



**CITY COUNCIL AGENDA
CITY HALL AUDITORIUM, 250 NORTH 5TH STREET
MONDAY, NOVEMBER 2, 2009, 7:00 P.M.**

Call to Order

Pledge of Allegiance

Invocation – David Huslig, Bethel Assembly of God

Proclamations/Recognitions

Proclaiming November as “Alzheimer’s Awareness Month” in the City of Grand Junction

Proclaiming November 11th, “As a Salute to All Veterans 2009” in the City of Grand Junction

Proclaiming November as “Hospice and Palliative Care Month” in the City of Grand Junction

Proclaiming November as “Blue Star Mothers Month” in the City of Grand Junction

Council Comments

Citizen Comments

***** CONSENT CALENDAR ***®**

1. **Minutes of Previous Meetings**

[Attach 1](#)

Action: Approve the Minutes of the October 19, 2009, and the Minutes of the October 21, 2009, Regular Meeting

*** Indicates New Item

® Requires Roll Call Vote

2. **Setting a Hearing on the Fuoco Rezone, Located at 160 Hill Avenue** [File #GPA-2009-147] [Attach 2](#)

Request to rezone 0.14 acres located at 160 Hill Avenue from R-O, (Residential Office) to C-1, (Light Commercial).

Proposed Ordinance Rezoning Property Known as the Fuoco Rezone from R-O (Residential Office) to C-1 (Light Commercial), Located at 160 Hill Avenue

Action: Introduction of a Proposed Ordinance and Set a Hearing of November 16, 2009

Staff presentation: Scott D. Peterson, Senior Planner

3. **Setting a Hearing on the Annexation of the Matthews Enclave, located along the Colorado River west of 25 Road and south of the Riverside Parkway** [File #ANX-2009-209] [Attach 3](#)

A request to annex 10.53 acres of enclaved property, located along the Colorado River west of 25 Road and south of the Riverside Parkway. The Matthews Enclave consists of one privately-owned parcel and portions of two publicly-owned parcels, along with 0.83 acres of public right-of-way.

Under the 1998 Persigo Agreement with Mesa County the City is to annex all Enclave areas within five (5) years. State law allows a municipality to annex enclave areas unilaterally after they have been enclaved for a period of three (3) years. The Matthews Enclave has been enclaved since January 16, 2005.

a. Notice of Intent to Annex and Exercising Land Use Control

Resolution No. 84-09—A Resolution of the City of Grand Junction Giving Notice That a Tract of Land Known as Matthews Enclave, Located along the Colorado River West of 25 Road and South of the Riverside Parkway, Consisting of Approximately 10.53 Acres, will be Considered for Annexation to the City of Grand Junction, Colorado, and Exercising Land Use Control

®Action: Adopt Resolution No. 84-09

b. Setting a Hearing on Proposed Ordinance

An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Matthews Enclave Annexation, Located along the Colorado River West of 25 Road and South of the Riverside Parkway, Consisting of Approximately 10.53 Acres

Action: *Introduction of a Proposed Ordinance and Set a Hearing for December 14, 2009*

Staff presentation: Brian Rusche, Senior Planner

4. **Setting a Hearing Correcting Legal Description on a Vacation of Right-of-Way Ordinance, Gunnison Avenue** [Attach 4](#)

The intent of Ordinance No. 2639 was to vacate the entirety of Gunnison Avenue right of way within the limits specified by said ordinance; however, due to scrivener's error not all documents conveying Gunnison Avenue right of way were cited in said ordinance. The amended ordinance lists all documents conveying right of way for Gunnison Avenue to be included within the stated limits, thereby fully satisfying the intent of Ordinance No. 2639.

Proposed Ordinance Amending Ordinance No. 2639 Vacating a Portion of Gunnison Avenue Right of Way between Harris Road and Melody Lane

Action: *Introduction of a Proposed Ordinance and Set a Hearing for November 16, 2009*

Staff presentation: Tim Moore, Public Works and Planning Director
John Shaver, City Attorney

5. **Setting a Hearing on the Moratorium for Medicinal Marijuana** [Attach 5](#)

The proposed ordinance would afford the City an opportunity, by declaring a temporary moratorium on the filing of development applications for medical marijuana dispensaries, to carefully evaluate and determine as appropriate, the proper regulation of those businesses. The ordinance also proposes a moratorium on the issuance of sales tax licenses for new dispensaries/marijuana care-givers.

Proposed Ordinance Concerning Land Use Applications in the City of Grand Junction, Instituting a Temporary Moratorium on the Issuance of Land Use Approvals and Sales Tax Licenses for Medical Marijuana Dispensaries and Providing Penalties for Violation Thereof

Action: *Introduction of a Proposed Ordinance and Set a Hearing for November 16, 2009*

Staff presentation: John Shaver, City Attorney

6. **Downtown Grand Junction Business Improvement District (DGJBID) Operating Plan and Budget** [Attach 6](#)

As required by statute, the DGJBID has filed the 2010 Operating Plan and Proposed Budget with the City Clerk by September 30. It has been reviewed by Staff and found to be reasonable.

Action: Approve the DGJBID 2010 Operating Plan and Proposed Budget

Staff presentation: Jodi Romero, Financial Operations Manager

7. **Construction and Maintenance Agreement and Purchase of Property from Union Pacific Railroad Company for the 29 Road and I-70B Interchange Project** [Attach 7](#)

The Public Utility Commission requires that the City and the Union Pacific Railroad Company enter into a Construction and Maintenance Agreement for the construction and future maintenance of the 29 Road Overpass Bridge. The City's cost for the Easement Fees and Permit Fees included in this Agreement is \$177,547. The City has also signed a Letter of Understanding with the Union Pacific Railroad company to purchase street right-of-way at 29 Road and D ½ Road. The City's cost for the right-of-way is \$120,680.

Resolution No. 85-09—A Resolution Authorizing the Purchase of Real Property at 29 Road and D ½ Road, Identified by parcel Schedule #2943-172-00-056 from Union Pacific Railroad Company

®Action: Adopt Resolution No. 85-09 and Authorize the City Manager to Sign the Construction and Maintenance Agreement with Union Pacific Railroad Company for the 29 Road Overpass to be Constructed as a part of the 29 Road and I-70 B Interchange Project

Staff presentation: Tim Moore, Public Works and Planning Director

8. **Water Agreement Amended and Restated by BrightStar Golf Redlands Mesa LLC** [Attach 8](#)

Authorization of the City Manager to consent to the assignment of the Water Agreement Amended and Restated to provide irrigation water for the public golf course for the land where the Golf Course at Redlands Mesa ("Golf Course") is located in the Redlands.

Action: Authorize the City Manager to Act by Executing the Consent to Assignment of the Water Agreement Amended and Restated with BrightStar Golf Redlands Mesa LLC

Staff presentation: John Shaver, City Attorney

9. **Tiara Rado Golf Course Irrigation Replacement – Phase Two** [Attach 9](#)

This project will replace the 40 year old irrigation system at Tiara Rado Golf Course that is deteriorating and in some cases beyond repair. This approval request is for phase two of the project (pond construction and dirt work), consisting of the Civil Contractor (\$584,923.50) and Golf Course Specialty Contractor (\$727,189.69) for a total phase two cost in the amount of \$1,312,113.40.

If approved, the City will realize future cost savings through reduced irrigation and pump repairs, and decreased electrical costs. The pond construction is being done in conjunction with the irrigation replacement project. The irrigation system and pump station are designed to operate from the ponds being built by the Civil Contractor.

Action: Authorize the City Purchasing Division to enter into Construction Contracts with M.A. Concrete in the amount of \$584,923.50 for the Civil Construction portion of the project, and Stonefly Earthworks in the amount of \$727,189.69 for the Golf Course Specialty Construction portion of the project.

Staff presentation: Rob Schoeber, Parks and Recreation Director
Jay Valentine, Assistant Financial Operations Manager

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

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

10. **Public Hearing - Authorizing the Issuance and Sale of the City of Grand Junction Joint Sewer System Revenue Bonds, Series 2009** [Attach 10](#)

City Council and the Mesa County Commissioners have determined that in the best interests of the joint sewer system and its customers, to complete certain improvements to the Persigo sewer system. To finance the projects, the City Council has determined that it is necessary and advisable to issue its "City of Grand Junction, Colorado, Joint Sewer System Revenue Bonds, Series 2009

(Direct Pay Build America Bonds)” in the amount of \$5.2 million to help defray part of the costs of the Project.

Ordinance No. 4389—An Ordinance Authorizing the Issuance and Sale of the City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Building America Bonds), Series 2009, Payable Solely Out of the Net Revenues to be Derived from the Operation of the Joint Sewer System of the City and Mesa County, Colorado and Certain Other Revenues

®Action: Hold a Public Hearing and Consider Final Passage and Final Publication of Ordinance No. 4389

Staff presentation: Greg Trainor, Utilities, Streets, and Facilities Director
Tim Moore, Public Works and Planning Director

11. **Public Hearing - Approving Loan from the Colorado Water Resources and Power Development Authority** [Attach 11](#)

The City Council has determined that in the interests of the City and the public, certain improvements are required to the City’s water system, including the replacement of certain existing cast iron and steel water distribution lines within the system. To finance the project, the City Council has determined that it is necessary and advisable to enter into a loan agreement with the Colorado Water Resources and Power Development Authority (“CWRPDA”) for a loan amount of \$3,800,000.00.

Ordinance No. 4390—An Ordinance Approving a Loan from the Colorado Water Resources and Power Development Authority to Finance Improvements to the City’s Water System; Authorizing the Form and Execution of the Loan Agreement and a Governmental Agency Bond to Evidence Such Loan; Authorizing the Execution and Delivery of Documents Related Thereto; and Prescribing Other Details in Connection Therewith

®Action: Hold a Public Hearing and Consider Final Passage and Final Publication of Ordinance No. 4390

Staff presentation: Greg Trainor, Utilities, Streets, and Facilities Director
Tim Moore, Public Works and Planning Director

12. **Non-Scheduled Citizens & Visitors**

13. **Other Business**

14. **Adjournment**

Attach 1
Minutes

GRAND JUNCTION CITY COUNCIL
MINUTES OF THE REGULAR MEETING

October 19, 2009

The City Council of the City of Grand Junction convened into regular session on the 19th day of October 2009 at 7:05 p.m. in the City Auditorium. Those present were Councilmembers Bonnie Beckstein, Teresa Coons, Bill Pitts, Linda Romer Todd, and Council President Bruce Hill. Councilmembers Tom Kenyon and Gregg Palmer were absent. Also present were City Manager Laurie Kadrich, City Attorney John Shaver, and Deputy City Clerk Juanita Peterson.

Council President Hill called the meeting to order. Councilmember Coons led in the Pledge of Allegiance followed by a moment of silence.

Ratify Appointments

Councilmember Beckstein moved to ratify the reappointment of Dave Detwiler and the appointment of Steve Peterson to the Building Code Board of Appeals with terms expiring July 1, 2012 and to eliminate the alternate position as the Bylaws do not require an alternate, just five members, as requested by the Mesa County Commissioners for the Building Code Board of Appeals. Motion seconded by Councilmember Coons. Motion carried.

Recognitions

Recognition of Neighborhood Association—Housing Resources of Western Colorado properties

Kristen Ashbeck, with the City Neighborhood Services Department, acknowledged that the Housing Resources of Western Colorado properties have registered three of their multi-housing units with the housing program, these include the Phoenix Apartments, the Linden Apartments and the Tiffany Apartments. The Housing Resources of Western Colorado have participated in the Grand Junction Police Department Crime-Free multi-housing program for a year and have met qualifications for certification. They have applied for a grant in the amount of \$2000 to help with cost of improvements for these multi-housing units. Dan Whalen, Coleen Simpson, and Rick Johnson were present to receive the recognition.

Recognition of Neighborhood Association—The Villas at Country Club

Ms. Ashbeck reported that the Villas at Country Club Home Owners Association has functioned as a close knit group for a number of years. Most are elderly and single and have supported one another. The neighbors have provided a safe and healthy environment for this area. The grant they have received for \$2000 is to improve the underdeveloped right-of-way and matched the grant with their own HOA funds as well as 55 volunteer hours of work. Bill Greer, William Myers, Don Saunders, and Goldie Ward were present to receive the recognition.

Recognition of Neighborhood Association—Grand Manor

Ms. Ashbeck advised Grand Manor is a multi-housing complex. They have also participated in the Crime-Free Multi Housing Program. They applied for \$5000 to help for the cost of additional lighting on the housing units. Staff members Maureen Weaver, Sheri Baughman, Christine Ordonez, and several residents were present to receive the recognition.

Council Comments

There were none.

Citizen Comments

There were none.

CONSENT CALENDAR

Councilmember Pitts read the consent Calendar and then Councilmember Beckstein moved to approve items #1 through #3. Councilmember Coons seconded the motion. Motion carried by roll call vote.

1. **Minutes of Previous Meetings**

Action: Approve the Minutes of the October 5, 2009, Regular Meeting

2. **Setting a Hearing Authorizing the Issuance and Sale of the City of Grand Junction Joint Sewer System Revenue Bonds, Series 2009**

City Council and the Mesa County Commissioners have determined that in the best interests of the joint sewer system and its customers, to complete certain improvements to the Persigo sewer system. To finance the projects, the City Council has determined that it is necessary and advisable to issue its "City of Grand Junction, Colorado, Joint Sewer System Revenue Bonds, Series 2009 (Direct Pay Build America Bonds)" in the amount of \$3.2 million to help defray part of the costs of the Project.

Proposed Ordinance Authorizing the Issuance and Sale of the City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Building America Bonds), Series 2009, Payable Solely Out of the Net Revenues to be Derived from the Operation of the Joint Sewer System of the City and Mesa County, Colorado and Certain Other Revenues

Action: Introduction of a Proposed Ordinance and Set a Hearing for November 2, 2009

3. **Setting a Hearing Approving Loan from the Colorado Water Resources and Power Development Authority**

The City Council has determined that in the interests of the City and the public, certain improvements are required to the City's water system, including the replacement of certain existing cast iron and steel water distribution lines within the system. To finance the project, the City Council has determined that it is necessary and advisable to enter into a loan agreement with the Colorado Water Resources and Power Development Authority ("CWRPDA") for a loan amount of \$3,800,000.00.

Proposed Ordinance Approving a Loan from the Colorado Water Resources and Power Development Authority to Finance Improvements to the City's Water System; Authorizing the Form and Execution of the Loan Agreement and a Governmental Agency Bond to Evidence Such Loan; Authorizing the Execution and Delivery of Documents Related Thereto; and Prescribing Other Details in Connection Therewith

Action: Introduction of a Proposed Ordinance and Set a Hearing for November 2, 2009

ITEMS NEEDING INDIVIDUAL CONSIDERATION

Public Hearing – Moir Growth Plan Amendment, Located at 399 29 Road and 2895 Riverside Parkway [File # GPA-2009-169]

This is a request to approve an amendment to the 2004 Pear Park Transportation and Access Management Plan (TAMP) to allow a right-in/right-out access onto the south side of Riverside Parkway approximately 300' west of 29 Road. An amendment to the Pear Park Neighborhood Plan is an amendment to the Grand Valley Circulation Plan and is considered an amendment to the Growth Plan.

The public hearing was opened at 7:21 p.m.

Tim Moore, Public Works and Planning Director, presented this item. He gave a little history and the reasoning behind the amendment. He stated this had been given Planning Commission approval.

There were no public comments.

The public hearing was closed at 7:32 p.m.

Resolution No. 81-09— A Resolution Amending the Growth Plan of the City of Grand Junction to Allow a Right-In/Right-Out Access onto the South Side of Riverside Parkway Approximately 300' West of 29 Road

Councilmember Beckstein moved to adopt Resolution No. 81-09. Councilmember Todd seconded the motion. Motion carried by roll call vote.

Public Hearing – Correcting Legal Descriptions on Various Annexation and Zoning Ordinances and Resolutions

A discrepancy in the legal description of Barker Annexation No. 2 recently became known when a development application was filed for the proposed Carson Subdivision, which occupies the same area. An improvement survey was completed and submitted as part of the subdivision application and discrepancies in the property description were discovered. This ordinance corrects the discrepancies found in the prior ordinances and resolutions.

The public hearing was opened at 7:34 p.m.

John Shaver, City Attorney, presented this item. City Attorney Shaver stated that this is corrective housekeeping in order to clear any discrepancies for future reliability.

There were no public comments.

The public hearing was closed at 7:36 p.m.

Resolution No. 82-09—A Resolution Amending Resolution No. 69-04 and Resolution No. 85-04 to Correct the Legal Description for Barker Annexation, Which Includes Barker Annexation No. 2

Ordinance No. 4387—An Ordinance Amending Ordinance No. 3666 and Ordinance No. 3667 Annexing Territory to the City of Grand Junction, Colorado, Barker Annexation No. 2, Located at 172 Lantzer Avenue, 2934 Highway 50, and 2937 Jon Hall Drive

Councilmember Todd moved to adopt Resolution No. 82-09 and Ordinance No. 4387 and ordered it published. Councilmember Beckstein seconded the motion. Motion carried by roll call vote.

Continuation of Public Hearing on an Ordinance Adopting the 7th Street Historical District Overlay as Amended [File #PLN-2009-179]

The 7th Street Historic District Design Standards and Guidelines are being proposed for the properties included in the designated National Register Historic District, which includes those properties adjacent to 7th Street between Hill and Grand Avenue, as well as the properties at the southeast and southwest corners of 7th Street and Grand Avenue.

The public hearing was opened at 7:50 p.m.

Tim Moore, Public Works and Planning Director, presented this item. Mr. Moore briefly stated the historical background of this item in terms of how and why it has been continued to this meeting. Two copies of this Ordinance have been included in this packet, one without changes, and the second shows all changes that have been made to date. Mr. Moore referred to section C in the Historical Overlay where the majority of changes have been made since the last Council workshop. Mr. Moore described the process and criteria that future changes would go through.

Councilmember Coons asked if there were to be any changes to the design standards in this district, would it need to go before Council? Mr. Moore answered that this is a possibility based on public interest and controversy level.

Council President Hill asked Mr. Moore for confirmation that all change of use applications would have to go before Council. Mr. Moore replied affirmatively.

Councilmember Beckstein asked in regards to allowed uses in residential neighborhoods, why would Council need to be involved in the decision making processes for the 7th Street Historical District when other City neighborhoods are being held to the same high standards and do not require Council's review. Mr. Moore said on-street parking is one reason, in addition to the fact that preservation of this District is a priority. Councilmember Beckstein stated that on-street parking would be a consideration in any other neighborhood as well. There are already guidelines in place to protect these neighborhoods. In reference to section D, there are already guidelines in place for other neighborhoods for change of use similar to what Staff is proposing for the Historic District. Mr. Moore replied that was correct.

Councilmember Todd asked about the five points in the document. In any other R-8 subdivision, would the decisions on changes be made by Staff? Mr. Moore said this is what is already in place in other City neighborhoods.

Council President Hill asked Council if there were any more questions.

There were no further questions from Council.

Council President Hill asked for public comment.

Marilyn Simons, 515 N. 7th Street, read an email she sent to Council last week dated October 14, 2009. She states that she has been a resident for the past five years and is opposed to the Seventh Street Overlay. She believes this document is vague and needs to be more specific in addressing specific issues. She believes this document could put the value of the Historic District in danger and asks that each change in use be put to Council for a public hearing.

Gordon Nicholson, 726 Ouray Avenue, speaking for Joe Hatfield read a letter on behalf of Mr. Hatfield who lives at 407 N. 7th Street. (See attached)

Council President Hill interjected by stating that he thought the two prior citizens who read their statements were speaking to changes that had already been made to suffice their concerns.

Sharon Snyder, 634 N. 7th Street, spoke to her concerns on the vagueness and the design standards referenced in the Overlay Plan. She read a letter written to Council. (See attached)

Council President Hill asked Ms. Snyder if she has submitted these changes to Staff in writing. She replied that she had not submitted the letter she read tonight. Council President Hill assured Ms. Snyder that the errors in the Overlay Plan will be corrected.

Gordon Nicholson returned to voice his opinion that the wording in the Overlay Plan should be clarified and corrected.

Councilmember Coons clarified for Mr. Nicholson that the Public Works and Planning Director would bring forward his decision/recommendation to Council in order for City Council to make a final decision. There may or may not be a public hearing based on public interest.

Pat Olsen, 445 N. 7th Street, said he believes that the only function of the Overlay is to allow for the current uses being proposed. In the 1984 matrix, Bed and Breakfasts (B&Bs) were not allowed. He pointed out that there have been previous inquiries regarding B&Bs in this neighborhood that were not allowed. This Overlay/Rezone as presented now will initiate changes that the Historical District has pledged to protect.

Kathy Jordan, 440 N. 7th Street, had some clarifications to add in regards to information Sharon Snyder presented and stated she gave a corrected copy of changes to Mr. Moore on Friday. She stated they have repeatedly asked for these changes. Twenty-five years ago she asked for Council to approve the 1984 Plan for the Historical District. She asked that this current City Council continue the vision of what cannot be replaced.

Sandra Alexander, 838 White Ave, representing Ronald Kim Sutherland, read a letter to Council from Mr. Sutherland. (See attached)

Sherri DeRose, 604 N. 7th Street, said she does believe in preservation in the Historical District although there should be personal property rights of the owners in this District. She agrees with Sharon Snyder that there should be clarification and corrections made to the Overlay document just as Sharon Snyder has pointed out.

Jodie Behrmann, Attorney for the 7th Street District, passed out copies of her letter to the City Council, City Attorney John Shaver, City Manager Laurie Kadrach, and Public Works and Planning Director Tim Moore. She said this is not about property rights of the DeRoses; this is a rezoning issue. The 1984 Plan had a rezoning process in place for this District. If this Overlay is adopted, the 1984 criteria will never be addressed. Changes in land use for those that currently exist have public hearings in place so that questions can be answered. She is asking Council to respect what has been in place for twenty-five years. They (7th Street District owners) are seeking to maintain the rights the Historic District has come to rely on. (See attached)

Sandra Alexander, 838 White Avenue, said she and her husband declined purchasing property in the area because the real estate agent told them it would have to be restored and could not be renovated. There is a difference between restoration and renovation. She said restoration is what the Historic District is asking for.

There were no other public comments.

The public hearing was closed at 8:38 p.m.

Councilmember Beckstein asked City Attorney Shaver regarding the Overlay Plan in comparison to the 1984 agreement, were there standards for buildings and allowed uses and what needs to go before a public hearing. City Attorney Shaver stated that specifically with the Ordinance which provides Seventh Street District properties legal descriptions, the Ordinance has not changed anything. This is not a rezone, the 1984 agreement zoned this District PR-8. This Overlay is instead defining what the PR-8 is which is what planned zoning is. Staff does not see the adoption of this Ordinance as a change of use. Staff's analysis is that the Bed and Breakfast change falls into the minor change use category in accordance with the 1984 agreement. City Staff is defining what is already set in the current Code. The public hearing would be for major changes. A minor change process has already been defined in the 1984 agreement which is what this

issue falls under. Even if the 1984 Plan had been adopted, the process that has occurred would still have taken place. Councilmember Beckstein asked about non-legal plans that have been in place for twenty plus years would legally stand as a legal plan based on the number of years the plan has been in place. City Attorney Shaver said he has found no law to that effect. The 1984 plan was not adopted. This Overlay Plan is a great opportunity for there to be a legal plan in place and to serve as a benchmark for future changes. One consideration would be to revisit after a year to see if it is working effectively or if changes need to be made. This should be looked at as an opportunity. Councilmember Beckstein said in regards to the outside design structure, does the new Overlay Plan give better standards to the 7th Street Historical District. City Attorney Shaver replied that these are guidelines and a participatory process to determine what is necessary.

Councilmember Pitts asked City Attorney Shaver about the possibility of forming a Home Owners Association (HOA) versus this current process. City Attorney Shaver replied that to agree on covenants would be difficult. There would also have to be agreement with all the landowners.

Councilmember Beckstein asked if an HOA was in place and majority ruled, would the minority automatically have to be involved with the HOA. City Attorney Shaver responded that in theory, yes.

Council President Hill stated he is uncomfortable moving forward with the errors presented tonight. He felt that there are still some discrepancies and other interpretations that need to be clarified. Separating the zoning overlay versus personal rights usage is important. He proposes that this issue be moved back to a workshop and dealt with in two pieces, zoning use and historic preservation.

Councilmember Todd said she has some concerns, some of the wording and errors in the document as well. She agrees that this needs further discussion.

Councilmember Coons said this could be separated into two issues. The most critical issue to deal with was the significance in changes and how they get brought forward to City Council. This she is willing to go forward with. However, the changes in the design standards that need to be dealt with in a new draft, clearly there are errors. She believes Council should stick with a guideline as Attorney Shaver stated. The most important piece is how to deal with any change in use.

Councilmember Pitts said the main thing he heard was most residents of Seventh Street have not participated, and he feels that the document should return to a Council Workshop, with more residential involvement.

Councilmember Beckstein asked Staff to clarify who the Public Works and Planning Director is. She then asked Mr. Moore about incorporating another subcommittee who

would then report to the Public Works and Planning Director. She asked for Mr. Moore's input on what would and would not work. Public Works and Planning Director Tim Moore said the Historic Preservation Board is already a key part of the decision making process. He thought that there were already adequate layers of review in process.

Council President Hill restated that the Historic Preservation Board is a review agency for the major issues regarding the Seventh Street Historical District. City Attorney Shaver and Mr. Moore confirmed this.

Councilmember Beckstein stated that if the Historic Preservation Board is already being used as a review agency for major issues, she is ready to move forward now.

Councilmember Todd restated her concerns of use by right issues having to come back to Council for one district but not another.

Councilmember Coons asked for advice from City Attorney Shaver on how to frame a motion to separate the amendments relative to Council's review of uses by the design standards overlay with respect to what is in front of Council tonight. Mr. Shaver said that it would be very difficult to separate the two since they are so closely intertwined. He suggested breaking them apart by residential and non-residential usage components.

City Manager Laurie Kadrach said she thought Councilmember Coons was saying that there needs to be an Administrative order in place and take this back to a Council Workshop to correct the errors.

Councilmember Todd said by separating the land use and having the zoning in place that is current, would it then not fall into the normal processes of the Code? City Attorney Shaver said this is correct, but there are still some issues regarding usage that need to be identified, defined and clarified.

Ordinance No. 4388—An Ordinance Amending Ordinance No. 2211 by Adoption of the 7th Street Residential Historic District Zoning Overlay Design Standards and Guidelines, Amending the Zoning and Development Code to Add Section 7.7

Councilmember Todd moved to continue this item to a Workshop, date uncertain. Councilmember Pitts seconded the motion. Motion carried by roll call vote.

Non-Scheduled Citizens & Visitors

There were none.

Other Business

There was none.

Adjournment

The meeting was adjourned at 9:23 p.m.

Juanita Peterson, CMC
Deputy City Clerk

10.19.2009

Dear City Council members:

I am writing to ask you to Not approve the 7th Street Overlay as it is currently written. I do appreciate that this issue is being considered separately from other zoning issues, but in its current state, it is still unacceptable to meet the needs of the continued preservation of the 7th Street Historic Residential District. For one, there are still minor issues with the document. Despite informing Neighborhood Services on two separate occasions that they have incorrectly labeled my home as the "Herman Bull House" instead of the correct "Heman Bull House," it still remains as of the date of this writing.

More importantly, though, the Overlay still does not reflect the results of the Land Use survey, where the vast majority of residents opposed Use of Right status for the uses listed in section C. It has been said that the neighbors who oppose the Overlay is in the minority, as if we are just a few who happen to be the most vocal. Everyone in the neighborhood was given ample opportunity to have their opinion heard and it is not our fault they failed to speak up. The results of the survey and the input from public discussions on this issue are both clear. Don't penalize us by disregarding our input.

It has been suggested that we are looking for special treatment for our neighborhood. I guess you could say that is correct. However, I am not asking for special treatment for the homeowners, but rather for the homes and the history and character they contain. 25 years ago, the City felt that this area deserved special consideration and I think you have the responsibility to uphold that intent.

It has also been suggested that it makes no difference what the use is inside the home, as long as the outside of the home remains unchanged. Despite the best of intentions, use changes on the homes will eventually lead to changes on the exterior. One not need veer far from the District and drive down Grand Avenue to see the effect of these changes on signage, parking, and landscaping to name a few.

The hard work of 7th Street residents and city officials to preserve the District should not be just thrown out. Even if the 1984 Plan was not officially adopted, it has been used to decide use applications in the past.

It seems to me that once you use it, it becomes official. Previous city councils have operated as if it was enacted, which clearly was their intent. Replacing the 1984 Plan with this new Overlay does not take care of the issue.

This new overlay does not have the teeth to honor the intent of the original Plan. I am not saying that all changes should be banned, but that they should have a full public hearing. Administrative decisions only scratch the surface of the questions that need to be asked and seem to me to be mostly procedural.

When do the more important questions get debated and answered... Is it a viable use? Can the same services be found elsewhere in close proximity? Will it enhance or detract from the neighborhood? How will it affect property values? When do these questions get answered?

Joe Hatfield, 407 N 7th Street

TO: City Council of Grand Junction on 10/19/2009

After 7 months this is so frustrating to be talking about the same thing. Truthfully I cannot imagine that the DeRoses would live in the basement of their beautiful home with strangers staying upstairs. Nor can I imagine Ron or Sherri cleaning toilets and changing sheets since as a B&B owner you cannot hire employees. Even though they have admitted this is a poor business plan and probably not profitable they are proceeding with their venture. If however after 3 years on the market they happen to sell their house at the current inflated price because it has been rezoned for a B&B, I believe there will be other 7th street residents follow suit for the financial gain. Therefore if we end up with this overlay to the 1984 plan it will be important that the overlay be as accurate as possible.

There really has been no discussion about the design standards. Everyone has been focused on the land use section for obvious reasons. We spent 2 days reviewing and providing alternative ideas to the planning department so the standards would be more specific and stronger. We based all of our criteria on the survey results taken by the residents. We referenced other successful historical districts like Salt Lake City, Durango, Dayton Ohio. Dayton Ohio was the first city in the nation to use a preservation board as a decision making body for historical design decisions. This information was repeatedly given to city staff. No data corrections were ever made nor did any of our suggestions materialize in a document or even a conversation. The city latched onto Colorado Springs as its only model and I have no idea why.

I have listed some examples of vagueness or errors in the overlay:

-In the Views and Landscaping section ----quote "the city overlay states that the **property owners and the city** will maintain the median and park strip – That is ridiculous. The city owns the property and has always maintained the landscaping through the park service. This could read that the residents will have some financial responsibility. The trees have always belonged to the city park service not the property owners. I hope this isn't a city cut back and they are really giving us the trees to maintain.

-In the parking section quote " **parking is not allowed on the side streets**"????????? There is public parking on all the side streets. Are we not allowed to use it?????

-Section on District Identification the city quotes another **partnership of responsibilities**. At this point I am not very interesting in getting into a partnership with a group that I have been fighting with for 7 months.

-Roofing section quote " Keeping rooftop features such as chimneys, materials and other fixtures is **encouraged** to reinforce the buildings historical style. --- Encouraged is rather vague and non specific. The example given by the city happens to be my roof. My roof is unusual because the composite used represents slate but cannot be replaced. What happens then??

-Quote: Unless a building was originally designed differently on a corner property, the primary building entrances shall face North 7th street. Why not say those properties are 604 N. 7th and 710 Ouray

-Doorways shall keep the buildings original construction and historical style but the cities example shows an alteration of the Moyer house front door entry from one main door to two for change from single family to the current subunits.

-Window frames should match as closely as possible- Again no direction is given. A major concern of the DeRoses was the use of vinyl replacement windows. This was never addressed.

- Avoid enclosing a porch whenever possible. If it must be done, design the enclosure so that the original lines of the porch roof, eaves are preserved. Why would you ever **have to** enclose a porch and who decides if it must be done??????

-Overlay states that the Exterior surfaces should be replaced with historically accurate materials. Vague no direction

-Hazardous materials that must be replaced **should be done in a manner that keeps a buildings historic style.** Vague no direction

-Modern materials may be used if they can be removed and they blend with the house ??????

-No new primarily non residential structures shall be built- what does **primarily non residential mean?** There is no definition section.

- The terms **primary structures, landmark structures, contributing structures** are used throughout the document and infer they mean the same thing but they do not mean the same thing. Again no definition section.

-In the Fences section there is no way to establish the front yard from side yard. The problem is the fencing codes are different depending on whether you are talking about a fence in the front yard or side yard.

-In the parking section it says "commercial parking and paved parking lots shall be screened from views from 7th street". Why is that confusing?? Planning just approved additional paved parking at 604 that can be seen from 7th street. If 604 screens the new parking doesn't that sound like it was written just for them since the survey identified that the view of parking from 7th street is a major concern for the residents but no one elses parking will be blocked from view. Why did the city add the reference to screening commercial parking? Are they planning on knew commercial parking?

There is no direction on when you need a permit so you must go to the underlying zone to figure that out. Very confusing for a non professional

Appendices

There is property that was completely left out of this section because it is new. It is still in the district and should be documented as a knew structure, noting the style and date

#3 Hermann Bull vs. Heman Bull

#4 Warren House city states has not changed---there have been many many changes from original design and is now a historical intrusion to the district

-#17 states it is residential with no additions- actually it is commercial with addition

-#23 Furbrosh House residential --- is a boarding house and Furbrosh is misspelled

-#25 Moyer House says residential duplex . Under the heading observations it says the interior alterations don't diminish the exterior character --- this was changed to a 4 unit rental with a the original front door removed. Front opening was replaced with separate entrances along with a permanent brick division leading to the porch level. .

- #26 Goodwin House- No notation was made that permanent modern era fixed brick planters were added to this turn of the century home in 2001 which dramatically alter the architectural character.

-#32 Allison House states date of construction is 1900 but makes no historical reference to the fact the original façade was basically deteriorated beyond repair. The recent new façade does not represent the original architecture and is considered an intrusion.

To document the historical fadades you really need to document the oldest possible photo and list it beside the current 2009 photo of the structure. Kathy Jordon has published many 7th street tour books showing that exact information. It is easily available.

If this is what you the 2009 council wants to leave as historical data for future generations to try to figure out I guess you would vote yes to adopt this overlay. In our opinion this would be a embarrassing mistake.

Sharon Snyder
639 N. 7th Street

Ronald Kim Sutherland
750 North Seventh St.
Grand Junction, Colorado 81501
October 19, 2009

Grand Junction City Council

Dear Council Members:

I am a resident of North Seventh Street, my home lies on the northern boundary of the Seventh Street Historic District, and is in fact listed as an intrusion on that district. I have lived in the neighborhood for the past 20 years, and major factors in my purchase of that home were the close proximity to downtown shopping, and other amenities. Other factors which led me to that area were well maintained homes, and friendly neighbors. I count it a privilege to have known a few of the original owners of some of the homes in my neighborhood.

During the past 20 years, I have taken pride in the upkeep of my home and yard, even to the extent of paying the city back roughly one-third of the cost of watering the parking between the sidewalks and street bordering my lot. I've thought it was important to maintain a well groomed area for the City's pride.


I thought it interesting to read the following in Saturday's Daily Sentinel:
"...communities across the country are homogenizing, losing their identities and things that set them apart from one another through a blur of shopping malls and big boulevards. That's what makes Friday's unveiling of a statue honoring Lincoln Park Pool grantor William Moyer so important."

What would Mr. Moyer have to say about the rezoning of his neighborhood on North Seventh Street, or for that matter Mr. Harry Goodwin, who resided at 604 N 7th, and granted St. Mary's hospital a radiology department? Little wonder that he had the foresight to bequeath the Denver Art Museum his Asian art collection, because he felt it would be seen as little value to his home town.

When asked by many of my friends what would be wrong with a Bed and Breakfast or any other business in my neighborhood, my ready response has been, "I'm sure they would also be a welcomed addition to your neighborhood." It always commands a loud "NO!"

I am asking you to consider the preservation of a neighborhood, much the same as you see the need to preserve the neighborhoods near Lincoln Park, and other residential neighborhoods in our city. Many city's are now regretting the flee of residential areas in their downtown cores, I would hope that our current city fathers would have the same foresight that their predecessors have possessed.

Sincerely,


750 N. 7th

Jodie L. Behrmann

Attorney-at-Law

107 Park Drive
Grand Junction, CO 81501
Telephone/Facsimile: (970) 314-2695
Cell: (720) 272-8210
email: jodie@behrmann.org

October 19, 2009

VIA HAND DELIVERY

Grand Junction City Council
250 N. 5th Street
Grand Junction, CO 81501

Dear Council Members:

Late Friday afternoon, Planning's revision to the 7th Street Overlay was released, along with the agenda for tonight's City Council meeting. Once again, the residents of 7th Street had no meaningful opportunity to participate in the drafting of that revision and were left with only the weekend in which to review it.

As it turns out, there is not much to review. None of the corrections submitted by residents to the design guidelines or the property survey portions of the Overlay have been made. None of the suggestions made by the residents has even been considered, much less incorporated. Planning has not even bothered to correct the erroneous designation of the "Herman Bull House" rather than "Heman Bull House," an issue that was acknowledged many weeks ago, and which Planning expressly promised to correct. Along with all other input from the residents of the District regarding the problems with the Overlay, this too, was simply ignored.

Clearly, City Planning is not much concerned with historical accuracy or even the aesthetics of historic preservation. That's more than a little ironic given that Planning, and several members of Council, have repeatedly voiced the opinion that historic preservation is only about aesthetics, i.e., that preservation has nothing to do with land use and what happens behind the facade is irrelevant. The obvious conclusion is that the Overlay is 50+ pages of meaningless fluff designed to provide cover for the land use changes that are contained within Paragraph C - land use changes that Planning desires to make without the support of the affected property owners. That's all this about, and all it has ever been about.

1984 Plan vs. The Overlay

At the Workshop on October 5th, the majority of Council members voiced their opinion that the 1984 Plan had in fact been given effect by the City for the past 25 years. Should anyone

still have doubts about that issue, I would refer you to my letter of June 3 in which I cited the specific instances in which the Plan was applied to development applications within the District. Neither we, nor City Planning staff, have been able to identify a single instance where the 1984 Plan was not applied to a development application within the District. Not one.

Despite this fact, Council's legislative committee refused to refer the 1984 Plan to Council for a vote on formal adoption, my clients were told it was because a better plan was needed. They were told that the City found the language of the Plan was confusing, that it did not include any requirements for setbacks or architectural standards, that the intent was unclear, and that they couldn't determine whether the proposed Bed and Breakfast at 604 N. 7th constituted a "major" or a "minor" change. While even a cursory reading of the 1984 Plan shows these concerns to be baseless, it is revealing that the Overlay fails to address any of these alleged concerns, and adopts much of the language from the 1984 Plan that staff found so "confusing."

The only substantive difference between the Overlay and the 1984 Plan is that the Overlay allows certain land uses as a matter of right, without any consideration of whether these land uses are appropriate or compatible. The proposed Overlay does not build and strengthen the 1984 Plan, it undercuts it. The 1984 Plan explicitly and repeatedly states that the intent of the Plan is to protect the single-family residential character of the District. The Overlay rezones the District from the planned zoning that has been in effect for the past 25 years by redefining that planned zoning to include land uses that were previously not allowed without following the rezoning procedures.

The Overlay would treat accessory units, residential subunits, and 1-3 room Bed and Breakfasts as uses that are allowed by right within the District. None of these uses is allowed under the 1984 Plan without City Council's decision, after public hearing, that the change in land use is appropriate under the rezoning criteria.

With respect to this attempt to amend the 1984 Plan, Section 2.12(F)(1)(a) of the City's Code states:

- a. No use may be established that is not permitted in the PD without amending the rezoning ordinance through the rezoning process.

Under the City's current Code, property may be rezoned only if the following criteria are met:

2.6 CODE AMENDMENT AND REZONING

- A. **Approval Criteria.** In order to maintain internal consistency between this Code and the Zoning Maps, map amendments must only occur if:
1. The existing zoning was in error at the time of adoption; or
 2. There has been a change of character in the neighborhood due to installation of public facilities, other zone changes, new growth/growth trends, deterioration, redevelopment, *etc.*;
 3. The proposed rezone is compatible with the neighborhood, conforms to and furthers the goals and policies of the Growth Plan and other adopted plans and policies, the requirements of this Code, and other City regulations;
 4. Adequate public facilities and services are available or will be made available concurrent with the projected impacts of development allowed by the proposed zoning;
 5. The supply of comparably zoned land in the surrounding area is inadequate to accommodate the community's needs; and
 6. The community will benefit from the proposed zone.

None of these criteria have been addressed by the Overlay. Further, the Overlay prevents the consideration of these criteria on a case-by-case basis because the Overlay deems the land uses to be allowed as a matter of right. The decision to rezone the District without application of the rezoning criteria at any stage of the process violates the City's Code and the rights of the affected property owners.

Land Uses Allowed Under the Overlay are NOT Residential

At the Workshop it was apparent that some council members are laboring under the mistaken impression that the additional land uses allowed by the Overlay are "residential uses" that should be allowed in the District because they are allowed in all other residential zones. That is inaccurate.

When the District was rezoned to PR-8 in 1984, the City had separate categories for multi-family and single-family residential zones. That distinction has since been erased, but it

was a critical distinction at the time for the downzoning of the District. The 1984 Planning Commission's first recommendation for rezoning the District was to zone it RSF-8, or residential single family. The intent from the beginning was to prevent anything other than single-family residential use within the District without a rezoning application. Planned zoning was substituted for RSF-8 in order to give greater protection for already existing uses that did not conform to single-family residential zoning.

Since 1984, the City has redefined single-family residential zoning in other areas to allow additional uses, including multi-family and limited commercial uses, but those changes have never been addressed, much less applied, in the context of the 7th Street Historic District. That the City has redefined what constitutes a "residential use" in other areas of the City does not mean that the City has passed on the question with respect to the District. Such uses are directly contrary to Council's stated intent in rezoning the District in 1984.

Public Hearing Process

Much has been made of the fact that the revised Overlay makes City Council has final review of all land use applications in the District. It is a step in the right direction, but it is an incomplete step.

With respect to the uses by right allowed by the Overlay, City Council's decision-making power is limited to a review of the Planning Director's decision and whether it meets the limited review criteria under the Zoning Code for approving a use by right. All that really means is that City Council is being substituted for the Planning Commission in the existing administrative review process. While there are a few additional grounds listed for denying an application, no application for a change of land use, whether it is under Paragraph C (uses by right) or under Paragraph D (other uses), is subject to the City's rezoning criteria. These fundamental compatibility and public benefit criteria are crucial, and they are simply being ignored.

If the rezoning criteria for allowing additional land uses are not addressed through the adoption of the Overlay, and are not addressed on a case-by-case basis through application of the Overlay, then they never get addressed, and the approval of any changes in land uses within the District are *per se* illegal zoning determinations.

What the Overlay does is destroy any pretense of maintaining the single-family residential character of the District. Allowing as a matter of right that every property in the District may be used as a B&B, or as an owner-occupied apartment complex, will, over time, pressure all property owners to compete for the higher market values that exist for income-generating properties. One by one, each property will be converted to an income-producing use and the single-family residence will be a thing of the past. The District is too small to sustain that level

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Page 5

of commercial competition, and eventually they will all fail, leaving the Historic District as just another collection of rental properties with absentee owners.

To avoid that eventuality, the residents of the District ask that the rezoning criteria be applied as applications for changes in land uses within the District are made. They ask that land use changes be addressed on a case-by-case basis, and in the context of a public hearing in which City Council is not just a review body, but the actual decision-maker.

Sincerely,



Jodie L. Behrmann

cc: John Shaver, City Attorney
Tim Moore, Director of Public Works and Planning

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

October 21, 2009

The City Council of the City of Grand Junction convened into regular session on the 21st day of October 2009 at 7:00 p.m. in the City Auditorium. Those present were Councilmembers Teresa Coons, Tom Kenyon, Gregg Palmer, Bill Pitts, Linda Romer Todd, and Council President Bruce Hill. Councilmember Bonnie Beckstein was absent. Also present were City Manager Laurie Kadrach, City Attorney John Shaver, and Deputy City Clerk Juanita Peterson.

Council President Hill called the meeting to order. Councilmember Coons led in the Pledge of Allegiance.

Citizen Comments

There were none.

City Manager's Report

Laurie Kadrach, City Manager, presented the Third Quarter Financial Report for 2009 and explained why the 2009 tax revenues are comparable to 2006. There has been a decline in new construction activity, a loss of \$150 million in development projects, which has significantly impacted City revenues. The City has been seeking additional funding, specifically an increase in the 911 surcharge to be used for equipment replacement and technology upgrades at the Communication Center. City Attorney John Shaver has filed the paper work for this project. Funding through Senate bills and Federal and State grants are also being pursued. Ms. Kadrach introduced Elizabeth Tice as the lead staff person for grant funding.

Ms. Elizabeth Tice, City Auditor, presented an update on the American Recovery and Reinvestment Act (ARRA) which has been put into a brochure. On September 15, the City submitted their final known application. The City has been awarded \$1.9 million through ARRA; \$500,000 was a direct allocation and the rest was through the competitive bid process. \$1.3 for the COPS program and \$100,000 for the 800 mHZ system. Currently the City is awaiting word on the status of grant applications totaling \$25.1 million; funding for the two fire stations, 29 Road and the Persigo Compressed Natural Gas (CNG) project. The direct funding received by the City was the Justice Assistance grant, the Energy Efficiency grant and the additional funding for the Community Development Block Grant program. Other funding that has impacted the valley in addition to the direct funding is \$1 million of Section 8 Housing assistance, the \$1.4 million to the City in competitive awards, the direct funding to Mesa County for \$2.9 million, Colorado Department of Transportation (CDOT) funding for \$7.6 million,

the airport received \$9.3 million and there has been \$10.4 million of additional unemployment benefits paid to valley residents. Lastly, education received \$15 million; \$4 million to the college and \$11 million to the school district. That is a total of \$48 million for the valley.

Councilmember Kenyon asked if there was a way to know if the City will be successful in getting what has been requested. Ms. Tice responded that she believes the City has a good chance for the 29 Road grant and CNG project. The 29 Road project is a perfect fit for the funding criteria. However, the chances may be slim for the Fire Station grants.

Councilmember Kenyon asked who is involved with making the selection for the 29 Road grant. Ms. Tice responded that the decision is made at the federal level under the Department of Transportation.

Councilmember Coons asked if the City is competing for grants with the entire Country. Ms. Tice said yes, \$1.5 billion is allocated for the entire Country. The City is competing within the State for these grants as the funding must be allocated geographically, but Grand Junction is within the top five competitors. There are thirty projects in Colorado but only seven were endorsed by the Governor of Colorado.

City Manager Kadrach said the City feels really good about the work and applications that have been done. If not awarded the first time around, the opportunity could come back around and the City will be ready.

City Manager Kadrach advised that unemployment has declined to 8.2%. There are still concerns with the gap between the workforce and employment.

Relative to the Cash for Clunkers Program, Ms. Kadrach noted the auto industry has seen a serious reduction in sales however there was a spike in July and August due to the Cash for Clunkers program. There will likely be an increase in registration fees once the temporary tags for these car purchases expire.

Ms. Kadrach reported that natural gas prices are still just as volatile as was reported last time. There are those that say the supply is up so that will keep prices down and those that say since gas is being exported, the prices could go up. Bottom line, the situation is very volatile and not predictable. However the good news is that the major companies like Williams, Encana, and Chevron are still working and investing in this region. Red Cliff Mine is still going forward in the Loma/Mack area with their expansion. They are in the Environmental Policy Act (NEPA) process. Once they get going, the expansion will employ 200-250 people and then once done they will hire more miners. If the Pinon Ridge Uranium Mill is approved, they are projected to begin construction in 2011 and costs for this will be \$130 million dollars which could positively

impact the community if supplies are purchased in the area, and there will also be a significant amount of positions open for employment.

Councilmember Kenyon asked if in the future he would like information on the proposed nuclear power plant in Green River to see if it is viable. City Manager Kadrich replied Staff will begin to track this as well.

CONSENT CALENDAR

Councilmember Coons read Consent Calendar items and then moved to approve items #1 through #4. Councilmember Palmer seconded the motion. Motion carried by roll call vote.

1. **CDBG Subrecipient Contracts for Projects within the 2009 Community Development Block Grant (CDBG) Program Year**

The Subrecipient Contracts formalize the City's award of a total of \$238,201 to various non-profit organizations allocated from the City's 2009 CDBG Program as previously approved by Council.

Action: Authorize the City Manager to Sign the Subrecipient Contracts with Riverside Task Force, Inc. and the Western Slope Center for Children for the City's 2009 Program Year funds

2. **Contract for Cemetery Building Construction**

This approval request is for the contract award for the construction of a Customer Service / Administrative Office and Maintenance Operations Facility at the City Cemetery. The new facility is an integral part of a big picture master plan for Park Operations Divisions. Moving forward at this time is multi beneficial:

- Take advantage of extremely competitive contractor bids as well as providing a large project to a local contractor
- Move the South West area City Park staff to the new facility
- Provide much needed grave spaces for future sales.

Action: Authorize the Purchasing Division to Enter into a Contract with Vostatek Construction, Inc. for the Construction of a Shop/Office Building in the Amount of \$312,934.69

3. **Purchase Playground Equipment for Melrose Park**

The redevelopment plan for Melrose Park has been in progress since the summer of 2008 when funds were earmarked in the 2009 Capital Improvement Plan. The 2009 budget included \$200,000 for restroom/shelter reconstruction and \$100,000 for playground replacement. Several months of community meetings and planning have taken place and a Great Outdoors Colorado grant has been awarded. The shelter/restroom project is almost completed, and replacement of the playground is the next phase of the redevelopment.

Action: Authorize the City Purchasing Division to Purchase the Melrose Park Playground Equipment from 4 Corners Park and Playground, Inc. for a Total of \$163,850.37

4. **Horizon Drive Association Business Improvement District 2010 Operating Plan and Budget**

Every business improvement district is required to file an operating plan and budget with the City Clerk by September 30 each year. The City Council is then required to approve the plan and budget within thirty days and no later than December 5. Horizon Drive Association Business Improvement District filed their 2010 Operation Plan and Budget. It has been reviewed by Staff and found to be reasonable.

Action: Approve Horizon Drive Association Business Improvement District's 2010 Operating Plan and Budget

ITEMS NEEDING INDIVIDUAL CONSIDERATION

Melrose Park Name Change to Rocket Park

The 2009 redevelopment plan for Melrose Park has been in progress since the summer of 2008 with several months of planning and four community meetings. The community meetings and surveys resulted in a plethora of outstanding feedback from the neighborhood including the popular opinion that the official name of the park should be changed from Melrose Park to Rocket Park. The name, Rocket Park, would:

1. Provide name consistency and ease of recognition since the park is actually rarely referred to as Melrose Park, even by staff
2. Solidify the historical importance of the 30 foot high rocket structure that has been the focal point of Melrose Park since it was installed in the 1960's
3. Grant the neighborhood and surrounding community an opportunity to weigh in on decisions they feel are important to them

Rob Schoeber, Parks and Recreation Director, presented this item and introduced two of the Parks and Recreation Advisory Board members, Lenna Watson and Yvette

Carnine. Mr. Schoeber explained the request for the name change and redevelopment process, which has been in the works for a year. The majority of the public has called this park Rocket Park, hence the name change.

Lenna Watson gave an explanation on the process of the research of the name and how the process was done.

Council President Hill said the Parks and Recreation Advisory Board did not take this project lightly. He applauded the Parks Staff and Advisory Committee for their due diligence to make sure this was a sound decision.

Councilmember Kenyon asked how the City will continue to have an icon to make sure it is still known as Rocket Park.

Mr. Schoeber said the rocket is being repainted and will become a piece of art to be re-erected in a corner of the park. Mr. Schoeber then gave an update of the rest of the improvements to this park. The total phase should be completed by spring.

Councilmember Kenyon expressed his appreciation for the work done by the Parks and Recreation Department and the Advisory Committee to make everyone involved happy.

Lenna Watson thanked Council for giving the Parks and Recreation Advisory Board the opportunity to do this project.

Councilmember Palmer stated his grandchildren are also pleased about the name change to Rocket Park.

Resolution No. 83-09—A Resolution Renaming Melrose Park to Rocket Park

Councilmember Palmer moved to adopt Resolution No. 83-09. Councilmember Kenyon seconded the motion. Motion carried by roll call vote.

Non-Scheduled Citizens & Visitors

There were none.

Other Business

There was none.

Adjournment

The meeting was adjourned at 7:30 p.m.

Juanita Peterson, CMC
Deputy City Clerk



Date: October 14, 2009
Author: Scott D. Peterson
Title/ Phone Ext: Senior Planner
1447
Proposed Schedule:
November 2, 2009
2nd Reading:
November 16, 2009

Attach 2
Setting a Hearing on the Fuoco Rezone, Located
at 160 Hill Avenue
CITY COUNCIL AGENDA ITEM

Subject: Fuoco Rezone, Located at 160 Hill Avenue
File #: GPA-2009-147
Presenters Name & Title: Scott D. Peterson, Senior Planner

Executive Summary:

Request to rezone 0.14 acres located at 160 Hill Avenue from R-O, (Residential Office) to C-1, (Light Commercial).

How this item relates to the draft Comprehensive Plan Goals and Policies:

By the continued support of jobs within the downtown area of the City Center, appropriate reuse of an existing property and the expansion of an existing business that supports Grand Junction as a regional provider of goods and services to help sustain, develop and enhance a healthy, diverse economy. The proposed request meets with Goals 4, 6 and 12 of the proposed Comprehensive Plan.

Goal 4: Support the continued development of the downtown area of the City Center into vibrant and growing area with jobs, housing and tourist attractions.

Goal 6: Land Use decisions will encourage preservation and appropriate reuse.

Goal 12: Being a regional provider of goods and services the City and County will sustain, develop and enhance a healthy, diverse economy.

Action Requested/Recommendation:

Introduce a Proposed Ordinance and Set a Public Hearing for November 16, 2009.

Board or Committee Recommendation:

The Planning Commission recommended approval of the requested rezone at their October 13, 2009 meeting, finding that the proposed rezone request is consistent with

the purpose and intent of the Growth Plan and Section 2.6 A. of the Zoning and Development Code.

Background, Analysis and Options:

See attached Staff Report.

Financial Impact/Budget:

N/A.

Legal issues:

None.

Other issues:

The proposed Downtown Plan is to be changed to match the existing zoning.

Previously presented or discussed:

On September 14, 2009, the City Council approved a Growth Plan Amendment to change the Future Land Use Map from Residential High (12+ du/ac) to Commercial for this property.

Attachments:

Site Location Map / Aerial Photo Map
Future Land Use Map / Existing City Zoning Map
Proposed Ordinance

BACKGROUND INFORMATION				
Location:		160 Hill Avenue		
Applicants:		Fuoco Investments, LLC, Owner River City Consultants, Inc., Representative		
Existing Land Use:		Single-family residence		
Proposed Land Use:		Excess inventory parking lot for Honda automobiles		
Surrounding Land Use:	North	Single-family residential		
	South	Fuoco Honda		
	East	Single-family residential		
	West	Fuoco Motor Company Body Shop		
Existing Zoning:		R-O, (Residential Office)		
Proposed Zoning:		C-1, (Light Commercial)		
Surrounding Zoning:	North	R-O (Residential Office)		
	South	C-1, (Light Commercial)		
	East	R-8, (Residential – 8 du/ac)		
	West	C-1 (Light Commercial)		
Growth Plan Designation:		Commercial		
Zoning within density range?		X	Yes	No

1. Background:

The existing property is located at the northwest corner of N. 2nd Street and Hill Avenue and currently contains a single-family residence and detached structures and was recently purchased by the Applicant. It is the intension of the Applicant to remove the existing structures and develop the property as a parking lot for excess inventory for Honda automobiles with no customer viewing. Fuoco Honda, owned and operated by the Applicant, is located directly to the south, across Hill Avenue. Total acreage for the parcel requesting the rezone is 0.14 acres (Lots 13 and 14, Block 33, Grand Junction). The Applicant requests a rezone for this property so that the entire Block will have a uniform, C-1, (Light Commercial) zone. If this rezone request is approved by the City, the applicant plans to submit a site plan review application in order to develop as part of their Fuoco Honda operations.

The existing R-O, (Residence Office) zoning district does allow parking lots, however a Conditional Use Permit from the Planning Commission would be required. In addition, the R-O District requires that parking be setback a minimum of 20' from the front property lines. This requirement would greatly impact the usability of this property if the existing zoning designation were to remain.

In September, 2009 the City Council approved a Growth Plan Amendment to change the Future Land Use Map from Residential High (12+ du/ac) to Commercial for this property. The applicant is now requesting that the City approve the corresponding zoning application to bring this property into compliance with the Future Land Use Map designation of Commercial.

2. Consistency with the Growth Plan:

The Growth Plan Future Land Use Map designates this property as Commercial. The requested zone district of C-1 (Light Commercial) implements the Commercial land use classification of the Growth Plan. The rezone is also consistent with the following Goals and Policies of the Growth Plan:

Goal 5 from the Growth Plan is; "to ensure that urban growth and development make efficient use of investments in streets, utilities and other public facilities."

Policy 5.2 states that; "the City and County will encourage development that uses existing facilities and is compatible with existing development."

Goal 11 as stated in the Growth Plan is; "to promote stable neighborhoods and land use compatibility throughout the community."

Policy 11.2 states that; "the City and County will limit commercial encroachment into stable residential neighborhoods. In areas designated for residential development the City and County may consider inclusion of small scale neighborhood commercial development that provides retail and service opportunities in a manner compatible with surrounding neighborhoods in terms of scale and impact."

Goal 18 as stated in the Growth Plan is to; "maintain the City's position as a regional provider of goods and services."

Policy 18.1 states that; "The City and County will coordinate with appropriate entities to monitor the supply of land zoned for commercial and industrial development and retain an adequate supply of land to support projected commercial and industrial employment."

Goal 28 from the Growth Plan: *“The City of Grand Junction is committed to taking an active role in the facilitation and promotion of infill and redevelopment within the urban growth area of the City.”*

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

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

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

Response: There was no error at the time of the adoption of the 1996 Growth Plan. The property contained a single-family residence, and there is no other indication than an error was made in originally designating the property Residential High (12+ du/ac). However, the City has recently changed the Growth Plan designation for this property to Commercial; therefore the applicant is now requesting a zoning designation that matches and coincides with the approved Growth Plan Future Land Use Map.

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

Response: The N. 1st Street area has undergone changes through the years with the increase and expansions of existing and new commercial land uses. After adoption of the Growth Plan in 1996, this property, along with properties to the north, was zoned to R-O (Residential Office) in 2000. The purpose of the R-O district is to “provide low intensity, non-retail, neighborhood service and office uses that are compatible with adjacent residential neighborhoods.” The R-O district is used with Medium to High Density Residential and Commercial land use designations within the Growth Plan to achieve the purpose stated above and to provide an adequate buffer between commercial and residential land uses.

However, the majority of businesses along the N. 1st Street corridor between Grand and North Avenues are retail in nature, including automotive services. The previous Growth Plan designation did not anticipate or allow for any future expansion by these existing businesses. Also, the existing residential properties which are located within the same block as commercial development have not transitioned into either offices or consolidated parcels to achieve higher density housing, as anticipated by the Growth Plan and the subsequent R-O zoning. Therefore, there has been a change of character in the neighborhood due to new growth/trends and development transitions.

3. The proposed rezone is compatible with the neighborhood, conforms to and furthers the goals and policies of the Growth Plan and other adopted plans and policies, the requirements of this Code, and other City regulations;

Response: The character of the area is a mix of commercial development along N. 1st Street and single/multi-family residential uses along N. 2nd Street. The proposed rezone is acceptable because the change from R-O to C-1 would be more in keeping with the existing commercial development, which is owned by the applicant, directly to the west. The small size of the property (0.14 acres – 6,098 sq. ft.) makes new multi-family or office development unlikely. The small amount of land, together with the current Code requirements for; off-street parking, open space, landscaping and buffering requirements make use of the property as R-O difficult.

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

Response: Existing infrastructure facilities are adequate to serve the proposed commercial development. The existing property is located at the northwest corner of the intersection at N. 2nd Street and Hill Avenue. Sufficient access is available from Hill Avenue. No access would be permitted onto N. 2nd Street. Secondary access is available via an existing, alley directly to the north, provided that the alley is paved. The paving could be accomplished by the developer, applicant or through establishment of an Alley Improvement District.

5. The supply of comparably zoned land in the surrounding area is inadequate to accommodate the community's needs; and

Response: The applicant owns the existing parcels on this block and has recently purchased this property to allow for the continued expansion of their automobile business. The proposed rezone request is a logical extension of the existing C-1 zone on this Block and will eliminate the remaining R-O zone so that the entire Block would become uniformly zoned C-1.

6. The community will benefit from the proposed zone.

Response: The adjacent neighborhood will benefit from the proposed rezone in the respect that it may help with getting parked vehicles off the street and onto private property as the applicant's automobile dealership continues to expand. Project Manager believes that the proposed rezone request, adjacent to the

applicant's property and within one block of a major transportation route, N. 1st Street, would be an appropriate zone for the property. Furthermore, N. 2nd Street provides an adequate buffer between Commercial and Residential land uses.

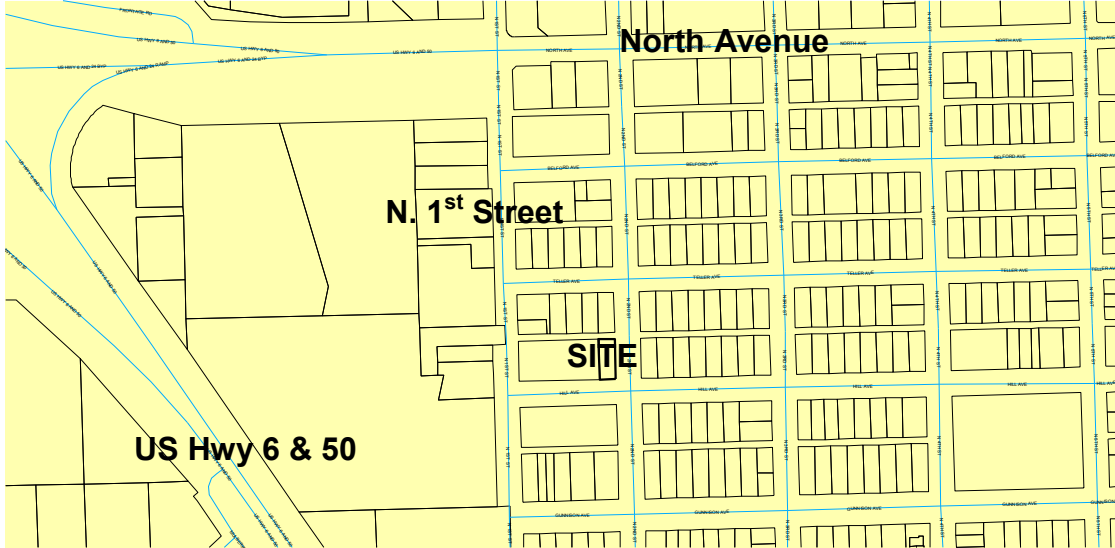
Alternatives: In addition to the zoning that the petitioner has requested, the following zone districts would also be consistent with the Growth Plan designation for the subject property.

- a. Existing - R-O (Residential Office)
- b. B-1, (Neighborhood Business)
- c. C-2, (General Commercial)

The Planning Commission recommends a C-1 zone designation and does not recommend R-O, B-1 or C-2. If the City Council chooses to approve one of the alternative zone designations, specific alternative findings must be made as to why the City Council is approving an alternative zone designation.

Site Location Map

Figure 1



Aerial Photo Map

Figure 2



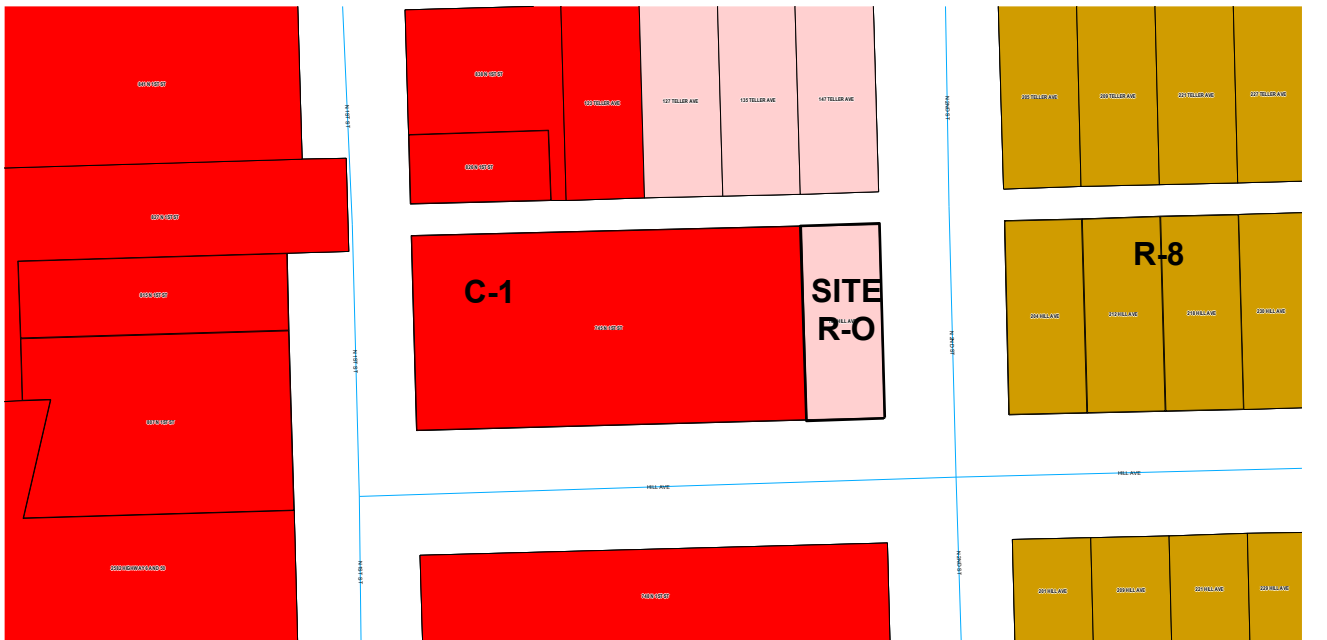
Future Land Use Map

Figure 3



Existing City Zoning Map

Figure 4



CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO.

**AN ORDINANCE REZONING PROPERTY KNOWN AS THE FUOCO REZONE
FROM R-O (RESIDENTIAL OFFICE) TO
C-1 (LIGHT COMMERCIAL)**

LOCATED AT 160 HILL AVENUE

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 property known as the Fuoco Rezone from R-O, (Residential Office) to the C-1, (Light Commercial) zone district, finding that it conforms with the recommended land use category of Commercial as shown on the future land use map of the Growth Plan and the Growth Plan's goals and policies and is generally compatible with land uses located in the surrounding area.

After the public notice and public hearing before the Grand Junction City Council, City Council finds that the C-1, (Light Commercial) zone district be established.

The Planning Commission and City Council finds that the C-1 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 properties shall be rezoned C-1, (Light Commercial).

Lots 13 and 14, Block 33, City of Grand Junction

Introduced on first reading this _____ day of _____, 2009 and ordered published.

Adopted on second reading this _____ day of _____, 2009.

ATTEST:

City Clerk

President of the Council



Date: October 14, 2009
 Author: Brian Rusche
 Title/ Phone Ext: x. 4058
 Proposed Schedule: Notice of Intent to Annex on November 2, 2009
 2nd Reading
 (if applicable): December 14, 2009

Attach 3
Setting a Hearing on the Matthews Enclave Annexation, Located along the Colorado River West of 25 Road and South of the Riverside Parkway
CITY COUNCIL AGENDA ITEM

Subject: Matthews Enclave Annexation, Located along the Colorado River West of 25 Road and South of the Riverside Parkway
File #: ANX-2009-209
Presenters Name & Title: Brian Rusche, Senior Planner

Executive Summary:

A request to annex 10.53 acres of enclaved property, located along the Colorado River west of 25 Road and south of the Riverside Parkway. The Matthews Enclave consists of one privately-owned parcel and portions of two publicly-owned parcels, along with 0.83 acres of public right-of-way.

Under the 1998 Persigo Agreement with Mesa County, the City is to annex all Enclave areas within five (5) years. State law allows a municipality to annex enclave areas unilaterally after they have been enclaved for a period of three (3) years. The Matthews Enclave has been enclaved since January 16, 2005.

How this item relates to the draft Comprehensive Plan Goals and Policies:

Goal 1: To implement the Comprehensive Plan in a consistent manner between the City, Mesa County, and other service providers.

Annexation of this enclave will create consistent land use and zoning designations along this stretch of the Colorado River.

Action Requested/Recommendation:

Adopt a Resolution of Intent to Annex the Matthews Enclave and Introduction of the Proposed Ordinance and Set a Hearing for December 14, 2009.

Board or Committee Recommendation: The Zone of Annexation is scheduled for the Planning Commission on November 10, 2009.

Financial Impact/Budget: N/A

Legal issues: None

Other issues: None

Previously presented or discussed: No

Background, Analysis and Options: See attached.

Attachments:

1. Staff report/Background information
2. Annexation / Site Location Map; Aerial Photo Map
3. Future Land Use Map; Existing City and County Zoning Map
4. Resolution
5. Ordinance

<i>STAFF REPORT / BACKGROUND INFORMATION</i>				
Location:		Along the Colorado River west of 25 Road and south of the Riverside Parkway		
Applicant:		City of Grand Junction		
Existing Land Use:		Undeveloped		
Proposed Land Use:		Conservation		
Surrounding Land Use:	North	Public Trail		
	South	Colorado River		
	East	Undeveloped		
	West	Colorado River		
Existing Zoning:		County RSF-R (Residential Single Family Rural)		
Proposed Zoning:		CSR (Community Services and Recreation)		
Surrounding Zoning:	North	CSR (Community Services and Recreation)		
	South	CSR (Community Services and Recreation)		
	East	CSR (Community Services and Recreation)		
	West	CSR (Community Services and Recreation)		
Growth Plan Designation:		Conservation		
Zoning within density range?		X	Yes	No

This annexation area consists of 10.53 acres, including one privately-owned parcel and portions of two publicly-owned parcels, along with 0.83 acres of public right-of-way. Under the 1998 Persigo Agreement with Mesa County the City is to annex all Enclave areas within five (5) years. State law allows a municipality to annex enclave areas unilaterally after they have been enclaved for a period of three (3) years. The Matthews Enclave has been enclaved since January 16, 2005.

The following annexation and zoning schedule is being proposed.

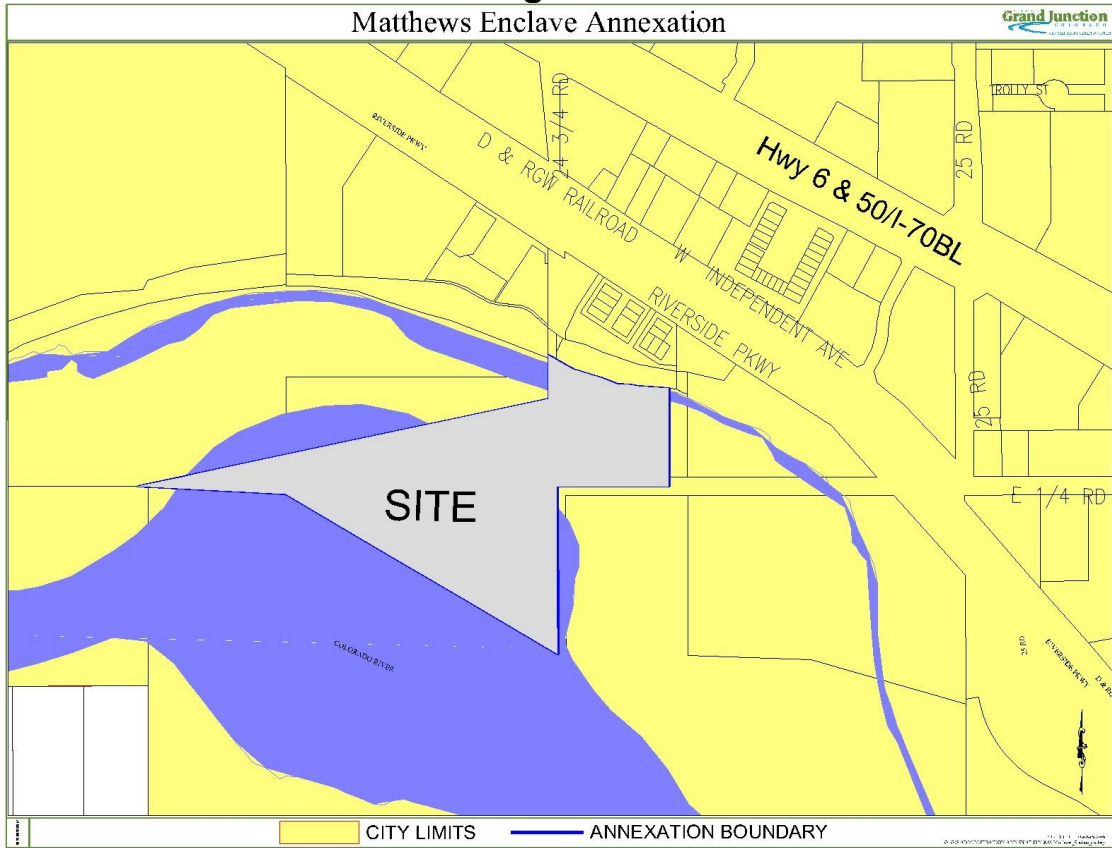
MATTHEWS ENCLAVE ANNEXATION SCHEDULE	
11/2/2009	Notice of Intent to Annex (30 Day Notice), Exercising Land Use
11/10/2009	Planning Commission considers Zone of Annexation
11/30/2009	Introduction Of A Proposed Ordinance on Zoning by City Council
12/14/2009	Acceptance of Petition and Public Hearing on Annexation and Zoning by City Council
1/15/2010	Effective date of Annexation and Zoning

MATTHEWS ENCLAVE ANNEXATION SUMMARY

File Number:	ANX-2009-209	
Location:	Along the Colorado River west of 25 Road and south of the Riverside Parkway	
Tax ID Number(s):	2945-094-00-142 - Matthews 2945-094-00-933 - Mesa County 2945-094-00-947 - City of Grand Junction	
# of Parcels:	Three (3)	
Estimated Population:	None	
# of Parcels (owner occupied):	None	
# of Dwelling Units:	None	
Acres land annexed:	10.53 acres	
Developable Acres Remaining:	None – all located within 100 yr. floodway	
Right-of-way in Annexation:	0.83 acres	
Previous County Zoning:	County RSF-R (Residential Single Family Rural)	
Proposed City Zoning:	CSR (Community Services and Recreation)	
Current Land Use:	Undeveloped	
Future Land Use:	Conservation	
Values (Matthews Parcel):	Assessed:	\$3,480
	Actual:	\$12,000
Address Ranges:	N/A	
Special Districts:	Water:	N/A
	Sewer:	Persigo 201
	Fire:	Grand Junction Rural Fire District
	Drainage:	Grand Valley Drainage District
	School:	Mesa County Valley School District #51
	Pest:	N/A

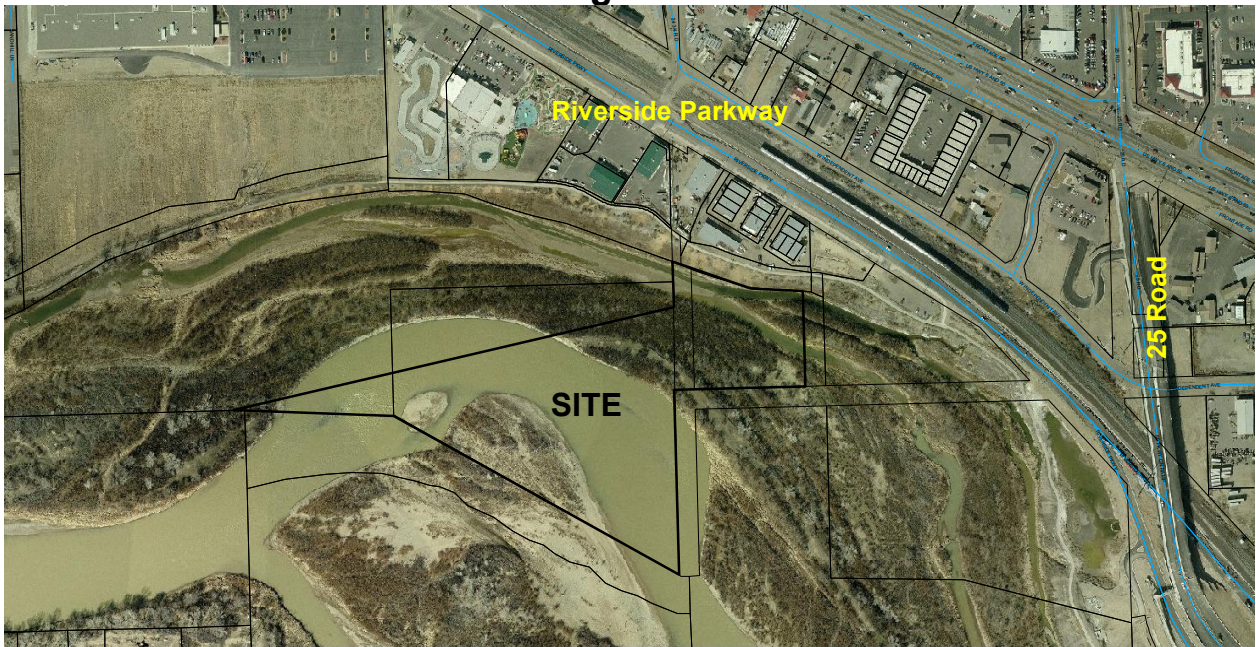
Annexation - Site Location Map

Figure 1



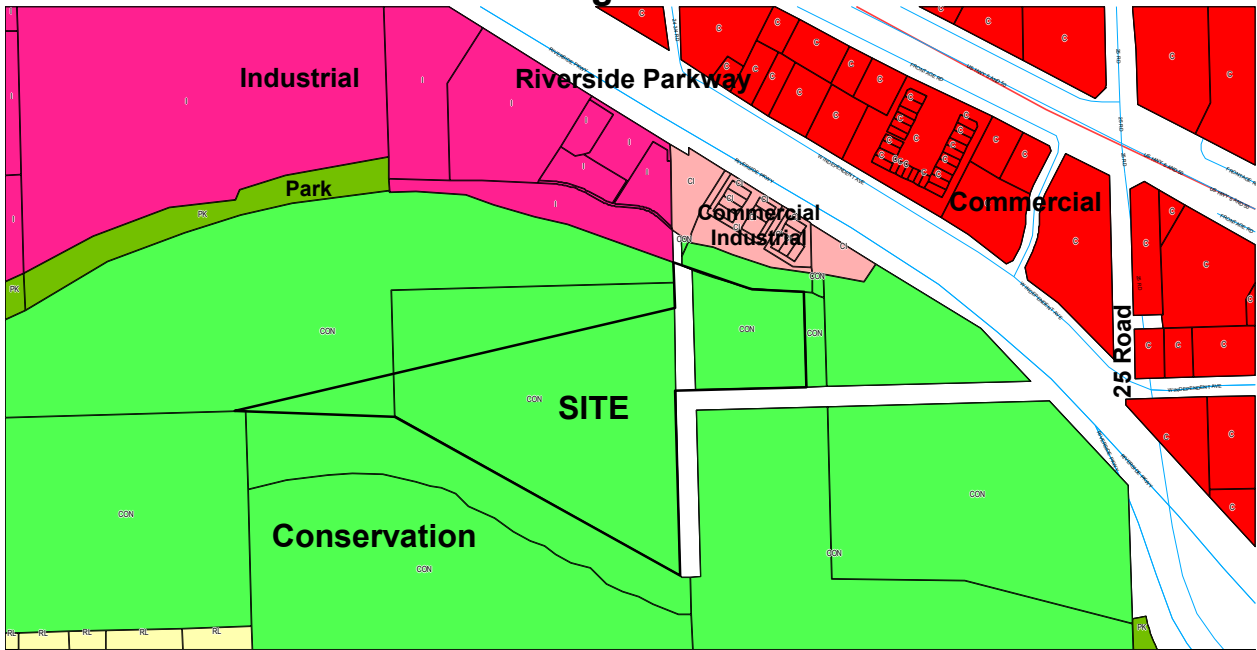
Aerial Photo Map

Figure 2



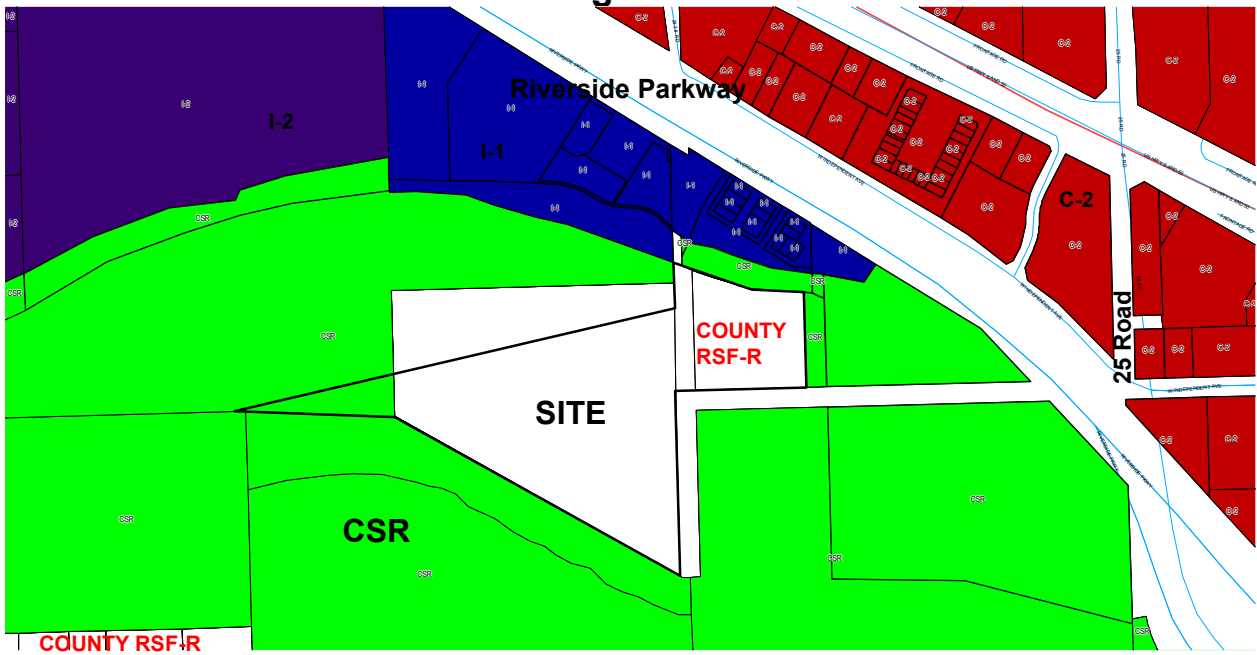
Future Land Use Map

Figure 3



Existing City and County Zoning Map

Figure 4



**NOTICE OF HEARING
ON PROPOSED ANNEXATION OF LANDS
TO THE CITY OF GRAND JUNCTION, COLORADO**

NOTICE IS HEREBY GIVEN that at a regular meeting of the City Council of the City of Grand Junction, Colorado, held on the 2nd of November, 2009, the following Resolution was adopted:

CITY OF GRAND JUNCTION, COLORADO

RESOLUTION NO. ____

**A RESOLUTION OF THE CITY OF GRAND JUNCTION
GIVING NOTICE THAT A TRACT OF LAND KNOWN AS**

MATTHEWS ENCLAVE

**LOCATED ALONG THE COLORADO RIVER
WEST OF 25 ROAD AND SOUTH OF THE RIVERSIDE PARKWAY**

CONSISTING OF APPROXIMATELY 10.53 ACRES

**WILL BE CONSIDERED FOR ANNEXATION
TO THE CITY OF GRAND JUNCTION, COLORADO**

AND EXERCISING LAND USE CONTROL

WHEREAS, on the 2nd day of November, 2009, the Public Works and Planning Director filed with the City Clerk of the City of Grand Junction, Colorado, a request that the City Council of the City of Grand Junction commence proceedings to annex to the City of Grand Junction a certain tract of land in the County of Mesa, State of Colorado, commonly known as the Matthews Enclave and more particularly described as follows:

MATTHEWS ENCLAVE ANNEXATION

A certain parcel of land lying in the Southeast Quarter (SE 1/4) of Section 9, Township 1 South, Range 1 West of the Ute Principal Meridian, County of Mesa, State of Colorado, being an enclave bounded by the Reece Ice Skating Inc Annexation, Ordinance No. 3698, The Blue Heron Annexation, Ordinance No. 2549, the Hytech Hydronic Systems Inc Annexation, Ordinance No. 2985 and the Blue Heron II Annexation, Ordinance No. 2685, lying entirely within the plat of Riverside Subdivision, as same is recorded in Plat Book 1, Page 28, Public Records of Mesa County, Colorado and being more particularly described as follows:

BEGINNING at the Northwest corner of the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of said Section 9 and assuming the North line of the SE 1/4 SE 1/4 of said Section 9 bears N 89°54'28" W with all other bearings contained herein being relative thereto; thence from said Point of Beginning, S 00°07'10" E along the West line of the SE 1/4 SE 1/4 of said Section 9, a distance of 545.55 feet; thence N 52°16'39" W, a distance of 893.52 feet to a point on the North line of the Southwest Quarter of the Southeast Quarter (SW 1/4 SE 1/4) of said Section 9; thence N 89°54'28" W along said North line, a distance of 476.11 feet; thence N 78°15'24" East, a distance of 1232.77 feet; thence N 00°03'11" E, a distance of 140.00 feet; thence South 71°27'59" E, a distance of 289.49 feet; thence S 84°33'06" E, a distance of 55.68 feet; thence S 00°03'11" W, a distance of 271.07 feet; thence S 89°54'28" E, a distance of 70.00 feet; thence S 00°03'11" W, a distance of 25.00 feet to a point on the North line of the SE

1/4 SE 1/4 of said Section 9; thence N 89°54'28" W, a distance of 425.00 feet, more or less, to the Point of Beginning.

CONTAINING 458,629 Square Feet or 10.53 Acres, more or less, as described.

WHEREAS, the area proposed to be annexed is entirely contained within the boundaries of the City of Grand Junction and said area has been so surrounded for a period of not less than three (3) years, pursuant to C.R.S. 31-12-106(1);

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

1. That the City Clerk of the City of Grand Junction is hereby directed to give notice of the City Council's intent to annex the aforementioned area, pursuant to the Municipal Annexation Act of 1965.
2. That the ordinance annexing the subject area was introduced and given first reading on this 2nd day of November, 2009, with a second reading of the proposed annexation ordinance to be held on the 14th day of December, 2009, in the City Hall auditorium, located at 250 North 5th Street, City of Grand Junction, Colorado, at 7:00 PM.
3. Pursuant to the State's Annexation Act, the City Council determines that the City may now, and hereby does, exercise jurisdiction over land use issues in the said territory. Requests for building permits, subdivision approvals and zoning approvals shall, as of this date, be submitted to the Public Works and Planning Department of the City.

ADOPTED the ___ day of _____, 2009.

Attest:

President of the Council

City Clerk

NOTICE IS FURTHER GIVEN that a hearing will be held in accordance with the Resolution on the date and at the time and place set forth in the Resolution.

City Clerk

DATES PUBLISHED
November 4, 2009
November 11, 2009
November 18, 2009
November 25, 2009

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO. ____

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

MATTHEWS ENCLAVE ANNEXATION

**LOCATED ALONG THE COLORADO RIVER
WEST OF 25 ROAD AND SOUTH OF THE RIVERSIDE PARKWAY**

CONSISTING OF APPROXIMATELY 10.53 ACRES

WHEREAS, on the 2nd day of November, 2009, the City Council of the City of Grand Junction gave notice that they will consider for annexation to the City of Grand Junction the following described territory, commonly known as the Matthews Enclave; and

WHEREAS, a hearing and second reading on the proposed annexation ordinance was duly held after proper notice on the 14th day of December, 2009; and

WHEREAS, the area proposed to be annexed is entirely contained within the boundaries of the City of Grand Junction and said area has been so surrounded for a period of not less than three (3) years, pursuant to C.R.S. 31-12-106(1);

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:

MATTHEWS ENCLAVE ANNEXATION

A certain parcel of land lying in the Southeast Quarter (SE 1/4) of Section 9, Township 1 South, Range 1 West of the Ute Principal Meridian, County of Mesa, State of Colorado, being an enclave bounded by the Reece Ice Skating Inc Annexation, Ordinance No. 3698, The Blue Heron Annexation, Ordinance No. 2549, the Hytech Hydronic Systems Inc Annexation, Ordinance No. 2985 and the Blue Heron II Annexation, Ordinance No. 2685, lying entirely within the plat of Riverside Subdivision, as same is recorded in Plat Book 1, Page 28, Public Records of Mesa County, Colorado and being more particularly described as follows:

BEGINNING at the Northwest corner of the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of said Section 9 and assuming the North line of the SE 1/4 SE 1/4 of said Section 9 bears N 89°54'28" W with all other bearings contained herein being relative thereto; thence from said Point of Beginning, S 00°07'10" E along the West line of the SE 1/4 SE 1/4 of said Section 9, a distance of 545.55 feet; thence N 52°16'39" W, a distance of 893.52 feet to a point on the North line of the Southwest Quarter of the Southeast Quarter (SW 1/4 SE 1/4) of said Section 9; thence N 89°54'28" W along said

North line, a distance of 476.11 feet; thence N 78°15'24" East, a distance of 1232.77 feet; thence N 00°03'11" E, a distance of 140.00 feet; thence South 71°27'59" E, a distance of 289.49 feet; thence S 84°33'06" E, a distance of 55.68 feet; thence S 00°03'11" W, a distance of 271.07 feet; thence S 89°54'28" E, a distance of 70.00 feet; thence S 00°03'11" W, a distance of 25.00 feet to a point on the North line of the SE 1/4 SE 1/4 of said Section 9; thence N 89°54'28" W, a distance of 425.00 feet, more or less, to the Point of Beginning.

CONTAINING 458,629 Square Feet or 10.53 Acres, more or less, as described.

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

INTRODUCED on first reading on the ____ day of _____, 2009 and ordered published.

ADOPTED on second reading the ____ day of _____, 2009.

Attest:

President of the Council

City Clerk



Date: October 26, 2009
 Author: Senta L. Costello
 Title/ Phone Ext: Sr. Planner, Ext. 1442
 Proposed Schedule: Monday, November 2, 2009
 2nd Reading): Monday, November 16, 2009

Attach 4
Setting a Hearing Correcting Legal Description on a Vacation of ROW Ordinance for a Portion of Gunnison Avenue
CITY COUNCIL AGENDA ITEM

Subject: Correcting Legal Description on a Vacation of Right-Of-Way Ordinance	
File # VR-2009-223	
Presenters Name & Title:	John Shaver, City Attorney Tim Moore, Public Works and Planning Director

Executive Summary: The intent of Ordinance No. 2639 was to vacate the entirety of Gunnison Avenue right-of-way within the limits specified by said ordinance; however, due to scrivener’s error not all documents conveying Gunnison Avenue right-of-way were cited in said ordinance. The amended ordinance lists all documents conveying right-of-way for Gunnison Avenue to be included within the stated limits, thereby fully satisfying the intent of Ordinance No. 2639.

How this item relates to the draft Comprehensive Plan Goals and Policies:

Goal 3: The Comprehensive Plan will create ordered and balanced growth and spread future growth throughout the community.

Property descriptions that are concise and accurate help achieve ordered and balanced growth in the community.

Action Requested/Recommendation:

Introduction of proposed Ordinance and Set a Hearing for November 16, 2009

Board or Committee Recommendation: N/A

Background, Analysis and Options:

In June 1991, Wagner Equipment requested the vacation of the portion of Gunnison Avenue north of and adjacent to their property located at 2882 I-70 Business Loop. City Council approved the request and passed Ordinance 2639.

Financial Impact/Budget: There is no fiscal impact to the City of Grand Junction.

Legal issues: The proposed Ordinance serves to amend Ordinance 2639 to satisfy the intent of the original Ordinance.

Other issues: N/A

Previously presented or discussed: N/A

Attachments:

Proposed Ordinance amending Ordinance 2639.

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 2639 VACATING A PORTION OF GUNNISON AVENUE RIGHT OF WAY BETWEEN HARRIS ROAD AND MELODY LANE

Recitals:

The intent of Ordinance No. 2639 was to vacate the entirety of Gunnison Avenue right of way within the limits specified by said ordinance; however, due to scrivener's error not all documents conveying Gunnison Avenue right of way were cited in said ordinance. The amended ordinance lists all documents conveying right of way for Gunnison Avenue to be included within the stated limits, thereby fully satisfying the intent of Ordinance No. 2639.

This Ordinance amends Ordinance No. 2639 and by adoption there of amends the legal description of the Gunnison Avenue right-of-way vacated.

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

Ordinance No. 2639 are hereby amended to wit:

That portion of Gunnison Avenue right-of-way, as described in the following Books:

Book 1050, Page 307 and 308;

Book 878 Page 663;

Book 865 Page 281;

Book 829, Page 49;

Book 825 Page 176;

Book 1059 Page 684;

and as shown on the final plat for Gunnison Avenue South in Plat Book 12, Page 304, all in the records of the Mesa County Clerk and Recorder,

lying 30 feet east of the west line $W\frac{1}{2} E\frac{1}{4} NW\frac{1}{4} NE\frac{1}{4}$ of Section 18, Township One South, Range 1 East of the Ute Meridian and lying 30 feet west of the east line $W\frac{1}{2} NE\frac{1}{4} NE\frac{1}{4}$, of Section 18 Township One South, Range 1 East of the Ute Meridian.

INTRODUCED for FIRST READING and publication on this _____ of _____ November, 2009.

PASSED and ADOPTED this _____ day of November, 2009.

Attest:

Stephanie Tuin
City Clerk

Bruce Hill
Mayor and President of the Council



Date: October 27, 2009
 Author: John Shaver
City Attorney
 Title/ Phone Ext: 244-1506
 Proposed Schedule: Monday,
November 2, 2009
 2nd Reading (if applicable):
Monday, November 16, 2009

Attach 5
Setting a Hearing on the Medicinal Marijuana
Dispensary Moratorium

CITY COUNCIL AGENDA ITEM

Subject: Medical Marijuana Dispensary Moratorium
File # (if applicable):
Presenters Name & Title: John Shaver, City Attorney

Executive Summary:

The proposed Ordinance would afford the City an opportunity, by declaring a temporary moratorium on the filing of development applications for medical marijuana dispensaries, to carefully evaluate and determine as appropriate, the proper regulation of those businesses. The ordinance also proposes a moratorium on the issuance of sales tax licenses for new dispensaries/marijuana care-givers.

How this item relates to the draft Comprehensive Plan Goals and Policies:

N/A

Action Requested/Recommendation:

Introduction of a Proposed Ordinance and Set a Hearing for November 16, 2009.

Board or Committee Recommendation:

The City Council Legislative Committee recently met and recommended that the Council consider adopting a moratorium on sales tax licenses and permitting additional establishments in Grand Junction.

Background, Analysis and Options:

In November 2000 Colorado voters approved Amendment 20 to the Colorado Constitution. In general that amendment allows certain people the right to sell, use, possess, distribute and transport marijuana and the means of consumption to treat debilitating medical conditions. The Amendment generally provides an exemption to prosecution under state law. Amendment 20 does not provide an exemption to prosecution for federal criminal violations.

Because of the proliferation of medical marijuana dispensaries in Grand Junction and because of the fact that Amendment 20 is silent on the “business” aspects of medical marijuana distribution aka “dispensaries,” the City Council Legislative Committee recently met and recommended that the Council consider adopting a moratorium on 1) sales tax licenses and 2) permitting additional establishments in Grand Junction.

During the 2010 session of the Colorado General Assembly it is likely that a bill or bills will be introduced to clarify Amendment 20 and/or to regulate the some or all aspects of siting and/or operating dispensaries. In addition to the possibility that the legislature may act, the City may also consider and/or adopt its own local regulation. In order to coordinate the City regulation with what the State may do, it is reasonable to temporarily suspend the permitting of new dispensaries/care giver operations.

Financial Impact/Budget: No direct impact from adoption of the Ordinance; enforcement costs may result.

Legal issues:

N/A

Other issues:

N/A

Previously presented or discussed:

N/A

Attachments:

Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE CONCERNING LAND USE APPLICATIONS IN THE CITY OF GRAND JUNCTION, INSTITUTING A TEMPORARY MORATORIUM ON THE ISSUANCE OF LAND USE APPROVALS AND SALES TAX LICENSES FOR MEDICAL MARIJUANA DISPENSARIES AND PROVIDING PENALTIES FOR VIOLATION THEREOF

Recitals.

The purpose of this Ordinance is to afford the City Council an opportunity, by declaring a temporary moratorium on the filing of development applications for medical marijuana dispensaries, to determine the appropriate regulations and requirements for the conduct of those businesses in the City of Grand Junction.

A moratorium is lawful, necessary and appropriate so that the citizens of the City, by and through the City Council, may carefully evaluate and determine as appropriate the proper zoning, site specific regulation(s), use specific regulation(s) and/or licensing for any person or entity that purports to operate as a “primary care-giver” for the cultivation, sale, possession, distribution and/or provision of medical marijuana to or for any person with a “debilitating medical condition” as the same are defined In Article XVIII, Section 14, Amendment 20 of the Colorado Constitution.

This Ordinance shall apply to any person or entity applying to function, to do business as or hold itself out as a medical marijuana dispensary in the City of Grand Junction. The Ordinance shall equally apply to any person or entity regardless of zoning.

This Ordinance shall apply to any person or entity applying to function, do business as, or hold him, her or itself out as a “primary care-giver” as the same is defined in Article XVIII, Section 14, Amendment 20 of the Colorado Constitution. The Ordinance shall equally apply to any person or entity regardless of zoning and/or compliance with other applicable City regulation(s) including but not limited to home occupation.

This Ordinance shall apply to any person or entity applying for a sales tax license to function, do business as or hold him, her or itself out as a “primary care-giver” as the same is defined In Article XVIII, Section 14, Amendment 20 of the Colorado Constitution. The Ordinance shall equally apply to any person or entity regardless of compliance with other applicable State regulation(s) regarding the collection of sales tax.

Because of the proliferation of medical marijuana dispensaries and the recent incidence of two burglaries at one dispensary location, the Grand Junction Police Department by and through Chief John Camper has warned that further violent crime may result. Chief Camper has endorsed the moratorium provided for in this Ordinance.

A stated goal of the City Council is to make Grand Junction the most livable community west of the Rockies by 2025. While the Council acknowledges the rights of those members of the community that are suffering from a debilitating medical condition to access medical marijuana, the City Council must balance those rights against the need for regulation of the number, the location and the safety practices of those businesses supplying medical marijuana.

The City Council is concerned about and during the moratorium period may study whether an undue concentration of dispensaries may result in among other things the businesses becoming illegitimate. The existence of illegitimate dispensary businesses will harm those persons that rely on the drug for medicinal purposes and at the same time the community will be harmed if those businesses become fronts for criminal activity and/or targets for related crimes such as robbery, burglary and/or fraud. Through a concerted effort Attorney General Suthers and the Colorado Association of Chiefs of Police have identified significant concerns with the proliferation of dispensary businesses.

The City Council anticipates that the local legislative delegation and other State representatives and senators may be proposing legislation to “fill the gaps” that exist in the current body of law concerning Amendment 20 and medical marijuana. The City Council generally endorses a state-wide licensing process/regulation of dispensaries; however, the City Council urges that in any bill(s) that the legislature approves that Home Rule communities’ right to craft more restrictive regulations be recognized and preserved.

The City Council hereby directs the City Manager and the City Attorney to monitor and evaluate any bill(s) brought to the legislature regarding medical marijuana and to advise the City Council Legislative Committee of those bills.

Consistent with the City’s authority and obligation to promote the health, safety and general welfare of the citizens and residents of the City, the City Council does hereby find and determine that for a period of 12 months from the effective date of this Ordinance the City Manager is not to accept, process or act on any use or development application(s) or issue any permits for uses that are either conditional or allowed by the Zoning and Development Code for any use, business, activity or action that is known as or functions as a medical marijuana dispensary and/or a medical marijuana primary care-giver.

The City Manager shall issue no new sales tax licenses for any use, business or activity that is known as or functions as a medical marijuana dispensary and/or a medical marijuana primary care-giver. The City Manager may renew sales tax licenses issued prior to the date of this Ordinance if the licensee is in good standing with the City but no new sales tax licenses for the sale of medical marijuana shall issue.

It shall be illegal for any person or entity to function, do business as or hold him, her or itself out as a primary care-giver for the purpose of acquisition, possession, production or transportation of marijuana or paraphernalia related to the administration of such

marijuana as the same is defined in Article XVIII, Section 14, Amendment 20 of the Colorado Constitution without having a City sales tax license. An existing sales tax licensee, as of the effective date of this Ordinance, may not lawfully add medical marijuana to his, her or its inventory.

This Ordinance is reasonable and proper because there are no applications pending at this time and a temporary moratorium will allow the opportunity for careful determination of the public and private needs.

The authority for this Ordinance derives from the Colorado Constitution and the Charter and laws and ordinances of the City of Grand Junction.

This Ordinance shall expire, if not renewed or sooner repealed by the City Council, on a date 12 months from the final passage and 32 days following publication thereof.

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

For the 12 month period following the date of lawful adoption of this Ordinance the City Manager, in accordance with the foregoing recitals which are adopted herein and made a part hereof, shall not accept, act on, process or approve any use or development application(s) or issue any permits for uses that are either conditional or allowed by the Zoning and Development Code for any use, business, activity or action that is known as or functions as a medical marijuana dispensary and/or a medical marijuana primary care-giver in the City of Grand Junction.

The moratorium established by this Ordinance shall apply to any person or entity applying to function, do business as, or hold itself out as a medical marijuana dispensary in the City of Grand Junction.

The moratorium shall equally apply to any person or entity regardless of zoning and/or the location of the medical marijuana dispensary.

The moratorium shall apply to any person or entity applying to function, do business as, or hold him, her or itself out as a "primary care-giver" as the same is defined In Article XVIII, Section 14, Amendment 20 of the Colorado Constitution.

The moratorium shall equally apply to any person or entity regardless of zoning and compliance with other applicable regulation(s) including but not limited to home occupation.

The moratorium shall equally apply to any person or entity, activity or action that applies for a sales tax license to function as a medical marijuana dispensary and/or a medical marijuana primary care-giver.

It shall be illegal for any person or entity to function, do business as or hold him, her or itself out as a primary care-giver for the purpose of acquisition, possession, production or transportation of marijuana or paraphernalia related to the administration of such marijuana as the same is defined in Article XVIII, Section 14, Amendment 20 of the Colorado Constitution without having a City sales tax license.

The City Manager may renew sales tax licenses issued prior to the date of this Ordinance but no new sales tax license for the sale of medical marijuana shall issue during the moratorium period. An existing City sales tax licensee, as of the effective date of this Ordinance, may not lawfully add medical marijuana to his, her or its inventory during the moratorium period.

Definitions of terms in Amendment 20 shall be applicable as necessary or required to construe this Ordinance.

Conducting business in violation of the provisions of this Ordinance constitutes a misdemeanor punishable in accordance with the penalties provided in Section 1.04.090 of the Grand Junction Code of Ordinances.

If any section, sentence, clause or phrase of this Ordinance is held invalid or unconstitutional by a court of competent jurisdiction, it shall in no way affect the validity of any remaining portions of this law.

This Ordinance shall expire, if not renewed or sooner repealed by the City Council, on a date 12 months from the final passage and 32 days following publication thereof.

INTRODUCED for FIRST READING on this _____ of November, 2009.

PASSED and ADOPTED this _____ day of November, 2009.

Bruce Hill
President of the Council

Attest:

Stephanie Tuin
City Clerk



Date: 9/29/2009 (Rev. 10/22/09)

Author: Heidi Hoffman Ham

Title/ Phone Ext: Exec Dir, GJDDA
/256-4134

Proposed Schedule:

2nd Reading

(if applicable): _____

Attach 6
Downtown Grand Junction Business
Improvement District Operating Plan
CITY COUNCIL AGENDA ITEM

Subject: Downtown Grand Junction Business Improvement District (DGJBID) Operating Plan and Budget
File # (if applicable):
Presenters Name & Title: Jodi Romero, Financial Operations Manager

Executive Summary:

As required by statute, the DGJBID has filed the 2010 Operating Plan and Proposed Budget with the City Clerk by September 30. It has been reviewed by Staff and found to be reasonable.

How this item relates to the draft Comprehensive Plan Goals and Policies:

N/A

Action Requested/Recommendation:

Approve the DGJBID 2010 Operating Plan and Proposed Budget.

Board or Committee Recommendation:

The DGJBID Board reviewed and approved the 2010 Proposed Budget at their meeting on October 22, 2009.

Background, Analysis and Options:

In 2005, the City Council created the Downtown Grand Junction Business Improvement District, approved their 2006 Operating Plan and Budget, conducted a mail ballot election to create a Special Assessment, and then turned over the board to the DDA. The State Statutes (31-25-1212 C.R.S.) require business improvement districts to annually submit an operating plan and budget for the next fiscal year by September 30. The municipality shall approve or disapprove the operating plan and budget within thirty days of receipt but no later than December 5 so the BID can file their Special Assessment with the County Treasurer by December 10.

Financial Impact/Budget:

The finances of the GJBID do not have an impact on the City's budget except for an in-lieu contribution for the City properties within the District of \$13,466.

Legal issues:

N/A

Other issues:

N/A

Previously presented or discussed:

The 2010 Budget and Operating Plan are very similar in scope and focus to previous years.

Attachments:

2009 Annual Report
2010 Proposed Budget

Downtown Business Improvement District 2009 Annual Report and 2010 Proposed Budget

With the successful passage of the Downtown Business Improvement District in November 2005, the Downtown Partnership (DDA/DTA) was able to embark on an expanded program of advertising and promotion. The BID covers an area of nearly 50 square blocks and has over 600 property owners and businesses representing a mix of retail, restaurants, professional services and commercial activities. The BID was formed with the intention of performing the following functions:

Downtown Marketing and Promotions

- Public relations to project a positive community and business image
- Collaborative advertising with other agencies (VCB, Chamber, etc)
- Biweekly email to members and quarterly membership meetings
- Revision of website to reflect changing needs of merchants, visitors
- Holiday/seasonal advertising campaigns in print, radio, television, billboards
- Expansion of downtown gift certificate marketing
- Continued support of marketing efforts for Art on the Corner program

Staff works closely with representatives from Colorado Public Radio, the Avalon Theatre, the Museum of Western Colorado, Western Colorado Botanical Gardens, the Visitor and Convention Bureau, Two Rivers Convention Center, and local nonprofit groups to market and support downtown activities. Other beneficial communication efforts have included promotion of new and expanding businesses, special events, and development of the Downtown Uplift project. The addition of a marketing/events staff person in early 2009 greatly expanded the ability of the BID to communicate these efforts, particularly through a complete website renovation, social networking, and in-house graphic design as well as increased customer service for merchants and public customers of the Partnership.

Special Events

The Art & Jazz Festival, the Farmers' Market, the Independence Day Parade, the Car Show, Spooktacular, and the Parade of Lights have all continued to grow in attendance and participation. These popular events bring thousands of people into Downtown Grand Junction to enjoy the unique atmosphere and spend additional dollars in the downtown shopping district.

Budget and Administration:

The 2010 Proposed Budget supports the operating plan and goals for the BID. The DTA Board continues to administer the majority of the funds for events and marketing

under close supervision of the BID Board, including a comprehensive quarterly report and approved budget.

GJ BID Operating Budget

	2008 Actual	2009 Budget	2009 Projected	2010 Proposed
Start Fund Balance	95,048	117,698	117,698	95,275
Revenues				
Special Assessments	133,626	135,000	131,953	130,000
Interest Income	2,848	3,000	4,876	3,500
Govt Reimbursements	34,500	34,500	24,500	26,000
Other Income	3,095	0	0	0
Event Income	168,000	0	0	0
Revenues Sub Total	342,069	172,500	161,329	159,500
Expenses				
Salaries	34,041	33,280	57,034	41,683
Part-time/Contract Labor		30,347	48,400	9,360
Benefits	14,628	8,320	14,259	10,421
Treasurer's Fees	2,662	3,000	2,643	3,100
Donations	0	0	0	0
FF&E	0	5,000	3,644	5,000
Other	6,467	3,000	722	2,500
Interfund Transfers	2,870	3,500	3,500	8,000
Event Expenses	103,210	0	0	0
Marketing Expenses	50,194	0	0	0
DTA Expenses	75,000	101,500	101,500	76,000
Expenses Sub Total	319,419	206,000	183,752	156,064
Net Difference	22,650	-33,500	-22,423	3,436
Fund Balance	117,698	84,198	95,275	98,711



Date: 10/21/09
 Author: D. Paul Jagim
 Title/ Phone Ext: Project Engineer / 244-1542
 Proposed Schedule: Nov. 2, 2009
 2nd Reading
 (if applicable): _____

Attach 7
Construction and Maintenance Agreement and Purchase of Property from Union Pacific Railroad Co for the 29 Road and I-70B Interchange Project
CITY COUNCIL AGENDA ITEM

Subject: Construction and Maintenance Agreement and Purchase of Property from the Union Pacific Railroad Company for the 29 Road & I-70B Interchange Project
File # (if applicable): N/A
Presenters Name & Title: Tim Moore, Public Works & Planning Director

Executive Summary:

The Public Utility Commission requires that the City and the Union Pacific Railroad Company enter into a Construction and Maintenance Agreement for the construction and future maintenance of the 29 Road Overpass Bridge. The City’s cost for the Easement Fees and Permit Fees included in this Agreement is \$177,547. The City has also signed a Letter of Understanding with the Union Pacific Railroad company to purchase street right-of-way at 29 Road and D ½ Road. The City’s cost for the right-of-way is \$120,680.

How this item relates to the draft Comprehensive Plan Goals and Policies:

The agreement and property purchase are necessary in order to complete the 29 Road and I-70B Interchange Project. The 29 Road and I-70B project harmonizes with the goals and policies of the Comprehensive Plan.

Goal 1: To implement the Comprehensive Plan in a consistent manner between the City, Mesa County, and other service providers.

The project represents a collaborative effort between the City and County to construct a section of infrastructure identified in the plan as a key component of the Regional Transportation Plan and as a Mixed Use Opportunity Corridor.

Goal 3: The Comprehensive Plan will create order and balanced growth and spread future growth throughout the community.

The project will establish a transportation corridor essential to the implementation of land uses identified in the Comp Plan, such as the Neighborhood and Village Centers in the Pear Park and Orchard Mesa areas.

Goal 8: Create attractive public spaces and enhance the visual appeal of the community through quality development.

By linking the residential areas of Orchard Mesa and Pear Park with North Avenue, the project encourages the revitalization of the existing North Avenue commercial corridor.

Goal 9: Develop a well-balanced transportation system that supports automobile, local transit, pedestrian, bicycle, air, and freight movement while protecting air, water, and natural resources.

The Regional Transportation Plan identifies this project as a critical component of the transportation network. The traffic model prepared by the Regional Transportation Planning Office estimates that vehicular traffic counts will be 29,790 vehicles per day in the year 2030. This significant improvement in traffic flow will reduce vehicle miles traveled, thereby improving air quality, and conserving natural resources.

The project encourages multi-modal use of the corridor by including bike lanes and sidewalks in the street section. It will also create a more efficient bus route connecting residential areas with the North Avenue commercial center and service providers such as the Mesa County Work Force Center.

The new “grade-separated” crossing of the Union Pacific Railroad tracks will result in safety and efficiency improvements for rail freight traffic by reducing vehicle and pedestrian traffic at existing “at-grade” crossings.

Goal 12: Being a regional provider of goods and services the City and County will sustain, develop, and enhance a healthy, diverse economy.

The transportation corridor constructed by this project, and the improved access that results, will encourage commercial and industrial development.

Action Requested/Recommendation:

Authorize the City Manager to Sign the Construction and Maintenance Agreement with the Union Pacific Railroad Company for the 29 Road Overpass and Adopt a Resolution authorizing the Purchase of a Portion of the Property at 29 Road & D ½ Road, identified as Parcel Schedule # 2943-172-00-056, from Union Pacific Railroad Company.

Board or Committee Recommendation:

Because 29 Road project costs are being shared equally between the City and Mesa County, the County’s Public Works Director and project staff have been consulted on the status of the UPRR property acquisition and the Construction and Maintenance agreement. They have recommended that the City proceed with executing the Construction and Maintenance agreement and the property acquisition.

Background, Analysis and Options:

Construction of the proposed 29 Road bridge over the Union Pacific Railroad (UPRR) tracks will involve two separate property requirements from the Railroad. One will address the area of the bridge structure, and the second will address the street approach and retaining walls on the south side of the bridge.

The first requirement is a Construction and Maintenance Agreement that details a permanent easement for the overpass, temporary construction easements, and the terms and conditions that must be followed during construction and future maintenance of the bridge. The Public Utilities Commission of Colorado issued an order on June 24, 2009, authorizing the new overpass at 29 Road. The PUC's order stipulates that the City and UPRR must enter into a Construction and Maintenance Agreement prior to December 1, 2009. The easement fees and permit fees associated with the Construction and Maintenance agreement total \$355,094. Half of this fee will be paid by the City and the other half by Mesa County. The fees are calculated based on the area of easements required, the duration of construction, and a land value of \$5.00/SF.

The land value used in the easement fee calculation matches the price per square foot to be paid for the property to be acquired from the UPRR at 29 Road and D ½ Road.

The second requirement is the acquisition of a right-of-way parcel in fee simple from the UPRR's property just north of D ½ Road. The new right-of-way parcel will extend from the south end of the proposed bridge (approximately 400 feet north of D ½ Road) to the existing 29 Road right-of-way that currently ends at D ½ Road. The new right-of-way corridor will be 125 feet wide. This new right-of-way will house the street approach to the proposed bridge, which will be built on imported embankment and retaining walls, and will be a 5-lane street section with bike lanes and sidewalks.

The property to be acquired from the UPRR is currently unimproved. An appraisal was prepared for the City to determine the fair market value of the parcel to be acquired. The appraisal concluded a value of \$176,193 for the property to be acquired, based on a square foot value of \$3.65/SF. An offer to acquire in the amount of \$176,193, consistent with the City's approved appraisal, was presented to Mr. Gregg A. Larsen, Senior Manager of Real Estate with the Union Pacific Railroad, on August 21, 2009. The offer to acquire in the amount of \$176,193, was rejected by the UPRR Real Estate Department. The UPRR generally agreed with the values of the comparable sales utilized in the City's appraisal. However they took exception to the appraisal's adjustment of square footage value of the comparable sales based on a difference in parcel size between the comparable sales and the parcel in question. The City's appraisal applied a discounting adjustment to the square foot value because the sale parcel was a larger sized parcel than those used as comparable sales. Prior to any adjustment based on a difference in parcel size, the comparable sales utilized in the City's appraisal had a range of value of \$4.84/SF to \$5.20/SF. Based on this, the UPRR's Real Estate Department asserted a value of \$251,014, based on a square foot value of \$5.20/SF. A revised offer to acquire in the amount of \$241,360, based on a square foot value of \$5.00/SF, was presented to Mr. Gregg A. Larsen on August 28, 2009. The UPRR's General Director of Real Estate, Mr. Chris Goebbel, accepted this offer and a letter of understanding for the sale of this parcel was signed on October 9, 2009. The offer to purchase this property is contingent upon City Council's ratification of the purchase contract.

This settlement as proposed is reasonable, prudent, and necessary for the construction of the 29 Road project, and City Staff recommends its approval. Closing on this property is scheduled to occur on or after December 1, 2009, contingent upon the Council's approval.

Financial Impact/Budget:

The 29 Road & I-70B Interchange Project is being jointly funded by the City and Mesa County. The City funds are budgeted under Fund 201 for Program Years 2009, 2010, and 2011. City funds budgeted for the 29 Road and I-70B Interchange project are as follows:

	City of Grand Junction's Share of Project Budget
Overall Project Budget (Fund 201-F0028)	\$ 16,267,477
2008 Project Costs	512,302
2009 Project Costs (Year to Date or Encumbered)	
Irrigation Phase, South Phase, and North Phase Construction Contracts	\$ 1,643,522
Right-of-Way Costs	\$ 1,721,750
UPRR Construction & Maintenance Agreement's Easement Fees and Permit Fees	\$ 177,547
UPRR property purchase for R-O-W	\$ 120,680
2009 Remaining Estimated Project Costs	1,326,676
Estimated Project Costs (2010 & 2011)	10,765,000

As can be seen from the table above, sufficient project funds exist to complete the City's purchase of this property.

Legal issues:

The City's Legal Department staff was actively involved in the negotiation of the Construction and Maintenance Agreement and the property acquisition. The City Attorney has reviewed the final version of the Agreement and recommends approval.

Other issues:

None

Previously presented or discussed:

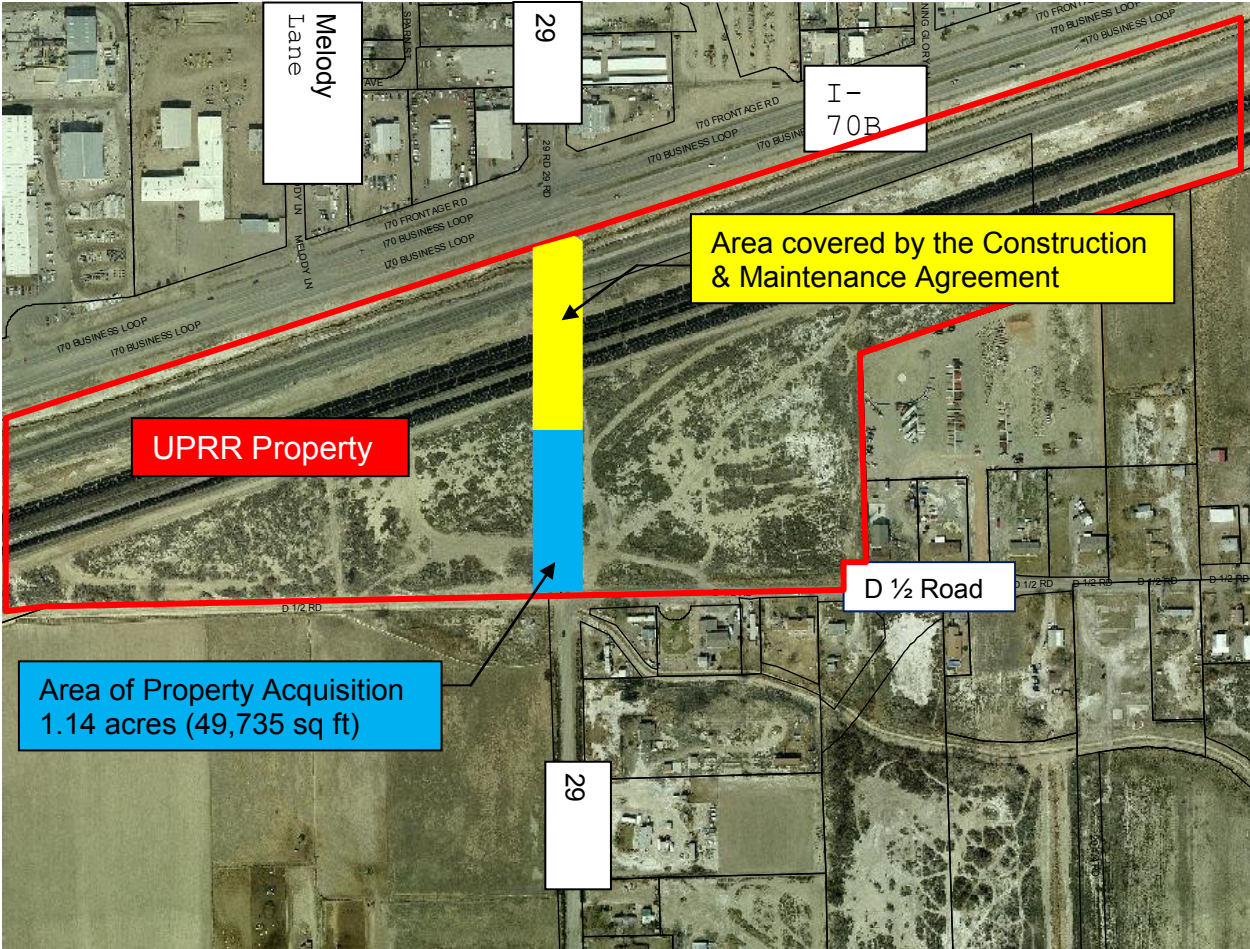
This item has not previously been considered.

Attachments:

1. Site Map
2. Proposed Resolution

29 Road & I-70B Interchange Project

Vicinity Map for Union Pacific Railroad Property Acquisition and Construction & Maintenance Agreement



RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE PURCHASE OF REAL PROPERTY AT 29 ROAD AND D ½ ROAD, IDENTIFIED BY PARCEL SCHEDULE # 2943-172-00-056 FROM UNION PACIFIC RAILROAD COMPANY

Recitals.

A. The City of Grand Junction has entered into a contract with Union Pacific Railroad Company, for the purchase by the City of certain real property located within the proposed alignment of the 29 Road and I-70B Interchange.

Parcel #	Schedule #	Address	Zoned	Current Use	ROW Req'd (Sq ft)	Multi-Purpose Easement Req'd (Sq ft)	Temporary Easement Req'd (Sq ft)
H-17 LA1Rev	2943-172-00-056		I-1	Industrial	49,735		
Total Sq Ft. =					49,735		

B. The purchase contract provides that on or before December 1, 2009, the City Council must ratify the purchase and the allocation of funds for all expenses required to effectuate the purchase of the property.

C. Based on the advice and information provided by the City staff, the City Council finds that it is necessary and proper that the City purchase a portion of the property identified by parcel schedule # 2943-172-00-056 at 29 Road and D ½ Road.

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

- The property described herein shall be purchased for a price of \$241,360. All actions heretofore taken by the officers, employees and agents of the City relating to the purchase of said 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.
- The sum of \$241,360 is authorized to be paid at closing, in exchange for conveyance of the fee simple title to the described property.
- 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 described property. Specifically, City staff is directed to effectuate this Resolution and the 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 _____, 2009.

Attest:
Council

President of the

City Clerk



Date: 10-26-09

Author: Jamie B. Beard

Title/ Phone Ext: 4032 _____

Proposed Schedule: _____

2nd Reading

(if applicable): N/A

Attach 8
Water Agreement Amended and Restated with
BrightStar Golf Redlands Mesa LLC
CITY COUNCIL AGENDA ITEM

Subject: Water Agreement Amended and Restated with BrightStar Golf Redlands Mesa, LLC
File # (if applicable):
Presenters Name & Title: John Shaver, City Attorney

Executive Summary: Authorization of the City Manager to consent to the assignment of the Water Agreement Amended and Restated to provide irrigation water for the public golf course for the land where the Golf Course at Redlands Mesa (“Golf Course”) is located in the Redlands.

How this item relates to the draft Comprehensive Plan Goals and Policies:

Only consenting to assignment of an agreement previously entered into by City Council. The assignment is to allow for the landowner to refinance.

Action Requested/Recommendation:

Authorize the City Manager to Act by Executing the Consent to Assignment of the Water Agreement Amended and Restated with BrightStar Golf Redlands Mesa LLC

Board or Committee Recommendation:

N/A

Background, Analysis and Options:

In 1997, the City agreed to convey 3 c.f.s. water rights by quitclaim deed to Redlands Mesa, LLC (“Redlands Mesa”) for public golf course irrigation for the land where the Golf Course at Redlands Mesa (“Golf Course”) lies. Due to the expense involved, the infrastructure needed to deliver the 3 c.f.s. has not been built by the owner of the rights. The City has provided water for irrigation through the Ridges System.

In 2004, the City entered into an agreement with Redlands Golf, predecessor to Redlands Mesa, that irrigation water would continue to be provided in the event the Ridges System is interrupted. The agreement was modified in 2007 to further define the terms with Red Junction, LLC, the then owner of the golf course and land. The land

was sold to BrightStar Golf Redlands Mesa, LLC ("BrightStar") soon after. The City consented to the assignment of the agreement to BrightStar.

BrightStar is in the process of refinancing with Textron Financial Corporation ("Textron"), a company that specifically designs financing for golf course owners. Textron has requested the assignment of the 2007 Water Agreement Amended and Restated as a part of the refinancing agreements.

Staff has reviewed the proposed Assignment of Service and the Consent to Assignment ("Documents"). In addition, staff has reviewed information concerning Textron for purposes of the assignment. The proposed Documents and Textron have been found to be acceptable for the City's interests.

Financial Impact/Budget:

No budget impact for the City.

Legal issues:

The Consent to Assignment has been reviewed and found acceptable.

Other issues:

None

Previously presented or discussed:

No

Attachments:

Proposed Assignment of Service Agreement and Consent to Assignment

ASSIGNMENT OF SERVICE AGREEMENT

This Assignment of Service Agreement (the "Assignment") is made to be effective as of _____, 2009, by BRIGHTSTAR GOLF REDLANDS MESA LLC, a Delaware limited liability company ("Assignor"), to and for the benefit of TEXTRON FINANCIAL CORPORATION, a Delaware corporation, having a mailing address of 11575 Great Oaks Way, Suite 210, Alpharetta, Atlanta, GA 30022, Attention: President - Golf Finance ("Lender").

Assignor is the owner of the real property described in Exhibit A attached hereto (the "Land"). Lender has made one or more loans (collectively, the "Loan") to BRIGHTSTAR GOLF PINERY LLC, a Delaware limited liability company, BRIGHTSTAR GOLF PRADERA LLC, a Delaware limited liability company, BRIGHTSTAR GOLF SNOQUALMIE LLC, a Delaware limited liability company, and BRIGHTSTAR WHITNEY OAKS LLC, a Delaware limited liability company (collectively, the "Borrower"), in connection with one or more Loan Agreements, among Borrower and Lender (collectively, the "Loan Agreement"), as evidenced by one or more Promissory Notes made by each Borrower (collectively, the "Note"), payable to the order of the Lender, to evidence the Loan.

Except as otherwise provided in this Assignment, capitalized terms used in this Assignment have the same meanings given to such terms in the Loan Agreement.

The Borrower has requested that Lender modify the Loan (the "Modification") and in connection with the Modification, Lender requires that Assignor execute and deliver to Lender, among other things, a (i) Deed of Trust, Security Agreement and Fixture Filing dated of even date herewith, (ii) an Assignment of Leases, Rents and Contracts, and (iii) this Assignment in connection with the Land and other Loan Documents as security for the performance of Borrower's obligations under the Loan Agreement and the other Loan Documents. Assignor acknowledges and agrees that it receives material benefit from Lender's making of the Loan to Borrower and the Modification.

Assignor has entered into that certain Water Agreement dated April 19, 2007 (the "Agreement") with the City of Grand Junction, a municipal corporation, State of Colorado (the "City"). The Agreement provides for the water service to the Land.

NOW THEREFORE, in consideration of the recitals above, and other valuable consideration, the receipt and sufficiency of which is here by acknowledged, Assignor hereby agrees as follows:

Assignment and Security Interest. As additional security for Borrower's obligations under the Loan Documents, Assignor hereby unconditionally and irrevocably assigns, conveys and transfers to Lender, and grants to Lender a first priority security interest in all of Assignor's right, title and interest in and to the Agreement (but not its obligations), together with all of Assignor's rights, benefits or remedies arising from the Agreement. Assignor hereby authorizes Lender, at any time and from time to time, to file any initial financing statements, amendments

thereto and continuation statements with or without signature of Assignor as authorized by applicable law, as applicable to the security interest granted by Assignor herein.

Representations and Warranties of Assignor. Assignor represents and warrants that:

The Agreement is held by Assignor free and clear of all prior liens, security interests, charges and encumbrances whatsoever with respect to the Land and Assignor covenants and agrees with Lender to perform all acts required of it to maintain the Agreement in good standing at all times.

Assignor has not conveyed, transferred, or assigned the Agreement or any right or interest therein and has not executed any other document or instrument that might prevent or limit Lender from operating under the terms, conditions and provisions of this Assignment.

Assignor shall make no other assignment of the Agreement or of any right or interest therein.

This Assignment and the consent to it do not relieve Assignor of its obligations under the Agreement. Assignor shall perform and observe, in a timely fashion, all of the covenants, conditions, obligations and agreements of Assignor in connection with the Agreement, in material accordance with the all of the covenants, conditions, obligations and agreements of the Agreement.

This Assignment by Assignor to Lender is not and shall not be a default under or a violation of any of the terms or conditions of any of the Agreement.

Indemnity. In the exercise of the powers herein granted, no liability shall be asserted or enforced against Lender prior to the enforcement of its rights under this Assignment, all such liability being hereby expressly waived and released by the Assignor. Assignor shall, and does hereby agree to, indemnify, defend and hold Lender harmless, for, from and against any and all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, damages (including foreseeable and unforeseeable consequential damages), costs or expenses, fines, penalties, and losses, including sums paid in settlement of claims and all consultant, expert and legal fees and expenses of Lender's counsel (including the allocated cost of in-house counsel), directly or indirectly arising out of or resulting from this Assignment or Lender's exercise of its rights under this Assignment.

Lender's Rights. Although this Assignment is a present assignment, it is expressly understood and agreed, notwithstanding anything contained herein to the contrary, that Lender shall not exercise any of the rights or powers herein conferred upon it until an Event of Default has occurred under the Loan Documents, but upon the occurrence and during the continuance of any such Event of Default, Lender shall be entitled to all the rights, privileges and benefits of Assignor under the Agreement. Upon the occurrence of an Event of Default under the Loan Documents, Lender may, at its option, upon written notice to the City, exercise all of the rights and remedies granted to Assignor under the Agreement as if Lender had been an original party to

the Agreement. Lender may elect to assume all of the obligations of Assignor under the Agreement by giving notice to that effect to the City and Lender shall thereafter be responsible under the terms of the Agreement.

Attorney in Fact. Assignor does hereby make, constitute and appoint Lender, and its successors and assigns, as Assignor's true and lawful attorney in fact, in Assignor's name, place and stead, or otherwise, upon the occurrence of any Event of Default, and at any time while such Event of Default is continuing:

To do all acts and to execute, acknowledge, obtain and deliver any and all instruments, documents, items or things necessary, proper or required in connection with the Agreement;

To give any notices, instructions, or other communications in connection with the Agreement;

To demand and receive all performances due in connection with the Agreement and to take all lawful ways and means for the enforcement thereof and to compromise and settle any claim or cause of action in Assignor arising from or related to the Agreement and give acquittances and other sufficient discharges relating thereto; and

To file any claim or proceeding or to take any other action, either in its own name, in that of its nominee, in the name of Assignor, or otherwise, to enforce its rights under the Agreement or protect and preserve the right, title and interest of Lender hereunder.

The power of attorney given herein is a power coupled with an interest and shall be irrevocable so long as any part of the Note remains unpaid or unperformed. Lender shall have no obligation to exercise any of the foregoing rights and powers in any event.

Lender's Counsel. Lender may at any time to appear in and defend and be represented by counsel of its own choice in any action or proceeding purporting to affect Assignor's rights related to the Agreement.

Additional Indebtedness. All sums advanced or paid by Lender under the terms hereof, all amounts paid, suffered or incurred by Lender in exercising any authority granted herein, including reasonable attorneys' fees, and all other amounts due Lender from Assignor in connection with this Assignment shall be added to the indebtedness evidenced by the Note, shall be secured by the Loan Documents, shall bear interest at the highest rate payable under the Note until paid, and shall be due and payable by Assignor to Lender immediately upon demand.

Assignor Liability. Neither the execution and delivery of this Assignment, nor any failure on the part of any person to comply with, honor and perform in accordance with the terms of the Agreement shall affect the liability of any party to pay and perform the obligation under the Note or Loan Documents.

No Release. The taking of this Assignment by Lender shall not effect the release of any other collateral now or hereafter held by Lender as security for the Note, nor shall the taking of

additional security for the Note hereafter effect a release or termination of this Assignment or any terms, conditions or provisions hereof.

Termination. Upon payment in full of the principal, interest and all other indebtedness evidenced by the Loan Documents, this Assignment shall cease, terminate and be of no further effect; provided, however, that the affidavit, certificate, letter or statement of Lender or any other officer, agent or attorney of Lender showing any part of the principal, interest or other indebtedness on the Note being unpaid shall constitute conclusive evidence of the validity, effectiveness, and continuing force of this Agreement and any person may, and is hereby authorized to, rely thereon. Assignor hereby authorizes and directs all entities or persons having any interest in the Agreement, upon receipt of written notice from Lender, to recognize Lender as entitled to exercise all powers and receive all benefits of Assignor thereunder.

Further Assurances. Assignor, upon request of Lender, shall execute and deliver such additional documents, including but not limited to financing statements, and do such other acts as may be reasonably necessary to fully implement the intent of this Assignment and to perfect and preserve the rights and interests of Lender hereunder and the priority thereof.

Inurement. Time is of the essence hereof. This Assignment shall be binding upon Assignor and its successors and assigns and shall inure to the benefit of Lender. This Assignment, however, is not intended to confer any right or remedies upon any person other than the parties hereto.

Payment of Costs. Assignor shall pay all costs and expenses, including without limitation, court costs and reasonable attorneys' fees, incurred by Lender in enforcing performance of the obligations of Assignor or in exercising the rights and remedies of Lender hereunder. All such costs and expenses shall be secured by this Assignment and the Loan Documents. In the event of any court proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Lender.

No Waiver. No failure or delay on the part of Lender in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies hereunder are cumulative and may be exercised by Lender either independently of or concurrently with any other right, power or remedy contained herein or in any document or instrument executed in connection with the Note. Except that any exercise of rights, powers, or remedies by Lender regarding the Agreement shall be exercising the rights, powers, remedies and obligations of the Agreement in full.

Governing Law. By executing this Assignment, Assignor acknowledges receipt of a copy hereof. A carbon, photographic or other reproduced copy of this Assignment and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. This Assignment shall be governed by and construed according to the laws of the State of Colorado.

Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same document.

Lender's Successors. As used herein the term "Lender" shall mean Lender only. No assignment shall be made to Lender's participants, subsequent holders of the Note, successors, assigns, designees, nominees or owners of the Project as a consequence of foreclosure or deed in lieu of foreclosure of the Deed of Trust without the City's approval of the assignment.

Waiver of Jury Trial. ASSIGNOR AND LENDER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON AGREEMENT, TORT OR OTHERWISE) BETWEEN OR AMONG ASSIGNOR AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT OR ANY OTHER RELATED DOCUMENT OR ANY RELATIONSHIP BETWEEN ASSIGNOR AND LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT TO BENEFICIARY TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER LOAN DOCUMENTS.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Grantor has executed this Assignment under seal, as of the day and year first above written.

BRIGHTSTAR GOLF REDLANDS MESA LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of May, 2009, by _____, as _____ of BRIGHTSTAR GOLF REDLANDS MESA LLC, a Delaware limited liability company, on behalf of the company.

NOTARY PUBLIC
Name: _____
My Commission Expires: _____

EXHIBIT A

DESCRIPTION OF THE LAND

Legal Description of Redlands Mesa Golf Course

Golf Block 12R, Ten Overlook, County of Mesa, State of Colorado

Golf Blocks 15, 16, and 17, Redlands Mesa Filing 1, County of Mesa, State of Colorado;

Golf Block 14, Redlands Mesa Filing 1, excepting therefrom that certain real property described in instrument recorded on May 4, 2001 in Book 2845 at Page 535, County of Mesa, State of Colorado;

Golf Block 13R, Redlands Mesa Filing 1 Replat, County of Mesa, State of Colorado;

Tracts 11-1 and 11-4, Redlands Mesa Filing 3, County of Mesa, State of Colorado; and

Tract 6-1, Redlands Mesa Filing 4, County of Mesa, State of Colorado.

CONSENT TO ASSIGNMENT

The undersigned, CITY OF GRAND JUNCTION, a municipal corporation, State of Colorado (the "City"), whose mailing address is c/o City Manager, 250 N. 5th Street, Grand Junction, CO 81501 acknowledges to TEXTRON FINANCIAL CORPORATION, a Delaware corporation ("Lender"), having a mailing address of 11575 Great Oaks Way, Suite 210, Alpharetta, Atlanta, GA 30022, Attention: President - Golf Finance, that the City is a party to that certain Water Agreement dated April 19, 2007 (the "Agreement"), with BRIGHTSTAR GOLF REDLANDS MESA LLC, a Delaware limited liability company ("Assignor"), and that the Agreement has been, or will be, assigned by Assignor to Lender pursuant to the attached Assignment of Service Agreement (the "Assignment"), and the City hereby consents to the foregoing Assignment. Capitalized terms not otherwise defined in the Assignment or in this Consent shall have the same meaning as set forth in the Agreement.

In connection with the Loan and the assignment of the Agreement by Assignor to Lender, the City hereby certifies, represents, warrants and covenants to Lender that:

1. Representations, Warranties and Covenants of The City. City hereby certifies, represents, warrants and covenants to Lender that to the best of City's actual knowledge:

The City acknowledges and approves the assignment of the Agreement, to Lender as security for the Loan.

During the term of the Loan, the City shall not enter into any agreement with Assignor to modify the Agreement or any attachment thereto, where the same alters the amount of payment(s) under the Agreement in a manner detrimental to Lender, without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed. The City's consent to this assignment does not give the Lender any more benefits or obligations than the Agreement gave to the Assignor. Any changes that may be made in accordance with the Agreement that may alter the amount of payment(s) may be made without the written consent of Lender.

Whenever the City transmits any notice of default to Assignor with respect to the Agreement, the City shall, at the same time, transmit to Lender a copy of such notice or demand.

In the event of a breach or a default under the Loan Documents and the subsequent foreclosure of the Property or acceptance of a deed in lieu thereof by Lender, Lender shall be entitled to all of the rights and benefits of Assignor under the Agreement.

During any applicable cure period as set forth in the Agreement or extended cure period as set forth in the Assignment, Lender may, at its option, and without relieving Assignor of any of its obligations under any Loan Document, the Agreement or hereunder, take any actions necessary in order to eliminate the breach or default of Assignor.

The City warrants that this Consent and the Agreement have been duly authorized, are legal and binding upon the City, and are enforceable in accordance with their terms against the City.

Lender's Obligations. Lender shall have no obligations or duties under the Agreement (unless Lender exercises its rights to assume the Agreement) and Lender's obligation shall be limited to its agreements set forth in the Assignment and this Consent.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



Date: 10/22/09

Author: Scott Hockins

Title/ Phone Ext: Purchasing

Supervisor/1484 _____

Proposed Schedule: _____

11/2/09

2nd Reading

(if applicable):

Attach 9
Tiara Rado Golf Course Irrigation Replacement –
Phase Two
CITY COUNCIL AGENDA ITEM

Subject: Tiara Rado Golf Course Irrigation Replacement- Phase Two
File # (if applicable):
Presenters Name & Title: Rob Schoeber, Parks and Recreation Director Jay Valentine, Assistant Financial Operations Manager

Executive Summary:

This project will replace the 40 year old irrigation system at Tiara Rado Golf Course that is deteriorating and in some cases beyond repair. This approval request is for Phase Two of the project (pond construction and dirt work), consisting of the Civil Contractor (\$584,923.50) and Golf Course Specialty Contractor (\$727,189.69) for a total Phase Two cost in the amount of \$1,312,113.19.

If approved, the City will realize future cost savings through reduced irrigation and pump repairs, and decreased electrical costs. The pond construction is being done in conjunction with the irrigation replacement project. The irrigation system and pump station are designed to operate from the ponds being built by the Civil Contractor.

How this item relates to the draft Comprehensive Plan Goals and Policies:

Goal 8: Create attractive public spaces and enhance the visual appeal of the community through quality development.

The project will improve the course health and playing conditions on the City’s 18- hole golf course, while conserving power and water.

Goal 10: Develop a system of regional, neighborhood and community parks protecting open space corridors for recreation, transportation and environmental purposes.

This new irrigation system will conserve water & power, and the new ponds will improve the wildlife habitat.

Action Requested/Recommendation:

Authorize the City Purchasing Division to Enter into Construction Contracts with M.A. Concrete in the Amount of \$584,923.50 for the Civil Construction Portion of the Project, and Stonefly Earthworks in the Amount of \$727,189.69 for the Golf Course Specialty Construction Portion of the Project.

Board or Committee Recommendation:

This project has been reviewed by the City Property Committee, and has been recommended for further Council action.

Financial Impact/Budget:

The Golf fund will use loan proceeds to cover the project costs.

Background, Analysis and Options:

The irrigation system at Tiara Rado is approaching 40 years old and is showing its age. When the present system was installed it had an expected useful life of 20-25 years, which currently have three significant issues: (1) Obsolete equipment, (2) Inefficient pumping system, (3) Inadequate water storage.

There will be five irrigation storage ponds constructed (3 large and 2 small). These ponds will be located on the back-nine providing about 7 days of water storage. They will be lined to increase water storage retention in the fall as well as in the early spring. The spoils from pond construction will be used to improve other golf course features such as greens, tees and fairways.

If approved, pond construction is expected to start in November. Due to the use of heavy equipment, the back nine will need to be closed to golf until sometime in April. These winter months are the slowest period of time for golf course play. The front-nine will be open to play during the entire construction period. A totally complete project should be expected by mid-June. The following bids were received and evaluated:

Civil Contractor	City/State	Dollar Amount
M.A. Concrete	Grand Junction, CO	\$584,923.50
Stonefly Earthworks	Montrose, CO	\$626,894.20
Niebur Golf	Colorado Springs, CO	\$643,497.00

Golf Specialty Contractor	City/State	Dollar Amount
Stonefly Earthworks	Montrose, CO	\$727,189.69
Mill Brothers Golf	Fort Collins, CO	\$749,797.78
Timberstone Landscaping	Eagle, ID	\$754,253.39
Niebur Golf	Colorado Springs, CO	\$789,138.45
Landscapes Unlimited	Lincoln, NE	\$839,961.61

M.A. Concrete is a Grand Junction based company specializing in civil contracting. M.A. Concrete has a history of successfully performing City construction projects. Staff has no reservations regarding M.A. Concrete's qualifications or capability to complete this project.

Stonefly Earthworks is a Montrose based company specializing in golf course construction. While Stonefly has not worked for the City of Grand Junction in the past, they have an extensive record of completing complex golf course construction projects.

Other issues:

N/A

Previously presented or discussed:

Phase one of this project was approved by City Council on September 16, 2009.

Attachments:

N/A

Date: October 22, 2009

Author: Mary Lynn Bacus

Paralegal

Title/ Phone Ext: 244-1505

Proposed Schedule: 2nd Reading

Monday, November 2, 2009

Attach 10
Public Hearing Authorizing the Issuance and Sale
of the City of Grand Junction Joint Sewer System
Revenue Bonds
CITY COUNCIL AGENDA ITEM

Subject: Authorizing the Issuance and Sale of the City of Grand Junction Joint Sewer System Revenue Bonds, Series 2009

File # (if applicable):

Presenters Name & Title: Greg Trainor, Utilities, Streets, and Facilities Director
Tim Moore, Public Works and Planning Director

Executive Summary:

City Council and the Mesa County Commissioners have determined that in the best interests of the joint sewer system and its customers, to complete certain improvements to the Persigo Sewer System. To finance the project, the City Council has determined that it is necessary and advisable to issue its "City of Grand Junction, Colorado, Joint Sewer System Revenue Bonds, Series 2009 (Direct Pay Build America Bonds)" in the approximate amount of \$3.2 million to help defray part of the costs of the Project.

How this item relates to the draft Comprehensive Plan Goals and Policies:

Goal 12: Being a regional provider of goods and services the City and County will sustain, develop and enhance a healthy, diverse economy.

The projects funded with this loan will help the City and County sustain, develop and enhance a healthy, diverse economy. Completion of the proposed projects will aid in our continued provision of reliable and safe wastewater management to the Citizens of Grand Junction.

Action Requested/Recommendation:

Hold a Public Hearing and Consider Final Passage and Final Publication of Ordinance.

Board or Committee Recommendation:

N/A

Background, Analysis and Options:

This project includes three separate projects previously planned for maintenance and expansion of the Persigo Sewer System.

The Canary Lane Sewer Improvement District is included as a Septic System Elimination Project. This project will include extension of trunk line sewer from the Connected Lakes Lift Station to serve the Canary Lane neighborhood located north of Hwy 340 across from the Ridges Subdivision. The project will provide sewer service to 35 lots in this area. The extension of a portion of the trunk sewer line will allow for future decommissioning of the Ridges Lift Station. The estimated cost for this project is \$1 million.

A project to rehabilitate a portion of the River Road interceptor sewer is also included with this bond effort. The Persigo Wash siphon and sections of the River Road interceptor pipe have suffered damage from hydrogen sulfide gases and are in need of repair. This project is estimated at \$1.2 million.

The third project includes system expansion for the D Road Interceptor that will allow for conveyance of sewage from the Central Grand Valley Sanitation District, Pear Park and portions of East Orchard Mesa at some future date. This project is consistent with recommendations identified in the sewer basin study accomplished in conjunction with the City of Grand Junction Comprehensive Plan. This project was originally scheduled to be completed in 2015 but was moved forward as part of the ARRA application for the sewer collection system. The estimated cost of this project is \$1 million.

Financial Impact/Budget:

Completion of these projects utilizing Build America Bonds allows for greater financial flexibility to accommodate future upgrades to the waste water treatment plant or larger collection lines. This bond effort will be issued at 3.4% interest rate, which is less than historic returns on the system investments.

A portion of the costs for the Canary Lane sewer improvement district will be recovered over time through collection of trunk extension fees and repayment of 70% of the project costs for the improvement district through the Septic System Elimination Program (SSEP). A breakdown of the costs and projected revenues is included below:

	<u>Canary Lane ID</u>	<u>River Road Int.</u>	<u>D Road Interceptor</u>
<u>Bond Proceeds</u>	\$1,000,000	\$1,200,000	\$1,000,000
<u>Estimated Revenues:</u>			
SSEP Rev	<\$410,000>		
Trunk Ext. Rev	<\$33,000>		
<u>Debt Service</u>	<u>\$190,325</u>	<u>\$ 228,390</u>	<u>\$ 190,325</u>
Total Est. cost	\$747,325	\$1,428,390	\$1,190,325

Legal issues:

N/A

Other issues:

N/A

Previously presented or discussed:

First Reading of the Ordinance was on October 19, 2009 at the City Council Meeting

Attachments:

Proposed Ordinance

ORDINANCE NO. 4389

1. AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF GRAND JUNCTION, COLORADO, TAXABLE JOINT SEWER SYSTEM REVENUE BONDS (DIRECT PAY BUILD AMERICA BONDS), SERIES 2009, PAYABLE SOLELY OUT OF THE NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE JOINT SEWER SYSTEM OF THE CITY AND MESA COUNTY, COLORADO AND CERTAIN OTHER REVENUES

WHEREAS, the City of Grand Junction, Colorado (the "City"), is a home rule city duly existing under the Constitution and laws of the State of Colorado and its City Charter (the "Charter"); and

WHEREAS, the members of the Council of the City (the "Council") have been duly elected or appointed and qualified; and

WHEREAS, the County of Mesa, Colorado (the "County"), is a county duly organized and existing under the laws of the State of Colorado; and

WHEREAS, the members of the Board of County Commissioners of the County (the "Board") have been duly elected or appointed and qualified; and

WHEREAS, the City and the County entered into a Joint Sewerage Service Agreement, dated May 1, 1980, as amended on October 1, 1980, relating to the scope and operation of the joint sewerage system of the City and the County (the "Joint System") and the use of revenues from the Joint System, which includes all of the revenues and charges for connection to and use of the Joint System from whatever source derived, including, but not limited to, tap fees and sewer user charges, but excluding surcharges or add-on charges made by the City, the County, or any district for services or facilities provided by other than the Joint System; and

WHEREAS, the City and the County further entered into a 1999 Intergovernmental Agreement, dated October 13, 1998 (the "Policy Agreement"), which requires the City and the County to jointly establish and provide policy direction for the Joint System but designates the City as the operator and manager of the Joint System; and

WHEREAS, the Policy Agreement requires all bond issues and other financing arrangements relating to the Joint System to be approved by both the Council and the Board; and

WHEREAS, the Council and the Board propose to extend, better, otherwise improve, and equip the Joint System (the "Project"); and

WHEREAS, the City, with the prior consent and approval of the County, intends to issue its "City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Build America Bonds), Series 2009" (the "Bonds") to defray in part the cost of the Project; and

WHEREAS, the City is authorized pursuant to Section 93(f) of its Charter and Title 37, Article 45.1 of the Colorado Revised Statutes, as amended, to issue the Bonds and to pledge the Net Revenues (hereinafter defined) of the Joint System to the repayment of the Bonds; and

WHEREAS, the City has determined that the Joint System constitutes an enterprise pursuant to Article X, Section 20 of the Colorado Constitution and that the Bonds may therefore be issued without an election; and

WHEREAS, the City and the County have entered into a Loan Agreement, dated as of May 1, 2002 (the "Loan Agreement"), with the Colorado Water Resources and Power Development Authority (the "Authority"), evidencing a loan from the Authority to the City and the County (the "Loan") that is secured by a pledge of the Net Revenues of the Joint System; and

WHEREAS, the City and the County are not delinquent in the payment of any loan payments due under the Loan Agreement and the issuance of the Bonds within the parameters described herein does not contravene the terms and provisions of the Loan Agreement; and

WHEREAS, except to secure the Loan, neither the City nor the County has pledged nor hypothecated the Gross Revenues derived or to be derived from the operation of the Joint System, or any part thereof, to the payment of any bonds or for any other purpose, with the result that the Net Revenues may now be pledged lawfully and irrevocably to the payment of the Bonds; and

WHEREAS, the City intends to negotiate a proposal with D.A. Davidson & Co., Denver, Colorado (the "Purchaser"), concerning the purchase of the Bonds; and

WHEREAS, the Council has determined and does hereby declare:

2. In order to meet the present and future needs of the City it is necessary to extend, better, otherwise improve and equip the Joint System;

3. The Bonds shall be issued for the Project;

4. Net Revenues shall be pledged to the payment of the Bonds on a parity with the Loan Agreement, and the BAB Credit (as defined herein) shall be exclusively pledged to the payment of the Bonds;

5. Because of market conditions, the Bonds shall be sold by negotiated sale to the Purchaser in accordance with its proposal, and that such sale is to the best advantage of the City; and

6. All action preliminary to the authorization of the issuance of the Bonds has been taken.

WHEREAS, there are on file with the City Clerk the forms of the following documents: (i) the form of the Purchase Contract (as defined herein); (ii) the form of the Paying Agent Agreement (as defined herein); (iii) the form of the Preliminary Official Statement (as defined herein); and (iv) the form of the Continuing Disclosure Certificate (as defined herein); and

WHEREAS, it is necessary to provide for the form of the Bonds, the Bond details, the payment of the Bonds, and other provisions relating to the authorization, issuance, and sale of the Bonds.

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

DEFINITIONS, INTERPRETATION, RATIFICATION AND EFFECTIVE DATE

Short Title. This ordinance shall be known as and may be cited by the short title “2009 Bond Ordinance” (the “ordinance”).

Meanings and Construction.

Definitions. The terms in this Section for all purposes of this ordinance and of any ordinance amendatory hereof or supplemental hereto, or relating hereto, and of any other ordinance or any other document pertaining hereto, except where the context by clear implication otherwise requires, shall have the meanings herein specified:

“acquire” or “acquisition” means the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, lease, gift, grant from the Federal Government, the State, any body corporate and politic therein, or any other Person, the endowment, bequest, devise, transfer, assignment, option to purchase, other contract, or other acquisition, or any combination thereof, of any properties pertaining to the Joint System, or an interest therein, or any other properties herein designated.

“Acquisition Fund” means the special account designated as the “City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Build America Bonds), Series 2009, Acquisition Fund” created pursuant to Section 501(B) hereof.

“Authority” means the Colorado Water Resources and Power Development Authority.

“BAB Credit” means the credit provided in Section 6431 of the Code in lieu of any credit otherwise available to the Owners of BABs under Section 54AA(a) of the Code.

“BABs” means the Bonds and any future Parity Lien Bonds with respect to which the City expects to receive a BAB Credit.

“Balloon Bonds” means any securities payable from Net Revenues 25% or more of the original principal amount of which matures during any consecutive twelve month period if such maturing principal amount is not required to be amortized by mandatory redemption or prepayment prior to such period and if such twelve month period overlaps the Fiscal Year in which the Combined Maximum Annual Principal and Interest Requirements occur (without regard to the assumptions contained in clause (C)(3) of the definition of Combined Maximum Annual Principal and Interest Requirements).

“Board” means the Board of County Commissioners of the County.

“Bond Counsel” means an attorney or a firm of attorneys, designated by the City of nationally recognized standing in matters pertaining to the tax status of interest on bonds issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

“Bond Account” means the special account designated as the “City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Build America Bonds), Series 2009, Bond Account” created pursuant to Section 605 hereof, which shall be used solely to pay debt service on the Bonds.

“Bond Requirements” means the principal of, any prior redemption premiums due in connection with, and the interest on the Bonds or any Parity Lien Bonds payable from (A) the Net Revenues and, (B) with respect to BABs, including the Bonds, from the BAB Credit payable with respect such BABs.

“Bonds” means those securities issued hereunder and designated as the “City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Build America Bonds), Series 2009.”

“Book-entry form” or “book-entry system” means, with respect to the Bonds, a form or system, as applicable, under which physical Bond certificates in fully registered form are registered only in the name of The Depository Trust Company or its nominee as Owner, with the physical Bond certificates “immobilized” in the custody of The Depository Trust Company. The book-entry system maintained by and the responsibility of The Depository Trust Company and not maintained by or the responsibility of the City or the Paying Agent is the record that identifies, and records the transfer of the interests of, the owners of book-entry interests in the Bonds.

“Business Day” means a day of the year, except for: a Saturday or Sunday; a day on which commercial banks located in the city in which the principal corporate trust office of the Paying Agent is located are required or authorized to remain closed; or a day on which the New York Stock Exchange is closed.

“Capital Improvements” means the acquisition of land, easements, facilities, equipment, and materials (other than ordinary repairs and replacements), and the construction or reconstruction or other acquisition of improvements, betterments, and extensions, for use by or in connection with the Joint System, including related planning, legal, and engineering expenses and administrative facilities, and further including, without limitation, any of the foregoing which are constructed, reconstructed, acquired or owned on a cooperative basis with any other entities.

“City” means the City of Grand Junction, Colorado.

“City Clerk” means the City Clerk of the City, or his or her successor in functions, if any.

“Charter” means the City Charter.

“Closing Date” means the date of delivery of and payment for the Bonds.

“Code” means the Internal Revenue Code of 1986, as amended to the date of delivery of the Bonds, and the regulations promulgated thereunder.

“Combined Maximum Annual Principal and Interest Requirements” means the largest sum of the principal of and interest on the Bonds and any other Outstanding Parity Lien Bonds, excluding any securities the principal of which is payable within less than one year from the date on which issued, to be paid during any one Fiscal Year for the period beginning with the Fiscal Year in which such computation is made and ending with the Fiscal Year in which any Bond or other such security last becomes due at maturity or on a Redemption Date, whichever time is later (but excluding any reserve requirement to secure such payments unless otherwise expressly provided), subject in all respects to the following, as applicable:

(A) The word “principal,” as used in this definition, means the principal which must be paid to security Owners, whether on stated maturity dates or on mandatory Redemption Dates, or otherwise.

(B) Any computation made under this definition shall be adjusted for all purposes in the same manner as is provided in Section 803(C) hereof.

(C) For purposes of this definition, (1) Variable Rate Bonds shall be assumed to bear interest at the highest of: (a) the actual rate of any Outstanding Variable Rate Bonds on the date of computation, or if the Variable Rate Bonds are not yet Outstanding, the initial rate (if established and binding), (b) if the Variable Rate Bonds have been Outstanding for at least twelve months, the average rate over the

twelve months immediately preceding the date of computation, or if no Variable Rate Bonds are Outstanding for such twelve months, the average rate borne by reference to an index comparable to that to be utilized in determining the interest rate for the Variable Rate Bonds to be issued or (c) (i) if interest on the Variable Rate Bonds is excludable from gross income under the applicable provisions of the Internal Revenue Code, the most recently published Bond Buyer "Revenue Bond Index" (or if such Index is not published within 30 days prior to such determination, such index selected by the City and acceptable to the Insurer), or (ii) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities; (2) any Tender Bonds Outstanding at the time of such determination shall mature on the stated maturity or mandatory Redemption Date or Dates thereof; and (3) any Balloon Bonds Outstanding at the time of such determination which mature more than six months thereafter shall be deemed to mature over 30 years from the date of issuance of the Balloon Bonds, will bear interest on the unpaid principal amount thereof at the fixed rate of interest equal to the Revenue Bond Index or if such Index is no longer published, of a comparable index selected by the City and acceptable to the Insurer and will be payable on a level annual debt service basis over a thirty year period.

"Commercial Bank" means a state or national bank or trust company which is a member of the Federal Deposit Insurance Corporation (or any successors thereto) and of the Federal Reserve System, which has a capital and surplus of \$10,000,000 or more, and which is located within the United States of America.

"Continuing Disclosure Certificate" means the Continuing Disclosure Certificate executed by the City in connection with the issuance of the Bonds, which constitutes an undertaking pursuant to Rule 15c2-12 promulgated by the U.S. Securities and Exchange Commission.

"County" means Mesa County, Colorado.

"Cost of the Project" means all costs, as designated by the City, of the Project, or any interest therein, which cost, at the option of the City (except as may be otherwise limited by law) may include all, any one or other portion of the incidental costs pertaining to the Project, including, without limitation:

(A) All preliminary expenses or other costs advanced by the City or advanced by the Federal Government, the State or by any other Person from any source, with the approval of the Council, or any combination thereof, or otherwise;

(B) The costs of making surveys and tests, audits, preliminary plans, other plans, specifications, estimates of costs and other preliminaries;

(C) The costs of contingencies;

(D) The costs of premiums on any builders' risk insurance and performance bonds during the construction, installation and other acquisition of the Project, or a reasonably allocated share thereof;

(E) The costs of appraising, printing, estimates, advice, inspection, other services of engineers, architects, accountants, financial consultants, attorneys at law, clerical help and other agents and employees;

(F) The costs of making, publishing, posting, mailing and otherwise giving any notice in connection with the Project and the issuance of the Bonds;

(G) All costs and expenses of issuing the Bonds including, without limitation, fees of the Paying Agent, bond counsel, counsel to the Purchaser, financial advisor, rating agencies and printers to the extent not defrayed as an Operation and Maintenance Expense;

(H) The costs of the filing or recording of instruments and the cost of any title insurance premiums;

(I) The costs of funding any construction loans and other temporary loans pertaining to the Project and of the incidental expenses incurred in connection with such loans;

(J) The costs of demolishing, removing, or relocating any buildings, structures, or other facilities on land acquired for the Project, and of acquiring lands to which such buildings, structures or other facilities may be moved or relocated;

(K) The costs of machinery and equipment;

(L) The costs of any properties, rights, easements or other interests in properties, or any licenses, privileges, agreements and franchises;

(M) The payment of the premium for the Insurance Policy and Reserve Account Insurance Policy issued by the Insurer;

(N) The costs of labor, material and obligations incurred to contractors, builders and materialmen in connection with the acquisition and construction of the Project;

(O) The costs of amending any ordinance, resolution or other instrument pertaining to the Bonds or otherwise to the Joint System; and

(P) All other expenses pertaining to the Project.

“Council” means the Council of the City.

“Events of Default” means the events stated in Section 1003 hereof.

“Extraordinary Event” means an event causing the BAB Credit expected to be received with respect to the Bonds to be eliminated or reduced, as

reasonably determined by the Finance Director, which determination shall be conclusive, as a result of:

(A) a material adverse change to Section 54AA or 6431 of the Code,

(B) guidance published by the Internal Revenue Service or the United States Treasury with respect to such Sections, or

(C) a determination by the Internal Revenue Service or the United States Treasury, which determination is not the result of a failure of the City to satisfy the requirements of Section 930 hereof.

“Federal Government” means the United States of America and any agency, instrumentality or corporation thereof.

“Federal Securities” means bills, certificates of indebtedness, notes, bonds or other similar instruments which are direct non-callable obligations of the United States of America or which are fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America.

“Finance Director” means the Financial Operations Manager of the City, or his or her successor in functions, if any.

“Fiscal Year” means the calendar year or any other 12 month period hereafter selected by the City as its fiscal year.

“Gross Revenues” means all income, charges, and revenues derived directly or indirectly from the operation and use of and otherwise pertaining to the Joint System, or any part thereof, whether resulting from Capital Improvements or otherwise, and includes all income, charges, and revenues received from the Joint System, including without limitation:

(A) All fees, rates, and other charges for the use of the Joint System, or for any service rendered in the operation thereof, directly or indirectly, the availability of any such service, or the sale or other disposal of any commodities derived therefrom, including, without limitation, connection charges, but:

(1) Excluding (subject to Section 601 hereof) any moneys borrowed and used for the acquisition of Capital Improvements or for the refunding of securities and income or other gain from any investment of such borrowed moneys;

(2) Excluding any moneys received as grants, appropriations or gifts from the Federal Government, the State, or other sources, the use of which is limited by the grantor or donor to the construction of Capital Improvements, except to the extent any such moneys shall be received as payments for

the use of the Joint System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom; and

(3) Excluding surcharges or add-on charges made by the City, the County, or any district for services or facilities not provided by the Joint System;

(B) All income or other gain from any investment of Gross Revenues (including without limitation the income or gain from any investment of all moneys in the Bond Account and Reserve Account and of all Net Revenues, but excluding borrowed moneys and all income or other gain thereon in the Acquisition Fund, any other acquisition fund, or any escrow fund for any securities heretofore or hereafter issued), unless the Council and the Board otherwise provide by ordinance and resolution; and

(C) All income and revenues derived from the operation of any other utility or other income-producing facilities added to the Joint System and to which the pledge and lien herein provided are extended.

“improve” or “improvement” means the extension, reconstruction, alteration, betterment or other improvement by the construction, purchase or other acquisition of facilities, including, without limitation, appurtenant machinery, apparatus, fixtures, structures and buildings.

“Income Fund” means the Income Fund of the City created by the Loan Agreement and continued in Section 602 hereof, into which all Gross Revenues are directed to be deposited as provided in Section 602 hereof.

“Independent Accountant” means any certified public accountant, or any firm of certified public accountants, duly licensed to practice and practicing as such under the laws of the State:

(A) Who is, in fact, independent and not under the domination of the City;

(B) Who does not have any substantial interest, direct or indirect, with the City, and

(C) Who is not connected with the City as an officer or employee thereof, but who may be regularly retained to make annual or similar audits of any books or records of the City.

“Independent Engineer” means an individual, firm or corporation engaged in the engineering profession of recognized good standing and having specific experience in respect of business and properties of a character similar to those of the Joint System, which individual, firm or corporation has no substantial interest, direct or indirect, in the City and in the case of an individual, is not a member of the Council, or

an officer or employee of the City, and in the case of a firm or corporation, does not have a partner, director, officer or employee who is a member of the Council or an officer or employee of the City.

“Insurance Policy” means the municipal bond insurance policy, if any, issued by the Insurer that guarantees the payment of the principal of and interest on the Bonds when due.

“Insurer” means the issuer of the Insurance Policy, if any.

“Investment Securities” means any securities or other obligations permitted as investments of moneys of the City under the laws of the State.

“Joint System” means the municipal wastewater system, consisting of all properties, real, personal, mixed or otherwise, now a part of or hereafter acquired by the Joint System, the City, or the County, through purchase construction, or otherwise, and used in connection with the Joint System, and in any way pertaining thereto, whether or not located within or without or both within and without the boundaries of the County; and, with the prior written consent of the Insurer, such defined term includes any other utility or other income-producing facilities added to the Joint System and to which the lien and pledge herein provided are extended by ordinance or resolution adopted by the Council and the Board.

“Letter of Representations” means the Letter of Representations from the City and The Depository Trust Company in connection with the issuance of the Bonds in a book-entry system, as supplemented and amended from time to time.

“Loan Agreement” means the Loan Agreement, dated as of May 1, 2002, by and among the Authority, the City, and the County, relating to the Loan.

“Loan” means the loan from the Authority to the City and the County evidenced by the Loan Agreement.

“Net Revenues” means the Gross Revenues remaining after the payment of the Operation and Maintenance Expenses of the Joint System.

“Official Statement” means the Official Statement delivered in connection with the original issuance and sale of the Bonds.

“Operation and Maintenance Expenses” means all reasonable and necessary current expenses, paid or accrued, of operating, maintaining, and repairing the Joint System or any component, division or other part thereof, or any other designated facilities in connection with which such term is used including, without limitation, all salaries, labor, materials and repairs necessary to render efficient service.

“Operation and Maintenance Expenses Reserve Account” means the Operations and Maintenance Reserve Fund created in the Loan Agreement and

continued in Section 607 hereof for so long as the Loan, or any portion thereof, is outstanding.

“Outstanding” when used with reference to the Bonds, the Parity Lien Bonds, or any other designated securities, and as of any particular date, means all of the Bonds, the Parity Lien Bonds, or any such other securities payable from the Net Revenues or otherwise pertaining to the Joint System, as the case may be, in any manner theretofore and thereupon being executed and delivered:

(A) Except any Bond or other security canceled by the City, by any paying agent, or otherwise on the City’s behalf, at or before such date;

(B) Except any Bond or other security deemed to be paid as provided in Section 1301 hereof or any similar provision of the ordinance authorizing the issuance of such other security;

(C) Except any Bond or other security in lieu of or in substitution for which another Bond or other security shall have been executed and delivered pursuant to Sections 306, 307 or 1108 hereof or any similar provisions of the ordinance authorizing the issuance of such other security.

“Owner” means the registered owner of any designated Bond or other designated security.

“Parity Lien Bonds” means the Loan and any other securities hereafter issued payable from and having an irrevocable lien upon the Net Revenues on a parity with the Bonds.

“Parity Bond Ordinances” means the Loan Agreement and any agreements hereafter entered into by the City, with the consent of the Board, with respect to Parity Lien Bonds and, without duplication, any ordinances hereafter adopted by the Council, with the consent of the Board, authorizing the issuance of Parity Lien Bonds.

“Paying Agent” means Zions First National Bank, in Denver, Colorado, and being an agent of the City for the payment of the Bond Requirements due in connection with the Bonds, the registrar for the Bonds and for other administration of moneys pertaining to the Bonds, and includes any successor Commercial Bank as paying agent.

“Paying Agent Agreement” means the Registrar and Paying Agent Agreement between the City and the Paying Agent.

“Person” means a corporation, firm, other body corporate (including, without limitation, the Federal Government, the State, or any other body corporate and politic other than the City), partnership, limited liability company, association or individual, and also includes an executor, administrator, trustee, receiver or other representative appointed according to law.

“Policy Agreement” means the 1999 Intergovernmental Agreement, dated October 13, 1998, which (A) requires the Council and the Board to jointly establish and provide policy direction for the Joint System, and (B) appoints the City as the operator and manager of the Joint System.

“Policy Costs” means repayment of draws under the Reserve Account Insurance Policy, if any, plus all related reasonable expenses incurred by the Surety Provider.

“Preliminary Official Statement” means the Preliminary Official Statement delivered in connection with the original issuance and sale of the Bonds.

“President” means the President of the Council, or his or her successor in functions.

“Project” means the land, facilities and rights constructed, installed, purchased and otherwise acquired for the Joint System, the cost of which is to be defrayed with a portion of the proceeds of the Bonds and which constitute Capital Improvements.

“Pro Rata Portion” means the dollar amount derived by dividing the amount of principal or interest to come due on the next principal or interest payment date by the number of monthly credits required to be made prior to such payment date.

“Purchaser” means D.A. Davidson & Co., Denver, Colorado.

“Purchase Contract” means the Bond Purchase Agreement between the City and the Purchaser concerning the purchase of the Bonds.

“Rating Agency” means each nationally recognized securities rating agency then maintaining a rating on the Bonds.

“Rebate Fund” means the special account designated as the “City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Build America Bonds), Series 2009, Rebate Fund” created pursuant to Section 608 hereof.

“Record Date” means the close of business on the fifteenth day (whether or not a Business Day) of the calendar month next preceding an interest payment date.

“Redemption Date” means the date fixed for the redemption prior to their respective maturities of any Bonds or other designated securities payable from Net Revenues in any notice of prior redemption or otherwise fixed and designated by the City.

“Reserve Account” means the special account designated as the “City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct

Pay Build America Bonds), Series 2009, Reserve Account” created pursuant to Section 606 hereof and securing only the Bonds.

“Reserve Account Insurance Policy” any insurance policy, surety bond, irrevocable letter of credit or similar instrument deposited in or credited to the Reserve Account in lieu of or in partial substitution for moneys on deposit therein. The issuer providing any such Reserve Account Insurance Policy shall be an issuer which then is rated in one of the four highest investment grade rating categories by one or more nationally recognized organizations which regularly rate such obligations.

“Reserve Account Requirement” has the meaning ascribed to such term in the Sale Certificate.

“Revenue Bond Index” means the Revenue Bond Index as published in the most recent issue of The Bond Buyer (or any successor thereto).

“Sale Certificate” means the sale certificate of the City relating to the Bonds issued pursuant to the Supplemental Public Securities Act and described in Section 213 hereof.

“Special Record Date” means a special date fixed by the Paying Agent to determine the names and addresses of Owners of Bonds for the purpose of paying interest on a special interest payment date for the payment of defaulted interest, all as further provided in Section 302 hereof.

“State” means the State of Colorado.

“Subordinate Securities” means securities payable from the Net Revenues subordinate and junior to the lien thereon of the Bonds and any Parity Lien Bonds.

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

“Surety Provider” means any entity issuing a Reserve Account Insurance Policy with respect to the Bonds.

“Tax Compliance Certificate” means the Federal Tax Certificate executed by the City in connection with the initial issuance and delivery of the Bonds as it may from time to time be amended.

“Tender Bonds” means any securities payable from Net Revenues which by their terms may be required to be tendered for purchase, or which may be tendered by and at the option of the Owner thereof for purchase, prior to the stated maturity thereof.

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

“Trust Bank” means a Commercial Bank that is authorized to exercise and is exercising trust powers located within or without the State, and also means any branch of the Federal Reserve Bank.

“Variable Rate Bonds” means any securities payable from Net Revenues issued with a variable, adjustable, convertible or other similar interest rate which is not fixed in percentage for the entire term thereof at the date of issue.

City or County Held Securities. Any securities held by the City or the County that are payable from Net Revenues shall not be deemed to be Outstanding for the purpose of redemption nor Outstanding for the purpose of consents hereunder or for any other purpose herein.

Parties Interested Herein. Nothing herein expressed or implied confers any right, remedy or claim upon any Person, other than the City, the Council, the County, the Board, the Paying Agent, the Insurer, the Surety Provider, the Owners of the Bonds and the Owners of any Parity Lien Bonds or other securities payable from the Net Revenues when reference is expressly made thereto. All of the covenants, stipulations, promises and agreements herein contained by and on behalf of the City and the County shall be for the sole and exclusive benefit of the City and the County, the Council, the Board, the Paying Agent, the Insurer, the Surety Provider, the Owners of the Bonds and the Owners of any such other securities in the event of such a reference.

Ratification; Approval of Documents. All action heretofore taken (not inconsistent with the provisions of this ordinance) by the Council and the officers of the City directed toward the Project and the sale and delivery of the Bonds for such purposes, be, and the same hereby is, ratified, approved and confirmed.

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 such bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Severability. If any section, subsection, paragraph, clause or other provision of this ordinance for any reason is invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or other provision shall not affect any of the remaining provisions of this ordinance.

Ordinance Irrepealable. After any of the Bonds are issued, this ordinance shall constitute an irrevocable contract between the City and the Owner or Owners of the Bonds and this ordinance shall be and shall remain irrepealable until the Bonds, as to all Bond Requirements, shall be fully paid, canceled, and discharged, except as herein otherwise provided.

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

DETERMINATION OF AUTHORITY AND OBLIGATIONS;
APPROVAL OF RELATED DOCUMENTS; AND ELECTION TO
APPLY SUPPLEMENTAL PUBLIC SECURITIES ACT TO THE BONDS

Authority for this Ordinance. The Bonds are issued in accordance with (A) Section 93(f) of the Charter, Title 37, Article 45.1 of the Colorado Revised Statutes, as amended, and Title 11, Article 59.7 of the Colorado Revised Statutes, as amended, (B) the Policy Agreement, (C) this ordinance, and (D) the Supplemental Public Securities Act. For the purpose of defraying the cost of the Project, the Council, with the consent of the Board, hereby authorizes to be issued its "City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Build America Bonds), Series 2009," in the aggregate principal amount provided in the Sale Certificate, subject to the parameters and restrictions contained in this ordinance.

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 Bonds, all of which, regardless of the time or times of their issue or 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 Bond Requirements of the Bonds and the Policy Costs shall be payable and collectible out of the Net Revenues, and the Bonds shall be further payable from the BAB Credit, which revenues are so pledged; the Owner or Owners of the Bonds and the Surety Provider may not look to any general or other fund for the payment of such Bond Requirements, except the herein designated special funds pledged therefor; the Bonds and the Policy Costs shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation; and the Bonds and the Policy Costs shall not be considered or held to be general obligations of the City but shall constitute its special obligations. No statutory or constitutional provision enacted after the issuance of the Bonds shall in any manner be construed as limiting or impairing the obligation of the City to comply with the provisions of this ordinance or to pay the Bond Requirements of the Bonds and the Policy Costs as herein provided.

Character of Agreement. None of the covenants, agreements, representations and warranties contained herein or in the Bonds shall ever impose or shall be construed as imposing any liability, obligation or charge against the City (except the special funds pledged therefor), or against their general credit, or as payable out of their respective general funds or out of any funds derived from taxation or out of any other revenue source (other than those pledged therefor).

No Pledge of Property. The payment of the Bonds and the Policy Costs is not secured by an encumbrance, mortgage or other pledge of property of the City or the County, except for the Net Revenues and other moneys pledged for the payment of the Bond Requirements of the Bonds (including the BAB Credit, which is pledged exclusively to the payment of the Bonds). No property of the City or the County, subject to such exception, shall be liable to be forfeited or taken in payment of the Bonds or the Policy Costs.

No Recourse Against Officers and Agents. No recourse shall be had for the payment of the Bond Requirements of the 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, employee or other agent of the City, past, present or future, either directly or indirectly through the Council, the City, or otherwise, whether by virtue of any penalty or otherwise, all such liability, if any, being by the acceptance of the Bonds and as part of the consideration of their issuance specially waived and released.

Authorization of the Project. The Council does hereby determine to undertake the Project, which is hereby authorized, and the proceeds of the Bonds shall be used therefor.

Enterprise Status. The Council hereby confirms that the Joint System is an "enterprise" for the purposes of Article X, Section 20 of the Colorado Constitution.

Sale of Bonds. The Bonds shall be sold by negotiated sale to the Purchaser. Pursuant to the Supplemental Public Securities Act, the Council hereby delegates to the President or the Finance Director the authority to execute the Sale Certificate and the Purchase Contract, subject to the parameters contained in this ordinance.

Official Statement. The preparation and use of the Preliminary Official Statement and of the final Official Statement are hereby authorized. The Finance Director is hereby authorized to approve, on behalf of the City, the Official Statement. The execution of the Official Statement by the Finance Director shall be conclusively deemed to evidence the approval of the form and contents of the Official Statement by the Council with respect to the Joint System.

Paying Agent Agreement. The Council hereby determines to approve the Paying Agent Agreement. If the Paying Agent appointed thereunder shall resign, or if the City shall determine to remove the Paying Agent, then the City may appoint a successor Paying Agent, upon notice mailed to each owner of any Bond at his address last shown on the registration records maintained by the Paying Agent. No resignation or dismissal of the Paying Agent may take effect until a successor has been appointed and has accepted the duties of the Paying Agent. Every such successor Paying Agent shall be a bank or trust company located in the United States of America and having shareholder's equity (e.g., capital stock, surplus and profits), however denominated, of not less than \$10,000,000.

Other Related Documents. The forms, terms, and provisions of the Paying Agent Agreement and the Continuing Disclosure Certificate are hereby approved and the President, the Finance Director and the City Clerk and any deputy thereof are hereby authorized and directed to execute each of such documents on behalf of and in the name of the City, and to deliver each of such documents, in substantially the form on file with the City Clerk, with such changes as are not inconsistent herewith. The Council further approves the performance by the City of its obligations under the Preliminary Official Statement

Election to Apply Supplemental Public Securities Act to the Bonds. Pursuant to Section 11-57-204 of the Supplemental Public Securities Act, a public entity, including the City, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Public Securities Act. The Council hereby elects to apply all of the provisions of the Supplemental Public Securities Act to the Bonds. Pursuant to such election to apply Section 11-57-205 of the Supplemental Public Securities Act to the Bonds, the Council hereby delegates to the President or the Finance Director the authority to make the following determinations with respect to the Bonds, subject to the parameters and restrictions contained in this ordinance, without any requirement that the Council approve such determinations:

(A) Interest Rate. The net effective rate of interest to be borne by the Bonds, which shall not exceed 4.00% per annum net of any anticipated BAB Credit.

(B) Redemption Provisions. The prior redemption provisions of the Bonds, as set forth in the Sale Certificate. Such redemption provisions shall include the discount rate above the Treasury Rate (as defined in Section 403 hereof) required to be determined for extraordinary optional redemptions of the Bonds pursuant to Section 403 hereof.

(C) Purchase Price. The price at which the Bonds will be sold to the Purchaser, which shall not be less than 99.6% of the aggregate principal amount of the Bonds.

(D) Principal Amount. The aggregate principal amount of the Bonds, provided that such aggregate principal amount shall not exceed \$5,250,000.

(E) Interest Payment Dates. The interest payment dates for the Bonds, and the first interest payment date for the Bonds.

(F) Maturity Schedule. The amount of principal of the Bonds maturing, or subject to mandatory sinking fund redemption, in any particular year; to be not more than \$1,055,000 annually, and the total repayment cost shall not exceed \$6,900,000 without netting any anticipated BAB Credit.

(G) Reserve Account Requirement. The amount of the Reserve Account Requirement for the Reserve Account, subject to the limitations of the Code.

(H) Term of the Bonds. The Bonds shall mature no later than December 1, 2019.

(I) Bond Insurer. Either the President or the Finance Director may determine whether it is in the best interest of the City to obtain a municipal bond insurance policy, and if so determined, to execute any commitment or any other agreement relating to same. If the City should determine that the Bonds will not be insured, any reference to the Insurer or the Insurance Policy herein shall be of no force or effect.

AUTHORIZATION, TERMS, EXECUTION AND ISSUANCE OF BONDS

Authorization of Bonds. For the purpose of protecting the public health, conserving the property and advancing the general welfare of the citizens of the City and the County and of defraying wholly or in part the Cost of the Project, the “City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Build America Bonds), Series 2009” in an aggregate principal amount set forth in the Sale Certificate (but not to exceed \$5,250,000) are hereby authorized to be issued; and the City pledges irrevocably, but not necessarily exclusively, the Net Revenues, and further irrevocably and exclusively pledges the BAB Credit relating to the Bonds, to the payment of the Bond Requirements of the Bonds.

Bond Details.

Basic Provisions. The Bonds shall be issued in fully registered form (*i.e.* registered as to payment of both principal and interest), in denominations of \$5,000 or any integral multiple thereof. The Bonds shall be lettered “R” and shall be numbered separately from 1 upward. The Bonds shall be dated as of the date of delivery of the Bonds. The Bonds shall mature on December 1, in the years and amounts and subject to prior redemption as set forth herein and in the Sale Certificate. The Bonds shall bear interest from the most recent interest payment date to which interest has been paid, or if no interest has been paid, from their date until their respective maturities (or prior redemption) at the rates set forth in the Sale Certificate. No interest shall accrue on any Bonds owned by or on behalf of the City or the County.

Payment of Bonds. The principal of each Bond shall be payable at the principal corporate trust office of the Paying Agent, or at such other office as the Paying Agent directs in writing to the Owners of the Bonds, or at the principal office of its successor, upon presentation and surrender of the Bond. Payment of interest on any Bond shall be made to the Owner thereof 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 such Owner at his or her address as it appears on the registration records kept by the Paying Agent on the Record Date; but any such interest not so timely paid or duly provided for shall cease to be payable to the

person who is the Owner thereof at the close of business on the Record Date and shall be payable to the person who is the Owner thereof 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 such defaulted interest shall be fixed by the Paying Agent whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the Owners not less than ten days prior to the Special Record Date by first-class mail to each such Owner as shown on the Paying Agent's registration books on a date selected by the Paying Agent, 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 Bond by such alternative means as may be mutually agreed to between the Owner of such Bond and the Paying Agent. If any Bond is not paid upon its presentation and surrender at or after its maturity or prior redemption, interest shall continue at its stated rate per annum until the principal thereof is paid in full. All such payments shall be made in lawful money of the United States of America.

Execution of Bonds. The Bonds shall be executed in the name of the City by the manual or facsimile signature of the President of the Council, sealed with a manual or facsimile impression of the seal of the City, and attested by the manual or facsimile signature of the City Clerk; and shall be approved by the County with the manual or facsimile signature of the Chair of the Board, sealed with a manual or facsimile impression of the seal of the County, and attested by the manual or facsimile signature of the County Clerk. Any Bond may be signed (manually or by facsimile), approved, sealed or attested on behalf of the City or the County 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, the City Clerk, the Chair of the Board, and the County 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 Bonds. Before the execution of any Bond, the President, the City Clerk, the Chair of the Board, and the County Clerk shall each file with the Secretary of State of the State his or her manual signature certified by him or her under oath.

Authentication Certificate. The authentication certificate upon the Bonds shall be substantially in the form and tenor provided in the form of the Bonds attached to this ordinance as Exhibit A. No Bond shall be secured hereby or entitled to the benefit hereof, nor shall any Bond be valid or obligatory for any purpose, unless the certificate of authentication, substantially in such form, has been duly executed by the Paying Agent and such certificate of the Paying Agent upon any Bond shall be conclusive evidence that such Bond has been authenticated and delivered hereunder. The certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized officer or employee of the Paying Agent, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bonds.

Registration and Payment. The Paying Agent shall keep or cause to be kept sufficient records for the registration and transfer of the Bonds, which shall at all

times be open to inspection by the City. Upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said records, Bonds as herein provided. Except as provided in Section 307 hereof, the Person in whose name any Bond shall be registered on the registration records kept by the Paying Agent shall be deemed and regarded as the absolute owner thereof for the purpose of making payment of the Bond Requirements thereof and for all other purposes; and payment of or on account of the Bond Requirements of any Bond shall be made only to the Owner thereof or his or her legal representative, but such registration may be changed upon transfer of such 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 Bond to the extent of the sum or sums so paid. The foregoing provisions of this Section are subject to the provisions of Section 308 hereof.

Transfer and Exchange. Any Bond may be transferred upon the records required to be kept pursuant to the provisions of Section 305 hereof by the Person in whose name it is registered, in person or by his or her duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer in a form approved by the Paying Agent, duly executed. Whenever any Bond or Bonds shall be surrendered for transfer, the Paying Agent shall authenticate and deliver a new Bond or Bonds for a like aggregate principal amount and of the same maturity and interest rate and of any authorized denominations. The Bonds may be exchanged by the Paying Agent for a like aggregate principal amount of Bonds of the same maturity and interest rate and of other authorized denominations. The execution by the City, and approval by the County, of any Bond of any denomination shall constitute full and due authorization of such denomination and the Paying Agent shall thereby be authorized to authenticate and deliver such Bond.

The Paying Agent shall not be required to transfer or exchange (A) any Bond subject to redemption during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Bonds and ending at the close of business on the day such notice is mailed, or (B) any Bond so selected for redemption in whole or in part after the mailing of notice calling such Bond or any portion thereof for prior redemption except the unredeemed portion of Bonds being redeemed in part.

The Paying Agent shall require the payment by any Owner requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer, and may charge a sum sufficient to pay the cost of preparing each new Bond upon each exchange or transfer and any other expenses of the City, the County, or the Paying Agent incurred in connection therewith.

The foregoing provisions of this Section are subject to the provisions of Section 308 hereof.

Bond Replacement. Upon receipt by the City and the Paying Agent of evidence satisfactory to them of the ownership of and the loss, theft, destruction or

mutilation of any Bond and, in the case of a lost, stolen or destroyed Bond, of indemnity satisfactory to them, and in the case of a mutilated Bond upon surrender and cancellation of the Bond, (A) the City shall execute, the County shall approve, and the Paying Agent shall authenticate and deliver a new Bond of the same date, interest rate and denomination in lieu of such lost, stolen, destroyed or mutilated Bond or (B) if such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, in lieu of executing and delivering a new Bond as aforesaid, the City may pay such Bond. Any such new Bond shall bear a number not previously assigned. The applicant for any such new Bond may be required to pay all expenses and charges of the City, the County, and of the Paying Agent in connection with the issuance of such Bond. All Bonds shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing conditions are exclusive with respect to the replacement and payment of mutilated, destroyed, lost or stolen Bonds, negotiable instruments or other securities.

Custodial Deposit.

A. Depository. Notwithstanding any contrary provision of this ordinance, the Bonds initially shall be evidenced by one Bond of the same maturity and interest rate in denominations equal to the aggregate principal amount of the Bonds of the same maturity and interest rate. Such initially delivered Bonds shall be registered in the name of "Cede & Co." as nominee for The Depository Trust Company, the securities depository for the Bonds. The Bonds may not thereafter be transferred or exchanged except:

(1) 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(a)(5), C.R.S. and a qualified and registered "clearing agency" under Section 17A of the Securities Exchange Act of 1934, as amended; or

(2) upon the resignation of The Depository Trust Company or a successor or new depository institution 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 a new depository institution 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 Bonds, which new depository must be both a "clearing corporation" as defined in Section 4-8-102(a)(5), C.R.S. 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 institution; or

(3) upon the resignation of The Depository Trust Company or a successor or new depository institution under clause (1) above or designation of a new depository institution pursuant to clause (2) above, or a determination of the Council that The Depository Trust Company or such successor or depository institution is no longer able to carry out its functions, and the failure by the Council, after reasonable

investigation, to locate another depository institution under clause (2) to carry out such depository institution functions.

B. Successor. 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, upon receipt of the outstanding Bonds by the Paying Agent together with written instructions for transfer satisfactory to the Paying Agent, a new Bond for each maturity and interest rate of the 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 Bonds as provided in clause (3) of paragraph A hereof, and upon receipt of the outstanding Bonds by the Paying Agent, together with written instructions for transfer satisfactory to the Paying Agent, new Bonds shall be issued in authorized denominations as provided in and subject to the limitations of Sections 302, 305, and 306 hereof, registered in the names of such persons, as are requested in such written transfer instructions; however, the Paying Agent shall not be required to deliver such new Bonds within a period of less than 60 days from the date of receipt of such written transfer instructions.

C. Absolute Owner. The Council and the Paying Agent shall be entitled to treat the 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 and the Paying Agent shall have no responsibility for transmitting payments or notices to the beneficial owners of the Bonds held by The Depository Trust Company or any successor or new depository named pursuant to paragraph A hereof.

D. Payment. The Council 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 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.

E. Redemption. Upon any partial redemption of Bonds of the same maturity and interest rate, Cede & Co. (or its successor) in its discretion may request the City to issue, the County to approve, and the Paying Agent to authenticate a new Bond, or shall make an appropriate notation on the Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case the Bond must be presented to the Paying Agent prior to payment. The records of the Paying Agent shall govern in the case of any dispute as to the amount of any partial prepayment made to Cede & Co. (or its successor).

Bond Cancellation. Whenever any Bond shall be surrendered to the Paying Agent upon payment thereof, or to the Paying Agent for transfer, exchange or replacement as provided herein, such Bond shall be promptly canceled and destroyed

by the Paying Agent, and a certificate of such cancellation and destruction shall be furnished by the Paying Agent to the City.

Incontestable Recital in Bonds. Pursuant to Article XX of the State Constitution, the Supplemental Public Securities Act and this ordinance, each Bond shall recite that it is issued under the authority of this ordinance and the Supplemental Public Securities Act and that it is the intention of the City that such recital shall conclusively impart full compliance with all the provisions of this ordinance and shall be conclusive evidence of the validity and the regularity of the issuance of the Bonds after their delivery for value and that all of the Bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Bond Form. Subject to the provisions of this ordinance, each Bond shall be in substantially the form attached hereto as Exhibit A, 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, be consistent with this ordinance or be necessary or appropriate to conform to the rules and requirements of any governmental authority or any usage or requirement of law with respect thereto.

REDEMPTION

Optional Redemption. The Bonds will be subject to redemption at the option of the City from any legally available funds on the dates, at the prices, and in the manner set forth in the Sale Certificate.

Notwithstanding the foregoing, the Bonds may not be redeemed pursuant to this Section unless all Policy Costs, if any, due and owing at the time to the Surety Provider have been paid.

Mandatory Sinking Fund Redemption. 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 Paying Agent shall proceed to call the Term Bonds, if any, as provided in the Sale Certificate (or any Term Bond or Term Bonds issued to replace such Term Bonds) for redemption from the sinking fund on the next December 1, and give notice of such call without further 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 Paying Agent 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 same maturity and interest 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 Paying Agent 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 Paying Agent at the principal amount thereof against the obligation of the City on such sinking fund date and such sinking fund obligation will be accordingly reduced. The City will on or before the sixtieth day next preceding each sinking fund Redemption Date furnish the Paying Agent 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 Paying Agent's duty to give notice of sinking fund redemption as provided in this paragraph.

Extraordinary Optional Redemption of Bonds. Upon the occurrence of an Extraordinary Event, the Bonds are subject to extraordinary redemption prior to their respective maturity dates, at the option of the City, as described below.

From the date of execution and delivery of the Bonds up to, but not including, the first optional redemption date of the Bonds or, if the Bonds are not subject to optional redemption, the maturity date of such Bonds, the Bonds are subject to extraordinary redemption prior to their respective maturities, at the option of the City, upon the occurrence of an Extraordinary Event from any source of available funds, in whole or in part, by lot, at the "Make-Whole Redemption Price."

The "Make-Whole Redemption Price" means the amount equal to the greater of the following:

(A) the issue price of the Bonds set forth in the Purchase Contract (but not less than 100% of the principal amount of the Bonds to be redeemed); or

(B) the sum of the present value of the remaining scheduled payments of the principal of and interest on the Bonds to the maturity date of such Bonds, not including any portion of those payments of interest accrued and unpaid as of the date on which the Bonds are to be redeemed, discounted to the date on which the Bonds are to be prepaid on a semi-annual basis, assuming a 360-day year containing twelve 30-day months, at the Treasury Rate, plus the fixed number of basis points determined by the Sale Certificate; plus, in each case, accrued interest on the Bonds to be redeemed to the redemption date.

For purpose of determining the Make-Whole Prepayment Price, the following definitions apply:

"Treasury Rate" means, with respect to any redemption date for a particular Bond, the yield to maturity as of such redemption date of United State Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to the redemption date (excluding inflation-indexed securities) (or, if such Statistical Release is no longer published, any publicly

available source of similar market data)) most nearly equal to the period from the redemption date to the maturity date of the Bonds to be redeemed; provided, however that if the period from the redemption date to the maturity date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

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

Notice of Prior Redemption. Notice of optional or mandatory redemption 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 sixty nor less than thirty days prior to the Redemption Date to each Owner at his address as it last appears on the registration books kept by the Paying Agent; but neither failure to give such notice nor any defect therein shall affect the redemption of any Bond. Such notice shall identify the Bonds to be so redeemed (if less than all are to be redeemed) and the Redemption Date, and shall further state that on such Redemption Date there will become due and payable upon each Bond so to be redeemed, at the Paying Agent, the principal amount thereof, accrued interest to the Redemption Date, and the stipulated premium, if any, and that from and after such date interest will cease to accrue. Notice having been given in the manner hereinabove provided, the Bond or Bonds so called for redemption shall become due and payable on the Redemption Date so designated; and upon presentation thereof at the Paying Agent, the Paying Agent will pay the Bond or Bonds so called for redemption. No further interest shall accrue on the principal of any such Bond called for redemption from and after the Redemption Date, provided sufficient funds are deposited with the Paying Agent and available on the Redemption Date.

Notwithstanding the provisions of this Section, any notice of redemption shall either (a) contain a statement that the redemption is conditioned upon the receipt by the Paying Agent on or before the Redemption Date of funds sufficient to pay the redemption price of the 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 Bonds called for redemption in the same manner as the original redemption notice was mailed, or (b) be given only if funds sufficient to pay the redemption price of the Bonds so called for redemption are on deposit with the Paying Agent in the applicable fund or account.

Bonds Owned by the City or the County. Bonds owned by or on behalf of the City or the County shall not be subject to redemption. At any time the City or the County may surrender any Bonds owned by or on behalf of the City or the County to the Paying Agent, which shall promptly cancel such Bonds.

No Partial Redemption After Default. Anything in this ordinance to the contrary notwithstanding, if there shall have occurred and is continuing an Event of Default hereunder, there shall be no redemption of less than all of the Bonds at the time Outstanding (other than pursuant to Section 402 hereof).

USE OF BOND PROCEEDS AND OTHER MONEYS

Disposition of Bond Proceeds. The proceeds of the Bonds (net of underwriting discount), upon the receipt thereof, shall be accounted for in the following manner and priority:

A. Reserve Account. An amount equal to the Reserve Account Requirement for the Bonds shall be credited to the special and separate account hereby created and to be known as the “City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Build America Bonds), Series 2009, Reserve Account.”

B. Acquisition Fund. The remaining proceeds derived from the sale of the Bonds, upon the receipt thereof, shall be credited to the special and separate account hereby created and to be known as the “City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Build America Bonds), Series 2009, Acquisition Fund.” Except as otherwise provided herein, the moneys in the Acquisition Fund shall be used solely for the purpose of paying the Cost of the Project and for the purposes set forth herein.

On the date of delivery of the Bonds, the City shall pay from the net proceeds of the Bonds the premiums payable to the Insurer, if any, for its Insurance Policy, and to the Surety Provider, if any, for its Reserve Account Insurance Policy.

Except as otherwise provided herein, the moneys in the Acquisition Fund shall be used solely for the purpose of paying the Cost of the Project and for the purposes set forth in Section 502 hereof. The City agrees that not more than 2% of the proceeds of the Bonds will be used for the payment of “issuance costs” within the meaning of Section 54A(e)(4) of the Code.

Payment of Expenses. Moneys deposited in the Acquisition Fund pursuant to Section 501 hereof may be used and paid out by the City to defray the administrative costs of the Project, including, without limitation, amounts to be paid to the Paying Agent, legal fees, accounting fees, financial advisory fees, printing costs and rating fees. The City may defray any such administrative costs from time to time as Operation and Maintenance Expenses to the extent the moneys deposited in the Acquisition Fund pursuant to Section 501 hereof are insufficient therefor.

Completion of Project. When the Project is completed in accordance with the relevant plans and specifications and all amounts due therefor, including all proper incidental expenses and all administrative costs of the Project referred to in

Section 502 hereof, are paid, or for which full provision is made, the Finance Director, shall cause all surplus moneys remaining in the Acquisition Fund, if any, except for any moneys designated in the certificate to be retained to pay any unpaid accrued costs or contingent obligations, to be used exclusively for other capital expenditures related to the Joint System, unless the City obtains an opinion of Bond Counsel that the remaining funds in the Acquisition Fund may be used for another purpose.

Lien on Bond Proceeds. Until the proceeds of the Bonds deposited in the Acquisition Fund are applied as herein provided, such Bond proceeds are subject to a lien thereon and pledge thereof for the benefit of the Owners of the Outstanding Bonds as provided in Section 601 hereof.

Purchaser Not Responsible. The validity of the Bonds is not dependent upon nor affected by the validity or regularity of any proceedings relating to the application of the Bond proceeds. The Purchaser and any subsequent Owners of any of the Bonds are not responsible for the application or disposal by the City or by any of its officers, agents and employees of the moneys derived from the sale of the Bonds or of any other moneys herein designated.

ADMINISTRATION OF AND ACCOUNTING FOR PLEGDED REVENUES

Pledge Securing Bonds. Subject only to the right of the City to cause amounts to be withdrawn and paid on account of Operation and Maintenance Expenses of the Joint System, the Gross Revenues and, subject to the right of the City to cause amounts to be withdrawn to pay the Cost of the Project as provided herein and other than moneys and securities held in the Rebate Fund to the extent such amounts are required to be paid to the United States, all moneys and securities paid or to be paid to or held or to be held in any account under this Article or under Section 501 hereof are hereby pledged to secure the payment of the Bond Requirements of the Outstanding Bonds and to secure the obligations of the City to pay the Policy Costs. The pledge of the Net Revenues to secure the payment of the Bond Requirements of the Outstanding Bonds and any Parity Lien Bonds is on a parity with the pledge of the Net Revenues for, and lien thereon of the Parity Lien Bonds heretofore issued and any other Parity Lien Bonds hereafter issued in compliance with the provisions of Article VIII hereof. The pledge of Net Revenues to secure the payment of the Policy Costs is subordinate only to the pledge to pay the Bond Requirements with respect to the Bonds and any Parity Lien Bonds. The BAB Credit relating to the Bonds is also pledged exclusively to the payment of the Bond Requirements on the Bonds. The pledge of the Net Revenues and the BAB Credit shall be valid and binding from and after the date of the delivery of the Bonds, and the moneys as 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 and the obligation to perform the contractual provisions hereby made shall have priority over any or all other obligations and liabilities of the City and/or the County except any Outstanding Parity Lien Bonds

heretofore or hereafter authorized and any Policy Costs as provided herein; provided, however, the BAB Credit relating to the Bonds is pledged exclusively to pay the Bond Requirements on the Bonds. The lien of the pledge of the Net Revenues and the BAB Credit as described in this section shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City (except as herein otherwise provided) irrespective of whether such parties have notice thereof.

Income Fund Deposits. So long as any of the Bonds shall be Outstanding, as to any Bond Requirements related to the Bonds and the Parity Lien Bonds, the entire Gross Revenues, upon their receipt from time to time by the City, shall be set aside and credited immediately to the special and separate account created by the Loan Agreement and hereby continued known as the “City of Grand Junction, Colorado, Joint Sewer System Revenue Bonds, Income Fund.”

Administration of Income Fund. So long as any of the Bonds and any Parity Lien Bonds shall be Outstanding, as to any Bond Requirements, the following payments shall be made from the Income Fund, as provided in Sections 604 through 610 hereof.

Operation and Maintenance Expenses. First, as a first charge on the Income Fund, from time to time there shall continue to be held therein moneys sufficient to pay Operation and Maintenance Expenses, as they become due and payable, and thereupon they shall be promptly paid. Any surplus remaining in the Income Fund at the end of the Fiscal Year and not needed for Operation and Maintenance Expenses shall be used for other purposes of the Income Fund as herein provided.

Bond Account Payments. Second, from any remaining Net Revenues, there shall be credited, concurrently with amounts required to meet the Bond Requirements for any Outstanding Parity Lien Bonds heretofore or hereinafter issued, to the special and separate account created herein exclusively for the Bonds and known as the “City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Build America Bonds), Series 2009, Bond Account” the following amounts:

Use of Moneys in the Bond Account. Moneys deposited in the Bond Account shall be used solely for the purpose of paying the principal of, premium, if any, and interest on the Bonds. A separate account has been established to pay the principal of and interest on the Loan, and separate bond accounts shall be established for any Parity Lien Bonds hereinafter issued. The Bond Account, the separate account established to pay the principal of and interest on the Loan, and any additional bond accounts established to pay the principal of and interest on Parity Lien Bonds hereinafter issued either presently have or will have upon their issuance a claim to the Net Revenues equal to and on a parity with that of the Bond Account.

Deposits to the Bond Account. On or before the last day of each month, commencing in the month next succeeding the date of issuance of the Bonds, the City

shall deposit to the Bond Account from the Net Revenues an amount equal to the Pro Rata Portion of the interest and principal to come due on the Bonds on the next succeeding interest payment date, concurrently with the deposits to all separate accounts of amounts equal to the Pro Rata Portion of the interest and principal to come due on any Outstanding Parity Lien Bonds on the next succeeding interest payment date. All deposits to the Bond Account shall first be allocated to the payment of interest to come due on the Bonds. The BAB Credit relating to the Bonds shall also be deposited directly into the Bond Account as and when received and such monies used as a credit against the next succeeding interest payment due on the Bonds; provided, however, if, after taking into account the amount already deposited into the Bond Account all or any portion of the BAB Credit is not needed to pay the next succeeding interest payment due on the Bonds the portion not so needed shall be used to reimburse the City for the amount already deposited into the Bond Account and shall instead be applied as otherwise provided in Sections 604 through 610 hereof.

C. Investments. Moneys deposited in the Bond Account may be invested or deposited in securities or obligations which are Investment Securities. The investment of moneys deposited in the Bond Account shall, however, be subject to the covenants and provisions of the Tax Compliance Certificate.

Reserve Account. Third, from any remaining Net Revenues, there shall be credited, if necessary, sufficient amounts into a separate account known as the "City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Build America Bonds), Series 2009, Reserve Account," any amounts necessary to meet the Reserve Account Requirement, and to any such similar account created pursuant to an ordinance authorizing the issuance of Parity Lien Bonds, on a pro rata basis.

Upon the execution and delivery of the Bonds, the amount set forth in Section 501(A) hereof shall be deposited into the Reserve Account from proceeds of the Bonds or a Surety Bond. Notwithstanding any other provisions in this Ordinance to the contrary, moneys on deposit in Reserve Account shall only be used to pay debt service on the Bonds to the extent of any deficiency in the Bond Account, to pay rebate on the Bonds, or may be applied to the defeasance of the Bonds, unless the City receives an opinion of Special Counsel that any other use of moneys on deposit in the Reserve Account will not disqualify the Bonds as Build America Bonds under Section 54AA of the Code.

Moneys on deposit in the Reserve Account shall be released only upon receipt of an Opinion from Special Counsel that such release will not disqualify the Bonds as Build America Bonds under Section 54AA of the Tax Code. Any such opinion shall direct how any moneys so released from the Reserve Account may be applied by the City.

A. Use of Moneys in the Reserve Account. Moneys in the Reserve Account shall be used, if necessary, only to prevent a default in the payment of the principal of, premium, if any, and interest on the Bonds when due. Moneys on deposit

in the Reserve Account, proceeds of the liquidation of Investment Securities on deposit in the Reserve Account, or moneys available from a Reserve Account Insurance Policy shall be transferred to the Bond Account on any date on which a payment of principal of, premium, if any, or interest on the Bonds is due to the extent the amount on deposit in the Bond Account is insufficient to make such payment.

B. Funding and Maintenance of Reserve Account Requirement. The Reserve Account Requirement shall be funded and maintained by any one of or any combination of (i) cash; (ii) Investment Securities; and (iii) a Reserve Account Insurance Policy which provides for payments when and as required for purposes of the applicable reserve account and is issued by an obligor whose obligations such as the Reserve Account Insurance Policy are either (A) rated by a rating agency as investment grade or (B) if a rating has been obtained on the Bonds whose obligations are rated by each rating agency that then maintains a rating on the Bonds in a category (or comparable classification) equal to or higher than the category, if any, in which the Bonds are rated. To the extent that the Reserve Account Requirement is funded from Investment Securities, such investments shall have an aggregate weighted term to maturity of not greater than five years.

C. Valuation of Deposits. Cash shall satisfy the Reserve Account Requirement by the amount of cash on deposit. Investment Securities shall satisfy the Reserve Account Requirement by the value of such investments. The value of each Permitted Investment on deposit in the Reserve Account shall be (i) its purchase price from the date of purchase until the first date thereafter on which the Reserve Account Requirement is calculated pursuant to paragraph D. of this section and (ii) following each date on which the Reserve Account Requirement is calculated pursuant to paragraph D. of this section until the next date on which the Reserve Account Requirement is so calculated, its fair market value determined as of such calculation date. A Reserve Account Insurance Policy shall satisfy the Reserve Account Requirement by the amount payable to the City pursuant to such policy.

D. Calculation of Reserve Account Requirement and Transfers Resulting from Calculation. The Reserve Account Requirement shall be calculated as of (i) the date of issuance of the Bonds; and (ii) not less than every six months. If at any time the calculated amounts of the Reserve Account are less than the Reserve Account Requirement or transfers are made from the Reserve Account as provided in paragraph (A) hereof, then the City shall deposit to the Reserve Account from the Net Revenues amounts sufficient to bring the amounts deposited in the Reserve Account to the Reserve Account Requirement. If at any time the calculated amounts of the Reserve Account are more than the Reserve Account Requirement, then the City shall transfer from the Reserve Account to the Bond Account any amounts which are in excess of the Reserve Account Requirement. Such deposits shall be made as soon as possible after such use or calculation, but in accordance with and subject to the limitations of this Article VI.

E. Transfer of Interest Income. The investment of moneys deposited in the Reserve Account shall be subject to the covenants and provisions of Sections

704 and 930 hereof, and shall be distributed as required by Section 730 hereof or as otherwise permitted by the Tax Compliance Certificate.

Operations and Maintenance Reserve Account. Fourth, for so long as the Loan Agreement is in place, from any remaining Net Revenues there shall be credited, if necessary, to the "Operations and Maintenance Reserve Fund" required by Exhibit F of the Loan Agreement such amounts as are necessary to maintain an amount therein equal to the three months of Operation and Maintenance Expenses excluding depreciation of the Joint System as set forth in the annual budget for the current Fiscal Year but in no event greater than \$1,250,000. Pursuant to the Loan Agreement, such amounts may be in the form of unobligated fund balances or other unobligated cash or securities (i.e. capital reserves) or may be in a separate segregated fund and shall be maintained a continuing reserve for payment of any lawful purpose relating to the Joint System.

Rebate Fund. Fifth, concurrently with any payments required to be made pursuant to any Parity Bond Ordinances with respect to any rebate funds established thereby, there shall be deposited into the special and separate account hereby created and to be known as the "City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Build America Bonds), Series 2009, Rebate Fund" moneys in the amounts and at the times specified in the Tax Compliance Certificate so as to enable the City to comply with Section 930 hereof. Amounts on deposit in the Rebate Fund shall not be subject to the lien and pledge of this ordinance to the extent that such amounts are required to be paid to the United States Treasury. The City shall cause amounts on deposit in the Rebate Fund to be forwarded to the United States Treasury (at the address provided in the Tax Compliance Certificate) at the times and in the amounts set forth in the Tax Compliance Certificate.

If the moneys on deposit in the Rebate Fund are insufficient for the purposes thereof, the City shall transfer moneys in the amount of the insufficiency to the Rebate Fund from the Reserve Account (to the extent permitted by Section 606 hereof) and the Bond Account. Upon receipt by the City of an opinion of Bond Counsel to the effect that the amount in the Rebate Fund is in excess of the amount required to be contained therein, such excess may be transferred to the Income Fund.

Payment of Additional Securities. Sixth, and subject to the provisions hereinabove in this Article, but subsequent to the payments required by Sections 604 through 608 hereof, any moneys remaining in the Income Fund may be used by the City for the payment of Bond Requirements of subordinate securities, including reasonable reserves for such subordinate securities and for rebate of amounts to the United States Treasury with respect to such subordinate securities.

Use of Remaining Revenues. After the payments hereinabove required to be made by Sections 604 through 609 hereof are made, any remaining Net Revenues in the Income Fund shall be used, first, for any one or any combination of necessary purposes relating to the operation, improvement or debt management of the Joint System and, second, to the extent of any remaining surplus, for any one or any

combination of lawful purposes as the Council, with the consent of the Board, may from time to time conclusively determine.

GENERAL ADMINISTRATION

Administration of Accounts. The special accounts designated in Articles V and VI hereof shall be administered as provided in this Article (but not any account under Section 1301 hereof).

Places and Times of Deposits. Except as hereinafter provided, each of such special accounts shall be maintained by the City as a book account and kept separate from all other accounts as a trust account solely for the purposes herein designated therefor. The moneys accounted for in such special book accounts may be in one or more bank accounts in one or more Commercial Banks. Each such bank account shall be continuously secured to the fullest extent required or permitted by the laws of the State for the securing of public funds and shall be irrevocable and not withdrawable by anyone for any purpose other than the respective designated purposes. 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 not be a Business Day, then such payment shall be made on or before the next preceding Business Day. Moneys shall be deposited with the Paying Agent for the Bonds at least three days prior to each interest payment date and each maturity or mandatory Redemption Date herein designated in amounts sufficient to pay the Bond Requirements then becoming due on the Outstanding Bonds.

Investment of Moneys. Any moneys in the Acquisition Fund, Income Fund, Bond Account, Reserve Account and Rebate Fund and not needed for immediate use shall be invested or reinvested by the Finance Director in Investment Securities. All such investments shall (a) either be subject to redemption at any time at a fixed value by the holder thereof at the option of such holder, or (b) mature not later than the estimated date or respective dates on which the proceeds are to be expended as estimated by the Finance Director at the time of such investment or reinvestment; provided that (1) Investment Securities credited to the Reserve Account shall not mature later than ten years from the date of such investment or reinvestment and (2) collateral securities of any Investment Securities may have a maturity of more than five years from the date of purchase thereof. For the purpose of any such investment or reinvestment, Investment Securities shall be deemed to mature at the earliest date on which the obligor is, on demand, obligated to pay a fixed sum in discharge of the whole of such obligations.

Accounting for Investments. The Investment Securities so purchased as an investment or reinvestment of moneys in any such account hereunder shall be deemed at all times to be a part of the account. Any interest or other gain from any investments and reinvestments of moneys accounted for in the Income Fund, the Acquisition Fund, the Bond Account and the Rebate Fund shall be credited to such

Fund, and any loss resulting from any such investments or reinvestments of moneys accounted for in the Income Fund, the Acquisition Fund, the Bond Account, the Reserve Account and the Rebate Fund shall be charged or debited to such Fund. Any interest or other gain from any investment or reinvestment of moneys accounted for in the Reserve Account (a) shall be credited to the Rebate Fund or the Bond Account, at the discretion of the Finance Director, if the amount credited to the Reserve Account immediately after such credit to the Rebate Fund or the Bond Account is not less than the Reserve Account Requirement and (b) if the amount credited to the Reserve Account is less than the Reserve Account Requirement, shall be credited to the Reserve Account (up to the amount of the deficiency). No loss or profit in any account on any investments or reinvestments in Investment Securities shall be deemed to take place as a result of market fluctuations of the Investment Securities prior to the sale or maturity thereof. In the computation of the amount in any account for any purpose hereunder, except as herein otherwise expressly provided or for rebate purposes, as described in the Tax Compliance Certificate, Investment Securities shall be valued at the cost thereof (including any amount paid as accrued interest at the time of purchase of the obligation); provided that any time or demand deposits shall be valued at the amounts deposited, in each case exclusive of any accrued interest or any other gain to the City until such gain is realized by the presentation of matured coupons for payment or otherwise.

Redemption or Sale of Investment Securities. The Finance Director shall present for redemption or sale on the prevailing market at the best price obtainable any Investment Securities so purchased as an investment or reinvestment of moneys in the account whenever it shall be necessary in order to provide moneys to meet any withdrawal, payment or transfer from such account. Neither the Finance Director or any other officer or employee of the City shall be liable or responsible for any loss resulting from any such investment or reinvestment made in accordance with this ordinance.

Character of Funds. The moneys in any account designated in Articles V and VI hereof shall consist either of lawful money of the United States or Investment Securities, or both such money and such Investment Securities. Moneys deposited in a demand or time deposit account in a bank or savings and loan association, appropriately secured according to the laws of the State, shall be deemed lawful money of the United States.

Payment of Bond Requirements. The moneys credited to any fund or account designated in Article VI hereof for the payment of the Bond Requirements of any Bonds shall be used without requisition, voucher, warrant, further order or authority (other than is contained herein), or any other preliminaries, to pay promptly the Bond Requirements of any Bonds payable from such fund or account as such amounts are due, except to the extent any other moneys are available therefor.

SECURITIES LIENS AND ADDITIONAL SECURITIES

Lien Status. The Bonds constitute an irrevocable lien (but not necessarily an exclusive lien) upon the Net Revenues on a parity with the lien of the Net Revenues of the Parity Lien Bonds. The Policy Costs constitute an irrevocable and subordinate lien (but not necessarily an exclusive subordinate lien) upon the Net Revenues. The Bonds constitute an irrevocable and exclusive lien on the BAB Credit payable with respect to the Bonds.

Equality of Bonds. The Bonds and any Parity Lien Bonds heretofore issued or hereafter authorized to be issued and from time to time Outstanding are equitably and ratably secured by a lien on the Net Revenues and shall not be entitled to any priority one over the other in the application of the Net Revenues regardless of the time or times of the issuance of the Bonds and any other such Parity Lien Bonds, it being the intention of the Council and the Board that there shall be no priority among the Bonds and any such Parity Lien Bonds regardless of the fact that they may be actually issued and delivered at different times, except that (a) moneys in the Acquisition Fund, the Bond Account and the Reserve Account shall secure only the Bonds and the moneys in any acquisition, bond, reserve or similar funds established for other Parity Lien Bonds shall secure only such Parity Lien Bonds, (b) the BAB Credit payable with respect to the Bonds shall secure only the Bonds, and (c) other Parity Lien Bonds may have a lien on Net Revenues on a parity with the lien thereon of the Bonds even if no Reserve Account is established for such Parity Lien Bonds or a Reserve Account is established but with a different requirement as to the amount of moneys (or the value of a Reserve Account insurance policy with respect to such Parity Lien Bonds) required to be on deposit therein or the manner in which such Reserve Account is funded or the period of time over which such Reserve Account is funded.

Issuance of Parity Lien Bonds. Nothing herein prevents the issuance by the Council, with the consent of the Board, of additional securities payable from the Net Revenues and constituting a lien thereon on a parity with, but not prior nor superior to, the lien thereon of the Bonds; but before any such additional Parity Lien Bonds, except as provided in Section 808 hereof, are authorized or actually issued, all of the following conditions must be satisfied:

Absence of Default. At the time of the adoption of the ordinance authorizing the issuance of the additional securities, the City shall not be in default in making any payments required by Article VI hereof, including any payments of Policy Costs.

Historic Earnings Test. The Net Revenues for [any 12 consecutive months out of the 18 months preceding the month in which such securities are to be issued are at least equal to the sum of \(1\) 125%](#) of the Combined Maximum Annual Principal and Interest Requirements of [\(a\)](#) the Outstanding Bonds and any Outstanding Parity Lien Bonds, [\(b\) such proposed](#) Parity Lien Bonds to be issued and (c) **100% of the Policy**

Costs then due and owing, if any, except as hereinafter otherwise expressly provided and (2) 100% of maximum annual debt service of all other indebtedness payable from the Net Revenues.

Adjustment of Gross Pledged Revenues. In any computation under paragraph B of this Section, the amount of the Gross Revenues for the applicable period shall be decreased and may be increased by the amount of loss or gain conservatively estimated by an Independent Accountant, Independent Engineer or the Finance Director, as the case may be, which results from any changes which became effective not less than 60 days prior to the last day of the period for which Gross Revenues are determined in any schedule of fees, rates and other charges constituting Gross Revenues based on the number of users during the applicable period as if such modified schedule of fees, rates and other charges shall have been in effect during such entire time period. However, the Gross Revenues need not be decreased by the amount of any such estimated loss to the extent the Independent Accountant, the Independent Engineer or the Finance Director estimates the loss is temporary in nature or will be offset within a reasonable temporary period by an increase in revenues or a reduction in Operation and Maintenance Expenses not otherwise included in the calculations under this Section, and estimates any loss under this sentence will not at any time materially and adversely affect the City's apparent ability to comply with the rate maintenance covenant stated in Section 921 hereof without modification because of any restrictive legislation, regulation or other action under the police power exercised by any governmental body.

Reduction of Annual Requirements. The respective annual Bond Requirements (including as such a requirement the amount of any prior redemption premiums due on any Redemption Date) shall be reduced to the extent such Bond Requirements are scheduled to be paid in each of the respective Fiscal Years with moneys held in trust or in escrow for that purpose by any Trust Bank, including the known minimum yield from any investment in Federal Securities and any bank deposits, including any certificate of deposit.

Consideration of Additional Expenses. In determining whether or not additional Parity Lien Bonds may be issued as aforesaid, consideration shall be given to any probable increase (but not reduction) in the Operation and Maintenance Expenses of the Joint System as estimated by the Finance Director that will result from the expenditure of the funds proposed to be derived from the issuance and sale of the additional securities; but the Finance Director may reduce any such increase in Operation and Maintenance Expenses by the amount of any increase in revenues or any reduction in Operation and Maintenance Expenses resulting from the Capital Improvements to which such expenditure relates and not otherwise included in the calculations under this Section, if the Finance Director also opines that any such reduction in any such increase in Operation and Maintenance Expenses will not materially and adversely affect the City's apparent ability to comply with the rate maintenance covenant stated in Section 921 hereof without modification because of any restrictive legislation, regulation or other action under the police power exercised by any governmental body.

Certification of Revenues. A written certificate or written opinion by the Finance Director under Section 803(B) that such annual revenues, when adjusted as hereinabove provided in subsections (C), (D), and (E) of Section 803 hereof, are sufficient to pay such amounts, as provided in subsection (B) of Section 803 hereof, shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver additional securities on a parity with the Bonds, subject to approval by the Board.

Subordinate Securities Permitted. Nothing herein prevents the City from issuing additional securities payable from the Net Revenues and having a lien thereon subordinate, inferior and junior to the lien thereon of the Bonds.

Superior Securities Prohibited. Nothing herein permits the City to issue additional securities payable from the Net Revenues and having a lien thereon prior and superior to the lien thereon of the Bonds.

Use of Proceeds. The proceeds of any additional parity securities payable from any Net Revenues shall be used only to finance Capital Improvements or to refund other securities payable from Net Revenues, regardless of the priority or the lien of such securities on Net Revenues.

Issuance of Refunding Securities. The Council, with the approval of the Board, may issue any refunding securities payable from Net Revenues to refund any Outstanding Bonds, Parity Lien Bonds or any subordinate securities heretofore or hereafter issued, with such details as the Council may by ordinance 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 such Outstanding securities of any one or more issues; but so long as the Bonds, or any part thereof, are Outstanding, refunding securities payable from Net 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 portion of the Bonds; or

Requirements Not Increased. The Combined Maximum Annual Principal and Interest Requirements for the Bonds and Parity Lien Bonds Outstanding immediately after the issuance of the refunding securities is not greater than the Combined Maximum Annual Principal and Interest Requirements for all Bonds and Parity Lien Bonds Outstanding immediately prior to the issuance of the refunding securities and the lien of any refunding Parity Lien Bonds on the Net Pledged Revenues is not raised to a higher priority than the lien thereon of any securities thereby refunded; or

Earnings Test. The refunding securities are issued in compliance with Section 803(B) hereof.

PROTECTIVE COVENANTS

General. The City hereby covenants and agree with the Owners of the Bonds and makes provisions which shall be a part of their contract with such Owners to the effect and with the purpose set forth in the following Sections of this Article.

Performance of Duties. The City, acting by and through the Council or otherwise, and the County to the extent required by the Policy Agreement, acting by and through the Board, shall faithfully and punctually perform, or cause to be performed, all duties with respect to the Gross Revenues and the Joint System required by the Constitution and laws of the State, and various ordinances of the City, including, without limitation, the making and collection of reasonable and sufficient fees, rates and other charges for services rendered or furnished by or the use of the Joint System, as herein provided, and the proper segregation of the proceeds of the Bonds and of any securities hereafter authorized and the Gross Revenues and their application from time to time to the respective accounts provided therefor.

Contractual Obligations. The City shall perform all contractual obligations undertaken by it under any agreements relating to the Bonds, the Gross Revenues, the Project, or the Joint System, or any combination thereof, with any other Persons.

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 Gross Revenues and other moneys 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. 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 Gross Revenues and other moneys and accounts pledged hereunder and all the rights of every Owner of any Bond hereunder against all claims and demands of all Persons whomsoever.

Conditions Precedent. Upon the date of issuance of the Bonds, all conditions, acts and things required by the Federal or State Constitution, the Supplemental Public Securities Act and this ordinance to exist, to have happened and to have been performed precedent to or in the issuance of the Bonds shall exist, have happened, and have been performed; and the Bonds, together with all other obligations of the City, shall not contravene any debt or other limitation prescribed by the State Constitution.

Efficient Operation and Maintenance. The City shall at all times operate the Joint System properly and in a sound and economical manner; and the City shall maintain, preserve and keep the same properly or cause the same so to be maintained, preserved and kept, with the appurtenances and every part and parcel thereof in good repair, working order and condition, and shall from time to time make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Joint System may be properly and advantageously conducted. All salaries, fees, wages and other compensation paid by the City in connection with the maintenance, repair and operation of the Joint System shall be reasonable and proper.

Rules, Regulations and Other Details. The City, acting by and through the Council, shall establish and enforce reasonable rules and regulations governing the operation, use and services of the Joint System. The City shall observe and perform all of the terms and conditions contained in this ordinance and shall comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to the Joint System or to the City.

Payment of Governmental Charges. The City shall pay or cause to be paid all taxes and assessments or other municipal or governmental charges, if any, lawfully levied or assessed upon or in respect of the Joint System, or upon any part thereof, or upon any portion of the Gross Revenues, when the same shall become due, and shall duly observe and comply with all valid requirements of any municipal or governmental authority relative to the Joint System or any part thereof, except for any period during which the same are being contested in good faith by proper legal proceedings. The City shall not create or suffer to be created any lien upon the Joint System, or any part thereof, or upon the Gross Revenues, except the pledge and lien created by this ordinance for the payment of the Bond Requirements of the Bonds and except as herein otherwise permitted. The City shall pay or cause to be discharged or shall make adequate provision to satisfy and to discharge, within 60 days after the same shall become payable, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the Joint System, or any part thereof, or the Gross Revenues; but nothing herein requires the City to pay or cause to be discharged or to make provision for any such tax, assessment, lien or charge, so long as the validity thereof is contested in good faith and by appropriate legal proceedings.

Protection of Security. The City, the officers, agents and employees of the City, and the Council, shall not take any action in such manner or to such extent as might prejudice the security for the payment of the Bond Requirements of the Bonds and any other securities payable from the Net Revenues or any Policy Costs relating thereto according to the terms thereof, or prejudice the receipt of the BAB Credit with respect to the Bonds. No contract shall be entered into nor any other action taken by which the rights of any Owner of any Bond or other security payable from Net Revenues or any Policy Costs relating thereto might be prejudicially and materially impaired or diminished.

Prompt Payment of Bonds. The City shall promptly pay the Bond Requirements of the Bonds at the places, on the dates and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

Use of Bond and Reserve Accounts. The Bond Account and the Reserve Account shall be used solely and only and the moneys credited to such accounts are hereby pledged for the purpose of paying the Bond Requirements of the Bonds to their respective maturities or any Redemption Date or Dates, subject to the provisions of Sections 606, 704 and 1301 hereof.

Other Liens. Other than as provided herein, there are no liens or encumbrances of any nature whatsoever on or against the Joint System, or any part thereof, or on or against the Gross Revenues on a parity with or superior to the lien thereon of the Bonds.

Corporate Existence. The City shall maintain its corporate identity and existence so long as any of the Bonds remain Outstanding, unless another body corporate and politic by operation of law succeeds to the powers, privileges, rights, liabilities, disabilities, duties and immunities of the City and is obligated by law to operate and maintain the Joint System and to fix and collect the Gross Revenues as herein provided without adversely and materially affecting at any time the privileges and rights of any Owner of any Outstanding Bond.

Disposal of Joint System Prohibited. Except for the use of the Joint System and services pertaining thereto in the normal course of business, neither all nor a substantial part of the Joint System shall be sold, leased, mortgaged, pledged, encumbered, alienated or otherwise disposed of, until all the Bonds have been paid in full, as to all Bond Requirements, or unless provision has been made therefor, or until the Bonds have otherwise been redeemed, including, without limitation, the termination of the pledge as herein authorized; and neither the City nor the County shall not dispose of its respective title to the Joint System or to any useful part thereof, including any property necessary to the operation and use of the Joint System and the lands and interests in lands comprising the sites of the Joint System, except as provided in Section 915 hereof.

Disposal of Unnecessary Property. The City or the County at any time and from time to time may sell, exchange, lease or otherwise dispose of any property constituting a part of the Joint System and not useful in the construction, reconstruction or operation thereof, or which shall cease to be necessary for the efficient operation of the Joint System, or which shall have been replaced by other property of at least equal value. Any proceeds of any such sale, exchange or other disposition received and not used to replace such property so sold or so exchanged or otherwise so disposed of, shall be deposited by the City in the Income Fund or into a special book account for the betterment, enlargement, extension, other improvement and equipment of the Joint System, or any combination thereof, as the Council and the Board may determine, and any proceeds of any such lease received shall be deposited by the City as Gross Revenues in the Income Fund.

Competing System. So long as any of the Bonds are Outstanding, the City shall not grant any franchise or license to any competing facilities so that the Gross Revenues shall not be sufficient to satisfy the covenant in Section 921 hereof.

Loss From Condemnation. If any part of the Joint System is taken by the exercise of the power of eminent domain, the amount of any award received by the City or the County as a result of such taking shall be paid into the Income Fund or into a capital improvement account pertaining to the Joint System for the purposes thereof, or, applied to the redemption of the Outstanding Bonds and any Outstanding Parity Lien Bonds relating thereto, all as the Council and the Board may determine.

Employment of Management Engineers. If the City defaults in paying the Bond Requirements of the Bonds and any other securities or Policy Costs relating thereto payable from the Gross Revenues promptly as the same fall due, or if the City or the County defaults in the keeping of any of its covenants herein contained, and if such default continues for a period of 60 days, or if the Net Revenues in any Fiscal Year fail to equal at least the amount of the Bond Requirements of the Outstanding Bonds and any other securities (including all reserves therefor specified in the authorizing proceedings, including, without limitation, this ordinance) or Policy Costs relating thereto payable from the Net Revenues in that Fiscal Year, the City shall retain a firm of competent management engineers skilled in the operation of such facilities to assist the management of the Joint System so long as such default continues or so long as the Net Revenues are less than the amount hereinabove designated in this Section.

Budgets. The Council and the Board, and officials of the City and the County, shall annually and at such other times as may be provided by law prepare and adopt a budget pertaining to the Joint System.

Reasonable and Adequate Charges. While the Bonds remain Outstanding and unpaid, the fees, rates and other charges due to the City for the use of or otherwise pertaining to and services rendered by the Joint System to the City, to its inhabitants and to all other users within and without the boundaries of the County shall be reasonable and just, taking into account and consideration public interests and needs, the cost and value of the Joint System, the Operation and Maintenance Expenses thereof, and the amounts necessary to meet the Bond Requirements of all Bonds and any other securities payable from the Net Revenues, including, without limitation, reserves and any replacement accounts therefor.

Adequacy and Applicability of Charges. There shall be charged against users of service pertaining to and users of the Joint System, including the City and the County, except as provided by Section 922 hereof, such fees, rates and other charges so that the Gross Revenues shall be adequate to meet the requirements of this and the preceding Sections hereof. Such charges pertaining to the Joint System shall be at least sufficient so that the Gross Revenues annually are sufficient to pay in each Fiscal Year:

Operation and Maintenance Expenses. An amount equal to the annual Operation and Maintenance Expenses for such Fiscal Year,

Principal and Interest. An amount equal to 125% of both the principal and interest on the Bonds and any Parity Lien Bonds then Outstanding payable from the Net Revenues in that Fiscal Year (excluding the reserves therefor), and

Deficiencies. Any amounts required to pay all Policy Costs, if any, due and owing and all sums, if any, due and owing to meet then existing deficiencies pertaining to any fund or account relating to the Gross Revenues or any securities payable therefrom.

Limitations Upon Free Service. The City shall furnish no free service from the Joint System, and if the City or the County shall use the facilities of the Joint System for its own purposes, it shall pay monthly a fair and reasonable amount for such service; provided that nothing herein shall require the City or the County to charge tap fees to public buildings owned by the City or the County or located on lands owned by the City or the County or for irrigation of land owned by the City or the County. In no event shall the City or the County pay a greater amount than would be charged a private consumer for the same amount of service. The City shall include in its annual appropriation and budget amounts sufficient to pay for all service so used.

Levy of Charges. The Council and the Board shall forthwith and in any event prior to the delivery of any of the Bonds, fix, establish and levy the fees, rates and other charges which are required by Section 921 hereof, if such action is necessary therefor. No reduction in any initial or existing rate schedule for the Joint System may be made:

Proper Application. Unless the City and the County have fully complied with the provisions of Article VI of this ordinance for at least the full Fiscal Year immediately preceding such reduction of the initial or any other existing rate schedule; and

Sufficient Revenues. Unless the audit required by the Independent Accountant by Section 927 hereof for the full Fiscal Year immediately preceding such reduction discloses that the estimated revenues resulting from the proposed rate schedule for the Joint System, after the schedule's proposed reduction, shall be at least sufficient to produce the amounts required by Section 921 hereof.

Collection of Charges. The City shall cause all fees, rates and other charges pertaining to the Joint System to be collected as soon as is reasonable, shall prescribe and enforce rules and regulations or impose contractual obligations for the payment of such charges, and for the use of the Joint System, and shall provide methods of collection and penalties, to the end that the Gross Revenues shall be adequate to meet the requirements of this ordinance and any other ordinance supplemental thereto.

Procedure for Collecting Charges. All bills for water services or facilities, sanitary sewer services and all other services or facilities furnished or served by or through the Joint System shall be rendered to customers on a regularly established basis. The fees, rates and other charges due shall be collected in a lawful manner, including, without limitation, discontinuance of service.

Maintenance of Records. So long as any of the Bonds and any other Parity Lien Bonds payable from the Gross Revenues remain Outstanding, proper books of record and account shall be kept by the City, separate and apart from all other records and accounts.

Audits Required. The City, within 60 days following the close of each Fiscal Year, shall order an audit for the Fiscal Year of such books and accounts to be made forthwith by an Independent Accountant, and order an audit report showing the receipts and disbursements for each account pertaining to the Joint System and the Gross Revenues.

Accounting Principles. Joint System records and accounts, and audits thereof, shall be currently kept and made, as nearly as practicable, in accordance with the then generally accepted accounting principles, methods and terminology followed and construed for utility operations comparable to the Joint System, except as may be otherwise provided herein or required by applicable law or regulation or by contractual obligation existing on the effective date of this ordinance.

Insurance and Reconstruction. Except to the extent of any self-insurance, the City shall at all times maintain, or cause to be maintained, with responsible insurers fire and extended coverage insurance, worker's compensation insurance, public liability insurance and all such other insurance as is customarily maintained with respect to utilities of like character against loss of or damage to the Joint System and against loss of revenues and against public and other liability to the extent reasonably necessary to protect the interests of the City, the County, and of each Owner of a Bond. If any useful part of the Joint System shall be damaged or destroyed, the City shall, as expeditiously as may be possible, commence and diligently proceed with the repair or replacement of the damaged property so as to restore the same to use. The proceeds of any such insurance shall be payable to the City and (except for proceeds of any use and occupancy insurance) shall be applied to the necessary costs involved in such repair and replacement and to the extent not so applied shall (together with the proceeds of any such use and occupancy insurance) be deposited in the Income Fund by the City as revenues derived from the operation of the Joint System. If the costs of such repair and replacement of the damaged property exceed the proceeds of such insurance available for the payment of the same, moneys in the Income Fund shall be used to the extent necessary for such purposes, as permitted by Section 611 hereof.

Irrevocable Election to Apply Section 54AA of the Code. The City hereby makes an irrevocable election that Section 54AA of the Code shall apply to the Bonds and that subsection (g) of Section 54AA will also apply to the Bonds so that the

City will receive the BAB Credit. None of the Owners of the Bonds shall be entitled to any credit under Section 54AA of the Code. The City covenants that it will not take any action or omit to take any action with respect to the Bonds, the proceeds thereof, any other funds of the City or the Project if such action or omission would cause the City to not be entitled to the BAB Credit with respect to the Bonds. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all obligations of the City in fulfilling the above covenant have been met. The City shall timely file any document required by the Internal Revenue Service to be filed in order to claim the BAB Credit.

Continuing Disclosure. The City shall comply with the provisions of the Continuing Disclosure Certificate. Any failure by the City to perform in accordance with this Section shall not constitute an Event of Default under this Ordinance, and the rights and remedies provided by this ordinance upon the occurrence of an Event of Default shall not apply to any such failure. The Paying Agent shall not have any power or duty to enforce this Section. No Owner of a Bond shall be entitled to damages for the City's non-compliance with its obligations under this Section; however, the Owners of the Bonds may enforce specific performance of the obligations contained in this Section by any judicial proceeding available.

PRIVILEGES, RIGHTS AND REMEDIES

Owners' Remedies. Each Owner of any Bond shall be entitled to all of the privileges, rights and remedies provided and this ordinance, and as otherwise provided or permitted by law or in equity or by any statutes, except as provided in Sections 202 through 206 hereof, but subject to the provisions herein concerning the pledge of and the covenants and the other contractual provisions concerning the Gross Revenues and the proceeds of the Bonds.

Right to Enforce Payment. Nothing in this Article affects or impairs the right of any Owner of any Bond to enforce the payment of the Bond Requirements due in connection with his or her Bond or the obligation of the City to pay the Bond Requirements of each Bond to the Owner thereof at the time and the place expressed in the Bond.

Events of Default. Each of the following events is hereby declared an "Event of Default," provided however, that in determining whether a payment default has occurred pursuant to paragraphs A or B of this Section, no effect shall be given to payments made under the Insurance Policy:

Nonpayment of Principal. Payment of the principal of any of the Bonds is not made when the same becomes due and payable, either at maturity or by proceedings for prior redemption, or otherwise;

Nonpayment of Interest. Payment of any installment of interest on any of the Bonds is not made when the same becomes due and payable;

Cross Defaults. The occurrence and continuance of an “event of default,” as defined in any Parity Bond Ordinance;

Failure to Reconstruct. The City unreasonably delays or fails to carry out with reasonable dispatch the reconstruction of any part of the Joint System which is destroyed or damaged and is not promptly repaired or replaced (whether such failure promptly to repair the same is due to impracticability of such repair or replacement or is due to a lack of moneys therefor or for any other reason), but it shall not be an Event of Default if such reconstruction is not essential to the efficient operation of the Joint System;

Appointment of Receiver. An order or decree is entered by a court of competent jurisdiction with the consent or acquiescence of the City and the County appointing a receiver or receivers for the Joint System or for the Gross Revenues and any other moneys subject to the lien to secure the payment of the Bonds, or if an order or decree having been entered without the consent or acquiescence of the City or the County is not vacated or discharged or stayed on appeal within 60 days after entry; and

Default of Any Provision. The City defaults in the due and punctual performance of any other of the representations, covenants, conditions, agreements and other provisions contained in the Bonds or in this ordinance on its part to be performed (other than Section 931 hereof), and such default continues for 60 days after written notice specifying such default and requiring the same to be remedied is given to the City and the Insurer specifying the failure and requiring that it be remedied, which notice shall be given by the Paying Agent at the written request of the Owners of not less than 25 percent in aggregate principal amount of Bonds then Outstanding.

Remedies for Defaults. Upon the happening and continuance of any Event of Default, the Owner or Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding, including, without limitation, a trustee or trustees therefor, may proceed against the City, and its agents, officers and employees to protect and to enforce the rights of any Owner of Bonds under this ordinance by mandamus or by other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award of execution of any power herein granted for the enforcement of any proper legal or equitable remedy as such Owner or Owners may deem most effectual to protect and to enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any right of any Owner of any Bond, or to require the City to act as if it were the trustee of an expressed trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the Bonds and any other Parity Lien Bonds.

Receiver's Rights and Privileges. Any receiver appointed in any proceedings to protect the rights of such Owners hereunder, the consent to any such appointment being hereby expressly granted by the City, may enter and may take possession of the Joint System, may operate and maintain the same, may prescribe fees, rates and other charges, and may collect, receive and apply all Gross Revenues arising after the appointment of such receiver in the same manner as the City itself might do.

Rights and Privileges Cumulative. The failure of any Owner of any Outstanding Bond to proceed in any manner herein provided shall not relieve the City, or any of its officers, agents or employees of any liability for failure to perform or carry out any duty, obligation or other commitment. Each right or privilege of any such Owner (or trustee thereof) is in addition and is cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any Owner shall not be deemed a waiver of any other right or privilege thereof.

Duties upon Defaults. Upon the happening of any Event of Default, the City shall do and perform all proper acts on behalf of and for the Owners of Bonds to protect and to preserve the security created for the payment of the Bonds and to insure the payment of the Bond Requirements promptly as the same become due. While any Event of Default exists, except to the extent it may be unlawful to do so, all Gross Revenues shall be paid into the Bond Account and into bond or similar funds established for other Parity Lien Bonds then Outstanding, pro rata based upon the aggregate principal amount of the Bonds and Parity Lien Bonds then Outstanding. If 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 Bonds then Outstanding, after demand in writing, may proceed to protect and to enforce the rights of the Owners of the Bonds as hereinabove provided, and to that end any such Owners of the Outstanding Bonds shall be subrogated to all rights of the City under any agreement, lease or other contract involving the Joint System or the Gross Revenues entered into prior to the effective date of this ordinance or thereafter while any of the Bonds are Outstanding.

AMENDMENT OF ORDINANCE

Privilege of Amendments.

Except as hereafter provided, this ordinance may be amended or supplemented by ordinances adopted by the Council, and approved by the Board, in accordance with law, without receipt by the City of any additional consideration, but with the written consent of the Insurer, and, subject to Section 1201 hereof, the Owners of not less than 66% in aggregate principal amount of the Bonds Outstanding at the time of the adoption of such amendatory or supplemental ordinance excluding, pursuant to Section 102(B) hereof, any Bonds which may then be held or owned for the account of the City or the County. Notwithstanding the foregoing, no such ordinance shall permit:

a change in the maturity, terms of redemption or interest payment of any Outstanding Bond; or

a reduction in the principal amount of any Bond or the rate of interest thereon, without the consent of the Owner of the Bond; or

the creation of a lien upon or a pledge of revenues ranking prior to the lien or to the pledge created by this ordinance; or

a reduction of the principal amount or percentages or otherwise affecting the description of Bonds the consent of the Owners of which is required for any such modification or amendment; or

the establishment of priorities as between Bonds issued and Outstanding;
or

the modification of or otherwise affecting the rights of the Owners of less than all of the Outstanding Bonds.

Notwithstanding the foregoing provisions of this Section, this ordinance and the rights and obligations of the City, the County, and of the Owners of the Bonds may also be modified or amended at any time, with the written consent of the Insurer but without the consent of any Owners of the Bonds, but only to the extent permitted by law and only for any or all of the following purposes:

to add to the covenants and agreements of the City or the County in this ordinance contained other covenants and agreements thereafter to be observed;

to subject to the covenants and agreements of the City and the County in this ordinance additional Joint System revenues, to be defined and treated as Gross Revenues, for the purpose of providing additional security for the Bonds and any Parity Lien Bonds;

in connection with the provision of a Reserve Account Insurance Policy subsequent to the issuance of the Bonds;

to provide for the appointment of a new Paying Agent;

to make such provisions for the purpose of curing any ambiguity or of curing or correcting any formal defect or omission in this ordinance, or in regard to questions arising under this ordinance, as the City may deem necessary or desirable, and which shall not adversely affect the interests of the Owners of the Bonds; or

to maintain the status of the Bonds as qualified Build America Bonds under Section 54AA of the Code.

Notice of Amendment. Whenever the Council proposes to amend or modify this ordinance under the provisions of this Article, it shall cause notice of the proposed amendment to be mailed to Owners of all Outstanding Bonds at their addresses as the same last appear on the registration records maintained by the Paying Agent and to the Insurer. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy of the proposed amendatory ordinance is on file in the office of the City Clerk for public inspection. Notice of the proposed amendment, together with a copy of the proposed amendatory ordinance, shall be delivered to the Rating Agencies then maintaining a rating on the Bonds at least 15 days in advance of the adoption of the amendment. A full transcript of all proceedings relating to the execution of such amendatory ordinance shall be provided to the Insurer.

Time for Amendment. If the ordinance is required to be consented to by the Owners of the Bonds, whenever at any time within one year from the date of the giving of such notice there shall be filed in the office of the City Clerk an instrument or instruments executed by the Owners of at least 66% in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed amendatory ordinance described in such notice and shall specifically consent to and approve the adoption of such ordinance, the Council may adopt such amendatory ordinance and such ordinance shall become effective. If the ordinance is not required to be consented to by the Owners of the Bonds, the amendatory ordinance may be adopted by the Council at any time, subject to approval by the Board.

Binding Consent to Amendment. If the Owners of not less than 66% in aggregate principal amount of the Bonds Outstanding at the time of the adoption of such amendatory ordinance requiring consent of the Owners of the Bonds, or the predecessors in title of such Owners, shall have consented to and approved the adoption thereof as herein provided, no Owner of any Bond, whether or not such Owner shall have consented to or shall have revoked any consent as in this Article provided, shall have any right or interest to object to the adoption of such amendatory ordinance or to object to any of the terms or provisions therein contained or to the operation thereof or to enjoin or restrain the City from taking any action pursuant to the provisions thereof.

Time Consent Binding. Any consent given by the Owner of a Bond pursuant to the provisions of this Article shall be irrevocable for a period of 6 months from the date of the giving of the notice above provided for and shall be conclusive and binding upon all future Owners of the same Bond during such period. Such consent may be revoked at any time after 6 months from the date of such giving of such notice by the Owner who gave such consent or by a successor in title by filing notice of such revocation with the City Clerk, but such revocation shall not be effective if the Owners of not less than 66% in aggregate principal amount of the Bonds Outstanding as in this Article provided, prior to the attempted revocation, consented to and approved the amendatory ordinance referred to in such revocation.

Unanimous Consent. Notwithstanding anything in the foregoing provisions of this Article, the terms and provisions of this ordinance or of any ordinance amendatory thereof or supplemental thereto and the rights and the obligations of the City and of the Owners of the Bonds thereunder may be modified or amended in any respect upon the adoption by the Council, with the approval of the Board, and upon the filing with the City Clerk of an ordinance to that effect and with the consent of the Owners of all the then Outstanding Bonds, such consent to be given as provided in Section 1103 hereof; and no notice to Owners of Bonds shall be required as provided in Section 1102 hereof, nor shall the time of consent be limited except as may be provided in such consent.

Exclusion of City and County Bonds. At the time of any consent or of other action taken under this Article, the City shall furnish to the City Clerk a certificate of the Finance Director, upon which the City may rely, describing all Bonds to be excluded for the purpose of consent or of other action or of any calculation of Outstanding Bonds provided for in this Article, and the City shall not be entitled with respect to such Bonds to give any consent or to take any other action provided for in this Article, as provided in Section 102(B) hereof.

Notation on Bonds. Bonds authenticated and delivered after the effective date of any action taken as in this Article provided may bear a notation by endorsement or otherwise in form approved by the Council as to such action; and after the approval of such notation, then upon demand of the Owner of any Bond Outstanding and upon presentation of his or her Bond for that purpose at the principal office of the Paying Agent, suitable notation shall be made on such Bond by the Paying Agent as to any such action. If the Council so determines, new Bonds, so modified as in the opinion of the Council to conform to such action, shall be prepared, executed, authenticated and delivered; and upon demand of the Owner of any Bond then Outstanding, shall be exchanged without cost to such Owner for Bonds then Outstanding upon surrender of such Bonds.

Proof of Instruments and Bonds. The fact and date of execution of any instrument under the provisions of this Article, the amount and number of the Bonds held by any Person executing such instrument, and the date of his or her holding the same may be proved as provided by Section 1303 hereof.

Copies of Supplemental Ordinances to Rating Agencies. Copies of any supplemental or amendatory ordinance shall be sent by the City to the Rating Agencies at least 10 days prior to the effective date thereof.

INSURANCE POLICY PROVISIONS

Insurer To Be Deemed Owner, Rights of the Insurer, Payments by the Insurer: Notices.

Notwithstanding any provision of this ordinance to the contrary, so long as the Insurer is not in default in its payment obligations under the Insurance Policy, the Insurer shall at all times be deemed the sole and exclusive Owner of the Outstanding Bonds for the purposes of all approvals, consents, waivers, institution of any action, and the direction of all remedies pursuant to this ordinance, including but not limited to approval of or consent to any amendment of or supplement to this ordinance which requires the consent or approval of the Owners of not less than 66% in aggregate principal amount of the Bonds then Outstanding pursuant to this ordinance; provided, however, that the Insurer shall not be deemed to be the sole and exclusive Owner of the Outstanding Bonds with respect to any amendment or supplement to this Indenture which seeks to amend or supplement this Indenture for the purposes set forth in clauses A (1) through A (6) of Section 1101 hereof, and provided, further, that the Insurer shall not have the right to direct or consent to City, Paying Agent or Owner action as provided herein, if:

the Insurer shall be in payment default under the Insurance Policy;

any material provision of the Insurance Policy shall be held to be invalid by a final, non-appealable order of a court of competent jurisdiction, or the validity or enforceability thereof shall be contested by the Insurer; or

a proceeding shall have been instituted in a court having jurisdiction in the premises seeking an order for relief, rehabilitation, reorganization, conservation, liquidation or dissolution in respect of the Insurer under Article 16 of the Insurance Law of the State of New York or any successor provision thereto and such proceeding is not terminated for a period of 90 consecutive days or such court enters an order granting the relief sought in such proceeding.

To the extent that the Insurer makes payment of any principal of or interest on a Bond, it shall be fully subrogated to all of the Owner's rights thereunder in accordance with the terms of the Insurance Policy to the extent of such payment, including the Owner's rights to payment thereof.

In the event that the principal of or interest on a Bond shall be paid by the Insurer pursuant to the terms of the Insurance Policy: (1) such Bond shall continue to be "Outstanding" under this ordinance, and (2) the Insurer shall be fully subrogated to all of the rights of the Owner thereof in accordance with the terms and conditions of paragraph B of this Section and the Insurance Policy.

This ordinance shall not be discharged unless and until all amounts due to the Insurer have been paid in full or duly provided for.

The rights granted under this ordinance to the Insurer to request, consent to or direct any action are rights granted to the Insurer in consideration of its issuance of the Insurance Policy. Any exercise by the Insurer of such rights is merely an exercise of the Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit of or on behalf of the Owners, nor does such action evidence any position of the Insurer, positive or negative, as to whether Owner consent is required in addition to consent of the Insurer.

No modification, amendment or supplement to this ordinance shall become effective except upon obtaining the prior written consent of the Insurer.

No contract shall be entered into nor any action taken by the City or the Paying Agent pursuant to which the rights of the Insurer or security for or sources of payment of the Bonds under this ordinance may be impaired or prejudiced except upon obtaining the prior written consent of the Insurer.

MISCELLANEOUS

Defeasance. If, when the Bonds shall be paid in accordance with their terms (or payment of the Bonds has been provided for in the manner set forth in the following paragraph), together with all other sums payable hereunder, then this ordinance and all rights granted hereunder shall thereupon cease, terminate and become void and be discharged and satisfied. Also if all Outstanding Bonds shall have been purchased by the City or the County and delivered to the Paying Agent for cancellation, and all other sums payable hereunder have been paid, or provision shall have been made for the payment of the same, then this ordinance and all rights granted hereunder shall thereupon cease, terminate and become void and be discharged and satisfied.

Payment of any Outstanding Bond shall prior to the maturity or Redemption Date thereof be deemed to have been provided for within the meaning and with the effect expressed in this Section if (a) in case said Bond is to be redeemed on any date prior to its maturity, the City shall have given to the Paying Agent in form satisfactory to it irrevocable instructions to give on a date in accordance with the provisions of Section 405 hereof notice of redemption of such Bond on said Redemption Date, such notice to be given in accordance with the provisions of Section 405 hereof, (b) there shall have been deposited with the Paying Agent or other Trust Bank either moneys in an amount which shall be sufficient, or Federal Securities which shall not contain provisions permitting the redemption thereof at the option of the issuer, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited with or held by the Paying Agent or other Trust Bank at the same time, shall be sufficient to pay when due the Bond Requirements due and to become due on said Bond on and prior to the Redemption Date or maturity date thereof, as the case may be, and (c) in the event said Bond is not by its terms subject to redemption within the

next sixty days, the City shall have given the Paying Agent in form satisfactory to it irrevocable instructions to give, as soon as practicable in the same manner as the notice of redemption is given pursuant to Section 404 hereof, a notice to the Owner of such Bond that the deposit required by (b) above has been made with the Paying Agent or other Trust Bank and that payment of said Bond has been provided for in accordance with this Section and stating such maturity or Redemption Date upon which moneys are to be available for the payment of the Bond Requirements of said Bond. Neither such securities nor moneys deposited with the Paying Agent or other Trust Bank pursuant to this Section or principal or interest payments on any such Federal Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the Bond Requirements of said Bond; provided any cash received from such principal or interest payments on such Federal Securities deposited with the Paying Agent or other Trust Bank, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities of the type described in (b) of this paragraph maturing at times and in amounts sufficient to pay when due the Bond Requirements to become due on said Bond on or prior to such Redemption Date or maturity date thereof, as the case may be. At such time as payment of a Bond has been provided for as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this ordinance, except for the purpose of any payment from such moneys or securities deposited with the Paying Agent or other Trust Bank.

In the case of the Bonds, the City is obligated to contribute additional securities or monies to the escrow or trust if necessary to provide sufficient amounts to satisfy the payment obligations on the Bonds.

In the event that any Bond is deemed to have been paid and defeased in accordance with (b) of the preceding paragraph, then in connection therewith, the City shall cause to be delivered a verification report of an independent nationally recognized certified public accountant. If a forward supply contract is employed in connection with the refunding, (1) such verification report shall expressly state that the adequacy of the escrow to accomplish the refunding relies solely on the initial escrowed investments and the maturing principal thereof and interest income thereon and does not assume performance under or compliance with the forward supply contract, and (2) the applicable escrow agreement shall provide that in the event of any discrepancy or difference between the terms of the forward supply contract and the escrow agreement (or the authorizing ordinance, if no separate escrow agreement is utilized), the terms of the escrow agreement or authorizing ordinance, if applicable, shall be controlling.

The release of the obligations of the City under this Section shall be without prejudice to the right of the Paying Agent to be paid reasonable compensation for all services rendered by it hereunder and all its reasonable expenses, charges and other disbursements incurred on or about the administration of and performance of its powers and duties hereunder.

Upon compliance with the foregoing provisions of this Section with respect to all Bonds then Outstanding, this ordinance may be discharged in accordance with the provisions of this Section but the liability of the City in respect of the Bonds shall

continue; provided that the Owners thereof shall thereafter be entitled to payment only out of the moneys or Federal Securities deposited with the Paying Agent or other Trust Bank as provided in this Section.

Delegated Powers. The officers and employees of the City be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance, including, without limitation:

Final Certificates. the execution of such certificates as may be reasonably required by the Purchaser, including the Continuing Disclosure Certificate;

Paying Agent Agreement. the execution and delivery of an agreement with the Paying Agent necessary or desirable to evidence the acceptance by the Paying Agent of its duties hereunder;

Official Statement. the execution and delivery of the final Official Statement; and

Bond Purchase Agreement. the execution and delivery of the Purchase Contract between the City and the Purchaser.

Evidence of Bond Owners. Any request, consent or other instrument which this ordinance may require or may permit to be signed and to be executed by the Owners of any Bonds may be in one or more instruments of similar tenor and shall be signed or shall be executed by each such Owner in person or by his or her attorney appointed in writing. Proof of the execution of any such instrument or of an instrument appointing any such attorney, or the holding by any Person of the Bonds shall be sufficient for any purpose of this ordinance (except as otherwise herein expressly provided) if made in the following manner:

Proof of Execution. The fact and the date of the execution by any Owner of any Bonds or his or her attorney of such instrument may be established by a certificate, which need not be acknowledged or verified, of an officer of a bank or trust company satisfactory to the City Clerk or of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he or she purports to act, that the individual signing such request or other instrument acknowledged to him or her the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer; the authority of the individual or individuals executing any such instrument on behalf of a corporate Owner of any securities may be established without further proof if such instrument is signed by an individual purporting to be the president or vice president of such corporation with a corporate seal affixed and attested by an individual purporting to be its secretary or an assistant secretary; and the authority of any Person or Persons executing any such instrument in any fiduciary or representative capacity may be established without further proof if such instrument is signed by a Person or Persons purporting to act in such fiduciary or representative capacity; and

Proof of Holdings. The amount of Bonds held by any Person and the numbers, date and other identification thereof, together with the date of his or her holding the Bonds, shall be proved by the registration records maintained by the Paying Agent.

Parties Interested Herein. Nothing in this ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any Person, other than the City, the County, the Paying Agent, the Insurer and the Owners of the Bonds, any right, remedy or claim under or by reason of this ordinance or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Paying Agent, the Insurer and the Owners of the Bonds.

Notices. Except as otherwise may be provided in this ordinance, all notices, certificates, requests or other communications pursuant to this ordinance shall be in writing and shall be sufficiently given and shall be deemed given by personal delivery or when mailed by first class mail, and either delivered or addressed as follows:

If to the City at:

City of Grand Junction, Colorado
250 N. 5th Street,
Grand Junction, CO 81501
Attention: Finance Director

If to the Paying Agent at:

Zions First National Bank
Corporate Trust Department
1001 - 17th Street, Suite 1050
Denver, CO 80202

Any of the foregoing Persons may, by notice given hereunder to each of the other Persons, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Business Days. If the date for making any payment or the last date for performance of any act or the exercising of any rights, as provided in this ordinance, shall not be a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this ordinance, and no interest shall accrue for the period after such nominal date.

INTRODUCED, PASSED ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN PAMPHLET FORM THIS 19TH DAY OF OCTOBER, 2009.

CITY OF GRAND JUNCTION, COLORADO

[S E A L]

President of the Council

Attest:

City Clerk

INTRODUCED, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED IN PAMPHLET FORM THIS 2ND DAY OF NOVEMBER, 2009.

CITY OF GRAND JUNCTION, COLORADO

[S E A L]

President of the Council Pro Tem

Attest:

City Clerk

EXHIBIT A

(FORM OF BOND)

7. Unless this Bond 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 Bond 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
COUNTY OF MESA
CITY OF GRAND JUNCTION, COLORADO
TAXABLE JOINT SEWER SYSTEM REVENUE BOND
(DIRECT PAY BUILD AMERICA BOND)
SERIES 2009

No. R- _____ \$ _____

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>DATED AS OF</u>	<u>CUSIP NO.</u>
_____ %	December 1, 20__	December __, 2009	_____

REGISTERED OWNER:

PRINCIPAL AMOUNT: _____
DOLLARS

The City of Grand Junction (the "City"), in the County of Mesa and State of Colorado (the "State"), for value received, hereby promises to pay to the registered owner specified above, or registered assigns, upon the presentation and surrender of this bond, solely from the special funds provided therefor, as hereinafter set forth, the principal amount set forth above on the maturity date specified above (unless this bond shall have been called for prior redemption, in which case on the Redemption Date) and to pay solely from such special funds interest hereon at the interest rate per annum specified above, payable semiannually on June 1 and December 1 in each year, commencing on _____ 1, 2009, until the principal amount is paid or payment has been provided for, as described in an ordinance adopted by the Council of the City on November 2, 2009 (the "Ordinance"). This is one of an authorized series of bonds issued under the Ordinance (the "Bonds"). The Bonds are all issued under and equally and ratably secured by and entitled to the security of the Ordinance. To the extent not defined herein, terms used in this Bond shall have the same meanings as set forth in the Ordinance. This Bond bears interest, matures, is payable, is subject to redemption and is transferable as provided in the Ordinance.

Reference is made to the Ordinance and to all ordinances supplemental thereto, with respect to the nature and extent of the security for the Bonds, the accounts, funds or revenues pledged, rights, duties and obligations of the City and the Paying Agent, the rights of the Owners of the Bonds, the events of defaults and remedies, the circumstances under which any Bond is no longer Outstanding, the issuance of additional bonds and the terms on which such additional bonds may be issued under and secured by the Ordinance, the ability to amend the Ordinance, and to all the provisions of which the Owner hereof by the acceptance of this Bond assents.

THE BONDS ARE ISSUED PURSUANT TO AND IN FULL COMPLIANCE WITH THE CONSTITUTION AND LAWS OF THE STATE OF COLORADO, AND PURSUANT TO THE ORDINANCE. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE CITY SECURED BY THE NET REVENUES AND THE BAB CREDIT. THE BONDS DO NOT CONSTITUTE A DEBT OF THE CITY, THE COUNTY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NONE OF THE CITY, THE COUNTY, THE STATE OR ANY OF THE POLITICAL SUBDIVISIONS THEREOF IS LIABLE THEREFOR. NONE OF THE MEMBERS OF THE COUNCIL OF THE CITY OR 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 of the State, the laws of the State of Colorado, and with the Ordinance and any ordinances supplemental thereto; and that this Bond does not contravene any Constitutional or statutory limitation.

The bonds of the series of which this bond is one are issued under the authority of Section 93(f) of the City Charter and Title 37, Article 45.1, of the Colorado Revised Statutes, as amended. Pursuant to Section 11-57-210 of the Colorado Revised Statutes, as amended, this recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bonds and the Bonds shall be 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 Ordinance until the certificate of authentication hereon shall have been duly executed by the Paying Agent.

IN WITNESS WHEREOF, the City Council of the City of Grand Junction, Colorado has caused this Bond to be signed by the manual or facsimile signature of the President of the City Council; sealed with a manual or facsimile impression of the seal of the City; and attested by the manual or facsimile signature of the City Clerk; and has further caused this Bond to be approved by the Board of County Commissioners of Mesa County, Colorado, with the manual or facsimile signature of the Chair of the County Board of Commissioners; sealed with a manual or facsimile impression of the seal of the County; and attested by the manual or facsimile signature of the County Clerk, all of the day first above written.

CITY OF GRAND JUNCTION, COLORADO

(S E A L)

(Facsimile Signature)
President of the City Council Pro Tem

ATTESTED:

(Facsimile Signature)
City Clerk

APPROVED BY:

MESA COUNTY, COLORADO

(S E A L)

(Facsimile Signature)
Chair, Board of County Commissioners

ATTESTED:

(Facsimile Signature)
County Clerk

(End of Form of Bond)

(Form of Registrar's Certificate of Authentication)

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

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

ZIONS FIRST 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)

PREPAYMENT PANEL

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

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

(End of Form of Prepayment Panel)

(Form of Assignment)

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)

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 City Council of the City (the “Council”), do hereby certify that:

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 October 19, 2009 and was duly adopted and ordered published in full by the Council at a regular meeting thereof held on November 2, 2009, which Ordinance has not been revoked, rescinded or repealed and is in full force and effect on the date hereof.

The Ordinance was duly moved and seconded and the Ordinance was passed on first reading at the meeting of October 19, 2009, 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>
Bruce Hill	X			
Teresa Coons	X			
Bonnie Beckstein	X			
Tom Kenyon			X	
Gregg Palmer			X	
Bill Pitts	X			
Linda Romer Todd	X			

The Ordinance was duly moved and seconded and the Ordinance was finally passed on second reading at the meeting of November 2, 2009, 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>
Bruce Hill			X	
Teresa Coons	X			
Bonnie Beckstein	X			
Tom Kenyon	X			
Gregg Palmer	X			
Bill Pitts	X			
Linda Romer Todd	X			

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

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.

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

Notices of the meetings of October 19, 2009 and November 2, 2009 in the forms attached hereto as Exhibit A were posted at City Hall in accordance with law.

The Ordinance was published in pamphlet form in The Daily Sentinel, a daily newspaper of general circulation in the City, on October 21, 2009, and November 4, 2009 as required by the City Charter. 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 5th day of November, 2009.

[S E A L]

City Clerk and Clerk to the Council

EXHIBIT A



**CITY COUNCIL AGENDA
CITY HALL AUDITORIUM, 250 NORTH 5TH STREET**

MONDAY, OCTOBER 19, 2009, 7:00 P.M.

Call to Order

Pledge of Allegiance
Invocation – Moment of Silence

Ratify Appointments

Attach 1

Ratify the Re-appointment of Dave Detwiler and the Appointment of Steve Peterson to the Building Code Board of Appeals with terms expiring July 1, 2012 and to eliminate the alternate position as the Bylaws do not require an alternate, just five members as requested by the Commissioners for the Building Code Board of Appeals

Recognitions

Recognition of Neighborhood Association—Housing Resources of Western Colorado properties

Recognition of Neighborhood Association—The Villas at Country Club

Recognition of Neighborhood Association—Grand Manor

Council Comments

Citizen Comments

***** CONSENT CALENDAR ***®**

1. **Minutes of Previous Meetings**

Attach 2

Action: Approve the Minutes of the October 5, 2009, Regular Meeting

2. **Setting a Hearing Authorizing the Issuance and Sale of the City of Grand Junction Joint Sewer System Revenue Bonds, Series 2009**

Attach 3

City Council and the Mesa County Commissioners have determined that in the best interests of the joint sewer system and its customers, to complete certain improvements to the Persigo sewer system. To finance the projects, the City Council has determined that it is necessary and advisable to issue its “City of Grand Junction, Colorado, Joint Sewer System Revenue Bonds, Series 2009 (Direct Pay Build America Bonds)” in the amount of \$3.2 million to help defray part of the costs of the Project.

Proposed Ordinance Authorizing the Issuance and Sale of the City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Building America Bonds), Series 2009, Payable Solely Out of the Net Revenues to be Derived from the Operation of the Joint Sewer System of the City and Mesa County, Colorado and Certain Other Revenues

Action: Introduction of a Proposed Ordinance and Set a Hearing for November 2, 2009

Staff presentation: Greg Trainor, Utilities, Streets, and Facilities Director
Tim Moore, Public Works and Planning Director

3. **Setting a Hearing Approving Loan from the Colorado Water Resources and Power Development Authority** **Attach 4**

The City Council has determined that in the interests of the City and the public, certain improvements are required to the City’s water system, including the replacement of certain existing cast iron and steel water distribution lines within the system. To finance the project, the City Council has determined that it is necessary and advisable to enter into a loan agreement with the Colorado Water Resources and Power Development Authority (“CWRPDA”) for a loan amount of \$3,800,000.00.

Proposed Ordinance Approving a Loan from the Colorado Water Resources and Power Development Authority to Finance Improvements to the City’s Water System; Authorizing the Form and Execution of the Loan Agreement and a Governmental Agency Bond to Evidence Such Loan; Authorizing the Execution and Delivery of Documents Related Thereto; and Prescribing Other Details in Connection Therewith

Action: Introduction of a Proposed Ordinance and Set a Hearing for November 2, 2009

Staff presentation: Greg Trainor, Utilities, Streets, and Facilities Director
Tim Moore, Public Works and Planning Director

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

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

4. **Public Hearing – Moir Growth Plan Amendment, Located at 399 29 Road and 2895 Riverside Parkway** [File # GPA-2009-169] **Attach 5**

This is a request to approve an amendment to the 2004 Pear Park Transportation and Access Management Plan (TAMP) to allow a right-in/right-out access onto the south side of Riverside Parkway approximately 300' west of 29 Road. An amendment to the Pear Park Neighborhood Plan is an amendment to the Grand Valley Circulation Plan and is considered an amendment to the Growth Plan.

Resolution No. 81-09— A Resolution Amending the Growth Plan of the City of Grand Junction to Allow a Right-In/Right-Out Access onto the South Side of Riverside Parkway Approximately 300' West of 29 Road

®Action: Adopt Resolution No. 81-09

Staff presentation: Tim Moore, Public Works and Planning Director

5. **Public Hearing – Correcting Legal Descriptions on Various Annexation and Zoning Ordinances and Resolutions** **Attach 6**

A discrepancy in the legal description of Barker Annexation No. 2 recently became known when a development application was filed for the proposed Carson Subdivision, which occupies the same area. An improvement survey was completed and submitted as part of the subdivision application and discrepancies in the property description were discovered. This ordinance corrects the discrepancies found in the prior ordinances and resolutions.

Resolution No. 82-09—A Resolution Amending Resolution No. 69-04 and Resolution No. 85-04 to Correct the Legal Description for Barker Annexation, Which Includes Barker Annexation No. 2

Ordinance No. 4387—An Ordinance Amending Ordinance No. 3666 and Ordinance No. 3667 Annexing Territory to the City of Grand Junction, Colorado, Barker Annexation No. 2, Located at 172 Lantzer Avenue, 2934 Highway 50, and 2937 Jon Hall Drive

®Action: Adopt Resolution No. 82-09 and Hold a Public Hearing and Consider Final Passage and Final Publication of Ordinance No. 4387

Staff presentation: John Shaver, City Attorney

6. **Continuation of Public Hearing on an Ordinance Adopting the 7th Street Historical District Overlay as Amended** [File #PLN-2009-179] **Attach 7**

The 7th Street Historic District Design Standards and Guidelines are being proposed for the properties included in the designated National Register Historic

District, which includes those properties adjacent to 7th Street between Hill and Grand Avenue, as well as the properties at the southeast and southwest corners of 7th Street and Grand Avenue.

Ordinance No. 4388—An Ordinance Amending Ordinance No. 2211 by Adoption of the 7th Street Residential Historic District Zoning Overlay Design Standards and Guidelines, Amending the Zoning and Development Code to Add Section 7.7

®Action: Hold a Public Hearing and Consider Final Passage and Final Publication of Ordinance No. 4388

Staff presentation: Tim Moore, Public Works and Planning Director

7. **Non-Scheduled Citizens & Visitors**
8. **Other Business**
9. **Adjournment**



**CITY COUNCIL AGENDA
CITY HALL AUDITORIUM, 250 NORTH 5TH STREET**

MONDAY, NOVEMBER 2, 2009, 7:00 P.M.

Call to Order

Pledge of Allegiance- Cub Scout Pack 320
Invocation – David Huslig, Bethel Assembly of God

Proclamations/Recognitions

Proclaiming November as “Alzheimer’s Awareness Month” in the City of Grand Junction

Proclaiming November 11th, “As a Salute to All Veterans 2009” in the City of Grand Junction

Proclaiming November as “Hospice and Palliative Care Month” in the City of Grand Junction

Proclaiming November as “Blue Star Mothers Month” in the City of Grand Junction

Council Comments

Citizen Comments

***** CONSENT CALENDAR ***®**

1. **Minutes of Previous Meetings** **Attach 1**

Action: Approve the Minutes of the October 19, 2009, and the Minutes of the October 21, 2009, Regular Meeting

2. **Setting a Hearing on the Fuoco Rezone, Located at 160 Hill Avenue** [File #GPA-2009-147] **Attach 2**

Request to rezone 0.14 acres located at 160 Hill Avenue from R-O, (Residential Office) to C-1, (Light Commercial).

Proposed Ordinance Rezoning Property Known as the Fuoco Rezone from R-O (Residential Office) to C-1 (Light Commercial), Located at 160 Hill Avenue

Action: *Introduction of a Proposed Ordinance and Set a Hearing of November 16, 2009*

Staff presentation: Scott D. Peterson, Senior Planner

3. **Setting a Hearing on the Matthews Enclave Annexation, Located along the Colorado River West of 25 Road and South of the Riverside Parkway** [File #ANX-2009-209] **Attach 3**

A request to annex 10.53 acres of enclaved property, located along the Colorado River west of 25 Road and south of the Riverside Parkway. The Matthews Enclave consists of one privately-owned parcel and portions of two publicly-owned parcels, along with 0.83 acres of public right-of-way.

Under the 1998 Persigo Agreement with Mesa County the City is to annex all Enclave areas within five (5) years. State law allows a municipality to annex enclave areas unilaterally after they have been enclaved for a period of three (3) years. The Matthews Enclave has been enclaved since January 16, 2005.

a. Notice of Intent to Annex and Exercising Land Use Control

Resolution No. 84-09—A Resolution of the City of Grand Junction Giving Notice that a Tract of Land Known as Matthews Enclave, Located along the Colorado River West of 25 Road and South of the Riverside Parkway, Consisting of Approximately 10.53 Acres, will be Considered for Annexation to the City of Grand Junction, Colorado, and Exercising Land Use Control

®Action: *Adopt Resolution No. 84-09*

b. Setting a Hearing on Proposed Ordinance

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Matthews Enclave Annexation, Located along the Colorado River West of 25 Road and South of the Riverside Parkway, Consisting of Approximately 10.53 Acres

Action: *Introduction of a Proposed Ordinance and Set a Hearing for December 14, 2009*

Staff presentation: Brian Rusche, Senior Planner

4. **Setting a Hearing Correcting Legal Description on a Vacation of Right-of-Way Ordinance for a Portion of Gunnison Avenue** [File #VR-2009-223] **Attach 4**

The intent of Ordinance No. 2639 was to vacate the entirety of Gunnison Avenue right- of-way within the limits specified by said ordinance; however, due to scrivener's error not all documents conveying Gunnison Avenue right-of-way were cited in said ordinance. The amended ordinance lists all documents

conveying right of way for Gunnison Avenue to be included within the stated limits, thereby fully satisfying the intent of Ordinance No. 2639.

Proposed Ordinance Amending Ordinance No. 2639 Vacating a Portion of Gunnison Avenue Right-of-Way between Harris Road and Melody Lane

Action: Introduction of a Proposed Ordinance and Set a Hearing for November 16, 2009

Staff presentation: John Shaver, City Attorney
Tim Moore, Public Works and Planning Director

5. **Setting a Hearing on the Medicinal Marijuana Dispensary Moratorium** **Attach 5**

The proposed ordinance would afford the City an opportunity, by declaring a temporary moratorium on the filing of development applications for medical marijuana dispensaries, to carefully evaluate and determine as appropriate, the proper regulation of those businesses. The ordinance also proposes a moratorium on the issuance of sales tax licenses for new dispensaries/marijuana care-givers.

Proposed Ordinance Concerning Land Use Applications in the City of Grand Junction, Instituting a Temporary Moratorium on the Issuance of Land Use Approvals and Sales Tax Licenses for Medical Marijuana Dispensaries and Providing Penalties for Violation Thereof

Action: Introduction of a Proposed Ordinance and Set a Hearing for November 16, 2009

Staff presentation: John Shaver, City Attorney

6. **Downtown Grand Junction Business Improvement District (DGJBID) Operating Plan and Budget** **Attach 6**

As required by statute, the DGJBID has filed the 2010 Operating Plan and Proposed Budget with the City Clerk by September 30. It has been reviewed by Staff and found to be reasonable.

Action: Approve the DGJBID 2010 Operating Plan and Proposed Budget

Staff presentation: Jodi Romero, Financial Operations Manager

7. **Construction and Maintenance Agreement and Purchase of Property from Union Pacific Railroad Company for the 29 Road and I-70B Interchange Project** **Attach 7**

The Public Utility Commission requires that the City and the Union Pacific Railroad Company enter into a Construction and Maintenance Agreement for the construction and future maintenance of the 29 Road Overpass Bridge. The City's cost for the Easement Fees and Permit Fees included in this Agreement is \$177,547. The City has also signed a Letter of Understanding with the Union Pacific Railroad Company to purchase street right-of-way at 29 Road and D ½ Road. The City's cost for the right-of-way is \$120,680.

Resolution No. 85-09—A Resolution Authorizing the Purchase of Real Property at 29 Road and D ½ Road, Identified by Parcel Schedule #2943-172-00-056 from Union Pacific Railroad Company

®Action: Authorize the City Manager to Sign the Construction and Maintenance Agreement with Union Pacific Railroad Company for the 29 Road Overpass and Adopt Resolution No. 85-09

Staff presentation: Tim Moore, Public Works and Planning Director

8. **Water Agreement Amended and Restated with BrightStar Golf Redlands Mesa LLC** **Attach 8**

Authorization of the City Manager to consent to the assignment of the Water Agreement Amended and Restated to provide irrigation water for the public golf course for the land where the Golf Course at Redlands Mesa ("Golf Course") is located in the Redlands.

Action: Authorize the City Manager to Act by Executing the Consent to Assignment of the Water Agreement Amended and Restated with BrightStar Golf Redlands Mesa LLC

Staff presentation: John Shaver, City Attorney

9. **Tiara Rado Golf Course Irrigation Replacement – Phase Two** **Attach 9**

This project will replace the 40 year old irrigation system at Tiara Rado Golf Course that is deteriorating and in some cases beyond repair. This approval request is for Phase Two of the project (pond construction and dirt work), consisting of the Civil Contractor (\$584,923.50) and Golf Course Specialty Contractor (\$727,189.69) for a total Phase Two cost in the amount of \$1,312,113.19.

If approved, the City will realize future cost savings through reduced irrigation and pump repairs, and decreased electrical costs. The pond construction is being done in conjunction with the irrigation replacement project. The irrigation system and pump station are designed to operate from the ponds being built by the Civil Contractor.

Action: Authorize the City Purchasing Division to Enter into Construction Contracts with M.A. Concrete in the Amount of \$584,923.50 for the Civil Construction Portion of the Project, and Stonefly Earthworks in the Amount of \$727,189.69 for the Golf Course Specialty Construction Portion of the Project

Staff presentation: Rob Schoeber, Parks and Recreation Director
Jay Valentine, Assistant Financial Operations Manager

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

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

10. **Public Hearing - Authorizing the Issuance and Sale of the City of Grand Junction Joint Sewer System Revenue Bonds, Series 2009** **Attach 10**

City Council and the Mesa County Commissioners have determined that in the best interests of the joint sewer system and its customers, to complete certain improvements to the Persigo sewer system. To finance the projects, the City Council has determined that it is necessary and advisable to issue its “City of Grand Junction, Colorado, Joint Sewer System Revenue Bonds, Series 2009 (Direct Pay Build America Bonds)” in the approximate amount of \$5.2 million to help defray part of the costs of the Project.

Ordinance No. 4389—An Ordinance Authorizing the Issuance and Sale of the City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Build America Bonds), Series 2009, Payable Solely out of the Net Revenues to be Derived from the Operation of the Joint Sewer System of the City and Mesa County, Colorado and Certain Other Revenues

®Action: Hold a Public Hearing and Consider Final Passage and Final Publication of Ordinance No. 4389

Staff presentation: Greg Trainor, Utilities, Streets, and Facilities Director
Tim Moore, Public Works and Planning Director

11. **Public Hearing - Approving Loan from the Colorado Water Resources and Power Development Authority** **Attach 11**

The City Council has determined that in the interests of the City and the public, certain improvements are required to the City’s water system, including the replacement of certain existing cast iron and steel water distribution lines within the system. To finance the project, the City Council has determined that it is necessary and advisable to enter into a loan agreement with the Colorado Water Resources and Power Development Authority (“CWRPDA”) for a loan amount of \$3.8 million.

Ordinance No. 4390—An Ordinance Approving a Loan from the Colorado Water Resources and Power Development Authority to Finance Improvements to the City’s Water System; Authorizing the Form and Execution of the Loan Agreement and a Governmental Agency Bond to Evidence Such Loan; Authorizing the Execution and Delivery of Documents Related Thereto; and Prescribing Other Details in Connection Therewith

®Action: Hold a Public Hearing and Consider Final Passage and Final Publication of Ordinance No. 4390

Staff presentation: Greg Trainor, Utilities, Streets, and Facilities Director
Tim Moore, Public Works and Planning Director

- 12. **Non-Scheduled Citizens & Visitors**
- 13. **Other Business**
- 14. **Adjournment**

EXHIBIT B

State PROOF OF PUBLICATION

NOTICE OF PUBLIC HEARING
 NOTICE IS HEREBY GIVEN
 THAT:
 The City Council of the City of Grand Junction, Colorado, at its regular convened meeting on October 19, 2009, passed on first reading the following entitled proposed ordinance: -
 An Ordinance Authorizing the Issuance and Sale of the City of Grand Junction, Colorado, Taxable Joint Sewer System Revenue Bonds (Direct Pay Building America Bonds), Series 2009, Payable Solely Out of the Net Revenues to be Derived from the Operation of the Joint Sewer System of the City and Mesa County, Colorado and Certain Other Revenues and authorized the publication in pamphlet form.
 NOTICE IS FURTHER GIVEN THAT the public hearing will be held November 2, 2009 at 7:00 p.m. in the City Auditorium, 250 North 5th Street, at which time public comments will be taken and considered before the final adoption of the proposed ordinance.
 Copies of the proposed ordinance are available for public inspection in the City Clerk's Office, 250 North 5th Street, City Hall, at any time Monday through Friday between the hours of 7:30 a.m. and 5:30 p.m.
 BY THE ORDER OF THE CITY COUNCIL
 /s/ Juanita Peterson
 Deputy City Clerk
 Published: October 21, 2009.

STATE OF COLORADO

County of (Mesa)

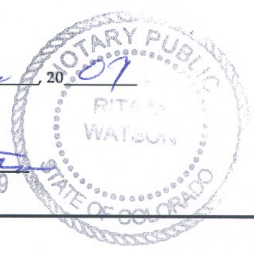
Terry Laubhan

Being duly sworn, says that I am Legal Secretary of The Daily Sentinel, a daily newspaper, published and duly printed in The County of Mesa, State of Colorado; that said newspaper has a general circulation in said County and has been continuously and uninterruptedly published therein, during a period of at least fifty-two consecutive weeks next prior to the first publication of the annexed notice; that said newspaper is a newspaper within the meaning of the act of the general Assembly of the State of Colorado, entitled "An Act to regulate the printing of legal notices and advertisements," and amendments thereto; that the notice of which the annexed is a printed copy taken from said newspaper, was published in said newspaper, and in the regular and entire issue of every number thereof once a week for 1 successive week; that said notice was so published in said newspaper proper and not in any supplement thereof, and that first publication of said notice as aforesaid, was on the 21st day of October, 2009, and the last, on the 21st day of October, 2009. Copies of each number of said paper in which said notice and/or list was published were delivered by carriers or transmitted by mail to each of the subscribers of said newspaper, The Daily Sentinel, according to the accustomed mode of business in this office.

PLH

Subscribed and sworn to before me, this 21st day of October, 2009

Rita M. Watson
 My Commission Expires November 8, 2009



Proof of Publication 2nd Reading



Date: September 25, 2009
Author: Mary Lynn Bacus
Paralegal
Title/ Phone Ext: 244-1505
2nd Reading: Monday,
November 2, 2009

Attach 11
Public Hearing Approving Loan from the
Colorado Water Resources and Power
Development Authority
CITY COUNCIL AGENDA ITEM

Subject: Loan from the Colorado Water Resources and Power Development Authority
File # (if applicable):
Presenters Name & Title: Greg Trainor, Utilities, Streets and Facilities Director Tim Moore, Director of Public Works & Planning

Executive Summary:

The City Council has determined that in the interests of the City and the public, certain improvements are required to the City's water system, including the replacement of certain existing cast iron and steel water distribution lines within the system. To finance the project, the City Council has determined that it is necessary and advisable to enter into a loan agreement with the Colorado Water Resources and Power Development Authority ("CWRPDA") for a loan amount of \$3.8 million.

How this item relates to the draft Comprehensive Plan Goals and Policies:

Goal 12: Being a regional provider of goods and services the City and County will sustain, develop and enhance a healthy, diverse economy.

The projects funded with this loan will help the City and County sustain, develop and enhance a healthy, diverse economy. Completion of the proposed projects will aid in our continued provision of reliable and safe delivery of potable water to the citizens of Grand Junction.

Action Requested/Recommendation:

Hold a Public Hearing and Consider Final Passage and Final Publication of Ordinance.

Board or Committee Recommendation:

N/A

Background, Analysis and Options:

There are currently about 35 miles of cast iron water lines within the City of Grand Junction's water distribution system. Approximately one third of these lines have a significant enough break history to warrant inclusion in the 10-year capital improvement plan. Repairs of the numerous breaks on these lines have found the pipe to be structurally compromised due to loss of pipe material from electrolysis. This project involves some of the larger distribution lines in our system located within arterial and local streets where water breaks are difficult to repair, and typically impact a greater service area.

Benefits of this replacement effort include; better water quality, less opportunity for contamination of the water system due to breaks, more reliable water service for our customers, and minimized possibility of future breaks within congested street corridors.

Financial Impact/Budget:

We have included the proposed \$3.8 million dollar loan in the water fund long range financial plan. Debt service for this loan will be carried for a 20-year period with a loan rate of 2.5% through the state revolving fund administered by the Colorado Water and Power Development Authority.

Legal issues:

N/A

Other issues:

N/A

Previously presented or discussed:

Setting a Hearing on First Reading of the Ordinance on October 19, 2009 at City Council Meeting

Attachments:

Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY TO FINANCE IMPROVEMENTS TO THE CITY'S WATER SYSTEM; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN AGREEMENT AND A GOVERNMENTAL AGENCY BOND TO EVIDENCE SUCH LOAN; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATED THERETO; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH

WHEREAS, the City of Grand Junction, Colorado (the "City"), is a home rule city duly existing under the Constitution and laws of the State of Colorado and its City Charter (the "Charter"); and

WHEREAS, the members of the City Council of the City (the "Council") have been duly elected and qualified; and

WHEREAS, the Council has determined and does hereby determine that the City's water system (the "System") is an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution ("TABOR"), and Section 37-45.1-103 of the Colorado Revised Statutes, as amended; and

WHEREAS, the Council has heretofore determined that the interest of the City and the public interest and necessity require certain improvements to the System, including the replacement of certain existing cast iron and steel water distribution lines within the System (collectively, the "Project"); and

WHEREAS, the Council has determined that in order to finance the Project it is necessary, advisable, and in the best interests of the City to enter into a loan agreement (the "Loan Agreement") with the Colorado Water Resources and Power Development Authority (the "CWRPDA"), a body corporate and political subdivision of the State of Colorado, pursuant to which CWRPDA will loan the City an amount not to exceed \$4,300,000 (the "Loan") for such purposes; and

WHEREAS, CWRPDA will obtain moneys to fund the Loan through the issuance of its bonds (the "CWRPDA Bonds"); and

WHEREAS, the City's repayment obligations under the Loan Agreement shall be evidenced by a governmental agency bond (the "Bond") to be issued by the City to CWRPDA; and

WHEREAS, the Bond and the Loan Agreement (collectively, the "Financing Documents") shall be a revenue obligation of the City payable from the Pledged Property (as defined in the Loan Agreement), and pursuant to TABOR and Article XII, Section 93(f) of the Charter may be approved by the Council without an election; and

WHEREAS, forms of the Financing Documents have been filed with the City Clerk; and

WHEREAS, the Council desires to approve the forms of the Financing Documents and authorize the execution thereof.

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

Section 1. Approvals, Authorizations, and Amendments. The forms of the Financing Documents filed with the City Clerk are incorporated herein by reference and are hereby approved. The City shall enter into and perform its obligations under the Financing Documents in the forms of such documents, with such changes as are not inconsistent herewith and as are hereafter approved by the President of the Council (the "President"). The President and City Clerk are hereby authorized and directed to execute the Financing Documents and to affix the seal of the City thereto, and further to execute and authenticate such other documents or certificates as are deemed necessary or desirable in connection therewith. The Financing Documents shall be executed in substantially the forms approved at this meeting.

The execution by the President, the City Clerk, or other appropriate officers of the City of any instrument or certificate or other document in connection with the matters referred to herein shall be conclusive evidence of the approval by the City of such instrument or certificate or other document.

Section 2. Election to Apply Supplemental Act. Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, of the Colorado Revised Statutes, as amended (the “Supplemental Act”), provides that a public entity, including the City, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Council hereby elects to apply all of the provisions of the Supplemental Act to the Financing Documents.

Section 3. Delegation and Parameters.

(a) Pursuant to Section 11-57-205 of the Supplemental Act, the Council hereby delegates to the President, the Financial Operations Manager, or any member of the Council the authority to make the following determinations relating to and contained in the Financing Documents, subject to the restrictions contained in paragraph (b) of this Section 3:

- (i) The interest rate on the Loan;
- (ii) The principal amount of the Loan;
- (iii) The amount of principal of the Loan maturing in any given year and the final maturity of the Loan;
- (iv) The conditions on which and the prices at which the Loan may be paid prior to maturity;
- (v) The dates on which the principal of and interest on the Loan are paid; and
- (vi) The existence and amount of reserve funds for the Loan, if any.

(b) The delegation in paragraph (a) of this Section 3 shall be subject to the following parameters and restrictions: (i) the interest rate on the Loan shall not exceed 3%; (ii) the principal amount of the Loan shall not exceed \$4,300,000; and (iii) the final maturity of the Loan shall not be later than December 31, 2030.

Section 4. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Financing Documents shall contain a recital that they are issued pursuant to the Supplemental Act. Such recital shall be conclusive evidence of the

validity and the regularity of the issuance of the Financing Documents after their delivery for value.

Section 5. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Financing Documents provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. The revenues pledged to the payment of the Financing Documents shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall have the priority described in the Loan Agreement. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the City irrespective of whether such persons have notice of such liens.

Section 6. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the Financing Documents shall be commenced more than thirty days after the date of adoption of this Ordinance.

Section 7. Limited Obligation; Special Obligation. The Financing Documents are payable solely from the Pledged Property and the Financing Documents do not constitute a debt within the meaning of any constitutional or statutory limitation or provision.

Section 8. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council, or any officer or agent of the City acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal of or interest on the Bond. Such recourse shall not be available 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 Bond and as a part of the consideration of its sale or purchase, CWRPDA specifically waives any such recourse.

Section 9. Disposition and Investment of Loan Proceeds. The proceeds of the Loan shall be applied only to pay the costs and expenses of acquiring, constructing and equipping the Project, including costs related thereto and, to the extent

permitted under federal tax laws, reimbursement to the City for capital expenditures heretofore incurred and paid from City funds in anticipation of the incurrence of long-term financing therefor, and all other costs and expenses incident thereto, including without limitation, the costs of obtaining the Loan.

Neither CWRPDA nor any subsequent owner(s) of the Financing Documents shall be responsible for the application or disposal by the City or any of its officers of the funds derived from the Loan. In the event that all of the proceeds of the Loan are not required to pay such costs and expenses, any remaining amount shall be used for the purpose of paying the principal amount of the Loan and the interest thereon.

Section 10. City Representative. Pursuant to Exhibit B of the Loan Agreement, Jodi Romero, Financial Operations Manager, and Jay Valentine, Assistant Financial Operations Manager, are each hereby designated an Authorized Officer (as defined in the Loan Agreement) for the purpose of performing any act or executing any document relating to the Loan, the City, the Bond, or the Loan Agreement. A copy of this Ordinance shall be furnished to CWRPDA as evidence of such designation.

Section 11. Estimated Life of Improvements. It is hereby determined that the estimated life of the Project to be financed with the proceeds of the Loan is not less than 20 years from the date of the Loan.

Section 12. Direction to Take Authorizing Action. The appropriate officers of the City and members of the Council are hereby authorized and directed to take all other actions necessary or appropriate to effectuate the provisions of this Ordinance, including but not limited to the execution and delivery of such certificates and affidavits as may reasonably be required by CWRPDA.

Section 13. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the City and members of the Council, not inconsistent with the provisions of this Ordinance, relating to the Financing Documents, or actions to be taken in respect thereof, are hereby authorized, ratified, approved, and confirmed.

Section 14. CWRPDA's Official Statement. The appropriate officers and employees of the City are hereby authorized and directed to furnish and supply to CWRPDA information concerning the City for use in the preparation of an Official Statement to be used to market the CWRPDA Bonds.

Section 15. Repealer. All acts, orders, ordinances, or resolutions, or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

Section 16. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such determination shall not affect, impair, or invalidate the remaining provisions hereof, the intention being that the various provisions hereof are severable.

Section 17. Ordinance Irrepealable. After the Bond is issued, this Ordinance shall constitute an irrevocable contract between the City and CWRPDA, and shall be and remain irrepealable until the Bond and the interest thereon shall have been fully paid, satisfied, and discharged. No provisions of any constitution, statute, charter, ordinance, resolution, or other measure enacted after the issuance of the Bond shall in any way be construed as impairing the obligations of the City to keep and perform its covenants contained in this Ordinance.

Section 18. Effective Date. This Ordinance shall be in full force and effect 30 days after publication following final passage.

[The remainder of this page intentionally left blank.]

INTRODUCED, PASSED ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN PAMPHLET FORM on the 19th day of October, 2009.

INTRODUCED, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED IN PAMPHLET FORM this ____ day of _____, 2009.

CITY OF GRAND JUNCTION, COLORADO

[S E A L]

President of the City 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 City Council of the City (the “Council”), do hereby certify as follows:

(1) The foregoing pages are a true, correct and complete copy of an ordinance (the “Ordinance”) that was introduced, passed on first reading and ordered published in full by the Council at a regular meeting thereof held on October 19, 2009 and was duly adopted and ordered published in full by the Council at a regular meeting thereof held on November 2, 2009, 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 October 19, 2009, 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>
Bruce Hill				
Teresa Coons				
Bonnie Beckstein				
Tom Kenyon				
Gregg Palmer				
Bill Pitts				
Linda Romer Todd				

(3) The Ordinance was duly moved and seconded and the Ordinance was finally passed on second reading at the meeting of November 2, 2009, 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>
Bruce Hill				
Teresa Coons				
Bonnie Beckstein				
Tom Kenyon				
Gregg Palmer				
Bill Pitts				
Linda Romer Todd				

(4) The members of the Council were present at such meetings and voted on the passage of the 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 that might prohibit the adoption of the Ordinance.

(7) Notices of the meetings of October 19, 2009 and November 2, 2009 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 _____, 2009 and _____, 2009, as required by the City Charter. 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 _____, 2009.

City Clerk and Clerk to the Council

[S E A L]

EXHIBIT A

(Attach Notices of Meetings of October 19, 2009 and November 2, 2009)

EXHIBIT B
(Attach Notice of Meeting)