

**GRAND JUNCTION CITY COUNCIL  
WORKSHOP AGENDA**

**MONDAY, DECEMBER 5, 2005 7:00 P.M.  
CITY HALL AUDITORIUM, 250 N. 5<sup>TH</sup> STREET**

**MAYOR'S INTRODUCTION AND WELCOME**

**7:00 COUNCILMEMBER REPORTS**

**7:10 CITY MANAGER'S REPORT**

**7:15 REVIEW FUTURE WORKSHOP AGENDAS** [Attach W-1](#)

**7:20 REVIEW WEDNESDAY COUNCIL AGENDA**

**7:30 THIRD TIER MINERAL LEASE PAYMENTS/SEVERANCE TAX  
PAYMENT ISSUES:** Jim Evans, Associated Governments of  
Northwest Colorado (AGNC) Director, will update the City Council  
on current issues related to these topics.

**7:55 ECONOMIC DEVELOPMENT FOLLOW UP:** City Staff will review  
proposed contracts with the Incubator and GJEP. IDI will address  
the City Council regarding the Bookcliff Technology Park.

[Attach W-2](#)

**8:30 AMENDMENT TO THE MOU WITH THE DDA TO INCLUDE THE  
BID:** City Staff will review the proposed amendment to the  
agreement with the Downtown Development Authority relative to  
City services to include the newly formed Downtown Business  
Improvement District.

[Attach W-3](#)

**ADJOURN**

Attach W-1  
Future Workshop Agendas

# FUTURE CITY COUNCIL WORKSHOP AGENDAS

(30 November 2005)

**DECEMBER 14, WEDNESDAY 1:30 PM: AT THE ⇒ MESA COUNTY OFFICES**  
MEET WITH THE BOARD OF COUNTY COMMISSIONERS TO DISCUSS VARIOUS ISSUES

↳ **DECEMBER 19, MONDAY 11:30 AM** at STATION #5 (Redlands)

11:30 FIRE DEPARTMENT UPDATE/PRESENTATION

↳ **DECEMBER 19, MONDAY 7:00PM**

7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND FUTURE WORKSHOP AGENDAS

7:25 CITY MANAGER'S REPORT

7:30 APPOINTMENTS TO BOARDS & COMMISSIONS

7:40 EMS UPDATE

8:10 TABOR: EDUCATION & FUTURE STRATEGIES

## JANUARY 2006



↳ **JANUARY 2, MONDAY**

Canceled for New Year's Holiday

↳ **JANUARY 16, MONDAY 11:30 AM**

11:30 AVALON THEATER: Continued discussion of recent study

↳ **JANUARY 16, MONDAY 7:00PM**

7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND FUTURE WORKSHOP AGENDAS

7:25 CITY MANAGER'S REPORT

7:30 APPOINTMENTS TO BOARDS & COMMISSIONS

↳ **JANUARY 30, MONDAY 11:30 AM**

11:30 OPEN

↳ **JANUARY 30, MONDAY 7:00PM**

7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND FUTURE WORKSHOP AGENDAS

7:25 CITY MANAGER'S REPORT

7:30 OPEN

## FEBRUARY 2006

### ↳ **FEBRUARY 13, MONDAY 11:30 AM**

11:30 OPEN

### ↳ **FEBRUARY 13, MONDAY 7:00PM**

7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND FUTURE WORKSHOP AGENDAS

7:25 CITY MANAGER'S REPORT

7:30 APPOINTMENTS TO BOARDS & COMMISSIONS

### ↳ **FEBRUARY 27, MONDAY 11:30 AM IN ADMINISTRATION CONFERENCE ROOM**

11:30 OPEN

### ↳ **FEBRUARY 27, MONDAY 7:00PM**

7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND FUTURE WORKSHOP AGENDAS

7:25 CITY MANAGER'S REPORT

7:30 STRATEGIC PLAN UPDATE

7:45 RIVERSIDE PARKWAY: REVIEW PHASE 2 BID PROPOSAL

### ↗ **BIN LIST** ↖

1. Clifton Fire District: contract status & update
2. Police Department building
3. Development Review Performance Measurements (February)
4. Meeting with Western Colorado Botanical Gardens
5. Neighborhood Program update
6. Grand Junction Housing Authority's request for CDBG funding for a tenant based rental assistance program
7. Bird flu update (Dr. Aduddell)

## 2006 Department Presentations to City Council

**Attach W-2  
BIC and GJEP Contracts**

**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA						
<b>Subject</b>		Agreement with Business Incubator and GJEP				
<b>Meeting Date</b>		December 5, 2005				
<b>Date Prepared</b>		November 30, 2005			<b>File #</b>	
<b>Author</b>		Sheryl Trent		Assistant to the City Manager		
<b>Presenter Name</b>		Sheryl Trent		Assistant to the City Manager		
<b>Report results back to Council</b>		<input checked="" type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>When</b>
<b>Citizen Presentation</b>		<input type="checkbox"/>	<b>Yes</b>	<input checked="" type="checkbox"/>	<b>No</b>	<b>Name</b>
<input checked="" type="checkbox"/>	<b>Workshop</b>	<input type="checkbox"/>	<b>Formal Agenda</b>		<input type="checkbox"/>	<b>Consent</b>
		<input type="checkbox"/>			<input type="checkbox"/>	<b>Individual Consideration</b>

**Summary:** The City Council directed staff to prepare agreements for the Business Incubator Center and the Grand Junction Economic Partnership regarding the expenditure of City funding. The agreements for both of those agencies detail the goals, policies, and performance measures, as well as reporting requirements.

**Budget:** The City Council has designated the following amounts for the fiscal year 2006 budget:

- \$40,000 for the Business Incubator
- \$40,000 for the Grand Junction Economic Partnership
- \$60,000 for the recruitment of new businesses to the Grand Valley by the Grand Junction Economic Partnership

**Action Requested/Recommendation:** That the City Council review the proposed agreements and give direction to staff to place the agreements on an upcoming agenda for approval.

**Attachments:** A DRAFT copy of the proposed agreements is attached. The agreements are still under review by the City Attorney, the City Manager, the Business Incubator Center, and the Grand Junction Economic Partnership.

**Background Information:** As a part of the economic development strategic plan and the budget deliberations, the City Council has directed staff to work with the Business Incubator Center and the Grand Junction Economic Partnership to structure a financial participation agreement. The City Attorney has drafted two agreements, one for the Business Incubator Center and one for the Grand Junction Economic Partnership that outline goals, policies, objectives, performance measures, and reporting requirements for each agency.

The agreements list the amount of funding from the City of Grand Junction. The Business Incubator Center agreement is in the amount of \$40,000 and the Grand Junction Economic Partnership has an amount of \$40,000 and an amount of \$60,000, for a total of \$100,000. In that case the \$40,000 is for specific strategies and the \$60,000 is for the recruitment of new businesses to the Grand Valley. These agreements are only for the calendar year of 2006. Specific exhibits are attached to each contract detailing duties, responsibilities, and measurement of the accomplishments of each agency.

THE CITY OF GRAND JUNCTION  
and  
THE GRAND JUNCTION BUSINESS INCUBATOR CENTER  
FINANCIAL PARTICIPATION AGREEMENT

Recitals:

The City Council of the City of Grand Junction, a Colorado municipal corporation (the "City"), has authorized participation in and financial support for the regional economic development program of the Grand Junction Business Incubator Center ("BUSINESS INCUBATOR CENTER"), a Colorado non-profit corporation.

The purpose of this agreement ("Agreement") is to set forth the program that the BUSINESS INCUBATOR CENTER agrees to undertake, the support that the City agrees to provide and the respective roles and responsibilities of the parties for the fiscal year January 1, 2006 – December 31, 2006.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City by the City Council and BUSINESS INCUBATOR CENTER by and through its Board, agree as follows:

I. RESPONSIBILITIES OF BUSINESS INCUBATOR CENTER

A. PURPOSE: THE BUSINESS INCUBATOR CENTER exists to provide educational services and business development tools to start-up businesses/commercial enterprises and entrepreneurs. The Business Incubator Center supports the beginning, growth, stabilization and long-term success of business enterprises in Grand Junction and Mesa County.

B. GOALS: BUSINESS INCUBATOR CENTER is guided by and strategically focused on seven specific long-range goals:

1. guiding entrepreneurs through sound business planning and decision making;
2. positively influencing economic growth in the City, Mesa County and Western Colorado region;
3. facilitation of the startup and growth of small businesses in Mesa County through the use of the incubator;
4. preservation and diversification of the economy in Grand Junction and Mesa County;
5. providing consultation and technical support to the Grand Junction and Mesa County small business community;
6. providing training for the small business community; and
7. developing new assistance programs targeting existing businesses.

C. ACTION PLAN AND BUDGET:

In accordance with the Purpose and Goals set forth above and subject to the availability of adequate funding, the BUSINESS INCUBATOR CENTER shall implement the Action Plan and Budget adopted by the BUSINESS INCUBATOR CENTER's Board of Directors.

The City shall be informed of any changes in the adopted Action Plan. Such notification will be in writing and will be made prior to changes being made. Notwithstanding the foregoing, the City acknowledges and agrees that the BUSINESS INCUBATOR CENTER may, in its reasonable judgment in accordance with its own practices and procedures, substitute, change, reschedule, cancel or defer certain events, meetings or activities described in the Action Plan as required by or resulting from changed market conditions, funding unavailability and/or circumstances beyond the BUSINESS INCUBATOR CENTER's reasonable control. The City may participate in the formulation of future BUSINESS INCUBATOR CENTER Action Plan(s). The Action Plan shall be revised to reflect agreed upon changes.

D. PERFORMANCE TARGETS:

Specific performance targets, established by the BUSINESS INCUBATOR CENTER's Executive Director and Board of Directors, are attached hereto as Exhibit A and shall be used to evaluate and report progress on the BUSINESS INCUBATOR CENTER's implementation of its Action Plan. Exhibit A is incorporated by this reference as if fully set forth. In the event of changed market conditions, funding unavailability and/or circumstances beyond the BUSINESS INCUBATOR CENTER's reasonable control, performance targets may be revised with the City's prior written approval.

The BUSINESS INCUBATOR CENTER will provide quarterly reports to the City describing in detail its progress in implementing the Action Plan as well as reporting the numerical results for each performance measurement set forth in Exhibit A.

The BUSINESS INCUBATOR CENTER shall provide a copy of its annual audit for the preceding fiscal year to the City by no later than December 15<sup>th</sup>. The financial contribution from the City to the BUSINESS INCUBATOR CENTER will be invested in two primary programs:

- 1) the Small Business Incubator and
- 2) the Small Business Development Center.

These programs provide technical assistance to start-up and existing businesses.

The Small Business Incubator is a program of the BUSINESS INCUBATOR CENTER and offers an array of business support resources and services designed to accelerate the successful development of entrepreneurial companies. Selected start-up companies are housed at the Incubator for a 3-5 year period, at which time the businesses "graduate" into the community. Companies that participate in the Small Business Incubator program must go through intensive business training, goal setting

and review. Overhead is controlled through shared office equipment and a sliding scale rent structure.

The Kitchen Incubator, which is a part of the Small Business Incubator, provides a licensed commercial kitchen, available by the hour, for food processors, caterers and vendors. Technical assistance programs assist these companies in the complexities of start-up and operation of food related businesses.

The Small Business Development Center provides high quality, cost-effective business assistance, information and training activities to start-up and existing businesses. Through the delivery of those services the successful growth and development of small businesses is fostered and in turn a positive long-term economic impact for Mesa County is provided.

The United States Small Business Administration (SBA) started the Small Business Development Center program and funds half of the local program.

Performance measures for the BUSINESS INCUBATOR CENTER include:

Number of training activities conducted;

Number of businesses participating in consulting activities;

Number of new assistance programs for existing businesses;

**Number of qualified (?) startups generated;**

**Number of businesses started that diversify the economy (by size or type?);**

Long term (? # of years?) success of incubated businesses;

Hours of use of the kitchen incubator site;

Number of existing businesses assisted.

## II. RESPONSIBILITIES OF THE CITY

A. COOPERATIVE ASSISTANCE: Representative(s) of the City shall be entitled to participate in BUSINESS INCUBATOR CENTER's program development provided that such participation shall not be at BUSINESS INCUBATOR CENTER's expense. When requested by the City, the BUSINESS INCUBATOR CENTER will provide assistance and support to City economic development staff for business development prospects identified and qualified by the City that meet BUSINESS INCUBATOR CENTER standards.

### B. COMPENSATION:

1. The City agrees to pay \$\_\_\_\_\_ for services to be provided by the BUSINESS INCUBATOR CENTER pursuant to the Agreement during the year ending on December 31, 2006, as set forth in this Agreement.
2. Funding of this Agreement shall be subject to the annual appropriation of funds by the City Council pursuant to the required budget process of the City;



3. Nothing herein shall preclude the City from contracting separately with the BUSINESS INCUBATOR CENTER for services to be provided in addition to those to be provided hereunder, upon terms and conditions to be negotiated by the City and the BUSINESS INCUBATOR CENTER; and
4. The BUSINESS INCUBATOR CENTER shall submit on or about the 15<sup>th</sup> of each month invoices for payment on a monthly basis for services provided in the previous month. The foregoing notwithstanding, if BUSINESS INCUBATOR CENTER has not provided the City with the annual audit required by this Agreement by no later than December 15, no payment shall be made until the City receives and approves the audit report.

C. COOPERATION:

1. The parties acknowledge that cooperation between the BUSINESS INCUBATOR CENTER and the City is essential. Accordingly, the City and the BUSINESS INCUBATOR CENTER covenant and agree to work together in a productive and harmonious working relationship, to cooperate in furthering the BUSINESS INCUBATOR CENTER's goals for the 2006 fiscal year.
2. The City agrees to work with the BUSINESS INCUBATOR CENTER, as necessary or appropriate, to revise the performance measures and/or benchmarks and/or goals for the FY 2006 contract.

D. STAFF SUPPORT: The City agrees to provide staff support as it can to the BUSINESS INCUBATOR CENTER's economic development efforts as follows:

1. The City shall provide appropriate local hospitality, tours and briefings for incubator businesses visiting sites in the City;
2. The City shall provide a representative of the City to serve on the BUSINESS INCUBATOR CENTER Board of Directors;
3. The City shall reasonably cooperate with the BUSINESS INCUBATOR CENTER to provide and exchange information with the BUSINESS INCUBATOR CENTER's staff;
4. The City shall use its best efforts to respond to special requests by BUSINESS INCUBATOR CENTER for particularized information about the City within three business days after the receipt of such request;
5. In order to enable the BUSINESS INCUBATOR CENTER to be more sensitive to the City's requirements, the City shall, at its sole option deliver to BUSINESS INCUBATOR CENTER copies of any City approved economic development strategies, work plan(s), program(s) and incentive contribution evaluation criteria. The BUSINESS INCUBATOR CENTER shall not disclose the same to

the other participants in the BUSINESS INCUBATOR CENTER or their representatives.

III. GENERAL PROVISIONS:

- A. COVENANT AGAINST CONTINGENT FEES: The BUSINESS INCUBATOR CENTER warrants that no person has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For a breach or violation of this warranty, the City shall have the right to terminate this Agreement without liability or, in its discretion, to deduct the commission, brokerage or contingent fee from its payment to BUSINESS INCUBATOR CENTER.
- B. ASSIGNMENT PROHIBITED: No party to this agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and no effect.
- C. INDEPENDENT CONTRACTOR; NO AGENCY: Nothing contained in this Agreement creates any partnership, joint venture or agency relationship between the City and the BUSINESS INCUBATOR CENTER. At all times during the term of this Agreement, the BUSINESS INCUBATOR CENTER shall be an independent contractor and shall not be an employee of City. City shall have the right to control the BUSINESS INCUBATOR CENTER only as to the results of the BUSINESS INCUBATOR CENTER's services rendered pursuant to this Agreement. The BUSINESS INCUBATOR CENTER shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. The BUSINESS INCUBATOR CENTER shall have no authority, express or implied, pursuant to this Agreement to bind the City to any obligation whatsoever outside of this agreement.
- D. INDEMNIFICATION AND HOLD HARMLESS: During the term of this Contract, the BUSINESS INCUBATOR CENTER shall indemnify, defend, hold, protect and save harmless the City and any and all of its officers and employees from and against any and all actions, suits, proceedings, claims and demands, loss, liens, costs, expense and liability of any kind and nature whatsoever, for injury to or death of persons, or damage to property, including property owned by City, brought, made, filed against, imposed upon or sustained by the City, its officers, or employees in and arising from or attributable to or caused directly or indirectly by the negligence, wrongful acts, omissions or from operations conducted by the BUSINESS

INCUBATOR CENTER, its directors, officers, agents or employees acting on behalf of the BUSINESS INCUBATOR CENTER and with the BUSINESS INCUBATOR CENTER's knowledge and consent.

Any party entitled to indemnity shall notify the BUSINESS INCUBATOR CENTER in writing of the existence of any claim, demand or other matter to which the BUSINESS INCUBATOR CENTER's indemnification obligations would apply and shall give to the BUSINESS INCUBATOR CENTER a reasonable opportunity to defend the same at its own expense and with counsel reasonably satisfactory to the indemnified party.

Nothing in this Subsection D shall be deemed to provide indemnification to any indemnified party with respect to any liabilities arising from the fraud or willful or wanton misconduct of such indemnified party.

- E. INSURANCE: The BUSINESS INCUBATOR CENTER shall procure and maintain for the duration of this Agreement, at the BUSINESS INCUBATOR CENTER's own cost and expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Agreement by the BUSINESS INCUBATOR CENTER, its agents, representatives, employees or contractors, in accordance with the Insurance Requirements set forth in Exhibit C attached hereto. The City acknowledges that it has received and reviewed evidence of the BUSINESS INCUBATOR CENTER's insurance coverage in effect as of the execution of this Agreement.
- F. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Agreement, the BUSINESS INCUBATOR CENTER agrees as follows:
  - 1. The BUSINESS INCUBATOR CENTER will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, national origin, age or disability. The BUSINESS INCUBATOR CENTER shall take affirmative action to ensure that employees are treated during employment without regard to their race, color, religion, gender, sexual orientation, national origin, age or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. BUSINESS INCUBATOR CENTER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - 2. The BUSINESS INCUBATOR CENTER will, in all solicitations or advertisements for employees and businesses placed by or on behalf of the BUSINESS INCUBATOR CENTER, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, sexual orientation, national origin, age or disability.

3. The BUSINESS INCUBATOR CENTER will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement, provided that the foregoing provisions shall not apply to Agreements or subcontracts for standard commercial supplies or new materials.
  4. Upon request by the City, the BUSINESS INCUBATOR CENTER shall provide the City with information and data concerning action taken and results obtained in regard to the BUSINESS INCUBATOR CENTER's Equal Employment Opportunity efforts performed during the term of this Agreement. Such reports shall be accomplished upon forms furnished by the City or in such other format as the City shall prescribe.
- G. COMPLIANCE WITH FEDERAL LAWS REQUIRED. The BUSINESS INCUBATOR CENTER understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 and agrees to comply therewith in performing under any resultant agreement and to permit City inspection of its records to verify such compliance.
- H. TERMINATION. The City shall have the right to terminate this Agreement if the BUSINESS INCUBATOR CENTER shall fail to duly perform, observe or comply with any covenant, condition or agreement on its part under this Agreement and such failure continues for a period of 30 days (or such shorter period as may be expressly provided herein) after the date on which written notice requiring the failure to be remedied shall have been given to the BUSINESS INCUBATOR CENTER by the City; provided, however, that if such performance, observation or compliance requires work to be done, action to be taken or conditions to be remedied which, by their nature, cannot reasonably be accomplished within 30 days, no event of default shall be deemed to have occurred or to exist if, and so long as, the BUSINESS INCUBATOR CENTER shall commence such action within that period and diligently and continuously prosecute the same to completion within 90 days or such longer period as the City may approve in writing. The foregoing notwithstanding, in the event of circumstances which render the BUSINESS INCUBATOR CENTER incapable of providing the services required to be performed hereunder, including, but not limited to, insolvency or an award of monetary damages against the BUSINESS INCUBATOR CENTER in excess of its available insurance coverage and assets, the City may immediately and without further notice terminate this Agreement.
- I. RESPONSIBILITY FOR COMPLIANCE WITH LEGAL REQUIREMENTS. The BUSINESS INCUBATOR CENTER's performance hereunder shall be in material compliance with all applicable federal, state and local laws, regulations, standards, and ordinances in effect during the performance of this Agreement.
- J. INSTITUTION OF LEGAL ACTIONS. Any legal actions instituted pursuant to this Agreement must be filed in Mesa County Colorado. In any legal action,

the prevailing party in such action will be entitled to reimbursement by the other party for all costs and expenses of such action, including reasonable attorneys' fees (including the value of in-house counsel) as may be fixed by the Court.

K. APPLICABLE LAW. Any and all disputes arising under any Agreement to be awarded hereunder or out of the proposals herein called for, which cannot be administratively resolved, shall be tried according to the laws of the State of Colorado, and the BUSINESS INCUBATOR CENTER shall agree that the venue for any such action shall be Mesa County.

L. CONTINUATION DURING DISPUTES. The BUSINESS INCUBATOR CENTER agrees that, notwithstanding the existence of any dispute between the parties, each party shall continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by a Colorado court of competent jurisdiction.

M. CITY REVIEW OF BUSINESS INCUBATOR CENTER RECORDS. The BUSINESS INCUBATOR CENTER must keep all Agreement records separate and make them available for audit by the City upon request.

N. NOTICES. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows:

If to City: City Manager  
City of Grand Junction  
250 North 5<sup>th</sup> Street  
Grand Junction, Colorado 81502  
(970) 244-1503

With a copy to the City Attorney at the same address

If to BUSINESS INCUBATOR CENTER:

\_\_\_\_\_  
\_\_\_\_\_  
Grand Junction, Colorado 81505  
(970) \_\_\_\_\_

Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as provided in this paragraph.

- O. NON-LIABILITY OF OFFICIALS AND EMPLOYEES. No member, official or employee of the City will be personally liable to the BUSINESS INCUBATOR CENTER or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the BUSINESS INCUBATOR CENTER or successor or on any obligation under the terms of this Agreement. No member, official or employee of the BUSINESS INCUBATOR CENTER will be personally liable to the City or any successor in interest in the event of any default or breach by the BUSINESS INCUBATOR CENTER or for any amount which may become due to the City or successor, or on any obligation under the terms of this Agreement.
- P. NO WAIVER. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default, will not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.
- Q. SEVERABILITY. If any provision of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law, provided that the fundamental purposes of this Agreement are not defeated by such severability.
- R. CAPTIONS. The captions contained in this Agreement are merely a reference and are not to be used to construe or limit the text.
- S. NO THIRD PARTY BENEFICIARIES. No creditor of either party or other individual or entity shall have any rights, whether as a third-party beneficiary or otherwise, by reason of any provision of this Agreement.
- T. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS. This Agreement may be executed in up to three (3) duplicate originals, each of which is deemed to be an original. This Agreement, including \_\_\_ pages of text and the below-listed exhibits which are incorporated herein by this reference, constitutes the entire understanding and agreement of the City and the BUSINESS INCUBATOR CENTER.

Exhibit A - BUSINESS INCUBATOR CENTER Performance Measures  
Exhibit B - Insurance Requirements

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or the BUSINESS INCUBATOR CENTER, and all amendments hereto must be in writing and signed by the appropriate authorities of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement this \_\_\_\_\_ day of December 2006.

City of Grand Junction

By:

\_\_\_\_\_

Attest:

Kelly E. Arnold, City Manager

By: \_\_\_\_\_

Stephanie Tuin, City Clerk

Approved as to form:

By: \_\_\_\_\_

John P. Shaver, City Attorney

Grand Junction Business Incubator Center

By: \_\_\_\_\_

Thea Chase-Gilman, Director

# Exhibit A

## **Performance Measures for the Business Incubator Center**

- Number of qualified startups generated
- Number of businesses started that diversify the economy
- Long term success of incubated businesses
- Hours of use of the kitchen incubator site
- Number of existing businesses assisted

## **Performance Measures for the Small Business Development Center**

- Number of training activities
- Number of businesses participating in consulting activities
- Number of new assistance programs for existing businesses**

INCUBATOR CENTER

\_\_\_\_\_ BUSINESS

\_\_\_\_\_ City



THE CITY OF GRAND JUNCTION  
and  
THE GRAND JUNCTION ECONOMIC PARTNERSHIP  
PARTICIPATION AGREEMENT

Recitals:

The City Council of the City of Grand Junction, a Colorado municipal corporation (the "City"), has authorized participation in and financial support for the regional economic development program of the Grand Junction Economic Partnership ("GJEP"), a Colorado non-profit corporation.

The purpose of this agreement ("Agreement") is to set forth the regional economic development program that GJEP agrees to undertake, the support that the City agrees to provide and the respective roles and responsibilities of the parties for the fiscal year January 1, 2006 – December 31, 2006.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City by the City Council and GJEP by and through its Board, agree as follows:

I. RESPONSIBILITIES OF GJEP

A. Purpose: GJEP exists to collect, expend and leverage public and private money in support of innovative regional economic development strategies and tactics for the attraction and expansion of business.

B. Goals: GJEP is guided by and strategically focused on two specific long-range goals:

1. Marketing Mesa County to qualified business/industry prospects in targeted economic clusters; and
2. Leveraging public and private contributions to finance the location of qualified businesses to Mesa County, improve competitiveness of business and to spur growth of the Grand Junction economy.

C. Business Development Policy:

1. GJEP's primary role is image building, marketing and new business attraction for Grand Junction and Mesa County.

D. RETENTION AND EXPANSION POLICY: GJEP is not responsible for:

1. Retention and expansion of existing businesses, however, GJEP will advise the City and other appropriate agencies as determined by the City when an existing company requests a retention or expansion incentive(s).

E. INCENTIVES: Incentive offers by GJEP will be made when:

1. Grand Junction or Mesa County is in competition with one or more other communities for the location/relocation of a business; and
2. the offer of an incentive will induce the prospect to locate/relocate to Mesa County; and
3. the prospect business is currently in business and has a successful financial track record or if a "new" business has strong financial assets and qualified management as determined in the sole discretion of GJEP; and
4. the prospect business is involved in an activity which creates "base" jobs, defined as manufacturing, distribution or service jobs; or

5. makes a product(s) or produces a service which is "exported" from Colorado; or
6. is able to make a transition, either expansion or relocation, in the absence of an incentive.

An incentive offer will not be made unless:

1. The wage and salary level (i.e., the quality of the jobs) is not good enough. The wage and salary level must be above the median income for Grand Junction as determined by HUD.
2. The number of new jobs to be created in Mesa County is adequate as determined in the sole discretion of GJEP; and
3. The amount of new capital investment is adequate as determined in the sole discretion of GJEP.

The expenditure of public money for incentives will be justified if there is a demonstrable "return on investment", which the incentive causes or helps to cause when the incentive funds are leveraged by the prospect or GJEP.

For purposes of this agreement, incentives are not:

1. the intrinsic benefits of a location in Mesa County;
2. the benefits accruing from participation in the Colorado FIRST training program;
3. the benefits of location in the Mesa County Enterprise Zone; and
4. Revolving Loan Fund (RLF) loans.

F. Action Plan and Budget:

In accordance with the Purpose, Goals, Business Development and Retention Policies set forth above and subject to the availability of adequate funding, GJEP shall implement the Action Plan and Budget adopted by GJEP's Board of Directors, a copy of which is attached as Exhibit A and incorporated by this reference as if fully set forth.

The City shall be informed of any changes in the adopted Action Plan. Such notification will be in writing and will be made prior to changes being made. Notwithstanding the foregoing, the City acknowledges and agrees that GJEP may, in its reasonable judgment in accordance with its own practices and procedures, substitute, change, reschedule, cancel or defer certain events, meetings or activities described in the Action Plan as required by or resulting from changed market conditions, funding unavailability and/or circumstances beyond GJEP's reasonable control. The City may participate in the formulation of future GJEP marketing strategies and advertisements. The Action Plan shall be revised to reflect agreed upon changes.

G. Performance Targets:

Specific performance targets, established by GJEP's Executive Committee and Board of Directors, are attached hereto as Exhibit B and shall be used to evaluate and report progress on GJEP's implementation of the Action Plan. Exhibit B is incorporated by this reference as if fully set forth. In the event of changed market conditions, funding unavailability and/or circumstances beyond GJEP's reasonable control, performance targets may be revised with the City's prior written approval.

GJEP will provide quarterly reports to the City describing in detail its progress in implementing the Action Plan as well as reporting the numerical results for each performance measurement set forth in Exhibit B.

GJEP shall provide a copy of its annual audit for the preceding fiscal year to the City by no later than December 15<sup>th</sup>.

### III. RESPONSIBILITIES OF THE CITY

A. Marketing Assistance: Representative(s) of the City shall be entitled to participate in GJEP's marketing provided that such participation shall not be at GJEP's expense. When requested by the City, GJEP will provide assistance and support to City economic development staff for business location/relocation prospects identified and qualified by the City. GJEP's assistance will include but not necessarily be limited to assisting the City with presentations to the prospect in the City or at the business location.

#### B. Compensation:

1. The City agrees to pay GJEP \$40,000 for operations and \$60,000 for incentives pursuant to the Agreement during the year ending on December 31, 2006, as set forth in this Agreement.

2. Funding of this Agreement shall be subject to the annual appropriation of funds by the City Council pursuant to the required budget process of the City;

3. Nothing herein shall preclude the City from contracting separately with GJEP for additional services to be provided in addition to those to be provided hereunder, upon terms and conditions to be negotiated by the City and GJEP; and

4. GJEP shall submit on or about the 15<sup>th</sup> of each month invoices for payment on a monthly basis for operations provided in the previous month. The foregoing notwithstanding, if GJEP has not provided the City with the reports and audits required by this Agreement, then no payment shall be made until the City receives and approves the required reports.

5. The City agrees to pay the sum of \$60,000 on or before January 31, 2006 subject to the full and faithful completion of the terms of this agreement. The foregoing notwithstanding, if GJEP does not provide the City with the reports and audits required by this Agreement, then the City may declare GJEP in breach of this Agreement and demand repayment of its funds. GJEP shall not expend the City's funds until the City receives and approves the required reports.

#### C. Cooperation:

1. The parties acknowledge that cooperation between GJEP and the City is essential. Accordingly, the City and GJEP covenant and agree to work together in a productive and harmonious working relationship, to cooperate in furthering GJEP's goals for the 2006 fiscal year.

2. The City agrees to work with GJEP, as necessary or appropriate, to revise the performance measures and/or benchmarks and/or goals for the FY 2006 contract.

D. Staff SUPPORT: The City agrees to provide staff support as it can to GJEP's economic development efforts as follows:

1. The City shall timely respond to leads or prospects referred by GJEP if the City desires to compete and if the lead is appropriate for the City as determined in the City's

sole discretion. The City agrees to provide its response to the prospect in the format developed jointly by the City and GJEP;

2. The City shall provide appropriate local hospitality, tours and briefings for prospects visiting sites in the City;

3. The City shall provide a representative to serve on the GJEP Board of Directors;

4. The City shall cooperate in the implementation of GJEP process improvement recommendations including the use of common presentation formats, exchange of information on prospects with GJEP's staff, the use of land and building data bases;

5. The City shall use its best efforts to respond to special requests by GJEP for particularized information about the City within three business days after the receipt of such request;

6. In order to enable GJEP to be more sensitive to the City's requirements, the City shall, at its sole option deliver to GJEP copies of any City approved economic development strategies, work plan(s), program(s) and incentive contribution evaluation criteria. GJEP shall not disclose the same to the other participants in GJEP or their representatives;

### III. GENERAL PROVISIONS:

A. **Covenant Against Contingent Fees:** GJEP warrants that no person has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For a breach or violation of this warranty, the City shall have the right to terminate this Agreement without liability or, in its discretion, to deduct the commission, brokerage or contingent fee from its payment to GJEP.

B. **Assignment Prohibited:** No party to this agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and no effect.

C. **Independent Contractor; No Agency:** Nothing contained in this Agreement creates any partnership, joint venture or agency relationship between the City and GJEP. At all times during the term of this Agreement, GJEP shall be an independent contractor and shall not be an employee of City. City shall have the right to control GJEP only as to the results of GJEP's services rendered pursuant to this Agreement. GJEP shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. GJEP shall have no authority, express or implied, pursuant to this Agreement to bind the City to any obligation whatsoever outside of this agreement.

D. **Indemnification And Hold Harmless:** During the term of this Contract, GJEP shall indemnify, defend, hold, protect and save harmless the City and any and all of its officers and employees from and against any and all actions, suits, proceedings, claims and demands, loss, liens, costs, expense and liability of any kind and nature whatsoever, for injury to or death of persons, or damage to property, including property owned by City, brought, made, filed against, imposed upon or sustained by the City, its officers, or employees in and arising from or attributable to or caused directly or indirectly by the negligence, wrongful acts, omissions or from operations conducted by GJEP, its directors, officers, agents or employees acting on behalf of GJEP and with GJEP's knowledge and consent.

Any party entitled to indemnity shall notify GJEP in writing of the existence of any claim, demand or other matter to which GJEP's indemnification obligations would apply and shall give to GJEP a reasonable opportunity to defend the same at its own expense and with counsel reasonably satisfactory to the indemnified party.

Nothing in this Subsection D shall be deemed to provide indemnification to any indemnified party with respect to any liabilities arising from the fraud or willful or wanton misconduct of such indemnified party.

E. Insurance: GJEP shall procure and maintain for the duration of this Agreement, at GJEP's own cost and expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Agreement by GJEP, its agents, representatives, employees or contractors, in accordance with the Insurance Requirements set forth in Exhibit C attached hereto. The City acknowledges that it has received and reviewed evidence of GJEP's insurance coverage in effect as of the execution of this Agreement.

F. Equal Employment Opportunity. During the performance of this Agreement, GJEP agrees as follows:

1. GJEP will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, national origin, age or disability. GJEP shall take affirmative action to ensure that employees are treated during employment without regard to their race, color, religion, gender, sexual orientation, national origin, age or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. GJEP agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. GJEP will, in all solicitations or advertisements for employees placed by or on behalf of GJEP, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, sexual orientation, national origin, age or disability.

3. GJEP will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement, provided that the foregoing provisions shall not apply to Agreements or subcontracts for standard commercial supplies or new materials.

4. Upon request by the City, GJEP shall provide the City with information and data concerning action taken and results obtained in regard to GJEP's Equal Employment Opportunity efforts performed during the term of this Agreement. Such reports shall be accomplished upon forms furnished by the City or in such other format as the City shall prescribe.

G. Compliance with Federal Laws Required. GJEP understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 and agrees to comply therewith in performing under any resultant agreement and to permit City inspection of its records to verify such compliance.

H. Termination. The City shall have the right to terminate this Agreement if GJEP shall fail to duly perform, observe or comply with any covenant, condition or agreement on its part under this Agreement and such failure continues for a period of 30 days (or such shorter period as may be expressly provided herein) after the date on which written notice requiring the failure to be remedied shall have been given to GJEP by the City; provided, however, that if such performance, observation or compliance requires work to be done, action to be taken or conditions to be remedied which, by their nature,

cannot reasonably be accomplished within 30 days, no event of default shall be deemed to have occurred or to exist if, and so long as, GJEP shall commence such action within that period and diligently and continuously prosecute the same to completion within 90 days or such longer period as the City may approve in writing. The foregoing notwithstanding, in the event of circumstances which render GJEP incapable of providing the services required to be performed hereunder, including, but not limited to, insolvency or an award of monetary damages against GJEP in excess of its available insurance coverage and assets, the City may immediately and without further notice terminate this Agreement.

I. Responsibility for Compliance with Legal Requirements. GJEP's performance hereunder shall be in material compliance with all applicable federal, state and local laws, regulations, standards, and ordinances in effect during the performance of this Agreement.

J. Institution of Legal Actions. Any legal actions instituted pursuant to this Agreement must be filed in Mesa County Colorado. In any legal action, the prevailing party in such action will be entitled to reimbursement by the other party for all costs and expenses of such action, including reasonable attorneys' fees (including the value of in-house counsel) as may be fixed by the Court.

K. Applicable Law. Any and all disputes arising under any Agreement to be awarded hereunder or out of the proposals herein called for, which cannot be administratively resolved, shall be tried according to the laws of the State of Colorado, and GJEP shall agree that the venue for any such action shall be Mesa County.

L. Continuation During Disputes. GJEP agrees that, notwithstanding the existence of any dispute between the parties, each party shall continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by a Colorado court of competent jurisdiction.

M. City Review of GJEP Records. GJEP must keep all Agreement records separate and make them available for audit by the City upon request.

N. Notices. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) days after the notice is deposited in the United States mail addressed as follows:

If to City:                   City Manager  
                                  City of Grand Junction  
                                  250 North 5<sup>th</sup> Street  
                                  Grand Junction, Colorado 81502  
                                  (970) 244-1503

With a copy to the City Attorney at the same address

If to GJEP:                   GJEP  
                                  2828 Walker Field Drive  
                                  Suite 302  
                                  Grand Junction, Colorado 81560  
                                  (970) 245-4335

Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as provided in this paragraph.

O. Non-liability of Officials and Employees. No member, official or employee of the City will be personally liable to GJEP or any successor in interest in the event of any default or breach by the City or for any amount which may become due to GJEP or successor or on any obligation under the terms of this Agreement. No member, official or employee of GJEP will be personally liable to the City or any successor in interest in the event of any default or breach by the GJEP or for any amount which may become due to the City or successor, or on any obligation under the terms of this Agreement.

P. No Waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default, will not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Q. Severability. If any provision of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law, provided that the fundamental purposes of this Agreement are not defeated by such severability.

R. Captions. The captions contained in this Agreement are merely a reference and are not to be used to construe or limit the text.

S. No Third Party Beneficiaries. No creditor of either party or other individual or entity shall have any rights, whether as a third-party beneficiary or otherwise, by reason of any provision of this Agreement.

T. Entire Agreement, Waivers and Amendments. This Agreement may be executed in up to three (3) duplicate originals, each of which is deemed to be an original. This Agreement, including the exhibits which are incorporated by reference, constitutes the entire understanding and agreement of the City and GJEP.

Exhibit A - Action Plan

Exhibit B - GJEP Performance Measures

Exhibit C - Insurance Requirements

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or GJEP, and all amendments hereto must be in writing and signed by the appropriate authorities of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement this \_\_\_\_\_ day of December 2006.

City of Grand Junction

By: \_\_\_\_\_  
Kelly E. Arnold, City Manager



By: \_\_\_\_\_  
Stephanie Tuin, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John P. Shaver, City Attorney

Grand Junction Economic Partnership

By: \_\_\_\_\_

Ann Driggers, President

## Exhibit B

The City and GJEP understand and agree that there are three keys to the meaningful completion of the work to be performed pursuant to the Agreement by and between GJEP and the City. Those are:

- Prospect generation
- Prospect recruitment
- Identification of and work to overcome competitive disadvantages to business location/relocation to Grand Junction.

To achieve the mutual goals of the City and GJEP, GJEP will:

- Concentrate on cost-effective strategies such as \_\_\_?\_\_\_;
- Develop and strengthen collaborative relationships between GJEP, the City, Mesa County, the Chamber of Commerce and local financial interests;
- Secure public and private financial contributions; and
- Effectively measure, evaluate and report on its performance.

GJEP will target companies that fit the community.

- Generally those will be small (> 50 employees), owner-managed clean industries (*i.e.*, health/medical, environmental, outdoor, aviation/aerospace. Companies may be involved in either services or manufacturing) which provide primary jobs.
- Compensation offered to the company employees shall meet or exceed the median income for Grand Junction as defined by the most recent HUD data.

GJEP will develop general marketing materials as well as specific materials for presentations and prospects. GJEP will update and revise a website from which materials are accessible and with links to the City and other economic development agencies in the Grand Valley.

Marketing may include but not be limited to:

- Identifying 'success stories' that can be promoted to the media;
- Developing relations with media outlets on the Front-Range and/or industry specific media;

- Advertising in publications, such as CO Biz, Boulder Biz Journal, SkyWest Magazine, Grand Valley Magazine and site selection magazines featuring Colorado or target industries;
- Working with the Western Colorado Economic Alliance in its plan to promote the Western Slope as a business location;
- Updating industry specific marketing pieces
- Conduct mailing campaigns to identified companies to increase awareness and promote specific strengths in coordination with tradeshow
- Establish and develop relationships through personal contacts

#### Performance Measures

- Value of capital investment, number of jobs, payroll and average salary of corporate locations
- Number of prospect visits
- Prospect to locate conversion rate
- Provide feedback to communities and relevant partners on information obtained in prospect analysis
- Contributor satisfaction levels
- Program implemented within budget
- Fund raising successfully covers budgetary needs

\_\_\_\_\_ GJEP

\_\_\_\_\_ City

**Attach W-3  
Amending DDA MOU**

**CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA							
<b>Subject</b>	Adding the Downtown BID to the DDA MOU						
<b>Meeting Date</b>	05 December 2005						
<b>Date Prepared</b>	30 November 2005						
<b>Author</b>	David Varley		Assistant City Manager				
<b>Presenter Name</b>	David Varley		Assistant City Manager				
<b>Report results back to Council</b>	X	No		Yes	When		
<b>Citizen Presentation</b>		Yes	X	No	Name		
X	Workshop		Formal Agenda			Consent	Individual Consideration

**Summary:** Approval of this amendment will add the downtown business improvement district (BID) to the Memorandum of Understanding between the City and the Downtown Development Authority. The downtown BID will then receive the same City services that the DDA currently receives.

**Budget:** No direct budget outlay because of this action.

**Action Requested/Recommendation:** Request City Council approve Amendment #1 to the Grand Junction/DDA Memorandum of Understanding.

**Attachments:** Memorandum of Understanding between the City of Grand Junction and the Downtown Development Authority that was approved on 15 July 2002.

**Background Information:**

On 15 July 2002, the City of Grand Junction and the Downtown Development Authority (DDA) entered into a Memorandum of Understanding. A significant objective of that agreement was to establish basic roles, responsibilities and duties of the DDA and the City with respect to the operations of the DDA. Following that agreement the City and the DDA entered into a Services Agreement by which the City agreed to provide certain services to the DDA.

The City also supported the Downtown Partnership with a three year funding commitment which ends this year. In order to continue the work of the Partnership, in August 2005 a downtown business improvement district (BID) was formed. In November 2005 a majority of the voters approved an assessment against many downtown properties. The proceeds of this assessment will be used to continue to promote downtown.

In order to help the BID function effectively and efficiently the Downtown Development Authority would like the downtown BID to have the same relationship with the City that the DDA currently enjoys. This proposed amendment would accomplish that goal.

The attached amendment will change the MOU between the City and the DDA by adding the downtown Business Improvement District and affording it the same services that are provided by the City to the DDA. In other words, the BID would be treated the same way that the DDA is currently treated. The services provided to the DDA are outlined in a separate Services Agreement Letter which would be amended to include the Business Improvement District.

As noted in the Services Agreement Letter, the DDA does not pay the 5% administrative overhead to the general fund that is paid by the other City funds. The DDA pays a 2% fee which is assumed to cover just the budget and accounting services. This amendment does not change the fees that are to be paid to the City for the services rendered.

In addition, this amendment will delete three paragraphs of the MOU. These paragraphs all deal with a monthly and yearly report that the DDA Director is required to provide. The DDA Board Chair feels that these reports are not necessary as the appropriate information is already being provided.

## **AMENDMENT #1 TO THAT CERTAIN MEMORANDUM OF UNDERSTANDING**

Between the City of Grand Junction  
the Grand Junction Downtown Development Authority and the Downtown Grand  
Junction Business Improvement District

### Recitals.

On 15 July 2002, the City of Grand Junction and the Grand Junction Downtown Development Authority (DDA) entered into a Memorandum of Understanding. A significant objective of that agreement was to establish basic roles, responsibilities and duties of the DDA and the City with respect to the operations of the Authority.

Following that agreement the City and the DDA entered into a Services Agreement by which the City agreed to provide certain services to the DDA.

The relationship between the City and the DDA has been healthy and the Downtown has flourished with the advent of the Downtown Partnership. The Downtown Partnership, with a three year funding commitment from the City, has brought renewed emphasis to Downtown events and marketing.

In order to continue the work of the Partnership, in August of 2005 a downtown business improvement district (BID) was formed. In November of 2005 a majority of the voters chose to impose an assessment against many downtown properties. The proceeds of the assessment will be invested to continue to promote downtown.

As part of the continuing effort to streamline the various operations of Downtown, the DDA Board has been designated as the BID Board. Because of the efficiencies that have been had by and between the City and the DDA and especially the City's provision of services to the DDA, it has been recommended and agreed that the same relationship exist between the City and the BID.

Current laws and rules that apply to the BID and give direction to the DDA Board as the BID Board are found in §31-25-1201, *et seq.*, C.R.S.

**BASED ON THE FOREGOING RECITALS**, which are intended to be substantive provisions of this agreement, the City Council of the City of Grand Junction and the Board of Directors of the Grand Junction Downtown Development Authority (Board)

**HEREBY AGREE and ENTER INTO THIS MEMORANDUM OF UNDERSTANDING**, as of the date of the last signature hereon.

1. Extension of Terms. By this amendment the MOU between the City and the DDA, a copy of which is attached and incorporated by this reference as if fully set forth, is amended as necessary and relevant to extend to the relationship between the City

and the Downtown BID. Any and all obligations of the DDA shall equally be obligations of the BID.

City-DDA-BID

Memorandum of Understanding

December 2005

Page 2

2. Terms to be Stricken. To aid in the efficiency of administration of the DDA and the BID, the parties hereby agree that paragraphs 6a, b and d shall be stricken.

3. Service Agreement to be Extended. For purposes of this amended agreement the Service Agreement by and between the City shall be deemed amended to extend those certain City services provided to the DDA to the BID.

4. Further Amendment. The MOU and this amendment of the MOU may be amended only in writing with the same authority and formality as this agreement.

5. Authority. Each signatory represents that he/she has authority to sign and bind the entity by his/her signature to accept the rights and discharge the obligations attendant to this agreement.

Entered into this \_\_\_\_ day of December 2005.

\_\_\_\_\_  
Chair of the BID  
Date: \_\_\_\_\_

\_\_\_\_\_  
Chair of the DDA  
Date: \_\_\_\_\_

\_\_\_\_\_  
Mayor of the City  
Date: \_\_\_\_\_

DDABIDMOU.doc

## MEMORANDUM OF UNDERSTANDING

Between the City of Grand Junction  
And the  
Grand Junction Downtown Development Authority

### Recitals.

The Grand Junction Downtown Development Authority (DDA) was created in 1977 and its bylaws were adopted not long thereafter. Those bylaws are a part of the governing rules for the Board of Directors of the DDA (Board) but they have not been reviewed or amended since they were adopted.

In addition, because the relationship between the DDA and the City has not been formally examined since the inception of the DDA, the Board and the City Council believe that this memorandum of understanding (MOU) is necessary and beneficial.

One major purpose of this agreement is to set forth basic principles of the DDA's mission and its legal duties and responsibilities.

This MOU will provide an operating framework and address other matters deemed appropriate and necessary by the City Council and the Board.

Because an MOU is a form of contract it serves to describe some rights, powers, duties, privileges and liabilities of the DDA and the City. Of course, the parties acknowledge that the City Charter, the City's ordinances, regulations, policies and practices and state and federal laws control as primary sources for those things.

Current laws and rules that apply to the DDA, give direction to the Board and the DDA employees and control the programs and efforts of the DDA are:

- (1) the statute that authorizes downtown development authorities. §31-25-101, *et seq.*, C.R.S.;
- (2) the City's ordinance that created the DDA in 1982 supplemented by the more detailed bylaws, adopted by the Board and the City Council in 1982;
- (3) the City and DDA ordinances and resolutions related to financial transactions, such as bond issues including limits and rules regarding expenditures and accounting.

The DDA can only act through a majority of a quorum of its board of directors. Acting together in two quite different roles, the board members:

- (1) Set policy and give guidance and direction for the DDA, in accordance with



the policies and direction established by the City Council; and

- (2) Act as the supervisor and employer of the director of the DDA.

Because local government decisions in Colorado can only be made in open meetings and consistent with principles of governance, the City and the Board acknowledge that each can only act as a majority of a quorum. Individual members of the Board and the Council have no authority or power; members only take action to the extent approved by the respective group.

Normally, the Board will act through its chairperson. Occasionally, the Board may act through another, for example, when the chair is in the minority or if the chair declines to act consistently with the Board's direction. Unless acting to carry out the Board's decision or direction, an individual board member is not authorized to direct or control the Director or other DDA employee.

Fundamental duties of each member (of the Board and the Council) are:

- (1) To act as a fiduciary, including oversight and management; and
- (2) To direct the DDA and expend its resources in accordance with the budget, applicable law and other requirements and policies.

While it is true that the real properties and businesses within the DDA boundaries generate the DDA's revenues, the Council pursuant to Colorado law reviews and approves the DDA budget. To that end the Council must assist the DDA in maintaining compliance and consistency with City, state and federal law and requirements, including but not limited to fiscal and budgetary regulations.

The rules and regulations applicable to local governments (such as financial, accounting, open meetings and open records) are already inherent in the City's operations and are easily and readily applied to the DDA.

BASED ON THE FOREGOING RECITALS, which are intended to be substantive provisions of this agreement, the City Council of the City of Grand Junction and the Board of Directors of the Grand Junction Downtown Development Authority (Board) HEREBY AGREE and ENTER INTO THIS MEMORANDUM OF UNDERSTANDING, as of the date of the last signature hereon.

1. Supplemental. This MOU supplements the DDA bylaws and rules, thus helping the DDA to accomplish its mission while allowing the Council to discharge its duties in assisting, managing and guiding the Board.
2. DDA Minutes. The DDA Director shall provide to the City Clerk minutes of

the meetings of the DDA. Such minutes shall be of a style and quality equivalent to those provided by the City Clerk for City Council meetings. The Director shall provide minutes within fourteen (14) days of approval of the minutes by the Board.

3. Board Supervision of Director. The Board shall supervise, direct and oversee the Director. The Board is responsible for the hiring and day-to-day supervision, periodic evaluation and discipline, as necessary, of its employee, the DDA Director.

4. DDA Budget.

(a) The Board and/or the Director as directed by the Board shall prepare and propose an annual budget to the City Council. The City Council will review the proposed DDA budget as a part of the City's budget and appropriation process. As a part of the evaluation and approval of the City's budget and appropriations, the Council shall approve, approve with detailed and/or general changes, or otherwise establish, a budget for the DDA.

(b) The Director shall participate in the City budgeting process and shall abide by the City's rules and requirements including budgeting and accounting. Unless directed otherwise by the Board, the Director shall provide each member of the Board with a copy of all reports provided to the City.

5. DDA Director.

(a) The DDA Director, who has been referred to as the *Executive Director* from time-to-time, is an at-will employee of the Board. In general, the DDA Director may be regarded as the chief executive officer of the DDA. The Director is responsible for the day-to-day implementation of the Board's direction, including oversight and supervision of the other DDA employees and operational performance and control of the DDA programs, activities and policies.

(b) The Director shall hire, act as the manager and supervisor of the other DDA employees.

(c) The Director shall keep each member of the Board informed of the Director's activities, decisions, the activities and programs and other functions of the DDA, as provided by the Board in writing from time-to-time.

(d) The Director is responsible to see that the meetings, records and other activities of the DDA comply with applicable laws, including the open meetings act and open records act.

(e) The Director shall inform the City Manager, the City Attorney and the HR Manager, as appropriate, regarding any concerns and/or possible liability arising out of this agreement, including employment law claims and notices

of claim under the Colorado Governmental Immunity Act.

6. Director's Reports.

- (a) The Director shall prepare a written monthly report to the Board, with a copy to the City Manager. The report shall at least describe the financial condition of the DDA for the prior month, the calendar year to date and shall include a summary of ongoing projects and activities. Such reports shall be available to the public in accordance with the Open Records Act.
- (b) The Director's monthly report shall describe the efforts, staff time and resources given to and received by the DDA with regard to the Downtown Association, the Avalon and other DDA activities and relationships.
- (c) The Director shall provide such other reports, documents and information as the Treasurer, Human Resources Manager, City Attorney and/or City Manager require from time-to-time. The Director shall provide copies of all such reports to the Board.
- (d) On or before each March 1, the Director shall give the Board, with a copy to the City Manager, a written report of services or resources provided to the DDA during the preceding calendar year by any City department, division or employee. The purpose of this report is to identify the value, expense, benefit(s) and costs associated with providing such City services to or at the direction of the DDA. The Director shall include a separate written evaluation of such services, which shall be approved by the Chair of the Board and the City Manager before it is made available to the public.

7. DDA Employees.

- (a) DDA employees, including the Director, are not City employees. For convenience, however, the City may pay DDA employees as though the employees are City employees. In addition, a DDA employee may receive medical and other benefits provided by the DDA that are equivalent to those received by an equivalent City employee as directed and determined by the DDA. The City may perform payroll and benefit administration and services for the DDA in accordance with a contract for services pursuant to paragraph 11.
- (b) At least once each calendar year, the Director shall personally deliver a written notice to each DDA employee indicating to the employee that s/he is neither employed by the City nor entitled to any City employee benefits and/or protections.
- (c) Each DDA employee is employed as an at-will employee, unless the Board has determined otherwise, in writing, with regard to each specific individual. The Board shall maintain a copy of each such writing.

- (d) At least once each calendar year, the Director shall perform an oral and written evaluation of/with each DDA employee. The Director shall make each such written evaluation available to the Board in either summary or detailed form as determined by the Board. The Director shall maintain a copy of each such written evaluation.

8. Personnel policies.

- (a) The Director and other DDA employees shall be supervised in accordance with the City's most recent Personnel Policy Manual (PPM). The Director shall, at any time during which the City is contracted to provide human resources services in accordance with paragraph 11, seek direction and guidance from the City in construing and applying the PPM as instituted herein.
- (b) The Board may vary how one or more of the provisions of the PPM apply to any particular DDA employee effective when the Board confirms the change or variance in writing. If the City is providing human resources services to the DDA in accordance with paragraph 11, each such change or variance shall only occur if the City's Human Resources Manager consents in writing.
- (c) For purposes of interpreting and applying the PPM only, the Director shall be deemed to be a City department head and the Board shall be deemed to be the City Manager.
- (d) If the Director and the HR Manager differ at any time regarding the PPM as it relates to the DDA and/or DDA employment matters, decisions, or policy interpretations, each shall inform the City Manager and the DDA Chair. The City Manager shall make a written decision on such matter, which shall be final except for all matters properly decided by the City Council.
- (e) The Director shall take no action to modify any salary, benefit, job duty, compensation or similar matter regarding any DDA employee, including the Director, without having first obtained the approval of the Board and after having first consulted with the City's HR Manager. A copy of any such action shall not be effective until it is provided to the HR Manager.
- (f) The City shall provide training to DDA employees on various employment policies and practices.
- (g) The City shall administer the benefits, compensation and the similar matters of the DDA employees on a basis roughly equivalent to those of City employees, unless directed otherwise in writing by the Board.

9. DDA Treasurer. (a) The City Finance Director is the treasurer of the DDA, unless the City Manager designates otherwise in writing with a copy to the Board,

the Director and the City Council.

10. Legal Representation.

- (a) Unless the Board and the City Council both determine otherwise, the City's attorney shall be the attorney for the DDA pursuant to paragraph 11. Either the Council or the City attorney may determine on a case-by-case basis that the DDA must obtain separate legal advice and/or representation.
- (b) The City Council may terminate the provision of the City attorney's services to the DDA at any time in general or for particular/specific matters. The Council may terminate the provision of the City's attorney services based on actual or perceived conflict of interest or without a reason being stated.

11. Other Services. The Council and the Board shall determine by separate agreement what if any other services the City shall provide to the DDA. DDA payment to the City shall be in accordance with the terms of any service(s) agreement(s).

12. DDA Payments to the City. The Council and the Board shall determine by separate agreement how, if and/or how much the DDA will pay to the City for the work and/or services provided to the DDA by the City.

13. Headings. Paragraph titles and headings are for convenience only and should not be used to understand the terms of this Memorandum of Understanding.

\_\_\_\_\_  
Chair of the DDA

Date: \_\_\_\_\_

\_\_\_\_\_  
Mayor of the City

Date: \_\_\_\_\_