.

Sincerely

Pat Cecil  
Development Services Supervisor  
City of Grand Junction

cc: John Shaver

2557 McCook Avenue  
Grand Junction, CO 81505  
December 20, 2003

Ms. Lisa Cox, Senior Planner  
Community Development Department  
250 North Fifth Street  
Grand Junction, CO 81501-2668

Dear Ms. Cox,

We, the residents of Valley Meadows East, wish to appeal to the City Council the decision of the Planning Commission at their December 16, 2003 meeting whereby approval was granted for the rezoning of Valley Meadows North from RSF-R to RSF-4. (File # RZP-2003-153)

1. The decision makers misinterpreted information presented when the instructions given to the Commission was that in rezoning property it is only necessary to consider the zoning in the surrounding areas and not appropriate to consider the part of the code which clearly states:

2.6 CODE AMENDMENT AND REZONING

A. **Approval Criteria.** In order to maintain internal consistency between this code and the zoning maps, map amendment must only occur if:

3. The proposed rezone is compatible with the neighborhood and will not create adverse impacts such as: capacity or safety of the street network, parking problems, storm water or drainage problems, water, air or noise pollution, excessive nighttime lighting, or other nuisances.
2. The decision makers did not realize the full impact of the project when they were shown a schematic drawing of the property which indicated a direct access to 25 1/2 road when indeed there is no access to 25 1/2 road and the only access would be by reducing the berm at the end of Kapota Drive and routing all traffic through Valley Meadows East.

RECEIVED

DEC 22 2003

COMMUNITY DEVELOPMENT

3. The decision makers may have erred in judgment when no consideration was given to:

**CHAPTER THREE  
ZONING**

**3.1 PURPOSE**

- K. Secure safety from fire, panic, and other dangers.

**CHAPTER SIX  
DESIGN & IMPROVEMENT STANDARDS**

**6.7 SUBDIVISION STANDARDS**

E. Circulation

9. Fire Lanes. Fire lanes shall be provided in accordance with The adopted code.

4. The decision makers may have been unduly influenced by a threat of a legal action.
5. The decision makers may have been misled when the lack of an access for the undeveloped properties to the east of Valley Meadows North was mentioned and they were told that the assumption was that these properties would access from the east when the informant knew that the only road planned for accommodating these properties is through Valley Meadows North.

We are appealing a rezoning decision which would allow development of a subdivision with only one access to serve two subdivisions in violation of the fire code and a drainage plan which alters the drainage pattern in such a way that it removes flood protection from other private property.

Respectfully Submitted

*Helen Dunn*

Helen Dunn, President. Valley Meadows East HOA

cc: Jim Spehar, Mayor





**CITY OF GRAND JUNCTION, COLORADO**

**ORDINANCE No. \_\_\_\_**

**An Ordinance Rezoning the Valley Meadows North property,  
located at the north end of Kapota Street,  
from Residential Single Family Rural (RSF-R)  
to Residential Single Family-4 (RSF-4)**

Recitals.

After public notice and public hearing as required by the Grand Junction Zoning and Development Code, the Grand Junction Planning Commission recommended approval of rezoning the Valley Meadows North property, located at the north end of Kapota Street, from the from Residential Single Family Rural (RSF-R) to Residential Single Family-4 (RSF-4), for the following reasons:

1. The zone district is consistent with the goals and policies of the Growth Plan.
2. The zone district meets the criteria found in Section 2.6.A of the Zoning and Development Code.

After public notice and public hearing before the Grand Junction City Council, City Council finds that the Residential Single Family-4 (RSF-4) zone district be established.

The Planning Commission and City Council find that the Residential Single Family-4 (RSF-4) zoning is in conformance with the stated criteria of Section 2.6.A of the Grand Junction Zoning and Development Code.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION  
THAT:**

The following property shall be rezoned to the Residential Single Family-4 (RSF-4) zone district:

Parcel One: That part of the S 632.50' of the W 786.00' of the NW1/4 NE1/4 of Sec 3, T1S, R1W of the UM, being more particularly described as follows: Commencing at the N1/4 corner of said Sec 3, and considering the W line of the NE1/4 of said Sec 3 to bear S 00°00'00" W with all bearings contained herein relative thereto; thence S 00°00'00" W along said W line of the NE1/4 of said Sec 3, 688.50'; thence N 89°59'00" E 265.00' to the POB; thence continuing N 89°59'00" E 521.00'; thence S 00°00'00" W 632.50'; thence S 89°59'00" W 521.00'; thence N 00°00'00" E 632.50' to the POB.

Parcel Two: The S 15' of the following described tract: That part of the S 632.50' of the W 786.00' of the NW1/4 NE1/4 of Sec 3, T1S, R1W of the UM, being more particularly described as follows: Commencing at the N1/4 corner of said Sec 3 and considering the W line of the NE1/4 of said Sec 3 to bear S 00°00'00" W with all bearings contained herein relative thereto; thence S 00°00'00" W along said W line of the NE1/4 of Sec 3, 688.50' to the POB; thence N 89°59'00" E 265.00'; thence S 00°00'00" W 632.50'; thence S 89°59'00" W 265.00' to a point on said W line of the NE1/4 of said Sec 3; thence N 00°00'00" E 632.50' to the POB.

Introduced on first reading this 7th day of January, 2004.

PASSED and ADOPTED on second reading this \_\_\_\_ day of January, 2004.

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Mayor

ATTEST:

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City Clerk

**Attach 5  
Setting a Hearing on Amending Ordinance No. 3582 Gowhari Annexation**

**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA							
<b>Subject</b>	Setting a hearing to amend the Ordinance concerning Gowhari Annexation located at 563 20 ½ Rd						
<b>Meeting Date</b>	January 7, 2004						
<b>Date Prepared</b>	December 30, 2003				File #GPA-2003-183		
<b>Author</b>	Senta Costello		Associate Planner				
<b>Presenter Name</b>	Senta Costello		Associate Planner				
<b>Report results back to Council</b>	X	No		Yes	<b>When</b>		
<b>Citizen Presentation</b>		Yes	X	No	<b>Name</b>		
	<b>Workshop</b>	X	<b>Formal Agenda</b>		X	<b>Consent</b>	<b>Individual Consideration</b>

**Summary:** Amending Ordinance No. 3582 for the Gowhari Annexation. The legal description in Ordinance No. 3582 is incorrect; the annexation should have been a serial annexation. When amended the annexation will be known as the Gowhari Annexations # 1 & #2. The 24.473 acre Gowhari annexation consists of 3 parcels of land and 0.63 acres of 20 ½ Road right-of-way.

**Budget:** N/A

**Action Requested/Recommendation:** Introduce a proposed amended Gowhari Annexation Ordinance and set a hearing for January 21, 2004.

**Background Information:** See attached Staff Report/Background Information

**Attachments:**

1. Staff report/Background information
2. General Location Map
3. Aerial Photo
4. Growth Plan Map
5. Zoning Map
6. Amended Annexation map
7. Amended Annexation Ordinance

STAFF REPORT / BACKGROUND INFORMATION			
<b>Location:</b>		563 20 ½ Rd; 573 20 ½ Rd; 2026 S. Broadway	
<b>Applicants:</b>		Owner: Elizabeth Gowhari; Representative: Thompson-Langford – Doug Thies	
<b>Existing Land Use:</b>		Irrigated pasture and Single Family Homes	
<b>Proposed Land Use:</b>		Future residential uses	
<b>Surrounding Land Use:</b>	<b>North</b>	Single Family Residential average 5 acre lots	
	<b>South</b>	Single Family Residential .25 to 1 acre lots	
	<b>East</b>	Single Family Residential .25 to 1+ acre lots	
	<b>West</b>	New church site and residential	
<b>Existing Zoning:</b>		RSF-R: 1 du/5 ac	
<b>Proposed Zoning:</b>		Applicant request is for RSF-2; Final zoning to be determined after GPA is reviewed.	
<b>Surrounding Zoning:</b>	<b>North</b>	RSF-R	
	<b>South</b>	PD/RSF-4	
	<b>East</b>	RSF-2 (Mesa County)	
	<b>West</b>	RSF-R (City) & RSF-2 (Mesa County)	
<b>Growth Plan Designation:</b>		Rural	
<b>Zoning within density range?</b>		<input type="checkbox"/>	<input checked="" type="checkbox"/> <b>Yes</b>
		<input checked="" type="checkbox"/>	<input type="checkbox"/> <b>No</b>

**Staff Analysis:**

**ANNEXATION:**

This annexation area consists of 25.103 acres of land and is comprised of 3 parcel(s). The property owners have requested annexation into the City. A Growth Plan Amendment to change 24.503 acres of the property from Rural 5 - 35 ac/du to Residential Low ½ -2 ac/du has also been submitted. Under the 1998 Persigo Agreement all rezones require annexation and processing in the City.

The Gowhari Annexation under the Municipal Annexation Act C.R.S. 31-12-104, is eligible to be annexed.

The following annexation and zoning schedule is being proposed.

ANNEXATION SCHEDULE	
<b>January 7, 2004</b>	Introduction of a Proposed Ordinance Amending the Legal Description
<b>January 21, 2004</b>	Public Hearing on the Ordinance amending the legal description by City Council
<b>February 18, 2004</b>	Effective date of Annexation

<b>GOWHARI ANNEXATION SUMMARY</b>		
<b>File Number:</b>	GPA-2003-183	
<b>Location:</b>	563 20 ½ Rd; 573 20 ½ Rd; 2026 S. Broadway	
<b>Tax ID Number:</b>	2947-222-00-184; 2947-222-40-001; 2947-222-40-002	
<b>Parcels:</b>	3	
<b>Estimated Population:</b>	7	
<b># of Parcels (owner occupied):</b>	1	
<b># of Dwelling Units:</b>	3	
<b>Acres land annexed:</b>	25.103 acres	
<b>Developable Acres Remaining:</b>	24.473 acres	
<b>Right-of-way in Annexation:</b>	0.630 ac. – 687' of 20 ½ Rd (full width of ROW)	
<b>Previous County Zoning:</b>	RSF-R	
<b>Proposed City Zoning:</b>	Applicant request is for RSF-2; Final zoning to be determined after GPA is reviewed.	
<b>Current Land Use:</b>	Irrigated pasture and Single Family Homes	
<b>Future Land Use:</b>	Future residential uses	
<b>Values:</b>	<b>Assessed:</b>	\$17,960
	<b>Actual:</b>	\$225,640
	<b>Assessed:</b>	\$28,020
	<b>Actual:</b>	\$301,490
	<b>Assessed:</b>	\$13,560
	<b>Actual:</b>	\$170,280
<b>Address Ranges:</b>	563 – 573 20 ½ Rd (odd only); 2026 S. Broadway	
<b>Special Districts:</b>	<b>Water:</b>	Ute Water
	<b>Fire:</b>	Grand Junction Rural Fire District
	<b>Irrigation/ Drainage:</b>	Redlands Water & Power
	<b>School:</b>	Mesa County School District #51



# Aerial Photo Map

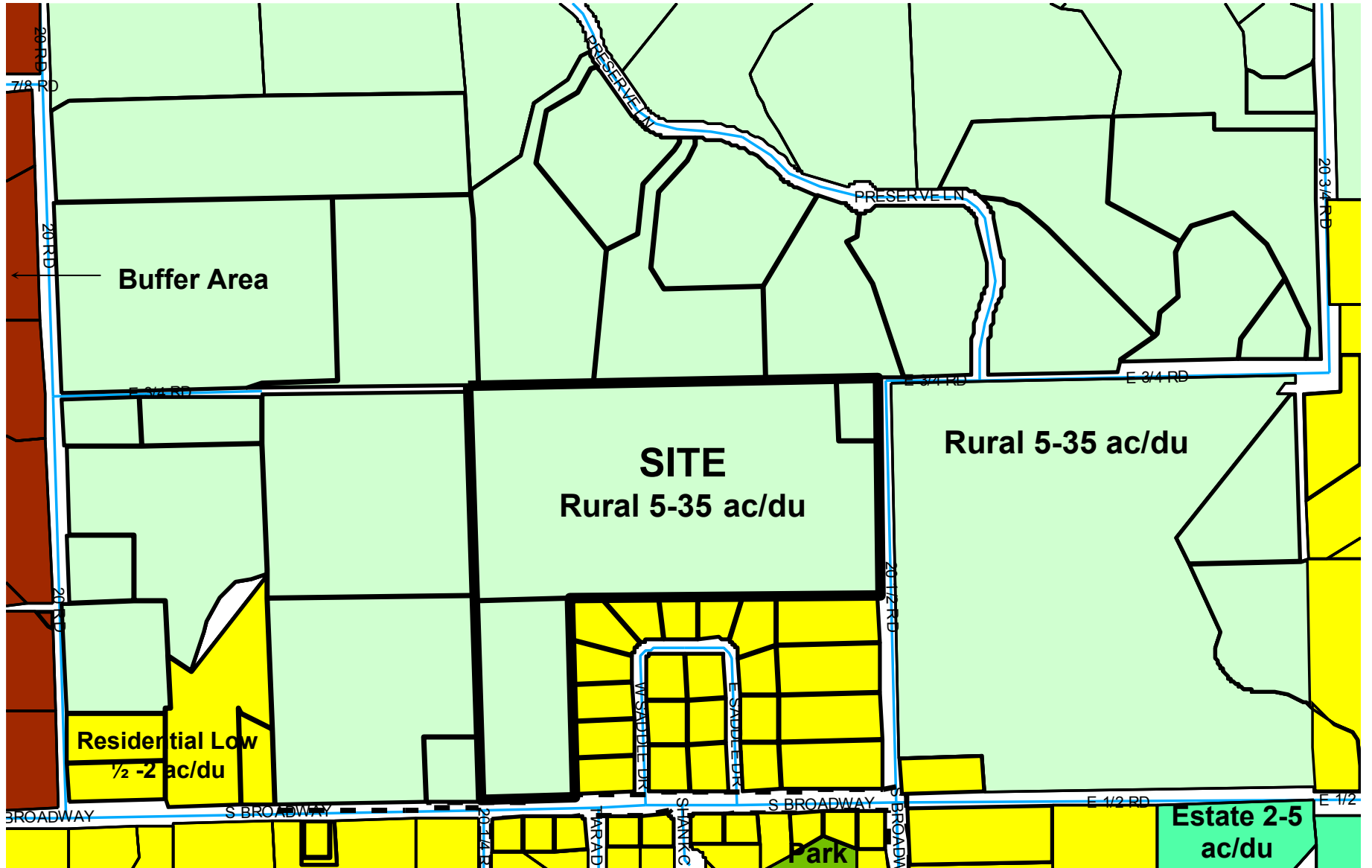
Figure 2





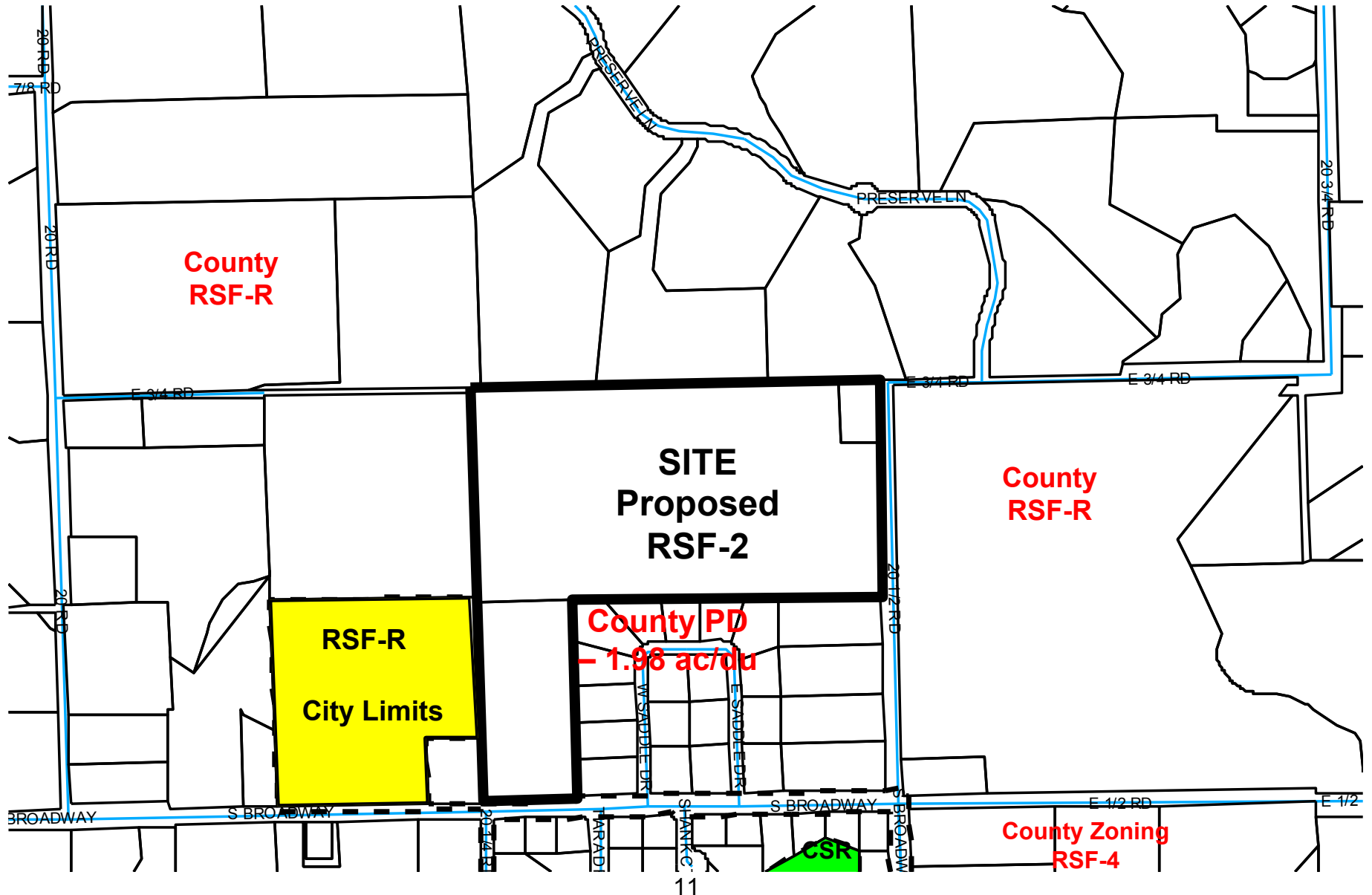
# Future Land Use Map

Figure 3



# Existing City and County Zoning

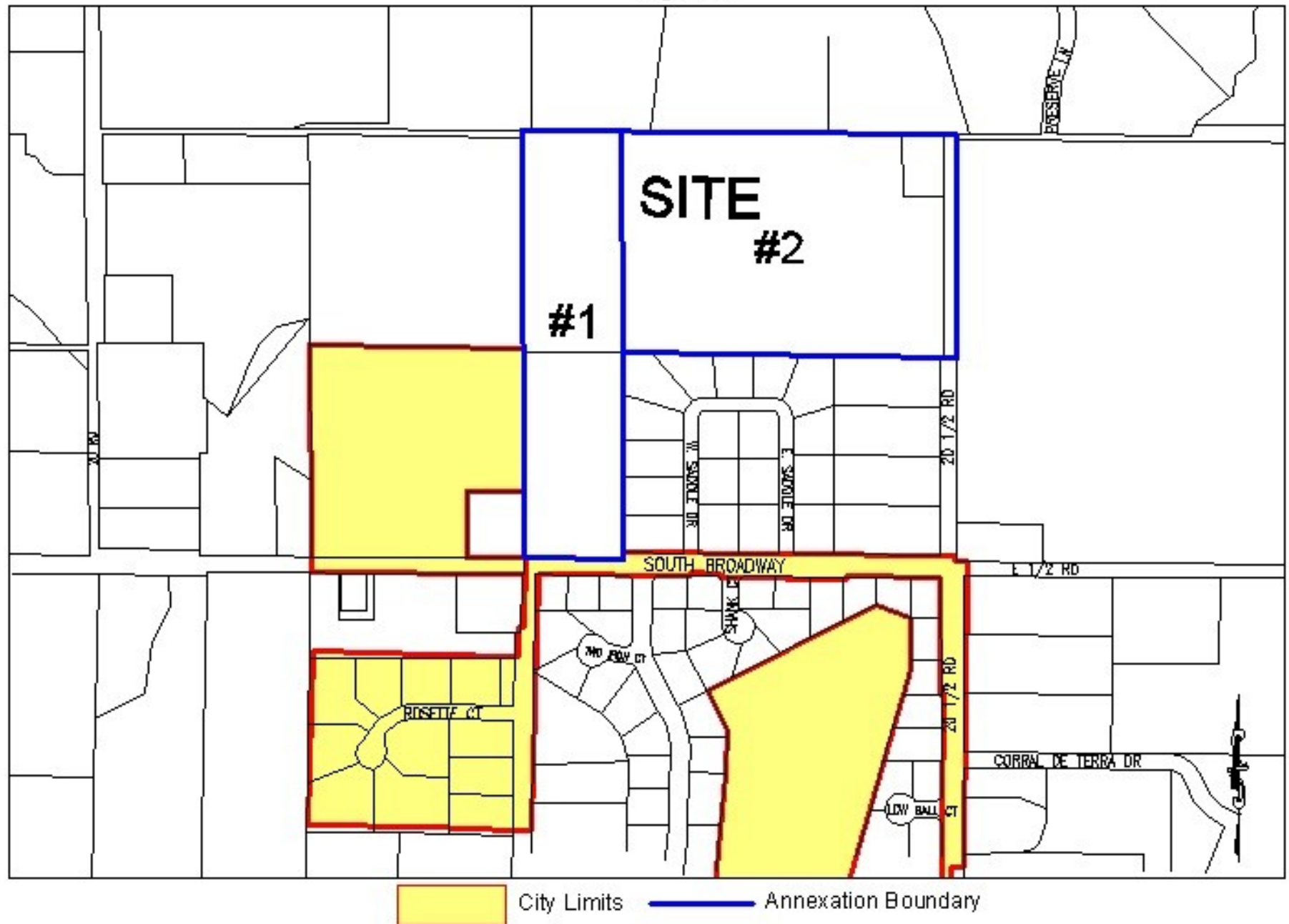
Figure 4



NOTE: Mesa County is currently in the process of updating their zoning map. Please contact Mesa County directly to determine parcels and the zoning thereof."

# Gowhari Annexation #1 and #2 (as amended)

Figure 5



**CITY OF GRAND JUNCTION, COLORADO**

**ORDINANCE NO.**

**AN ORDINANCE ANNEXING TERRITORY TO THE  
CITY OF GRAND JUNCTION, COLORADO**

**GOWHARI ANNEXATIONS #1 & #2**

**APPROXIMATELY 25.103 ACRES**

**LOCATED AT 563 20 ½ Rd, 573 20 ½ Rd, 2026 S. Broadway and including a  
portion of the 20 ½ Road right-of-way**

**WHEREAS**, on the 1<sup>st</sup> day of October, 2003, the City Council of the City of Grand Junction considered a petition for the annexation of the following described territory to the City of Grand Junction; and

**WHEREAS**, a hearing on the petition was duly held after proper notice on the 5<sup>th</sup> day of November, 2003; and

**WHEREAS**, the City Council determined that said territory was eligible for annexation and that no election was necessary to determine whether such territory should be annexed;

**WHEREAS**, the annexation was adopted with Ordinance No.3582.

**WHEREAS**, the legal description in Ordinance No.3582 is incorrect; the annexation should have been a serial annexation. When amended the annexation will be known as the Gowhari Annexations #1 & #2.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY  
OF GRAND JUNCTION, COLORADO:**

That the property situate in Mesa County, Colorado, and described to wit:

**GOWHARI ANNEXATION #1**

A certain parcel of land lying in the Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4) of Section 22, Township 11 South, Range 101 West of the 6<sup>th</sup> Principal Meridian, County of Mesa, State of Colorado, being more particularly described as follows:

COMMENCING at the Southwest corner of the SE 1/4 NW 1/4 of said Section 22, and assuming the South line of the SE 1/4 NW 1/4 of said Section 22 bears N 89°40'40" E with all other bearings contained herein being relative thereto; thence from said Point of Commencement, N 00°56'27" W along the West line of the SE 1/4 NW 1/4 of said Section 22 a distance of 20.00 feet to a point on the North right of way for South Broadway and the POINT OF BEGINNING; thence from said Point of Beginning, continue N 00°56'27" W along the West line of the SE 1/4 NW 1/4 of said Section 22, a distance of 1310.96 feet, more or less, to a point being the Northwest corner of the SE 1/4 NW 1/4 of said Section 22 and being the Northwest corner of Gowhari Minor Subdivision, as same is recorded in Plat Book 18, Page 129 of the Public Records of Mesa County, Colorado; thence N 89°35'06" E along the North line of the SE 1/4 NW 1/4 of said Section 22, and the North line of said Gowhari Minor Subdivision, a distance of 299.88 feet; thence S 00°53'16" E along the Northerly extension of the West line of Saddleback Subdivision, as same is recorded in Plat Book 14, Page 140, Public Records of Mesa County, Colorado, a distance of 1311.45 feet to a point on the North right of way for South Broadway; thence S 89°40'40" W along the said North right of way, being a line 20.00 feet North of and parallel to, the South line of the SE 1/4 NW 1/4 of said Section 22, a distance of 298.67 feet, more or less, to the Point of Beginning.

CONTAINS 9.008 Acres (392,394 Sq. Ft.) more or less, as described.

AND

#### GOWHARI ANNEXATION #2

A certain parcel of land lying in the Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4) and the Southwest Quarter of the Northeast Quarter (SW 1/4 NE 1/4) of Section 22, Township 11 South, Range 101 West of the 6<sup>th</sup> Principal Meridian, County of Mesa, State of Colorado, being more particularly described as follows:

COMMENCING at the Southwest corner of the SE 1/4 NW 1/4 of said Section 22, and assuming the South line of the SE 1/4 NW 1/4 of said Section 22 bears N 89°40'40" E with all other bearings contained herein being relative thereto; thence from said Point of Commencement, N 00°56'27" W along the West line of the SE 1/4 NW 1/4 of said Section 22 a distance of 1330.96 feet to a point being the Northwest corner of the SE 1/4 NW 1/4 of said Section 22 and being the Northwest corner of Gowhari Minor Subdivision, as same is recorded in Plat Book 18, Page 129 of the Public Records of Mesa County, Colorado; thence N 89°35'06" E along the North line of the SE 1/4 NW 1/4 of said Section 22, and the North line of said Gowhari Minor Subdivision, a distance of 299.88 feet to the POINT OF BEGINNING; thence from said Point of Beginning, continue N 89°35'06" E along the North line of the SE 1/4 NW 1/4 of said Section 22 a distance of 1006.49 feet, to a point being the Northeast corner of the SE 1/4 NW 1/4 of

said Section 22; thence N 89°35'28" E along the North line of the SW 1/4 NE 1/4 of said Section 22, a distance of 20.00 feet; thence S 00°53'16" E along a line 20.00 feet East of and parallel to the West line of the SW 1/4 NE 1/4 of said Section 22, being the East right of way for 20-1/2 Road, a distance of 686.71 feet, more or less, to a point on the Easterly extension of the North line of Saddleback Subdivision, as same is recorded in Plat Book 14, Page 140, Public Records of Mesa County, Colorado; thence S 89°59'40" W along the North line of said Saddleback Subdivision, a distance of 1026.57 feet, more or less, to a point being the Northwest corner of said Saddleback Subdivision; thence N 00°53'16"W, a distance of 679.37 feet, more or less, to the Point of Beginning.

CONTAINS 16.095 Acres (701,111 Sq. Ft.) more or less, as described.

Be and is hereby annexed to the City of Grand Junction, Colorado.

**INTRODUCED** on first reading on the 7<sup>th</sup> day of January, 2004 and ordered published.

**ADOPTED** on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Attest:

\_\_\_\_\_  
President of the Council

\_\_\_\_\_  
City Clerk

**Attach 6  
Zoning Gowhari Annexation**

**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA							
<b>Subject</b>	Zoning the Gowhari Annexation, located at 563 20 ½ Rd, 573 20 ½ Rd, 2026 S. Broadway.						
<b>Meeting Date</b>	January 7, 2004						
<b>Date Prepared</b>	December 30, 2003				File #GPA-2003-183		
<b>Author</b>	Senta Costello		Associate Planner				
<b>Presenter Name</b>	Senta Costello		Associate Planner				
<b>Report results back to Council</b>	X	No		Yes	When		
<b>Citizen Presentation</b>		Yes	X	No	Name		
	<b>Workshop</b>	X	<b>Formal Agenda</b>		X	<b>Consent</b>	<b>Individual Consideration</b>

**Summary:** Introduction of a proposed zoning ordinance to zone the Gowhari Annexation consisting of 25.103 acres and 3 parcels, located at 563 20 ½ Rd, 573 20 ½ Rd, 2026 S. Broadway.

**Budget:** N/A

**Action Requested/Recommendation:** Introduce a proposed zoning ordinance and set a public hearing for January 21, 2003.

**Background Information:** See attached Staff Report/Background Information

**Attachments:**

8. Staff report/Background information
9. General Location Map
10. Aerial Photo
11. Growth Plan Map
12. Zoning Map
13. Annexation map
14. Zoning Ordinance

STAFF REPORT/BACKGROUND INFORMATION			
<b>Location:</b>		563 20 ½ Rd; 573 20 ½ Rd; 2026 S. Broadway	
<b>Applicants:</b>		Owner: Elizabeth Gowhari; Representative: Thompson-Langford – Doug Thies	
<b>Existing Land Use:</b>		Irrigated pasture and Single Family Homes	
<b>Proposed Land Use:</b>		Future residential uses	
<b>Surrounding Land Use:</b>	<b>North</b>	Single Family Residential average 5 acre lots	
	<b>South</b>	Single Family Residential .25 to 1 acre lots	
	<b>East</b>	Single Family Residential .25 to 1+ acre lots	
	<b>West</b>	New church site and residential	
<b>Existing Zoning:</b>		RSF-2: 2 du/ac (Mesa County)	
<b>Proposed Zoning:</b>		RSF-2	
<b>Surrounding Zoning:</b>	<b>North</b>	RSF-2 (Mesa County)	
	<b>South</b>	PD/RSF-4 (Mesa County)	
	<b>East</b>	RSF-2 (Mesa County)	
	<b>West</b>	RSF-R (City) & RSF-2 (Mesa County)	
<b>Growth Plan Designation:</b>		Residential Low ½ -2 ac/du	
<b>Zoning within density range?</b>		<b>X</b>	<b>Yes</b>
			<b>No</b>

**Staff Analysis:**

**Zone of Annexation:** The requested zone of annexation to the RSF-2 district is consistent with the Growth Plan density of Residential Low ½ -2 ac/du. The existing County zoning is RSF-2. Section 2.14 of the Zoning and Development Code states that the zoning of an annexation area shall be consistent with either the Growth Plan or the existing County zoning.

In order for the rezoning to occur, the following questions must be answered and a finding of consistency with the Zoning and Development Code must be made per Section 2.6 as follows:

1. The existing zoning was in error at the time of adoption;

Response: The requested zoning is to place the property into an appropriate City zoning designation due to the annexation request. Therefore, this criteria is not applicable.



2. There has been a change of character in the neighborhood due to installation of public facilities, other zone changes, new growth trends, deterioration, development transitions, etc.;

Response: The zoning request is in conjunction with an annexation request. Therefore this criteria is not applicable.

3. The proposed rezone is compatible with the neighborhood and will not create adverse impacts such as: capacity or safety of the street network, parking problems, storm water or drainage problems, water, air or noise pollution, excessive nighttime lighting, or nuisances;

Response: The zoning request is compatible with the neighborhood and adjacent zoning. Future improvements to facilities will occur as part of any approved future development.

4. The proposal conforms with and furthers the goals and policies of the Growth Plan, other adopted plans, and policies, the requirements of this Code, and other City regulations and guidelines;

Response: The proposed zoning is consistent with the Goals and polices of the Growth Plan, the requirements of the Zoning and Development Code and other City regulations and guidelines.

5. Adequate public facilities and services are available or will be made available concurrent with the projected impacts of the proposed development;

Response: Adequate public facilities are available or will be supplied at the time of further development of the property.

6. There is not an adequate supply of land available in the neighborhood and surrounding area to accommodate the zoning and community needs; and

Response: The zoning request is in conjunction with an annexation request. Therefore this criteria is not applicable.

7. The community or neighborhood will benefit from the proposed zone.

Response: The zoning request is in conjunction with an annexation request. Therefore this criteria is not applicable.

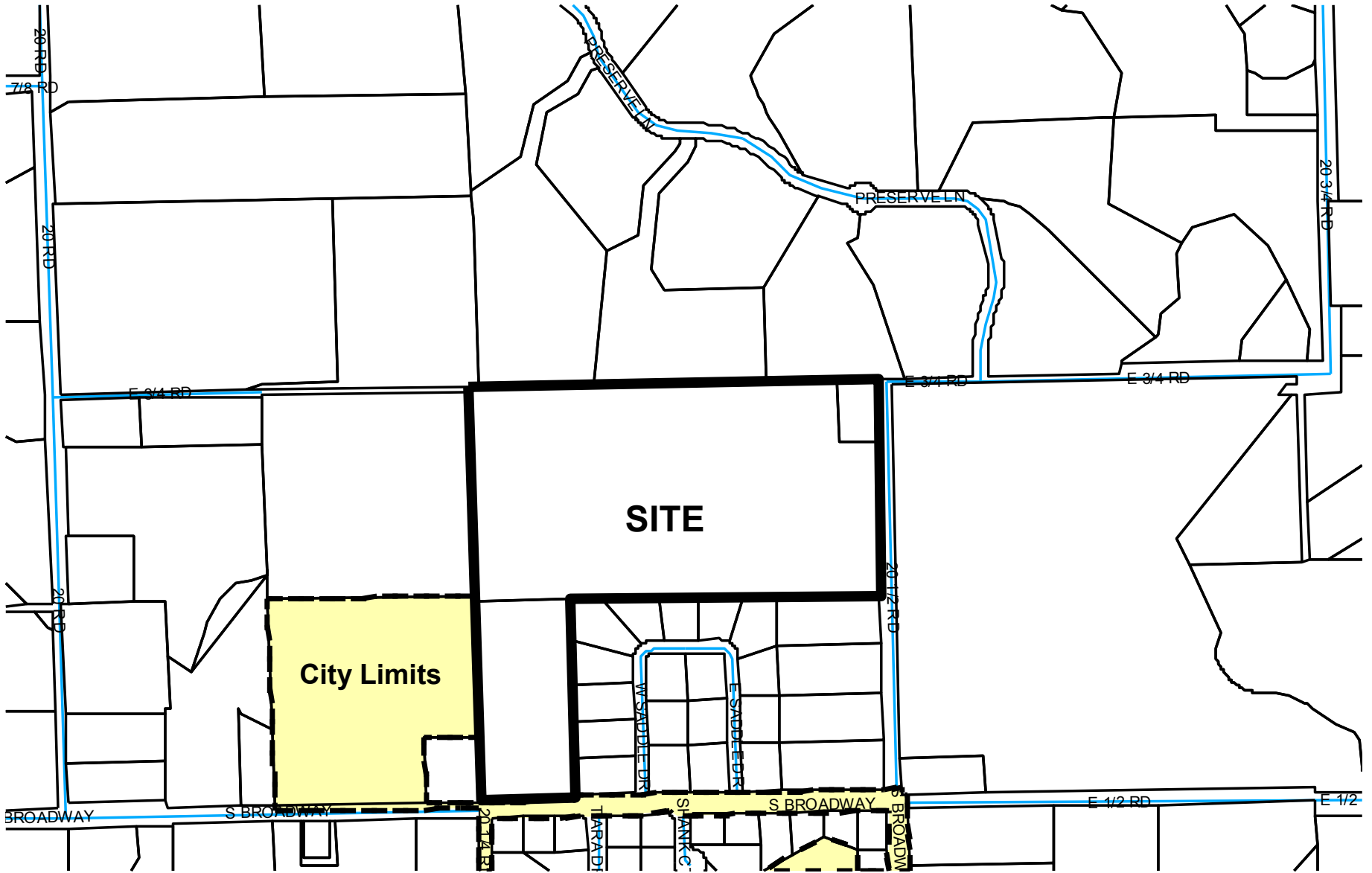
## **STAFF RECOMMENDATION**

Staff recommends approval of the RSF-2 zone district, with the finding that the proposed zone district is consistent with the Growth Plan and with Sections 2.6 and 2.14 of the Zoning and Development Code.



# Site Location Map

Figure 1



# Aerial Photo Map

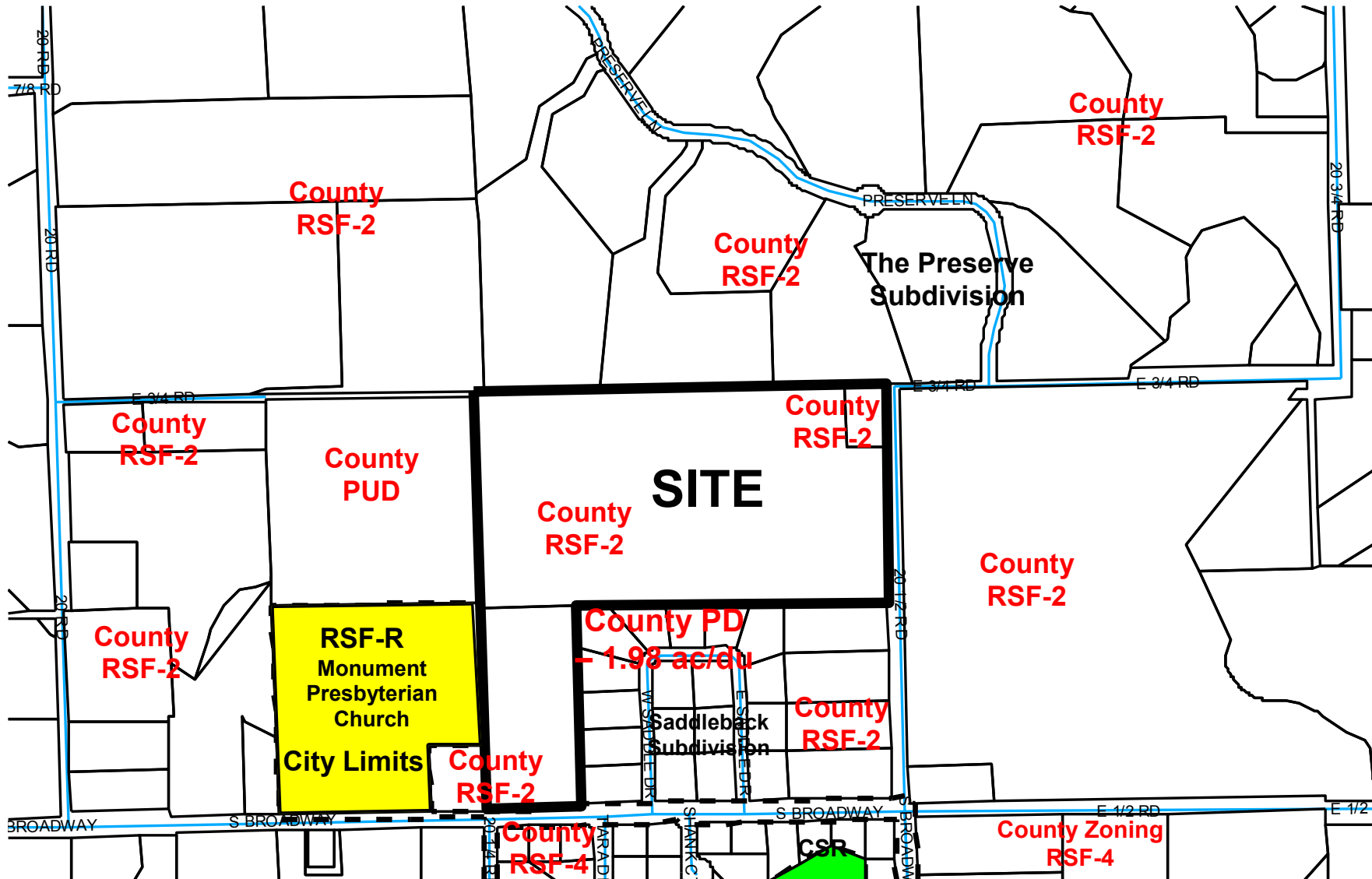
Figure 2





# Existing City and County Zoning

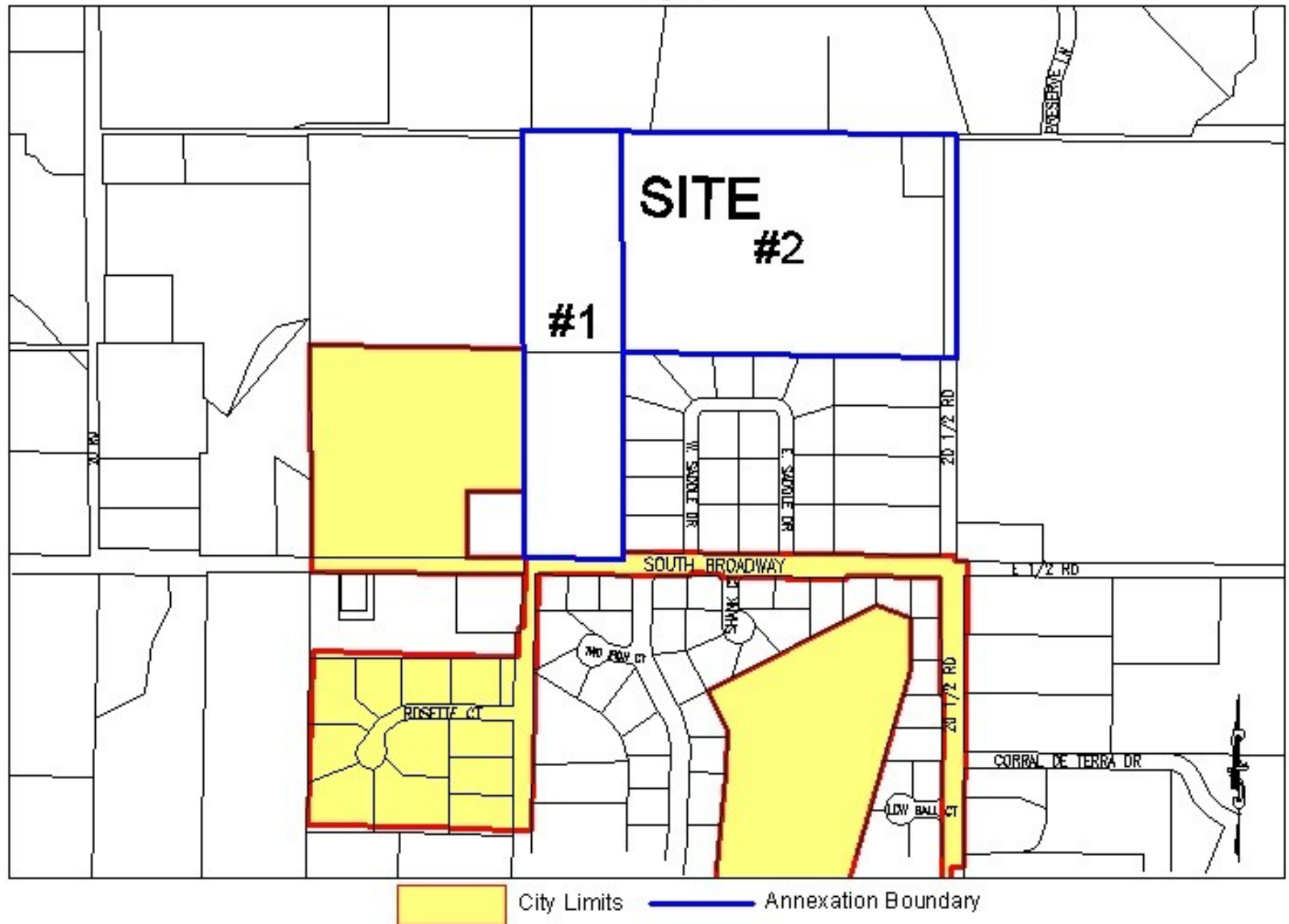
Figure 4



NOTE: Mesa County is currently in the process of updating their zoning map. Please contact Mesa County directly to determine parcels and the zoning thereof."

# Gowhari Annexation #1 and #2 (as amended)

Figure 5



**CITY OF GRAND JUNCTION, COLORADO**

**ORDINANCE NO.**

**AN ORDINANCE ZONING THE GOWHARI ANNEXATION TO  
RSF-2**

**LOCATED AT 563 20 ½ Rd, 573 20 ½ Rd, 2026 S. Broadway**

Recitals.

After public notice and public hearing as required by the Grand Junction Zoning and Development Code, the Grand Junction Planning Commission recommended approval of rezoning the Gowhari Annexation to the RSF-2 zone district for the following reasons:

The zone district meets the recommended land use category as shown on the future land use map of the Growth Plan and the Growth Plan's goals and policies and/or are generally compatible with appropriate land uses located in the surrounding area. The zone district meets the criteria found in Section 2.6 of the Zoning and Development Code.

After the public notice and public hearing before the Grand Junction City Council, City Council finds that the RSF-2 zone district be established.

The Planning Commission and City Council find that the RSF-2 zoning is in conformance with the stated criteria of Section 2.6 of the Grand Junction Zoning and Development Code.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION  
THAT:**

The following property shall be rezoned RSF-2 with a density not to exceed 2 units per acre.

**GOWHARI ANNEXATION**

A certain parcel of land lying in the Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4) and the Southwest Quarter of the Northeast Quarter (SW 1/4 NE 1/4) of Section 22, Township 11 South, Range 101 West of the 6<sup>th</sup> Principal Meridian, County of Mesa, State of Colorado, being more particularly described as follows:

COMMENCING at the Southwest corner of the SE 1/4 NW 1/4 of said Section 22, and assuming the South line of the SE 1/4 NW 1/4 of said Section 22 bears N 89°40'40" E with all other bearings contained herein being relative thereto; thence from said Point of Commencement, N 00°56'27" W along the West line of the SE 1/4 NW 1/4 of said Section 22 a



distance of 20.00 feet to a point on the North right of way for South Broadway and the POINT OF BEGINNING; thence from said Point of Beginning, continue N 00°56'27" W along the West line of the SE 1/4 NW 1/4 of said Section 22, a distance of 1310.96 feet, more or less, to a point being the Northwest corner of the SE 1/4 NW 1/4 of said Section 22 and being the Northwest corner of Gowhari Minor Subdivision, as same is recorded in Plat Book 18, Page 129 of the Public Records of Mesa County, Colorado; thence N 89°35'06" E along the North line of the SE 1/4 NW 1/4 of said Section 22, and the North line of said Gowhari Minor Subdivision, a distance of 1306.37 feet, more or less, to a point being the Northeast corner of the SE 1/4 NW 1/4 of said Section 22; thence N 89°35'28" E along the North line of the SW 1/4 NE 1/4 of said Section 22, a distance of 20.00 feet; thence S 00°53'16" E along a line 20.00 feet East of and parallel to the West line of the SW 1/4 NE 1/4 of said Section 22, being the East right of way for 20-1/2 Road, a distance of 686.71 feet, more or less, to a point on the Easterly extension of the North line of Saddleback Subdivision, as same is recorded in Plat Book 14, Page 140, Public Records of Mesa County, Colorado; thence S 89°59'40" W along the North line of said Saddleback Subdivision, a distance of 1026.57 feet, more or less, to a point being the Northwest corner of said Saddleback Subdivision; thence S 00°53'16" E along the West line of said Saddleback Subdivision, a distance of 632.08 feet, more or less, to a point on the North right of way for South Broadway; thence S 89°40'40" W along the said North right of way, being a line 20.00 feet North of and parallel to, the South line of the SE 1/4 NW 1/4 of said Section 22, a distance of 298.67 feet, more or less, to the Point of Beginning.

CONTAINS 25.103 Acres (1,093,505 Sq. Ft.) more or less, as described.

Introduced on first reading this 17<sup>th</sup> day of December, 2003 and ordered published.

Adopted on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**Attach 7**  
**Lease Extension Saccomanno Property**  
**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA							
<b>Subject</b>		Farm Lease of the Saccomanno Park Property to Robert H. Murphy					
<b>Meeting Date</b>		January 7, 2004					
<b>Date Prepared</b>		December 30, 2003			<b>File #</b>		
<b>Author</b>		Tim Woodmansee		<b>Real Estate Manager</b>			
<b>Presenter Name</b>		Joe Stevens		<b>Director of Parks &amp; Recreation</b>			
<b>Report results back to Council</b>		X	No		Yes	<b>When</b>	
<b>Citizen Presentation</b>			Yes	X	No	<b>Name</b>	
	<b>Workshop</b>	X		<b>Formal Agenda</b>	X	<b>Consent</b>	<b>Individual Consideration</b>

**Summary:** A resolution authorizing a one-year farm lease of the City's Saccomanno Park property, located at the southwest corner of 26 ½ Road and H Road, except the south 5-acres.

**Budget:** Annual revenue to the General Fund: \$1,000.

**Action Requested/Recommendation:** Adopt resolution authorizing a one-year lease of the Saccomanno Park property, except the south 5-acres, to Robert H. Murphy.

**Attachments:** 1) Vicinity Map; 2) Proposed Resolution, which includes lease.

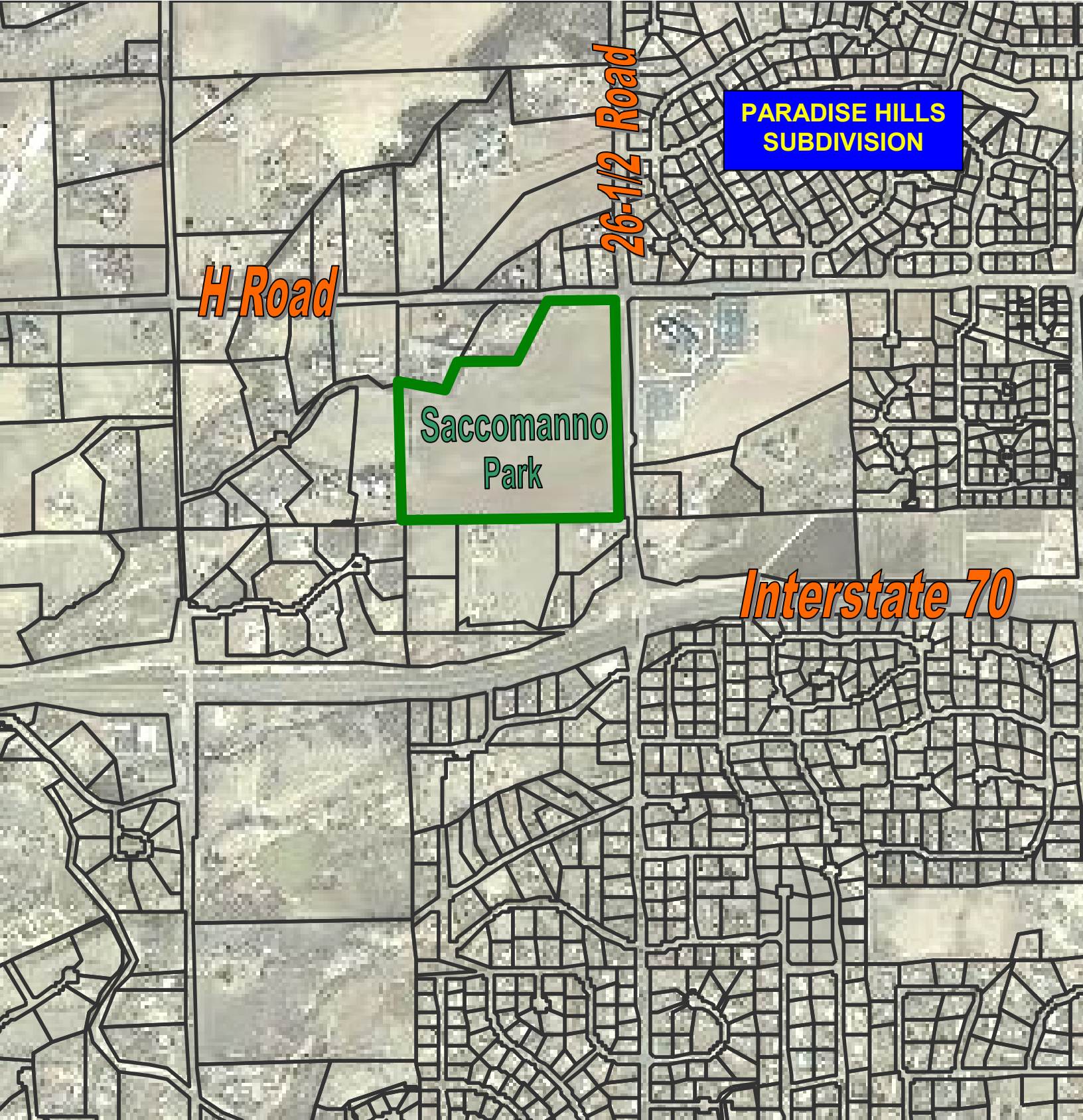
**Background Information:** The City purchased the 30 acre Saccomanno Park property in 1994 as a community park site in accordance with the recommendation of the Parks, Recreation and Open Space Master Plan adopted by City Resolution No. 91-92.

Timing for development of the property is undetermined pending identification of funding sources. Meanwhile, the property and its appurtenant water rights have remained productive through successive farm lease agreements with Robert H. Murphy. Mr. Murphy has provided a commendable level of stewardship for the property.

For the 2004 lease, the Parks and Recreation Department will reserve the south 5-acres to grow and harvest pumpkins in conjunction with its annual recreation program. The terms of the proposed lease are "triple-net", requiring Mr. Murphy to provide all

materials, equipment and labor necessary to care for the property. Recommended rent for the 2004 farming season is \$1,000.

**SACCOMANNO PARK  
VICINITY MAP**



**RESOLUTION NO.**

**A RESOLUTION AUTHORIZING A ONE-YEAR FARM LEASE OF THE  
"SACCOMANNO PARK PROPERTY"  
TO ROBERT H. MURPHY**

**Recitals.**

The City of Grand Junction is the owner of that certain real property legally described as: Lot 4 of the Replat of Lot 2, Saccomanno Minor Subdivision, situate in the NE ¼ NW ¼ of Section 35, Township 1 North, Range 1 West of the Ute Meridian, Mesa County, Colorado, as recorded in Plat Book 13 at Page 449 in the office of the Mesa County Clerk and Recorder, commonly known as the Saccomanno Park Property.

The City purchased the Saccomanno Park Property in 1994 as a community park site. While development of the Saccomanno Park Property as a community park is pending, the property and its appurtenant water rights have remained productive through successive farm lease agreements with Robert H. Murphy.

The City Council deems it appropriate to lease the farming rights associated with the Saccomanno Park Property to Robert H. Murphy, except the south five (5) acres thereof which is being reserved from the Lease for use by the City, for a period of one-year, commencing on January 1, 2004, and expiring on December 31, 2004.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

That the City Manager, on behalf of the City and as the act of the City, is hereby authorized to execute and enter into the attached Farm Lease Agreement with Robert H. Murphy.

PASSED and ADOPTED this \_\_\_\_\_ day of January, 2004.

\_\_\_\_\_  
Attest:

\_\_\_\_\_  
President of the Council

\_\_\_\_\_  
City Clerk

## FARM LEASE AGREEMENT

THIS FARM LEASE AGREEMENT is entered into as of the 1<sup>st</sup> day of January, 2004, by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Robert H. Murphy, hereinafter referred to as "Lessee", whose address for the purpose of this Agreement is 778 26 ½ Road, Grand Junction, Colorado 81506-8351.

### RECITALS

A. The City is the owner of that certain real property in the City of Grand Junction, County of Mesa, State of Colorado, described as Lot 4 of the Replat of Lot 2 of Saccomanno Minor Subdivision, situated at the southwest corner of the intersection of 26½ Road and H Road and hereinafter referred to as "the Property". The City acquired the property for park purposes and intends to develop the Property as a community park; however, timing for development and use of the Property as a community park is uncertain. Until the Property is developed as a community park, the City believes it is in the best interest of the community that the Property continue to be maintained as a productive farm, that the water rights and ditch rights appurtenant to the Property be used to their full and maximum extent, that all aspects of the Property be maintained to the highest practicable standard, and that expenses be kept to a minimum without waste.

B. Lessee desires to lease the farming rights associated with the Property, except the south five (5) acres thereof, in accordance with the desires and express intent of the City. Lessee has represented to the City that Lessee possesses the knowledge, experience, equipment, personnel and financial resources to maintain the Property to the highest practicable standard and to use the water and water rights and ditches and ditch rights to their full and maximum extent, all in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, In consideration of the payment of rent and the performance of the promises, covenants, conditions, restrictions, duties and obligations set forth herein, the parties agree as follows:

1. Grant and Acceptance of Lease. The City hereby leases the farming rights associated with the Property to Lessee, reserving however the south five (5) acres of the Property unto the City, and Lessee hereby accepts and leases the farming rights associated with the Property from the City, for the term stated in paragraph 2 below and for the specific purposes and duties of maintaining all aspects of the Property, including water and water rights and ditches and ditch rights, all in accordance with the terms and conditions of this Agreement.

2. Term. The term of this Lease shall commence on January 1, 2004, and continue through December 31, 2004, at which time this lease shall expire; provided, however, that

the City may, in its sole discretion, allow Lessee to continue to occupy a designated portion of the Property for a reasonable period of time for the sole purpose of storing crops which have been harvested from the Property pending the sale and/or delivery of said crops to market.

3. Rental. Rental for the farming rights hereby leased during the term hereinabove specified shall be \$1,000.00, which amount shall be due and payable, without demand by the City, on or before January 31, 2004. In the event payment of rent is not received by the City on or before January 31, 2004, Lessee agrees to pay to the City a late charge of \$100.00, which amount shall be added to the amount of rent(s) due. In the event payment of rent and any late charge is not received by the City on or before February 15, 2004, this lease shall automatically terminate and neither party shall have any further rights, duties or obligations under this Agreement.

4. Reservations from Lease. The City withholds from this Lease and hereby retains and reserves unto itself: (a) the south five (5) acres of the Property; (b) all oil, gas, coal and other minerals and mineral rights underlying and/or appurtenant to the Property; (c) all water and water rights, ditches and ditch rights appurtenant to and/or connected with the Property, including, but not limited to, any water and/or water rights which may have been previously used on or in connection with the Property, for whatever purpose; (d) all rights to grant, sell, bargain and convey ownership interest(s) in and to the Property, or any division thereof, to any other party, including the conveyance of easements, so long as such action will not interfere with Lessee's use and quiet enjoyment of the Property for the purposes set forth in this Agreement; and (e) the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, in whole or in part, even if such taking is made by and/or for the purposes of the City, or for any conveyance in lieu of condemnation. Lessee hereby assigns and transfers to the City any claim Lessee may assert to compensation, including claims for damages, as a result of any condemnation.

5. Use and Condition of the Property.

5.1 Lessee agrees that Lessee's use the Property is strictly limited to the growing and cultivating the type(s) of crop(s) which are mutually agreed upon between the City and Lessee and for no other purposes. In connection therewith, Lessee agrees to thoroughly plow, irrigate, cultivate, fertilize and farm all farmable lands upon the Property in a responsible and prudent farm-like manner. This Lease does not authorize Lessee to permit stock of any kind to run in any field on the Property. Lessee additionally agrees to crease the south five (5) acres of the Property and to irrigate said south five (5) acres in a manner that will assist the City in accomplishing the growing and harvesting of pumpkins.

5.2 Lessee agrees that Lessee's use and occupancy of the Property shall be subject to all applicable laws, rules, rulings, codes, regulations and ordinances of any governmental authority, either now in effect or hereafter enacted, having jurisdiction over

the Property and Lessee's use, occupancy and operations thereon. Lessee agrees that Lessee shall not use nor permit the Property to be used for any other purpose or in any other fashion or manner contrary to this Lease or the laws, ordinances, codes or regulations of any governmental unit or agency exercising jurisdiction over the Property or any use thereon.

5.3 Lessee agrees to maintain, clean and repair all aspects of the Property at Lessee's sole cost and expense, including, but not limited to driveways, fences, gates, ditches, headgates, piping and other irrigation facilities located upon the Property, and to not allow irrigation water to overrun any furrows or otherwise cause damage to the Property or to the real or personal property of any other party. Lessee agrees that the City shall not be obligated nor required to repair damages to any portion or aspect of the Property.

5.4 Lessee agrees to make a reasonable effort to keep the Property free from noxious weeds. Lessee further agrees that Lessee shall not commit nor permit waste, damage or injury to the Property.

5.5 Lessee has inspected the Property, the rights and privileges appurtenant thereto, and the rules, regulations, codes and ordinances governing Lessee's use, occupancy and operations thereon. Lessee agrees that the condition of the Property and such rights, privileges, rules, regulations, codes and ordinances are sufficient for the purposes of Lessee. The City makes no warranties, promises or representations, express or implied, that the Property is sufficient for the purposes of Lessee. If the Property is damaged due to fire, flood or other casualty, or if the Property or any aspect thereto is damaged or deteriorates to the extent where it is not longer functional for the purposes of Lessee, the City shall have no obligation to repair the Property nor to otherwise make the Property usable or occupiable; damages shall be at Lessee's own risk.

6. Irrigation of the Property. Irrigation of the Property is an essential duty and obligation to be undertaken by Lessee on behalf of the City. Irrigation of the Property shall be undertaken in accordance with the following provisions:

6.1 The City agrees to pay the base water assessments, when the same become due and payable, which are levied by authorities having jurisdiction and control over the irrigation water appropriated to the Property.

6.2 Lessee agrees to pay for all costs and fees, when the same become due and payable, which are charged for water usage in excess of the base amounts set forth in subparagraph 6.1 above.

6.3 Lessee shall apply the base water and such additional water as is necessary to the Property to irrigate crops during the historical irrigating season. Any failure by Lessee to irrigate the Property as set forth above, or any of the following acts



or omissions on the part of Lessee with respect to the water rights appurtenant to the Property, shall be grounds for immediate termination of this Lease:

- a. failure or refusal to cultivate the Property and/or make use of available water upon the Property without the prior written consent of the City; or
- b. failure to maintain and preserve the irrigation structures, ditches, pipes and other irrigation facilities and appurtenances on the Property in such a manner as to allow the full application of water rights to the Property.

7. Fees and Charges. Lessee shall hold the City harmless from and indemnify the City against any and all fees, charges, costs and expenses associated with the Property, excepting the base water assessment which the City shall pay as set forth in paragraph 6.1. If Lessee shall fail to pay any of the foregoing when the same become due and payable, the City may, without obligation to do so, pay such amount(s) and , in such event, the amount(s) paid by the City, plus interest at the rate of fifteen percent (15%) per annum from the date of such payment by the City, shall be due and payable from Lessee to the City.

8. Nonliability of the City for Damage.

8.1 The City shall not be liable for liability or damage claims for injury to persons or property, including property of Lessee, from any cause relating to the occupancy and use of the Property by Lessee, including those arising out of damages or losses occurring on areas adjacent to the Property or easements used for the benefit of the Property during the term of this Lease or any extension thereof, nor for any injury or damage to any property of Lessee or any other party, from any cause. Lessee shall indemnify the City, its officers, employees and agents, and hold the City, its officers, employees and agents, harmless from all liability, loss or other damage claims or obligations resulting from any injuries, including death, or losses of any nature.

8.2 The City shall not be liable to Lessee for any damages or any loss of profits or loss of opportunities claimed by Lessee or for interruption of Lessee's business or operations resulting from fire, the elements, casualty of any kind or the closure of any public highway providing access to and from the Property.

9. Hazardous Substances.

9.1 The term "Hazardous Substances", as used in this Agreement, shall mean any substance which is: defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law enacted by any federal, state and local governmental agency or other governmental authority; a petroleum hydrocarbon, including, but not limited to, crude oil or any fraction thereof; hazardous, toxic or reproductive toxicant; regulated pursuant to any law; any pesticide or

herbicide regulated under state or federal law. The term “Environmental Law”, as used in this Lease Agreement, shall mean each and every federal, state and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal state and local governmental agency or other governmental authority, pertaining to the protection of human health and safety of the environment, either now in force or hereafter enacted.

9.2 Lessee shall not cause or permit to occur by Lessee and/or Lessee’s agents, guests, invitees, contractors, licensees or employees:

- a. any violation of any Environmental Law on, under or about the Property or arising from Lessee’s use and occupancy of the Property, including, but not limited to, air, soil and groundwater conditions; or
- b. the use, generation, accidental or uncontrolled release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance in violation of any federal state or local law, ordinance or regulation either now in force or hereafter enacted.

10. Environmental Clean-Up.

10.1 The following provisions shall be applicable to Lessee and to Lessee’s agents, guests, invitees, contractors, licensees and employees:

- a. Lessee shall, at Lessee’s sole cost and expense, comply with all Environmental Laws and laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances;
- b. Lessee shall, at Lessee’s sole cost and expense, make all submissions to provide all information required by and/or to comply with all requirements of all governmental authorities (“the Authorities”) under Environmental Laws and other applicable laws.
- c. Should any Authority or the City demand that a clean-up plan be prepared and that a clean-up plan be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances on, under or about the Property, Lessee shall, at Lessee’s sole cost and expense, prepare and submit the required plan(s) and all related bonds and other financial assurances, and Lessee shall carry out all such clean-up plan(s) in compliance with the Authorities and all Environmental Laws and other applicable laws.

- d. Lessee shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances requested by any Authority. If Lessee fails to fulfill any duty imposed hereunder within a reasonable time, the City may do so on Lessee's behalf and, in such case, Lessee shall cooperate with the City in the preparation of all documents the City or any Authority deems necessary or appropriate to determine the applicability of Environmental Laws to the Property and Lessee's use thereof, and for compliance therewith, and Lessee shall execute all documents promptly upon the City's request. No such action by the City and no attempt made by the City to mitigate damages under any Environmental Law or other applicable law shall constitute a waiver of any of Lessee's obligations hereunder.
- e. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

10.2 Lessee shall indemnify, defend and hold the City, its officers, employees and agents harmless from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Substances and the violation of any Environmental Law and other applicable law by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees and employees that occur during the term of this Lease or any extension thereof, or from Lessee's failure to provide all information, make all submissions, and take all actions required by all Authorities under the Environmental Laws and other applicable laws. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

#### 11. Default, Sublet, Termination, Assignment.

11.1 Should Lessee: (a) default in the performance of its agreements or obligations herein and any such default continue for a period of thirty (30) days after written notice thereof is given by the City to Lessee; or (b) abandon or vacate the Property; or (c) be declared bankrupt, insolvent, make an assignment for the benefit of creditors, or if a receiver is appointed; the City, at the City's option, may cancel and annul this Lease at once and enter and take possession of the Property immediately without any previous notice of intention to reenter, and such reentry shall not operate as a waiver or satisfaction in whole or in part of any claim or demand arising out of or connected with any breach or violation by Lessee of any covenant or agreement to be performed by Lessee. Upon reentry, the City may remove the property and personnel of Lessee and store Lessee's property in a warehouse or at a place selected by the City, at the expense of Lessee and without liability to the City. Any such reentry shall not work a forfeiture of nor shall it terminate the rent(s) to be paid or the covenants and agreements to be

performed by Lessee for the full term of this Lease; and, upon such reentry, the City may thereafter lease or sublease the Property for such rent as the City may reasonably obtain, crediting Lessee with the rent so obtained after deducting the cost reasonably incurred in such reentry, leasing or subleasing, including the costs of necessary repairs, alterations and modifications to the Property. Nothing herein shall prejudice or be to the exclusion of any other rights or remedies which the City may have against Lessee, including, but not limited to, the right of the City to obtain injunctive relief based on the irreparable harm caused to the City's reversionary rights.

11.2 Except as otherwise provided for (automatic and immediate termination), if Lessee is in default in the performance of any term or condition of this Lease Agreement, the City may, at its option, terminate this Lease upon giving thirty (30) days written notice. If Lessee fails within any such thirty (30) day period to remedy each and every default specified in the City's notice, this Lease shall terminate. If Lessee remedies such default, Lessee shall not thereafter have the right of thirty (30) days (to remedy) with respect to a similar subsequent default, but rather, Lessee's rights shall, with respect to a subsequent similar default, terminate upon the giving of notice by the City.

11.3 Lessee shall not assign or sublease the Property, or any right or privilege connected therewith, or allow any other person, except officers, employees, agents and clientele of Lessee, to occupy the Property or any part thereof without first obtaining the written consent of the City, which consent must be approved and ratified by the City Council of the City. Any attempt to sublet, assign or transfer without the prior written consent of the City shall be void *ab initio*. In the event an assignment of this Lease or a sublease is authorized by the City, Lessee shall not be released from Lessee's obligations and duties under this Lease and this Lease shall remain in full force and effect. Any consent by the City shall not be a consent to a subsequent assignment, sublease or occupation by any other party. Any unauthorized assignment, sublease or permission to occupy by Lessee shall be void and shall, at the option of the City, provide reasonable cause for the City to terminate this Lease. The interest of Lessee in this Lease is not to be assignable by operation of law without the formal approval and ratification by the City Council of the City.

11.4 This Lease is not intended to and shall in no way preclude the City from actively marketing the Property for sale or exchange, whether through the efforts of the City, a real estate broker or any other person, nor shall this Lease prevent the City from selling, exchanging or conveying the Property to any other party; provided, however, that in the event any such sale, exchange or conveyance is made during the term of this Lease, such sale, exchange or conveyance shall be made subject to Lessee's leasehold interest in the Property. In the event of the voluntary or involuntary transfer of the City's interest in the Property, Lessee will attorn to the transferee of, or successor to, the City's interest in the Property, and recognize such transferee or successor as Lessor under this Lease.

11.5 Lessee shall not engage or allow any contractor, materialman or supplier to perform any work or supply any materials or other goods or services on any portion of the Property which could be the subject of a mechanic's lien.

12. Fees or Commissions. The parties to this Lease Agreement warrant that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. The City and Lessee agree to defend, indemnify and hold the other harmless from any claim for real estate brokerage commissions or finder's fees asserted by any other party claiming to be entitled to brokerage commissions or finder's fees arising out of this Lease.

13. Notices. All notices to be given with respect to this Lease shall be in writing delivered either by United States mail or Express mail, postage prepaid, or by facsimile transmission, personally by hand or courier service, as follows:

To the City:

City of Grand Junction  
Parks & Recreation Director  
1340 Gunnison Avenue  
Grand Junction, CO 81501

With Copy to:

City of Grand Junction  
Real Estate Manager  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

To Lessee:

Robert H. Murphy  
778 26 ½ Road  
Grand Junction, CO 81506-8351

All notices shall be deemed given: (a) if sent by mail, when deposited in the mail; (b) if delivered by hand or courier service, when delivered; or (c) if transmitted by facsimile, when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

14. Not a Partnership.

14.1 The City, by entering into this Lease Agreement, does not part with its entire possession of the Property, but only so far as it is necessary to enable Lessee to farm the Property and carry out the terms and provisions of this Lease. It is expressly agreed between the parties that this Agreement is one of lease and not of partnership and that the City shall not be or become responsible for any debts contracted or incurred by Lessee. Lessee shall save, indemnify and hold the City, its officers, employees and agents harmless against all liability and loss, and against all claims or actions based upon or arising out of any claim, lien, damage or injury (including death), to persons or property

caused by Lessee or sustained in connection with Lessee's performance of the terms and conditions of this Agreement or the conditions created thereby, or based upon any violation of any statute, ordinance, code or regulation, either now in force or hereinafter enacted, and the defense of any such claims or actions, including the costs and fees of attorneys, consultants and experts. Lessee shall also save, indemnify and hold the City, its officers, employees and agents harmless from and against all liability and loss in connection with, and shall assume full responsibility for the payment of, all federal, state and local taxes, fees or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to employees engaged by Lessee.

14.2 The City hereby reserves the right to at all times have its officers, employees and agents enter into and upon the demised premises and every part thereof and to do such acts and things as may be deemed necessary for protection of the City's interests therein.

15. Enforcement, Partial Invalidity, Governing Law.

15.1 If the City uses the services of a city attorney, or engages another attorney or attorneys to enforce its rights hereunder, or to terminate this Agreement, or to defend a claim by Lessee or any person claiming through Lessee, and/or to remove Lessee or Lessee's personal property from the Property, Lessee agrees to pay the reasonable attorney's fees of the City in such regard, plus the costs or fees of any experts, incurred in such action.

15.2 The invalidity of any portion of this Lease Agreement shall not affect the validity of any other provision contained herein. In the event any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provisions.

15.3 This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce any covenant or agreement contained in this Agreement shall be in Mesa County, Colorado.

16. Surrender, Holding Over. Lessee shall, upon the expiration or termination of this Lease, surrender the Property to the City in good order, condition and state of repair, reasonable wear and use excepted. In the event Lessee fails, for whatever reason, to vacate and surrender the Property upon the expiration or termination of this Lease and the parties have not reached an agreement which would allow Lessee to continue to occupy any portion of the Property, Lessee agrees that Lessee shall pay to the City the sum of \$25.00 per day for each and every day thereafter until Lessee has effectively

vacated and surrendered the Property. The parties agree that it would be difficult to establish the actual damages to the City in the event Lessee fails to vacate and surrender the Property upon the expiration or termination of this Lease, and that said \$25.00 daily fee is an appropriate liquidated damages amount.

17. Total Agreement; Applicable to Successors. This Lease contains the entire agreement between the parties and, except for automatic expiration or termination, cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. This Lease and the terms and conditions hereof apply to and are binding upon the successors and authorized assigns of both parties.

The parties hereto have each executed and entered into this Lease Agreement as of the day and year first above written.

Attest:

The City of Grand Junction,  
a Colorado home rule municipality

\_\_\_\_\_

\_\_\_\_\_

City Clerk

City Manager

Lessee:

\_\_\_\_\_

\_\_\_\_\_

Robert H. Murphy

**Attach 8**  
**Lease Two Dry Grazing Areas Located South of Whitewater**  
**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA							
<b>Subject</b>		Lease Extension of Two Dry Grazing Areas Located South of Whitewater					
<b>Meeting Date</b>		January 7, 2004					
<b>Date Prepared</b>		December 30, 2003			<b>File #</b>		
<b>Author</b>		Tim Woodmansee			<b>Real Estate Manager</b>		
<b>Presenter Name</b>		Mark Relph			<b>Public Works &amp; Utilities Director</b>		
<b>Report results back to Council</b>		X	No		Yes	<b>When</b>	
<b>Citizen Presentation</b>			Yes	X	No	<b>Name</b>	
	<b>Workshop</b>	X		<b>Formal Agenda</b>	X	<b>Consent</b>	<b>Individual Consideration</b>

**Summary:** Two proposed Resolutions will extend the terms of these two existing Dry Grazing Leases located south of Whitewater for William Arthur Mertz and Sally Marie Smith.

**Budget:** Annual revenue to the General Fund: \$870.

**Action Requested/Recommendation:** (a) Adopt Resolution authorizing a one-year dry grazing lease with William Arthur Mertz, and (b) Adopt Resolution authorizing a one-year dry grazing lease with Sally Marie Smith.

**Attachments:** 1) Vicinity Map; 2) Mertz Resolution, which includes Proposed Lease Agreement; 3) Smith Resolution, which includes Proposed Lease Agreement.

**Background Information:** The City owns 471 acres south of Whitewater and west of Highway 50. The City purchased the property in 1954 from C.V. Hallenbeck for the appurtenant water rights. The Hallenbeck purchase included several hundred acres ranging from semi-arid properties near Whitewater to irrigated sub-alpine lands in the Kannah Creek, Purdy Mesa and Grand Mesa areas. All water rights acquired from Hallenbeck were promptly converted to allow dual use for either agricultural or municipal purposes.

The City presently leases 431 acres for dry grazing purposes: 240 acres to William Mertz and 191 acres to Sally Smith. These leases expire on December 31, 2003. The remaining 40 acres are leased to KNZZ Radio through December 31, 2017.



The City Council discussed the future management of these lands at a workshop in 1997. The discussion was prompted by the installation of a Clifton water line, potential developments as a result of the water line and KNZZ Radio's proposal to purchase the land it leases from the City.

Previous Councils had chosen to retain ownership of these lands to allow the City to participate in future actions which may affect their use and value. The Council's determination in 1997 was to continue to retain ownership and maintain the properties as a buffer of open space with the adjoining BLM lands. Council also concluded that these landholdings will allow the City to participate in growth related issues in this area.

Part of the standards and guidelines for these dry grazing leases are based on BLM guidelines and regulations for livestock grazing administration. The BLM Colorado Standards and Guidelines were approved by the Secretary of Interior on February 3, 1997, following the preparation of an environmental impact statement and extensive public involvement. The adopted standards describe conditions needed to sustain public land health and are applied on a landscape scale relating to the potential of ecosystems which are unique to each area.

The City's properties are in much better condition than the adjoining public and private lands, providing evidence that both William Mertz and Sally Smith have utilized best management practices to maintain and improve the health of these lands:

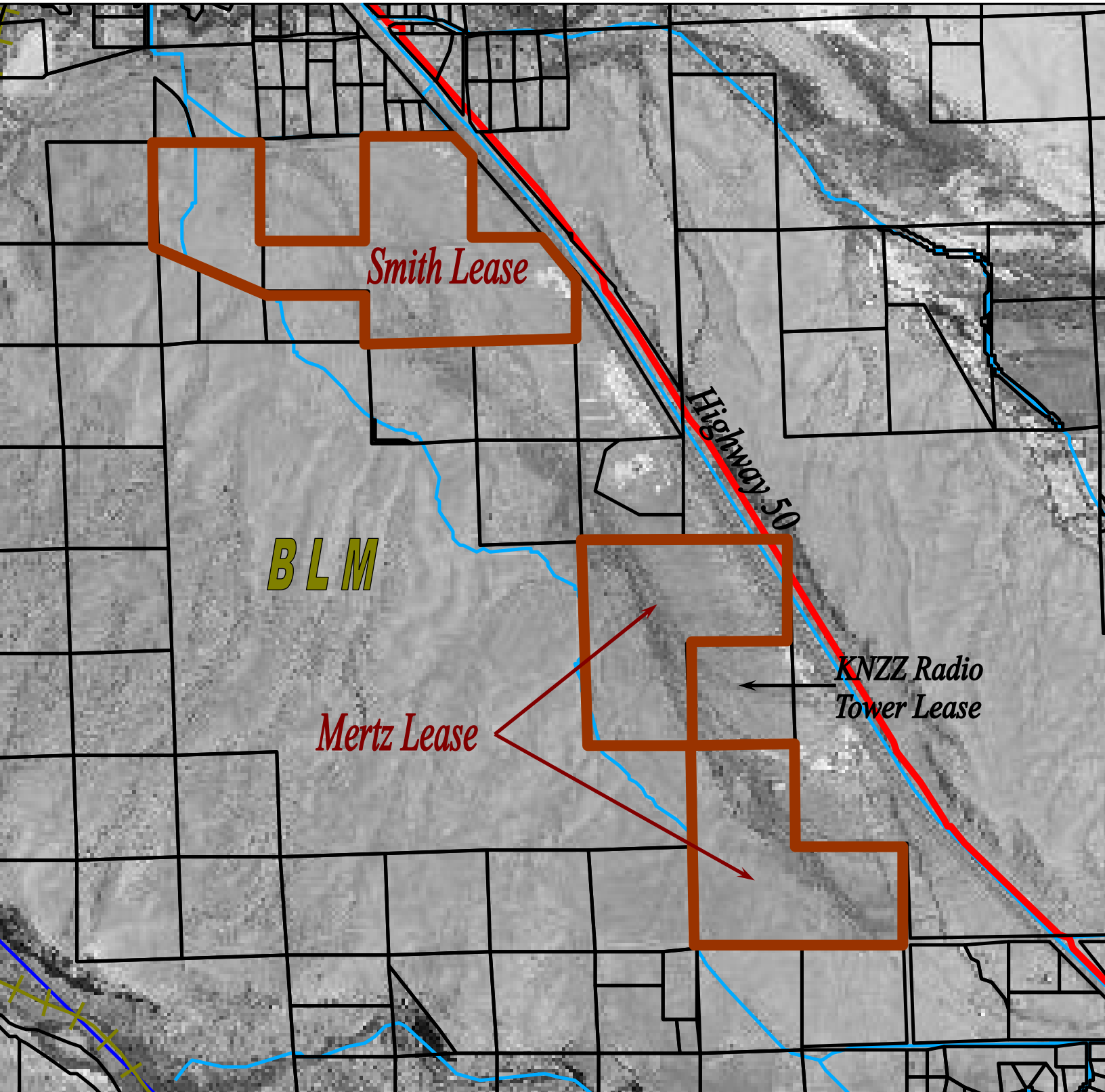
- All fences are intact and stock proof;
- Noxious weeds are virtually non-existent;
- Native plants are abundant and signs of natural revegetation are evident.

The proposed dry grazing leases will be for a period of one-year with options to extend the leases for an additional one-year term. Rental fees are based on the carrying capacity of the properties for livestock dry grazing purposes. The Mertz lease is limited to 18 Animal Units per Month (AUM's) at a rate of \$2.19 per AUM and the Smith lease is limited to 15 AUM's at a rate of \$2.19 per AUM. An AUM is one cow with calf over a one month period. By comparison, the BLM charges \$1.25 per AUM on the adjoining BLM grazing allotments.

In addition to paying rent, both lessees are required to pay the general property taxes, all operational expenses and liability insurance.

# WHITEWATER DRY-GRAZING LEASES

## Vicinity Map



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING A DRY GRAZING LEASE  
OF CITY PROPERTY TO WILLIAM ARTHUR MERTZ**

**Recitals.**

The City of Grand Junction is the owner of the following described real property situated in the County of Mesa, State of Colorado, to wit:

The SE ¼ of the NE ¼ and the NE ¼ of the SE ¼ of Section 25, Township 2 South, Range 1 East of the Ute Meridian, AND ALSO Lots 2 and 4 in Section 30, Township 2 South, Range 2 East of the Ute Meridian, subject to a 25-foot wide nonexclusive easement for ingress and egress purposes across Lot 2 in said Section 30, the center line of said easement being more particular described as follows: Beginning at a point on the South line of said Lot 2 from whence the Southeast corner of said Lot 2 bears East a distance of 180.0 feet; thence running Northeasterly to a point on the East line of said Lot 2 from whence the Southeast corner of said Lot 2 bears South a distance of 260.0 feet, said point being the Point of Terminus of said Easement, excepting therefrom right-of-way for U.S. Highway No. 50.

The City Council deems it appropriate to lease the dry grazing rights associated with the above described property to William Arthur Mertz for a period of one (1) year, commencing on January 1, 2004, and expiring on December 31, 2004.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

That the City Manager be authorized, on behalf of the City and as the act of the City, to execute the attached Dry Grazing Lease Agreement with William Arthur Mertz for a term of one-year, commencing on January 1, 2004 and expiring on December 31, 2004; provided, however, that in the event Mr. Mertz performs all of the required duties and obligations pursuant to the attached Agreement to the satisfaction of the City and if the City chooses, at its sole option and discretion, to again lease the dry grazing rights associated with the Property at the expiration of said one-year term, the City may extend the term of the lease with Mr. Mertz for one (1) additional one-year period, subject to each and every term contained in the attached Dry Grazing Lease Agreement.

PASSED and ADOPTED this \_\_\_\_\_ day of January, 2004.

Attest:

\_\_\_\_\_  
President of the Council

\_\_\_\_\_  
City Clerk

## DRY GRAZING LEASE AGREEMENT

This Dry Grazing Lease Agreement is made and entered into as of the 1<sup>st</sup> day of January, 2004, by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and William Arthur Mertz, hereinafter referred to as "Lessee".

### Recitals.

- A. The City is the owner of certain real property in the County of Mesa, State of Colorado, as described on **Exhibit "A"** attached hereto and incorporated herein by reference, hereinafter referred to as "the Property".
- B. Lessee desires to lease from the City the dry grazing rights associated with the Property under the terms and conditions of this Dry Grazing Lease Agreement.
- C. The City has agreed to lease the dry grazing rights associated with the Property to Lessee under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the recitals above and the terms, covenants and conditions contained herein, the parties hereto agree as follows:

1. Grant and Acceptance of Lease. The City hereby leases the dry grazing rights associated with the Property to Lessee, and Lessee hereby accepts and leases the dry grazing rights associated with the Property from the City, for the term stated in paragraph 2 below and for the specific purposes and duties of maintaining all aspects of the Property in accordance with the terms and conditions of this Agreement.
2. Term. The term of this Lease shall commence on January 1, 2004, and shall continue through December 31, 2004, at which time this Lease shall expire; provided, however, that in the event Lessee shall fully and complete fulfill each and every covenant, condition, duty and obligation of Lessee as hereinafter set forth and in the event the City determines, at the City's sole discretion, to again lease the Property in accordance with the provisions of this Lease, Lessee shall have the first right of refusal to lease the dry grazing rights to the Property for the term commencing on January 1, 2005, and expiring on December 31, 2005, as more fully set forth in paragraph 12 below.
3. Reservations from Lease. The City reserves from this Lease and retains unto itself:
  - a. all oil, gas coal and other minerals and mineral rights underlying and/or appurtenant to the Property;

- b. all hunting rights concerning the Property;
- c. all rights to grant, sell, bargain, convey and dedicate any ownership interest(s) in and to the Property, or any division thereof, to any other party, including the conveyance of easements, so long as such action will not interfere with Lessee's use and quiet enjoyment of the Property for the purposes set forth in this Agreement;
- d. the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, in whole or in part, even if such taking is made by and/or for the purposes of the City, or for the conveyance in lieu of condemnation. Lessee hereby assigns and transfers to the City any claim Lessee may have to compensation, including claims for damages, as a result of any condemnation; and
- e. all water and water rights, ditches and ditch rights which are or may have been appurtenant to and/or connected with the Property.

4. Rent.

4.1 Lessee agrees to pay to the City as annual rent for the dry grazing rights associated with the Property, in addition to any and all other sums and expenses which Lessee shall be required to pay to fulfill Lessee's duties and obligations hereunder, the sum of \$475.00. All rental payments paid by Lessee to the City shall be delivered either by mail or personal deliver to:

City of Grand Junction Finance Department  
Accounts Receivable  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501-2668

All rental payments deposited by Lessee shall be clearly marked "City Property Dry Grazing Lease Payment".

4.2 In the event Lessee fails to pay the specified rental payment on or before January 15, 2004, the lease of the dry grazing rights associated with the Property to Lessee shall automatically terminate and Lessee shall not have any further rights under this Agreement.

5. Lessee's Use and Occupancy of the Property. Lessee's use and occupancy of the Property shall be specifically limited to livestock dry grazing purposes and for no other purposes whatsoever. The amount(s) of livestock allowed on the Property shall not at any time exceed eighteen (18) Animal Units per Month ("AUM"). For the purposes

of this Agreement, an AUM is one cow with calf over a one month period. Lessee shall not use or occupy the Property nor allow any other person to use or occupy the Property for any purpose prohibited by this Agreement or by the applicable laws of the United States of America, the State of Colorado, the County of Mesa or any other governmental authority or any jurisdiction having authority over uses and activities conducted upon the Property.

6. Specific Duties and Obligations of Lessee. As consideration for the lease of the dry grazing rights associated with the Property, Lessee shall, at no cost or expense to the City:

6.1 Install, maintain and repair all fences and gates in a manner that will contain livestock. Lessee may install locks on all gates, provided, however, that Lessee shall provide the City with lock combinations and/or copies of keys to all locks installed by Lessee;

6.2 Maintain all aspects of the Property and keep the Property in a clean, safe and healthy condition and in compliance with all applicable codes, ordinances, regulations, rules and orders.

6.3 Timely pay any and all real estate, use and possessory taxes which may be levied upon and against the Property and any taxes or assessments levied against the livestock and other personal property of Lessee or any other leasehold interest acquired by Lessee under this Agreement.

6.4 Forever waive and forego any claim, cause of action or demand Lessee may have against the City, its officers, employees, agents and assets for injury to or destruction of any property of Lessee or any other party that may be lost, injured, destroyed or devalued as a result of the act, or failure to act, of Lessee or any other person; and to indemnify, defend and hold the City and the City's officers, employees, agents and assets harmless from any and all fines, suits, procedures, claims, damages, actions, costs and expenses of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) in any manner arising out of or resulting from Lessee's use, occupancy, maintenance and improvement of the Property.

6.5 Not violate nor permit to be violated any code, rule, regulation or order pertaining to the use, application, transportation and storage of any hazardous, toxic or regulated substance or material, including, but not limited to, herbicides, pesticides and petroleum products. Lessee agrees that any spill, excessive accumulation or violation of any code, rule, regulation or order pertaining to the use, application, transportation and storage of any such material or substance shall be reported immediately to the City. Lessee further agrees that all costs and responsibilities for cleaning, removing and abating any violation pursuant to this paragraph shall be borne solely by Lessee.

6.6 Purchase and at all times during the term of this lease maintain in effect suitable comprehensive general liability and hazard insurance which will protect the City and the City's officers, employees, agents and assets from liability in the event of loss of life, personal injury or property damage suffered by any person or persons on, about or using the Property, including Lessee. Such insurance policy(ies) shall have terms and amounts approved by the City's Risk Manager. Such insurance shall not be cancelable without thirty (30) days prior written notice to the City and shall be written for at least a minimum of Five Hundred Thousand Dollars (\$500,000.00), combined single limit. The certificate of insurance must be deposited with the City and must designate "The City of Grand Junction, its officers, employees, agents and assets" as additional insureds. If a policy approved by the City's Risk Manager is not at all times in full force and effect during the term of this Lease, this Lease shall automatically terminate.

6.7 Care for Lessee's livestock in the highest standard of care and in a manner that will not over-graze the Property or otherwise cause deterioration or destruction to the Property. Lessee shall comply with all applicable regulations of the United States Department of Agriculture, Livestock laws and regulations of the State of Colorado, and any and all federal, state and county laws, ordinances and regulations which are applicable to the area in which the Property is located.

7. Use of Chemicals on the Property. Lessee shall not apply any chemicals on the Property, including, but not limited to, fertilizers, herbicides and pesticides, without the prior written consent of the City. Lessee shall at all times keep the City advised of chemicals used and/or stored on the Property, and shall further comply with all applicable rules, laws, regulations and orders, either now in force or hereinafter enacted, regulating the storage, use, application, transportation and disposal of any such chemicals.

8. Hazardous Substances.

8.1 The term "Hazardous Substances", as used in this Agreement, shall mean any substance which is: defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law enacted by any federal, state and local governmental agency or other governmental authority; a petroleum hydrocarbon, including, but not limited to, crude oil or any fraction thereof; hazardous, toxic or reproductive toxicant; regulated pursuant to any law; any pesticide or herbicide regulated under state or federal law. The term "Environmental Law", as used in this Lease Agreement, shall mean each and every federal, state and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal state and local governmental agency or other governmental authority, pertaining to the protection of human health and safety of the environment, either now in force or hereafter enacted.



8.2 Lessee shall not cause or permit to occur by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees or employees:

a. any violation of any Environmental Law on, under or about the Property or arising from Lessee's use and occupancy of the Property, including, but not limited to, air, soil and groundwater conditions; or

b. the use, generation, accidental or uncontrolled release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance in violation of any federal state or local law, ordinance or regulation either now in force or hereafter enacted.

9. Environmental Clean-Up.

9.1 The following provisions shall be applicable to Lessee and to Lessee's agents, guests, invitees, contractors, licensees and employees:

a. Lessee shall, at Lessee's sole cost and expense, comply with all Environmental Laws and laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances;

b. Lessee shall, at Lessee's sole cost and expense, make all submissions to provide all information required by and/or to comply with all requirements of all governmental authorities ("the Authorities") under Environmental Laws and other applicable laws.

c. Should any Authority or the City demand that a clean-up plan be prepared and that a clean-up plan be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances on, under or about the Property, Lessee shall, at Lessee's sole cost and expense, prepare and submit the required plan(s) and all related bonds and other financial assurances, and Lessee shall carry out all such clean-up plan(s) in compliance with the Authorities and all Environmental Laws and other applicable laws.

d. Lessee shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances requested by any Authority. If Lessee fails to fulfill any duty imposed hereunder within a reasonable time, the City may do so on Lessee's behalf and, in such case, Lessee shall cooperate with the City in the preparation of all documents the City or any Authority deems necessary or appropriate to determine the applicability of Environmental Laws to the Property and Lessee's use thereof, and for compliance therewith, and Lessee shall execute all documents promptly

upon the City's request. No such action by the City and no attempt made by the City to mitigate damages under any Environmental Law or other applicable law shall constitute a waiver of any of Lessee's obligations hereunder.

e. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

9.2 Lessee shall indemnify, defend and hold the City, its officers, employees, agents and assets harmless from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Substances and the violation of any Environmental Law and other applicable law by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees and employees that occur during the term of this Lease or any extension thereof, or from Lessee's failure to provide all information, make all submissions, and take all actions required by all Authorities under the Environmental Laws and other applicable laws. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

#### 10. Condition of the Property.

10.1 Lessee affirms that Lessee has inspected the Property and has received the Property in good order and condition. Lessee further affirms that the condition of the Property is sufficient for the purposes of Lessee. The City makes no warranties nor promises, either express or implied, that the Property is sufficient for the purposes of Lessee.

10.2 In the event the Property is damaged due fire, flood or any other act of nature or casualty, or if the Property is damaged to the extent that it is no longer functional for the purposes of Lessee, the City shall have no obligation to repair the Property nor to otherwise make the Property usable or occupiable; damages shall be at Lessee's sole and absolute risk.

#### 11. Default, Sublet, Termination.

11.1 Should Lessee: (a) default in the performance of Lessee's agreements, duties or obligations set forth under this Agreement and any such default continue for a period of thirty (30) days after written notice thereof is given by the City to Lessee, or (b) abandon or vacate the Property, or (c) suffer death, or (d) be declared bankrupt, insolvent, make an assignment for the benefit of creditors, or if a receiver is appointed, the City may, at the City's option, cancel and annul this Lease at once and enter and take possession of the Property immediately without any previous notice of intention to reenter, and such reentry shall not operate as a waiver or satisfaction, in whole or in part, of any claim or demand arising out of or connected with any breach or violation by

Lessee of any covenant or agreement to be performed by Lessee. Upon reentry, the City may remove the property and personnel of Lessee and store Lessee's property in a warehouse or at a place selected by the City, at the expense of Lessee and without liability to the City. Any such reentry shall not work a forfeiture of nor shall it terminate the rent(s), fees, assessments or the covenants and agreements to be performed by Lessee for the full term of this Lease; and upon such reentry, the City may thereafter lease or sublease the Property for such rent as the City may reasonably obtain, crediting Lessee with the rent so obtained after deducting the cost reasonably incurred in such reentry, leasing or subleasing, including the costs of necessary repairs, alterations and modifications to the Property. Nothing herein shall prejudice or be to the exclusion of any other rights of the City to obtain injunctive relief based on the irreparable harm caused to the City's reversionary rights.

11.2 Except as otherwise provided for (automatic and immediate termination), if Lessee is in default in the performance of any term, condition, duty or obligation of this Agreement, the City may, at its option, terminate this Lease upon giving thirty (30) days written notice. If Lessee fails within any such thirty (30) day period to remedy each and every default specified in the City's notice, this Lease shall terminate. If Lessee remedies such default, Lessee shall not thereafter have the right of thirty (30) days to remedy with respect to a subsequent similar default, but rather, Lessee's rights shall, with respect to a subsequent similar default terminate upon the giving of notice by the City.

11.3 Lessee shall not assign or sublease this Lease or any right or privilege connected therewith, or allow any other person, except as provided herein and except the employees of Lessee, to occupy the Property or any part thereof. Any attempted assignment, sublease or permission to occupy the Property conveyed by Lessee shall be void and shall, at the option of the City, provide reasonable cause for the City to terminate this Lease. The interest of Lessee in this Lease is not to be assignable by operation of law without the formal approval of the City.

12. Option to Extend Lease. If Lessee performs Lessee's duties and obligations pursuant to this Agreement to the satisfaction of the City, and if the City chooses, at its sole option and discretion, to again lease the dry grazing rights to the Property at the expiration of the term as set forth in paragraph 2, the City hereby grants to Lessee an option to extend this Lease for one (1) additional one (1) year period, commencing on January 1, 2005, and expiring on December 31, 2005 ("second term"), upon the same terms and conditions of this Agreement or upon such other terms and conditions which may hereafter be negotiated between the parties. In order to exercise Lessee's option for a second term, Lessee shall, on or before November 15, 2004, give written notice to the City of Lessee's desire and intention to lease the dry grazing rights associated with the Property for a second term.

13. Miscellaneous Provisions.

13.1 The City, by entering into this Dry Grazing Lease Agreement, does not part with its entire possession of the Property, but only so far as is necessary to enable Lessee to use and occupy the Property and to carry out the duties, obligations, terms and provisions of this Agreement. The City reserves the right to at reasonable times have its officers, employees and agents enter into and upon the Property and every part thereof and to do such acts and things as may be deemed necessary for the protection of the City's interests therein.

13.2 It is expressly agreed that this Lease is one of lease and not of partnership. The City shall not be or become responsible for lost profits, lost opportunities or any debts contracted by Lessee. Lessee shall keep the Property free from any and all liens whatsoever, including, but not limited to, liens arising out of any work performed, materials furnished or obligations incurred by Lessee. Lessee shall save, indemnify and hold the City and the City's officers, employees, agents and assets harmless against all liability and loss, and against all claims or actions based upon or arising out of any claim, lien, damage or injury (including death), to persons or property caused by Lessee or sustained in connection with Lessee's performance of the duties, obligations, terms and conditions of this Agreement or the conditions created thereby, or based upon any violation of any statute, ordinance, code, rule or regulation, either now in force or hereinafter enacted, and the defense of any such claims or actions, including the costs and fees of attorneys, consultants and experts. Lessee shall also save, indemnify and hold the City and the City's officers, employees, agents and assets harmless from and against all liability and loss in connection with, and shall assume full responsibility for the payment of, all federal, state and local taxes, fees or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to employees engaged by Lessee.

13.3 The parties to this Lease Agreement warrant that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. Lessee agrees to defend, indemnify and hold the City harmless from any claim for real estate brokerage commissions or finder's fees asserted by any other party claiming to be entitled to brokerage commissions or finder's fees arising out of or in connection with this Lease.

13.4 Lessee shall not pledge or attempt to pledge or grant or attempt to grant as collateral or security any of Lessee's interest in any portion of the Property.

13.5 Unless otherwise agreed to by the parties in writing, all improvements placed upon, under or about the Property or attached to the Property by Lessee shall be and become part of the Property and shall be the sole and separate property of the City upon the expiration or termination of this Lease.

14. Surrender, Holding Over. Lessee shall, upon the expiration or termination of this Lease, peaceably surrender the Property to City in good order, condition and state of repair. In the event Lessee fails, for whatever reason, to vacate and peaceably surrender the Property upon the expiration or termination of this Lease, Lessee agrees that Lessee shall pay to the City the sum of \$100.00 per day for each and every day thereafter until Lessee has effectively vacated and surrendered the Property. The parties agree that it would be difficult to establish the actual damages to the City in the event Lessee fails to vacate and surrender the Property upon the expiration or termination of this Lease, and that said \$100.00 daily fee is an appropriate liquidated damages amount.

15. Enforcement, Partial Invalidity, Governing Law.

15.1 In the event the City uses its Attorney or engages an attorney to enforce the City's rights hereunder, Lessee agrees to pay any and all attorney fees, plus costs, including the costs of any experts.

15.2 The invalidity of any portion of this Dry Grazing Lease Agreement shall not affect the validity of any other provision contained herein. In the event any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision(s).

15.3 This Lease Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce any covenant or agreement contained herein shall be in Mesa County, Colorado.

16. Notices. All notices to be given with respect to this Agreement shall be in writing delivered either by United States mail or Express mail, postage prepaid, or by facsimile transmission, personally by hand or by courier service, as follows:

To the City:

City of Grand Junction  
Attn: Real Estate Manager  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501-2668

With Copy to:

City of Grand Junction  
Attn: City Attorney  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501-2668

To Lessee:

Mr. William Arthur Mertz  
P.O. Box 204  
Clifton, CO 81520-0204

All notices shall be deemed given: (a) if sent by mail, when deposited in the mail, or (b) if delivered by hand or courier service, when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.

17. Legal Counsel / Ambiguities. The City and Lessee have each obtained the advice of its/their own legal and tax counsel regarding this Agreement or has knowingly declined to do so. Therefore, the parties agree that the rule of construing ambiguities against the drafter shall have no application to this Agreement.

18. Total Agreement; Applicable to Successors. This Dry Grazing Lease Agreement contains the entire agreement between the parties. All representations made by any officer, agent or employee of either party, unless included herein, are null and void and of no effect. Except for automatic expiration or termination, this Agreement may not be changed, altered or modified except by a written instrument subsequently executed by both parties. This Dry Grazing Lease Agreement and the duties, obligations, terms and conditions hereof apply to and shall be binding upon the respective heirs, successors and authorized assigns of both parties.

The parties hereto have each executed and entered into this Lease Agreement as of the day and year first above written.

Grand Junction,  
Attest:  
rule municipality

The City of  
a Colorado home

---

City Clerk  
City Manager

---

Lessee:

---

Arthur Mertz

---

William

**EXHIBIT "A"**

**DESCRIPTION OF "THE PROPERTY"**

The SE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  and the NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 25, Township 2 South, Range 1 East of the Ute Meridian,

AND ALSO

Lots 2 and 4 in Section 30, Township 2 South, Range 2 East of the Ute Meridian, subject to a 25-foot wide nonexclusive easement for ingress and egress purposes across Lot 2 in said Section 30, the center line of said easement being more particular described as follows: Beginning at a point on the South line of said Lot 2 from whence the Southeast corner of said Lot 2 bears East a distance of 180.0 feet; thence running Northeasterly to a point on the East line of said Lot 2 from whence the Southeast corner of said Lot 2 bears South a distance of 260.0 feet, said point being the Point of Terminus of said Easement, excepting therefrom right-of-way for U.S. Highway No. 50.

All in the County of Mesa, State of Colorado.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING A DRY GRAZING LEASE  
OF CITY PROPERTY TO SALLY MARIE SMITH**

**Recitals.**

The City of Grand Junction is the owner of the following described real property situated in Township 2 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, to wit:

In Section 23: The SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$ , AND ALSO, commencing at a point which is 90.0 feet South of the Northwest corner of the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of said Section 23; thence North to the Northwest corner of the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of said Section 23; thence East a distance of 1320.0 feet to the Northeast corner of the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of said Section 23; thence South a distance of 630.0 feet to a point on the East line of the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of said Section 23; thence Northwesterly in a straight line to the Point of Beginning, AND ALSO

In Section 24: The SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$ , the NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$ , the N  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$ , and the East 25.0 feet of the SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ , AND ALSO, a nonexclusive easement for ingress and egress purposes which is more particularly described as follows: The South 35.0 feet of Lots 30 through 36 of Meserve Fruit Tracts lying South and West of U.S. Highway No. 50, AND ALSO, a strip of land 50.0 feet in width lying South and West and adjacent to the Southwesterly right-of-way line for U.S. Highway No. 50, said strip of land being across Lots 35 and 36 of Meserve Fruit Tracts, excepting therefrom the North 25.0 feet of the N  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  of said Section 24.

The City Council deems it appropriate to lease the dry grazing rights associated with the above described property to Sally Marie Smith for a period of one (1) year, commencing on January 1, 2004, and expiring on December 31, 2004.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

That the City Manager be authorized, on behalf of the City and as the act of the City, to execute the attached Dry Grazing Lease Agreement with Sally Marie Smith for a term of one-year, commencing on January 1, 2004 and expiring on December 31, 2004; provided, however, that in the event Ms. Smith performs all of the required duties and obligations pursuant to the attached Agreement to the satisfaction of the City and if the City chooses, at its sole option and discretion, to again lease the dry grazing rights associated with the Property at the expiration of said one-year term, the City may



extend the term of the lease with Ms. Smith for one (1) additional one-year period, subject to each and every term contained in the attached Dry Grazing Lease Agreement.

PASSED and ADOPTED this \_\_\_\_\_ day of January, 2004.

\_\_\_\_\_  
Attest:

\_\_\_\_\_  
President of the Council

\_\_\_\_\_  
City Clerk

## DRY GRAZING LEASE AGREEMENT

This Dry Grazing Lease Agreement is made and entered into as of the 1<sup>st</sup> day of January, 2004, by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as “the City”, and Sally Marie Smith, hereinafter referred to as “Lessee”.

### Recitals.

- A. The City is the owner of certain real property in the County of Mesa, State of Colorado, as described on **Exhibit “A”** attached hereto and incorporated herein by reference, hereinafter referred to as “the Property”.
- B. Lessee desires to lease from the City the dry grazing rights associated with the Property under the terms and conditions of this Dry Grazing Lease Agreement.
- C. The City has agreed to lease the dry grazing rights associated with the Property to Lessee under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the recitals above and the terms, covenants and conditions contained herein, the parties hereto agree as follows:

1. Grant and Acceptance of Lease. The City hereby leases the dry grazing rights associated with the Property to Lessee, and Lessee hereby accepts and leases the dry grazing rights associated with the Property from the City, for the term stated in paragraph 2 below and for the specific purposes and duties of maintaining all aspects of the Property in accordance with the terms and conditions of this Agreement.
2. Term. The term of this Lease shall commence on January 1, 2004, and shall continue through December 31, 2004, at which time this Lease shall expire; provided, however, that in the event Lessee shall fully and complete fulfill each and every covenant, condition, duty and obligation of Lessee as hereinafter set forth and in the event the City determines, at the City’s sole discretion, to again lease the Property in accordance with the provisions of this Lease, Lessee shall have the first right of refusal to lease the dry grazing rights to the Property for the term commencing on January 1, 2005, and expiring on December 31, 2005, as more fully set forth in paragraph 12 below.
3. Reservations from Lease. The City reserves from this Lease and retains unto itself:
  - a. all oil, gas coal and other minerals and mineral rights underlying and/or appurtenant to the Property;

- b. all hunting rights concerning the Property;
- c. all rights to grant, sell, bargain, convey and dedicate any ownership interest(s) in and to the Property, or any division thereof, to any other party, including the conveyance of easements, so long as such action will not interfere with Lessee's use and quiet enjoyment of the Property for the purposes set forth in this Agreement;
- d. the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, in whole or in part, even if such taking is made by and/or for the purposes of the City, or for the conveyance in lieu of condemnation. Lessee hereby assigns and transfers to the City any claim Lessee may have to compensation, including claims for damages, as a result of any condemnation; and
- e. all water and water rights, ditches and ditch rights which are or may have been appurtenant to and/or connected with the Property.

4. Rent.

4.1 Lessee agrees to pay to the City as annual rent for the dry grazing rights associated with the Property, in addition to any and all other sums and expenses which Lessee shall be required to pay to fulfill Lessee's duties and obligations hereunder, the sum of \$395.00. All rental payments paid by Lessee to the City shall be delivered either by mail or personal deliver to:

City of Grand Junction Finance Department  
Accounts Receivable  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501-2668

All rental payments deposited by Lessee shall be clearly marked "City Property Dry Grazing Lease Payment".

4.2 In the event Lessee fails to pay the specified rental payment on or before January 15, 2004, the lease of the dry grazing rights associated with the Property to Lessee shall automatically terminate and Lessee shall not have any further rights under this Agreement.

5. Lessee's Use and Occupancy of the Property. Lessee's use and occupancy of the Property shall be specifically limited to livestock dry grazing purposes and for no other purposes whatsoever. The amount(s) of livestock allowed on the Property shall not at any time exceed fifteen (15) Animal Units per Month ("AUM"). For the purposes

of this Agreement, an AUM is one cow with calf over a one month period. Lessee shall not use or occupy the Property nor allow any other person to use or occupy the Property for any purpose prohibited by this Agreement or by the applicable laws of the United States of America, the State of Colorado, the County of Mesa or any other governmental authority or any jurisdiction having authority over uses and activities conducted upon the Property.

6. Specific Duties and Obligations of Lessee. As consideration for the lease of the dry grazing rights associated with the Property, Lessee shall, at no cost or expense to the City:

6.1 Install, maintain and repair all fences and gates in a manner that will contain livestock. Lessee may install locks on all gates, provided, however, that Lessee shall provide the City with lock combinations and/or copies of keys to all locks installed by Lessee;

6.2 Maintain all aspects of the Property and keep the Property in a clean, safe and healthy condition and in compliance with all applicable codes, ordinances, regulations, rules and orders.

6.3 Timely pay any and all real estate, use and possessory taxes which may be levied upon and against the Property and any taxes or assessments levied against the livestock and other personal property of Lessee or any other leasehold interest acquired by Lessee under this Agreement.

6.4 Forever waive and forego any claim, cause of action or demand Lessee may have against the City, its officers, employees, agents and assets for injury to or destruction of any property of Lessee or any other party that may be lost, injured, destroyed or devalued as a result of the act, or failure to act, of Lessee or any other person; and to indemnify, defend and hold the City and the City's officers, employees, agents and assets harmless from any and all fines, suits, procedures, claims, damages, actions, costs and expenses of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) in any manner arising out of or resulting from Lessee's use, occupancy, maintenance and improvement of the Property.

6.5 Not violate nor permit to be violated any code, rule, regulation or order pertaining to the use, application, transportation and storage of any hazardous, toxic or regulated substance or material, including, but not limited to, herbicides, pesticides and petroleum products. Lessee agrees that any spill, excessive accumulation or violation of any code, rule, regulation or order pertaining to the use, application, transportation and storage of any such material or substance shall be reported immediately to the City. Lessee further agrees that all costs and responsibilities for cleaning, removing and abating any violation pursuant to this paragraph shall be borne solely by Lessee.

6.6 Purchase and at all times during the term of this lease maintain in effect suitable comprehensive general liability and hazard insurance which will protect the City and the City's officers, employees, agents and assets from liability in the event of loss of life, personal injury or property damage suffered by any person or persons on, about or using the Property, including Lessee. Such insurance policy(ies) shall have terms and amounts approved by the City's Risk Manager. Such insurance shall not be cancelable without thirty (30) days prior written notice to the City and shall be written for at least a minimum of Five Hundred Thousand Dollars (\$500,000.00), combined single limit. The certificate of insurance must be deposited with the City and must designate "The City of Grand Junction, its officers, employees, agents and assets" as additional insureds. If a policy approved by the City's Risk Manager is not at all times in full force and effect during the term of this Lease, this Lease shall automatically terminate.

6.7 Care for Lessee's livestock in the highest standard of care and in a manner that will not over-graze the Property or otherwise cause deterioration or destruction to the Property. Lessee shall comply with all applicable regulations of the United States Department of Agriculture, Livestock laws and regulations of the State of Colorado, and any and all federal, state and county laws, ordinances and regulations which are applicable to the area in which the Property is located.

7. Use of Chemicals on the Property. Lessee shall not apply any chemicals on the Property, including, but not limited to, fertilizers, herbicides and pesticides, without the prior written consent of the City. Lessee shall at all times keep the City advised of chemicals used and/or stored on the Property, and shall further comply with all applicable rules, laws, regulations and orders, either now in force or hereinafter enacted, regulating the storage, use, application, transportation and disposal of any such chemicals.

8. Hazardous Substances.

8.1 The term "Hazardous Substances", as used in this Agreement, shall mean any substance which is: defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law enacted by any federal, state and local governmental agency or other governmental authority; a petroleum hydrocarbon, including, but not limited to, crude oil or any fraction thereof; hazardous, toxic or reproductive toxicant; regulated pursuant to any law; any pesticide or herbicide regulated under state or federal law. The term "Environmental Law", as used in this Lease Agreement, shall mean each and every federal, state and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal state and local governmental agency or other governmental authority, pertaining to the protection of human health and safety of the environment, either now in force or hereafter enacted.

8.2 Lessee shall not cause or permit to occur by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees or employees:

a. any violation of any Environmental Law on, under or about the Property or arising from Lessee's use and occupancy of the Property, including, but not limited to, air, soil and groundwater conditions; or

b. the use, generation, accidental or uncontrolled release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance in violation of any federal state or local law, ordinance or regulation either now in force or hereafter enacted.

9. Environmental Clean-Up.

9.1 The following provisions shall be applicable to Lessee and to Lessee's agents, guests, invitees, contractors, licensees and employees:

a. Lessee shall, at Lessee's sole cost and expense, comply with all Environmental Laws and laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances;

b. Lessee shall, at Lessee's sole cost and expense, make all submissions to provide all information required by and/or to comply with all requirements of all governmental authorities ("the Authorities") under Environmental Laws and other applicable laws.

c. Should any Authority or the City demand that a clean-up plan be prepared and that a clean-up plan be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances on, under or about the Property, Lessee shall, at Lessee's sole cost and expense, prepare and submit the required plan(s) and all related bonds and other financial assurances, and Lessee shall carry out all such clean-up plan(s) in compliance with the Authorities and all Environmental Laws and other applicable laws.

d. Lessee shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances requested by any Authority. If Lessee fails to fulfill any duty imposed hereunder within a reasonable time, the City may do so on Lessee's behalf and, in such case, Lessee shall cooperate with the City in the preparation of all documents the City or any Authority deems necessary or appropriate to determine the applicability of Environmental Laws to the Property and Lessee's use thereof, and for compliance therewith, and Lessee shall execute all documents promptly

upon the City's request. No such action by the City and no attempt made by the City to mitigate damages under any Environmental Law or other applicable law shall constitute a waiver of any of Lessee's obligations hereunder.

e. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

9.2 Lessee shall indemnify, defend and hold the City, its officers, employees, agents and assets harmless from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Substances and the violation of any Environmental Law and other applicable law by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees and employees that occur during the term of this Lease or any extension thereof, or from Lessee's failure to provide all information, make all submissions, and take all actions required by all Authorities under the Environmental Laws and other applicable laws. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

#### 10. Condition of the Property.

10.1 Lessee affirms that Lessee has inspected the Property and has received the Property in good order and condition. Lessee further affirms that the condition of the Property is sufficient for the purposes of Lessee. The City makes no warranties nor promises, either express or implied, that the Property is sufficient for the purposes of Lessee.

10.2 In the event the Property is damaged due fire, flood or any other act of nature or casualty, or if the Property is damaged to the extent that it is no longer functional for the purposes of Lessee, the City shall have no obligation to repair the Property nor to otherwise make the Property usable or occupiable; damages shall be at Lessee's sole and absolute risk.

#### 11. Default, Sublet, Termination.

11.1 Should Lessee: (a) default in the performance of Lessee's agreements, duties or obligations set forth under this Agreement and any such default continue for a period of thirty (30) days after written notice thereof is given by the City to Lessee, or (b) abandon or vacate the Property, or (c) suffer death, or (d) be declared bankrupt, insolvent, make an assignment for the benefit of creditors, or if a receiver is appointed, the City may, at the City's option, cancel and annul this Lease at once and enter and take possession of the Property immediately without any previous notice of intention to reenter, and such reentry shall not operate as a waiver or satisfaction, in whole or in part, of any claim or demand arising out of or connected with any breach or violation by

Lessee of any covenant or agreement to be performed by Lessee. Upon reentry, the City may remove the property and personnel of Lessee and store Lessee's property in a warehouse or at a place selected by the City, at the expense of Lessee and without liability to the City. Any such reentry shall not work a forfeiture of nor shall it terminate the rent(s), fees, assessments or the covenants and agreements to be performed by Lessee for the full term of this Lease; and upon such reentry, the City may thereafter lease or sublease the Property for such rent as the City may reasonably obtain, crediting Lessee with the rent so obtained after deducting the cost reasonably incurred in such reentry, leasing or subleasing, including the costs of necessary repairs, alterations and modifications to the Property. Nothing herein shall prejudice or be to the exclusion of any other rights of the City to obtain injunctive relief based on the irreparable harm caused to the City's reversionary rights.

11.2 Except as otherwise provided for (automatic and immediate termination), if Lessee is in default in the performance of any term, condition, duty or obligation of this Agreement, the City may, at its option, terminate this Lease upon giving thirty (30) days written notice. If Lessee fails within any such thirty (30) day period to remedy each and every default specified in the City's notice, this Lease shall terminate. If Lessee remedies such default, Lessee shall not thereafter have the right of thirty (30) days to remedy with respect to a subsequent similar default, but rather, Lessee's rights shall, with respect to a subsequent similar default terminate upon the giving of notice by the City.

11.3 Lessee shall not assign or sublease this Lease or any right or privilege connected therewith, or allow any other person, except as provided herein and except the employees of Lessee, to occupy the Property or any part thereof. Any attempted assignment, sublease or permission to occupy the Property conveyed by Lessee shall be void and shall, at the option of the City, provide reasonable cause for the City to terminate this Lease. The interest of Lessee in this Lease is not to be assignable by operation of law without the formal approval of the City.

12. Option to Extend Lease. If Lessee performs Lessee's duties and obligations pursuant to this Agreement to the satisfaction of the City, and if the City chooses, at its sole option and discretion, to again lease the dry grazing rights to the Property at the expiration of the term as set forth in paragraph 2, the City hereby grants to Lessee an option to extend this Lease for one (1) additional one (1) year period, commencing on January 1, 2005, and expiring on December 31, 2005 ("second term"), upon the same terms and conditions of this Agreement or upon such other terms and conditions which may hereafter be negotiated between the parties. In order to exercise Lessee's option for a second term, Lessee shall, on or before November 15, 2004, give written notice to the City of Lessee's desire and intention to lease the dry grazing rights associated with the Property for a second term.

13. Miscellaneous Provisions.



13.1 The City, by entering into this Dry Grazing Lease Agreement, does not part with its entire possession of the Property, but only so far as is necessary to enable Lessee to use and occupy the Property and to carry out the duties, obligations, terms and provisions of this Agreement. The City reserves the right to at reasonable times have its officers, employees and agents enter into and upon the Property and every part thereof and to do such acts and things as may be deemed necessary for the protection of the City's interests therein.

13.2 It is expressly agreed that this Lease is one of lease and not of partnership. The City shall not be or become responsible for lost profits, lost opportunities or any debts contracted by Lessee. Lessee shall keep the Property free from any and all liens whatsoever, including, but not limited to, liens arising out of any work performed, materials furnished or obligations incurred by Lessee. Lessee shall save, indemnify and hold the City and the City's officers, employees, agents and assets harmless against all liability and loss, and against all claims or actions based upon or arising out of any claim, lien, damage or injury (including death), to persons or property caused by Lessee or sustained in connection with Lessee's performance of the duties, obligations, terms and conditions of this Agreement or the conditions created thereby, or based upon any violation of any statute, ordinance, code, rule or regulation, either now in force or hereinafter enacted, and the defense of any such claims or actions, including the costs and fees of attorneys, consultants and experts. Lessee shall also save, indemnify and hold the City and the City's officers, employees, agents and assets harmless from and against all liability and loss in connection with, and shall assume full responsibility for the payment of, all federal, state and local taxes, fees or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to employees engaged by Lessee.

13.3 The parties to this Lease Agreement warrant that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. Lessee agrees to defend, indemnify and hold the City harmless from any claim for real estate brokerage commissions or finder's fees asserted by any other party claiming to be entitled to brokerage commissions or finder's fees arising out of or in connection with this Lease.

13.4 Lessee shall not pledge or attempt to pledge or grant or attempt to grant as collateral or security any of Lessee's interest in any portion of the Property.

13.5 Unless otherwise agreed to by the parties in writing, all improvements placed upon, under or about the Property or attached to the Property by Lessee shall be and become part of the Property and shall be the sole and separate property of the City upon the expiration or termination of this Lease.

14. Surrender, Holding Over. Lessee shall, upon the expiration or termination of this Lease, peaceably surrender the Property to City in good order, condition and state of repair. In the event Lessee fails, for whatever reason, to vacate and peaceably surrender the Property upon the expiration or termination of this Lease, Lessee agrees that Lessee shall pay to the City the sum of \$100.00 per day for each and every day thereafter until Lessee has effectively vacated and surrendered the Property. The parties agree that it would be difficult to establish the actual damages to the City in the event Lessee fails to vacate and surrender the Property upon the expiration or termination of this Lease, and that said \$100.00 daily fee is an appropriate liquidated damages amount.

15. Enforcement, Partial Invalidity, Governing Law.

15.1 In the event the City uses its Attorney or engages an attorney to enforce the City's rights hereunder, Lessee agrees to pay any and all attorney fees, plus costs, including the costs of any experts.

15.2 The invalidity of any portion of this Dry Grazing Lease Agreement shall not affect the validity of any other provision contained herein. In the event any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision(s).

15.3 This Lease Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce any covenant or agreement contained herein shall be in Mesa County, Colorado.

16. Notices. All notices to be given with respect to this Agreement shall be in writing delivered either by United States mail or Express mail, postage prepaid, or by facsimile transmission, personally by hand or by courier service, as follows:

To the City:

City of Grand Junction  
Attn: Real Estate Manager  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501-2668

With Copy to:

City of Grand Junction  
Attn: City Attorney  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501-2668

To Lessee:

Ms Sally Marie Smith  
33129 Mill Tailing Road  
Whitewater, CO 81527-9409

All notices shall be deemed given: (a) if sent by mail, when deposited in the mail, or (b) if delivered by hand or courier service, when delivered. The parties may, by notice as provided above, designate a different address to which notice shall be given.

17. Legal Counsel / Ambiguities. The City and Lessee have each obtained the advice of its/their own legal and tax counsel regarding this Agreement or has knowingly declined to do so. Therefore, the parties agree that the rule of construing ambiguities against the drafter shall have no application to this Agreement.

18. Total Agreement; Applicable to Successors. This Dry Grazing Lease Agreement contains the entire agreement between the parties. All representations made by any officer, agent or employee of either party, unless included herein, are null and void and of no effect. Except for automatic expiration or termination, this Agreement may not be changed, altered or modified except by a written instrument subsequently executed by both parties. This Dry Grazing Lease Agreement and the duties, obligations, terms and conditions hereof apply to and shall be binding upon the respective heirs, successors and authorized assigns of both parties.

The parties hereto have each executed and entered into this Lease Agreement as of the day and year first above written.

Grand Junction,  
Attest:  
rule municipality

The City of  
a Colorado home

\_\_\_\_\_  
\_\_\_\_\_  
City Clerk  
City Manager

\_\_\_\_\_

Lessee:

\_\_\_\_\_  
Smith

\_\_\_\_\_  
Sally Marie

**EXHIBIT "A"**

**DESCRIPTION OF "THE PROPERTY"**

Township 2 South, Range 1 East of the Ute Meridian:

In Section 23: The SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$ , AND ALSO, commencing at a point which is 90.0 feet South of the Northwest corner of the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of said Section 23; thence North to the Northwest corner of the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of said Section 23; thence East a distance of 1320.0 feet to the Northeast corner of the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of said Section 23; thence South a distance of 630.0 feet to a point on the East line of the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of said Section 23; thence Northwesterly in a straight line to the Point of Beginning,

AND ALSO

In Section 24: The SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$ , the NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$ , the N  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$ , and the East 25.0 feet of the SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ ,

AND ALSO,

A nonexclusive easement for ingress and egress purposes which is more particularly described as follows: The South 35.0 feet of Lots 30 through 36 of Meserve Fruit Tracts lying South and West of U.S. Highway No. 50,

AND ALSO,

A strip of land 50.0 feet in width lying South and West and adjacent to the Southwesterly right-of-way line for U.S. Highway No. 50, said strip of land being across Lots 35 and 36 of Meserve Fruit Tracts, excepting therefrom the North 25.0 feet of the N  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  of said Section 24.

All in the County of Mesa, State of Colorado

**Attach 9**  
**Purchase of Property for Riverside Parkway**  
**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA						
<b>Subject</b>	Purchase of Property for Riverside Parkway					
<b>Meeting Date</b>	January 7, 2004					
<b>Date Prepared</b>	December 30, 2003				<b>File #</b>	
<b>Author</b>	Jim Shanks			<b>Riverside Parkway Program Manager</b>		
<b>Presenter Name</b>	Mark Relph			<b>Public Works &amp; Utilities Director</b>		
<b>Report results back to Council</b>	X	No		Yes	<b>When</b>	
<b>Citizen Presentation</b>		Yes	X	No	<b>Name</b>	
	<b>Workshop</b>	X		<b>Formal Agenda</b>	X	<b>Consent</b>
						<b>Individual Consideration</b>

**Summary:** The City has entered into a contract to purchase the property at 2529 High Country Court. A portion of the property is needed for Riverside Parkway right-of-way. The building will be used as office space for the Riverside Parkway Team for the duration of the project and then sold at the end of the project.

**Budget:** Sufficient funds exist in the 2004 Riverside Parkway budget to complete the City's due diligence investigations and purchase of the property, as follows:

Purchase Price	\$ 450,000.00
Environmental Audit	\$ 895.00
Boundary Survey	\$ 500.00
Closing Costs	\$ <u>200.00</u>
<b>Total Estimated Costs:</b>	<b>\$ 451,595.00</b>

Riverside Parkway Budget:	\$75,000,000.00
Riverside Parkway R/W Budget:	\$8,000,000.00

**Action Requested/Recommendation:** Adopt Resolution authorizing the purchase of property located at 2529 High Country Court.

**Attachments:** 1) Vicinity Map; 2) Proposed Resolution.

**Background Information:** On November 4, 2003, a majority of the City electorate voted to authorize the City to issue \$80 million in bonds to fund the Riverside Parkway.

The authorized funding will expedite the design and construction of this transportation corridor.

To ensure the project will be completed as authorized by the City electorate, the City has designated 4 members from Public Works staff to work solely on managing this project. The Riverside Parkway team will be recommending a design/build delivery for the entire project. As a part of this approach the City plans to hire an owner's representative consultant to review plans submitted by the design/build contractor and to provide construction management and inspection services for the construction of Riverside Parkway. It is proposed that the designated city personnel and a portion of the owner's representative and construction management staff will use the property at 2529 High Country Court for their project offices.

This building is in the path of the proposed Riverside Parkway. It is anticipated that the rear 20-30 feet of the building will have to be removed as a part of the roadway construction. The cost estimate for this demolition work is \$20,000. Rather than paying the existing property owner for the additional right-of-way and paying for damages, the staff recommends purchasing this building, making the necessary modifications to it, and using it for office space during construction. The building may then be sold at the conclusion of the project. The cost to provide a fiber optic link to City shops and to perform some minor interior remodeling including interior phone and computer wiring is \$27,958. A financial analysis of this scenario shows that the net cost to own the building for the 6 year project life is \$55,238.

The subject property contains 1.074 acres. Improvements include a 5,045 square foot metal modular building constructed in 1995 together with 19 paved parking spaces. The City's proposed use of the property is allowed under the existing I-1 zone. A Transaction Screen performed by The Walter Group indicates the property is free and clear of any toxic, hazardous or regulated substances.

The City's obligation to purchase the property is contingent upon Council's ratification of the contract, by Resolution, on or before January 7, 2004.

**2529 High Country Court  
Vicinity Map**

**2529 High Country Ct.**

HIGH COUNTRY CT

**"Oda" Property**

**City Shops**

RIVER RD

RIVER RD

RIVER RD

RIVER RD

RIVER RD

W GUNNISON AVE

CROSBY

W WHITE

2512 RD

RIVER RD

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE PURCHASE  
OF REAL PROPERTY LOCATED AT 2529 HIGH COUNTRY COURT  
FOR USE FOR THE RIVERSIDE PARKWAY**

Recitals.

The City of Grand Junction has entered into a contract with Old West Properties L.L.C., a Colorado limited liability company, for the purchase by the City of a site to be used as offices for the Riverside Parkway Design Team. The street address and Assessor's parcel number for the property is 2529 High Country Court and 2945-152-05-007. ("The Property").

The purchase agreement provides that on or before January 7, 2004, the City Council must ratify the purchase and the allocation of funds for all expenses required to effectuate the purchase said property.

Based on the advice and information provided by the City staff, the City Council finds that it is necessary and proper that the City purchased The Property, together with on-site improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO, THAT:

1. The Property shall be purchased for a price of \$450,000.00. All actions heretofore taken by the officers, employees and agents of the City relating to the purchase of The Property, which are consistent with the provisions of the negotiated Contract to Buy and Sell Real Estate and this Resolution are hereby ratified, approved and confirmed.
2. The purchase price (\$450,000.00) is authorized to be paid at closing, in exchange for conveyance by general warranty deed of the fee simple title to The Property.
3. The officers, employees and agents of the City are hereby authorized and directed to take all actions necessary or appropriate to complete the purchase of The Property. Specifically, City staff are directed to effectuate this Resolution and the existing Contract to Buy and Sell Real Estate, including the execution and delivery of such certificates and documents as may be necessary or desirable to complete the purchase for the stated price.



PASSED and ADOPTED this \_\_\_\_\_ day of January, 2004.

\_\_\_\_\_  
Attest:  
Council

\_\_\_\_\_  
President of the

\_\_\_\_\_  
City Clerk

**Attach 10**

**Construction Contract -29 Road Improvements**

**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA									
Subject		Construction Contract for 29 Road Improvements Phase III Utilities (Grand Valley Canal to Patterson Road)							
Meeting Date		January 7, 2004							
Date Prepared		December 30, 2003				File # - N/A			
Author		Kent W. Marsh, Project Engineer							
Presenter Name		Mark Relph, Public Works and Utilities Director							
Report results back to Council		x	No		Yes	When			
Citizen Presentation			Yes	x	No	Name			
	Workshop	X	Formal Agenda				Consent	X	Individual Consideration

**Summary:** Award of a construction contract for the 29 Road Improvements Phase III Utilities to M. A. Concrete Construction, Inc. in the amount of \$532,234.66.

**Budget:** This project is funded under Fund 2011, Program Year 2004.

The estimated project costs will be:

Construction Contract	\$532,234.66
Design	\$6,000.00
Street Lighting	\$19,380.00
Construction Inspection and Administration	\$50,000.00
Total Project Costs	<u>\$607,614.66</u>

Funding:

City Budget 2004 (includes County's 50% share)	\$1,395,000.00
Central Grand Valley Sanitation District	\$300,657.12
Xcel Energy, Bresnan Communications	<u>\$13,314.00</u>

Total Funding

\$1,708,971.12

Balance in 2004

\$1,101,356.46

The balance will be used for Phase III Street construction and for widening the existing bridge at the Grand Valley Canal. Phase III Street Construction and bridge widening at the Grand Valley Canal is estimated at \$950,000.00.

**Action Requested/Recommendation:** Authorize the City Manager to sign a Construction Contract for the 29 Road Improvements Phase III Utilities with M. A. Concrete Construction, Inc. in the amount of \$532,234.66.

**Attachments:** none

**Background Information:** The 29 Road Improvements Phase III Utilities project is part of a larger project that will improve 29 Road from Pinyon Street to the south side of Patterson Road. Right-of-Way and Easements necessary for the construction of utilities in this phase of construction are being acquired and will be in place by January 16, 2004.

Construction of the new City storm sewer and Central Grand Valley Sewer lines are scheduled to begin on January 26, 2004. Xcel Energy, Qwest and Bresnan Communications will begin relocating their overhead utilities beginning February 2. All utility improvements included in this construction contract will be completed prior to the start of Phase III Street improvements in May, 2004

Bids for the project were opened on December 24, 2003. The low bid was submitted by M. A. Concrete Construction, Inc. in the amount of \$532,234.66. The following bids were received:

<u>Bidder</u>	<u>From</u>	<u>Bid Amount</u>
M. A. Concrete Construction, Inc.	Grand Junction	\$532,234.66
Skyline Contracting, Inc.	Grand Junction	\$593,612.23
Mountain Region Corporation	Grand Junction	\$656,192.91
Downey Excavation, Inc.	Montrose	\$665,523.97
Mendez, Inc.	Grand Junction	\$703,879.81
Spallone Construction, Inc.	Gunnison	\$781,099.66
Engineer's Estimate		\$636,792.84

**Attach 11  
Citizen Corp Grant**

**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA							
<b>Subject</b>		Citizen Corp Grant Program					
<b>Meeting Date</b>		07 January 2004					
<b>Date Prepared</b>		19 December 2003				<b>File #</b>	
<b>Author</b>		Michael A. Nordine		<b>Lieutenant</b>			
<b>Presenter Name</b>		Greg Morrison		<b>Chief of Police</b>			
<b>Report results back to Council</b>		X	No		Yes	When	
<b>Citizen Presentation</b>			Yes	X	No	Name	
	<b>Workshop</b>			<b>Formal Agenda</b>	X	<b>Consent</b>	<b>Individual Consideration</b>

**Summary:** The Governors Commission on Community Service under Lt. Governor Jane Norton is accepting grant applications for the 2004 Citizen Corp Program. This program supports the establishment of Citizen Corp Councils, Neighborhood Watch, Community Emergency Response Teams, Volunteers in Police Service, and Medical Reserve Corp. The Grand Junction Police Department would like to establish a Citizen Corp Council and obtain funding to support the new Neighborhood Beat System. The Police Department would like to host quarterly meetings in each of the 63 neighborhood beats. Due to high service demands and staff shortages the neighborhood beat officers will be conducting these meetings on an overtime basis rather than pulling from patrol staffing. Additionally, this grant would allow the City to pay overtime to patrol officers to attend a four hour training block on how to host these neighborhood meetings.

**Budget:** The total costs of the proposed project will be \$53,960 all of which would come from the Governors Commission on Community Service.

**Action Requested/Recommendation:**

The Grand Junction Police Department is requesting approval to apply for the Citizen Corp Overtime Grant Program.

**Attachments:**

**Background Information:** Quarterly meetings in each of the cities 63 neighborhood beat areas will provide increased citizen contact in line with our community policing goals. These meetings can be utilized to solicit information, concerns and direction

directly from the citizens most impacted by crime and other concerns of government. Additionally, these meetings will provide a forum for educating the public on the issues of terrorism and its impact on Grand Junction. We will be able to pass along some of the information we receive from the federal government regarding potential threats and means of protecting oneself in the event of an attack. The Development of a Citizens Corp Council will assist in identifying areas of vulnerability and focus community training efforts.

**Attach 12**

**Public Hearing – Vacating ROW on Files Property Located at 631 26 ½ Road  
CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA						
<b>Subject</b>	Vacation of a 30' right-of-way located west of 26 ½ Road – 631 26 ½ Road					
<b>Meeting Date</b>	January 7, 2004					
<b>Date Prepared</b>	December 29, 2003				<b>File # VR-2003-227</b>	
<b>Author</b>	Scott D. Peterson		Associate Planner			
<b>Presenter Name</b>	Scott D. Peterson		Associate Planner			
<b>Report results back to Council</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Yes</b>	<b>When</b>
<b>Citizen Presentation</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Yes</b>	<b>Name</b>
<input type="checkbox"/>	<b>Workshop</b>	<input checked="" type="checkbox"/>	<b>Formal Agenda</b>		<input type="checkbox"/>	<b>Consent</b>
<input type="checkbox"/>						<input checked="" type="checkbox"/> <b>Individual Consideration</b>

**Summary:** The petitioners, City of Grand Junction and the current property owners, Shirley Howard, Donald Files & Robert Files, wish to vacate an existing 30' right-of-way located west of 26 ½ Road, between the platted right-of-ways of F ½ Road and North Acres Road that was originally dedicated in 1969 but due to a legal description error, was incorrectly conveyed. The only utility that is located in this right-of-way is a sanitary sewer line that will be covered by the recording of a 20' Public Utilities Easement. The proposed vacation has never been utilized or constructed as a road right-of-way. The Planning Commission recommended approval at its December 16<sup>th</sup>, 2003 meeting. The petitioners request approval of the Vacation Ordinance.

**Budget:** N/A

**Action Requested/Recommendation:** Conduct the Public Hearing and approve the Vacation Ordinance.

**Attachments:**

- 15. Background Information/Staff Analysis
- 16. Site Location Map
- 17. Aerial Photo
- 18. Growth Plan Map
- 19. Existing Zoning Map
- 20. Ordinance & Exhibit A

STAFF REPORT/BACKGROUND INFORMATION				
<b>Location:</b>		631 26 ½ Road		
<b>Applicant:</b>		City of Grand Junction		
<b>Existing Land Use:</b>		Single Family Residential		
<b>Proposed Land Use:</b>		N/A		
<b>Surrounding Land Use:</b>	<b>North</b>	Single Family Residential		
	<b>South</b>	Single Family Residential		
	<b>East</b>	Single Family Residential		
	<b>West</b>	Single Family Residential		
<b>Existing Zoning:</b>		Residential Single Family – 1 (RSF-1)		
<b>Proposed Zoning:</b>		N/A		
<b>Surrounding Zoning:</b>	<b>North</b>	Residential Single Family – 1 (RSF-1) & Residential Single Family – 2 (RSF-2)		
	<b>South</b>	Residential Single Family – 2 (RSF-2)		
	<b>East</b>	Residential Single Family – 1 (RSF-1)		
	<b>West</b>	Residential Single Family – 2 (RSF-2)		
<b>Growth Plan Designation:</b>		Residential Low (1/2 – 2 Ac./DU)		
<b>Zoning within density range?</b>		N/A	<b>Yes</b>	<b>No</b>

**Staff Analysis:**

In 1969, this property was located in Mesa County jurisdiction. At that time, the County acquired right-of-way on both the east and west sides of the 26 ½ Road corridor for the benefit of the public. When the deed was filed at the courthouse to dedicate the land area as right-of-way, an error was made in the legal description that conveyed this strip of right-of-way on the applicant’s portion of land area. The deed was recorded as the “west” 30’ feet when it should have been recorded as the “east” 30’ feet of the parcel. The City is working with the property owners, Shirley Howard, Donald Files and Robert Files, to finally clarify this situation in anticipation of a future land sale. In exchange for this right-of-way vacation, the property owners will officially dedicate the “east” 30’ feet of right-of-way to the City for 26 ½ Road as was the original intention back in 1969. The existing sanitary sewer line that is located in the 30’ right-of-way to be vacated will be covered by a 20’ Public Utilities Easement that will be dedicated.

**Consistency with the Growth Plan:**

The site is currently zoned Residential Single Family – 1 (RSF-1) with the Growth Plan Future Land Use Map showing this area as Residential Low (1/2 – 2 DU/Ac.).

**3. Section 2.11 C. of the Zoning and Development Code:**

Requests to vacate any public right-of-way or easement must conform to all of the following:

- a. The Growth Plan, major street plan and other adopted plans and policies of the City.

Granting the request to vacate the existing 30' right-of-way does not conflict with the Growth Plan, major street plan and other adopted plans and policies of the City of Grand Junction.

- b. No parcel shall be landlocked as a result of the vacation.

No parcel will be landlocked as a result of this right-of-way vacation.

- c. Access to any parcel shall not be restricted to the point where access is unreasonable, economically prohibitive or reduces or devalues any property affected by the proposed vacation.

Access will not be restricted.

- d. There shall be no adverse impacts on the health, safety, and/or welfare of the general community and the quality of public facilities and services provided to any parcel of land shall not be reduced (e.g. police/fire protection and utility services).

There will be no adverse impacts to the general community and the quality of public facilities and services provided will not be reduced due to the vacation request.

- e. The provision of adequate public facilities and services shall not be inhibited to any property as required in Chapter Six of the Zoning and Development Code.

The provision of adequate public facilities and services will not be inhibited to any property as required in Chapter Six of the Zoning & Development Code as the 30' right-of-way vacation will be converted to a 20' Public Utilities Easement for the benefit of the existing sanitary sewer line. No adverse comments were received from the utility review agencies during the staff review process.



- f. The proposal shall provide benefits to the City such as reduced maintenance requirements, improved traffic circulation, etc.

Maintenance requirements to the City will not change as a result of the proposed vacation, as a new 20' Public Utilities Easement will be dedicated for the existing sanitary sewer line.

**FINDINGS OF FACT/CONCLUSIONS:**

After reviewing the right-of-way vacation application located at 631 26 ½ Road, VR-2003-227 for the vacation of a 30' public right-of-way, the Planning Commission at their December 16<sup>th</sup>, 2003 meeting made the following findings of fact and conclusions:

3. The requested 30' right-of-way vacation is consistent with the Growth Plan.
4. The review criteria in Section 2.11 C. of the Zoning and Development Code have all been met.
5. That an adequate 20' Public Utilities Easement be granted to the City for the existing sanitary sewer line.

**Recommendation:** The Planning Commission recommends that the City Council approve the Ordinance vacating a 30' public right-of-way located west of 26 ½ Road – 631 26 ½ Road, making the findings of fact and conclusions listed above and subject to the recommended condition of approval.

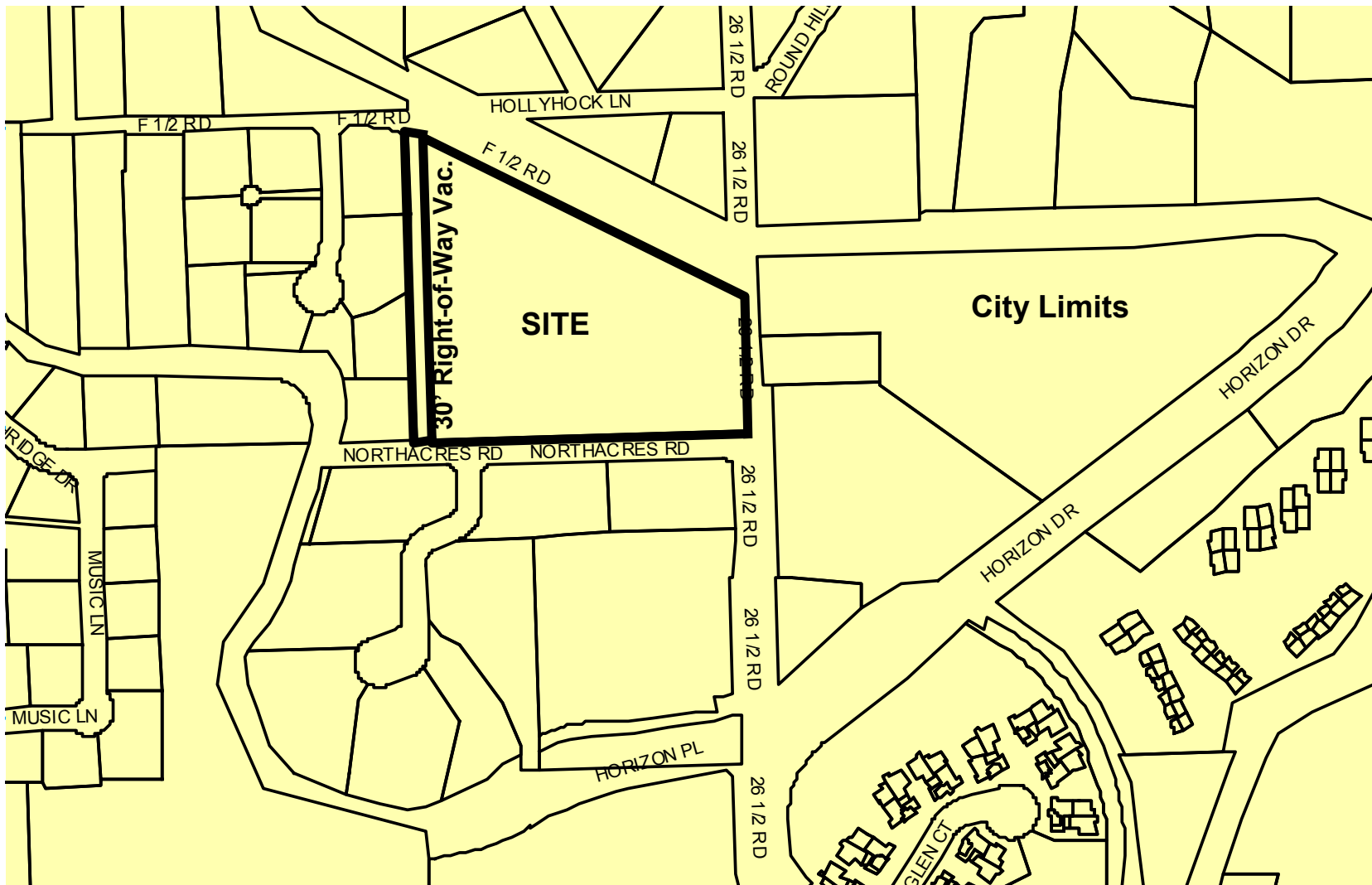
**Attachments:**

1. Site Location Map
2. Aerial Photo
3. Growth Plan Map
4. Existing Zoning Map
5. Ordinance & Exhibit A



# Site Location Map – 30' Right-of-Way Vacation

Figure 1



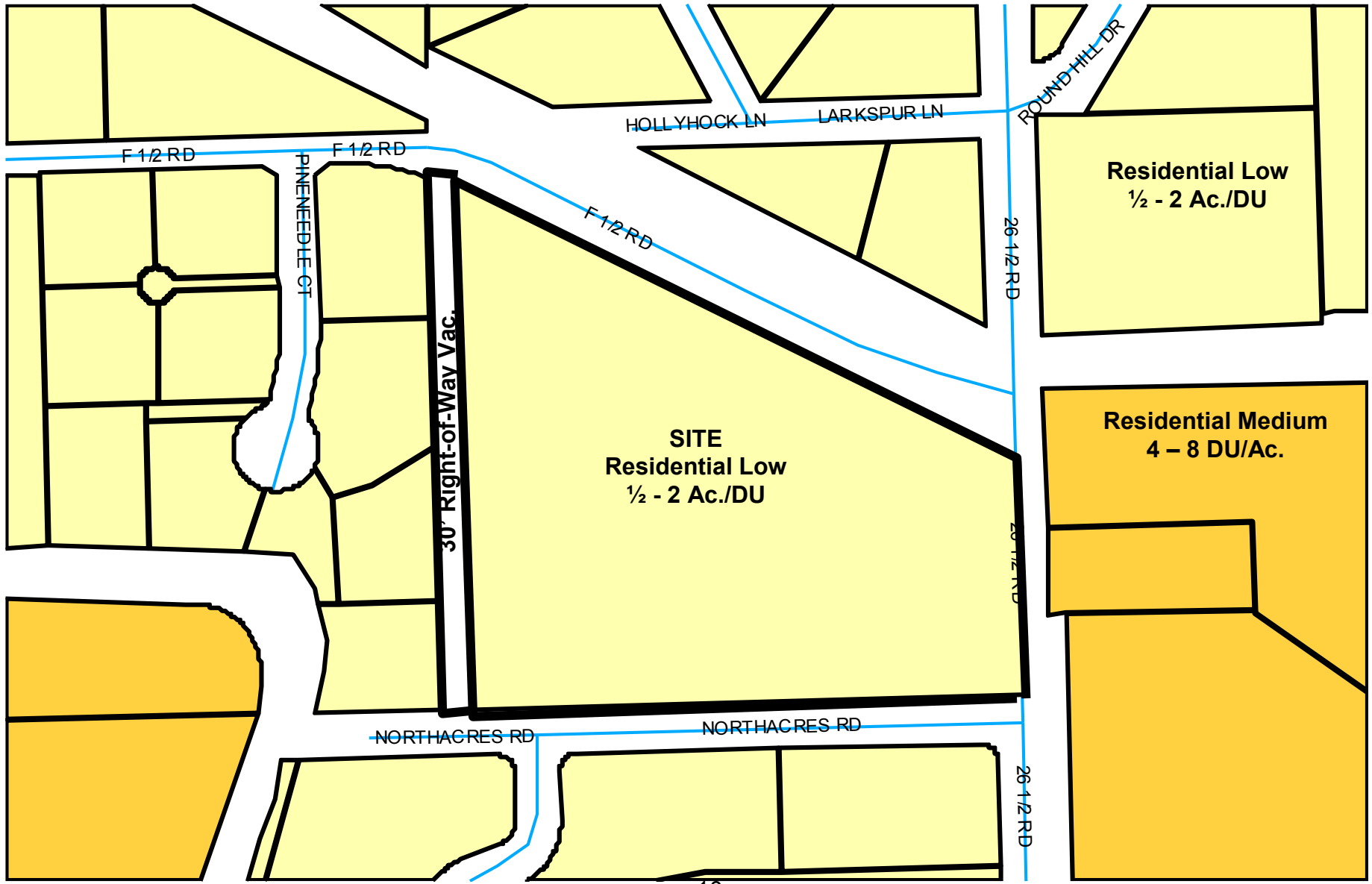
# Aerial Photo Map – 30' Right-of-Way Vacation

Figure 2



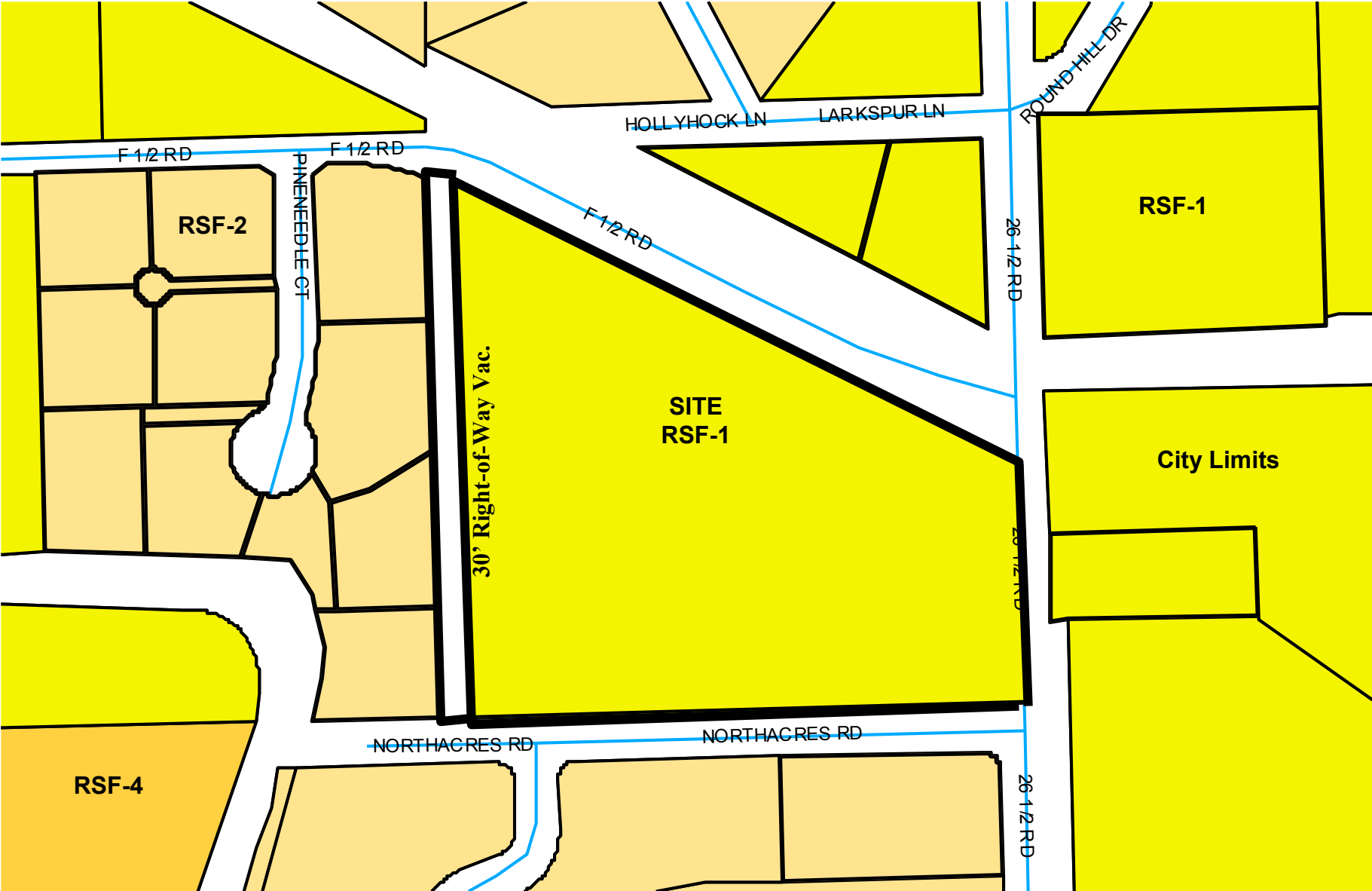
# Future Land Use Map – 30' Right-of-Way Vacation

Figure 3



# Existing City Zoning – 30' Right-of-Way Vacation

Figure 4



**CITY OF GRAND JUNCTION**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE VACATING A 30' WIDE RIGHT-OF-WAY LOCATED WEST OF  
26 ½ ROAD AND SOUTH OF THE GRAND VALLEY CANAL AND RESERVING  
A 20' PUBLIC UTILITIES EASEMENT  
KNOWN AS: 631 26 ½ Road**

**RECITALS:**

In order to correct a recorded legal description error, the applicant proposes to vacate a 30' wide deeded right-of-way located west of 26 ½ Road and south of the Grand Valley Canal and also reserve unto the City a 20' Public Utilities Easement for the use and benefit of the City and for the use and benefit of the Public Utilities, as approved by the City, as a perpetual easement for the installation, operation, maintenance, repair and replacement of public utilities and appurtenances related thereto, located at 631 26 ½ Road.

The Planning Commission, having heard and considered the request and found the criteria of the Code to have been met, recommend that the vacation be approved.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:**

1. The following described 30' right-of-way is hereby conditionally vacated:

A tract of land for road purposes located in the Southwest Quarter of Section Two, Township 1 South, Range 1 West of the Ute Meridian, more particularly described as follows:

The West 30.00 feet of the Northeast Quarter of the Northeast Quarter of the Southwest Quarter of said Section Two, lying South of the Grand Valley Canal. Said tract of land contains .22 acres; reserving an easement on, along, over, under, through and across the West 20.00 thereof.

This 30' right-of-way vacation is conditioned and contingent upon the simultaneous dedication of the East 30' of the petitioner's property to the City to officially obtain the road right-of-way for 26 ½ Road.

INTRODUCED on First Reading on the 17<sup>th</sup> day of December, 2003 and ordered published.

ADOPTED on Second Reading this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
President of City Council





**Attach 13**

**Public Hearing Rezoning the Blue Heron Meadows Located at 2587 G ½ Rd**

**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA									
<b>Subject</b>		Blue Heron Meadows Rezone							
<b>Meeting Date</b>		January 7, 2004							
<b>Date Prepared</b>		December 30, 2003			<b>File #</b> RZ-2003-212				
<b>Author</b>		Lori V. Bowers		Senior Planner					
<b>Presenter Name</b>		Lori V. Bowers		Senior Planner					
<b>Report results back to Council</b>		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Yes</b>	<b>When</b>		
<b>Citizen Presentation</b>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>No</b>	<b>Name</b>		
<input type="checkbox"/>	<b>Workshop</b>	<input checked="" type="checkbox"/>	<b>Formal Agenda</b>			<input type="checkbox"/>	<b>Consent</b>	<input checked="" type="checkbox"/>	<b>Individual Consideration</b>

**Summary:** A request for approval to rezone 18 acres of land from RSF-2 (Residential single-family, not to exceed 2 units per acre) to RSF-4 (Residential single-family, not to exceed 4 dwelling units per acre) and hold the Public Hearing on January 7, 2004.

**Budget:** N/A

**Action Requested/Recommendation:** Hold a public hearing and consider final passage of the re-zoning ordinance.

**Background Information:** See attached Staff Report/Background Information

**Attachments:**

- 21. Staff report/Background information
- 22. General Location Map
- 23. Aerial Photo
- 24. Growth Plan Map
- 25. Zoning Map
- 26. Zoning Ordinance

BACKGROUND INFORMATION					
Location:		2587 G ½ Road			
Applicants:		Ebe Eslami, owner & developer for Dinosaur Enterprises, Inc. Rolland Engineering, representative			
Existing Land Use:		Single family residence, vacant land, one non-conforming modular unit.			
Proposed Land Use:		Residential subdivision			
Surrounding Land Use:	North	Bookcliff Gardens, vacant land, G ½ Road			
	South	The Estates Subdivision			
	East	Sunpointe North Subdivision			
	West	Wilson Ranch Subdivision			
Existing Zoning:		RSF-2			
Proposed Zoning:		RSF-4			
Surrounding Zoning:	North	B-1			
	South	RSF-2			
	East	RSF-2			
	West	PD 4.4			
Growth Plan Designation:		Residential medium, 4 to 8 du/ac			
Zoning within density range?		X	Yes		No

**STAFF ANALYSIS:**

1. Background: The property located at 2587 G ½ Road is bounded by The Estates Subdivision on the south; Wilson Ranch Subdivision on the west; G 1/2 Road and Bookcliff Gardens on the north; and the Grand Valley Canal and 8 acres of undeveloped land on the east, known as the Sunpointe North Subdivision. The property was annexed into the City in 2000, as part of the G Road North Annexation. This annexation area consisted of annexing 274 acres of land. The G Road North Enclave had been enclaved since May 7, 1995. Under the 1998 Persigo Agreement with Mesa County, the City is to annex all enclave areas within 5 years.

2. Consistency with the Growth Plan: To be consistent with the Growth Plan, the applicant must request a rezone for their property. The Growth Plan suggests that this property develop within the “Residential Medium” category, which is 4 to 8 dwelling units per acre. The current zoning is RSF-2, (residential single-family, not to exceed 2 dwelling units per acre). The request to rezone to RSF-4, (residential single-family, not to exceed 4 dwelling units per acre), is consistent with the Growth Plan.

3. Consistency with Section 2.6 of the Zoning and Development Code

Rezone requests must meet all of the following criteria for approval:

- a. The existing zoning was in error at the time of adoption.

State law requires the City to zone newly annexed areas within 90 days of the annexation. Since this was such a large area for annexation the area property owners requested that the proposed City zoning be identical with existing Mesa County zoning for enclaves. Therefore the zoning was not in error at the time of adoption. At that time it was noted that the proposed RSF-R and some of the proposed RSF-2 zone districts did not conform to the Growth Plan's Future Land Use Map recommended densities. It was determined at that time that any future development on these properties may include rezoning to higher densities supported by the Growth Plan Future Land Use map. (ANX-2000-114).

- b. There has been a change of character in the neighborhood due to installation of public facilities, other zone changes, new growth trends, deterioration, development transition, etc.

The character of the neighborhood is changing due to the construction of The Estates Subdivision on the south. Other zone changes are proposed with the further development associated with property near Wilson Ranch. Current growth trends within the City remain constant.

- c. The proposed rezone is compatible with the neighborhood and will not create adverse impacts such as: capacity or safety of the street network, parking problems, storm water or drainage problems, water, air or noise pollution, excessive nighttime lighting, or other nuisances.

The proposed rezone to RSF-4 is within the allowable density range recommended by the Growth Plan. This criterion must be considered in conjunction with criterion “e” which requires that public facilities and services are available when the impacts of any

proposed development are realized. Staff has determined that public infrastructure can address the impacts of any development consistent with the RSF-4 zone district, therefore this criterion is met.

- d. The proposal conforms with and furthers the goals and policies of the Growth Plan, other adopted plans, and the policies, the requirements of this Code and other City regulations and guidelines.

The proposal does conform with the goals and policies of the Growth Plan and the requirements of the Zoning and Development Code.

- e. Adequate public facilities and services are available or will be made available concurrent with the projected impacts of the proposed development

Adequate public facilities are currently available and can address the impacts of development consistent with the RSF-4 zone district.

The Paradise Hills interceptor sewer line runs through the site. An eight inch water line can be looped through the site from the existing stubs from the northwest in Wilson Ranch to the south in The Estates Subdivision. Storm water from the site all drains to Leach Creek, which runs along the western boundary of the property. Irrigation water is available from the Grand Valley Irrigation Company. Road improvements to G ½ Road as well as 26 Road have been discussed regarding future impact from additional traffic.

- f. There is not an adequate supply of land available in the neighborhood and surrounding area to accommodate the zoning and community needs.

The re-zoning request is to accommodate the Growth Plan/Future Land Use Map. It was always the intent to re-zone the property upon future development, not based on the availability of other land supplies.

- g. The community or neighborhood will benefit from the proposed zone.

The proposed zoning change will allow the property to be developed at a density that will support its infrastructure needs and the natural geographic constraints of the property. The property is situated only 3 miles directly north of the core of the City, and

promotes the desire for compact and fiscally responsible development patterns.

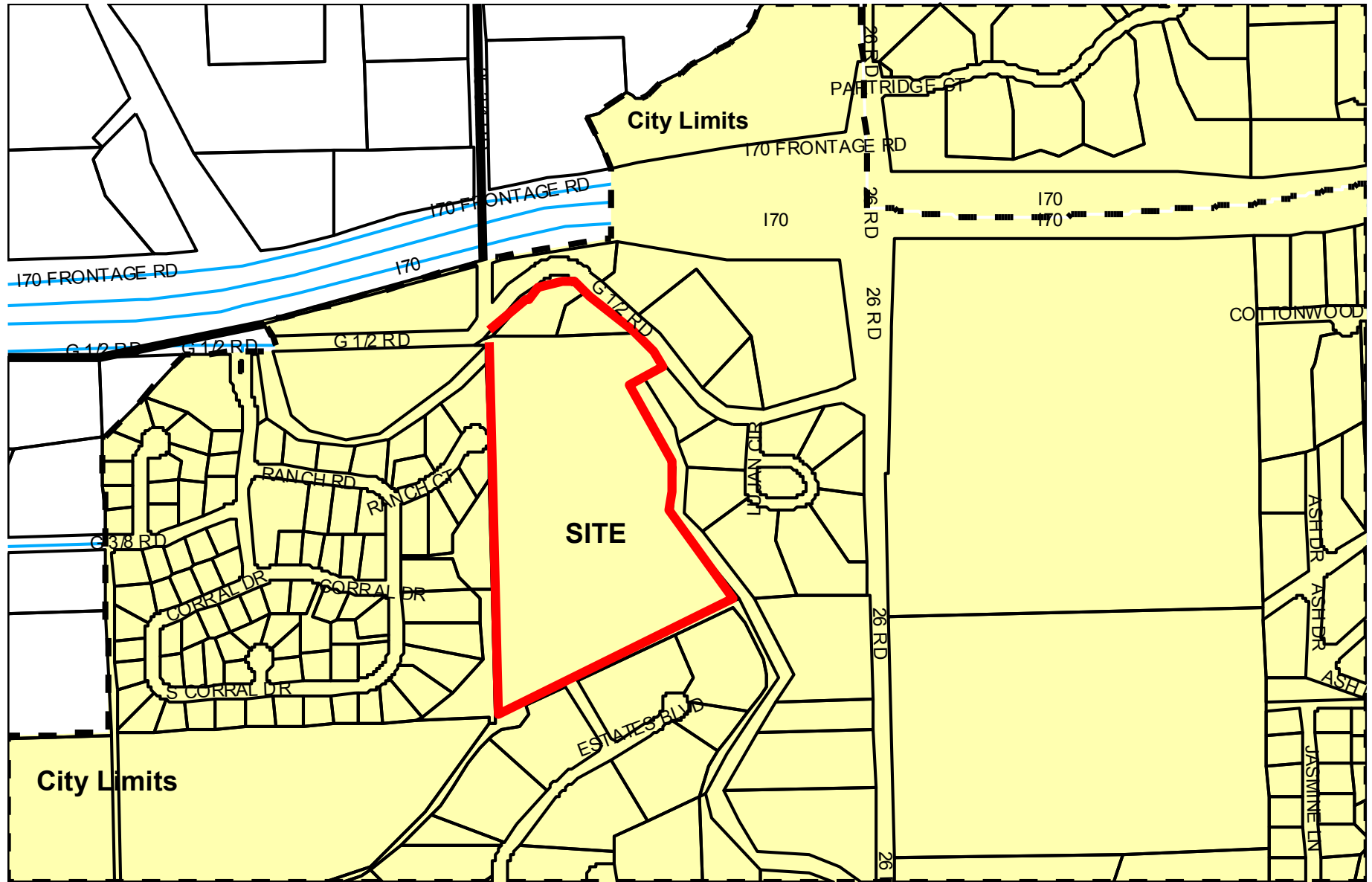
**PLANNING COMMISSION RECOMMENDATION:**

The Planning Commission at their regularly scheduled meeting of November 25<sup>th</sup>, 2003, recommended to City Council the zoning designation of RSF-4, finding it consistent with the Growth Plan, the Persigo Agreement and Sections 2.14 and 2.6 of the Zoning and Development Code.



# Site Location Map

Figure 1





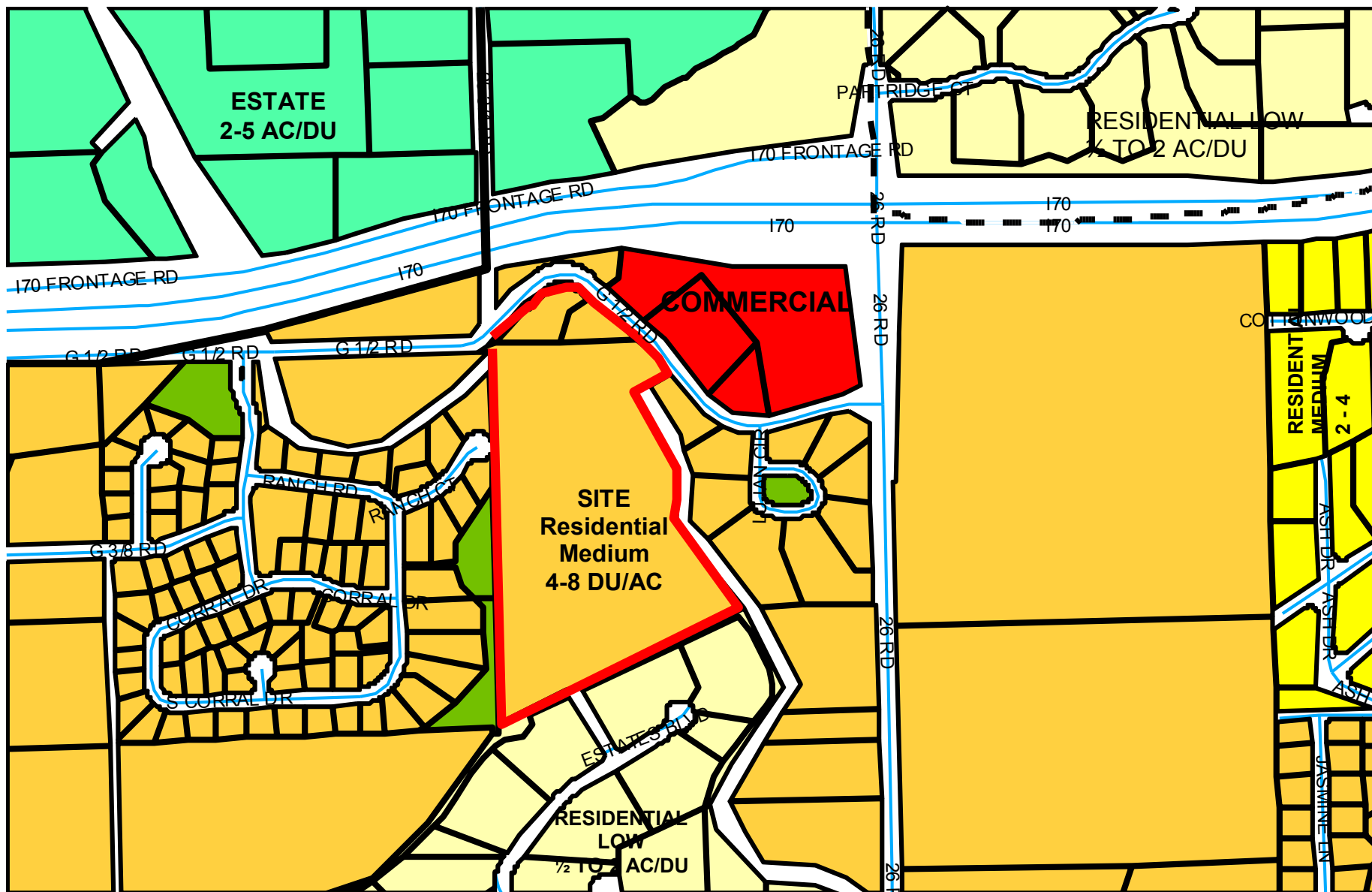
# Aerial Photo Map

Figure 2



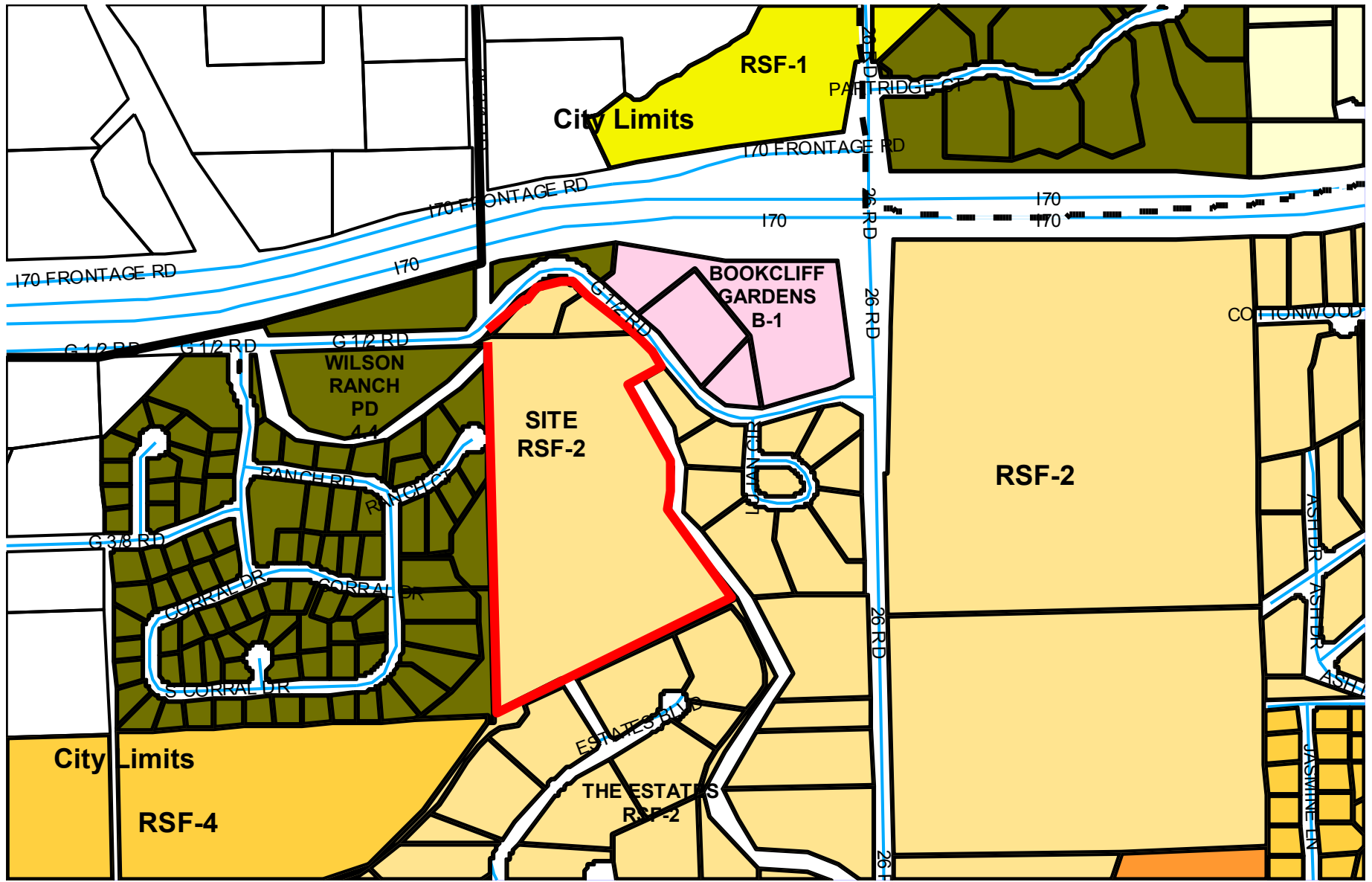
# Future Land Use Map

Figure 3



# Existing City and County Zoning

Figure 4





ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ZONING BLUE HERON MEADOWS  
18 ACRES OF LAND LOCATED AT  
2587 G ½ ROAD

Recitals.

A rezone from the Residential Single Family - 2 (RSF-2) district to the Residential Single Family - 4 (RSF-4) district has been requested for the properties located at 2587 G ½ Road for purposes of developing a residential subdivision. The City Council finds that the request meets the goals and policies and future land use set forth by the *Growth Plan* (Residential medium, 4 to 8 dwelling units per acre). City Council also finds that the requirements for a rezone as set forth in Section 2.6 of the Zoning and Development Code have been satisfied.

The Grand Junction Planning Commission, at its November 25<sup>th</sup>, 2003 hearing, recommended approval of the rezone request from the RSF-2 district to the RSF-4 district.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT THE PARCEL(S) DESCRIBED BELOW IS HEREBY ZONED TO THE RESIDENTIAL SINGLE FAMILY, NOT TO EXCEED 4 DWELLING UNITS PER ACRE (RSF-4) DISTRICT:

Beginning at a point on the North line of the NE1/4 SE1/4 of Section 34, Township 1 North, Range 1 West of the Ute Meridian, 940.3 feet West of the Northeast corner thereof,  
thence South 29° 40 minutes East 373 feet;  
thence South 18 ° 45' East 175 feet;  
thence South 10°20' West 165 feet;  
thence South 39°00' East 182 feet;  
thence South 48°30' East 167 feet;  
thence South 66°30' West 916 feet to the West line of said Section 34;  
thence North 0°21' West 1219 feet;  
thence North 45°00' East 70 feet to the North line of the NE1/4 SE1/4 of said Section 34;  
thence East along the North line of the NE1/4 SE1/4 to the Point of Beginning.

Also, beginning at a point on the North line of the NE1/4 SE1/4 Section 34, Township 1 North, Range 1 West, Ute Meridian, 886.3 feet West of the Northeast corner thereof;  
thence Southeasterly along the Easterly right-of-way line of the Grand Valley Canal 182.7 feet;  
thence North 67°10' East 123 feet;

thence North 34°45' West 115 feet;  
thence North 48°54' West to the North line of the NE1/4 SE1/4 of said Section 34;  
thence West along the North line of said NE1/4 SE1/4 121 feet to the Point of beginning.

And all that part of the following described property lying South of the centerline of the Grand Valley Irrigation Canal (Highline Canal):

A parcel of land situated in the SE1/4 NE1/4 of Section 34, Township 1 North Range 1 West of the Ute Meridian, more particularly described as follows:

Beginning at the Southwest corner of said SE1/4 NE1/4 Section 34;  
thence North 90°00' East 239.50 feet to the centerline of Leach Creek;  
thence North 20°30'04" East along said centerline 103.94 feet;  
thence North 55°42'53" East along said centerline 206.18 feet;  
thence North 04°18'03" East along said centerline 104.14 feet to the intersection point of said centerline and the Southerly right-of-way of U.S. Interstate 70:  
thence along the arc of a curve to the left 394.14 feet (the chord of which bears South 82°45'20" West 393.78 feet);  
thence South 76°39'49" West 64.93 feet to a point on the West line of said SE1/4 NE1/4 Section 34;  
thence leaving said Southerly right-of-way line South 00°33'31" West 252.74 feet to the Point of Beginning.

AND all that part of the SE1/4 NE1/4 of Section 34, Township 1 North, Range 1 West of the Ute Meridian, lying South of the County Road and East of the Wash.

TOGETHER WITH an ingress/egress easement over and across Lot 7 in Block 2 of WILSON RANCH FILING NO. FOUR as shown on the recorded Plat of said Subdivision, and as further set forth in Correction recorded October 28, 1997 in Book 2371 at Page 99.

Uses Permitted:

Those associated with the RSF-4 zoning district.

INTRODUCED for FIRST READING and PUBLICATION this 17th day of December, 2003.

PASSED on SECOND READING this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

ATTEST:

City Clerk

President of Council

**Attach 14  
Public Hearing – Westside Downtown Redevelopment Plan**

**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA								
Subject		Westside Downtown Redevelopment Plan						
Meeting Date		January 7, 2004						
Date Prepared		December 12, 2003			File #PLN-2003-247			
Author		Kathy Portner		Planning Manager				
Presenter Name		Kathy Portner		Planning Manager				
Report results back to Council		X	No		Yes	When		
Citizen Presentation		X	Yes		No	Name		
	Workshop	X	Formal Agenda			Consent	X	Individual Consideration

**Summary:** Request to adopt the Westside Downtown Redevelopment Plan for the area generally bounded by Main Street, 5<sup>th</sup> Street and the Railroad.

**Budget:** N/A

**Action Requested/Recommendation:** Hold a public hearing and consider a resolution adopting the Westside Downtown Redevelopment Plan. Staff and Planning Commission recommend approval.

**Background Information:** See attached Staff Report/Background Information

**Attachments:**

- 27. Staff report/Background information
- 28. Westside Downtown Redevelopment Plan, Final Draft
- 29. Resolution



AGENDA TOPIC: PLN-2003-247, Westside Downtown Redevelopment Plan

ACTION REQUESTED: Approve a resolution adopting the Westside Downtown Redevelopment Plan for the area generally bounded by Main Street, 5<sup>th</sup> Street and the Railroad

PROJECT DESCRIPTION:

**Background**

The Westside Downtown Redevelopment Plan had its origins in a grant received by Mesa County through the Great American Station Foundation to study the feasibility and design of the Grand Junction Historic Depot site as an Inter-modal Transportation Plaza ... a hub for Amtrak, Greyhound, and Grand Valley Transit.

Both the City of Grand Junction and Mesa County wanted to explore the traffic issues associated with such a facility, and the City also saw an opportunity to encourage and enhance the redevelopment of the lower downtown area. Subsequently the scope of the project expanded to become the Westside Downtown Redevelopment Study.

The Westside Downtown Redevelopment Study Area is bounded on the north by Main Street, on the east by 5<sup>th</sup> Street, on the south by South Avenue, and on the west by the Railroad. The area is anchored by the Historic Depot, the Mesa County Justice Center, the Two Rivers Convention Center, and the Museum of Western Colorado. Vacant land, zoning, existing uses, potential uses, transportation issues, roads, automobiles, parking, pedestrians, historic structures, existing buildings, structures in disrepair, existing utilities ... these are many of the elements that have been examined while identifying the highest and best uses for this area.

Three initial Transportation Plaza area concepts focused on the facility needs that Greyhound bus would have on the Depot area, as well as additional circulation opportunities and constraints throughout the entire Study Area. It was apparent from the onset of the study that the Historic Depot area was 'isolated' by the Pitkin – Ute transportation corridor and that there was a shortage of vacant real estate around the Depot to expand transportation facilities. This combined with public feedback and a reduced interest by Greyhound, resulted in the removal of Greyhound from the Inter-modal plaza program. Although the 'transportation plaza' aspects of the study were impacted, this was offset by a greater understanding of the importance of a redevelopment study addressing multi-modal facilities and roadways, land use, and aesthetics.

Absent a true ‘transportation plaza’ program element, three new concept plans were developed and presented to the public. Public feedback and Team input resulted in two recommended plans. One recommendation, labeled ‘Preferred Plan – Short Term’, is generally a “minimal change” alternative. This plan includes proposed zoning within the Study Area, and minor modifications to the existing circulation system. Entry, streetscape, and architectural improvements could still be implemented. The second recommendation, labeled ‘Preferred Plan – Long Term’ represents the ultimate desires of the public and the Team. This plan suggests significant changes to the existing circulation system and creates ripples that expand beyond the Study Area boundaries into adjacent downtown areas.

We believe this study provides a foundation and consensus towards the future development and redevelopment of the southwest area of Downtown Grand Junction.

## **Goals, Policies and Implementation Steps**

### **Transportation**

Goal: Accommodate the needs of all modes of transportation to and through the area, while respecting the importance of the area to the vitality of the urban core.

Policy: Street design will accommodate travel lanes, parking, bike lanes, medians, sidewalks, and street trees and will be appropriate to and complement the adjacent land use.

Policy: Street design will achieve a balance between travel mobility, land use access, and livability.

Policy: Street design will be pedestrian friendly to provide a foundation for a safe, active and livable area, including sidewalks, off-street trail connections and safe crossings.

Implementation Steps:

1. Provide traffic calming measures where appropriate, including pedestrian refuge areas, medians, landscaping and corner bulb-outs.
2. Conduct a more detailed traffic analysis of the area to determine needed intersection control and street cross-sections.
3. As opportunities arise, reconfigure the streets in accordance with the Plan.
4. Explore funding opportunities for combining Ute and Pitkin into one boulevard.

### **Land Use**

Goal: Redefine the land use in the area to provide a mix that will offer the most opportunities for redevelopment and revitalization.

Policy: “Districts” will be defined for groupings of land uses that are complimentary to the rest of the downtown area.

Policy: Mixed uses, including residential will be encouraged.

Policy: Shared parking facilities, including structured parking, will be encouraged in the study area.

Policy: Designation of historic structures and districts will be encouraged.

#### Implementation Steps:

1. Adopt an overlay zone for the area to identify land use groupings.
2. Adopt standards that allow for mixed uses and recognize the uniqueness of site design for this area of downtown.
3. Work with property owners on historic designations for individual structures and districts.
4. The Downtown Development Authority will coordinate with property owners, investors and developers to facilitate projects.

#### Aesthetics

Goal: Create architecture design and streetscapes with a unified theme for the Westside Downtown area, blending existing materials and patterns with new infill buildings and streetscape amenities to solidify a “Sense of Place”.

Policy: Building design, including material, scale, massing and detail, will be compatible with the identified historic character of the area.

Policy: The City will encourage the preservation and enhancement of existing historic structures.

Policy: The streetscape will be dominated by building facades with occasional breaks to allow for pedestrian pass-throughs, art displays and outdoor seating areas.

Policy: The streetscape will include corner bulbs, boulevard strips, street trees, public art, furniture, lighting and signage that is consistent with the theme for the area or district.

#### Implementation Steps

1. Adopt design standards and guidelines for the Westside Downtown area.

## **Summary**

The Westside Downtown Redevelopment Plan is a 'stepping stone' to the future development and redevelopment of the lower downtown area. While this Plan provides significant 'direction' on the areas of Transportation, Land Use, and Aesthetics, it recognizes this 'direction' as an evolving process. This is exemplified by the designation of the desired solutions as "Preferred Plan - Short Term" and "Preferred Plan - Long Term".

The 'Preferred Plan - Short Term' recommendation is generally a "minimal change" alternative that includes proposed zoning within the Study Area and minor modifications to the existing circulation system. Within this plan proposed 'Land Use' can be expedited and implemented, while entry treatments, streetscape, and architectural improvements must be implemented with regard to the 'Long Term' improvements. The 'Preferred Plan - Long Term' recommendation represents the ultimate desires of the public and the planning team. This plan allowed traffic, circulation, road sections, streetscapes, and parking to be studied in greater detail.

The Westside Downtown Redevelopment Plan notes 'Aesthetics' (including Architecture and Streetscape) as the most apparent and tangible facet of redevelopment, stressing that 'Aesthetics' does not function independent of 'Transportation' and 'Land Use'. While each of these issues has its own set of parameters, they must support each other within any redevelopment study. The original foundations of this study were in 'Transportation' followed by 'Land Use'. Subsequently, the 'street' became the first focus of the study defining the boundaries for 'Land Use'. As this study progressed 'Aesthetics' was continually integrated in the development and refinement of 'Transportation' and 'Land Use'. Realizing that 'Aesthetics' extends beyond the larger scale issues of 'Transportation' and 'Land Use', the Westside Downtown Redevelopment Plan recommends that Architectural Guidelines that address a much greater arena of 'detail' be adopted.

As a final note, the long term recommendations within the Westside Downtown Redevelopment Plan propose significant changes to the existing circulation system. These changes create ripples that expand beyond the Westside Downtown Study Area boundaries into adjacent downtown areas. In particular, traffic and parking impacts will be better understood with considerations to a much larger study area. The Westside Downtown Redevelopment Plan will hopefully provide the foundations for a larger more comprehensive study of the entire downtown area.

**RECOMMENDATION:** Staff recommends approval of the resolution adopting the Westside Downtown Redevelopment Plan

PLANNING COMMISSION RECOMMENDATION: Planning Commission, at their November 25, 2003 hearing, recommended approval of the Westside Downtown Redevelopment Plan

Attachments:

Westside Downtown Redevelopment Plan (separate cover)  
Resolution

## CITY OF GRAND JUNCTION, COLORADO

### Resolution No.

A Resolution Adopting the Westside Downtown Redevelopment Plan

#### **Recitals:**

The Westside Downtown Redevelopment Plan had its origins in a grant received by Mesa County through the Great American Station Foundation to study the feasibility and design of the Grand Junction Historic Depot site as an Inter-modal Transportation Plaza ... a hub for Amtrak, Greyhound, and Grand Valley Transit. Both the City of Grand Junction and Mesa County wanted to explore the traffic issues associated with such a facility, and the City also saw an opportunity to encourage and enhance the redevelopment of the lower downtown area. Subsequently the scope of the project expanded to become the Westside Downtown Redevelopment Study.

The Westside Downtown Redevelopment Study Area is bounded on the north by Main Street, on the east by 5<sup>th</sup> Street, on the south by South Avenue, and on the west by the Railroad. The area is anchored by the Historic Depot, the Mesa County Justice Center, the Two Rivers Convention Center, and the Museum of Western Colorado. Vacant land, zoning, existing uses, potential uses, transportation issues, roads, automobiles, parking, pedestrians, historic structures, existing buildings, structures in disrepair, existing utilities ... these are many of the elements that have been examined while identifying the highest and best uses for this area.

Public feedback and Team input resulted in two recommended plans. One recommendation, labeled 'Preferred Plan – Short Term', is generally a "minimal change" alternative. This plan includes proposed zoning within the Study Area, and minor modifications to the existing circulation system. Entry, streetscape, and architectural improvements could still be implemented. The second recommendation, labeled 'Preferred Plan – Long Term' represents the ultimate desires of the public and the Team. This plan suggests significant changes to the existing circulation system and creates ripples that expand beyond the Study Area boundaries into adjacent downtown areas.

This study provides a foundation and consensus towards the future development and redevelopment of the southwest area of Downtown Grand Junction.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:**

The Westside Downtown Redevelopment Plan is hereby adopted and made a part of the Grand Junction Growth Plan.

PASSED on this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

ATTEST:

\_\_\_\_\_  
President of Council

\_\_\_\_\_  
City Clerk







*Final Draft*

**WESTSIDE**

**DOWNTOWN**

**REDEVELOPMENT**

**PLAN**

This is a joint project between the City of Grand Junction and Mesa County, both of which were active 'Team' participants. Approximately 1/3 of the funding for this study is through Mesa County and the Great American Station Foundation, focusing on the Historic Depot site and Inter-Modal Transportation opportunities. The remaining 2/3's of the funding for this study is through the City of Grand Junction for consideration of redevelopment issues throughout the Study Area.

In addition to Mesa County and the City of Grand Junction, valuable involvement was provided by the Downtown Development Authority. The proposed plan incorporates input gathered in public forums and meetings with citizens and neighbors, business owners, the Arts Council, the Museum of Western Colorado, and the Colorado Department of Transportation.

The Consultants responsible for collecting information, synthesizing the input, and facilitating solutions included:

- Ciavonne & Associates, Inc.; Landscape Architecture, Site Planning
- Fehr & Peers; Transportation Consultants

- Centre Sky Architecture; Architecture and Urban Planning

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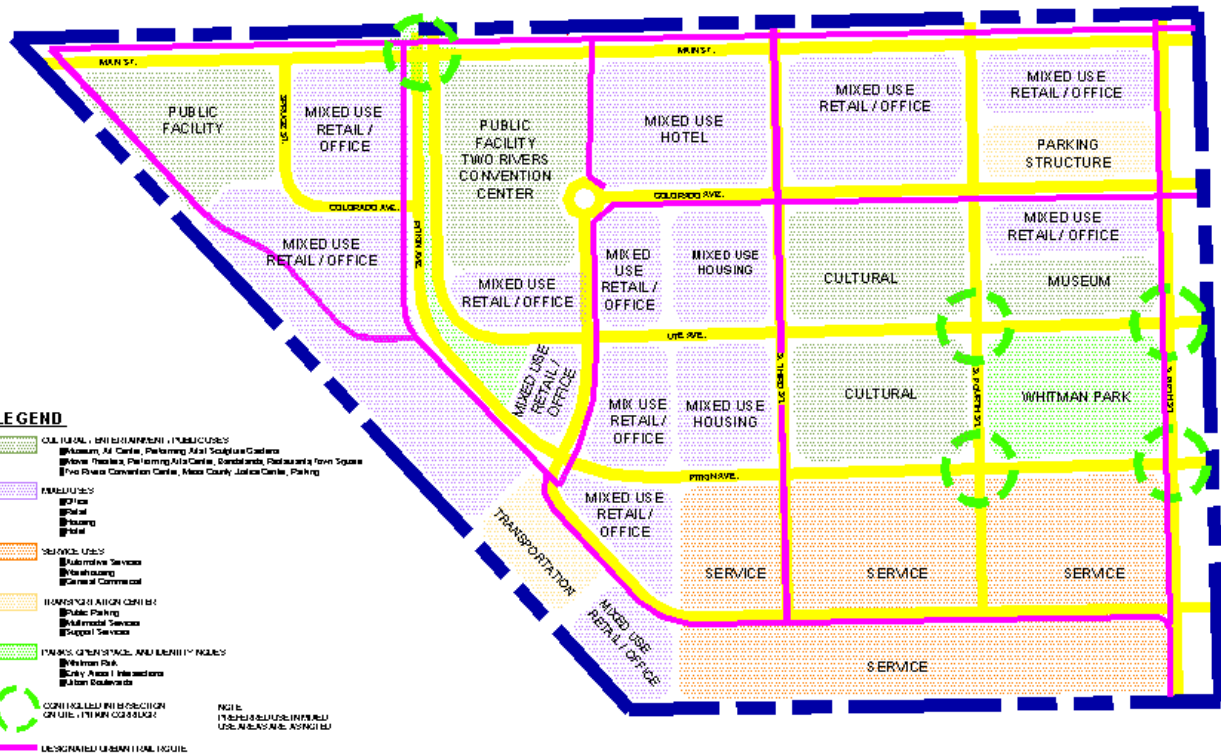
## **Executive Summary**

The following study had its origins in a grant received by Mesa County through the Great American Station Foundation to study the feasibility and design of the Grand Junction Historic Depot site as an Inter-modal Transportation Plaza ... a hub for Amtrak, Greyhound, and Grand Valley Transit. Both the City of Grand Junction and Mesa County wanted to explore the traffic issues associated with such a facility, and the City also saw an opportunity to encourage and enhance the redevelopment of the lower downtown area. Subsequently the scope of the project expanded to become the Westside Downtown Redevelopment Study.

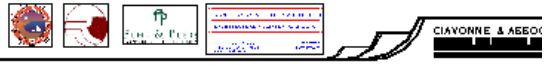
The Westside Downtown Redevelopment Study Area is bounded on the north by Main Street, on the east by 5<sup>th</sup> Street, on the south by South Avenue, and on the west by the Railroad (Exhibit 1). The area is anchored by the Historic Depot, the Mesa County Justice Center, the Two Rivers Convention Center, and the Museum of Western Colorado. Vacant land, zoning, existing uses, potential uses, transportation issues, roads, automobiles, parking, pedestrians, historic structures, existing buildings, structures in disrepair, existing utilities ... these are many of the elements that have been examined while identifying the highest and best uses for this area.

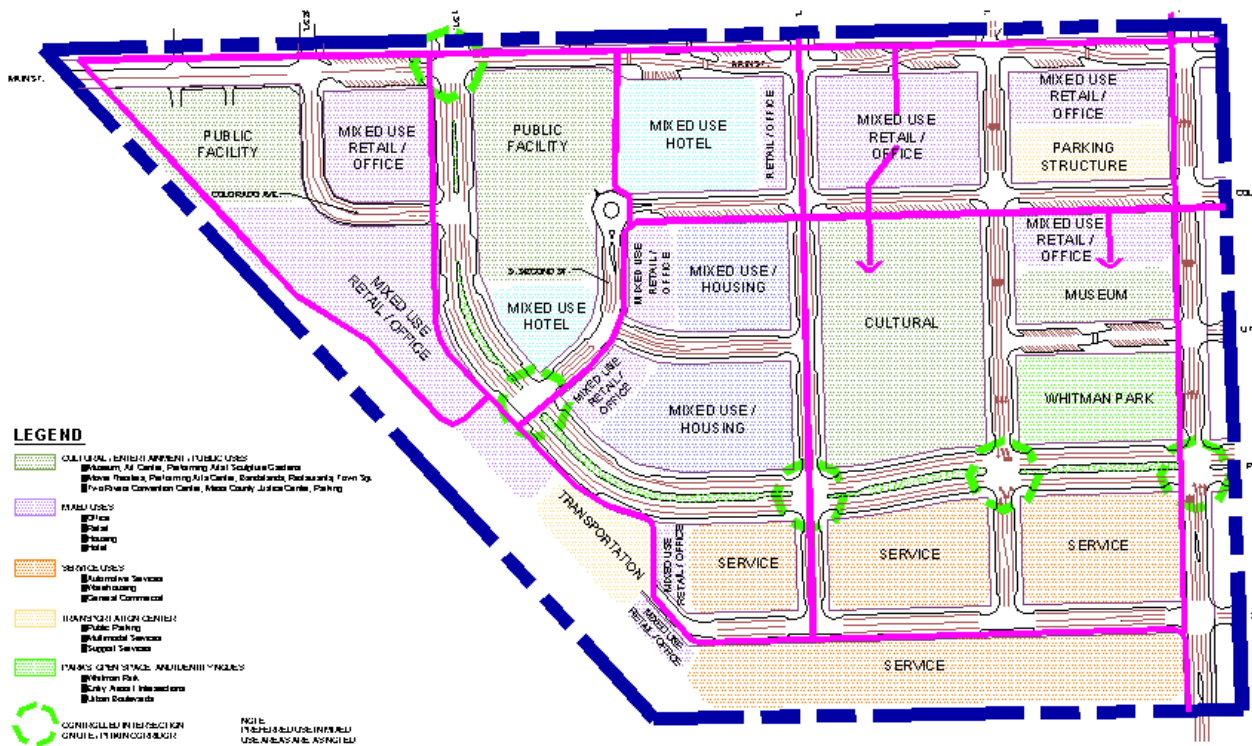
Three initial Transportation Plaza area concepts focused on the facility needs that Greyhound bus would have on the Depot area, as well as additional circulation opportunities and constraints throughout the entire Study Area. It was apparent from the onset of the study that the Historic Depot area was 'isolated' by the Pitkin – Ute transportation corridor and that there was a shortage of vacant real estate around the Depot to expand transportation facilities. This combined with public feedback and a reduced interest by Greyhound, resulted in the removal of Greyhound from the Inter-modal plaza program. Although the 'transportation plaza' aspects of the study were impacted, this was offset by a greater understanding of the importance of a redevelopment study addressing multi-modal facilities and roadways, land use, and aesthetics.

Absent a true 'transportation plaza' program element, three new concept plans were developed and presented to the public. Public feedback and Team input resulted in two recommended plans. One recommendation, labeled 'Preferred Plan – Short Term', is generally a "minimal change" alternative (Exhibit 2). This plan includes proposed zoning within the Study Area, and minor modifications to the existing circulation system. Entry, streetscape, and architectural improvements could still be implemented. The second recommendation, labeled 'Preferred Plan – Long Term' represents the ultimate desires of the public and the Team (Exhibit 3). This plan suggests significant changes to the existing circulation system and creates ripples that expand beyond the Study Area boundaries into adjacent downtown areas.



**WESTSIDE DOWNTOWN REDEVELOPMENT STUDY**  
**SHORT TERM PREFERRED PLAN**





**WESTSIDE DOWNTOWN REDEVELOPMENT STUDY**  
**LONG TERM PREFERRED PLAN**



CLAYBORNE & ASSOC.

We believe this study provides a foundation and consensus towards the future development and redevelopment of the southwest area of Downtown Grand Junction.

## **Goals, Policies and Implementation Steps**

### **Transportation**

Goal: Accommodate the needs of all modes of transportation to and through the area, while respecting the importance of the area to the vitality of the urban core.

Policy: Street design will accommodate travel lanes, parking, bike lanes, medians, sidewalks, and street trees and will be appropriate to and complement the adjacent land use.

Policy: Street design will achieve a balance between travel mobility, land use access, and livability.

Policy: Street design will be pedestrian friendly to provide a foundation for a safe, active and livable area, including sidewalks, off-street trail connections and safe crossings.

Implementation Steps:

5. Provide traffic calming measures where appropriate, including pedestrian refuge areas, medians, landscaping and corner bulb-outs.
6. Conduct a more detailed traffic analysis of the area to determine needed intersection control and street cross-sections.
7. As opportunities arise, reconfigure the streets in accordance with the Plan.
8. Explore funding opportunities for combining Ute and Pitkin into one boulevard.

### **Land Use**

Goal: Redefine the land use in the area to provide a mix that will offer the most opportunities for redevelopment and revitalization.

Policy: "Districts" will be defined for groupings of land uses that are complimentary to the rest of the downtown area.

Policy: Mixed uses, including residential will be encouraged.

Policy: Shared parking facilities, including structured parking, will be encouraged in the study area.

Policy: Designation of historic structures and districts will be encouraged.

### Implementation Steps:

5. Adopt an overlay zone for the area to identify land use groupings.
6. Adopt standards that allow for mixed uses and recognize the uniqueness of site design for this area of downtown.
7. Work with property owners on historic designations for individual structures and districts.
8. The Downtown Development Authority will coordinate with property owners, investors and developers to facilitate projects.

### **Aesthetics**

Goal: Create architecture design and streetscapes with a unified theme for the Westside Downtown area, blending existing materials and patterns with new infill buildings and streetscape amenities to solidify a “Sense of Place”.

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Policy: The streetscape will include corner bulbs, boulevard strips, street trees, public art, furniture, lighting and signage that is consistent with the theme for the area or district.

### Implementation Steps

2. Adopt design standards and guidelines for the Westside Downtown area.



## **Project Vision and Goals**

In order to develop a strongly supported plan for the area as a proactive approach to redevelopment, the following goals were identified through public input and charettes with the Team:

- to answer questions as to the feasibility and practicality of this site as an appropriate location for an Inter-modal Facility;
- to provide a 'map' for landowners, developers, and entrepreneurs wanting to proceed with development;
- to provide a guide for potential future public investment in infrastructure and/or land;
- to identify and support the highest and best use for the area;
- to increase the value of the area and invigorate 'life' through mixed use neighborhoods, linking commerce, residential, and cultural uses;
- to reinforce an architectural and landscape theme throughout the area;
- to support Grand Junction as the Urban and Cultural Center for Western Colorado.

## **Opportunities and Constraints**

Every constraint creates an opportunity, and the Study Area has a number of both (Exhibit 4). The single biggest 'constraint' within the Study Area, repeatedly identified by the public and the Team, was the double one-way street corridor comprising the Business Loop (Ute and Pitkin). Increasing 'value' through the expansion and linking of commerce, residential, and cultural uses was the most heard 'opportunity'.

Additional opportunities and constraints instrumental in the development of conceptual plans include:

- Constraint – Ute and Pitkin Avenues inhibit development of real estate between the two one-way streets.
- Opportunity – Extend the four lane corridor 'concept' that presently occurs within the Business Loop north of Colorado Avenue and east of 15<sup>th</sup> Street.
- Constraint – Traffic isolates real estate south of Ute Avenue.
- Opportunity – Analyze current traffic and incorporate traffic reductions associated with the future Riverside Bypass and 29 Road Project.
- Constraint – The Ute - Pitkin corridor presents barriers to some pedestrian and bicycle movements.
- Opportunity – Provide traffic calming measures within the corridor (medians, corner 'bulbs'); identify and strengthen 'Urban Trail' routes through the Study Area.

- Constraint – Current and Future zoning designations generally ‘blanket’ the Study Area, and are very broad in their allowed uses (Exhibits 5 & 6).
- Opportunity – Change the future zoning to create a diversity of zones that encourage Mixed Use, Cultural, Residential, Retail, and Service.
  
- Constraint – Current land use is scattered and inconsistent (Exhibit 7).
- Opportunity – Promote land use groupings that coordinate with zoning.
  
- Constraint – Significant established underground utilities are laced throughout the Study Area (Exhibit 8).
- Opportunity – Focus proposed changes on corridors with minimal existing utilities, or utilities that are relatively easy to relocate.
  
- Constraint - Lack of human activity, night life.
- Opportunity – Strengthen connections between existing Historic, Public, and Quasi-Public Facilities; increase cultural and entertainment uses; incorporate residential uses.
  
- Constraint – Lack of aesthetics and/or sense of place.
- Opportunity – Create a destination, define a ‘Gateway’ to this Lower Downtown Area; provide landscaped entries and streetscapes.
  
- Constraint - Lack of space around the Depot area for support facilities (parking, circulation), and difficult access.
- Opportunity – Identify realistic options for the Depot area. Create a focal point to attract users.
  
- Constraint – Historic District boundaries include a few ‘Designated Structures’, but numerous ‘Eligible Structures’ that are in great disrepair.
- Opportunity – Identify and incorporate designated and salvageable historic structures into the plan and redevelopment design guidelines.
  
- Constraint – Many existing buildings that are diverse, scattered, vacant, and / or dilapidated, and a ‘checkerboard’ or vacant properties.
- Opportunity – Create redevelopment design guidelines, specifically geared for new development of vacant and blighted areas.

## **Redevelopment Program Criteria**

Redevelopment within the Westside Downtown Study Area encompasses a large spectrum of planning and design issues. The primary focus of this study is in the areas of Transportation, Land Use, and Aesthetics. Aesthetics, including Architecture and Streetscape, is the most apparent and tangible facet of redevelopment, but it does not function independent of transportation and land use. Each of these issues has their own set of parameters, yet they are remarkably integrated and need to support each other. With the foundations of this study in transportation, and with the primary constraint being the Ute – Pitkin barrier, the ‘street’ became the first focus of the study.

### ***Multi-Modal Street Design***

Traditionally, streets have been categorized primarily by a functional classification system. This approach classifies streets according to their position in the roadway network, the amount of access allowed from adjacent land uses (from driveways or intersecting streets), and the quantity of traffic carried. Generally, streets with maximum access to adjacent property (such as local residential streets) carry lower traffic volumes compared to streets that allow minimal access to adjacent properties (such as expressways). All streets can be classified according to these criteria – more vehicular mobility with less access vs. less vehicular mobility with more access.

The Westside Downtown Redevelopment Study complements that approach, and defines streets (see report section entitled “Street Types for the Westside Downtown Redevelopment Plan”) by how they function for vehicles, how they function for other types of transportation such as walking, mass transit and bicycling, and how the adjacent buildings are designed and used.

Streets are not considered in isolation from land use, but are defined in part by the buildings and land uses that are located next to them. Streets are comprised of the area where vehicles move, the area where pedestrians move, and the areas where buildings interface with the rest of the street.

Designing multi-modal street types ensures that the design of the entire right of way – travel lanes, parking, bike lanes, medians, sidewalks, and street trees – are appropriate to and complement the adjacent land use. Multi-modal street types and land use types become the primary components of integrated land-use and transportation decisions.

All streets are multi-modal streets in that they accommodate multiple travel choices, trip purposes and travel lengths. Since streets provide the transportation backbone for all of Grand Junction, their design and operation substantially influence the extent that people will walk, bike, drive or use transit. Achieving a balance between travel mobility, land use access, and livability with the street system is critical to the implementation of the Westside Downtown Redevelopment Plan.

The primary challenge with multi-modal street design is that no two multi-modal streets are generally designed the same due to the difference between mobility, access, interface and travel modes associated with each street.

Street function designations encompass both the design characteristics of streets and the character of service or travel trips that the streets are intended to provide. Traditionally, categorizing street function forms a hierarchy of streets ranging from those that are primarily for travel mobility (such as Ute Ave.) to those that are primarily for access to property (such as South Ave.). These two primary concepts, mobility and access, relate to the ability to get from one location to another (mobility) and the ability to get into and out of a particular piece of property (access). The street function system recognizes that individual streets do not act independently of one another but instead form a network that works together to serve travel needs on a local, city-wide and regional level.

### **The Travelway Area**

The travelway is the section of the street in which vehicles and bicycles travel. It includes bicycle lanes, travel lanes, turning lanes and medians. While the travelway is primarily for the movement of vehicles, it also is where pedestrians cross streets and access transit. The design of the travelway affects how much traffic a street can carry and how fast vehicles will travel.

Equally important, the design of the travelway affects how people perceive the street. Wide expanses of asphalt and concrete with barren landscaping are perceived as barriers to pedestrians — who often choose not to cross such streets even when their destination is directly across the street. The travelway connects with the pedestrian area along its length and connects with adjacent land use via driveways and intersections.

### **The Pedestrian Area**

The pedestrian area is the section of the street needed to move people and transition people between land uses and between vehicles and land use. This environment includes on-street parking, curbs and gutters, tree lawns, sidewalks and bus stops. It is the interface between land use and the travelway. Often, amenities such as on-street parking and tree lawns achieve a dual purpose — they serve to slow down traffic in the travelway as well as provide a more attractive and safer pedestrian area. This will be particularly important on the reconfigured 'Utekin Boulevard' (the combining of Ute and Pitkin into one boulevard), where traffic speeds and volumes will limit pedestrian mobility.

Pedestrian-friendly streets provide the foundation for safe, active and livable areas. Pedestrian amenities can result in sidewalk activity such as outdoor seating, encourage

walking and bicycling, and contribute to quality of life. Attention to the pedestrian area and the design of connections to buildings and sites are critical to long-term transit viability. Every trip has a pedestrian component, but transit riders usually walk more than drivers do at both ends of each trip. If the connection from the transit stop to the destination is safe, comfortable, direct, and engaging, transit use becomes an attractive alternative to driving. If other needs can be met in the process, such as daily errands, the attraction becomes that much stronger.

In addition, pedestrian amenities make a critical difference in the safety, comfort, and mobility of those without the option of driving: the elderly, the disabled, children, and lower-income people. Given the civic and public uses in downtown Grand Junction, these considerations are particularly important.

### **The Land Use and Urban Design Area**

The land-use and urban design area is where land uses meet the street (e.g. building faces, front yards), and it is fundamental to how the street looks and feels to its users. Urban design focuses on character and aesthetics and includes building orientation and placement, streetscapes, lighting, landscaping themes and building architecture.

This area includes the land uses that line the street and how they relate to the street. It deals with the mix of uses as well as how they are accessed. It also deals with the appearance of the buildings, both from the standpoint of pedestrians in the pedestrian area and passengers in vehicles traveling through the travelway area. The Westside Downtown Redevelopment Plan recognizes that success will be achieved through a careful coordination of both streetscape design *and* urban design.

### ***Land Use***

The second focus of the study was Land Use. As noted above, Land Use starts where the street meets the building façade or building surrounds, but it is integral with the street. Project 'Vision and Goals' spoke to 'highest and best use' of the land, and the Opportunities and Constraints identified the desire for diversification of zoning, increased cultural, retail, and residential uses, and connectivity and continuity of uses.

The team originally identified ten 'concentrations' of land uses, reduced these to six groupings, ultimately combining them into the following five categories. Although the majority of these uses fall under the broad spectrum of 'Commercial', the plan promotes the noted Land Use 'Centers', or 'Districts', with the understanding that their borders may expand or contract as per market demand.

## The Land Use Groupings

- ***Cultural / Entertainment / Public Uses***
  - Museum, Art Center, Performing Arts, Sculpture Gardens,
  - Movie Theaters, Performing Arts Center, Bandstands, Restaurants, Zoo, Town Square
  - Two Rivers Convention Center, Mesa County Justice Center, Parking
- ***Mixed Uses***
  - Typical Office and Retail uses
  - Housing (as a component of any)
  - Hotels
- ***Service Uses***
  - Automotive Services
  - Warehousing
  - General Commercial
- ***Transportation Center***
  - Public Parking
  - Multimodal Services
  - Support Services
- ***Parks, Open Space, and Identity Nodes***
  - Whitman Park,
  - Entry Areas / Intersections
  - Urban Boulevards

In the evolution of the above 'Centers' it was realized that Historic Structures and Districts are independent of Land Use, and can occur anywhere. The Study Area contains a number of excellent Historic Structures which are scattered through every proposed Land Use area.

## ***Aesthetics***

Aesthetics is the last, but by no means the least, area of focus in the Westside Downtown Redevelopment Study. With the foundations of Transportation and Land Use, the Aesthetic goal is to create Architecture and Streetscapes with a unified theme, blending existing materials and patterns with new infill buildings and streetscape amenities in order to solidify a 'Sense of Place'. The vitality and quality of experiences of businesses, residents, and patrons is enhanced by the nature and form of this urban fabric. Buildings, landscape, pedestrian areas, and streetscape elements all combine to reinforce the Land Use and Transportation plan components to create the character of this area. The intent for each of these elements to compliment each other is met.

## The Architecture

When Grand Junction's settlement began in 1881 there were not many materials available for permanent structures. Adobe and brick became the materials of choice once the first kilns were up and running. Within one year Colorado Avenue was home to several businesses made of brick and frame construction. Agriculture, retail, mining and commercial enterprises created a stimulus for growth in Grand Junction's Downtown District. The downtown area of Grand Junction featured a multitude of architectural styles: Shack, Mission, Dutch Colonial, Colonial Revival, Greek Revival, Gothic Revival, Victorian Gothic, Italianate, and the highly used Bungalow Style for residential. Other commercial and retail styles included False Fronts, Railroad architecture and Main Street Vernacular.

The existing buildings throughout the Westside Downtown Redevelopment Study Area have varied architectural styles, construction periods, histories and uses. This area has many positive architectural features, but numerous vacant lots and buildings are in disrepair.

Common architectural goals include:

1. Establish a cohesive character / theme that harmonizes new structures with the existing buildings. This is done through:
  - material selection
  - building scale and massing
  - building character / detail
2. Promote high density, mixed use structures;
  - plaza / ground floor space is reserved for retail, restaurants, or offices
  - second floor space is reserved for office, restaurants, and residential uses
  - third floor space is reserved for offices or residential uses
3. Limit building heights / orientate to allow for solar access avoiding perennially shaded areas;
4. Preserve and restore significant historic structures;
5. Promote infill development;
6. Provide building breaks in key locations to facilitate pedestrian and bicycle transportation;
7. Discourage surface parking from dominating the streetscape view;



8. Retain flexibility implementing the architectural program; maintain the spirit and vitality of mixed use under ever changing conditions;
9. Parking structure facades should blend with surrounding architecture; not just a blank wall or view of parked cars;
10. Encourage 'street' businesses, such as sidewalk cafes, coffee shops, vendors, and newsstands that increase social interaction on the streets.

## The Streetscape

Streetscape opportunities occur in the Travelway and Pedestrian areas of the transportation corridor. It can be in the median of a street, but it primarily occurs in the area between destination and transportation. It is not only a transition space, but a place to be in and a place to be viewed by people in transit. It is the zone of social interaction. Streetscape items include such things as:

- entry nodes: landscaped medians, corner bulbs, monuments / gateway signage all serve as visual location makers;
- corner bulbs and boulevard strips: landscaped or hardscaped areas suitable for trees, lighting, benches;
- focal points such as water features, sculpture, kiosks;
- trees :provide shade, enclosure visual relaxation, and provide scale;
- accent paving in key areas and/or at
- lighting: down lit and of a historical nature
- sitting / gathering areas such as plazas and benches;
- bike racks;
- waste receptacles;
- signage: Wood or metal mounted on the building; pictographs/logos; fabric banners.



in  
be  
of



crosswalks;  
periodic  
building;

## Conceptual Alternatives

As noted in the Executive summary, three initial Inter-modal Transportation Plaza area concepts were prepared that focused on the facility needs that Greyhound bus would have on the Depot area, as well as additional circulation opportunities and constraints throughout the entire study area. The space impacts of Greyhound were significant, public support for a Greyhound terminal was minimal, and Greyhound indicated they



were interested in alternative locations closer to the Interstate. With the removal of Greyhound from the planning program the Inter-modal Transportation Plaza aspects of the study were abandoned (see Appendix A for these plans).

These earlier plans were instrumental in identifying the traffic, land use, and aesthetic foundations of the redevelopment study, additionally identifying the need to expand the Study Area east to 5<sup>th</sup> Street. These elements were considered in the preparation of three more Concepts that were taken to the public for feedback. These are briefly described below.

**CONCEPT A – IMPROVED EXISTING** (Exhibit 9)

- Maintain Ute and Pitkin as separated one way streets, but improve the corner of Ute and First, and slightly shift the Pitkin diagonal to the east (at Pitkin and First). Improve the 2<sup>nd</sup> Street intersection at Pitkin and Ute with signalization;
- Enhance pedestrian and bicycle circulation across the Pitkin/Ute corridor;
- Encourage the noted Land Uses;
- Provide for Streetscape and Boulevard treatments within and along Ute and Pitkin.

**CONCEPT B – NEW DIAGONAL** (Exhibit 10)

- Realign Ute and Pitkin as a two-way separated road (similar to First Street but improved to a wide Urban Boulevard) and diagonal from 1<sup>st</sup> Street to the Pitkin corridor. Abandon the Ute corridor within the Study Area. Improve the 2<sup>nd</sup> Street intersection with signalization;
- Enhance pedestrian and bicycle circulation across the Pitkin/Ute corridor;
- The real estate that was between Ute and Pitkin is now north of the Business Loop;
- Encourage the noted Land Uses. A significant 'Anchor' business would be desirable south of the Business Loop by the Depot to attract people to this large area;
- Provide for Streetscape and Boulevard treatments within and along Ute and Pitkin.

**CONCEPT C – PITKIN ALIGNMENT** (Exhibit 11)

- Realign Ute to the Pitkin corridor as a two-way separated road (similar to First Street but improved to a wide Urban Boulevard). Abandon portions of the Ute corridor within the Study Area. Improve the 2<sup>nd</sup> Street and/or 3<sup>rd</sup> Street intersection with signalization;
- Enhance pedestrian and bicycle circulation across the Pitkin/Ute corridor;
- Encourage the noted Land Uses;
- Provide for Streetscape and Boulevard treatments within and along the new 'Utekin' Boulevard).



## Recommended Plans

As noted, a second Public Workshop resulted in usable feedback and selection of 'Concept C – Pitkin Alignment' as the Preferred Plan. Although the Team supported the selected plan, implementation seemed more plausible through the refinement of a 'Preferred Short Term' and a 'Preferred Long Term' plan. Therefore, two plans were carried forward for additional consideration and refinement: 'Concept A – Improved Existing' became the foundations of the Preferred Short Term Plan, and 'Concept C – Pitkin Alignment' became the foundations of the Preferred Long Term Plan. The Team did not see a reason for carrying forward 'Concept B – New Diagonal' plan, nor a 'Do Nothing' Plan.

The Short Term Preferred Plan received minor street and land use refinements (see Exhibit 12). The Short Term Preferred Plan, which is recommended as a stepping stone to the Long Term Preferred Plan, encourages:

- road curvature improvements where Pitkin, Ute, and 1<sup>st</sup> Street join (highly desired by CDOT);
- diversification in zoning;
- pedestrian and streetscape Right-Of-Way (ROW) improvements on all existing roads;
- landscape and streetscape improvements at Study Area entries and along the existing medians in First Street and the improved corner;
- implementation of architectural redevelopment guidelines.

This plan was not studied in any further detail.

The Long Term Preferred Plan underwent street and land use refinements based on feedback from the Public and the Team, and was studied with greater detail towards right-of-way widths, pedestrian trails, and refined zoning (see Exhibit 13). The Long Term Preferred Plan was supported by the public, the planning team, and planning staff for numerous reasons:

- it consolidates Ute and Pitkin (aka 'Utekin Boulevard') into a single Urban Boulevard, while improving traffic and pedestrian circulation;
- it maximizes the potential area of Mixed Use, Cultural, and Retail real estate on the north side of 'Utekin Boulevard';
- it eliminates the risk of establishing an 'Anchor' use at the Depot area;
- it allows and promotes significant streetscape improvements;
- it strengthens the ability to create Architectural Design Guidelines and themes for 'centers' within the plan (Loft District, Depot District, Cultural District).

The Long Term Preferred Plan was embellished to show streetscape and landscape opportunities throughout the study area, labeled as Long Term Preferred Plan with Urban Attributes (Exhibit 14).

Up to this point in the development of the various Concepts, traffic and circulation had only been considered in the context of a Fatal Flaw Analysis. A concept would be considered to have a fatal flaw if the resulting impacts could not be reasonably accommodated or mitigated. With the identification and refinement of a Long Term Preferred Plan, traffic, circulation, road sections, and parking could be studied in greater detail.

## **Traffic and Circulation**

### ***Existing Conditions***

Exhibit 15 (Existing ADT) shows the existing study area, the existing roadway network, and existing daily traffic volumes. Primary circulation patterns are to and from the north and east, due to physical constraints to the west and the south (the railroad mainline).

The dominant circulation pattern within the study area consists of traffic utilizing the First St./Ute Ave./Pitkin Ave. route. Ute Ave. and Pitkin Ave. form a one-way couplet, carrying a combined average daily traffic volume of over 25,000 vehicles per day east of Fourth St. First St. carries approximately 23,000 vehicles per day north of Colorado Ave. A significant portion of the traffic on this route has origins and destinations outside the Westside study area.

Another key circulation component within the study area is the one-way couplet formed by Fourth St. and Fifth St. These routes provide the primary north/south circulation to and from the study area. Fourth St. changes from southbound travel to two-way travel south of Pitkin Ave., while Fifth St. changes from northbound travel to two-way travel south of Ute Ave.

Current traffic levels of service are within acceptable limits for this geographic area. During peak AM and PM peak hours, delays are evident along Ute Ave. and Pitkin Ave., but intersection queuing and stacking is within tolerable limits. Truck traffic is fairly heavy on the Ute Ave./Pitkin Ave. couplet.

Pedestrian travel within the study area is provided by an extensive system of sidewalks, with the only notable gaps occurring on some segments of First St. between Colorado Ave. and Main St. The Urban Trails Master Plan denotes Main Street, First Street, Third Street, Fifth Street, and South Ave. as 'designated' pedestrian / bicycle routes. This Study encourages expanding these designated routes within the study area, south from Main Street (east of the railroad tracks) to the Amtrak Station, between the Amtrak Station and Two Rivers Convention Center / Main Street along Second Street, and east along Colorado Avenue. Although the proposed Long and Short Term Preferred Plans reflect the current Urban Trails Plan, segments along First Street and Fifth Street will be

difficult to provide on-street bike lanes. Due to the proposed realignment of Second Street, some out-of-direction pedestrian travel is required to cross Pitkin Ave. and Ute Ave. to travel between the Amtrak station and downtown Grand Junction.

### ***Project Description***

Table 1 provides a summary of daily trip generation associated with the preferred Westside redevelopment concept. The table is based upon the land uses summarized on Exhibit 13– “Long Term Preferred Plan”. Only those parcels with future redevelopment potential are listed on Table 1, so the “Existing Daily Trip Generation” column excludes existing traffic from parcels not subject to redevelopment.

The trip generation summarized on Table 1 is based on a number of key assumptions:

- A 1.5 floor-area-ratio for all land designated “Retail/Office;”
- A 25% Retail/75% Office mix for all land designated “Retail/Office;” and
- An overall 1.0 FAR for the cultural mega-block.

The most significant trip generation is attributable to the Retail/Office lands, where Retail will generate 41 trips per thousand square feet per day, and Office will generate 11 trips per thousand square feet per day. Another significant generate is the cultural mega-block, anticipated to generate over 4,200 trips per day.

## **Future Conditions and Future Roadway Improvements**

### ***Traffic Forecasts***

Exhibit 16 (Future ADT Plus Project) shows future traffic volumes attributable to the Preferred Westside Redevelopment Concept. The daily volumes represent the sum of traffic generated within the study area, as well as background 2025 travel forecasts provided by the Mesa County Regional Transportation Planning Office.

Although not within the study area, the Riverside Parkway will result in a significant reduction in future traffic that would otherwise utilize Ute Ave. and Pitkin Ave. Without the Riverside Parkway, east/west to north/south traffic patterns within the Westside study area would be measurably higher. The reconfiguration of Ute Ave. and Pitkin Ave. into ‘Utekin Boulevard’, described below, would not be feasible in the absence of the Riverside Parkway.

Exhibit 16 traffic volumes are anticipated to result in acceptable roadway segment levels of service, predicated on the implementation of a number of roadway and intersection improvements. These are discussed below.

## ***Roadway Improvements***

The single most significant roadway improvement assumed within the study area is the reconfiguration of the existing Ute Ave./Pitkin Ave. one-way couplet. This improvement, shown on Exhibit 17 (Proposed Roadway Improvements), would relocate existing Ute Ave., moving it adjacent to existing Pitkin Ave.

There are significant circulation and other benefits related to the reconfigured Pitkin Ave. shown on Exhibit 17. A version of these improvements showing streetscapes is shown Exhibit 14 – “Long Term Preferred Plan with Urban Attributes”. These improvements include the following:

- Traffic circulation is focused on fewer roadway facilities, freeing up land for contiguous development opportunities;
- Pedestrian crossings are simplified by consolidating high-volume, high-speed roadways within the study area. These roadways have large landscape medians that function as pedestrian ‘refuge’ areas; and
- The combined Ute Ave./Pitkin Ave. facility is expected to function acceptably with four travel lanes, primarily due to construction of the proposed Riverside Parkway.

Since Ute Ave. and Pitkin Ave. represent a one-way couplet that extends from the study area eastward to 15<sup>th</sup> St., a transition will be required somewhere between Sixth St. and 15<sup>th</sup> St. Should the transition occur west of 15<sup>th</sup> St., the transition would occur through one of the existing City blocks. The two-way concept could also continue eastward from the study area all the way to 15<sup>th</sup> St., with no mid-block transition necessary. The primary conclusion is that due to roadway geometrics, signal spacing, lane requirements, and turning radii minimums, the transition cannot occur within the Westside study area.

Other significant roadway modifications include:

- Removal of Ute Ave. between Third St. and Fourth St. This would allow the assemblage of land for the cultural mega-block;
- Modification of Second St. to swing south and west from the current Ute Ave. intersection, resulting in a relocated intersection with the new combined Pitkin Ave.; and
- Connection of South Ave. directly into the multi-modal transportation area.

Exhibit 18 (Proposed Number of Lanes) provides a diagram of the number of lanes assumed for existing and proposed roadways within the study area. The combined First St./Pitkin Ave. facility is assumed to consist of four travel lanes with a landscaped median. Anticipated travel volumes approach 30,000 vehicle trips per day between Fourth St. and Fifth St., which is the upper limit of level of service D operations for a

four-lane divided arterial street. Recognizing that future travel demands could exceed the planned four-lane capacity, the proposed First St./Pitkin Ave. facility has been designed as a six-lane ultimate facility, which would be achieved through removal of on-street parking.

### ***Intersection Improvements***

Exhibit 17 also shows a number of proposed intersection improvements. These are summarized in the following paragraphs.

#### **First St./Colorado Ave.**

This intersection is currently unsignalized, and there is an existing left turn pocket from First St. onto Colorado Ave. The western leg currently functions as a curb cut to the nearby warehouses. The proposed circulation scheme would result in a connection between Spruce St. and Colorado Ave. If all turning movements were allowed at First St./Colorado Ave. in the future, a traffic signal should be considered. The volume of opposing through traffic on First St. may necessitate a protected left-turn phase for Colorado Ave. traffic to eliminate excessive queuing on Colorado Ave.

If Colorado Ave. is constructed as a right in/right out only intersection (the median break would be closed), then the intersection should operate acceptably without a traffic signal. The existing northbound left turn pocket will need to be removed. This configuration will require careful monitoring of resulting intersection conditions at First St./Main St.

#### **Second St./Pitkin Ave.**

One of the significant circulation challenges within the study area is the provision of pedestrian circulation between the Amtrak station and destinations such as Two Rivers Convention Center. The proposed Second St./Pitkin Ave. intersection, which would be controlled by a traffic signal, would address this need by providing a more direct pedestrian path. In addition, it would reorganize the existing Second St./Pitkin Ave./South Ave. intersection, eliminating some non-standard roadway geometrics.



### **Third, Fourth, and Fifth Streets/Pitkin Ave.**

Each of these intersections will require signalization to achieve acceptable future (buildout) intersection operating conditions. This is primarily the result of heavy peak hour through volumes on Pitkin Ave., noted above as approaching 30,000 vehicles per day. Sufficient right-of-way is available on Third, Fourth, and Fifth Streets to accommodate signalization. The signal at Third St. will be important since motorists traveling to and from the multi-modal transportation area will utilize this intersection to access South Ave., which will connect directly to the transportation facilities.

**NOTE: It is anticipated that the construction of the Riverside Parkway will reduce the traffic volume growth along the Ute/Pitkin corridor through the study area. Future improvements to the transportation system in the area will require a more detailed traffic analysis to determine roadway configuration and needed intersection control.**

### ***Roadway Cross-Sections***

Cross sections for the varying rights-of-way (ROW) within the Study Area are depicted in Exhibits 19, 20, and 21. These sections display the potential for ROW widths and streetscape improvements that respect the traffic and pedestrian needs. The following summarizes the important ROW issues proposed within the Study Area:

- Many of the ROW's within the Study Area will remain at their existing 80 foot and 100 foot widths (minimizing land purchase), with three or four drive lanes, and with on-street parking;
- The proposed 'Utekin Boulevard' ROW width is 130 feet, with two drive lanes and one parking lane on either side of a 20-foot wide landscaped median. 'Utekin Boulevard' generally follows the Pitkin Ave. corridor, which is 100 feet wide. The proposed parking lanes can be converted to an additional drive lane in both directions if future traffic demands so dictate;
- The 130-foot wide 'Utekin' serpentines within the 100-foot wide Pitkin corridor, sometimes respecting the existing north ROW boundary (as shown in the 200 Block), sometimes transitioning across the ROW boundaries (as shown in the 300 Block), and sometimes respecting the existing south ROW boundary (as shown in the 400 Block). The expanded width of 'Utekin Boulevard' will impact existing land uses on one or both sides of the Pitkin corridor;
- Spruce Street may be expanded to the south to provide better access into the designated Retail Office area.

### ***Street Types for the Westside Downtown Redevelopment Plan***

Multi-modal, livable streets are categorized by "type" based on their adjacent land use. While such categorization is an essential step in defining a multi-modal system, most



jurisdictions have not fully or uniformly adopted this convention. Therefore, two overlay street types are recommended for consideration by Grand Junction in conjunction with the Westside Downtown Redevelopment Plan:

- **Main Street** (Main St., Colorado Ave., Second St., and Third St.)
- **Mixed-Use Street** (First St., Ute Ave., Pitkin Ave., 'Utekin Blvd.,' Fourth St., and Fifth St.)

These designations would complement, not replace, the existing functional classifications for these facilities. As described in the previous section, the traditional designation of a street's function broadly defines its design and operational characteristics related primarily to the movement of motor vehicles. The multi-modal, livable street types define streets by relating them to the adjacent land use and their function for pedestrians, bicyclists and transit. Street design often ignores, or de-emphasizes, other modes of travel when it is based solely on the traditional emphasis of street functional classification. The design of a street, its intersections, sidewalks, and transit stops should reflect the adjacent land uses since the type and intensity of the adjacent land use directly influences the level of use by other modes.

The street types attempt to strike a balance between street function, adjacent land use, and the competing travel needs. Each street type prioritizes various design elements by looking at factors related to both the adjacent land use and the appropriate balance of transportation modes. Of course, the improvements to each facility will depend upon the availability of public right-of-way and funding.

Where sufficient public right-of-way exists, all "initial priority design elements" are recommended and may be accommodated. If sufficient land and funding are available, secondary priority design elements could then be added. Within constrained public right-of-way and with limited transportation funding, however, tradeoffs between design elements are required to balance the functions of the various travel modes and mobility and access needs. The general characteristics of the two recommended street types are described below.

### **Main Street (Main St., Colorado Ave., Second St., and Third St.)**

These streets should have wide sidewalks, street furniture (benches, information kiosks, trash receptacles, etc.), outdoor cafés, plazas and other public spaces. On-street parking provides vitality for adjacent businesses, and has a calming effect on vehicular traffic.

#### *Initial priority design elements*

- Wide sidewalks with pedestrian plazas
- Well-marked pedestrian crosswalks and signals

- Bicycle lanes on designated bike routes (Colorado Ave., Second Street, and Third Street)
- Bicycle facilities
- Curb extensions
- Tree lawns / amenity zones
- On-street parking

*Secondary priority design elements*

- Medians
- Commercial loading zones

*Examples of potential traffic management features*

- Narrower travel lanes (minimum 11.5 feet)
- Alternative paving material
- Tree planters in parking lane
- On-street parking
- Reduced pedestrian crossing distances at intersections, using curb extensions, traffic islands, and other measures
- Raised intersections
- High-visibility crosswalks

**Mixed-Use Streets**

**(First St., Ute Ave., Pitkin Ave., South Ave., ‘Utekin Boulevard’, Fourth St., and Fifth St.)**

Achieving the vision of the Westside Downtown Redevelopment Plan will depend in part on the degree to which vehicular traffic flows are balanced with pedestrian safety and access. While First St., Ute Ave., Pitkin Ave., South Ave., Fourth St., ‘Utekin Boulevard’ and Fifth St. will continue to retain important traffic movement functions, they need to provide access for all users – pedestrians, shoppers, and downtown employees.

*Initial priority design elements*

- Wide sidewalks with transit access
- Well-marked pedestrian crossings and signals
- Bulb-outs at intersections
- Special pavement treatments at intersections
- Bicycle lanes on designated bike routes (First Street, South Ave., Fourth Street, and Fifth Street)
- Bicycle facilities
- Tree lawns
- On-street parking
- Landscaped median islands

*Examples of traffic management features*

- Landscaped medians
- On-street parking
- Street trees
- Narrower travel lanes (11.5 foot minimum)

## **Parking**

Table 2 and the corresponding Lot Area Breakdown Table (Appendix B) summarizes parking requirements within the Study Area. A total of over 5,400 new off-street parking spaces will be required, based on maximizing development of each lot and applying City of Grand Junction parking standards. Parking requirements for Amtrak and Grand Valley Transit (the uses planned for the "Transportation Center") are closely related to the level of activity associated with passenger rail service. Additional Amtrak parking would be necessary only if significant increases in passenger rail service are anticipated during the study time horizon, and this is currently not the case.

Provision of approximately 5,400 new parking spaces will be accomplished through a combination of public parking facilities (such as the existing facility adjacent to the Two Rivers Convention Center and the proposed parking structure located between Fourth St. and Fifth St. north of Colorado Ave.) and private parking required for each development application. In addition, study area streets have been designed to provide over 300 on-street parking spaces. These consist of both parallel spaces (such as those featured along "Utekin Blvd." as well as angle spaces (shown along Colorado Ave.) Although on-street spaces are typically not credited against off-street parking requirements, these 300 spaces will comprise a key component of the future Westside parking supply. Utekin Blvd. on-street parking will require further evaluation, including consideration of CDOT's mobility objectives for this corridor.

The overall parking objective within the Study Area is two-fold: (1) insure that there is adequate parking, proximate to parking demand, throughout the Study Area; and (2) maximize opportunities to pool parking resources, thereby achieving optimal site design and minimization of duplicative parking resources. This will be achieved through continual monitoring of conditions of approval, provision of on-street parking through streetscape improvements, and planning and construction of public parking lots and structures. While it would be ideal to reduce future per square foot parking requirements and thereby reduce the amount of Westside land dedicated to surface parking, the Westside Plan assumes that current Grand Junction parking ratios will be applied. The key will be maximizing opportunities to pool parking resources in a limited number of surface parking lots or parking structures.

## **Summary**

The Westside Downtown Redevelopment Study is a 'stepping stone' to the future development and redevelopment of the lower downtown area. While this Study provides significant 'direction' on the areas of Transportation, Land Use, and Aesthetics, it recognizes this 'direction' as an evolving process. This is exemplified by the designation of the desired solutions as "Preferred Plan - Short Term" and "Preferred Plan - Long Term".

The 'Preferred Plan - Short Term' recommendation is generally a "minimal change" alternative that includes proposed zoning within the Study Area and minor modifications to the existing circulation system. Within this plan proposed 'Land Use' can be expedited and implemented, while entry treatments, streetscape, and architectural improvements must be implemented with regard to the 'Long Term' improvements. The 'Preferred Plan - Long Term' recommendation represents the ultimate desires of the public and the planning team. This plan allowed traffic, circulation, road sections, streetscapes, and parking to be studied in greater detail.

The Westside Downtown Redevelopment Study notes 'Aesthetics' (including Architecture and Streetscape) as the most apparent and tangible facet of redevelopment, stressing that 'Aesthetics' does not function independent of 'Transportation' and 'Land Use'. While each of these issues has its own set of parameters, they must support each other within any redevelopment study. The original foundations of this study were in 'Transportation' followed by 'Land Use'. Subsequently, the 'street' became the first focus of the study defining the boundaries for 'Land Use'. As this study progressed 'Aesthetics' was continually integrated in the development and refinement of 'Transportation' and 'Land Use'. Realizing that 'Aesthetics' extends beyond the larger scale issues of 'Transportation' and 'Land Use' ("the devil is in the detail"), the Westside Downtown Redevelopment Study provides a section on Architectural Guidelines that address a much greater arena of 'detail'. These Guidelines follow this Summary, and are detailed enough to function as a 'stand alone' document.

As a final note, the long term recommendations within the Westside Downtown Redevelopment Study propose significant changes to the existing circulation system. These changes create ripples that expand beyond the Westside Downtown Study Area boundaries into adjacent downtown areas. In particular, traffic and parking impacts will be better understood with considerations to a much larger study area. The Westside Downtown Redevelopment Study will hopefully provide the foundations for a larger more comprehensive study of the entire downtown area.

**Attach 15**  
**Agreements with Sanitation Districts**  
**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA							
<b>Subject</b>		Consideration of IGA's and TSA's between City of Grand Junction and Sanitation Districts.					
<b>Meeting Date</b>		January 7, 2004					
<b>Date Prepared</b>		December 30, 2003			<b>File #</b>		
<b>Author</b>		Kelly Arnold			<b>City Manager</b>		
<b>Presenter(s)</b>		Kelly Arnold, John Shaver, Mark Relph & Greg Trainor			<b>City Manager, Interim City Attorney, Public Works &amp; Utilities Director, &amp; Utilities Manager</b>		
<b>Report results back to Council</b>			<b>No</b>	X	<b>Yes</b>	<b>When</b>	After County and Districts consider agreements formally
<b>Citizen Presentation</b>			<b>Yes</b>	X	<b>No</b>	<b>Name</b>	
	<b>Workshop</b>	X	<b>Formal Agenda</b>			<b>Consent</b>	X <b>Individual Consideration</b>

**Summary:** Over the course of the last six months, the staff's and attorney's of three sanitation districts (Fruitvale, Central Grand Valley, and Orchard Mesa), Mesa County, and City of Grand Junction have been negotiating Intergovernmental Agreement's (IGA) and Total Service Agreement's (TSA) for a period of years that clearly delineates roles and responsibilities of each agency. This effort comes from the last Persigo Board meeting in July which the Board authorized the use of a third party to help facilitate negotiations.

**Budget:** All parties acknowledge that there are budgetary implications for their respective agencies starting in 2004. Specifically, the agreements outline Persigo Fund participation to the District's in the following manner:

*Fruitvale:* Annual payment of \$62,930 for "Fruitvale Capital Fund."

*Central Grand Valley:* Annual payment of \$110,670 for "Unrestricted Capital Fund" and \$144,330 for "Restricted Capital Fund."

*Orchard Mesa:* Annual payment of \$43,400 for "Unrestricted Capital Fund" and \$56,600 for "Restricted Capital Fund."

**Action Requested/Recommendation:** It is staff's recommendation that Council approves the attached IGA's and TSA's with Fruitvale Sanitation District, Central Grand Valley Sanitation District, and Orchard Mesa Sanitation District, and forward these agreements to each respective District and Mesa County for their approval.

**(NOTE: all parties have indicated that they will approve the attached documents).**

**Attachments:** Attached are the proposed IGA's and TSA's between the City of Grand Junction, Mesa County, and Sanitation Districts.

**Background Information:** Each attached agreement is unique to each Sanitation District. These agreements supercede prior agreements, except where duly noted, between the City and the Districts. The primary purposes of each agreement are to:

- Outline the responsibilities of each party for maintaining and improving their current system.
- Set forth rates for treatment and plant investment fees.
- Financial participation in Persigo funds for "Unrestricted Capital Funds" and for "Restricted Capital Funds". See discussion under **Budget** section of this memo.
- Sets forth conditions of dissolution or implementation of a Total Services Agreement (TSA). Each Sanitation District has agreed to take a dissolution vote in the future and if the vote fails, then the attached TSA is implemented. The concept of a TSA is that the City of Grand Junction manages/operates the District system, but ownership is maintained by the District. This concept is found to be successful in the Denver metropolitan area where the City of Denver is the manager/operator of a significant portion of the sewer system in this area with the Districts and/or suburban municipalities serving as the owners. The TSA allows for a unified system with all districts participating. The time period for each District to consider dissolution or a TSA is the following:

Fruitvale: a vote to be taken on or before November, 2008;

Orchard Mesa: a vote to be taken on or before November, 2015;

Central Grand Valley: a vote to be taken on or before November, 2012; if dissolution is not approved then another vote to be taken within 25 months after the prior vote.







# INTERGOVERNMENTAL AGREEMENT

## FRUITVALE SANITATION DISTRICT COUNTY OF MESA CITY OF GRAND JUNCTION

This Agreement is entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2004, by and among the Fruitvale Sanitation District (``Fruitvale''), and the City of Grand Junction (``City''), and Mesa County (``County’’).

### Recitals

A. On the 28<sup>th</sup> day of September, 1959, Fruitvale entered into an Agreement with the City (``Fruitvale Agreement’’) for the construction of sanitary sewer lines within the boundaries of that District and for the treatment of such effluent by the City. The Fruitvale Agreement has been modified on several occasions.

B. The parties now desire to enter into this new Intergovernmental Agreement which will (except as otherwise specifically provided herein) supercede the Fruitvale Agreement, as modified. This Intergovernmental Agreement will govern the relationship of the parties from and after the effective date of this Agreement.

Now, therefore, in consideration of the Recitals above and the covenants below, the parties agree as follows:

1. Joint Persigo Sewer System Agreement. The City and Mesa County have entered into a Joint Policy Making Agreement for the Persigo Sewer System signed October 13, 1998 (``Persigo Agreement’’). The parties acknowledge that the Persigo Agreement controls the relationship between the City and the County regarding the operation, management and control of the Persigo Sewer System as that System is defined in the Persigo Agreement. Nothing in this Intergovernmental Agreement is intended to modify or supercede the Persigo Agreement and if a conflict exists, then the provisions of the Persigo Agreement will prevail.

2. Fruitvale Lines and Fixtures. Fruitvale has constructed and currently owns, operates and maintains approximately 9 miles of lines, most of which are located within its boundaries. In addition to all lines within its boundaries, Fruitvale owns what is referred to as the Grand Avenue outfall line which carries effluent from the District to City Lines. Fruitvale currently serves properties in WestPark subdivision and in Eastbury subdivision under the terms of an intergovernmental agreement with Central Grand Valley Sanitation District. Under that agreement, several Fruitvale customers are serviced by CGVSD. All District customers and all properties within the District boundaries are also within the 201 Service Area. Except as otherwise provided herein and under the terms of the Total Service Agreement (``TSA’’), a

copy of which is attached hereto and incorporated herein by this reference, Fruitvale will continue to own, operate and maintain all of its current lines and will own any lines which are constructed in the future by the District or which are located within the Fruitvale boundaries. All such lines, and any facilities attached to or used in connection with such lines (including lift stations) are referred to in this Agreement as the ``Fruitvale Lines``.

3. Construction Standards. Fruitvale is responsible for the proper construction and maintenance of all lines within its system. All such construction shall comply with all rules and regulations of each respective District and with all local, County and state laws and regulations. In addition, such construction shall at a minimum meet the standard construction specifications as adopted from time to time by the City. The Districts' standards may exceed those of the City.

4. City Lines and Fixtures. All sanitary sewer lines, and any facilities attached to or used in connection with such lines (including lift stations) which are not Fruitvale Lines (and excluding any lines which belong to the Orchard Mesa Sanitation District and the Central Grand Valley Sanitation District) will be referred to in this Agreement as the ``City Lines.`` The Districts acknowledge that they do not have any ownership interest in such City Lines and the City Lines are under the control of the City, either by virtue of actual ownership or by virtue of agreements with other parties. The City is responsible for the maintenance of the City Lines.

5. Acceptance of Effluent for Treatment. The District will continue to discharge its effluent into the City Lines at the currently existing locations. If additional discharge points are required in the future, then the City will negotiate with the District regarding the terms and locations of such additional discharge points. In addition, the City will continue to treat all District effluent at the Persigo Plant.

6. Rates For Treatment. All rates for treatment and for maintenance and operation of all parts of the Persigo System, except for the Fruitvale Lines, shall be established pursuant to the Persigo Agreement and shall be assessed uniformly to all users of the Persigo System, including all District users (``Persigo Rate``). As of January 1, 2004, and as of the date of the signing of this Agreement, the Persigo Rate is \$13.23 each month for one EQU. For purposes of determining the charges to be paid by the District's customers, the Persigo Rate shall be reduced by twenty seven and two tenths percent (27.2%) for all District customers; this number will be referred to as the ``District Rate.`` The District Rate as of January 1, 2004 and as of the date of the signing of this Agreement is \$9.63 for one EQU. ``EQU`` is defined by the City's Code. When the City changes the Persigo Rate from time to time, the District Rate shall be adjusted to continue to be equal to seventy-two and eight tenths percent (72.8%) of the Persigo Rate.

7. Additional District Charges. In addition to the District Rate, each District may assess or charge such additional amounts to its customers as may be determined from time to time by the Board of the District; provided, however, beginning with the 2006 calendar year, the District shall assess or charge monthly service fees to its customers (including the District Rate) which

equals or exceeds the Persigo Rate. The District may establish its own procedures for setting rates, fees, tolls and charges to be assessed against its customers for services. In addition, the District may incur such debt, enter into such contracts and establish such ad valorem taxes as its Board may determine is needed or proper for the administration of its services.

8. Plant Investment Fee.

(a) In addition to the Persigo Rate, the City, pursuant to the Persigo Agreement, shall continue to assess to and require the payment of a Plant Investment Fee (``PIF'') to each new tap into the Persigo System. This PIF shall be charged by the District for new taps into the District System. Such PIF shall be uniform throughout the Persigo System and shall be paid at the time of physical connection to either the District's System or the Persigo System (``Tap.'') In addition to the City PIF, the District may establish its own Tap fee or system development charge in such amounts and payable under such terms as determined by the District's Board. All such fees or system development charges assessed by the District shall be retained by the District and shall be used in accordance with the rules and regulations of the District.

(b) The District shall require that each new customer of the District, and with respect to each new Tap into the District's or the Persigo System, shall pay to and be assessed by the City the then current PIF, in addition to any other lawful charges assessed or charged by the City as manager of the Persigo System.

9. Operation of District Lines.

(a) Except as provided in the TSA, the District shall be responsible for the operation, maintenance and control of its Lines. The District shall monitor its lines to locate areas of inflow and/or infiltration (``I & I'') into the District Lines and shall take such steps and make such capital expenditures as are reasonably required to reduce such Inflow and Infiltration. All costs for the operation, maintenance and capital expenditures of the District Lines will be paid by the District, except as provided in the TSA.

(b) In addition, the District shall police its own lines to minimize the discharge of substances which may be detrimental to the treatment process employed at the Persigo Plant, including oils, acids or other such materials. The District shall continue to enforce and abide by the City's and U.S. E.P.A.'s pretreatment rules and regulations. The City may perform such inspections of the District Lines as it deems appropriate to fulfill its duties and responsibilities, including identification and location of any source of any illegal or other discharges into the Persigo System that could cause an ``upset'' or which violates any permit or other City requirement.

10. Pretreatment.

(a) The District shall continue to delegate to the City, and the City hereby accepts such continued delegation, the administrative, managerial and enforcement authority concerning pretreatment programs as applied to industrial and other users of the Persigo System. The City shall continue to act as the agent for the District in pretreatment matters to the extent necessary to allow regulatory and health-related control by the City over industrial and non-residential users within the District. It is the intent of the parties that the City shall continue to exercise such pretreatment authority throughout the Persigo Sewer System as may be reasonably required to comply with all federal and state grant and discharge permit requirements applicable to the Persigo Sewer System.

(b) As the manager of the Persigo System, the City agrees to hold the District harmless from any and all liability whatsoever which may result either directly or indirectly from the City's acts or omissions arising from or related to the administrative, managerial or enforcement authority concerning pretreatment programs.

(c) The City may pay any costs, expenses, penalties or fines, whether administrative or otherwise, from the revenues and assets of the Persigo System without having to adjust for revenues or assets derived directly or indirectly from the District.

11. Participation in Joint Funds. The City shall continue to collect the District Rate from the District customers. The parties have determined that a portion of the District Rate that is collected by the City should be returned to the District under the following provisions.

a. Fruitvale Capital Fund. In each fiscal year for the City, beginning in 2004, the City shall propose a budget item to the City Council and Board of County Commissioners (acting jointly as "co-owners") in the amount of \$62,930 which shall be referred to as the "Fruitvale Capital Fund."

(i) On or before March 1 of each calendar year, beginning with the 2004 calendar year, and through the 2008 calendar year, the City will pay to Fruitvale the entire \$62,930.

(ii) The District will be entitled to rely on the amount of such distributions in the preparation of its annual budget, subject only to the final appropriations decision of the co-owners of the Persigo System. The District shall maintain a separate accounting for all such Capital Funds received and spent by the District and shall make available to the City a copy of such accounting upon request.

(iii) The Fruitvale Capital Funds shall only be used for repairs to existing capital systems or for capital improvements of the District Lines. Permitted uses of the funds shall include actions to increase capacity, replace aging lines, construct new or replacement collector lines that are not funded by developers, maintain or repair existing lines or reduce or cure Inflow and Infiltration. Permissible capital improvements shall not include

the construction of new line extensions that shall continue to be solely funded by developers under the District's rules and regulations that exist as of the date of this Agreement.

(v) If any portion of the Fruitvale Capital Funds are not spent prior to the date of dissolution of the District (as provided below), then all such unspent funds shall be returned to the Persigo Joint Fund without restriction.

12. Customer Billing. The District shall continue to bill its own customers and will remit monthly payments to the City. All billings will continue as they have been done in the past. The District applies the same EQU formula as used by the City for all properties which the District serves.

13. Emergency Call Outs. The District and the City currently have a separate agreement for emergency call out services. The terms of that separate agreement shall remain in effect and may be modified from time to time as provided in that agreement.

14. Line Cleaning. The District is responsible for cleaning and televising its own lines and for paying the costs thereof.

15. Dissolution of Fruitvale. On or before the general election to be held in November of 2008, the Board of Directors of Fruitvale shall take such steps as are required by statute to take to the voters of the District a plan and proposal to dissolve the District.

(a) In preparation for such vote, the Fruitvale Board shall pass a resolution endorsing such dissolution and shall recommend to its qualified electors that the plan be adopted and that the electors vote in favor of the dissolution.

(b) The District's plan of dissolution shall call for the transfer of all District Lines and sewer related assets (including sewer lines, lift stations, taps, fittings, records, video tapes, easements and rights of way) to the City of Grand Junction, Colorado, for the benefit of the Persigo 201 Sewer System, free and clear of any liens or encumbrances, and without cost or expense to the City.

(c) The plan shall call for the final dissolution of the District and the transfer of all District Lines and the District's sewer related assets to the City within one year of the date of the election.

(d) If the election is unsuccessful, the TSA, a copy of which is attached to this Agreement shall, become effective as of the next June 1<sup>st</sup>. In addition, the Board shall forthwith after the 2008 election ratify and approve the attached TSA, without changes.

(e) The conduct of the affairs of the District from and after the failure of the election shall be consistent with the intent of the parties to transfer effective control to the City, as provided in the TSA.

(f) In any plan of dissolution to be voted upon by the qualified electors of the District, the plan shall provide for the distribution of cash reserves under the following guidelines: the Board may elect to waive all or part of the monthly sewer service charges to its customers for a period of up to six months, and to use the cash reserves to pay for all costs of the operation of the district (including payments of the Persigo Rate to the City). After completion of the dissolution, any remaining cash reserves shall be accounted for separately by the City and spent exclusively on capital improvements to the district system, except for the Fruitvale Capital Fund which shall be repaid to the Joint Fund in accordance with the provisions of paragraph 11(v).

16. Limitation of Liability. No party shall be liable to the other party for any damages for failure to deliver or receive sanitary sewer discharges if such failure is due to war or civil strife, broken lines, accidents, fires, strikes, lockouts or other such occurrences beyond the reasonable control of such entity. Nothing in this Agreement is intended to waive any of the rights and privileges of the Colorado Governmental Immunity Act.

17. Term of Agreement. This Agreement shall continue until the District is dissolved.

18. Termination/Enforcement/Remedies.

(a) This Agreement may be enforced by either party through a suit for specific performance or for damages or for both. The prevailing party in any such proceeding may be awarded attorney fees and costs at the discretion of the Court.

(b) Upon giving thirty days written notice and the failure of the receiving party to comply with each and every term hereof, or with other applicable laws or regulations, the party giving the notice may terminate this agreement with a subsequent writing given within sixty days of the initial notice. The remedy of termination is cumulative to other remedies of the parties, including the remedies described above.

(c) The failure of the City/County joint Persigo Board to make the payments to each District as required herein shall be deemed a default and upon proper notice and right to cure as provided in paragraph 18(b), each District may elect to terminate this Agreement.

19. The terms and provisions of the City' s Code, the Sewer Regulations, as both are amended from time to time, are incorporated herein by this reference as though fully set forth herein.

20. This Agreement shall become effective upon approval of the City Council, the County Commissioners and the Board of Directors of the District.

Dated effective this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

City of Grand Junction

County of Mesa

By \_\_\_\_\_

By \_\_\_\_\_

Fruitvale Sanitation District

By \_\_\_\_\_



**TOTAL SERVICE AGREEMENT  
CENTRAL GRAND VALLEY SANITATION DISTRICT**

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_\_\_, by and between the CITY OF GRAND JUNCTION, State of Colorado (the "City"), as manager and operator of the wastewater collection, transmission and treatment system more fully described below (the "Joint System"), and the CENTRAL GRAND VALLEY SANITATION DISTRICT, Mesa County, Colorado, a quasi-municipal corporation and political subdivision of the State of Colorado ("CGVSD").

WHEREAS, each party is authorized by law to furnish sanitary sewer services and has the means to perform the same; and

WHEREAS, each party is authorized by the provisions of Article XIV, §18, Colorado Constitution, and §§ 29-1-201, *et seq.*, C.R.S., to enter into contracts with other local governments for the performance of functions which it is authorized by law to perform on its own; and

WHEREAS, the City and the County of Mesa, State of Colorado, have, pursuant to agreements dated October 17, 1979, May 1, 1980 and October 13, 1998 (the "System Agreements"), established the Joint System in order to provide for the collection, transmission and treatment of wastewater from and within an extensive area described in the System Agreements as the "Persigo Area"; and

WHEREAS, CGVSD is located within the Persigo Area and has utilized the Joint System to transmit wastewater flows from its system to the Joint System treatment works for treatment but has prior to the date of this Agreement owned, operated and maintained the collection and transmission system within its legal boundaries; and

WHEREAS, CGVSD now desires to contract with the City for complete wastewater services as set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements hereinafter set forth, it is agreed by and between the City and CGVSD as follows:

**Article 1  
DEFINITIONS**

For the purposes of this Agreement, the following terms shall have the following meanings:

"City" shall mean the City of Grand Junction, in its capacity as manager and operator of the Joint System, and any authorized person or entity acting on its behalf in such capacity. Pursuant to the System Agreements, when reference is made to the City as owner of, or owing, pipes and related facilities that are components of the Joint System, the parties acknowledge that the City accepts and

holds title to pipes and related facilities of the Joint System in the name and style of ``the City of Grand Junction, Colorado, for the benefit of the Persigo 201 Sewer System.''

"Collection System" shall refer to the pipes and related appurtenances for the collection and transmission of wastewater within CGVSD's Contract Service Area. In general, the Collection System will be owned by the City, but certain facilities in place prior to the City's provision of wastewater service pursuant to this Agreement shall be owned by CGVSD under the terms of this Agreement.

"Contract Service Area" shall mean the presently existing legal boundaries of CGVSD together with any amendments to those boundaries within the Persigo Area accomplished in accordance with the terms and provisions of this Agreement.

"CGVSD" shall refer to the Central Grand Valley Sanitation District and any authorized representative thereof.

"Persigo Area" shall mean the outer geographical boundaries of the 201 Service Area as contemplated and defined in the System Agreements, which the Joint System serves.

"Rules and Regulations" shall mean the operating rules and design standards promulgated by the City to govern the design, construction, operation, maintenance and use of the Joint System, including the rates, fees, tolls and charges imposed from time to time, including future modifications thereto.

"Sewer Tap" shall mean a physical connection to the Collection System which effects wastewater service to the connected premises.

## **Article 2 COMPLETE WASTEWATER SERVICE**

2.1 The City shall furnish all service necessary to effect full and complete sanitary sewer service to all lands within CGVSD's Contract Service Area, including the full development and any redevelopment of any and all such lands in accordance with applicable law.

2.2 Wastewater service furnished by the City under this Agreement shall be provided in a manner uniform and consistent with that provided to customers throughout the Persigo Area. To the extent the City determines that maintenance of the Collection System is necessary to the furnishing of wastewater service under this Agreement, the City agrees to maintain or replace all portions of the Collection System it owns or which come under its dominion. The City agrees to construct, maintain, replace and keep inventory of such additional physical facilities as the City deems necessary.

2.3 CGVSD represents that it has authority to use, connect, disconnect, modify, renew, extend, enlarge, replace, convey, abandon or otherwise dispose of the pipes and other facilities, including

pump stations, for providing wastewater service to users within its Contract Service Area, and grants to the City all such authority deemed necessary by the City to perform its obligations under this Agreement. CGVSD hereby delegates to the City, and the City hereby accepts administrative, managerial and enforcement authority concerning the CGVSD pre-treatment program as applied to industrial users of the joint system. The City will act as CGVSD's agent in pre-treatment matters to the extent necessary to allow direct regulatory and health-related control by the City over industrial users within the District. All additions to the Collection System installed or replaced by the City within CGVSD's Contract Service Area shall be owned by the City. CGVSD shall not exercise any dominion over any of its wastewater facilities that is in any way inconsistent with the exercise or performance by the City of its rights and obligations.

2.4 The City shall not make any Sewer Tap within the Contract Service Area or issue any approval or license for attachment to the Collection System within the Contract Service Area except upon written authorization of CGVSD. Upon receipt of written authorization by CGVSD, the City shall make the necessary taps in the regular course of its business. CGVSD shall be fully liable to the City for unreported connections, including payment of all charges thereon. No new Sewer Taps may be made to the Collection System which would impair the capacity of the Joint System to furnish wastewater service in accordance with the Rules and Regulations.

2.5 Each of the parties to this Agreement recognizes in the other the right to enforce its rules and the terms of this Agreement by interrupting or disconnecting wastewater flows from the premises of those who violate the rules of either party or this Agreement. Neither party shall interfere with the other in the enforcement of its rules or this Agreement. Neither party shall restore any service connection after the same has been interrupted or disconnected by the other in the course of enforcing its rules or the terms of this Agreement, except upon written authority of the party causing the interruption or disconnection of service. Each party agrees to provide oral or written notice to the other prior to interrupting or disconnecting any service connection, except when disconnection is made by either solely for reason of delinquency in payment for charges or to prevent an immediate threat to public health or safety.

2.6 Wastewater service furnished under this Agreement shall be governed by the Rules and Regulations and the System Agreements. Future amendments or modifications to the Rules and Regulations shall be binding on CGVSD unless CGVSD objects thereto in writing within thirty (30) days after the adoption of such amendment or modification and the Board of County Commissioners and the City Council, acting jointly pursuant to the System Agreements, determine to repeal or reject the proposed amendment(s) and/or modification(s). The Rules and Regulations shall be applied uniformly and equitably throughout the Persigo Area. The City may require the installation of additional wastewater service facilities at the expense of the customer requiring service in accordance with the Rules and Regulations. CGVSD retains the full right to make and enforce rules, not inconsistent with the Rules and Regulations, to govern use of the Collection System use within its Contract Service Area. CGVSD agrees to exercise its rule-making, fee-setting and other powers to assist the City in enforcing the Rules and Regulations.

2.7 CGVSD warrants that all portions of the Collection System it owns or controls are in public rights-of-way or easements it now owns, that its rights-of-way and easements are free and clear of all liens and encumbrances, and that title to all such rights-of-way and easements is adequately granted or dedicated to or vested in CGVSD in documents recorded in the real property records of the Mesa County Clerk and Recorder. Where a portion of the Collection System owned or controlled by CGVSD is located on private property, or CGVSD's easement is insufficient in size, CGVSD agrees to acquire at its expense such easements as may be reasonably required by the City.

2.8 CGVSD may not expand its Contract Service Area without the express written approval of the City, in its unfettered discretion.

2.9 The City reserves the right to refuse to accept wastewater flows from any premises when the same would impose unreasonable risk of a health hazard or other harm to the Joint System.

2.10 The wastewater service to be furnished by the City shall comply with the federal Clean Water Act and any and all other applicable regulations.

2.11 The damage to the Joint System if CGVSD disconnects from the Joint System shall be not less than the reproduction cost of any of the Joint System's facilities which are rendered useless by such disconnection and which must be replaced in order to serve customers outside the Contract Service Area. CGVSD agrees to pay the damages described in this paragraph immediately upon the occurrence of such disconnection.

### **Article 3 RATES AND CHARGES**

3.1 For the wastewater services provided by the City, the City shall be paid by the users within CGVSD's Contract Service Area the rates, fees tolls and charges calculated in accordance with the System Agreements, which shall be the same as all such rates and charges imposed and collected generally throughout the Persigo Area. Methods of collection and schedules of charges shall be applied uniformly among similar users throughout the Persigo Area. In addition to any other rate or charge herein provided, CGVSD shall pay or cause to be paid all applicable plant investment fees, and such other rates, tolls, charges or combinations thereof as the City may, from time to time, in the exercise of its lawful authority and pursuant to the System Agreements impose.

3.2 Rates for wastewater service shall be established by the joint action of the City Council and the Board of County Commissioners, pursuant to the System Agreements.

3.3 CGVSD grants and delegates to the City all of CGVSD's power and authority deemed necessary by the City to impose and collect the Joint System's fees and charges, including charges for Sewer Taps and other purposes within the Contract Service Area. This paragraph shall not be construed to limit in any manner CGVSD's powers to impose and collect its own fees and charges.

3.4 CGVSD shall require the users within its Contract Service Area to pay the City's plant investment fees and other charges and wastewater service rates. CGVSD grants and delegates to the City all of CGVSD's power and authority for the City to enforce collection of such rates and charges in the same manner as it employs generally throughout the Persigo Area.

**Article 4**  
**SPECIAL PROVISIONS**

4.1 By special warranty deed and bill of sale of even date herewith, CGVSD transfers and conveys to the City, for the purposes of this Agreement, all of its wastewater pump stations, and all underground pipelines having a diameter of ten (10) inches or larger, together with (i) all manholes and other surface and subsurface appurtenances thereto, (ii) all easements and rights of way covering or accommodating the same and (iii) fee title held by CGVSD in all parcels of real property upon which any such facilities are located.

4.2 In consideration of payments made to the City by CGVSD customers under prior agreements and the provisions of this Agreement, the receipt and sufficiency whereof is acknowledged, the City shall pay for and shall make all improvements necessary to bring the Collection System up to the standards applicable generally within the Persigo Area.

4.3 Based upon the City's representations that it is able and willing to supply CGVSD with all of the wastewater service for the full development of CGVSD's Contract Service Area, CGVSD finds that the making of this Agreement will provide for satisfactory, uniform and dependable service available for current and future use within its Contract Service Area, and is in the best interests of the users within its Contract Service Area.

**Article 5**  
**MISCELLANEOUS PROVISIONS**

5.1 No assignment by either party of its rights under this Agreement shall be binding on the other unless the other party shall have assented to such assignment with the same formality as employed in the execution of this Agreement.

5.2 No party shall waive its rights hereunder by failing to exercise its rights; any such failure shall not affect the right of such party to exercise at some future time the rights not previously exercised.

5.3 None of the remedies provided for under this Agreement need to be exhausted or exercised as a prerequisite to either party's pursuit of further relief to which it may be entitled.

5.4 The benefits and obligations created by this Agreement shall not be modified by amendment to the Constitution or the laws of the State of Colorado; provided, however, that in the event that the

General Assembly or an amendment to the Colorado Constitution lawfully places the Joint System under the jurisdiction of the Public Utilities Commission, the City's obligations hereunder shall cease. Nothing in this paragraph, however, shall be construed as a waiver by CGVSD of any rights it may have to continued wastewater service arising outside of this Agreement.

5.5 The City shall have the authority to exercise all rights with respect to the Collection System in order to use the Collection System to serve or contribute to the service of any lands within the Persigo Area, consistent with the Rules and Regulations.

5.6 If CGVSD commits a Material Breach of this Agreement and the City gives CGVSD written notice specifying the particular Material Breach, CGVSD shall have such time as provided in the notice, which time shall be reasonably sufficient to permit CGVSD to cure the noticed material breach but in no event no less than ninety (90) days. In the event that CGVSD fails to correct such breach within the time provided in the notice, or if more than the time provided in the notice is reasonably required to cure such matter complained of, if CGVSD shall fail to commence to correct the same within said period or shall thereafter fail to prosecute the same to completion with reasonable diligence, the City, without obligation to CGVSD or any person claiming by, through or under CGVSD, may take such steps as it may deem necessary to cure or remedy the breach. CGVSD agrees to reimburse the City for all fees and expenses incurred by the City in correcting the default or defaults. The 90-day notice provision of this paragraph shall not apply if the City determines that the breach will probably result in an immediate health hazard or harm to persons or property, in which case the City may unilaterally implement such cure or remedy upon hand delivery of written notice of the breach and description of the harm that is probable to result. The term "Material Breach" shall include, but not be limited to, failure by CGVSD to continue to exist as a title 32 quasi-municipal corporate entity, an unauthorized extension of wastewater service, and other actions or inactions which could cause a health hazard or harm to persons or property.

5.7 CGVSD shall not assert this Agreement as a defense to any action seeking to dissolve CGVSD pursuant to § 32-1-701 *et seq.*, C.R.S., as amended.

5.8 This Agreement shall remain in force until terminated by mutual written agreement or pursuant to the provisions hereof.

5.9 This Agreement shall be construed and enforced as the fully integrated expression of the parties' agreement with respect to the matters addressed.

5.10 No express or implied covenant not specifically set forth shall be a part of this Agreement.

5.11 The parties expressly aver that no representations other than those specifically set forth in this Agreement have been relied upon by either party to induce it to enter into this Agreement.

5.12 This Agreement supersedes and replaces in their entirety all prior agreements between the City and CGVSD for sanitary sewer service.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the day and year first above written.

CENTRAL GRAND VALLEY SANITATION DISTRICT

By: \_\_\_\_\_, President

ATTEST:

By:  
Secretary

CITY OF GRAND JUNCTION

By: \_\_\_\_\_, Mayor

ATTEST:

By:  
City Clerk

**TOTAL SERVICE AGREEMENT  
FRUITVALE SANITATION DISTRICT**

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the CITY OF GRAND JUNCTION, State of Colorado (the "City"), as manager and operator of the wastewater collection, transmission and treatment system more fully described below (the "Joint System"), and the FRUITVALE SANITATION DISTRICT, Mesa County, Colorado, a quasi-municipal corporation and political subdivision of the State of Colorado ("Fruitvale").

WHEREAS, each party is authorized by law to furnish sanitary sewer services and has the means to perform the same; and

WHEREAS, each party is authorized by the provisions of Article XIV, §18, Colorado Constitution, and §§ 29-1-201, *et seq.*, C.R.S., to enter into contracts with other local governments for the performance of functions which it is authorized by law to perform on its own; and

WHEREAS, the City and the County of Mesa, State of Colorado, have, pursuant to agreements dated October 17, 1979, May 1, 1980 and October 13, 1998 (the "System Agreements"), established the Joint System in order to provide for the collection, transmission and treatment of wastewater from and within an extensive area described in the System Agreements as the "Persigo Area"; and

WHEREAS, Fruitvale is located within the Persigo Area and has utilized the Joint System to transmit wastewater flows from its system to the Joint System treatment works for treatment but has prior to the date of this Agreement owned, operated and maintained the collection and transmission system within its legal boundaries; and

WHEREAS, Fruitvale now desires to contract with the City for complete wastewater services as set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements hereinafter set forth, it is agreed by and between the City and Fruitvale as follows:

**Article 1  
DEFINITIONS**

For the purposes of this Agreement, the following terms shall have the following meanings:

"City" shall mean the City of Grand Junction, in its capacity as manager and operator of the Joint System, and any authorized person or entity acting on its behalf in such capacity. Pursuant to the System Agreements, when reference is made to the City as owner of, or owing, pipes and related facilities that are components of the Joint System, the parties acknowledge that the City accepts and



holds title to pipes and related facilities of the Joint System in the name and style of ``the City of Grand Junction, Colorado, for the benefit of the Persigo 201 Sewer System.''

"Collection System" shall refer to the pipes and related appurtenances for the collection and transmission of wastewater within Fruitvale's Contract Service Area. In general, the Collection System will be owned by the City, but certain facilities in place prior to the City's provision of wastewater service pursuant to this Agreement shall be owned by Fruitvale under the terms of this Agreement.

"Contract Service Area" shall mean the presently existing legal boundaries of Fruitvale together with any amendments to those boundaries within the Persigo Area accomplished in accordance with the terms and provisions of this Agreement.

"Fruitvale" shall refer to the Fruitvale Sanitation District and any authorized representative thereof.

"Persigo Area" shall mean the outer geographical boundaries of the 201 Service Area as contemplated and defined in the System Agreements, which the Joint System serves.

"Rules and Regulations" shall mean the operating rules and design standards promulgated by the City to govern the design, construction, operation, maintenance and use of the Joint System, including the rates, fees, tolls and charges imposed from time to time, including future modifications thereto.

"Sewer Tap" shall mean a physical connection to the Collection System which effects wastewater service to the connected premises.

## **Article 2 COMPLETE WASTEWATER SERVICE**

2.1 The City shall furnish all service necessary to effect full and complete sanitary sewer service to all lands within Fruitvale's Contract Service Area, including the full development and any redevelopment of any and all such lands in accordance with applicable law.

2.2 Wastewater service furnished by the City under this Agreement shall be provided in a manner uniform and consistent with that provided to customers throughout the Persigo Area. To the extent the City determines that maintenance of the Collection System is necessary to the furnishing of wastewater service under this Agreement, the City agrees to maintain or replace all portions of the Collection System it owns or which come under its dominion. The City agrees to construct, maintain, replace and keep inventory of such additional physical facilities as the City deems necessary.

2.3 Fruitvale represents that it has authority to use, connect, disconnect, modify, renew, extend,

enlarge, replace, convey, abandon or otherwise dispose of the pipes and other facilities, including pump stations, for providing wastewater service to users within its Contract Service Area, and grants to the City all such authority deemed necessary by the City to perform its obligations under this Agreement. Fruitvale hereby delegates to the City, and the City hereby accepts administrative, managerial and enforcement authority concerning the Fruitvale pre-treatment program as applied to industrial users of the joint system. The City will act as Fruitvale's agent in pre-treatment matters to the extent necessary to allow direct regulatory and health-related control by the City over industrial users within the District. All additions to the Collection System installed or replaced by the City within Fruitvale's Contract Service Area shall be owned by the City. Fruitvale shall not exercise any dominion over any of its wastewater facilities that is in any way inconsistent with the exercise or performance by the City of its rights and obligations.

2.4 The City shall not make any Sewer Tap within the Contract Service Area or issue any approval or license for attachment to the Collection System within the Contract Service Area except upon written authorization of Fruitvale. Upon receipt of written authorization by Fruitvale, the City shall make the necessary taps in the regular course of its business. Fruitvale shall be fully liable to the City for unreported connections, including payment of all charges thereon. No new Sewer Taps may be made to the Collection System which would impair the capacity of the Joint System to furnish wastewater service in accordance with the Rules and Regulations.

2.5 Each of the parties to this Agreement recognizes in the other the right to enforce its rules and the terms of this Agreement by interrupting or disconnecting wastewater flows from the premises of those who violate the rules of either party or this Agreement. Neither party shall interfere with the other in the enforcement of its rules or this Agreement. Neither party shall restore any service connection after the same has been interrupted or disconnected by the other in the course of enforcing its rules or the terms of this Agreement, except upon written authority of the party causing the interruption or disconnection of service. Each party agrees to provide oral or written notice to the other prior to interrupting or disconnecting any service connection, except when disconnection is made by either solely for reason of delinquency in payment for charges or to prevent an immediate threat to public health or safety.

2.6 Wastewater service furnished under this Agreement shall be governed by the Rules and Regulations and the System Agreements. Future amendments or modifications to the Rules and Regulations shall be binding on Fruitvale unless Fruitvale objects thereto in writing within thirty (30) days after the adoption of such amendment or modification and the Board of County Commissioners and the City Council, acting jointly pursuant to the System Agreements, determine to repeal or reject the proposed amendment(s) and/or modification(s). The Rules and Regulations shall be applied uniformly and equitably throughout the Persigo Area. The City may require the installation of additional wastewater service facilities at the expense of the customer requiring service in accordance with the Rules and Regulations. Fruitvale retains the full right to make and enforce rules, not inconsistent with the Rules and Regulations, to govern use of the Collection System use within its Contract Service Area. Fruitvale agrees to exercise its rule-making, fee-setting and other powers to assist the City in enforcing the Rules and Regulations.

2.7 Fruitvale warrants that all portions of the Collection System it owns or controls are in public rights-of-way or easements it now owns, that its rights-of-way and easements are free and clear of all liens and encumbrances, and that title to all such rights-of-way and easements is adequately granted or dedicated to or vested in Fruitvale in documents recorded in the real property records of the Mesa County Clerk and Recorder. Where a portion of the Collection System owned or controlled by Fruitvale is located on private property, or Fruitvale's easement is insufficient in size, Fruitvale agrees to acquire at its expense such easements as may be reasonably required by the City.

2.8 Fruitvale may not expand its Contract Service Area without the express written approval of the City, in its unfettered discretion.

2.9 The City reserves the right to refuse to accept wastewater flows from any premises when the same would impose unreasonable risk of a health hazard or other harm to the Joint System.

2.10 The wastewater service to be furnished by the City shall comply with the federal Clean Water Act and any and all other applicable regulations.

2.11 The damage to the Joint System if Fruitvale disconnects from the Joint System shall be not less than the reproduction cost of any of the Joint System's facilities which are rendered useless by such disconnection and which must be replaced in order to serve customers outside the Contract Service Area. Fruitvale agrees to pay the damages described in this paragraph immediately upon the occurrence of such disconnection.

### **Article 3 RATES AND CHARGES**

3.1 For the wastewater services provided by the City, the City shall be paid by the users within Fruitvale's Contract Service Area the rates, fees, tolls and charges calculated in accordance with the System Agreements, which shall be the same as all such rates and charges imposed and collected generally throughout the Persigo Area. Methods of collection and schedules of charges shall be applied uniformly among similar users throughout the Persigo Area. In addition to any other rate or charge herein provided, Fruitvale shall pay or cause to be paid all applicable plant investment fees, and such other rates, tolls, charges or combinations thereof as the City may, from time to time, in the exercise of its lawful authority and pursuant to the System Agreements impose.

3.2 Rates for wastewater service shall be established by the joint action of the City Council and the Board of County Commissioners, pursuant to the System Agreements.

3.3 Fruitvale grants and delegates to the City all of Fruitvale's power and authority deemed necessary by the City to impose and collect the Joint System's fees and charges, including charges

for Sewer Taps and other purposes within the Contract Service Area. This paragraph shall not be construed to limit in any manner Fruitvale's powers to impose and collect its own fees and charges.

3.4 Fruitvale shall require the users within its Contract Service Area to pay the City's plant investment fees and other charges and wastewater service rates. Fruitvale grants and delegates to the City all of Fruitvale's power and authority for the City to enforce collection of such rates and charges in the same manner as it employs generally throughout the Persigo Area.

#### **Article 4 SPECIAL PROVISIONS**

4.1 By special warranty deed and bill of sale of even date herewith, Fruitvale transfers and conveys to the City, for the purposes of this Agreement, all of its wastewater pump stations, and all underground pipelines having a diameter of ten (10) inches or larger, together with (i) all manholes and other surface and subsurface appurtenances thereto, (ii) all easements and rights of way covering or accommodating the same and (iii) fee title held by Fruitvale in all parcels of real property upon which any such facilities are located.

4.2 In consideration of payments made to the City by Fruitvale customers under prior agreements and the provisions of this Agreement, the receipt and sufficiency whereof is acknowledged, the City shall pay for and shall make all improvements necessary to bring the Collection System up to the standards applicable generally within the Persigo Area.

4.3 Based upon the City's representations that it is able and willing to supply Fruitvale with all of the wastewater service for the full development of Fruitvale's Contract Service Area, Fruitvale finds that the making of this Agreement will provide for satisfactory, uniform and dependable service available for current and future use within its Contract Service Area, and is in the best interests of the users within its Contract Service Area.

#### **Article 5 MISCELLANEOUS PROVISIONS**

5.1 No assignment by either party of its rights under this Agreement shall be binding on the other unless the other party shall have assented to such assignment with the same formality as employed in the execution of this Agreement.

5.2 No party shall waive its rights hereunder by failing to exercise its rights; any such failure shall not affect the right of such party to exercise at some future time the rights not previously exercised.

5.3 None of the remedies provided for under this Agreement need to be exhausted or exercised as a prerequisite to either party's pursuit of further relief to which it may be entitled.

5.4 The benefits and obligations created by this Agreement shall not be modified by amendment to the Constitution or the laws of the State of Colorado; provided, however, that in the event that the General Assembly or an amendment to the Colorado Constitution lawfully places the Joint System under the jurisdiction of the Public Utilities Commission, the City's obligations hereunder shall cease. Nothing in this paragraph, however, shall be construed as a waiver by Fruitvale of any rights it may have to continued wastewater service arising outside of this Agreement.

5.5 The City shall have the authority to exercise all rights with respect to the Collection System in order to use the Collection System to serve or contribute to the service of any lands within the Persigo Area, consistent with the Rules and Regulations.

5.6 If Fruitvale commits a Material Breach of this Agreement and the City gives Fruitvale written notice specifying the particular Material Breach, Fruitvale shall have such time as provided in the notice, which time shall be reasonably sufficient to permit Fruitvale to cure the noticed material breach but in no event no less than ninety (90) days. In the event that Fruitvale fails to correct such breach within the time provided in the notice, or if more than the time provided in the notice is reasonably required to cure such matter complained of, if Fruitvale shall fail to commence to correct the same within said period or shall thereafter fail to prosecute the same to completion with reasonable diligence, the City, without obligation to Fruitvale or any person claiming by, through or under Fruitvale, may take such steps as it may deem necessary to cure or remedy the breach. Fruitvale agrees to reimburse the City for all fees and expenses incurred by the City in correcting the default or defaults. The 90-day notice provision of this paragraph shall not apply if the City determines that the breach will probably result in an immediate health hazard or harm to persons or property, in which case the City may unilaterally implement such cure or remedy upon hand delivery of written notice of the breach and description of the harm that is probable to result. The term "Material Breach" shall include, but not be limited to, failure by Fruitvale to continue to exist as a title 32 quasi-municipal corporate entity, an unauthorized extension of wastewater service, and other actions or inactions which could cause a health hazard or harm to persons or property.

5.7 Fruitvale shall not assert this Agreement as a defense to any action seeking to dissolve Fruitvale pursuant to § 32-1-701 *et seq.*, C.R.S., as amended.

5.8 This Agreement shall remain in force until terminated by mutual written agreement or pursuant to the provisions hereof.

5.9 This Agreement shall be construed and enforced as the fully integrated expression of the parties' agreement with respect to the matters addressed.

5.10 No express or implied covenant not specifically set forth shall be a part of this Agreement.

5.11 The parties expressly aver that no representations other than those specifically set forth in this Agreement have been relied upon by either party to induce it to enter into this Agreement.

5.12 This Agreement supersedes and replaces in their entirety all prior agreements between the City and Fruitvale for sanitary sewer service.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the day and year first above written.

FRUITVALE SANITATION DISTRICT

By:

\_\_\_\_\_, President

ATTEST:

By:

Secretary

CITY OF GRAND JUNCTION

By:

\_\_\_\_\_, Mayor

ATTEST:

By:

City Clerk

**TOTAL SERVICE AGREEMENT  
ORCHARD MESA SANITATION DISTRICT**

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the CITY OF GRAND JUNCTION, State of Colorado (the "City"), as manager and operator of the wastewater collection, transmission and treatment system more fully described below (the "Joint System"), and the ORCHARD MESA SANITATION DISTRICT, Mesa County, Colorado, a quasi-municipal corporation and political subdivision of the State of Colorado ("OMSD").

WHEREAS, each party is authorized by law to furnish sanitary sewer services and has the means to perform the same; and

WHEREAS, each party is authorized by the provisions of Article XIV, §18, Colorado Constitution, and §§ 29-1-201, *et seq.*, C.R.S., to enter into contracts with other local governments for the performance of functions which it is authorized by law to perform on its own; and

WHEREAS, the City and the County of Mesa, State of Colorado, have, pursuant to agreements dated October 17, 1979, May 1, 1980 and October 13, 1998 (the "System Agreements"), established the Joint System in order to provide for the collection, transmission and treatment of wastewater from and within an extensive area described in the System Agreements as the "Persigo Area"; and

WHEREAS, OMSD is located within the Persigo Area and has utilized the Joint System to transmit wastewater flows from its system to the Joint System treatment works for treatment but has prior to the date of this Agreement owned, operated and maintained the collection and transmission system within its legal boundaries; and

WHEREAS, OMSD now desires to contract with the City for complete wastewater services as set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements hereinafter set forth, it is agreed by and between the City and OMSD as follows:

**Article 1  
DEFINITIONS**

For the purposes of this Agreement, the following terms shall have the following meanings:

"City" shall mean the City of Grand Junction, in its capacity as manager and operator of the Joint System, and any authorized person or entity acting on its behalf in such capacity. Pursuant to the System Agreements, when reference is made to the City as owner of, or owing, pipes and related facilities that are components of the Joint System, the parties acknowledge that the City accepts and

holds title to pipes and related facilities of the Joint System in the name and style of ``the City of Grand Junction, Colorado, for the benefit of the Persigo 201 Sewer System.''

"Collection System" shall refer to the pipes and related appurtenances for the collection and transmission of wastewater within OMSD's Contract Service Area. In general, the Collection System will be owned by the City, but certain facilities in place prior to the City's provision of wastewater service pursuant to this Agreement shall be owned by OMSD under the terms of this Agreement.

"Contract Service Area" shall mean the presently existing legal boundaries of OMSD together with any amendments to those boundaries within the Persigo Area accomplished in accordance with the terms and provisions of this Agreement.

"OMSD" shall refer to the Orchard Mesa Sanitation District and any authorized representative thereof.

"Persigo Area" shall mean the outer geographical boundaries of the 201 Service Area as contemplated and defined in the System Agreements, which the Joint System serves.

"Rules and Regulations" shall mean the operating rules and design standards promulgated by the City to govern the design, construction, operation, maintenance and use of the Joint System, including the rates, fees, tolls and charges imposed from time to time, including future modifications thereto.

"Sewer Tap" shall mean a physical connection to the Collection System which effects wastewater service to the connected premises.

## **Article 2 COMPLETE WASTEWATER SERVICE**

2.1 The City shall furnish all service necessary to effect full and complete sanitary sewer service to all lands within OMSD's Contract Service Area, including the full development and any redevelopment of any and all such lands in accordance with applicable law.

2.2 Wastewater service furnished by the City under this Agreement shall be provided in a manner uniform and consistent with that provided to customers throughout the Persigo Area. To the extent the City determines that maintenance of the Collection System is necessary to the furnishing of wastewater service under this Agreement, the City agrees to maintain or replace all portions of the Collection System it owns or which come under its dominion. The City agrees to construct, maintain, replace and keep inventory of such additional physical facilities as the City deems necessary.

2.3 OMSD represents that it has authority to use, connect, disconnect, modify, renew, extend,



enlarge, replace, convey, abandon or otherwise dispose of the pipes and other facilities, including pump stations, for providing wastewater service to users within its Contract Service Area, and grants to the City all such authority deemed necessary by the City to perform its obligations under this Agreement. OMSD hereby delegates to the City, and the City hereby accepts administrative, managerial and enforcement authority concerning the OMSD pre-treatment program as applied to industrial users of the joint system. The City will act as OMSD's agent in pre-treatment matters to the extent necessary to allow direct regulatory and health-related control by the City over industrial users within the District. All additions to the Collection System installed or replaced by the City within OMSD's Contract Service Area shall be owned by the City. OMSD shall not exercise any dominion over any of its wastewater facilities that is in any way inconsistent with the exercise or performance by the City of its rights and obligations.

2.4 The City shall not make any Sewer Tap within the Contract Service Area or issue any approval or license for attachment to the Collection System within the Contract Service Area except upon written authorization of OMSD. Upon receipt of written authorization by OMSD, the City shall make the necessary taps in the regular course of its business. OMSD shall be fully liable to the City for unreported connections, including payment of all charges thereon. No new Sewer Taps may be made to the Collection System which would impair the capacity of the Joint System to furnish wastewater service in accordance with the Rules and Regulations.

2.5 Each of the parties to this Agreement recognizes in the other the right to enforce its rules and the terms of this Agreement by interrupting or disconnecting wastewater flows from the premises of those who violate the rules of either party or this Agreement. Neither party shall interfere with the other in the enforcement of its rules or this Agreement. Neither party shall restore any service connection after the same has been interrupted or disconnected by the other in the course of enforcing its rules or the terms of this Agreement, except upon written authority of the party causing the interruption or disconnection of service. Each party agrees to provide oral or written notice to the other prior to interrupting or disconnecting any service connection, except when disconnection is made by either solely for reason of delinquency in payment for charges or to prevent an immediate threat to public health or safety.

2.6 Wastewater service furnished under this Agreement shall be governed by the Rules and Regulations and the System Agreements. Future amendments or modifications to the Rules and Regulations shall be binding on OMSD unless OMSD objects thereto in writing within thirty (30) days after the adoption of such amendment or modification and the Board of County Commissioners and the City Council, acting jointly pursuant to the System Agreements, determine to repeal or reject the proposed amendment(s) and/or modification(s). The Rules and Regulations shall be applied uniformly and equitably throughout the Persigo Area. The City may require the installation of additional wastewater service facilities at the expense of the customer requiring service in accordance with the Rules and Regulations. OMSD retains the full right to make and enforce rules, not inconsistent with the Rules and Regulations, to govern use of the Collection System use within its Contract Service Area. OMSD agrees to exercise its rule-making, fee-setting and other powers to assist the City in enforcing the Rules and Regulations.

2.7 OMSD warrants that all portions of the Collection System it owns or controls are in public rights-of-way or easements it now owns, that its rights-of-way and easements are free and clear of all liens and encumbrances, and that title to all such rights-of-way and easements is adequately granted or dedicated to or vested in OMSD in documents recorded in the real property records of the Mesa County Clerk and Recorder. Where a portion of the Collection System owned or controlled by OMSD is located on private property, or OMSD's easement is insufficient in size, OMSD agrees to acquire at its expense such easements as may be reasonably required by the City.

2.8 OMSD may not expand its Contract Service Area without the express written approval of the City, in its unfettered discretion.

2.9 The City reserves the right to refuse to accept wastewater flows from any premises when the same would impose unreasonable risk of a health hazard or other harm to the Joint System.

2.10 The wastewater service to be furnished by the City shall comply with the federal Clean Water Act and any and all other applicable regulations.

2.11 The damage to the Joint System if OMSD disconnects from the Joint System shall be not less than the reproduction cost of any of the Joint System's facilities which are rendered useless by such disconnection and which must be replaced in order to serve customers outside the Contract Service Area. OMSD agrees to pay the damages described in this paragraph immediately upon the occurrence of such disconnection.

### **Article 3 RATES AND CHARGES**

3.1 For the wastewater services provided by the City, the City shall be paid by the users within OMSD's Contract Service Area the rates, fees tolls and charges calculated in accordance with the System Agreements, which shall be the same as all such rates and charges imposed and collected generally throughout the Persigo Area. Methods of collection and schedules of charges shall be applied uniformly among similar users throughout the Persigo Area. In addition to any other rate or charge herein provided, OMSD shall pay or cause to be paid all applicable plant investment fees, and such other rates, tolls, charges or combinations thereof as the City may, from time to time, in the exercise of its lawful authority and pursuant to the System Agreements impose.

3.2 Rates for wastewater service shall be established by the joint action of the City Council and the Board of County Commissioners, pursuant to the System Agreements.

3.3 OMSD grants and delegates to the City all of OMSD's power and authority deemed necessary by the City to impose and collect the Joint System's fees and charges, including charges

for Sewer Taps and other purposes within the Contract Service Area. This paragraph shall not be construed to limit in any manner OMSD's powers to impose and collect its own fees and charges.

3.4 OMSD shall require the users within its Contract Service Area to pay the City's plant investment fees and other charges and wastewater service rates. OMSD grants and delegates to the City all of OMSD's power and authority for the City to enforce collection of such rates and charges in the same manner as it employs generally throughout the Persigo Area.

#### **Article 4 SPECIAL PROVISIONS**

4.1 By special warranty deed and bill of sale of even date herewith, OMSD transfers and conveys to the City, for the purposes of this Agreement, all of its wastewater pump stations, and all underground pipelines having a diameter of ten (10) inches or larger, together with (i) all manholes and other surface and subsurface appurtenances thereto, (ii) all easements and rights of way covering or accommodating the same and (iii) fee title held by OMSD in all parcels of real property upon which any such facilities are located.

4.2 In consideration of payments made to the City by OMSD customers under prior agreements and the provisions of this Agreement, the receipt and sufficiency whereof is acknowledged, the City shall pay for and shall make all improvements necessary to bring the Collection System up to the standards applicable generally within the Persigo Area.

4.3 Based upon the City's representations that it is able and willing to supply OMSD with all of the wastewater service for the full development of OMSD's Contract Service Area, OMSD finds that the making of this Agreement will provide for satisfactory, uniform and dependable service available for current and future use within its Contract Service Area, and is in the best interests of the users within its Contract Service Area.

#### **Article 5 MISCELLANEOUS PROVISIONS**

5.1 No assignment by either party of its rights under this Agreement shall be binding on the other unless the other party shall have assented to such assignment with the same formality as employed in the execution of this Agreement.

5.2 No party shall waive its rights hereunder by failing to exercise its rights; any such failure shall not affect the right of such party to exercise at some future time the rights not previously exercised.

5.3 None of the remedies provided for under this Agreement need to be exhausted or exercised as a prerequisite to either party's pursuit of further relief to which it may be entitled.

5.4 The benefits and obligations created by this Agreement shall not be modified by amendment to the Constitution or the laws of the State of Colorado; provided, however, that in the event that the General Assembly or an amendment to the Colorado Constitution lawfully places the Joint System under the jurisdiction of the Public Utilities Commission, the City's obligations hereunder shall cease. Nothing in this paragraph, however, shall be construed as a waiver by OMSD of any rights it may have to continued wastewater service arising outside of this Agreement.

5.5 The City shall have the authority to exercise all rights with respect to the Collection System in order to use the Collection System to serve or contribute to the service of any lands within the Persigo Area, consistent with the Rules and Regulations.

5.6 If OMSD commits a Material Breach of this Agreement and the City gives OMSD written notice specifying the particular Material Breach, OMSD shall have such time as provided in the notice, which time shall be reasonably sufficient to permit OMSD to cure the noticed material breach but in no event no less than ninety (90) days. In the event that OMSD fails to correct such breach within the time provided in the notice, or if more than the time provided in the notice is reasonably required to cure such matter complained of, if OMSD shall fail to commence to correct the same within said period or shall thereafter fail to prosecute the same to completion with reasonable diligence, the City, without obligation to OMSD or any person claiming by, through or under OMSD, may take such steps as it may deem necessary to cure or remedy the breach. OMSD agrees to reimburse the City for all fees and expenses incurred by the City in correcting the default or defaults. The 90-day notice provision of this paragraph shall not apply if the City determines that the breach will probably result in an immediate health hazard or harm to persons or property, in which case the City may unilaterally implement such cure or remedy upon hand delivery of written notice of the breach and description of the harm that is probable to result. The term "Material Breach" shall include, but not be limited to, failure by OMSD to continue to exist as a title 32 quasi-municipal corporate entity, an unauthorized extension of wastewater service, and other actions or inactions which could cause a health hazard or harm to persons or property.

5.7 OMSD shall not assert this Agreement as a defense to any action seeking to dissolve OMSD pursuant to § 32-1-701 *et seq.*, C.R.S., as amended.

5.8 This Agreement shall remain in force until terminated by mutual written agreement or pursuant to the provisions hereof.

5.9 This Agreement shall be construed and enforced as the fully integrated expression of the parties' agreement with respect to the matters addressed.

5.10 No express or implied covenant not specifically set forth shall be a part of this Agreement.

5.11 The parties expressly aver that no representations other than those specifically set forth in this Agreement have been relied upon by either party to induce it to enter into this Agreement.

5.12 This Agreement supersedes and replaces in their entirety all prior agreements between the City and OMSD for sanitary sewer service.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective as of the day and year first above written.

ORCHARD MESA SANITATION DISTRICT

By: \_\_\_\_\_, President

ATTEST:

By:  
Secretary

CITY OF GRAND JUNCTION

By: \_\_\_\_\_, Mayor

ATTEST:

By:  
City Clerk

**Attach 16**  
**OTHER BUSINESS**  
**ALTERNATIVE APPROACHES TO CITY ATTORNEY RECRUITMENT**

The vacancy created by the resignation of former City Attorney Dan Wilson presents the City Council with some options for filling this important position. This report responds to the Mayor's request for information on alternative approaches for conducting an outreach recruitment to fill the vacancy.

**Position Requirements**

Pursuant to City Charter, the City must hire an attorney who has, at the time of appointment, at least five years experience in the active practice of law in the State of Colorado. The City's job description further requires this experience be in municipal or related governmental law and that it include trial experience. The foregoing requirements would call for the candidate to possess a Juris Doctorate from an accredited law school and membership in the State Bar of Colorado.

**Outline of Outreach Recruitment**

Recruitments for key positions within the organization have at times been contracted out to executive search firms. Others have simply been conducted by City Human Resources staff. The cost of an executive search varies greatly but could be expected to run around \$20,000 and up including all expenses. Use of internal staff for this type of recruitment would be approximately \$4,000 for advertising, room rentals, candidate expenses, etc. and excluding the cost of staff time.

Given the position requirements, an outreach recruitment with advertising limited to the State of Colorado would be most appropriate. That effort could be conducted using City staff. The following serves as a general timeline for this recruitment approach.

*Open the recruitment*

February 29, 2004

Advertise: Denver Post, CML Job Finder, Daily Sentinel, City website, and Colorado Bar Association's *Colorado Lawyer* (Note that ads for this premier publication must be placed one month prior to the month in which the ad is published, or February 1 for the March issue).

*Close the recruitment*

March 26, 2004

*Review applications*

Week of March 29, 2004

Human Resources staff would handle initial screening of applications for Council and would forward the applications of either all qualified candidates or the best-qualified candidates to Council for further evaluation. A full roster of applicants including a summary of each applicant's qualifications could also be provided.

*Telephone Interviews*

Week of April 5, 2004

Telephone interviews have proven to be an efficient and inexpensive method of further screening applicants down to those who possess the attributes and skills we are seeking in a successful candidate. Telephone interviews of 20-30 minutes each involving one or two Council members and a representative from Human Resources would be scheduled.

*Selection Process*

April 23 and/or April 26, 2004

The foregoing dates could apply whether an assessment center, panel interview or some other selection process were to be used.

*Conditional Job Offer*

Week of April 26, 2004

*Background Check*

May 3-14, 2004

A background investigation should be conducted. If an outside firm is chosen to complete the investigation, we could expect to spend about \$5000 for this process depending in large part upon expenses and the number of reference contacts involved in the check.

*Final Offer*

Week of May 24, 2004

*Start Date*

On or after June 28, 2004 subject to negotiation

The foregoing schedule is ambitious and assumes minimal delays.

**Selection Process**

The selection process may be designed any way Council wishes. Whatever selection process Council prefers, the process should measure the candidate's knowledge, skills and abilities as they relate to the job of City Attorney. Part of the process should also include education of the candidates about our organization to ensure a "good fit" for

both parties. Below are the recommended selection methods for the Council to consider.

### Assessment Center Process

An assessment center is a personnel selection tool used to evaluate applicants for higher level administrative or management positions. The applicants are invited to participate in a daylong assessment process that includes a variety of exercises specifically designed to simulate some of the more critical facets of the job. Throughout the simulations, the participant is evaluated relative to the knowledge, skills and abilities required of the job.

A special feature of the assessment center process is its ability to evaluate a number of candidates simultaneously. It allows us to set up leadership and teamwork situations and observe the interaction among candidates. The exercises allow the candidate to demonstrate what they know and how they would handle situations, instead of telling us. Observing the candidates over an extended period of time makes “faking” difficult. The assessment center includes multiple evaluation techniques. Judgments about the candidates are also based on pooled information from multiple evaluators or “assessors”.

Assessment center exercises are intended to measure knowledge, skills and abilities relevant to the job such as interpersonal skills, written and oral communication skills, professional knowledge, decision making and problems solving skills, flexibility and other skills using any of a variety of individuals and group exercises or approaches.

The assessment center process works most effectively with 5-8 candidates. It will typically identify the top 1-3 candidates who would then be interviewed individually and further screened by Council.

### Panel Interview (s)

This approach would use panels of individuals who represent various segments of the organization and community that are important to the success of the position. Minimally an internal and external panel would be used. The former would be comprised of department heads and other key managers with whom the City Attorney regularly works including the City Manager. The external panel could include community leaders representing business, development, law enforcement, courts, education and the like. Panels would debrief with Council following the close of interviews to assist in identifying the top contender(s). Council would then interview and further screen the top candidates.