



**CITY COUNCIL AGENDA
CITY HALL AUDITORIUM, 250 NORTH 5TH STREET**

MONDAY, NOVEMBER 29, 2010, 7:00 P.M.

Call to Order

Pledge of Allegiance
Invocation – Pastor Josh Boling, Lighthouse Foursquare
Church

[The invocation is offered for the use and benefit of the City Council. The invocation is intended to solemnize the occasion of the meeting, express confidence in the future and encourage recognition of what is worthy of appreciation in our society. During the invocation you may choose to sit, stand or leave the room.]

Recognition/Presentation

Recognize Colorado National Guard for the Tamarisk Work

Council Comments

Citizen Comments

***** CONSENT CALENDAR ***®**

1. **Minutes of Previous Meetings**

[Attach 1](#)

Action: Approve the Minutes of the November 17, 2010 Regular Meeting

** Indicates Changed Item

*** Indicates New Item

® Requires Roll Call Vote

2. **Setting a Hearing on Granting a Franchise Agreement to Xcel Energy and Grand Valley Power** [Attach 2](#)

The current franchise agreements with Xcel Energy (Public Service Company of Colorado) and Grand Valley Power (Grand Valley Rural Power) were approved in 1992 and will expire in 2012. The proposed ordinance would establish a new, 20-year franchise agreement with each utility to be placed on the ballot at the April, 2011 Municipal Election.

Proposed People's Ordinance Granting a Franchise by the City of Grand Junction to Public Service Company of Colorado, D/B/A Xcel Energy, Its Successors and Assigns, the Right to Furnish, Sell and Distribute Gas and Electricity to the City and to all Persons, Businesses, and Industry Within the City and the Right to Acquire, Construct, Install, Locate, Maintain, Operate and Extend Into, Within and Through Said City All Facilities Reasonably Necessary to Furnish, Sell and Distribute Gas and Electricity Within the City and the Right to Make Reasonable Use of All Streets and Other Public Places and Public Easements as Herein Defined as May Be Necessary; and Fixing the Terms and Conditions Thereof AND Granting a Franchise by the City of Grand Junction to Grand Valley Rural Power Lines, Inc., Its Successors and Assigns, the Right to Furnish, Sell and Distribute Electricity to the City and to All Persons, Businesses, and Industry Within the City and the Right to Acquire, Construct, Install, Locate, Maintain, Operate and Extend Into, Within and Through Said City All Facilities Reasonably Necessary to Furnish, Sell and Distribute Electricity Within the City and the Right to Make Reasonable Use of All Streets and Other Public Places and Public Easements as Herein Defined as May Be Necessary; and Fixing the Terms and Conditions Thereof

Action: Introduction of a Proposed People's Ordinance and Set a Hearing for January 31, 2011

Staff presentation: John Shaver, City Attorney

3. **Support for Funding for the League for Land and Water Conservation** [Attach 3](#)

A resolution that outlines the City Council's support for the full funding of the Land and Water Conservation Fund (LWCF) as originally authorized in 1964. Senate Bill 2747, co-sponsored by Senators Udall and Bennet, calls for the funding of the LWCF at its full authorized level.

Resolution No. 45-10—A Resolution Concerning the Funding of the Land and Water Conservation Fund and Supporting SB2747

®Action: *Adopt Resolution No. 45-10*

Staff presentation: John Shaver, City Attorney

4. **Setting a Hearing on the 2010 Supplemental Appropriation Ordinance and the 2011 Budget Appropriation Ordinance** [Attach 4](#)

This request is to appropriate certain sums of money to defray the necessary expenses and liabilities of the accounting funds of the City of Grand Junction based on the 2010 amended and 2011 proposed budgets.

Proposed Ordinance Making Supplemental Appropriations to the 2010 Budget of the City of Grand Junction

Proposed Ordinance Appropriating Certain Sums of Money to Defray the Necessary Expenses and Liabilities of the City of Grand Junction, Colorado, the Downtown Development Authority, and the Ridges Metropolitan District for the Year Beginning January 1, 2011 and Ending December 31, 2011

Action: *Introduction of Proposed Ordinances and Set a Hearing for December 15, 2010*

Presenter Name: Laurie Kadrach, City Manager
Jodi Romero, Financial Operations Manager

5. **Grant Award for Auto Theft Task Force** [Attach 5](#)

For the second year in a row, the Grand Junction Police Department has been awarded a grant from the Colorado Department of Public Safety. This grant award in the amount of \$161,481 will support the continuation of a joint auto theft task force for the Grand Valley. Participating agencies include; the Grand Junction Police Department, the Mesa County Sheriff's Office, the Fruita Police Department, and the Colorado State Patrol. The award is for the purchase of equipment vital to the mission of the task force, as well as overtime for participants. If approved, the City of Grand Junction will serve as the fiscal agent for the grant.

Action: *Authorize the City Manager to Accept this Award and Budget the Receipt and Expenditure of \$161,481 of Grant Funds in the Proposed 2011 Budget*

Presenter Name: Troy Smith, Deputy Chief of Police

6. **Setting a Hearing on the GJ Regional Airport Annexation, Located at 2828 Walker Field Drive** [File #ANX-2010-290] [Attach 6](#)

Request to annex 614.3 acres, located at 2828 Walker Field Drive. The GJ Regional Airport Annexation consists of seven (7) parcels. There is no public right-of-way contained within this annexation area.

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

Resolution No. 46-10—A Resolution Referring a Petition to the City Council for the Annexation of Lands to the City of Grand Junction, Colorado, Setting a Hearing on Such Annexation, and Exercising Land Use Control, GJ Regional Airport Annexation, Located at 2828 Walker Field Drive

®Action: *Adopt Resolution No. 46-10*

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

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, GJ Regional Airport Annexation, Approximately 614.3 Acres, Located at 2828 Walker Field Drive

Action: *Introduction of a Proposed Ordinance and Set a Hearing for January 17, 2011*

Staff presentation: Lori V. Bowers, Senior Planner

7. **Marso Revocable Permit, Located within the 26 ¾ Road Right-of-Way** [File #RVP-2010-193] [Attach 7](#)

Applicant is requesting approval of a revocable permit for an existing storage shed, irrigation pump and various landscaping improvements within the 26 ¾ Road right-of-way. The encroachment became apparent with the development of a new public pedestrian trail connecting Capra Way and Lakeside Court within the 26 ¾ Road alignment.

Resolution No. 47-10—A Resolution Concerning the Issuance of a Revocable Permit to Samuel and Audrey Marso

®Action: *Adopt Resolution No. 47-10*

Staff presentation: Tim Moore, Public Works and Planning Director

8. **Amendment #1 to the Contract between the City of Grand Junction and the Colorado Department of Transportation for the 23 Road and G Road Intersection Reconstruction Project** [Attach 8](#)

Federal aid funds have been awarded to the City from the Federal Hazard Elimination Program for reconstruction of the intersection of 23 Road and G Road. The project consists of right-of-way acquisition and incidentals, design and construction of a roundabout and associated intersection improvements at 23 Road and G Road. As a result of the right-of-way acquisition cost estimate and the engineer's construction cost estimate, additional funds are expected to be needed to complete this Project. The City has estimated that an additional \$196,358.00 needs to be added to the Federal funds and City funds already approved for this Project.

Resolution No. 48-10—A Resolution Accepting Amendment #1 (11 Ha3 25394) to the Contract for Construction Work at the Intersection of 23 Road and G Road, Authorizing the City's Over-Matching Funds, and Authorizing the City Manager to Sign the Contract Amendment #1 Agreement with the Colorado Department of Transportation

®Action: *Adopt Resolution No. 48-10*

Staff presentation: Tim Moore, Public Works and Planning Director

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

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

9. **Contract for Downtown Uplift – Main Street Phase II Construction** [Attach 9](#)

This is the contract award for the complete reconstruction of three blocks of Main Street between 4th Street and 7th Street. This phase of the project will provide replacement of deteriorated sidewalks, waterlines, storm drains, and brick planters. In addition, amenities will be added for the beautification to include replacement of dying trees, installation of water features, play areas, shade shelters and drinking fountains. With the exception of the waterline replacement, the project is being funded by the Downtown Development Authority with design and project oversight provided by the City.

Action: Authorize the Purchasing Division to Enter into a Contract with Sorter Construction, Inc. for the Downtown Uplift-Main Street Phase II Project in the Amount of \$2,888,562.10

Staff presentation: Tim Moore, Public Works and Planning Director
Jay Valentine, Assistant Financial Operations Manager

10. **Downtown Development Authority and Grand Junction Symphony Orchestra Partnership to Maximize Use of The Avalon Theatre** [Attach 10](#)

In January 2009, the Grand Junction Symphony Orchestra (GJSO) and the Downtown Development Authority (DDA) jointly funded a feasibility study to determine the building improvements needed for the GJSO to become the primary, but non-exclusive, tenant of The Avalon Theatre. The findings of the study suggest that the GJSO would be an appropriate tenant for The Avalon as long as building improvements were made. The renovations suggested by the study would meet the diverse needs of all the current and potential users of the Theatre.

Action: Authorize the Grand Junction Symphony Orchestra to Enter into an Agreement with the City to be the Primary, but Non-exclusive Tenant of the Avalon Theatre, with a Long-term Lease Agreement of 50 years, so that the GJSO can Initiate a Capital Campaign to Fund Improvements as Described in Westlake Reed Leskosky's Avalon Theatre Master Plan Study, and Further Authorize the City Manager to Negotiate the Necessary Operating Agreement

Staff presentation: Debbie Kovalik, Economic, Convention & Visitor Services Department Director
Heidi Hoffman Ham, Downtown Development Authority Executive Director
Michael Schwerin, Grand Junction Symphony Orchestra Executive Director

11. **Public Hearing—Assessments for Alley Improvement District ST-10** [Attach 11](#)

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

- East/West Alley from 11th to 12th, between Belford Avenue and North Avenue

Ordinance No. 4444—An Ordinance Approving the Assessable Cost of the Improvements Made In and for Alley Improvement District No. ST-10 in the City of Grand Junction, Colorado, Pursuant to Ordinance No. 178, Adopted and Approved the 11th Day of June, 1910, as Amended; Approving the Apportionment of Said Cost to Each Lot or Tract of Land or Other Real Estate in Said Districts; Assessing the Share of Said Cost Against Each Lot or Tract of Land or Other Real Estate in Said Districts; Approving the Apportionment of Said Cost and Prescribing the Manner for the Collection and Payment of Said Assessment

®Action: Hold a Public Hearing and Consider Final Passage and Final Publication of Ordinance No. 4444

Staff presentation: Tim Moore, Public Works and Planning Director

12. **Public Hearing—Amendment to the Zoning and Development Code to Allow Duplexes in the B-1 Zone District** [File #RZN-2010-260] [Attach 12](#)

A proposed amendment to the Grand Junction Municipal Code to allow Two Family Dwellings (duplexes), upon approval of a Conditional Use Permit, in the B-1 (Neighborhood Business) zone district in anticipation of future residential development.

Ordinance No. 4445—An Ordinance Amending Section 21.04.010 Use Table, to Allow Two Family Dwellings, with Approval of a Conditional Use Permit, in the B-1 Zone District

®Action: Hold a Public Hearing and Consider Final Passage and Final Publication of Ordinance No. 4445

Staff presentation: Greg Moberg, Planning Supervisor

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

14. **Other Business**

15. **Adjournment**

**Attach 1
Minutes of Previous Meeting**

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

November 17, 2010

The City Council of the City of Grand Junction convened into regular session on the 17th day of November, 2010 at 7:01 p.m. in the City Auditorium. Those present were Councilmembers Bruce Hill, Tom Kenyon, Gregg Palmer and President of the Council Pro Tem Bonnie Beckstein. Councilmembers Bill Pitts, Sam Susuras and Council President Teresa Coons were absent. Also present were City Manager Laurie Kadrich, City Attorney John Shaver, and Deputy City Clerk Juanita Peterson.

Council President Pro Tem Beckstein called the meeting to order. Councilmember Palmer led the Pledge of Allegiance followed by Invocation by Hans Weston, Jubilee Family Church.

Proclamations

Proclaiming November 16, 2010 as "March of Dimes Day" in the City of Grand Junction

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

Certificates of Appointment

Shirley Nilsen, Teddy Hildebrant, and Steve Watson were present to receive their Certificates of Appointment to the Forestry Board. Kamie Long was present to receive her Certificate of Reappointment to the Forestry Board.

Lyn Benoit was present to receive his Certificate of Appointment to the Planning Commission. Gregory Williams was present to receive his Certificate of Appointment to the Planning Commission as first alternate and to the Zoning Board of Appeals .

Stacy Kolegas was present to receive her Certificate of Appointment to the Riverfront Commission.

Council Comments

Councilmember Palmer spoke of his appreciation for the people who volunteer on the City's Boards and Commissions and thanked them for their service.

President of the Council Pro Tem Beckstein mentioned that it was Councilmember Palmer's birthday today and said she appreciated him for taking time from being with family to take care of Council business.

Councilmember Hill wanted everyone to be aware that there are a couple items under Individual Consideration that will not be put to vote this evening. He applauded that Councilmember Palmer asked for these individual items to be continued for the reason that there are only four Councilmembers present to vote this evening. Although it may be uncomfortable for some, it would be best for these items to be voted on with a full Council being present.

Citizen Comments

John Martin with Western Slope Coin Club said the Club has leased the Lincoln Park Barn for coin shows in the last year. Last year the Club had spoken with the Sales Tax Division in April and it was determined at that time that coins sold at these shows would not be taxed in the City so he proceeded with this particular show without the coins being taxed. In July for the next show, it was re-determined by the Sales Tax Division that coins were personal property and would be taxed. In all his experience with previous shows in other counties, cities, and states he has never had these taxed before. Mr. Martin would like Council and Staff to evaluate the process of sales tax on money sold at coin shows within the City.

CONSENT CALENDAR

Councilmember Palmer read the Consent Calendar and then moved to approve that the Consent Calendar Items #1 through #6 be adopted and Items #8 and #9 from the Individual Agenda be continued to the November 29, 2010 City Council Meeting. Councilmember Hill seconded the motion. Motion carried by roll call vote.

1. **Minutes of Previous Meeting**

Action: Approve the Minutes of the November 1, 2010 Regular Meeting

2. **Setting a Hearing on an Ordinance Amending the Zoning and Development Code to Allow Duplexes in the B-1 Zone District** [File #RZN-2010-260]

A proposed amendment to the Grand Junction Municipal Code to allow Two Family Dwellings (duplexes), upon approval of a Conditional Use Permit, in the B-1 (Neighborhood Business) zone district in anticipation of future residential development.

Proposed Ordinance Amending Section 21.04.010 Use Table, to Allow Two Family Dwellings, with Approval of a Conditional Use Permit, in the B-1 Zone District

Action: Introduction of a Proposed Ordinance and Set a Hearing for November 29, 2010

3. **CDBG Subrecipient Contract for the Gray Gourmet Project within the Community Development Block Grant (CDBG) 2010 Program Year** [File #CDBG 2010-02]

The Subrecipient Contract formalizes the City's award of \$20,500 to St. Mary's Foundation Gray Gourmet program allocated from the City's 2010 CDBG Program as previously approved by Council.

Action: Authorize the City Manager to Sign the Subrecipient Contract with the St. Mary's Foundation Gray Gourmet Program for the City's 2010 Program Year Funds

4. **Amendment to Action Plan for 2010 Community Development Block Grant (CDBG) Program Year and Amended Subrecipient Contract for the Grand Valley Catholic Outreach Project within the 2010 CDBG Program Year** [File #CDBG 2009-06 and 2009-09]

Amend the City's Action Plan for CDBG Program Year 2010 to reallocate a portion of funds not expended from the Hawthorne Park Restroom/Shelter project to be used towards the Grand Valley Catholic Outreach project and amend the existing Subrecipient Contract between the City and Grand Valley Catholic Outreach to reflect the \$15,000 additional funds.

Action: 1) Approve the Amendment to the City's CDBG Consolidated Plan 2010 Action Plan to Reflect the Reallocation of Funds from Project 2009-06 (Hawthorne Park Restroom/Shelter) to Project CDBG 2009-09 to remodel the Grand Valley Catholic Outreach soup kitchen building; and 2) Authorize the City Manager to Sign the Amended Subrecipient Contract with Grand Valley Catholic Outreach for the City's 2010 CDBG Program Year

5. **2011 Mesa County Animal Services Agreement**

The City of Grand Junction has an ongoing, annually renewable agreement with Mesa County for animal control services within the City limits. This year's Agreement is based upon actual service figures and costs that occurred during the County's fiscal year which runs from July 1 through June 30. The actual costs for animal control services during that time period was \$671,406.00. The City's share of that cost is 43.6%, or \$292,733.00.

Action: Authorize the Mayor to Sign the 2011 Agreement between Mesa County and the City of Grand Junction Pertaining to Animal Services

6. **Financial Audit Services Contract**

This contract request is to hire a firm to perform the annual independent audit of the City's financial statements for the 2010 fiscal year and express an opinion as to the compliance of those statements with generally accepted accounting principles that apply to government entities.

Action: Authorize the City Purchasing Division to Sign a Contract for Financial Audit Services with Chadwick, Steinkirchner, Davis & Co., P.C. in the Amount of \$27,900

ITEMS NEEDING INDIVIDUAL CONSIDERATION

Public Hearing—CB&G Rezone, Located at 531 Maldonado Street [File #RZ-2010-114]

Request to amend Comprehensive Plan from Residential Medium (4 – 8 du/ac) to Commercial and rezone 2.38 +/- acres located at 531 Maldonado Street from R-8, (Residential – 8 du/ac) to C-1, (Light Commercial) zone district in anticipation of future commercial development.

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

Scott D. Peterson, Senior Planner, presented this item. He described the site, the location, and the request. Total acreage is 2.38 acres and the property is currently vacant. This property is adjacent to residential and commercial properties. The requested zone is consistent with the goals and policies of the Comprehensive Plan. The review criteria in Title 21, Section 02.140 and 02.130 of the Zoning and Development Code have all been met. The applicant is in the audience and available for any questions.

There were no public comments.

The public hearing was closed at 7:24 p.m.

Ordinance No. 4443—An Ordinance Amending the Comprehensive Plan from Residential Medium (4-8 DU/AC) to Commercial and Rezoning from R-8 (Residential – 8 DU/AC) to C-1 (Light Commercial) for the CB & G Rezone, Located at 531 Maldonado Street

Councilmember Palmer moved to adopt Ordinance No. 4443 and ordered it published. Councilmember Kenyon seconded the motion.

Councilmember Hill commented that the Comprehensive Plan supports this and he is comfortable with this rezone.

Councilmember Kenyon also commented saying he agreed with Councilmember Hill as this is what was envisioned when the creation of the Comprehensive Plan was in process.

Council President Pro Tem Beckstein agreed with Councilmembers Hill and Kenyon and said that this is a good move.

Motion carried by roll call vote.

Public Hearing—Assessments for Alley Improvement District ST-10 – Continued to November 29, 2010

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

- East/West Alley from 11th to 12th, between Belford Avenue and North Avenue

Contract for Downtown Uplift – Main Street Phase II Construction – Continued to November 29, 2010

This is the contract award for the complete reconstruction of three blocks of Main Street between 4th Street and 7th Street. This phase of the project will provide replacement of deteriorated sidewalks, waterlines, storm drains, and brick planters. In addition, amenities will be added for the beautification to include replacement of dying trees, installation of water features, play areas, shade shelters and drinking fountains. With the exception of the water line replacement, the project is being funded by the Downtown Development Authority with design and project oversight provided by the City.

Non-Scheduled Citizens & Visitors

There were none.

Other Business

There was none.

Adjournment

The meeting adjourned at 7:22 p.m.

Juanita Peterson, MMC
Deputy City Clerk



Date: Nov. 1, 2010
Author: Kathy Portner
Title/ Phone Ext: Neighborhood
Services Manager/244-1420
Proposed Schedule: 11-29-10
2nd Reading
(if applicable): 1-31-11

CITY COUNCIL AGENDA ITEM

Attach 2 Xcel Energy and Grand Valley Power Franchise Agreements

Subject: Xcel Energy and Grand Valley Power Franchise Agreements
File # (if applicable):
Presenters Name & Title: John Shaver, City Attorney

Executive Summary:

The current franchise agreements with Xcel Energy (Public Service Company of Colorado) and Grand Valley Power (Grand Valley Rural Power) were approved in 1992 and will expire in 2012. The proposed ordinance would establish a new, 20-year franchise agreement with each utility to be placed on the ballot at the April, 2011 Municipal Election.

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

Renewal of the franchise agreements with Xcel Energy and Grand Valley Power supports the following goal of the Comprehensive Plan:

Goal 11: Public facilities and services for our citizens will be a priority in planning for growth.

Xcel Energy and Grand Valley Power will continue to meet the energy needs of the existing community, as well as provide for future growth.

Action Requested/Recommendation:

Set a Hearing on the Proposed Ordinance for January 31, 2011 and Order Published in Pamphlet Form.

Board or Committee Recommendation:

N.A.

Background, Analysis and Options:

State law requires a public utility to enter into a franchise agreement with local governments to serve customers in its jurisdiction. The proposed franchise agreements are contracts that provide Xcel Energy and Grand Valley Power with a non-exclusive right to furnish, sell, distribute and transport gas and electricity within the City and to all residents of the City. It also allows access to the City rights-of-way to acquire, construct, install, locate, maintain, operate and extend equipment to distribute and transport gas and electricity. It outlines fees that the utilities pay to the City in exchange for grant of this franchise. For the most part, the Colorado PUC reviews and approves the utilities' power supply portfolio and is tasked with overseeing and approving the rates charged to the customers.

The current franchise agreements with Xcel Energy (Public Service Company of Colorado) and Grand Valley Power (Grand Valley Rural Power) were approved in 1992 and will expire in 2012. The proposed ordinance would establish a new, 20-year franchise agreement with each utility to be placed on the ballot at the April, 2011 Municipal election.

The proposed franchise agreements update and clarify many of the provisions included previously. The most significant changes are as follows:

- Existing franchise fee is 3% for the first \$10,000 to each customer and 2% in excess of \$10,000. Proposed franchise fee is 3% of all gross revenues, with no fee charged on City's own consumption.
- Clarification that utility provider will relocate facilities for projects required by the City.
- Requires utility locates for infrastructure design as well as construction.
- Includes a provision to allow for transmission rights-of-way owned by the Utility to be used for parks, open space and trails.
- Addition of a section on Environment and Conservation outlining the Utilities' commitment to City-wide sustainability efforts.
- Includes a provision for a Municipally-Produced Utility Service.

Financial Impact/Budget:

Currently, annual franchise fee revenues are \$1.9 million from Xcel and \$200,000 from Grand Valley Power.

Legal issues:

By Charter "no proposed ordinance granting a franchise shall be put upon its final passage within sixty days after its introduction nor until it has been published not less than once a week for six consecutive weeks in two newspapers of the city in general circulation." To meet this requirement, the hearing for the proposed ordinance will be set for January 31, 2011, at which time the ballot title will also be set. The ballot title

must be certified to the County Clerk by February 4th, and ballots mailed by March 14th for the April 5, 2011 Municipal Election.

Other issues:

In addition to the Franchise Agreement, the City will be considering separate agreements specific to street lighting and energy efficiency programs for the community. The City also continues to work with Xcel Energy on a company-wide policy to accept bio-gas into their system which will allow for the Persigo Methane Gas to CNG Project to proceed.

Previously presented or discussed:

N.A.

Attachments:

People's Ordinance No. 37

PEOPLE'S ORDINANCE NO. 37

AN ORDINANCE GRANTING A FRANCHISE BY THE CITY OF GRAND JUNCTION TO PUBLIC SERVICE COMPANY OF COLORADO, d/b/a XCEL ENERGY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO FURNISH, SELL AND DISTRIBUTE GAS AND ELECTRICITY TO THE CITY AND TO ALL PERSONS, BUSINESSES, AND INDUSTRY WITHIN THE CITY AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH SAID CITY ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL AND DISTRIBUTE GAS AND ELECTRICITY WITHIN THE CITY AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AND PUBLIC EASEMENTS AS HEREIN DEFINED AS MAY BE NECESSARY; AND FIXING THE TERMS AND CONDITIONS THEREOF.

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ARTICLE 1
DEFINITIONS

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and "may" is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

- §1.1 "City" refers to the City of Grand Junction, a municipal corporation of the State of Colorado.
- §1.2 "City Council" or "Council" refers to the legislative body of the City.
- §1.3 "Clean Energy" means energy produced from Renewable Energy Resources, eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, "cost" means all those costs as determined by the PUC.
- §1.4 "Company" refers to Public Service Company of Colorado d/b/a Xcel Energy and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this franchise.
- §1.5 "Company Facilities" refer to all facilities of the Company reasonably necessary to provide gas and electric service into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, cables and poles.
- §1.6 "Electric Gross Revenues" refers to those amounts of money which the Company receives from the sale or delivery of electricity in the City, after adjusting for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. "Electric Gross Revenues" shall exclude any revenue for the sale or delivery of electricity to the City as a customer of the Company.
- §1.7 "Energy Conservation" means the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.
- §1.8 "Energy Efficiency" means the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.
- §1.9 "Force Majeure" means the inability to undertake an obligation of this franchise due to a cause that could not be reasonably anticipated by a party or is beyond its reasonable control after exercise of best efforts to perform, including but not limited to fire, strike,

war, riots, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in delivery of materials. Neither the City nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to a Force Majeure condition.

- §1.10 “Gross Revenues” refers to those amounts of money which the Company receives from the sale of gas and electricity within the City under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the City and those amounts of money, excluding expense reimbursements, which the Company receives from the use of Company facilities in Streets and Other Public Places (unless otherwise preempted by applicable federal or state law), as adjusted for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Gross Revenues” shall exclude any revenues from the sale of gas or electricity to the City or the transportation of gas to the City.
- §1.11 “Other City Property” refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the City or hereafter held by the City, that would not otherwise fall under the definition of “Streets”, but which provides a suitable location for the placement of Company facilities as specifically approved in writing by the City.
- §1.12 “Private Project” refers to any project which is not covered by the definition of Public Project.
- §1.13 “Public Project” refers to (1) any public work or improvement within the City that is wholly or beneficially owned by the City; or (2) any public work or improvement within the City where fifty percent (50%) or more of the funding is provided by any combination of the City, the federal government, the State of Colorado, or any Colorado county, but excluding all entities established under Title 32 of the Colorado Revised Statutes.
- §1.14 “Public Utilities Commission” or “PUC” refers to the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.
- §1.15 “Public Utility Easement” refers to any easement over, under, or above public or private property, dedicated to the use of public utility companies for the placement of utility facilities, including but not limited to Company Facilities. Public Utility Easement shall not include any easement that is located within Streets or Other City Property.
- §1.16 “Renewable Energy Resources” means wind; solar; geothermal; biomass from nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush, or from animal wastes and products of animal wastes, or from

methane produced at landfills or as a by-product of the treatment of wastewater residuals; new hydroelectricity with a nameplate rating of ten megawatts or less, and hydroelectricity in existence on January 1, 2005, with a nameplate rating of thirty megawatts or less; fuel cells using hydrogen derived from a Renewable Energy Resource; and recycled energy produced by a generation unit with a nameplate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel, and includes any eligible renewable energy resource as defined in § 40-2-124(1)(a), C.R.S., as the same shall be amended from time to time.

- §1.17 “Residents” refers to all persons, businesses, industries, governmental agencies, including the City, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the City.
- §1.18 “Streets” or “City Streets” refers to the surface, the air space above the surface and the area below the surface of any City-dedicated streets, alleys, bridges, roads, lanes, public easements (excluding any easements the terms of which do not permit the use thereof by public utilities), and other public rights-of-way within the City, which are primarily used for vehicle traffic. Streets shall not include Public Utility Easements.
- §1.19 “Supporting Documentation” refers to all information reasonably required in order to allow the Company to design and construct any work performed under the provisions of this franchise.
- §1.20 “Tariffs” refer to those tariffs of the Company on file and in effect with the PUC.
- §1.21 “Utility Service” refers to the sale of gas or electricity to Residents by the Company under rates approved by the PUC, as well as the delivery of gas to Residents by the Company.

ARTICLE 2 GRANT OF FRANCHISE

§2.1 Grant of Franchise.

A. Grant. The City hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this franchise, the non-exclusive right to make reasonable use of City Streets and Other City Property:

- (1) to provide Utility Service to the City and to its Residents; and
- (2) to acquire, purchase, construct, install, locate, maintain, operate, and extend into, within and through the City all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transmission, transportation and distribution of Utility Service within and through the City.

B. Street Lighting and Traffic Signal Lighting Service. Street lighting service and traffic signal lighting service within the City shall be governed by tariffs on file with the Colorado PUC.

§2.2 Conditions and Limitations.

A. Scope of Franchise. The grant of this franchise shall extend to all areas of the City as it is now or hereafter constituted that are within the Company's PUC-certificated service territory; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

B. Subject to City Usage. The right to make reasonable use of City Streets to provide Utility Service to the City and its Residents under the franchise is subject to and subordinate to any City usage of said Streets.

C. Prior Grants Not Revoked. This grant is not intended to revoke any prior license, grant, or right to use the Streets and such licenses, grants or rights of use are hereby affirmed. Such rights shall, however, be governed by the terms of this franchise.

D. Franchise Not Exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a franchise to any other person, firm, or corporation.

§2.3 Effective Date and Term.

A. Term. This franchise shall take effect on June 1, 2011 and shall supersede any prior franchise grants to the Company by the City. This franchise shall terminate on May 31, 2031 unless extended by mutual consent.

ARTICLE 3
CITY POLICE POWERS

§3.1 Police Powers. The City shall have the right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the Company's operations in the City's Streets and Other City Property, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements.

§3.2 Regulation of Streets or Other City Property. The Company expressly acknowledges the City's right to enforce regulations concerning the Company's access to or use of the Streets, including requirements for permits.

§3.3 Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits, and orders enacted by the City.

ARTICLE 4
FRANCHISE FEE

§4.4 Franchise Fee. Check numbering of Article 4

A. Fee. In partial consideration for the franchise, which provides for the Company's use of City Streets and Other City Property, which are valuable public properties acquired and maintained by the City at great expense to its Residents, and in recognition that the grant to the Company of the use of City Streets and Other City Property is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of all Gross Revenues. To the extent required by law, the Company shall collect this fee from a surcharge upon City residents who are customers of the Company.

B. Obligation in Lieu of Fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as partial consideration for use of the City Streets. To the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to City Residents.

C. Changes in Utility Service Industries. The City and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the City, the Company will cooperate with and assist the City in modifying this franchise to assure that the City receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees paid to the City as of the date that such initiatives and changes adversely impact franchise fee revenues.

D. Utility Service Provided to the City. No franchise fee shall be charged to the City for Utility Service provided directly or indirectly to the City for its own consumption, including street lighting service and traffic signal lighting service, unless otherwise directed by the City.

§4.5 Remittance of Franchise Fee.

A. Remittance Schedule. Franchise fee revenues shall be remitted by the Company to the City as directed by the City in monthly installments not more than 30 days following the close of each month.

B. Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the franchise fee payment to the City, it shall provide written notice to the other party of the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2.D of this franchise; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the franchise fee to the City, and said overpayment is in excess of Five Thousand Dollars (\$5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the Company error.

C. Audit of Franchise Fee Payments.

(1) Every three (3) years commencing at the end of the third year of this franchise, the Company shall conduct an internal audit to investigate and determine the correctness of the franchise fee paid to the City. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the City Manager containing the audit findings.

(2) If the City disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, and the Company shall cooperate fully, including but not necessarily limited to, providing the City's auditor with all information reasonably necessary to complete the audit.

(3) If the results of a City audit conducted pursuant to subsection C (2) concludes that the Company has underpaid the City by two percent (2%) or more, in addition to the obligation to pay such amounts to the City, the Company shall also pay all costs of the City's audit.

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.2.B of this franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice.

The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

E. Reports. Upon written request by the City, but not more than once per year, the Company shall supply the City with reports, in such formats and providing such details as reasonably requested by the City, of all suppliers of utility service that utilize Company Facilities to sell or distribute utility service to Residents and the names and addresses of each such supplier.

§4.6 Franchise Fee Payment not in Lieu of Permit or Other Fees. Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, including any fee for a street closure permit, an excavation permit, a street cut permit, or other lawful permits hereafter required by the City, except that the franchise fee provided for herein shall be in lieu of any occupation, occupancy or similar tax for the use of City Streets and Other City Property.

ARTICLE 5

ADMINISTRATION OF FRANCHISE

§5.1 City Designee. The City Manager shall designate in writing to the Company an official having full power and authority to administer the franchise. The City Manager may also designate one or more City representatives to act as the primary liaison with the Company as to particular matters addressed by this franchise and shall provide the Company with the name and telephone numbers of said City representatives. The City Manager may change these designations by providing written notice to the Company. The City's designee shall have the right, at all reasonable times, to inspect any Company Facilities in City Streets and Other City Property.

§5.2 Company Designee. The Company shall designate a representative to act as the primary liaison with the City and shall provide the City with the name, address, and telephone number for the Company's representative under this franchise. The Company may change its designation by providing written notice to the City. The City shall use this liaison to communicate with the Company regarding Utility Service and related service needs for City facilities.

§5.3 Coordination of Work.

A. The Company agrees to coordinate with the City its activities in City Streets and other City Property. The City and the Company will meet annually upon the written request of the City designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect City Streets and Other City Property. The City and Company shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all provisions of this franchise, building and zoning codes, and City air and water

pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

ARTICLE 6
SUPPLY, CONSTRUCTION, AND DESIGN

- §6.1 Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the City to the Residents which require the Company to provide prompt and reliable Utility Service and the performance of related services for City facilities. The City and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the City in order to facilitate and enhance the operation of City facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the City.
- §6.2 Supply. Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to Residents at the lowest reasonable cost consistent with reliable supplies.
- §6.3 Service to City Facilities.
- A. Transport Gas. To the extent the City is or elects to become a gas transport customer of the Company, the Company shall transport natural gas purchased by the City for use in City facilities pursuant to separate contracts with the City.
- B. Charges to the City. No charges to the City by the Company for Utility Service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the Colorado PUC over the Company's regulated intrastate electric and gas rates.
- §6.4 Restoration of Service.
- A. Notification. The Company shall provide to the City daytime and nighttime telephone numbers of a designated Company representative from whom the City designee may obtain status information from the Company on a twenty-four (24) hour basis concerning interruptions of Utility Service in any part of the City.
- B. Restoration. In the event the Company's gas system or electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such systems to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if the Company elects not to restore such system.

§6.5 Obligations Regarding Company Facilities.

A. Company Facilities. All Company Facilities within City Streets shall be maintained in good repair and condition.

B. Company Work within the City. All work within City Streets performed or caused to be performed by the Company shall be done:

- (1) in a high-quality manner;
- (2) in a timely and expeditious manner;
- (3) in a manner which minimizes inconvenience to the public;
- (4) in a cost-effective manner, which may include the use of qualified contractors; and
- (5) in accordance with all applicable laws, ordinances, and regulations.

C. No Interference with City Facilities. Company Facilities shall not interfere with any City facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other City uses of the Streets or Other City Property. Company Facilities shall be installed and maintained in City Streets and Other City Property so as to minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets and Other City Property in light of the Company's obligation under Colorado law to provide safe and reliable utility facilities and services.

D. Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the City Streets or Other City Property by or on behalf of the Company shall be subject to permit, inspection and approval by the City. Such inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and trimming of trees and shrubs, and disturbance of pavement, sidewalks, and surfaces of City Streets or Other City Property. The Company agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action lawfully required by the City pursuant to any such inspection.

E. Compliance. The Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits, and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall assure that its contractors working in City Streets or Other City Property hold the necessary licenses and permits required by law.

F. Increase in Voltage. The Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that

uses Utility Service where such upgrading is solely caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy. This provision shall not apply to voltage increases required by law, including but not limited to a lawful order of the PUC, or voltage increases requested by the City.

G. As-Built Drawings. Upon written request of the City designee, the Company shall provide within 14 days of the request, on a project by project basis, as-built drawings of any Company Facility installed within the City Streets or contiguous to the City Streets. As used in this Section, as-built drawings refers to the facility drawings as maintained in the Company's geographical information system or any equivalent Company system. The Company shall not be required to create drawings that do not exist at the time of the request.

§6.6 Excavation and Construction. The Company shall be responsible for obtaining, paying for, and complying with all applicable permits including, but not limited to, excavation, street closure and street cut permits, in the manner required by the laws, ordinances, and regulations of the City. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing relocations requested by the City under Section 6.8 of this franchise and undergrounding requested by the City under Article 11 of this franchise, the City will not require the Company to pay the fees charged for such permits.

§6.7 Restoration. When the Company does any work in or affecting the City Streets or Other City Property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such City Streets or Other City Property to a condition that is substantially the same as existed before the work, and that meets applicable City standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may with the approval of the City, temporarily restore the affected City Streets or Other City Property, provided that such temporary restoration is at the Company's sole expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the City, the Company shall restore the Streets or Other City Property to a better condition than existed before the work was undertaken, provided that the City shall be responsible for any incremental costs of such restoration not required by then-current City standards. If the Company fails to promptly restore the City Streets or Other City Property as required by this Section, and if, in the reasonable discretion of the City immediate action is required for the protection of public health and safety, the City may restore such City Streets or Other City Property or remove the obstruction therefrom; provided however, City actions do not interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the City to restore such City Streets or Other City Property or to remove any obstructions therefrom. In the course of its restoration of City Streets or Other City Property under this Section, the City shall not perform work on Company facilities unless specifically authorized by the Company in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

§6.8 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall temporarily or permanently remove, relocate, change or alter the position of any Company Facility in City Streets or in Other City Property at no cost or expense to the City whenever such removal, relocation, change or alteration is necessary for the completion of any Public Project. Any City-required removal, relocation, change or alteration of Company Facilities located in any Company owned property or any private easement or Public Utility Easement shall be at no cost to the Company. For all relocations, the Company and the City agree to cooperate on the location and relocation of the Company Facilities in the City Streets or Other City Property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has relocated any Company Facility at the City's direction, if the City requests that the same Company Facility be relocated within two years after the date of the prior relocation, the subsequent relocation shall not be at the Company's expense.

B. Private Projects. The Company shall not be responsible for the expenses of any relocation required by Private Projects, and the Company has the right to require the payment of estimated relocation expenses from the affected private party before undertaking such relocation.

C. Relocation Performance. The relocations set forth in Section 6.8.A of this franchise shall be completed within a reasonable time, not to exceed one hundred twenty (120) days from the later of the date on which the City designee requests, in writing, that the relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall receive an extension of time to complete a relocation where the Company's performance was delayed due to Force Majeure or the failure of the City to provide adequate Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

D. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise.

E. Completion. Each such relocation shall be complete only when the Company actually relocates the Company Facilities, restores the relocation site in accordance with Section 6.7 of this franchise or as otherwise agreed with the City, and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.

F. Scope of Obligation. The relocation obligation set forth in this Section shall only apply to Company Facilities located in City Streets or Other City Property. The obligation shall not apply to Company Facilities located on property owned by the Company in fee, or to Company Facilities located in privately-owned easements or Public Utility Easements.

G. Underground Relocation. Underground facilities shall be relocated underground. Above ground facilities shall be placed above ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above ground cost of relocation, or the City requests that such additional incremental cost be paid out of available funds under Article 11 of this franchise.

H. Coordination.

(1) When requested in writing by the City designee or the Company, representatives of the City and the Company shall meet to share information regarding anticipated projects which will require relocation of Company Facilities in City Streets or Other City Property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City for any Public Project.

(2) The City shall provide the Company with two (2) years advance notice of any planned street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the Streets within the two-year period if practicable.

I. Proposed Alternatives or Modifications. Upon receipt of written notice of a required relocation, the Company may propose an alternative to or modification of the Public Project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of Company Facilities. The City shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the sole discretion of the City. In the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses, or delay that the City reasonably determines resulted from the implementation of the proposed alternative.

§6.9 New or Modified Service Requested by City. The conditions under which the Company shall install new or modified Utility Service to the City as a customer shall be governed by this franchise and the Company's PUC tariffs.

§6.10 Service to New Areas. If the territorial boundaries of the City are expanded during the term of this franchise, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time if the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area

shall be in accordance with the terms of the Company's PUC tariffs and this franchise, including the payment of franchise fees.

- §6.11 City Not Required to Advance Funds. Upon receipt of the City's authorization for billing and construction, the Company shall extend Company Facilities to provide Utility Service to the City as a customer, without requiring the City to advance funds prior to construction. The City shall pay for the extension of Company Facilities once completed in accordance with the Company's extension policy on file with the PUC.
- §6.12 Technological Improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its Residents.

ARTICLE 7 RELIABILITY

- §7.13 Reliability. The Company shall operate and maintain Company Facilities efficiently and economically and in accordance with the high standards and best systems, methods and skills consistent with the provision of adequate, safe, and reliable Utility Service.
- §7.14 Franchise Performance Obligations. The Company recognizes that, as part of its obligations and commitments under this franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical, and workmanlike manner.
- §7.15 Reliability Reports. Upon written request, the Company shall provide the City with a report regarding the reliability of Company Facilities and Utility Service. **Check number of this section**

ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS

- §8.1 New or Modified Service to City Facilities. In providing new or modified Utility Service to City facilities, the Company agrees to perform as follows:
- A. Performance. The Company shall complete each project requested by the City within a reasonable time. The Parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the City designee makes a written request and provides the required Supporting Documentation for all Company Facilities other than traffic facilities. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City designee may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding new or modified service to City facilities shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise.

C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of the franchise or as otherwise agreed with the City and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

§8.2 Adjustments To Company Facilities. The Company shall perform adjustments to Company Facilities, including manholes and other appurtenances in Streets and Other City Property, to accommodate City street maintenance, repair and paving operations at no cost to the City. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed sixty (60) days from the date upon which the City makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. Completion/Restoration. Each such adjustment shall be complete only when the Company actually adjusts the Company Facility to accommodate the City operations in accordance with City instructions and, if required, readjusts, following City paving operations.

C. Coordination. As requested by the City or the Company, representatives of the City and the Company shall meet regarding anticipated street maintenance operations which will require such adjustments to Company Facilities in Streets or Other City Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

§8.3 Third Party Damage Recovery.

A. Damage to Company Interests. If any individual or entity damages any Company Facilities that the Company is responsible to repair or replace, to the extent permitted by law, the City will notify the Company of any such incident of which it has knowledge and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

B. Damage to Company Property for which the City is Responsible. If any individual or entity damages any Company Facilities for which the City is obligated to reimburse the Company for the cost of the repair or replacement of the damaged facility, to the extent permitted by law, the Company will notify the City of any such incident of which it has knowledge and will provide to the City within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

C. Meeting. The Company and the City agree to meet periodically, upon written request of either party, for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities.

ARTICLE 9
BILLING AND PAYMENT

§9.1 Billing for Other Utility Services.

A. Unless otherwise provided in its tariffs, the rules and regulations of the PUC, or the Public Utilities Law, the Company shall render bills monthly to the offices of the City for Utility Service and other related services for which the Company is entitled to payment and for which the City has authorized payment.

B. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the City and payment for same shall be made as prescribed in this agreement and the applicable tariff on file and in effect from time to time with the PUC.

C. The Company shall provide all billings and any underlying support documentation reasonably requested by the City and in an editable and manipulatable electronic format that is acceptable to the Company and the City.

D. The Company agrees to meet with the City designee at least annually for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the City.

§9.2 Payment To City. In the event the City determines after written notice to the Company that the Company is liable to the City for payments, costs, expenses or damages of any nature, and subject to the Company's right to challenge such determination, the City may deduct all monies due and owing the City from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the City to

discuss such determination. The City agrees to attend such a meeting. As an alternative to such deduction, the City may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill. If the Company challenges the City determination of liability, the City shall make such payments to the Company pursuant to the Company's tariffs until the challenge has been finally resolved.

ARTICLE 10
USE OF COMPANY ELECTRIC DISTRIBUTION POLES

- §10.1 City Use of Company Electric Distribution Poles. The City shall be permitted to make use of Company electric distribution poles in the City at no cost to the City for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. The Company may allow the use of electric distribution poles for other purposes at the Company's sole discretion. The City will notify the Company in advance and in writing of its intent to use Company distribution poles and the nature of such use unless it is impracticable to provide such advance notice because of emergency circumstances, in which event the City will provide such notice as soon as practicable. The City shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the City's use of such Company electric distribution poles and for any electricity used. No such use of Company electric distribution poles shall be required if it would constitute a safety hazard or would interfere with the Company's use of Company electric distribution facilities. Any such City use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations.
- §10.2 City Use of Street Lighting and Traffic Signal Lighting Poles. The City shall be allowed to use the Company's street lighting and traffic signal lighting poles in the future for legitimate police, public safety or traffic control purposes under the terms and conditions set forth in the Company's PUC tariffs and any subsequent agreements that may be entered between the parties, but must obtain prior written approval of the Company. No such use shall be allowed if the Company determines in good faith that the City's use of specific street lighting or traffic signal lighting poles creates a safety hazard or interferes with the Company's use of its Utility Facilities. The City shall be responsible for paying the Company's reasonable costs of determining whether the proposed use of street lighting and traffic signal lighting poles creates a safety hazard or interferes with Company Utility Facilities.
- §10.3 Existing Uses. The City shall not be required to remove its existing signs, equipment or facilities from street lighting or traffic signal lighting poles, unless the Company determines after consultation with the City that attachment of specific equipment or facilities on specific poles creates a safety hazard or interferes with the Company's use of those poles. If after such determination the City is required to remove its existing equipment or facilities from those poles, the Company shall allow the City ten (10) days from the date of written notice, including by electronic mail, within which to remove its equipment or facilities. If the City fails to remove the equipment or facilities, the Company may perform the removal at the City's sole expense.

- §10.4 Third Party Use Of Company Facilities. If requested in writing by the City, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets, to utilize Company electric distribution poles for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions including payment of fees established by the Company. Use of other Company facilities by third parties shall be in accordance with the Company's tariffs. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company electric distribution facilities. The Company shall not be required to permit the use of Company distribution facilities for the provision of utility service except as otherwise required by law.
- §10.5 City Use of Company Transmission Rights-of-Way. The Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for the purposes set forth in and pursuant to the provisions of the Park and Open Space Act of 1984, on terms comparable to those offered to other municipalities, provided that the Company shall not be required to make such an offer in any circumstance where such offer would constitute a safety hazard or interfere with the Company's use of the transmission right-of-way. City use of transmission rights-of-way may include use for trails, parks and open space. In order to exercise this right, the City must make specific written request to the Company for any such use.
- §10.6 Emergencies. Upon written request, the Company shall assist the City in developing an emergency management plan. In the case of any emergency or disaster, the Company shall, upon oral request of the City, make available Company Facilities for emergency use during the emergency or the disaster period. Such use of Company Facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of Company Facilities.

ARTICLE 11

UNDERGROUNDING OF OVERHEAD FACILITIES

- §11.1 Underground Electrical Lines in New Areas. The Company shall, upon payment to the Company of the charges provided in its tariffs or their equivalent, place all newly constructed electrical distribution lines in newly developed areas of the City underground in accordance with applicable laws, regulations and orders.
- §11.2 Underground Conversion At Expense Of Company.
- A. Underground Fund. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues (the "Fund"), for the purpose of undergrounding existing overhead distribution facilities in the City, as may be requested by the City Designee.
- B. Unexpended Portion And Advances. Any unexpended portion of the Fund shall be carried over to succeeding years and, in addition, upon request by the City, the Company agrees to advance and expend amounts anticipated to be available

under the preceding paragraph for up to three (3) years in advance. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any funds left accumulated under any prior franchise shall be carried over to this franchise. The City shall have no vested interest in monies allocated to the Fund and any monies in the Fund not expended at the expiration or termination of this franchise shall remain the property of the Company. At the expiration or termination of this franchise, the Company shall not be required to underground any existing overhead facilities under this Article, but may do so in its sole discretion.

C. System-wide Undergrounding. If, during the term of this franchise, the Company should receive authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution facilities, the Company will budget and allocate to the program of undergrounding in the City such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

D. City Requirement To Underground. In addition to the provisions of this Article, the City may require any above ground Company Facilities to be moved underground at the City's expense.

§11.3 Undergrounding Performance. Upon receipt of a written request from the City, the Company shall, to the extent of monies available in the Fund, and as otherwise provided herein, underground Company Facilities pursuant to the provisions of this Article, in accordance with the procedures set forth in this Section.

A. Estimates. Promptly upon receipt of an undergrounding request from the City and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable to the City, the City will issue a project authorization. At the City's request, the Company will provide all documentation which forms the basis of the estimate. The Company will not proceed with any requested project until the City has provided a written acceptance of the Company estimate.

B. Performance. The Company shall complete each undergrounding project requested by the City within a reasonable time, not to exceed 240 days from the later of the date upon which the City designee makes a written request or the date the City provides to the Company all Supporting Documentation. The Company shall have 120 days after receiving the City's written request to design project plans, prepare the good faith estimate, and transmit same to the City Designee for review. If City approval of the plans and estimate has not been granted, the Company's good faith estimate will be void 60 days after delivery of the plans and estimate to the City Designee. If the plans and estimate are approved by the City, the Company shall have 120 days from date of the City Designee's authorization of the underground project, plus any of the 120 unused days in preparing the good faith estimate to complete the project. At the Company's sole discretion, if the good faith estimate has expired

because the City Designee has not approved the same within 60 days, the Company may extend the good faith estimate or prepare a new estimate using current prices. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a Force Majeure condition. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

C. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under the franchise.

D. Completion/Restoration. Each such undergrounding project shall be complete only when the Company actually undergrounds the designated Company Facilities, restores the undergrounding site in accordance with Section 6.7 of this franchise, or as otherwise agreed with the City, and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

E. Report of Actual Costs. Upon completion of each undergrounding project, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. The report shall be provided within 120 days after completion of the project and written request from the City.

F. Audit of Underground Projects. The City may require that the Company undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The cost of any such independent audit shall reduce the amount of the Fund. The Company shall cooperate fully with any audit and the independent auditor shall prepare and provide to the City and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the City, only those actual project costs confirmed and verified by the independent auditor as reasonable and necessary to complete the project shall be charged against the Fund balance.

§11.4 Audit of Underground Fund. Upon written request, every three (3) years commencing at the end of the third year of this franchise, the Company shall cause an independent auditor to investigate and determine the correctness of the charges to the underground fund. Such audits shall be limited to the previous three (3) calendar years. The independent auditor shall provide a written report containing its findings to the City and the Company. The Company shall reconcile the Fund consistent with the findings contained in the independent auditor's written report. The Company shall pay the costs of the audit and investigation.

§11.5 Cooperation with Other Utilities. When undertaking an undergrounding project the City and the Company shall coordinate with other utilities or companies that have their

facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior written notification, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for the cost of undergrounding the facilities of other companies or the City.

§11.6 Planning And Coordination Of Undergrounding Projects. The city and the company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this article as a part of the review and planning for other city and company construction projects. The City and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the City and the Company in order to achieve the orderly undergrounding of Company Facilities. Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding of Company Facilities and at such meetings shall review:

A. Undergrounding, including conversions, Public Projects and replacements which have been accomplished or are underway, together with the Company's plans for additional undergrounding; and

B. Public Projects anticipated by the City.

ARTICLE 12

PURCHASE OR CONDEMNATION

§12.1 Municipal Right to Purchase or Condemn.

A. Right and Privilege of City. The right and privilege of the City to construct, purchase, or condemn any Company Facilities located within the territorial boundaries of the City, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution and statutes of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The City shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, to purchase Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the City. In the event of any such purchase, no value shall be ascribed or given to the rights granted under this franchise in the valuation of the property thus taken.

B. Notice of Intent to Purchase or Condemn. The City shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the City's purchase or condemnation of Company Facilities.

ARTICLE 13
MUNICIPALLY-PRODUCED UTILITY SERVICE

§13.1 Municipally-Produced Utility Service.

A. City Reservation. The City expressly reserves the right to engage in the production of utility service to the extent permitted by law. The Company agrees to negotiate in good faith long term contracts to purchase City-generated power made available for sale, consistent with PUC requirements. The Company further agrees to offer transmission and delivery services to the City that are required by judicial, statutory and/or regulatory directive and that are comparable to the services offered to any other customer with similar generation facilities.

B. Franchise Not To Limit City's Rights. Nothing in this franchise prohibits the City from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law.

ARTICLE 14
ENVIRONMENT AND CONSERVATION

§14.1 Environmental Leadership. The City and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this franchise. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of energy conservation and energy efficiency measures, Clean Energy measures, and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet or exceed the requirements of environmental laws, regulations and permits; shall invest in cost-effective environmentally-sound technologies; shall consider environmental issues in its planning and decision-making; and shall support environmental research and development projects and partnerships in our communities through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. On or before December 1 of each year, the Company shall provide the City a written report describing its progress in carbon reduction and other environmental efforts, and the parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements.

§14.2 Conservation. The City and the Company recognize and agree that energy conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The City and the Company further recognize that creative and effective

energy conservation solutions are crucial to sustainable development. The Company recognizes and shares the City's stated objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective energy efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate energy efficiency in new construction projects, and re-commissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future Demand Side Management ("DSM") programs. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs the benefits of which would otherwise be lost if not pursued in a timely fashion; and (ii) developing cost-effective programs for the various classes of the Company's customers, including low-income customers. The Company shall advise the City and its Residents of the availability of assistance that the Company makes available for investments in energy conservation through newspaper advertisements, bill inserts and energy efficiency workshops and by maintaining information about these programs on the Company's website. Further, the Company will designate a conservation representative to act as the primary liaison with the City who will provide the City with information on how the City may take advantage of reducing energy consumption in City facilities and how the City may participate in energy conservation and energy efficiency programs sponsored by the Company. As such, the Company and the City commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers and Residents. The Company agrees to help the City participate in Company programs and when opportunities exist to partner with others, such as the State of Colorado, the Company will help the City pursue those opportunities. In addition, and in order to assist the City and its Residents' participation in Renewable Energy Resource programs, the Company shall:

- (1) notify the City regarding all eligible Renewable Energy Resource programs;
- (2) provide the City with technical support regarding how the City may participate in Renewable Energy Resource programs; and
- (3) advise Residents regarding eligible Renewable Energy Resource programs.

Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the City, the Company retains the sole discretion as to whether to incur such costs.

§14.3 Continuing Commitment.

It is the express intention of the City and the Company that the collaborative effort provided for in this Article continue for the entire term of this agreement. The City and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with energy conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this agreement by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this agreement in order to help the City achieve its environmental goals.

- §14.4 PUC Approval. Nothing in this Article shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process.

ARTICLE 15 TRANSFER OF FRANCHISE

- §15.1 Consent of City Required. The Company shall not transfer or assign any rights under this franchise to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to legislation or regulatory requirements, unless the City approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld.
- §15.2 Transfer Fee. In order that the City may share in the value this franchise adds to the Company's operations, any transfer or assignment of rights granted under this franchise requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the City's then-population provided Utility Service by the Company to the then-population of the City and County of Denver provided Utility Service by the Company multiplied by one million dollars (\$1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.

ARTICLE 16 CONTINUATION OF UTILITY SERVICE

- §16.1 Continuation of Utility Service. In the event this franchise is not renewed at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, the Company shall have no right to remove any Company Facilities or discontinue providing Utility Service unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the City until the City arranges for utility service from another provider. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Company's tariffs on file with the Public Utilities Commission and the Company shall be entitled to collect from Residents and

shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City's Streets. Only upon receipt of written notice from the City stating that the City has adequate alternative Utility Service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the City and its Residents.

ARTICLE 17
INDEMNIFICATION AND IMMUNITY

- §17.1 City Held Harmless. The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this franchise, the exercise by the Company of the related rights, or from the operations of the Company within the City, and shall pay the costs of defense plus reasonable attorneys' fees. The City shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City seeks indemnification hereunder and (b) unless in the City's judgment a conflict of interest may exist between the City and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel satisfactory to the City. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the City determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers or employees.
- §17.2 Immunity. Nothing in this Section or any other provision of this agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (§4-10-101, C.R. S., *et. seq.*) or of any other defenses, immunities, or limitations of liability available to the City by law.

ARTICLE 18
BREACH

- §18.1 Non-Contestability. The City and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise are performed. The Company reserves the right to seek a change in its tariffs, including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the City and its Residents, and the City retains all rights that it may have to intervene and participate in any such proceedings.
- §18.2 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this franchise, if a party (the “breaching party”) to this franchise fails or refuses to perform any of the terms or conditions of this franchise (a “breach”), the other party (the “non-breaching party”) may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach. If the breaching party does not remedy the breach within the time allowed in the notice, the non-breaching party may exercise the following remedies for such breach:

- (1) specific performance of the applicable term or condition; and
- (2) recovery of actual damages from the date of such breach incurred by the non-breaching party in connection with the breach, but excluding any consequential damages.

B. Termination of Franchise by City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this franchise (a “material breach”), the City may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, in which to remedy the material breach. If the Company does not remedy the material breach within the time allowed in the notice, the City may, at its sole option, terminate this franchise. This remedy shall be in addition to the City’s right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, the Company shall continue to provide Utility Service to the City and its Residents until the City makes alternative arrangements for such service and until otherwise ordered by the PUC and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City Streets.

C. Company Shall Not Terminate Franchise. In no event does the Company have the right to terminate this franchise.

D. No Limitation. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise.

ARTICLE 19 AMENDMENTS

§19.1 Proposed Amendments. At any time during the term of this franchise, the City or the Company may propose amendments to this franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However,

nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.

- §19.2 Effective Amendments. No alterations, amendments or modifications to this franchise shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise, to the extent required by law. Neither this franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

ARTICLE 20
EQUAL OPPORTUNITY

- §20.1 Economic Development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is also committed to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.

- §20.2 Employment.

A. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.

B. The Company recognizes that the City and the business community in the City, including women and minority owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of underrepresented communities into management positions, and agrees to keep the City regularly advised of the Company's progress by providing the City a copy of the Company's annual affirmative action report upon the City's written request.

C. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity specific expertise.

D. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and

members of underrepresented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training, and leadership programs.

E. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, sex, age, national origin or ancestry or handicap, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified, and further agrees to insert the foregoing provision or its equivalent in all agreements the Company enters into in connection with this franchise.

F. The Company shall identify and consider women, persons of color and other underrepresented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the Shareholders, customers and employees of the Company.

§20.3 Contracting.

A. It is the Company's policy to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

B. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the City regularly advised of the Company's programs.

C. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority owned, women owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority owned, women owned and disadvantaged businesses to contract with the Company.

§20.4 Coordination. City agencies provide collaborative leadership and mutual opportunities or programs relating to City based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and

mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

ARTICLE 21
MISCELLANEOUS

- §21.1 No Waiver. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.
- §21.2 Successors and Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 15 of this franchise.
- §21.3 Third Parties. Nothing contained in this franchise shall be construed to provide rights to third parties.
- §21.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent as follows:

To the City:

Mayor of Grand Junction
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501

and

City Manager
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501

With a copy to:

City Attorney
City of Grand Junction

250 North 5th Street
Grand Junction, CO 81501

To the Company:

Regional Vice President, Customer and Community Services
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

With a copy to:

Legal Department
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

- §21.5 Examination Of Records. The Parties agree that any duly authorized representative of the City and the Company shall have access to and the right to examine any directly pertinent non-confidential books, documents, papers, and records of the other party involving any activities related to this franchise. All such records must be kept for a minimum of four (4) years. To the extent that either Party believes in good faith that it is necessary in order to monitor compliance with the terms of this franchise to examine confidential books, documents, papers, and records of the other Party, the Parties agree to meet and discuss providing confidential materials, including but not limited to providing such materials subject to a reasonable confidentiality agreement which effectively protects the confidentiality of such materials and complies with PUC rules and regulations.
- §21.6 List of Utility Property. The Company shall provide the City, upon request not more than every two (2) years, a list of utility related property owned or leased by the Company within the City. All such records must be kept for a minimum of four (4) years.
- §21.7 PUC Filings. Upon written request, the Company shall provide the City non-confidential copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Colorado Public Utilities Commission.
- §21.8 Information. Upon written request, the Company shall provide the City Manager or the City Manager's designee with:

A. A copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's web site;

B. maps or schematics in electronic format indicating the location of specific Company Facilities, including gas or electric lines, located within the City, to the extent those maps or schematics are in existence at the time of the request and related to an ongoing project within the City; and

C. a copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

§21.9 Payment of Taxes and Fees.

A. The Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this agreement ("Impositions"), provided that Company shall have the right to contest any such impositions and shall not be in breach of this Section so long as it is actively contesting such impositions.

B. The City shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable tariffs on file and in effect from time to time with the PUC.

§21.10 Conflict of Interest. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

§21.11 Certificate of Public Convenience and Necessity. The City agrees to support the Company's application to the PUC to obtain a certificate of public convenience and necessity to exercise its rights and obligations under this franchise.

§21.12 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this agreement on behalf of the parties and to bind the parties to its terms. The persons executing this agreement on behalf of each of the parties warrant that they have full authorization to execute this agreement. The City acknowledges that notwithstanding the foregoing, the Company requires a certificate of public

convenience and necessity from the PUC in order to operate under the terms of this franchise.

- §21.13 Severability. Should any one or more provisions of this franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder.
- §21.14 Force Majeure. Neither the City nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to Force Majeure, as defined herein.
- §21.15 Earlier Franchises Superseded. This franchise shall constitute the only franchise between the City and the Company for the furnishing of Utility Service, and it supersedes and cancels all former franchises between the parties hereto.
- §21.16 Titles Not Controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this franchise.
- §21.17 Applicable Law. Colorado law shall apply to the construction and enforcement of this franchise. The parties agree that venue for any litigation arising out of this franchise shall be in the District Court for Mesa County, State of Colorado.

AND,

AN ORDINANCE GRANTING A FRANCHISE BY THE CITY OF GRAND JUNCTION TO GRAND VALLEY RURAL POWER LINES, INC., ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO FURNISH, SELL AND DISTRIBUTE ELECTRICITY TO THE CITY AND TO ALL PERSONS, BUSINESSES, AND INDUSTRY WITHIN THE CITY AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH SAID CITY ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL AND DISTRIBUTE ELECTRICITY WITHIN THE CITY AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AND PUBLIC EASEMENTS AS HEREIN DEFINED AS MAY BE NECESSARY; AND FIXING THE TERMS AND CONDITIONS THEREOF.

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ARTICLE 1
DEFINITIONS

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

- §1.1 “City” refers to the City of Grand Junction, a municipal corporation of the State of Colorado.
- §1.2 “City Council” or “Council” refers to the legislative body of the City.
- §1.3 “Clean Energy” means energy produced from Renewable Energy Resources, eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, “cost” means all those costs as determined by the Company consistent with PUC rules.
- §1.4 “Company” refers to Grand Valley Rural Power Lines, Inc. and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this franchise.
- §1.5 “Company Facilities” refer to all facilities of the Company reasonably necessary to provide gas and electric service into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, cables and poles.
- §1.6 “Electric Gross Revenues” refers to those amounts of money which the Company receives from the sale or delivery of electricity in the City, after adjusting for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Electric Gross Revenues” shall exclude any revenue for the sale or delivery of electricity to the City as a customer of the Company.
- §1.7 “Energy Conservation” means the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.
- §1.8 “Energy Efficiency” means the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.
- §1.9 “Force Majeure” means the inability to undertake an obligation of this franchise due to a cause that could not be reasonably anticipated by a party or is beyond its reasonable

control after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in delivery of materials. Neither the City nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to a Force Majeure condition.

- §1.10 “Gross Revenues” refers to those amounts of money which the Company receives from the sale of ~~gas and~~ electricity within the City under rates authorized by the Company and those amounts of money, excluding expense reimbursements, which the Company receives from the use of Company facilities in Streets and Other Public Places (unless otherwise preempted by applicable federal or state law), as adjusted for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Gross Revenues” shall exclude any revenues from the sale of ~~gas or~~ electricity to the City.
- §1.11 “Other City Property” refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the City or hereafter held by the City, that would not otherwise fall under the definition of “Streets”, but which provides a suitable location for the placement of Company facilities as specifically approved in writing by the City.
- §1.12 “Private Project” refers to any project which is not covered by the definition of Public Project.
- §1.13 “Public Project” refers to (1) any public work or improvement within the City that is wholly or beneficially owned by the City; or (2) any public work or improvement within the City where fifty percent (50%) or more of the funding is provided by any combination of the City, the federal government, the State of Colorado, or any Colorado county, but excluding all other entities established under Title 32 of the Colorado Revised Statutes.
- §1.14 “Public Utilities Commission” or “PUC” refers to the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.
- §1.15 “Public Utility Easement” refers to any easement over, under, or above public or private property, dedicated to the use of public utility companies for the placement of utility facilities, including but not limited to Company Facilities. Public Utility Easement shall not include any easement that is located within Streets or Other City Property.
- §1.16 “Renewable Energy Resources” means wind; solar; geothermal; biomass from nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush, or from animal wastes and products of animal wastes, or from methane produced at landfills or as a by-product of the treatment of wastewater residuals; new hydroelectricity with a nameplate rating of ten megawatts or less, and

hydroelectricity in existence on January 1, 2005, with a nameplate rating of thirty megawatts or less; fuel cells using hydrogen derived from a Renewable Energy Resource; and recycled energy produced by a generation unit with a nameplate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel, and includes any eligible renewable energy resource as defined in § 40-2-124(1)(a), C.R.S., as the same shall be amended from time to time.

- §1.17 “Residents” refers to all persons, businesses, industries, governmental agencies, including the City, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the City.
- §1.18 “Streets” or “City Streets” refers to the surface, the air space above the surface and the area below the surface of any City-dedicated streets, alleys, bridges, roads, lanes, public easements (excluding any easements the terms of which do not permit the use thereof by public utilities), and other public rights-of-way within the City, which are primarily used for motorized vehicle traffic. Streets shall not include Public Utility Easements.
- §1.19 “Supporting Documentation” refers to all information reasonably required in order to allow the Company to design and construct any work performed under the provisions of this franchise.
- §1.20 “Tariffs” refer to those tariffs of the Company on file and in effect.
- §1.21 “Utility Service” refers to the sale of electricity to Residents by the Company under rates approved by the Company.

ARTICLE 2 GRANT OF FRANCHISE

§2.1 Grant of Franchise.

A. Grant. The City hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this franchise, the non-exclusive right to make reasonable use of City Streets and Other City Property:

- (1) to provide Utility Service to the City and to its Residents under tariffs on file with the Company and with the PUC if required by the PUC; and
- (2) to acquire, purchase, construct, install, locate, maintain, operate, and extend into, within and through the City all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transmission, transportation and distribution of Utility Service within and through the City.

B. Street Lighting and Traffic Signal Lighting Service. Street lighting service and traffic signal lighting service within the City shall be governed by tariffs on file with the Company and with the PUC if required by the PUC.

§2.2 Conditions and Limitations.

A. Scope of Franchise. The grant of this franchise shall extend to all areas of the City as it is now or hereafter constituted that are within the Company's PUC-certificated service territory; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

B. Subject to City Usage. The right to make reasonable use of City Streets to provide Utility Service to the City and its Residents under the franchise is subject to and subordinate to any City usage of said Streets.

C. Prior Grants Not Revoked. This grant is not intended to revoke any prior license, grant, or right to use the Streets and such licenses, grants or rights of use are hereby affirmed. Such rights shall, however, be governed by the terms of this franchise.

D. Franchise Not Exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a franchise to any other person, firm, or corporation.

§2.3 Effective Date and Term. This franchise shall take effect on _____, 2011, and shall supersede any prior franchise grants to the Company by the City. This franchise shall terminate on _____, 2031, unless extended by mutual consent.

ARTICLE 3
CITY POLICE POWERS

§3.1 Police Powers. The City shall have the right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the Company's operations in the City's Streets and Other City Property, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements.

§3.2 Regulation of Streets or Other City Property. The Company expressly acknowledges the City's right to enforce regulations concerning the Company's access to or use of the Streets, including requirements for permits.

§3.3 Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits, and orders enacted by the City.

ARTICLE 4
FRANCHISE FEE

§4.1 Franchise Fee.

A. Fee. In partial consideration for the franchise, which provides for the Company's use of City Streets, which are valuable public properties acquired and maintained by the City at great expense to its Residents, and in recognition that the grant to the Company of the use of City Streets is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of all Gross Revenues. The Company shall collect this fee from a surcharge upon City residents who are customers of the Company.

B. Obligation in Lieu of Fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as partial consideration for use of the City Streets. The Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to City Residents.

C. Changes in Utility Service Industries. The City and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the City, the Company will cooperate with and assist the City in modifying this franchise to assure that the City receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees paid to the City as of the date that such initiatives and changes adversely impact franchise fee revenues.

D. Utility Service Provided to the City. No franchise fee shall be charged to the City for Utility Service provided directly or indirectly to the City for its own consumption, including street lighting service and traffic signal lighting service, unless otherwise directed by the City.

§4.2 Remittance of Franchise Fee.

A. Remittance Schedule. Franchise fee revenues shall be remitted by the Company to the City as directed by the City in monthly installments not more than 30 days following the close of each month.

B. Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the

franchise fee payment to the City, it shall provide written notice to the other party of the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2.D of this franchise; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the franchise fee to the City, and said overpayment is in excess of Five Thousand Dollars (\$5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the Company error.

C. Audit of Franchise Fee Payments.

(1) Every three (3) years commencing at the end of the third year of this franchise, the Company shall conduct an internal audit to investigate and determine the correctness of the franchise fee paid to the City. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the City Manager containing the audit findings.

(2) If the City disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, and the Company shall cooperate fully, including but not necessarily limited to, providing the City's auditor with all information reasonably necessary to complete the audit.

(3) If the results of a City audit conducted pursuant to Subsection C (2) concludes that the Company has underpaid the City by two percent (2%) or more, in addition to the obligation to pay such amounts to the City, the Company shall also pay all costs of the City's audit.

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.2.B of this franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

E. Reports. Upon written request by the City, but not more than once per year, the Company shall supply the City with reports, in such formats and providing such details as reasonably requested by the City, of all suppliers of utility service that utilize Company Facilities to sell or distribute utility service to Residents and the names and addresses of each such supplier.

- §4.3 Franchise Fee Payment not in Lieu of Permit or Other Fees. Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, including any fee for a street closure permit, an excavation permit, a street cut permit, or other lawful permits hereafter required by the City, except that the franchise fee provided for herein shall be in lieu of any occupation, occupancy or similar tax for the use of City Streets.

ARTICLE 5
ADMINISTRATION OF FRANCHISE

- §5.1 City Designee. The City Manager shall designate in writing to the Company an official having full power and authority to administer the franchise. The City Manager may also designate one or more City representatives to act as the primary liaison with the Company as to particular matters addressed by this franchise and shall provide the Company with the name and telephone numbers of said City representatives. The City Manager may change these designations by providing written notice to the Company. The City's designee shall have the right, at all reasonable times, to inspect any Company Facilities in City Streets and Other City Property.

- §5.2 Company Designee. The Company shall designate a representative to act as the primary liaison with the City and shall provide the City with the name, address, and telephone number for the Company's representative under this franchise. The Company may change its designation by providing written notice to the City. The City shall use this liaison to communicate with the Company regarding Utility Service and related service needs for City facilities.

- §5.3 Coordination of Work.

A. The Company agrees to meet with the City's designee upon written request for the purpose of reviewing, implementing, or modifying mutually beneficial procedures for the efficient processing of Company bills, invoices and other requests for payment.

B. The Company agrees to coordinate its activities in City Streets with the City. The City and the Company will meet annually upon the written request of the City designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect City Streets. The City and Company shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all provisions of this franchise, building and zoning codes, and City air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

ARTICLE 6
SUPPLY, CONSTRUCTION, AND DESIGN

§6.1 Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the City to the Residents which require the Company to provide prompt and reliable Utility Service and the performance of related services for City facilities. The City and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the City in order to facilitate and enhance the operation of City facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the City.

§6.2 Supply. The Company shall take all reasonable and necessary steps to provide a sufficient supply of electricity to Residents at the lowest reasonable cost consistent with reliable supplies.

§6.3 Service to City Facilities.

A. Charges to the City. No charges to the City by the Company for Utility Service shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company.

§6.4 Restoration of Service.

A. Notification. The Company shall provide to the City daytime and nighttime telephone numbers of a designated Company representative from whom the City designee may obtain status information from the Company on a twenty-four (24) hour basis concerning interruptions of Utility Service in any part of the City.

B. Restoration. In the event the Company's gas system or electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such systems to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if the Company elects not to restore such system.

§6.5 Obligations Regarding Company Facilities.

A. Company Facilities. All Company Facilities within City Streets shall be maintained in good repair and condition.

B. Company Work within the City. All work within City Streets performed or caused to be performed by the Company shall be done:

- (1) in a high-quality manner;
- (2) in a timely and expeditious manner;
- (3) in a manner which minimizes inconvenience to the public;

- (4) in a cost-effective manner, which may include the use of qualified contractors; and
- (5) in accordance with all applicable laws, ordinances, and regulations.

C. No Interference with City Facilities. Company Facilities shall not interfere with any City facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other City uses of the Streets or Other City Property. Company Facilities shall be installed and maintained in City Streets and Other City Property so as to minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets in light of the Company's obligation under Colorado law to provide safe and reliable utility facilities and services.

D. Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the City Streets or Other City Property by or on behalf of the Company shall be subject to permit, inspection and approval by the City. Such inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and trimming of trees and shrubs, and disturbance of pavement, sidewalks, and surfaces of City Streets or Other City Property. The Company agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action lawfully required by the City pursuant to any such inspection.

E. Compliance. The Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits, and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall assure that its contractors working in City Streets or Other City Property hold the necessary licenses and permits required by law.

F. Increase in Voltage. The Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that uses Utility Service where such upgrading is solely caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy. This provision shall not apply to voltage increases required by law, including but not limited to a lawful order of the PUC, or voltage increases requested by the City.

G. As-Built Drawings. Upon written request of the City designee, the Company shall provide within 14 days of project completion, on a project by project basis, as-built drawings of any Company Facility installed within the City Streets or contiguous to the City Streets. As used in this Section, as-built drawings refers to the facility drawings as maintained in the Company's geographical information system or any equivalent Company system. The Company shall not be required to create drawings that do not exist at the time of the request.

§6.6 Excavation and Construction. The Company shall be responsible for obtaining, paying for, and complying with all applicable permits including, but not limited to, excavation, street closure and street cut permits, in the manner required by the laws, ordinances, and regulations of the City. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing relocations requested by the City under Section 6.8 of this franchise and undergrounding requested by the City under Article 11 of this franchise, the City will not require the Company to pay the fees charged for such permits.

§6.7 Restoration. When the Company does any work in or affecting the City Streets or Other City Property, it shall, at its own expense, promptly remove any obstructions there from and restore such City Streets or Other City Property to a condition that is substantially the same as existed before the work, and that meets applicable City standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may with the approval of the City, temporarily restore the affected City Streets or Other City Property, provided that such temporary restoration is at the Company's sole expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the City, the Company shall restore the Streets or Other City Property to a better condition than existed before the work was undertaken, provided that the City shall be responsible for any incremental costs of such restoration not required by then-current City standards. If the Company fails to promptly restore the City Streets or Other City Property as required by this Section, and if, in the reasonable discretion of the City immediate action is required for the protection of public health and safety, the City may restore such City Streets or Other City Property or remove the obstruction there from; provided however, City actions do not interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the City to restore such City Streets or Other City Property or to remove any obstructions there from. In the course of its restoration of City Streets or Other City Property under this Section, the City shall not perform work on Company facilities unless specifically authorized by the Company in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

§6.8 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall at its sole cost and expense temporarily or permanently remove, relocate, change or alter the position of any Company Facility in City Streets or in Other City Property whenever such removal, relocation, change or alteration is necessary for the completion of any Public Project. Any City-required removal, relocation, change or alteration of Company Facilities located in any Company owned property or any private easement or Public Utility Easement shall be at no cost to the Company. For all relocations, the Company and the City agree to cooperate on the location and relocation of the Company Facilities in the City Streets or Other City Property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has relocated any Company

Facility at the City's direction, if the City requests that the same Company Facility be relocated within two years, the subsequent relocation shall not be at the Company's expense.

B. Private Projects. The Company shall not be responsible for the expenses of any relocation required by Private Projects, and the Company has the right to require the payment of estimated relocation expenses from the affected private party before undertaking such relocation.

C. Relocation Performance. The relocations set forth in Section 6.8.A of this franchise shall be completed within a reasonable time, not to exceed one hundred twenty (120) days from the later of the date on which the City designee requests, in writing, that the relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall receive an extension of time to complete a relocation where the Company's performance was delayed due to Force Majeure or the failure of the City to provide adequate Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

D. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise.

E. Completion. Each such relocation shall be complete only when the Company actually relocates the Company Facilities, restores the relocation site in accordance with Section 6.7 of this franchise or as otherwise agreed with the City, and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.

F. Scope of Obligation. The relocation obligation set forth in this Section shall only apply to Company Facilities located in City Streets or Other City Property. The obligation shall not apply to Company Facilities located on property owned by the Company in fee, or to Company Facilities located in privately-owned easements or Public Utility Easements.

G. Underground Relocation. Underground facilities shall be relocated underground. Above ground facilities shall be placed above ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above ground cost of relocation, or the City requests that such additional incremental cost be paid out of available funds under Article 11 of this franchise.

H. Coordination.

(1) When requested in writing by the City designee or the Company, representatives of the City and the Company shall meet to share information regarding anticipated projects which will require relocation of Company Facilities in City Streets. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City for any Public Project.

(2) The City shall provide the Company with two (2) years advance notice of any planned street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the street within the two-year period if practicable.

I. Proposed Alternatives or Modifications. Upon receipt of written notice of a required relocation, the Company may propose an alternative to or modification of the Public Project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of Company Facilities. The City shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the sole discretion of the City. In the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses, or delay that the City reasonably determines resulted from the implementation of the proposed alternative.

- §6.9 New or Modified Service Requested by City. The conditions under which the Company shall install new or modified Utility Service to the City as a customer shall be governed by this franchise and the Company's tariffs.
- §6.10 Service to New Areas. If the territorial boundaries of the City are expanded during the term of this franchise, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time if the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the Company's tariffs and this franchise, including the payment of franchise fees.
- §6.11 City Not Required to Advance Funds. Upon receipt of the City's authorization for billing and construction, the Company shall extend Company Facilities to provide Utility Service to the City as a customer, without requiring the City to advance funds prior to construction. The City shall pay for the extension of Company Facilities once completed in accordance with the Company's extension policy.
- §6.12 Technological Improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its Residents.

ARTICLE 7
RELIABILITY

- §7.1 Reliability. The Company shall operate and maintain Company Facilities efficiently and economically and in accordance with the high standards and best systems, methods and skills consistent with the provision of adequate, safe, and reliable Utility Service.
- §7.2 Franchise Performance Obligations. The Company recognizes that, as part of its obligations and commitments under this franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical, and workmanlike manner.
- §7.3 Reliability Reports. Upon written request, the Company shall provide the City with a report regarding the reliability of Company Facilities and Utility Service.

ARTICLE 8
COMPANY PERFORMANCE OBLIGATIONS

- §8.1 New or Modified Service to City Facilities. In providing new or modified Utility Service to City facilities, the Company agrees to perform as follows:
- A. Performance. The Company shall complete each project requested by the City within a reasonable time. The Parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the City designee makes a written request and provides the required Supporting Documentation for all Company Facilities other than traffic facilities. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City designee may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.
- B. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding new or modified service to City facilities shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise.
- C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of the franchise or as otherwise agreed with the City and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.
- §8.2 Adjustments To Company Facilities. The Company shall perform adjustments to Company Facilities, including manholes and other appurtenances in Streets and Other City Property, to accommodate City street maintenance, repair and paving operations at

no cost to the City. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed sixty (60) days from the date upon which the City makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. Completion/Restoration. Each such adjustment shall be complete only when the Company actually adjusts the Company Facility to accommodate the City operations in accordance with City instructions and, if required, readjusts, following City paving operations.

C. Coordination. As requested by the City or the Company, representatives of the City and the Company shall meet regarding anticipated street maintenance operations which will require such adjustments to Company Facilities in Streets or Other City Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

§8.3 Third Party Damage Recovery.

A. Damage to Company Interests. If any individual or entity damages any Company Facilities that the Company is responsible to repair or replace, to the extent permitted by law, the City will notify the Company of any such incident of which it has knowledge and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

B. Damage to Company Property for which the City is Responsible. If any individual or entity damages any Company Facilities for which the City is obligated to reimburse the Company for the cost of the repair or replacement of the damaged facility, to the extent permitted by law, the Company will notify the City of any such incident of which it has knowledge and will provide to the City within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

C. Meeting. The Company and the City agree to meet periodically, upon written request of either party, for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities.

ARTICLE 9
BILLING AND PAYMENT

§9.1 Billing for Other Utility Services.

A. Unless otherwise provided in its tariffs, the rules and regulations of the PUC, or the Public Utility Law, the Company shall render bills monthly to the offices of the City for Utility Service and other related services for which the Company is entitled to payment and for which the City has authorized payment.

B. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the City and payment for same shall be made as prescribed in this agreement and the applicable Company tariff on file and in effect from time to time.

C. The Company shall provide all billings and any underlying support documentation reasonably requested by the City and in an editable and manipulatable electronic format that is acceptable to the Company and the City.

D. The Company agrees to meet with the City designee at least annually for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the City.

§9.2 Payment To City. In the event the City determines after written notice to the Company that the Company is liable to the City for payments, costs, expenses or damages of any nature, and subject to the Company's right to challenge such determination, the City may deduct all monies due and owing the City from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the City to discuss such determination. The City agrees to attend such a meeting. As an alternative to such deduction, the City may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill. If the Company challenges the City determination of liability, the City shall make such payments to the Company pursuant to the Company's tariffs until the challenge has been finally resolved.

ARTICLE 10
USE OF COMPANY FACILITIES

§10.1 City Use of Company Electric Distribution Poles. The City shall be permitted to make use of Company electric distribution poles in the City at no cost to the City for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. The Company may allow the use of electric distribution poles for other purposes at the Company's sole discretion. The

City will notify the Company in advance and in writing of its intent to use Company distribution poles and the nature of such use unless it is impracticable to provide such advance notice because of emergency circumstances, in which event the City will provide such notice as soon as practicable. The City shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the City's use of such Company electric distribution poles and for any electricity used. No such use of Company electric distribution poles shall be required if it would constitute a safety hazard or would interfere with the Company's use of Company electric distribution facilities. Any such City use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations.

- §10.2 City Use of Street Lighting and Traffic Signal Lighting Poles. The City shall be allowed to use the Company's street lighting and traffic signal lighting poles in the future for legitimate police, public safety or traffic control purposes under the terms and conditions set forth in the Company's tariffs and any subsequent agreements that may be entered between the parties, but must obtain prior written approval of the Company. No such use shall be allowed if the Company determines in good faith that the City's use of specific street lighting or traffic signal lighting poles creates a safety hazard or interferes with the Company's use of its Utility Facilities. The City shall be responsible for paying the Company's reasonable costs of determining whether the proposed use of street lighting and traffic signal lighting poles creates a safety hazard or interferes with Company Utility Facilities.
- §10.3 Existing Uses. The City shall not be required to remove its existing signs, equipment or facilities from street lighting or traffic signal lighting poles, unless the Company determines after consultation with the City that attachment of specific equipment or facilities on specific poles creates a safety hazard or interferes with the Company's use of its Utility Facilities. If after such determination the City is required to remove its existing equipment or facilities from those poles, the Company shall allow the City ten (10) days from the date of written notice, including by electronic mail, within which to remove its equipment or facilities. If the City fails to remove the equipment or facilities, the Company may perform the removal at the City's sole expense.
- §10.4 Third Party Use Of Company Facilities. If requested in writing by the City, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets, to utilize Company electric distribution poles for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions including payment of fees established by the Company. Use of other Company facilities by third parties shall be in accordance with the Company's tariffs. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company electric distribution facilities. The Company shall not be required to permit the use of Company distribution facilities for the provision of utility service except as otherwise required by law.
- §10.5 City Use of Company Transmission Rights-of-Way. The Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for the purposes set forth in and pursuant to the provisions of the Park

and Open Space Act of 1984, on terms comparable to those offered to other municipalities, provided that the Company shall not be required to make such an offer in any circumstance where such offer would constitute a safety hazard or interfere with the Company's use of the transmission right-of-way. City use of transmission rights-of-way may include use for trails, parks and open space. In order to exercise this right, the City must make specific written request to the Company for any such use.

- §10.6 Emergencies. Upon written request, the Company shall assist the City in developing an emergency management plan. In the case of any emergency or disaster, the Company shall, upon oral request of the City, make available Company Facilities for emergency use during the emergency or the disaster period. Such use of Company Facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of Company Facilities.

ARTICLE 11 **UNDERGROUNDING OF OVERHEAD FACILITIES**

- §11.1 Underground Electrical Lines in New Areas. The Company shall, upon payment to the Company of the charges provided in its tariffs or their equivalent, place all newly constructed electrical distribution lines in newly developed areas of the City underground in accordance with applicable laws, regulations and orders.

- §11.2 Underground Conversion At Expense Of Company.

A. Underground Fund. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues (the "Fund"), for the purpose of undergrounding existing overhead distribution facilities in the City, as may be requested by the City Designee.

B. Unexpended Portion And Advances. Any unexpended portion of the Fund shall be carried over to succeeding years and, in addition, upon request by the City, the Company agrees to advance and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any funds left accumulated under any prior franchise shall be carried over to this franchise. The City shall have no vested interest in monies allocated to the Fund and any monies in the Fund not expended at the expiration or termination of this franchise shall remain the property of the Company. At the expiration or termination of this franchise, the Company shall not be required to underground any existing overhead facilities under this Article, but may do so in its sole discretion.

C. System-wide Undergrounding. If, during the term of this franchise, the Company should undertake a system-wide program or programs of undergrounding its electric distribution facilities, the Company will budget and allocate to the program of undergrounding in the City such amount as may be determined and approved, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

D. City Requirement To Underground. In addition to the provisions of this Article, the City may require any above ground Company Facilities to be moved underground at the City's expense.

§11.3 Undergrounding Performance. Upon receipt of a written request from the City, the Company shall underground Company Facilities pursuant to the provisions of this Article, in accordance with the procedures set forth in this Section.

A. Estimates. Promptly upon receipt of an undergrounding request from the City and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable to the City, the City will issue a project authorization. At the City's request, the Company will provide all documentation which forms the basis of the estimate. The Company will not proceed with any requested project until the City has provided a written acceptance of the Company estimate.

B. Performance. The Company shall complete each undergrounding project requested by the City within a reasonable time, not to exceed 240 days from the later of the date upon which the City designee makes a written request or the date the City provides to the Company all Supporting Documentation. The Company shall have 120 days after receiving the City's written request to design project plans, prepare the good faith estimate, and transmit same to the City Designee for review. If City approval of the plans and estimate has not been granted, the Company's good faith estimate will be void 60 days after delivery of the plans and estimate to the City Designee. If the plans and estimate are approved by the City, the Company shall have 120 days from date of the City Designee's authorization of the underground project, plus any of the 120 unused days in preparing the good faith estimate to complete the project. At the Company's sole discretion, if the good faith estimate has expired because the City Designee has not approved the same within 60 days, the Company may extend the good faith estimate or prepare a new estimate using current prices. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a Force Majeure condition. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

C. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under the franchise.

D. Completion/Restoration. Each such undergrounding project shall be complete only when the Company actually undergrounds the designated Company Facilities, restores the undergrounding site in accordance with Section 6.7 of this franchise, or as otherwise agreed with the City, and removes from the site or

properly abandons on site any unused facilities, equipment, material and other impediments.

E. Report of Actual Costs. Upon completion of each undergrounding project, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. The report shall be provided within 120 days after completion of the project and written request from the City.

F. Audit of Underground Projects. The City may require that the Company undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The cost of any such independent audit shall reduce the amount of the Fund. The Company shall cooperate fully with any audit and the independent auditor shall prepare and provide to the City and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the City, only those actual project costs confirmed and verified by the independent auditor as reasonable and necessary to complete the project shall be charged against the Fund balance.

§11.4 Audit of Underground Fund. Upon written request, every three (3) years commencing at the end of the third year of this franchise, the Company shall cause an independent auditor to investigate and determine the correctness of the charges to the underground fund. Such audits shall be limited to the previous three (3) calendar years. The independent auditor shall provide a written report containing its findings to the City and the Company. The Company shall reconcile the Fund consistent with the findings contained in the independent auditor's written report. The Company shall pay the costs of the audit and investigation.

§11.5 Cooperation with Other Utilities. When undertaking an undergrounding project the City and the Company shall coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior written notification, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for the cost of undergrounding the facilities of other companies or the City.

§11.6 Planning And Coordination Of Undergrounding Projects. The city and the company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this article as a part of the review and planning for other city and company construction projects. The city and the company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the city and the company in order to achieve the orderly undergrounding of company facilities. Representatives of both the city and the company shall meet periodically to review the company's undergrounding of company facilities and at such meetings shall review:

A. Undergrounding, including conversions, Public Projects and replacements which have been accomplished or are underway, together with the Company's plans for additional undergrounding; and

B. Public Projects anticipated by the City.

ARTICLE 12
PURCHASE OR CONDEMNATION

§12.1 Municipal Right to Purchase or Condemn.

A. Right and Privilege of City. The right and privilege of the City to construct, purchase, or condemn any Company Facilities located within the territorial boundaries of the City, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution and statutes of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The City shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, to purchase Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the City. In the event of any such purchase, no value shall be ascribed or given to the rights granted under this franchise in the valuation of the property thus taken.

B. Notice of Intent to Purchase or Condemn. The City shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this Section shall be deemed or construed to constitute consent by the Company to the City's purchase or condemnation of Company Facilities.

ARTICLE 13
MUNICIPALLY-PRODUCED UTILITY SERVICE

§13.1 Municipally-Produced Utility Service.

A. City Reservation. The City expressly reserves the right to engage in the production of Utility Service to the extent permitted by law. The Company ~~further~~ agrees to offer transmission and delivery services to the City that are required by judicial, statutory and/or regulatory directive and that are comparable to the services offered to any other customer with similar generation facilities.

B. Franchise Not To Limit City's Rights. Nothing in this franchise prohibits the City from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law.

ARTICLE 14
ENVIRONMENT AND CONSERVATION

- §14.1 Environmental Leadership. The City and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this franchise. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of energy conservation and energy efficiency measures, Clean Energy measures, and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet or exceed the requirements of environmental laws, regulations and permits; shall invest in cost-effective environmentally-sound technologies; shall consider environmental issues in its planning and decision-making; and shall support environmental research and development projects and partnerships in our communities through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. On or before December 1 of each year, the Company shall provide the City a written report describing its progress in carbon reduction and other environmental efforts, and the parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements.
- §14.2 Conservation. The City and the Company recognize and agree that energy conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The City and the Company further recognize that creative and effective energy conservation solutions are crucial to sustainable development. The Company recognizes and shares the City's stated objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective energy efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate energy efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future Demand Side Management ("DSM") programs. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs the benefits of which would otherwise be lost if not pursued in a timely fashion; and (ii) developing cost-effective programs for the various classes of the Company's customers, including low-income customers. The Company shall advise the City and its Residents of the availability of assistance that the Company makes available for investments in energy conservation through newspaper advertisements,

bill inserts and energy efficiency workshops and by maintaining information about these programs on the Company's website. Further, the Company will designate a conservation representative to act as the primary liaison with the City who will provide the City with information on how the City may take advantage of reducing energy consumption in City facilities and how the City may participate in energy conservation and energy efficiency programs sponsored by the Company. As such, the Company and the City commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers and Residents. The Company agrees to help the City participate in Company programs and when opportunities exist to partner with others, such as the State of Colorado, the Company will help the City pursue those opportunities. In addition, and in order to assist the City and its Residents' participation in Renewable Energy Resource programs, the Company shall:

- (1) notify the City regarding all eligible Renewable Energy Resource programs;
- (2) provide the City with technical support regarding how the City may participate in Renewable Energy Resource programs; and
- (3) advise Residents regarding eligible Renewable Energy Resource programs.

Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the City, the Company retains the sole discretion as to whether to incur such costs.

§14.3 Continuing Commitment.

It is the express intention of the City and the Company that the collaborative effort provided for in this Article continue for the entire term of this agreement. The City and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with energy conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this agreement by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this agreement in order to help the City achieve its environmental goals.

ARTICLE 15
TRANSFER OF FRANCHISE

- §15.1 Consent of City Required. The Company shall not transfer or assign any rights under this franchise to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to legislation or regulatory requirements, unless the City approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld.
- §15.2 Transfer Fee. In order that the City may share in the value this franchise adds to the Company's operations, any transfer or assignment of rights granted under this franchise requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the City's then-population provided Utility Service by the Company to the then-population of the City and County of Denver provided Utility Service by Public Service Company of Colorado, d/b/a Xcel Energy, its successors and assigns, including affiliates or subsidiaries, multiplied by one million dollars (\$1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.

ARTICLE 16
CONTINUATION OF UTILITY SERVICE

- §16.1 Continuation of Utility Service. In the event this franchise is not renewed at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, the Company shall have no right to remove any Company Facilities or discontinue providing Utility Service, unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the City until the City arranges for utility service from another provider. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Company's tariffs and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City's Streets. Only upon receipt of written notice from the City stating that the City has adequate alternative Utility Service for Residents shall the Company be allowed to discontinue the provision of Utility Service to the City and its Residents.

ARTICLE 17
INDEMNIFICATION AND IMMUNITY

- §17.1 City Held Harmless. The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this franchise, the exercise by the Company of the related rights, or from the operations of the Company within the City, and shall pay the costs of defense plus reasonable attorneys' fees. The City shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the

City seeks indemnification hereunder and (b) unless in the City's judgment a conflict of interest may exist between the City and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel satisfactory to the City. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the City determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers or employees.

- §17.2 Immunity. Nothing in this Section or any other provision of this agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (§24-10-101, C.R.S., *et. seq.*) or of any other defenses, immunities, or limitations of liability available to the City by law.

ARTICLE 18 BREACH

- §18.1 Non-Contestability. The City and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise are performed. The Company reserves the right to seek a change in its tariffs, including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the City and its Residents, and the City retains all rights that it may have to intervene and participate in any such proceedings.

- §18.2 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this franchise, if a party (the "breaching party") to this franchise fails or refuses to perform any of the terms or conditions of this franchise (a "breach"), the other party (the "non-breaching party") may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach. If the breaching party does not remedy the breach within the time allowed in the notice, the non-breaching party may exercise the following remedies for such breach:

- (1) specific performance of the applicable term or condition; and
- (2) recovery of actual damages from the date of such breach incurred by the non-breaching party in connection with the breach, but excluding any consequential damages.

B. Termination of Franchise by City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this franchise (a "material breach"), the City may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, in which to remedy the material breach. If the Company does not remedy the material breach within the time allowed in the notice, the City may, at its sole option, terminate this franchise. This remedy shall be in addition to the City's right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, the Company shall continue to provide Utility Service to the City and its Residents until the City makes alternative arrangements for such service and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City Streets.

C. Company Shall Not Terminate Franchise. In no event does the Company have the right to terminate this franchise.

D. No Limitation. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise.

ARTICLE 19 AMENDMENTS

- §19.1 Proposed Amendments. At any time during the term of this franchise, the City or the Company may propose amendments to this franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.
- §19.2 Effective Amendments. No alterations, amendments or modifications to this franchise shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise, to the extent required by law. Neither this franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

ARTICLE 20 EQUAL OPPORTUNITY

- §20.1 Economic Development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and

representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is also committed to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.

§20.2 Employment.

A. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, sex, age, national origin or ancestry or handicap, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified, and further agrees to insert the foregoing provision or its equivalent in all agreements the Company enters into in connection with this franchise.

ARTICLE 21
MISCELLANEOUS

§21.1 No Waiver. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

§21.2 Successors and Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 15 of this franchise.

§21.3 Third Parties. Nothing contained in this franchise shall be construed to provide rights to third parties.

§21.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent as follows:

To the City:

Mayor of Grand Junction
City of Grand Junction

250 North 5th Street
Grand Junction, CO 81501

and

City Manager
City of Grand Junction
250 North 5th Street
Grand Junction, CO

With a copy to:

City Attorney
City of Grand Junction
250 North 5th Street
Grand Junction, CO

To the Company:

General Manager
Grand Valley Rural Power Lines, Inc.
Post Office Box 190
Grand Junction, Colorado 81502

With a copy to:

Hoskin Farina & Kampf, P.C.
Post Office Box 40
Grand Junction, Colorado 81502

- §21.5 Examination Of Records. The Parties agree that any duly authorized representative of the City and the Company shall have access to and the right to examine any directly pertinent non-confidential books, documents, papers, and records of the other party involving any activities related to this franchise. All such records must be kept for a minimum of four (4) years. To the extent that either Party believes in good faith that it is necessary in order to monitor compliance with the terms of this franchise to examine confidential books, documents, papers, and records of the other Party, the Parties agree to meet and discuss providing confidential materials, including but not limited to providing such materials subject to a reasonable confidentiality agreement which effectively protects the confidentiality of such materials.
- §21.6 List of Utility Property. The Company shall provide the City, upon request not more than every two (2) years, a list of utility related property owned or leased by the

Company within the City. All such records must be kept for a minimum of four (4) years.

§21.7 PUC Filings. Upon written request, the Company shall provide the City non-confidential copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Colorado Public Utilities Commission.

§21.8 Information. Upon written request, the Company shall provide the City Manager or the City Manager's designee with:

A. A copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's web site;

B. Maps or schematics in electronic format indicating the location of specific Company Facilities, including electric lines, located within the City, to the extent those maps or schematics are in existence at the time of the request and related to an ongoing project within the City; and

C. A copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

§21.9 Payment of Taxes and Fees.

A. The Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extra-ordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this agreement ("Impositions"), provided that Company shall have the right to contest any such impositions and shall not be in breach of this Section so long as it is actively contesting such impositions.

B. The City shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable tariffs on file and in effect from time to time.

§21.10 Conflict of Interest. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

- §21.11 Certificate of Public Convenience and Necessity. If it becomes necessary, the City agrees to support the Company's application to the PUC to obtain a certificate of public convenience and necessity to exercise its rights and obligations under this franchise.
- §21.12 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this agreement on behalf of the parties and to bind the parties to its terms. The persons executing this agreement on behalf of each of the parties warrant that they have full authorization to execute this agreement.
- §21.13 Severability. Should any one or more provisions of this franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder.
- §21.14 Force Majeure. Neither the City nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to Force Majeure, as defined herein.
- §21.15 Earlier Franchises Superseded. This franchise shall constitute the only franchise between the City and the Company for the furnishing of Utility Service, and it supersedes and cancels all former franchises between the parties hereto.
- §21.16 Titles Not Controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this franchise.
- §21.17 Applicable Law. Colorado law shall apply to the construction and enforcement of this franchise. The parties agree that venue for any litigation arising out of this franchise shall be in the District Court for Mesa County, State of Colorado.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the day and year first above written.

CITY OF GRAND JUNCTION

ATTEST:

Clerk of the City of Grand Junction

Teresa Coons, Mayor

APPROVED AS TO FORM:

Attorney for the City of Grand Junction

**GRAND VALLEY RURAL POWER
LINES, INC.**

By: _____
William F. Rook, President,

Attest: _____
S. James O'Connor, Secretary

Voter's Approval. This grant of franchise shall not become effective unless approved by a majority vote of the qualified electors of the City voting thereon at the Election to be held on April __ 2011.

INTRODUCED, READ AND ORDERED PUBLISHED this 29th day of November 2010.

PASSED, ADOPTED AND APPROVED this __ day of __ 2010

APPROVED AS TO FORM:

I HEREBY CERTIFY that the foregoing People's Ordinance No. 37 was introduced, read and ordered published by the City Council of the City of Grand Junction, Colorado, at a regular meeting of said body held on the 29th day of November 2010 and that the same was published in THE GRAND JUNCTION DAILY SENTINEL on _____.

People's Ordinance No. 37 is to be submitted to the registered electors of said City for their acceptance or rejection at THE MUNICIPAL ELECTION to be held April __ 2011.

Also need acceptance by Grand Valley Power

ACCEPTANCE BY PUBLIC SERVICE COMPANY OF COLORADO OF A GAS AND ELECTRIC FRANCHISE GRANTED BY THE CITY OF GRAND JUNCTION, MESA COUNTY, COLORADO, BY ORDINANCE NO. 37

WHEREAS, Public Service Company of Colorado and the City of Grand Junction, have negotiated the terms and conditions of a new gas and electric franchise between said Company and the City of Grand Junction, which franchise is as set forth in Ordinance No. 37 of the City of Grand Junction, adopted by the City, and entitled: AN ORDINANCE GRANTING A FRANCHISE BY THE CITY OF GRAND JUNCTION TO PUBLIC SERVICE COMPANY OF COLORADO, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO FURNISH, SELL AND DISTRIBUTE GAS AND ELECTRICITY TO THE CITY AND TO ALL PERSONS, BUSINESSES, AND INDUSTRY WITHIN THE CITY AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH SAID CITY ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL AND DISTRIBUTE GAS AND ELECTRICITY WITHIN THE CITY AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AND PUBLIC EASEMENTS AS HEREIN DEFINED AS MAY BE NECESSARY; AND FIXING THE TERMS AND CONDITIONS THEREOF.

NOW, THEREFORE, in consideration of the premises and in pursuance of the provisions of said Ordinance No. 37 of the City of Grand Junction, Public Service Company of Colorado does hereby accept the terms and conditions contained in said Ordinance as the franchise agreement between Public Service Company of Colorado and the City of Grand Junction, Mesa County, Colorado.

IN WITNESS WHEREOF, Public Service Company of Colorado has caused its Corporate name to be hereunto subscribed by its Vice President, and its corporate Seal to be hereunto affixed, attested by its Assistant Secretary, as of the day of,.

PUBLIC SERVICE COMPANY OF COLORADO

by:

I HEREBY CERTIFY that the foregoing People's Ordinance No. 37 was submitted to a vote of the registered electors for their adoption or rejection at Municipal Election held in the City of Grand Junction on the ___th day of April 2011, at which election a majority of the votes were cast in favor of the acceptance of People's Ordinance No. 37.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City this ___th day of April 2011.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the day and year first above written.

CITY OF GRAND JUNCTION

ATTEST:

Stephanie Tuin

Clerk of the City of Grand Junction

APPROVED AS TO FORM:

John P. Shaver

Attorney for the City of Grand Junction

Teresa Coons, Mayor

**PUBLIC SERVICE COMPANY OF
COLORADO**

By: _____
Jerome Davis

Regional Vice President
Customer and Community Relations

Attest: _____
Asst. Secretary



Date: November 22, 2010

Author: Stephanie Tuin \

Title/ Phone Ext: City Clerk,
X1511

Proposed Schedule:

November 29, 2010

2nd Reading

(if applicable): NA

CITY COUNCIL AGENDA ITEM

Attach 3 Support for Funding for the League for Land and Water Conservation

Subject: Funding of the Land and Water Conservation Fund and Support of SB-2747
File # (if applicable):
Presenters Name & Title: John Shaver, City Attorney

Executive Summary:

A resolution that outlines the City Council's support for the full funding of the Land and Water Conservation Fund (LWCF) as originally authorized in 1964. Senate Bill 2747, co-sponsored by Senators Udall and Bennet, calls for the funding of the LWCF at its full authorized level.

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

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

Policy B: Preserve areas of scenic and/or natural beauty and, where possible, include these areas in a permanent open space system.

Generally the property that is purchased using LWCF funds becomes part of the National Forests. Lands and waters purchased through the LWCF are used to provide recreational opportunities, preserve wildlife habitat and provide clean water for recreation and species protection.

Action Requested/Recommendation:

Adopt the Proposed Resolution Supporting SB-2747

Board or Committee Recommendation:

NA

Background, Analysis and Options:

In 2009 when offshore energy production revenues totaled more than \$5 billion, only \$180,000,000.00 or less than 3% was set aside for the LWCF. The LWCF has received

full funding only once since being authorized. Funding for the LCWF has steadily declined to a low of \$155,000,000.00 in 2008.

Colorado Senators Udall and Bennet are the co-sponsors of SB2747, *The Land and Water Conservation Funding Act*, which calls for funding of the LWCF at its full, authorized level of \$900,000,000.00.

With the passage of SB2747 and authorization of Congressional funding for the Land and Water Conservation Fund at its full funding of \$900,000,00.00 for 2011 the American people will be ensured that royalties paid for the privilege of producing energy from America's marine endowment are invested in conservation to the fullest extent authorized by law.

Financial Impact/Budget:

None.

Legal issues:

None.

Other issues:

NA

Previously presented or discussed:

This has not been presented previously.

Attachments:

Proposed Resolution

RESOLUTION NO. ____-10

A RESOLUTION CONCERNING THE FUNDING OF THE LAND AND WATER CONSERVATION FUND AND SUPPORTING SB2747

Recitals.

Created by Congress in 1964, the Land and Water Conservation Fund (LWCF) provides money to federal, state and local governments to purchase land, water and wetlands for public use.

Land is bought from landowners at fair-market value (unless the owner chooses to offer the land as a donation or at a bargain price.) The LWCF is funded principally from fees and royalties paid by offshore oil and gas production companies operating in federal waters. Other sources of funds include taxes on boat fuel and the sale of surplus federal lands.

Generally the property that is purchased using LWCF funds becomes part of the National Forests. Lands and waters purchased through the LWCF are used to provide recreational opportunities, preserve wildlife habitat and provide clean water for recreation and species protection. In addition to the federal component that has enlarged the National Forests, Parks and wildlife refuges; the LWCF has a state component that helps pay for local parks and recreation projects. The LCWF has provided over \$12,000,000.00 to Western Colorado Counties and \$1,940,000.00 to Mesa County.

In 2009 when offshore energy production revenues totaled more than \$5 billion, only \$180,000,000.00 or less than 3% was set aside for the LWCF. The LWCF has received full funding only once since being authorized. Funding for the LCWF has steadily declined to a low of \$155,000,000.00 in 2008.

Colorado Senators Udall and Bennet are the co-sponsors of SB2747, *The Land and Water Conservation Funding Act*, which calls for funding of the LWCF at its full, authorized level of \$900,000,000.00.

With the passage of SB2747 and authorization of Congressional funding for the Land and Water Conservation Fund at its full funding of \$900,000,00.00 for 2011 the American people will be ensured that royalties paid for the privilege of producing energy from America's marine endowment are invested in conservation to the fullest extent authorized by law.

For these and other reasons it is in the best interest of all the residents of the City of Grand Junction that the City Council endorse and support the full funding of the Land and Water Conservation Fund as proposed by SB2747.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION does strongly support the passage of SB2747 and recommends Congressional funding for the Land and Water Conservation Fund for \$900,000,000.00 for the year 2011 and continued full funding thereafter.

Passed and adopted this _____ day of _____, 2010.

CITY OF GRAND JUNCTION

Mayor and President of the City Council

ATTEST:

City Clerk



Date: 11-29-10
 Author: Jay Valentine
 Title/ Phone Ext: Asst. Fin. Ops.
Mgr., 1517
 Proposed Schedule: Nov.
29, 2010
 2nd Reading
 (if applicable): Dec. 15, 2010

CITY COUNCIL AGENDA ITEM

**Attach 4
 2010 Supplemental Appropriation Ordinance and
 the 2011 Budget Appropriation Ordinance**

Subject: 2010 Supplemental Appropriation Ordinance and the 2011 Budget Appropriation Ordinance
File # (if applicable):
Presenters Name & Title: Laurie Kadrach, City Manager Jodi Romero, Financial Operations Manager

Executive Summary:

This request is to appropriate certain sums of money to defray the necessary expenses and liabilities of the accounting funds of the City of Grand Junction based on the 2010 amended and 2011 proposed budgets.

How this action item meets City Council Comprehensive Plan Goals and Policies:

This action is needed to meet the plan goals and policies.

Action Requested/Recommendation:

Introduction of Proposed Ordinances and Set a Hearing for December 15, 2010.

Board or Committee Recommendation:

The 2010 Supplemental Appropriation Ordinance and the 2011 Budget Appropriation for the Funds of Downtown Development Authority (DDA) have been approved by the DDA Board.

Financial Impact/Budget:

The supplemental appropriation ordinance and the 2011 budget appropriation ordinance are presented every year at this time to ensure adequate appropriation by fund.

Legal issues:

N/A

Other issues:

N/A

Previously presented or discussed:

The supplemental budget appropriation increase is partly due to the re-appropriation of budget dollars for capital projects that were previously approved but incomplete at the end of 2009. Additional appropriation is also needed for projects approved by City Council during 2010.

The 2011 City of Grand Junction Budget was presented to City Council at the budget presentation workshops on October 18th and November 3rd of this year.

Background, Analysis and Options:

The 2011 appropriation ordinance is the legal adoption of the City Manager's budget by the City Council for the upcoming fiscal year.

The supplemental increase in the Enhanced 911 is due to an increase in the transfer to the Communications Center. The increase in the Major Projects Fund is due to the Public Safety and Stadium projects. The increase in the Transportation Capacity Fund is due to large development projects started in 2010. The increase in Water and Solid Waste Funds is due to capital projects not completed and carried forward from 2009. The Ambulance and Fleet Funds increase is due to capital projects funded through grants awarded in 2010. The increase in the Self Insurance Fund is due to an increase in worker compensation claims and health insurance claims.

Attachments:

Proposed Supplemental Appropriation Ordinance for 2010 Budget
Proposed 2011 Budget Appropriation Ordinance

ORDINANCE NO. _____

**AN ORDINANCE MAKING SUPPLEMENTAL APPROPRIATIONS TO THE 2010
BUDGET OF THE CITY OF GRAND JUNCTION**

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

That the following sums of money be appropriated from unappropriated fund balance and additional revenue to the funds indicated for the year ending December 31, 2010, to be expended from such funds as follows:

FUND NAME	FUND #	APPROPRIATION
Enhanced 911	101	\$ 422,619
D.D.A. Operations	103	\$ 76,477
Comm. Dev. Block Grant	104	\$ 70,336
Storm Drainage	202	\$ 76,936
D.D.A. Capital Projects	203	\$ 249,765
Major Projects	204	\$ 665,956
Transportation Capacity	207	\$ 1,091,393
Park Improvement Advisory Bd.	703	\$ 19,408
Water Fund	301	\$ 512,546
Solid Waste	302	\$ 147,027
Ambulance Transport	310	\$ 67,605
Fleet and Equipment	402	\$ 129,520
Self Insurance	404	\$ 1,602,971

INTRODUCED AND ORDERED PUBLISHED this _ day of _____, 2010.

PASSED AND ADOPTED the _ day of _____, 2010.

Attest:

President of the Council

City Clerk

ORDINANCE NO. ____

AN ORDINANCE APPROPRIATING CERTAIN SUMS OF MONEY TO DEFRAY THE NECESSARY EXPENSES AND LIABILITIES OF THE CITY OF GRAND JUNCTION, COLORADO, THE DOWNTOWN DEVELOPMENT AUTHORITY, AND THE RIDGES METROPOLITAN DISTRICT FOR THE YEAR BEGINNING JANUARY 1, 2011, AND ENDING DECEMBER 31, 2011

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

SECTION 1. That the following sums of money, or so much therefore as may be necessary, be and the same are hereby appropriated for the purpose of defraying the necessary expenses and liabilities, and for the purpose of establishing emergency reserves of the City of Grand Junction, for the fiscal year beginning January 1, 2011, and ending December 31, 2011, said sums to be derived from the various funds as indicated for the expenditures of:

FUND NAME	FUND #	APPROPRIATION
General	100	\$ 61,651,144
Enhanced 911 Special Revenue	101	\$ 3,186,450
Visitor & Convention Bureau	102	\$ 1,930,727
		\$ 450,738
D.D.A. Operations	103	
Community Development Block Grants	104	\$ 400,000
		\$ 3,369,420
T.I.F.Special Revenue	109	
Conservation Trust	110	\$ 229,219
Sales Tax CIP Fund	201	\$ 15,527,889
Storm Drainage Improvements	202	\$ 15,000
		\$ 3,957,896
T.I.F. Capital Improvements	203	
Major Projects	204	\$ 22,248,878
Transportation Capacity	207	\$ 1,102,000
Water Fund	301	\$ 5,261,343
Solid Waste	302	\$ 3,359,998
Two Rivers Convention Center	303	\$ 2,500,997
Swimming Pools	304	\$ 831,978
Golf Courses	305	\$ 2,216,575
Parking	308	\$ 542,967
Irrigation Systems	309	\$ 263,941

Ambulance Transport	310	\$	2,243,699
Information Services	401	\$	4,558,970
Equipment	402	\$	4,884,904
Self Insurance	404	\$	3,115,716
Communications Center	405	\$	7,819,026
General Debt Service	610	\$	9,383,443
T.I.F. Debt Service	611	\$	3,299,500
Ridges Metro District Debt Service	613	\$	225,331
Grand Junction Public Finance Corp.	614	\$	529,219
Parks Improvement Advisory Board	703	\$	274,510
Cemetery Perpetual Care	704	\$	16,173
Joint Sewer System, Total	900	\$	12,926,100

INTRODUCED AND ORDERED PUBLISHED the ____ day of _____, 2010.

PASSED AND ADOPTED the ____ day of _____, 2010.

Attest:

President of the Council

City Clerk



Date: 11/19/10
 Author: Troy Smith
 Title/ Phone Ext: Deputy Chief of Police/3560
 Proposed Schedule: 11/29/10
 2nd Reading
 (if applicable): _____

CITY COUNCIL AGENDA ITEM

**Attach 5
 Grant Award for Auto Theft Task Force**

Subject: Grant Award for Auto Theft Task Force
File # (if applicable):
Presenters Name & Title: Troy Smith, Deputy Chief of Police

Executive Summary:

For the second year in a row, the Grand Junction Police Department has been awarded a grant from the Colorado Department of Public Safety. This grant award in the amount of \$161,481 will support the continuation of a joint auto theft task force for the Grand Valley. Participating agencies include; the Grand Junction Police Department, the Mesa County Sheriff’s Office, the Fruita Police Department, and the Colorado State Patrol. The award is for the purchase of equipment vital to the mission of the task force, as well as overtime for participants. If approved, the City of Grand Junction will serve as the fiscal agent for the grant.

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

The task force will work towards reducing the number of auto theft crimes and increasing the recovery of stolen vehicles, thereby contributing towards the following goals through the protection of citizens’ property and enhancement of their safety.

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

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.

Goal 11: Public safety facilities and services for our citizens will be a priority in planning for growth.

Action Requested/Recommendation:

Authorize the City Manager to Accept this Award and Budget the Receipt and Expenditure of \$161,481 of Grant Funds in the Proposed 2011 Budget.

Board or Committee Recommendation:

None.

Background, Analysis and Options:

This grant allows the continuation of the auto theft task force which began this year with a \$245,039 grant award in April 2010. Due to the lead times required to obtain the necessary equipment, not all of the grant that pays for overtime and training expenses was able to be used this year. Therefore it is important to have the opportunity to continue the project into 2011.

The Colorado Auto Theft Prevention Authority (CATPA), through the Colorado Department of Public Safety, is offering \$161,481 to the City of Grand Junction Police Department to continue to support a multijurisdictional auto theft task force. This project allows the identified agencies to collaborate in addressing auto theft throughout Mesa County. The task force consists of investigators, deputies, officers and other law enforcement professionals from the Grand Junction Police Department, Mesa County Sheriff's Office, Fruita Police Department, and the Colorado State Patrol.

Auto theft continues to be a significant part of the serious crimes that occur in Colorado. According to the Colorado Bureau of Investigations (CBI), in 2007 motor vehicle thefts accounted for 32.7% of the major offenses reported by Colorado law enforcement agencies. The 21st Judicial District, which covers Mesa County, is the 10th highest County in the State for Auto thefts. Between 2000 and 2008, the 21st Judicial District's theft rate has increased from 1.18% to 2.39% of all auto thefts in the State.

The Western Colorado Auto Theft Task Force (WCATT) operates as a multi-agency team with the primary objective of combating crimes against autos. The financial goal set in the grant is to recover \$500,000 in stolen vehicles, which represents twice the amount of funds allocated by this grant award. The team will work collectively with divisions of each law enforcement agency involving property crimes, street crimes and narcotics. In addition, WCATT will provide assistance to law enforcement agencies in North West Colorado to combat crimes against autos.

Financial Impact/Budget:

Overtime for 6 detectives and 1 Sergeant: 20 hours per month including benefits	\$ 117,600
Supplies and Operating Expenses: Includes training, software, hardware, etc.	\$ 37,381
Equipment: GPS Reader	<u>\$ 6,500</u>
Total- 100% reimbursable by the grant	<u>\$ 161,481</u>

These funds will be included in the proposed 2011 Budget.

Legal issues:

None at this time.

Other issues:

N/A

Previously presented or discussed:

N/A

Attachments:

None



Date: November 19, 2010
 Author: Lori V. Bowers
 Title/ Phone Ext: Sr. Planner/4033
 Proposed Schedule: Resolution
Referring Petition Nov. 29, 2010
 2nd Reading
 (if applicable): January 17,
2011

CITY COUNCIL AGENDA ITEM

**Attach 6
 Setting a Hearing on the GJ Regional Airport
 Annexation**

Subject: GJ Regional Airport Annexation, Located at 2828 Walker Field Drive
File #: ANX-2010-290
Presenters Name & Title: Lori V. Bowers, Senior Planner

Executive Summary: Request to annex 614.3 acres, located at 2828 Walker Field Drive. The GJ Regional Airport Annexation consists of seven (7) parcels. There is no public right-of-way contained within this annexation area.

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

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.

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

The proposed annexation meets goals 9 and 12 by allowing area for expansion of the airport, which in turn helps keep our economy diverse and allows our region to provide more access to goods, services and visitors to the area.

Action Requested/Recommendation: Adopt a Resolution Referring the Petition for the GJ Regional Airport Annexation, Introduce the Proposed Ordinance and Set a Hearing for January 17, 2011.

Board or Committee Recommendation: The Planning Commission will consider the Zone of Annexation on December 14, 2010. Their recommendation will be forwarded in the 1st reading of the Zoning Ordinance on January 3, 2011.

Background, Analysis and Options: See attached Staff Report/Background Information

Financial Impact/Budget: N/A

Legal issues: There are none.

Other issues: The Airport has submitted for review an Institutional Civic Master Plan. The proposed annexations are necessary for the future expansion of the Airport as proposed in their Master Plan, providing consistency in that all lands owned by the Airport will be under the City's development policies and guidelines.

Previously presented or discussed: A Neighborhood Meeting took place in February, 2010.

Attachments:

1. Staff report/Background information
2. Annexation / Site Location Map; Aerial Photo Map West End
3. Aerial Photo Map East End; Comprehensive Plan Map
4. Existing City and County Zoning Map
5. Resolution Referring Petition
6. Annexation Ordinance

STAFF REPORT / BACKGROUND INFORMATION			
Location:		2828 Walker Field Drive	
Applicants:		Grand Junction Regional Airport Authority	
Existing Land Use:		Vacant land	
Proposed Land Use:		Airport expansion	
Surrounding Land Use:	North	Vacant land	
	South	Airport operations	
	East	Vacant land	
	West	Vacant land	
Existing Zoning:		County AFT	
Proposed Zoning:		PAD (Planned Airport Development)	
Surrounding Zoning:	North	County AFT	
	South	R-4 (Residential – 4 units); PAD (Planned Airport Development)	
	East	County AFT	
	West	County AFT	
Future Land Use Designation:		Airport	
Zoning within density range?		X	Yes
			No

Staff Analysis:

ANNEXATION:

This annexation area consists of 614.3 acres of land and is comprised of seven (7) parcels. The property owners have requested annexation into the City to allow for development of the property. Under the 1998 Persigo Agreement all proposed development within the Persigo Wastewater Treatment boundary requires annexation and processing in the City.

It is staff's opinion, based on review of the petition and knowledge of applicable state law, including the Municipal Annexation Act Pursuant to C.R.S. 31-12-104, that the GJ Regional Airport Annexation is eligible to be annexed because of compliance with the following:

- a) A proper petition has been signed by more than 50% of the owners and more than 50% of the property described;
- b) Not less than one-sixth of the perimeter of the area to be annexed is contiguous with the existing City limits;
- c) A community of interest exists between the area to be annexed and the City. This is so in part because the Central Grand Valley is essentially a single demographic and economic unit and occupants of the area can be expected to, and regularly do, use City streets, parks and other urban facilities;
- d) The area is or will be urbanized in the near future;
- e) The area is capable of being integrated with the City;

- f) No land held in identical ownership is being divided by the proposed annexation;
- g) No land held in identical ownership comprising 20 contiguous acres or more with an assessed valuation of \$200,000 or more for tax purposes is included without the owner's consent.

The following annexation and zoning schedule is being proposed.

<i>ANNEXATION SCHEDULE</i>	
Nov. 29, 2010	Referral of Petition (30 Day Notice), Introduction Of A Proposed Ordinance, Exercising Land Use
Dec. 14, 2010	Planning Commission considers Zone of Annexation
Jan. 3, 2011	Introduction Of A Proposed Ordinance on Zoning by City Council
Jan. 17, 2011	Acceptance of Petition and Public Hearing on Annexation and Zoning by City Council
Feb. 17, 2011	Effective date of Annexation and Zoning

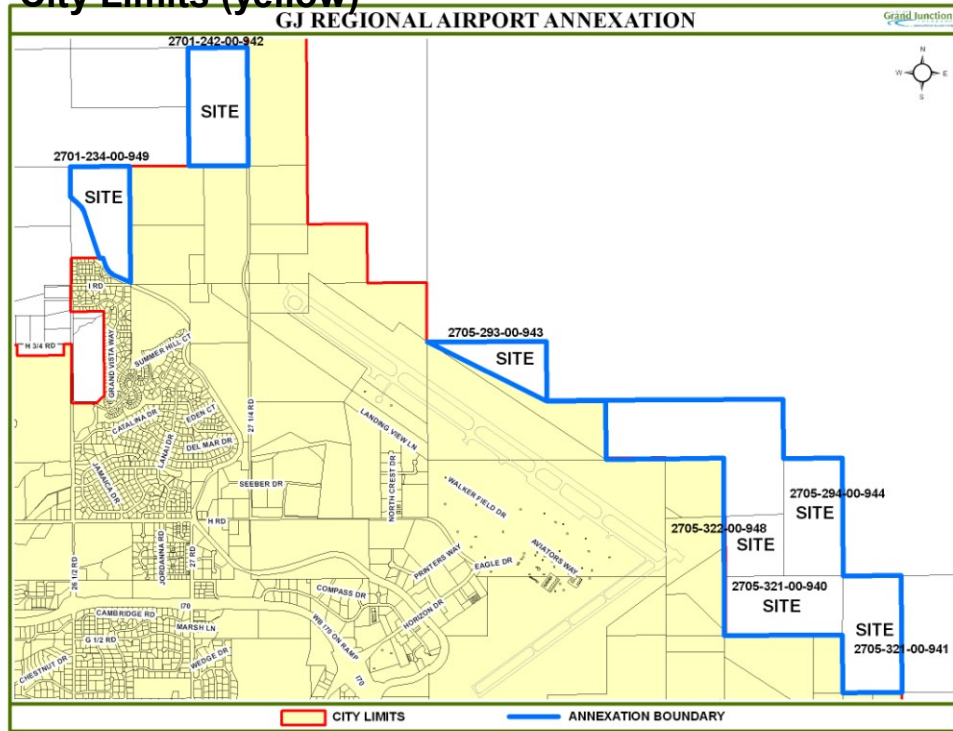
GJ REGIONAL AIRPORT ANNEXATION SUMMARY

File Number:	ANX-2010-290	
Location:	2828 Walker Field Drive	
Tax ID Numbers:	2705-294-00-944; 2701-234-00-949; 2705-321-00-941; 2705-321-00-940; 2705-322-00-948; 2701-242-00-942; 2705-293-00-943	
# of Parcels:	7	
Estimated Population:	0	
# of Parcels (owner occupied):	0	
# of Dwelling Units:	0	
Acres land annexed:	614.3 acres	
Developable Acres Remaining:	614.3 acres	
Right-of-way in Annexation:	0	
Previous County Zoning:	AFT	
Proposed City Zoning:	PAD	
Current Land Use:	Vacant land	
Future Land Use:	Airport expansion	
Values:	Assessed:	\$1,869,460.00
	Actual:	\$6,446,400.00
Address Ranges:	0	
Special Districts:	Water:	Partially in Ute Water Conservancy District
	Sewer:	None
	Fire:	Lower Valley and Mesa County Fire Marshall
	Irrigation/ Drainage:	N/A
	School:	District #51
	Pest:	N/A

Annexation / Site Location Map

Figure 1

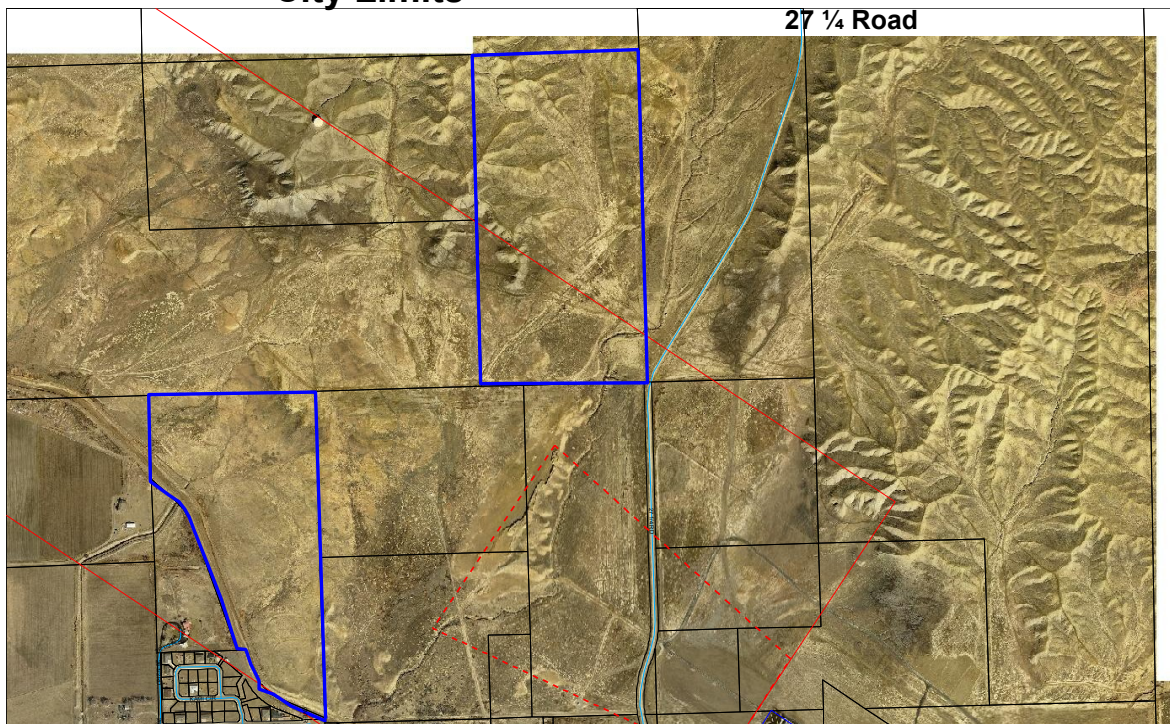
City Limits (yellow)



Aerial Photo Map West End

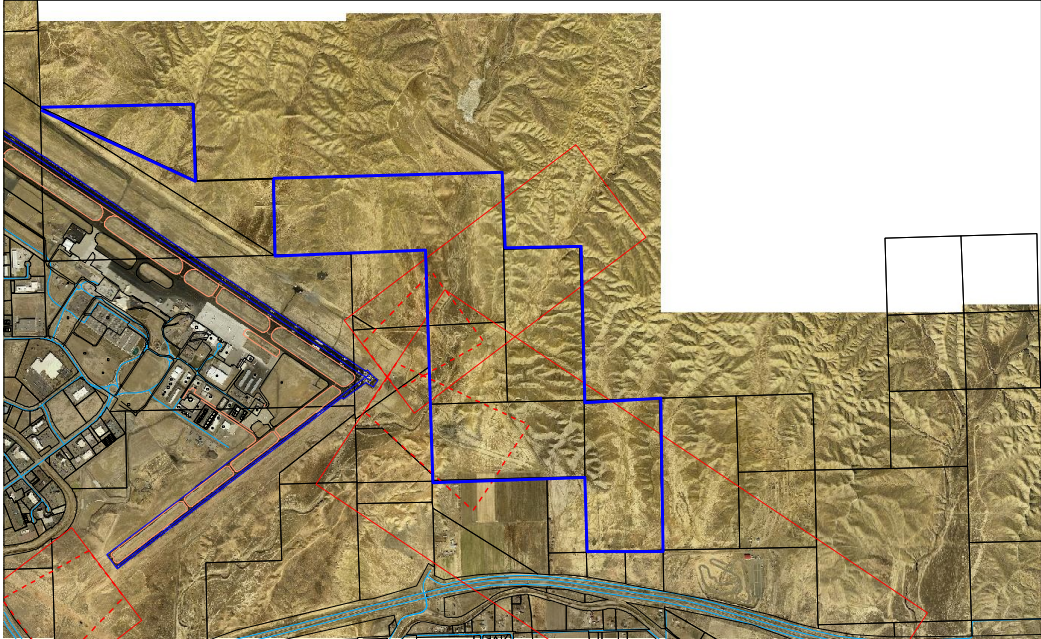
City Limits

Figure 2



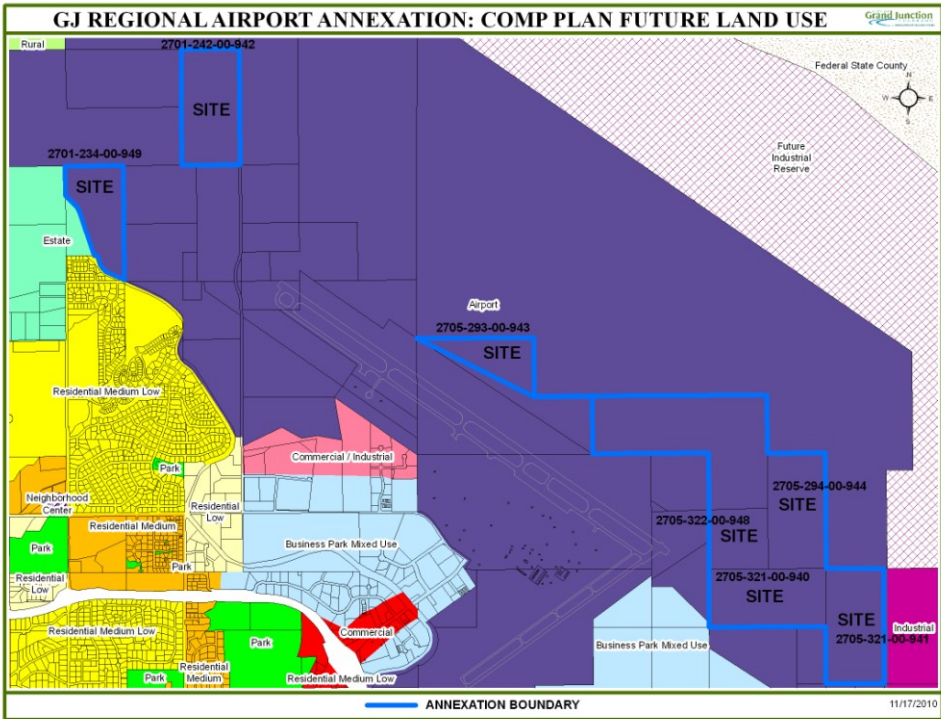
Aerial Photo Map East End

Figure 3



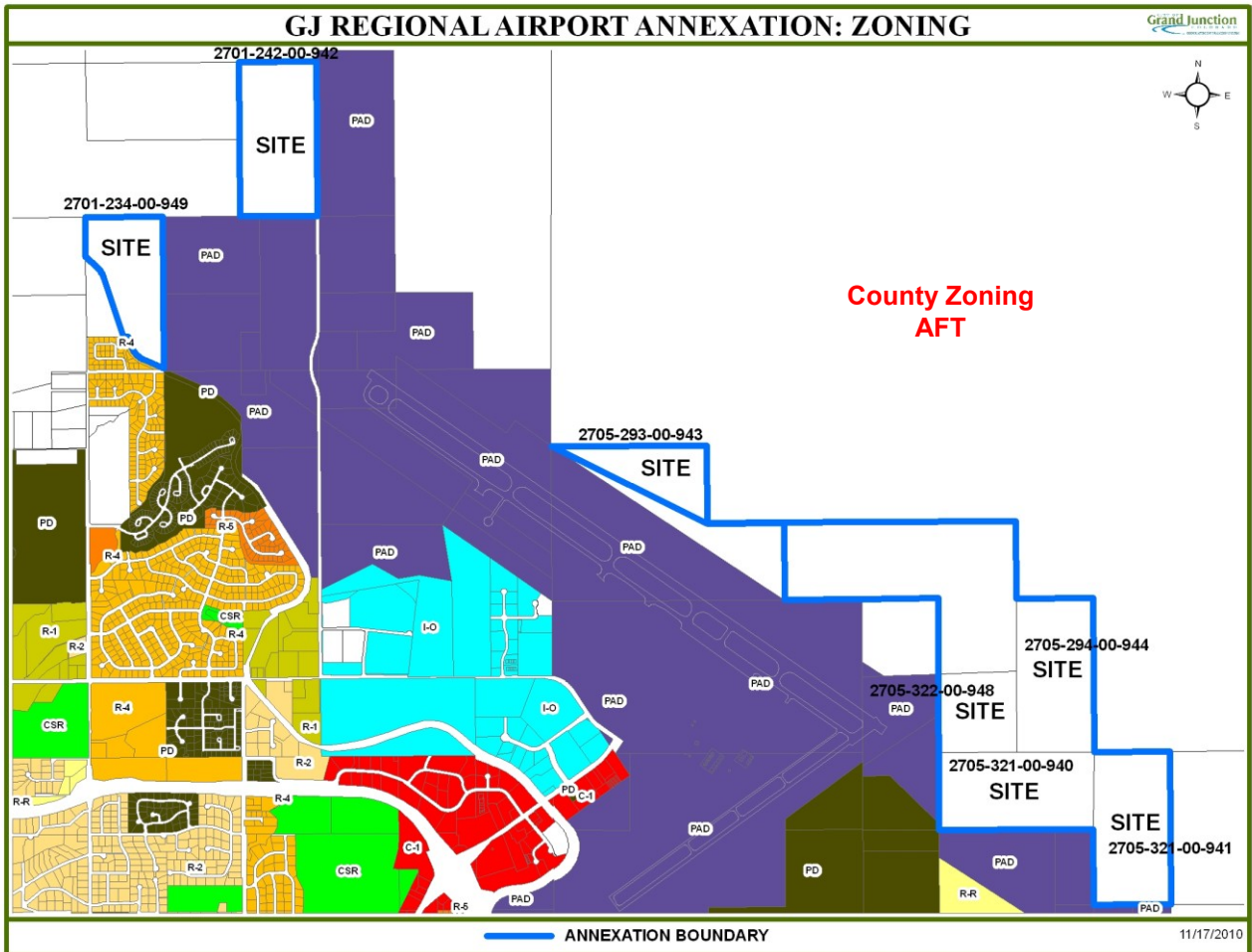
Comprehensive Plan Map

Figure 4



Existing City and County Zoning Map

Figure 5



**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 29th of November, 2010, the following Resolution was adopted:

CITY OF GRAND JUNCTION, COLORADO

RESOLUTION NO. ____-10

**A RESOLUTION
REFERRING A PETITION TO THE CITY COUNCIL
FOR THE ANNEXATION OF LANDS
TO THE CITY OF GRAND JUNCTION, COLORADO,
SETTING A HEARING ON SUCH ANNEXATION,
AND EXERCISING LAND USE CONTROL**

GJ REGIONAL AIRPORT ANNEXATION

LOCATED AT 2828 WALKER FIELD DRIVE

WHEREAS, on the 29th day of November, 2010, a petition was referred to the City Council of the City of Grand Junction, Colorado, for annexation to said City of the following property situate in Mesa County, Colorado, and described as follows:

GJ REGIONAL AIRPORT ANNEXATION

A certain parcel of land lying in the West-half of the Southeast Quarter (W 1/2 of the SE 1/4) of Section 23, Township 1 North, Range 1 West of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

ALL of the W 1/2 of the SE 1/4 of said Section 23 lying North and East of the centerline of the Highline Canal easement, as same is recorded in Book 2841, Page 804, Public Records of Mesa County, Colorado.

CONTAINING 52.35 Acres or 2,280,404 Square Feet, more or less, as described

-TOGETHER WITH-

A certain parcel of land lying in the West-half of the Northwest Quarter (W 1/2 of the NW 1/4) of Section 24, Township 1 North, Range 1 West of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

ALL of the W 1/2 of the NW 1/4 of said Section 24.

CONTAINING 79.82 Acres or 3,476,929 Square Feet, more or less, as described

-TOGETHER WITH-

A certain parcel of land lying in the South-half (S 1/2) of Section 29, the Northwest Quarter (NW 1/4), Southwest Quarter (SW 1/4) and the Southeast Quarter (SE 1/4) of Section 30 and the East-three quarters (E 3/4) of Section 32, all in Township 1 North,

Range 1 East of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

BEGINNING at the Northwest corner of the Southwest Quarter of the Northwest Quarter (SW 1/4 NW 1/4) of said Section 30 and assuming the North line of the South-half of the NW 1/4 of said Section 30 bears S 89°49'11" E with all other bearings contained herein relative thereto; thence from said Point of Beginning, S 89°49'11" E along the North line of the South-half of the NW 1/4 of said Section 30, a distance of 2646.70 feet to a point being the Northeast corner of the Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4) of said Section 30; thence S 00°09'32" W along the East line of the SE 1/4 NW 1/4 of said Section 30, a distance of 1322.96 feet to a point being the Southeast corner of the SE 1/4 NW 1/4 of said Section 30; thence S 89°46'00" E along the North line of the Southeast Quarter (SE 1/4) of said Section 30, a distance of 2643.81 feet to a point being the Northeast corner of the SE 1/4 of said Section 30; thence N 89°34'41" E along the North line of the Southwest Quarter (SW 1/4) of said Section 29, a distance of 2643.14 feet to a point being the Northeast corner of the SW 1/4 of said Section 29; thence S 00°16'19" W along the East line of the Northeast Quarter of the Southwest Quarter (NE 1/4 SW 1/4) of said Section 29, a distance of 1317.67 feet to a point being the Northeast corner of the Southeast Quarter of the Southwest Quarter (SE 1/4 SW 1/4) of said Section 29; thence N 89°37'46" E along the North line of the Southwest Quarter of the Southeast Quarter (SW 1/4 SE 1/4) of said Section 29, a distance of 1322.97 feet to a point being the Northeast corner of the SW 1/4 SE 1/4 of said Section 29; thence S 00°05'59" W along the East line of the SW 1/4 SE 1/4 of said Section 29, a distance of 1319.65 feet to a point being the Southeast corner of the SW 1/4 SE 1/4 of said Section 29; thence S 00°05'59" W along the West line of the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4) of said Section 32, a distance of 1323.49 feet to a point being the Northwest corner of the Southeast Quarter of the Northeast Quarter (SE 1/4 NE 1/4) of said Section 32; thence N 89°44'14" E along the North line of the SE 1/4 NE 1/4 of said Section 32, a distance of 1316.36 feet to a point being the Northeast corner of the SE 1/4 NE 1/4 of said Section 32; thence S 00°20'13" W along the East line of said Section 32, a distance of 1325.68 feet to a point being the Southeast corner of the SE 1/4 NE 1/4 of said Section 32; thence S 00°20'12" W along the East line of said Section 32, a distance of 1322.59 feet to a point being the Northeast corner of the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of said Section 32; thence S 00°20'12" W along the East line of said Section 32, a distance of 20.00 feet; thence S 89°51'51" W along a line 20.00 feet South of and parallel with, the North line of the SE 1/4 SE 1/4 of said Section 32, a distance of 1321.31 feet to a point on the West line of the SE 1/4 SE 1/4 of said Section 32; thence N 90°00'00" W along a line 20.00 feet South of and parallel with the South line of the Northwest Quarter of the Southeast Quarter (NW 1/4 SE 1/4) of said Section 32, a distance of 20.00 feet; thence N 00°18'53" E along a line 20.00 feet West of and parallel with the West line of the SE 1/4 SE 1/4 of said Section 32, a distance of 20.00 feet to a point on the South line of the NW 1/4 SE 1/4 of said Section 32; thence N 00°17'41" E along a line 20.00 feet West of and parallel with the West line of the Northeast Quarter of the Southeast Quarter (NE 1/4 SE 1/4) of said Section 32, a distance of 1321.21 feet to a point on the South line of the Southwest Quarter of the Northeast Quarter (SW 1/4 NE 1/4) of said Section 32; thence S 89°52'38" W along the South line of the SW 1/4 NE 1/4 of said Section 32, a distance of 1302.26 feet to a point being the Southwest corner of the SW 1/4 NE 1/4 of said Section 32; thence S

89°52'38" W along the South line of the Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4) of said Section 32, a distance of 1302.26 feet to a point 20.00 feet East of the Southwest corner of the SE 1/4 NW 1/4 of said Section 32; thence N 00°14'23" E along a line 20.00 feet East of and parallel with the West line of the SE 1/4 NW 1/4 of said Section 32, a distance of 1317.64 feet to a point on the North line of the SE 1/4 NW 1/4 of said Section 32; thence N 00°14'23" E along a line 20.00 feet East of and parallel with the West line of the Northeast Quarter of the Northwest Quarter (NE 1/4 NW 1/4) of said Section 32, a distance of 1319.24 feet to a point on the North line of said Section 32; thence S 89°38'38" W along the North line of said Section 32, a distance of 20.00 feet to a point being the Southeast corner of the Southwest Quarter of the Southwest Quarter (SW 1/4 SW 1/4) of said Section 29; thence N 00°07'41" E along the East line of the SW 1/4 SW 1/4 of said Section 29, a distance of 1318.98 feet to a point being the Northeast corner of the SW 1/4 SW 1/4 of said Section 29; thence S 89°37'46" W along the North line of the SW 1/4 SW 1/4 of said Section 29, a distance of 1300.00 feet to a point 20.00 feet East of the Northeast corner of the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of said Section 30; thence N 00°23'44" E along a line 20.00 feet East of and parallel with the West line of said Section 29, a distance of 20.00 feet; thence S 89°37'46" W along a line 20.00 feet North of and parallel with the North line of the SW 1/4 SW 1/4 of said Section 29, a distance of 20.00 feet to a point on the East line of said Section 30; thence N 89°48'56" W along a line 20.00 feet North of and parallel with the North line of the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of said Section 30, a distance of 1321.87 feet to a point on the East line of the Northwest Quarter of the Southeast Quarter (NW 1/4 SE 1/4) of said Section 30; thence N 00°18'19" E along the East line of the NW 1/4 SE 1/4 of said Section 30, a distance of 1276.27 feet to a point 20.00 feet South of the North line of the Southeast Quarter (SE 1/4) of said Section 30; thence N 89°46'00" W along a line 20.00 feet South of and parallel with the North line of the SE 1/4 of said Section 30, a distance of 1321.87 feet to a point on the West line of the NW 1/4 SE 1/4 of said Section 30; thence N 89°45'03" W along a line 20.00 feet South of and parallel with the North line of the Southwest Quarter (SW 1/4) of said Section 30, a distance of 20.00 feet; thence N 62°44'42" W, a distance of 2950.52 feet, more or less, to the Point of Beginning.

CONTAINING 482.13 Acres or 21,001,385 Square Feet, more or less, as described.

WHEREAS, the Council has found and determined that the petition complies substantially with the provisions of the Municipal Annexation Act and a hearing should be held to determine whether or not the lands should be annexed to the City by Ordinance;

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

1. That a hearing will be held on the 17th day of January, 2011, in the City Hall auditorium, located at 250 North 5th Street, City of Grand Junction, Colorado, at 7:00 PM to determine whether one-sixth of the perimeter of the area proposed to be annexed is contiguous with the City; whether a community of interest exists between the territory and the city; whether the territory proposed to be annexed

is urban or will be urbanized in the near future; whether the territory is integrated or is capable of being integrated with said City; whether any land in single ownership has been divided by the proposed annexation without the consent of the landowner; whether any land held in identical ownership comprising more than twenty acres which, together with the buildings and improvements thereon, has an assessed valuation in excess of two hundred thousand dollars is included without the landowner's consent; whether any of the land is now subject to other annexation proceedings; and whether an election is required under the Municipal Annexation Act of 1965.

2. 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 _____, 2010.

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

<i>DATES PUBLISHED</i>
December 1, 2010
December 8, 2010
December 15, 2010
December 22, 2010

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO.

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

GJ REGIONAL AIRPORT ANNEXATION

APPROXIMATELY 614.3 ACRES

LOCATED AT 2828 WALKER FIELD DRIVE

WHEREAS, on the 29th day of November, 2010, the City Council of the City of Grand Junction considered a petition for the annexation of the following described territory to the City of Grand Junction; and

WHEREAS, a hearing on the petition was duly held after proper notice on the 17th day of January, 2011; and

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

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:

GJ REIONAL AIRPORT ANNEXATION

A certain parcel of land lying in the West-half of the Southeast Quarter (W 1/2 of the SE 1/4) of Section 23, Township 1 North, Range 1 West of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

ALL of the W 1/2 of the SE 1/4 of said Section 23 lying North and East of the centerline of the Highline Canal easement, as same is recorded in Book 2841, Page 804, Public Records of Mesa County, Colorado.

CONTAINING 52.35 Acres or 2,280,404 Square Feet, more or less, as described

-TOGETHER WITH-

A certain parcel of land lying in the West-half of the Northwest Quarter (W 1/2 of the NW 1/4) of Section 24, Township 1 North, Range 1 West of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

ALL of the W 1/2 of the NW 1/4 of said Section 24.

CONTAINING 79.82 Acres or 3,476,929 Square Feet, more or less, as described

-TOGETHER WITH-

A certain parcel of land lying in the South-half (S 1/2) of Section 29, the Northwest Quarter (NW 1/4), Southwest Quarter (SW 1/4) and the Southeast Quarter (SE 1/4) of Section 30 and the East-three quarters (E 3/4) of Section 32, all in Township 1 North, Range 1 East of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

BEGINNING at the Northwest corner of the Southwest Quarter of the Northwest Quarter (SW 1/4 NW 1/4) of said Section 30 and assuming the North line of the South-half of the NW 1/4 of said Section 30 bears S 89°49'11" E with all other bearings contained herein relative thereto; thence from said Point of Beginning, S 89°49'11" E along the North line of the South-half of the NW 1/4 of said Section 30, a distance of 2646.70 feet to a point being the Northeast corner of the Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4) of said Section 30; thence S 00°09'32" W along the East line of the SE 1/4 NW 1/4 of said Section 30, a distance of 1322.96 feet to a point being the Southeast corner of the SE 1/4 NW 1/4 of said Section 30; thence S 89°46'00" E along the North line of the Southeast Quarter (SE 1/4) of said Section 30, a distance of 2643.81 feet to a point being the Northeast corner of the SE 1/4 of said Section 30; thence N 89°34'41" E along the North line of the Southwest Quarter (SW 1/4) of said Section 29, a distance of 2643.14 feet to a point being the Northeast corner of the SW 1/4 of said Section 29; thence S 00°16'19" W along the East line of the Northeast Quarter of the Southwest Quarter (NE 1/4 SW 1/4) of said Section 29, a distance of 1317.67 feet to a point being the Northeast corner of the Southeast Quarter of the Southwest Quarter (SE 1/4 SW 1/4) of said Section 29; thence N 89°37'46" E along the North line of the Southwest Quarter of the Southeast Quarter (SW 1/4 SE 1/4) of said Section 29, a distance of 1322.97 feet to a point being the Northeast corner of the SW 1/4 SE 1/4 of said Section 29; thence S 00°05'59" W along the East line of the SW 1/4 SE 1/4 of said Section 29, a distance of 1319.65 feet to a point being the Southeast corner of the SW 1/4 SE 1/4 of said Section 29; thence S 00°05'59" W along the West line of the Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4) of said Section 32, a distance of 1323.49 feet to a point being the Northwest corner of the Southeast Quarter of the Northeast Quarter (SE 1/4 NE 1/4) of said Section 32; thence N 89°44'14" E along the North line of the SE 1/4 NE 1/4 of said Section 32, a distance of 1316.36 feet to a point being the Northeast corner of the SE 1/4 NE 1/4 of said Section 32; thence S 00°20'13" W along the East line of said Section 32, a distance of 1325.68 feet to a point being the Southeast corner of the SE 1/4 NE 1/4 of said Section 32; thence S 00°20'12" W along the East line of said Section 32, a distance of 1322.59 feet to a point being the Northeast corner of the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of said Section 32; thence S 00°20'12" W along the East line of said Section 32, a distance of 20.00 feet; thence S 89°51'51" W along a line 20.00 feet South of and parallel with, the North line of the SE 1/4 SE 1/4 of said Section 32, a distance of 1321.31 feet to a point on the West line of the SE 1/4 SE 1/4 of said Section 32; thence N 90°00'00" W along a line 20.00 feet South of and parallel with the South

line of the Northwest Quarter of the Southeast Quarter (NW 1/4 SE 1/4) of said Section 32, a distance of 20.00 feet; thence N 00°18'53" E along a line 20.00 feet West of and parallel with the West line of the SE 1/4 SE 1/4 of said Section 32, a distance of 20.00 feet to a point on the South line of the NW 1/4 SE 1/4 of said Section 32; thence N 00°17'41" E along a line 20.00 feet West of and parallel with the West line of the Northeast Quarter of the Southeast Quarter (NE 1/4 SE 1/4) of said Section 32, a distance of 1321.21 feet to a point on the South line of the Southwest Quarter of the Northeast Quarter (SW 1/4 NE 1/4) of said Section 32; thence S 89°52'38" W along the South line of the SW 1/4 NE 1/4 of said Section 32, a distance of 1302.26 feet to a point being the Southwest corner of the SW 1/4 NE 1/4 of said Section 32; thence S 89°52'38" W along the South line of the Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4) of said Section 32, a distance of 1302.26 feet to a point 20.00 feet East of the Southwest corner of the SE 1/4 NW 1/4 of said Section 32; thence N 00°14'23" E along a line 20.00 feet East of and parallel with the West line of the SE 1/4 NW 1/4 of said Section 32, a distance of 1317.64 feet to a point on the North line of the SE 1/4 NW 1/4 of said Section 32; thence N 00°14'23" E along a line 20.00 feet East of and parallel with the West line of the Northeast Quarter of the Northwest Quarter (NE 1/4 NW 1/4) of said Section 32, a distance of 1319.24 feet to a point on the North line of said Section 32; thence S 89°38'38" W along the North line of said Section 32, a distance of 20.00 feet to a point being the Southeast corner of the Southwest Quarter of the Southwest Quarter (SW 1/4 SW 1/4) of said Section 29; thence N 00°07'41" E along the East line of the SW 1/4 SW 1/4 of said Section 29, a distance of 1318.98 feet to a point being the Northeast corner of the SW 1/4 SW 1/4 of said Section 29; thence S 89°37'46" W along the North line of the SW 1/4 SW 1/4 of said Section 29, a distance of 1300.00 feet to a point 20.00 feet East of the Northeast corner of the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of said Section 30; thence N 00°23'44" E along a line 20.00 feet East of and parallel with the West line of said Section 29, a distance of 20.00 feet; thence S 89°37'46" W along a line 20.00 feet North of and parallel with the North line of the SW 1/4 SW 1/4 of said Section 29, a distance of 20.00 feet to a point on the East line of said Section 30; thence N 89°48'56" W along a line 20.00 feet North of and parallel with the North line of the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of said Section 30, a distance of 1321.87 feet to a point on the East line of the Northwest Quarter of the Southeast Quarter (NW 1/4 SE 1/4) of said Section 30; thence N 00°18'19" E along the East line of the NW 1/4 SE 1/4 of said Section 30, a distance of 1276.27 feet to a point 20.00 feet South of the North line of the Southeast Quarter (SE 1/4) of said Section 30; thence N 89°46'00" W along a line 20.00 feet South of and parallel with the North line of the SE 1/4 of said Section 30, a distance of 1321.87 feet to a point on the West line of the NW 1/4 SE 1/4 of said Section 30; thence N 89°45'03" W along a line 20.00 feet South of and parallel with the North line of the Southwest Quarter (SW 1/4) of said Section 30, a distance of 20.00 feet; thence N 62°44'42" W, a distance of 2950.52 feet, more or less, to the Point of Beginning.

CONTAINING 482.13 Acres or 21,001,385 Square Feet, 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 _____, 2010 and ordered published.

ADOPTED on second reading the _____ day of _____, 2011.

Attest:

President of the Council

City Clerk



Date: November 12, 2010

Author: Senta Costello

Title/ Phone Ext: Sr. Planner
x1442

Proposed Schedule:
November 29, 2010

2nd Reading

(if applicable): N/A

CITY COUNCIL AGENDA ITEM

Attach 7

Marso Revocable Permit

Subject: Marso Revocable Permit, Located within the 26 ¾ Road Right-of-Way
File # (if applicable): RVP-2010-193
Presenters Name & Title: Tim Moore, Public Works and Planning Director

Executive Summary:

Applicant is requesting approval of a revocable permit for an existing storage shed, irrigation pump and various landscaping improvements within the 26 ¾ Road right-of-way. The encroachment became apparent with the development of a new public pedestrian trail connecting Capra Way and Lakeside Court within the 26 ¾ Road alignment.

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

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

This request allows for private improvements which have been installed within the 26 ¾ to be maintained. The improvements have historically not been an issue.

Action Requested/Recommendation:

Approval of a Resolution Granting a Revocable Permit to Samuel A. and Audrey S. Marso

Board or Committee Recommendation:

N/A

Background, Analysis and Options:

See attached staff report.

Financial Impact/Budget:

N/A

Legal issues:

All legal issues are addressed through the permit.

Other issues:

N/A

Previously presented or discussed:

N/A

Attachments:

1. Staff report/Background information
2. General Location Map / Aerial Photo
3. Future Land Use Map / Zoning Map
4. Resolution
5. Revocable Permit
6. Agreement.

BACKGROUND INFORMATION			
Location:	West of 2674 Capra Way within the 26 3/4 Road right-of-way		
Applicant:	Samuel A. and Audrey S. Marso		
Existing Land Use:	Residential landscaping/storage shed		
Proposed Land Use:	Residential landscaping/storage shed		
Surrounding Land Use:	North	Single Family Residential	
	South	Single Family Residential	
	East	Single Family Residential	
	West	Single Family Residential	
Existing Zoning:	R-4		
Proposed Zoning:	R-4		
Surrounding Zoning:	North	PD – Planned Development	
	South	R-4	
	East	R-4	
	West	R-4	
Future Land Use Designation:	Residential Medium 4-8 du/ac		
Zoning within density range?	X	Yes	No

Project Analysis:

1. Background

During the summer of 2010 a new public pedestrian access and fence were installed within the 26 3/4 right-of-way by the City. While planning for the improvements, the City became aware that the property located at 2674 Capra Way had improvements consisting of landscaping, irrigation lines and sprinklers and storage shed encroaching into the 26 3/4 Road right-of-way. A revocable permit was proposed to allow the encroachments to remain within the right of way as a long term, temporary use of public property in accordance with the terms set forth in the permit

2. Section 21.02.180 of the Grand Junction Municipal Code

Requests for a revocable permit must demonstrate compliance with all of the following criteria:

- a) There will be benefits derived by the community or area by granting the proposed revocable permit;

The encroachment has been in existence since the early to mid '90's based on aerial photo history. The public trail and fence were constructed so that the landscaping helps to buffer the uses on both the public and private side.

- b) There is a community need for the private development use proposed for the City property;

To some extent the private use alleviates the maintenance obligations of the City Parks Department.

- c) The City property is suitable for the proposed uses and no other uses or conflicting uses are anticipated for the property;

The encroachment has been in existence since the early to mid '90's based on aerial photo history. The City has constructed the public trail and fence to allow for continued use of the area by the Marso's as well as the users of the path.

- d) The proposed use shall not negatively impact access, traffic circulation, neighborhood stability or character, sensitive areas such as floodplains or natural hazard areas;

The encroachment has been in existence since the early to mid '90's based on aerial photo history. The 26 3/4 Road right of way is not used as a traditional street; instead it has been used as an informal pedestrian connection and for storage of the Marso's personal property. Continued use of the area identified in the permit does not negatively impact access, traffic circulation, the neighborhood or sensitive areas.

- e) The proposed use is in conformance with and in furtherance of the implementation of the goals, objectives and policies of the Comprehensive Plan, other adopted plans and the policies, intents and requirements of this code and other City policies; and

Continued use of the area identified in the permit is consistent with and supportive of developed residential uses. The neighborhood is well established and well kept single family area.

- f) The application complies with the submittal requirements as set forth in Section [127](#) of the City Charter, this chapter and the Submittal Standards for Improvements and Development manual (GJMC Title [22](#)). To the extent legally necessary or required, for the term of the use under the permit, the setbacks from the property line shall be varied to meet those existing at the time of the issuance of the permit.

The application complies with all applicable submittal requirements.

FINDINGS OF FACT/CONCLUSIONS

After reviewing the Marso Revocable Permit application, RVP-201-193 for the issuance of a revocable permit for a storage shed, irrigation pump and landscaping, staff makes the following findings of fact and conclusions:

1. The review criteria in Section 21.02.180 of the Grand Junction Municipal Code have all been met.

STAFF RECOMMENDATION:

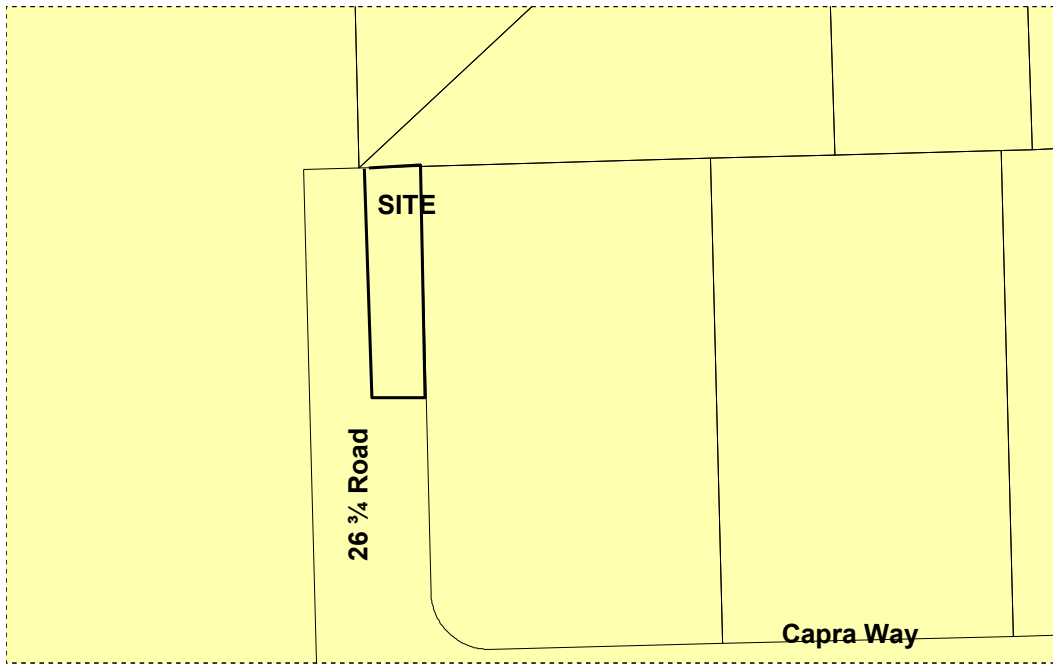
I recommend that the City Council approve the requested revocable permit for a storage shed, irrigation pump, lines and equipment and landscaping, RVP-2010-193.

Attachments:

Site Location Map / Aerial Map
Future Land Use Map / Existing Zoning Map
Resolution
Revocable Permit
Agreement

Site Location Map

Figure 1



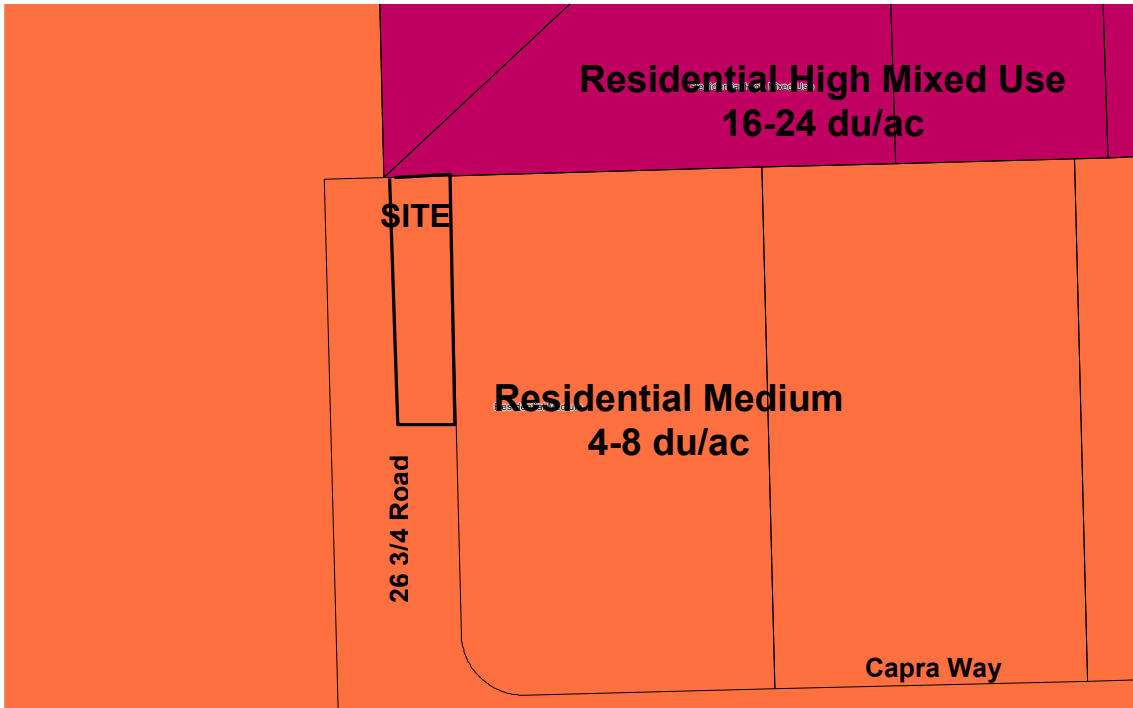
Aerial Photo Map

Figure 2



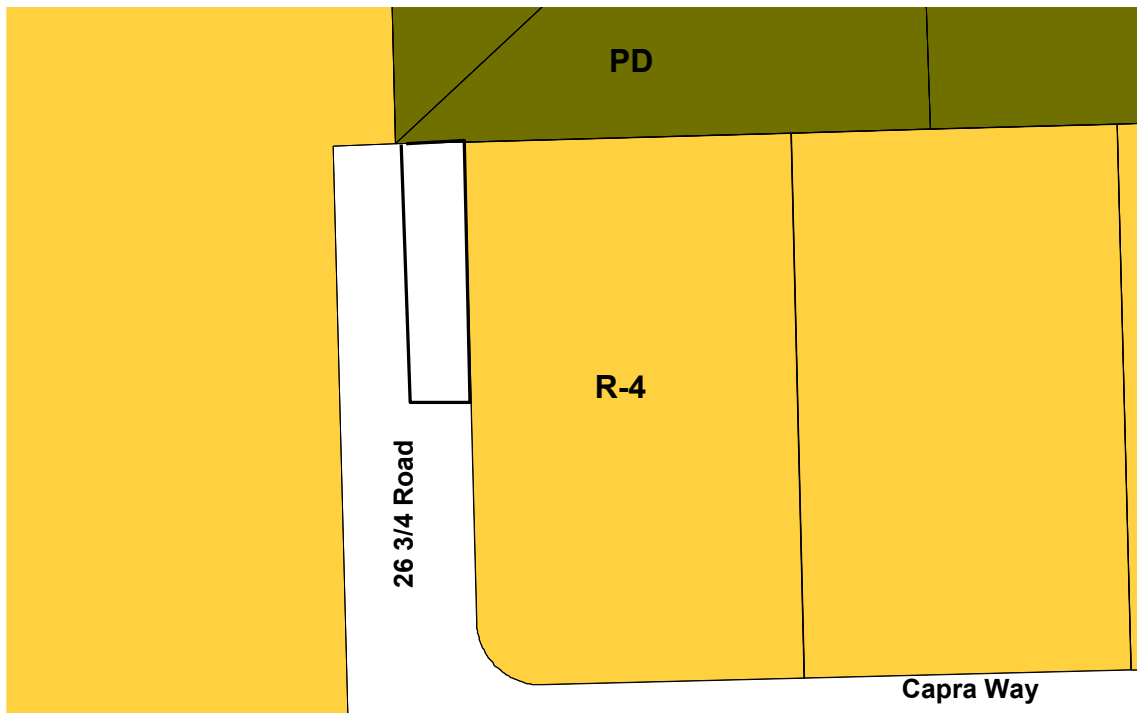
Future Land Use Map

Figure 3



Existing City Zoning Map

Figure 4



RESOLUTION NO. ____-10

**A RESOLUTION CONCERNING
THE ISSUANCE OF A REVOCABLE PERMIT TO
SAMUEL AND AUDREY MARSO**

Recitals.

A. Samuel A. and Audrey S. Marso, hereinafter referred to as the Petitioner, represent it is the owner of the following described real property in the City of Grand Junction, County of Mesa, State of Colorado, to wit:

LOT 1 FIRST ADD TO NORTHERN HILLS SUB SEC 2 1S 1W and identified by Mesa County Tax Schedule Number 2945-024-01-001.

B. The Petitioner has requested that the City Council of the City of Grand Junction issue a Revocable Permit to allow the Petitioner to maintain and repair a storage shed, irrigation pump and landscaping within the following described public right-of-way:

Two certain parcels of land lying in the South half of the Southeast Quarter (S 1/2 SE 1/4) of Section 2, Township 1 South, Range 1 West of the Ute Principal Meridian, County of Mesa, State of Colorado, each lying entirely within the right of way for 26-3/4 Road and being more particularly described as follows:

COMMENCING at the Northwest corner of the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of said Section 2 and assuming the West line of the SE 1/4 SE 1/4 of said Section 2 bears S 00°02'36" W with all other bearings noted herein being relative thereto; thence S 00°02'36" W along the West line of the SE 1/4 SE 1/4 of said Section 2, a distance of 32.90 feet to the POINT OF BEGINNING; thence from said Point of Beginning, S 87°42'28" E a distance of 1.54 feet; thence S 02°17'32" W a distance of 7.00 feet; thence N 87°42'28" W a distance of 7.00 feet; thence N 02°17'32" E a distance of 7.00 feet; thence S 87°42'28" E a distance of 5.46 feet to the Point of Beginning.

CONTAINING 49.0 Square Feet, more or less, as described.

TOGETHER WITH:

COMMENCING at the Northwest corner of the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of said Section 2 and assuming the West line of the SE 1/4 SE 1/4 of said Section 2 bears S 00°02'36" W with all other bearings noted herein being relative thereto; thence N 89°55'12" E along the North line of the SE 1/4 SE 1/4 of said Section 2, a distance of 16.57 feet, more or less, to a point being the Northerly prolongation of the East side of an existing wood fence and the POINT OF BEGINNING; thence from said Point of Beginning, continue N 89°55'12" E along the North line of the SE 1/4 SE 1/4 of said Section 2, a distance of 8.43 feet to a point being the Northwest corner of Lot 1, First Addition Northern Hills Subdivision, as same is recorded in Plat Book 9, Page 198, Public Records of Mesa County, Colorado;

thence S 00°04'48" E along the West line of said Lot 1, a distance of 183.52 feet to a point being the beginning of a 25.00 foot radius curve, concave Northeast, whose long chord bears S 45°04'48"E with a long chord length of 35.36 feet; thence Southeasterly along the arc of said curve a distance of 39.27 feet to a Point of Cusp; thence S 89°55'12" W along the Westerly prolongation of the South line of said Lot 1, a distance of 25.97 feet, more or less, to a point on the East side of an existing wood fence; thence N 00°00'24" W along the East side of said wood fence, a distance of 148.17 feet; thence N 87°48'40" W along the North side of an existing wood fence, a distance of 9.42 feet to a point on the East side of an existing wood fence; thence N 01°36'56" E along the East side of said wood fence and its Northerly prolongation, a distance of 60.01 feet, more or less, to the Point of Beginning.

CONTAINING 825.0 Square Feet, more less, as described.

See also attached Exhibit "A"

C. Relying on the information supplied by the Petitioner and contained in File No. RVP-2010-193 in the office of the City's Public Works and Planning Department, the City Council has determined that such action would not at this time be detrimental to the inhabitants of the City of Grand Junction.

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

1. That the City Manager is hereby authorized and directed to issue the attached Revocable Permit to the above-named Petitioner for the purpose aforescribed and within the limits of the public right-of-way aforescribed, subject to each and every term and condition contained in the attached Revocable Permit.

PASSED and ADOPTED this _____ day of _____, 2010.

Attest:

President of the City Council

City Clerk

REVOCABLE PERMIT

Recitals.

A. Samuel A. and Audrey S. Marso, hereinafter referred to as the Petitioner, represent it is the owner of the following described real property in the City of Grand Junction, County of Mesa, State of Colorado, to wit:

LOT 1 FIRST ADD TO NORTHERN HILLS SUB SEC 2 1S 1W and identified by Mesa County Tax Schedule Number 2945-024-01-001.

B. The Petitioner has requested that the City Council of the City of Grand Junction issue a Revocable Permit to allow the Petitioner to maintain and repair a storage shed, irrigation pump and landscaping within the following described public right-of-way:

Two certain parcels of land lying in the South half of the Southeast Quarter (S 1/2 SE 1/4) of Section 2, Township 1 South, Range 1 West of the Ute Principal Meridian, County of Mesa, State of Colorado, each lying entirely within the right of way for 26-3/4 Road and being more particularly described as follows:

COMMENCING at the Northwest corner of the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of said Section 2 and assuming the West line of the SE 1/4 SE 1/4 of said Section 2 bears S 00°02'36" W with all other bearings noted herein being relative thereto; thence S 00°02'36" W along the West line of the SE 1/4 SE 1/4 of said Section 2, a distance of 32.90 feet to the POINT OF BEGINNING; thence from said Point of Beginning, S 87°42'28" E a distance of 1.54 feet; thence S 02°17'32" W a distance of 7.00 feet; thence N 87°42'28" W a distance of 7.00 feet; thence N 02°17'32" E a distance of 7.00 feet; thence S 87°42'28" E a distance of 5.46 feet to the Point of Beginning.

CONTAINING 49.0 Square Feet, more or less, as described.

TOGETHER WITH:

COMMENCING at the Northwest corner of the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of said Section 2 and assuming the West line of the SE 1/4 SE 1/4 of said Section 2 bears S 00°02'36" W with all other bearings noted herein being relative thereto; thence N 89°55'12" E along the North line of the SE 1/4 SE 1/4 of said Section 2, a distance of 16.57 feet, more or less, to a point being the Northerly prolongation of the East side of an existing wood fence and the POINT OF BEGINNING; thence from said Point of Beginning, continue N 89°55'12" E along the North line of the SE 1/4 SE 1/4 of said Section 2, a distance of 8.43 feet to a point being the Northwest corner of Lot 1, First Addition Northern Hills Subdivision, as same is recorded in Plat Book 9, Page 198, Public Records of Mesa County, Colorado; thence S 00°04'48" E along the West line of said Lot 1, a distance of 183.52 feet to a point being the beginning of a 25.00 foot radius curve, concave Northeast, whose long chord bears S 45°04'48" E with a long chord length of 35.36 feet; thence Southeasterly along the arc of said curve a distance of 39.27 feet to a Point of Cusp; thence S 89°55'12" W along the Westerly prolongation of the South line of said Lot 1, a distance

of 25.97 feet, more or less, to a point on the East side of an existing wood fence; thence N 00°00'24" W along the East side of said wood fence, a distance of 148.17 feet; thence N 87°48'40" W along the North side of an existing wood fence, a distance of 9.42 feet to a point on the East side of an existing wood fence; thence N 01°36'56" E along the East side of said wood fence and its Northerly prolongation, a distance of 60.01 feet, more or less, to the Point of Beginning.

CONTAINING 825.0 Square Feet, more less, as described.

See also attached Exhibit "A"

C. Relying on the information supplied by the Petitioner and contained in File No. RVP-2010-193 in the office of the City's Public Works and Planning Department, the City Council has determined that such action would not at this time be detrimental to the inhabitants of the City of Grand Junction.

NOW, THEREFORE, IN ACCORDANCE WITH THE ACTION OF THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

There is hereby issued to the above-named Petitioner a Revocable Permit for the purpose aforescribed and within the limits of the public right-of-way aforescribed; provided, however, that the issuance of this Revocable Permit shall be conditioned upon the following terms and conditions:

1. The Petitioner's use and occupancy of the public right-of-way as authorized pursuant to this Permit shall be performed with due care or any other higher standard of care as may be required to avoid creating hazardous or dangerous situations and to avoid damaging public improvements and public utilities or any other facilities presently existing or which may in the future exist in said right-of-way.
2. The City hereby reserves and retains a perpetual right to utilize all or any portion of the aforescribed public right-of-way for any purpose whatsoever. The City further reserves and retains the right to revoke this Permit at any time and for any reason.
3. The Petitioner, for itself and for its successors, assigns and for all persons claiming through the Petitioner, agrees that it shall defend all efforts and claims to hold, or attempt to hold, the City of Grand Junction, its officers, employees and agents, liable for damages caused to any property of the Petitioner or any other party, as a result of the Petitioner's occupancy, possession or use of said public right-of-way or as a result of any City activity or use thereof or as a result of the installation, operation, maintenance, repair and replacement of public improvements.
4. The Petitioner agrees that it shall at all times keep the above described public right-of-way in good condition and repair.
5. This Revocable Permit shall be issued only upon the concurrent execution by the Petitioner of an agreement that the Petitioner and the Petitioner's successors and assigns shall save and hold the City of Grand Junction, its officers, employees and

agents harmless from, and indemnify the City, its officers, employees and agents, with respect to any claim or cause of action however stated arising out of, or in any way related to, the encroachment or use permitted, and that upon revocation of this Permit by the City the Petitioner shall, at the sole cost and expense of the Petitioner, within thirty (30) days of notice of revocation (which may occur by mailing a first class letter to the last known address), peaceably surrender said public right-of-way and, at its own expense, remove any encroachment so as to make the aforescribed public right-of-way available for use by the City or the general public. The provisions concerning holding harmless and indemnity shall survive the expiration, revocation, termination or other ending of this Permit.

6. This Revocable Permit, the foregoing Resolution and the following Agreement shall be recorded by the Petitioner, at the Petitioner's expense, in the office of the Mesa County Clerk and Recorder.

Dated this _____ day of _____, 2010.

The City of Grand Junction,
a Colorado home rule municipality

Attest:

City Clerk

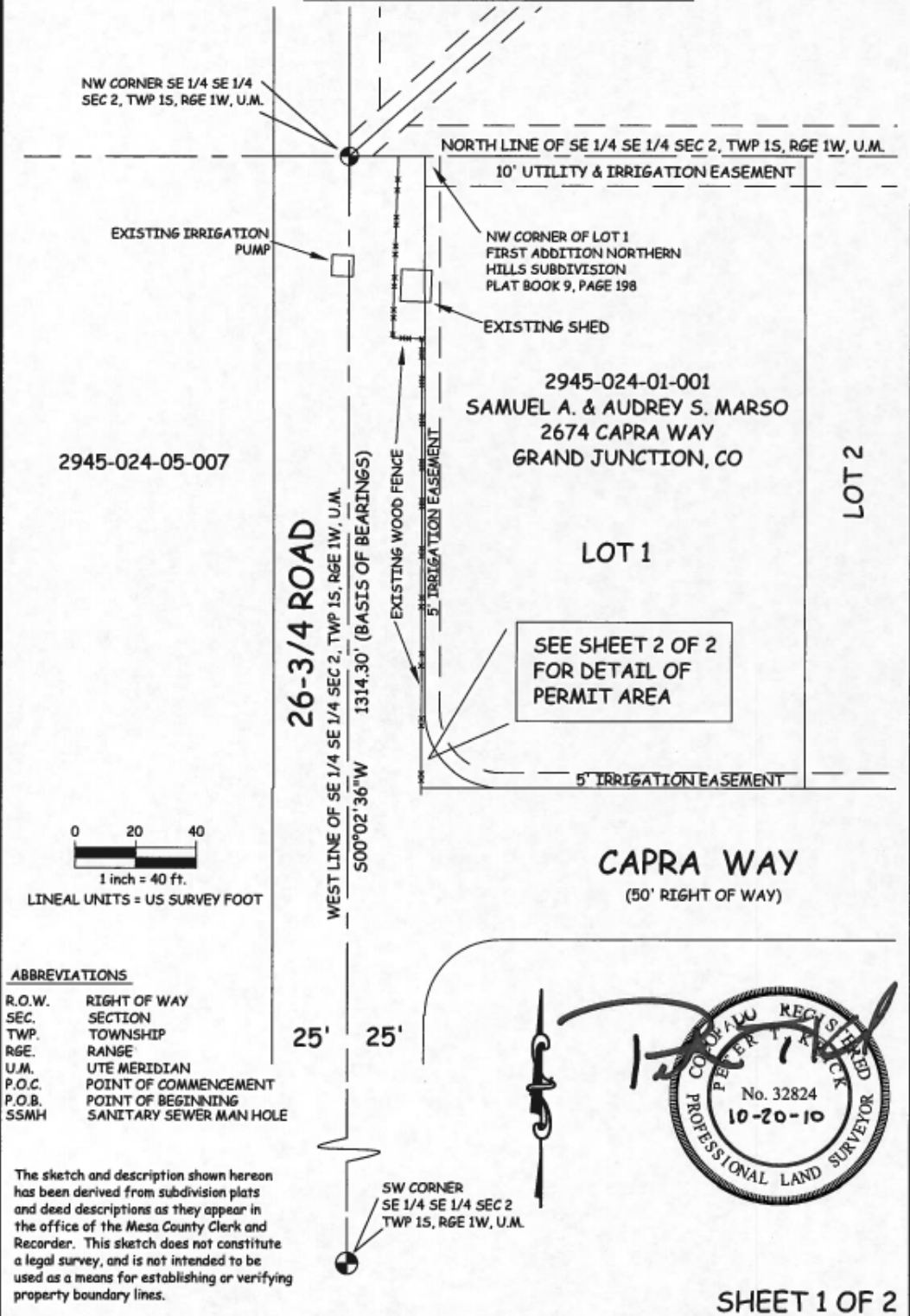
City Manager

Acceptance by the Petitioner:

Samuel A Marso

Audrey S Marso

EXHIBIT "A"



ABBREVIATIONS

R.O.W.	RIGHT OF WAY
SEC.	SECTION
TWP.	TOWNSHIP
RGE.	RANGE
U.M.	UTE MERIDIAN
P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING
SSMH	SANITARY SEWER MAN HOLE

The sketch and description shown hereon has been derived from subdivision plats and deed descriptions as they appear in the office of the Mesa County Clerk and Recorder. This sketch does not constitute a legal survey, and is not intended to be used as a means for establishing or verifying property boundary lines.



SHEET 1 OF 2

DRAWN BY: PTK
 DATE: 10-19-10
 SCALE: 1" = 40'
 APPR. BY: PTK

REVOCABLE PERMIT
 26-3/4 ROAD
 FOR THE BENEFIT OF
 2945-024-01-001



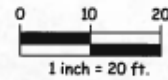
EXHIBIT "A"

NW CORNER OF LOT 1
FIRST ADDITION NORTHERN
HILLS SUBDIVISION
PLAT BOOK 9, PAGE 198

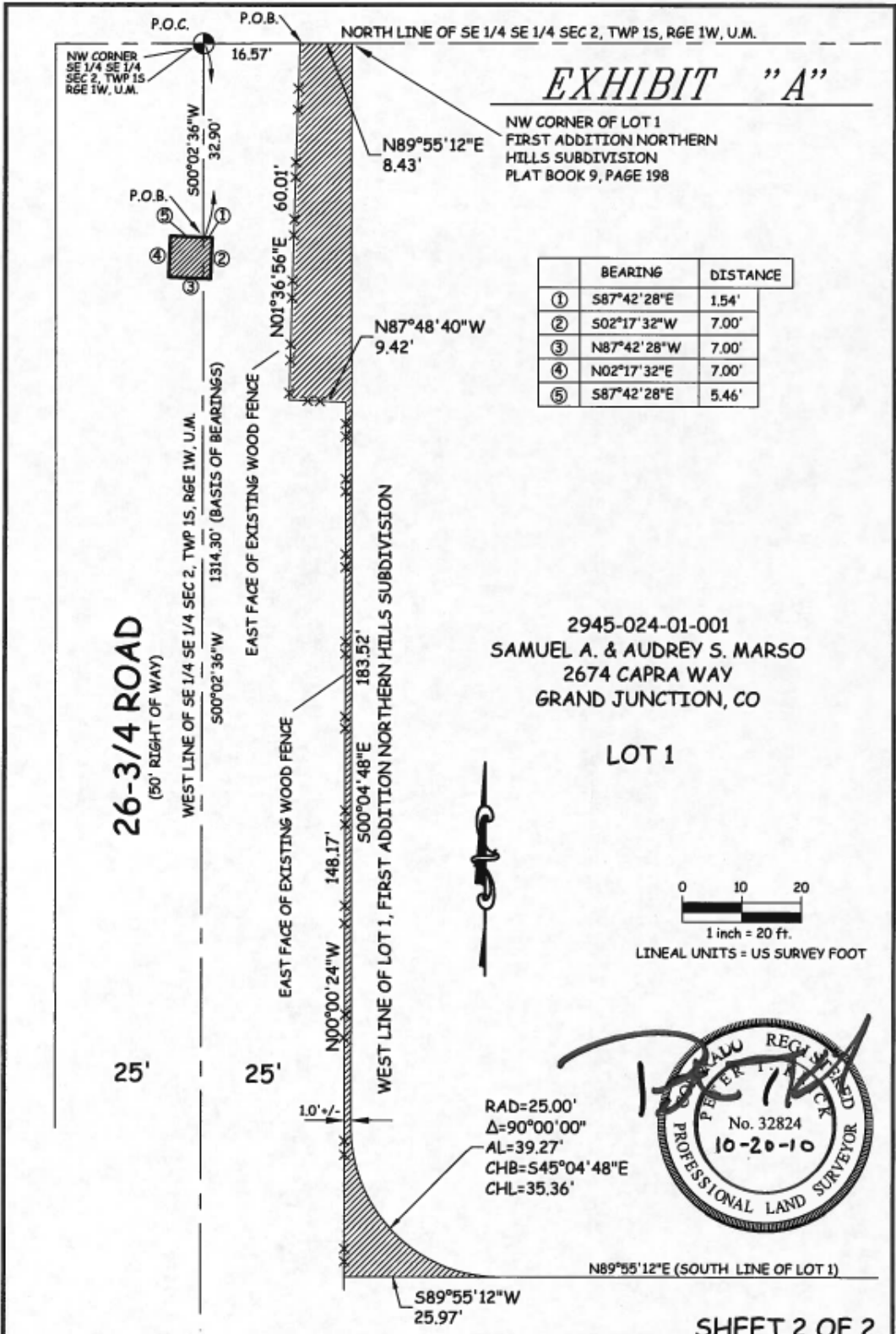
	BEARING	DISTANCE
①	S87°42'28"E	1.54'
②	S02°17'32"W	7.00'
③	N87°42'28"W	7.00'
④	N02°17'32"E	7.00'
⑤	S87°42'28"E	5.46'

2945-024-01-001
SAMUEL A. & AUDREY S. MARSO
2674 CAPRA WAY
GRAND JUNCTION, CO

LOT 1



RAD=25.00'
Δ=90°00'00"
AL=39.27'
CHB=545°04'48"E
CHL=35.36'



SHEET 2 OF 2

DRAWN BY: PTK
DATE: 10-19-10
SCALE: 1" = 20'
APPR. BY: PTK

REVOCABLE PERMIT
26-3/4 ROAD
FOR THE BENEFIT OF
2945-024-01-001



AGREEMENT

Samuel A. and Audrey S. Marso, for themselves and for their successors and assigns, do hereby agree to:

(a) Abide by each and every term and condition contained in the foregoing Revocable Permit;

(b) Indemnify and hold harmless the City of Grand Junction, its officers, employees and agents with respect to all claims and causes of action, as provided for in the approving Resolution and Revocable Permit;

(c) Within thirty (30) days of revocation of said Permit by the City Council, peaceably surrender said public right-of-way to the City of Grand Junction;

(d) At the sole cost and expense of the Petitioner, remove any encroachment so as to make said public right-of-way fully available for use by the City of Grand Junction or the general public.

Dated this _____ day of _____, 2010.

By: _____
Samuel A. Marso

Audrey S. Marso

State of Colorado)
)ss.
County of Mesa)

The foregoing Agreement was acknowledged before me this ___ day of _____, 2010, by Samuel A. and Audrey S. Marso.

My Commission expires: _____
Witness my hand and official seal.

Notary Public



Date: November 16, 2010

Author: Lee Cooper

Title/ Phone Ext: Project Engineer, (256-4155)

Proposed Schedule: Monday, November 29, 2010

2nd Reading (if applicable):
n/a

CITY COUNCIL AGENDA ITEM

Attach 8 23 Road and G Road Intersection Reconstruction Project

Subject: Amendment #1 to the Contract between the City of Grand Junction and the Colorado Department of Transportation for the 23 Road and G Road Intersection Reconstruction Project.
File # (if applicable): N/A
Presenters Name & Title: Tim Moore, Public Works and Planning Director

Executive Summary:

Federal aid funds have been awarded to the City from the Federal Hazard Elimination Program for reconstruction of the intersection of 23 Road and G Road. The project consists of right-of-way acquisition and incidentals, design and construction of a roundabout and associated intersection improvements at 23 Road and G Road. As a result of the right-of-way acquisition cost estimate and the engineer’s construction cost estimate, additional funds are expected to be needed to complete this Project. The City has estimated that an additional \$196,358.00 needs to be added to the Federal funds and City funds already approved for this Project.

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

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.*

Over the past several years the current intersection layout of 23 Road and G Road has resulted in multiple vehicle accidents and also a few vehicle fatalities. Using funds provided by the Federal Hazard Elimination Program, this notoriously dangerous intersection will be replaced with a safer, more environmentally friendly roundabout intersection. Roundabouts have been proven to provide a safer environment for both vehicles and pedestrians by reducing the points of conflicts between vehicles and between vehicles and pedestrians. Also roundabouts are considered to be more aesthetically pleasing and attractive compared to the typical signalized intersection. This roundabout has been designed to support the local transit common in this area of town which happens to be larger transport trucks. Also in the summer time this intersection receives an increase in bicycle traffic, and this roundabout will safely accommodate both pedestrian and bicycle traffic.

Action Requested/Recommendation:

Adopt a Resolution Accepting Contract Amendment #1 (11 HA3 25394) for Federal-aid Funds in the Amount of \$828,000.00 (90% of participating funds); Authorizing City Matching Funds of \$92,000.00 (10% of participating funds); Authorizing the City's additional funds of \$196,358.00 and Authorizing the City Manager to Sign the Contract Amendment #1 with CDOT for the 23 Road and G Road Intersection Improvement Project.

Board or Committee Recommendation:

N/A

Background, Analysis and Options:

The current contract with CDOT was written back in late 2008 based on cost estimates generated in 2006. Since then costs for Right of Way (ROW) and construction have increased partially due to the larger roundabout required to accommodate longer trucks as well as inflation on construction costs. The revised IGA updates the anticipated expenses for 2011 ROW acquisition and construction.

Item	Current contract	Proposed contract amendment
Design	\$ 17,000	\$ 17,000
ROW acquisition	\$ 60,000	\$ 109,500
ROW Incidentals	\$ 36,000	\$ 48,000
Construction	\$ 807,000	\$ 941,858
	\$ 920,000	\$ 1,116,358

The delay has been due to a number of factors both on CDOT's local agency processes as well as on the City's redesign and overall workload. The project is now scheduled for early 2011 ROW acquisition and mid-summer 2011 construction.

Even though the original grant was intended to be a 90%/10% match, there are no additional federal funds available. Therefore the City will need to provide the additional funds to complete the project. In the attached contract amendment, these funds are referred to as "overmatching" funds.

Financial Impact/Budget:**Project Costs:**

Covered By Federal Grant	\$ 828,000.00
Original Matching City Funds	\$ 92,000.00
Additional City Funds Required	<u>\$ 196,358.00</u>

Total Estimated 2011 Project Cost - \$1,116,358.00

The 2011 proposed budget for this project will be \$1,099,358.00; the total estimated project cost less design costs of \$17,000 paid and budgeted in 2010.

Legal issues:

N/A

Other issues:

N/A

Previously presented or discussed:

On November 17, 2008, the City Council Agenda was approved by City Council authorizing the City Manager to sign a contractual agreement with CDOT to use the Federal funds for the 23 Road and G Road Intersection Improvement Project.

Attachments:

- Resolution
- Contract Amendment #1 (Scanned copy)

RESOLUTION NO. _____ -10

A RESOLUTION ACCEPTING AMENDMENT #1 (11 HA3 25394) TO THE CONTRACT FOR CONSTRUCTION WORK AT THE INTERSECTION OF 23 ROAD AND G ROAD, AUTHORIZING THE CITY'S OVER-MATCHING FUNDS, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT AMENDMENT #1 AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION

Recitals:

The City has requested funds from the Federal Hazard Elimination Program for a local construction project to be completed at the intersection of 23 Road and G Road. The project consists of a right-of-way acquisition and incidentals, design and construction of a roundabout and associated intersection improvements.

Federal aid funds were awarded to the City for the Hazard Elimination Program, through an Intergovernmental Agreement (IGA) between the Colorado Department of Transportation (CDOT) and the City of Grand Junction. The Project Number is SHO M555-027 (16730). A total amount of \$828,000.00 is awarded to the City from the Program and pursuant to the IGA, the City must contribute matching funds in the amount of \$92,000.00, and over-matching funds in the amount of \$196,358.00.

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

Federal aid funds in the amount of \$828,000.00 awarded to the City for construction work at 23 Road and G Road are hereby accepted and that the City Manager is hereby authorized to expend \$92,000.00 in matching funds and \$196,358.00 in over-matching funds for the project. The City Manager is authorized to execute the Contract Amendment #1 with the Colorado Department of Transportation.

PASSED AND APPROVED this ____ of _____, 2010.

President of the Council

ATTEST:

City Clerk

(FMLAWRK)
PROJECT SHO M555-027, (16730)
REGION 3 / (DAW)

AMD #1 Routing # 11 HA3 25394
PO # 271000859

CONTRACT AMENDMENT #1

THIS AMENDMENT is made this ____ day of _____, 20____, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation, hereinafter referred to as the "State", and the CITY OF GRAND JUNCTION, 250 N. 5th Street Grand Junction, Colorado, 81501, CDOT Vendor #: 2000027 hereinafter referred to as the "Local Agency."

FACTUAL RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for this Project as set forth below; and,
2. Required approval, clearance, and coordination has been accomplished from and with appropriate agencies; and,
3. The Parties entered into the original contract dated December 18, 2008, Contract Routing Number 09 HA3 00022 known hereafter as "the Basic Contract for which Federal-aid funds have been made available from the Hazard Elimination Program, for Project Number SHO M555-027 (16730), which shall consist of Right of Way Acquisition and Incidentals (ROW), the Design and Construction of a Roundabout and associated Intersection Improvements at 23 Road, and G Road, referred to as the "Project" or the "Work." Such Work will be performed in the City of Grand Junction Colorado, as specifically described in Exhibit A ; and,
4. The Basic Contract is still in effect and provides for changes to its terms and conditions by written supplement or contract amendment; and,
5. The Parties also now desire to amend the Basic Contract by replacing Recital 1 to the Basic Contract, and replacing EXHIBIT C of the Basic Contract, Pages 1 and 2 in their entirety, with the revised EXHIBIT C-1 FUNDING PROVISIONS adding \$12,000.00 to encumber final ROW phase funds and revise the construction phase funding for a new contract total amount of \$65,000.00 and, to replace Section 25. Funding Letters with the new Section 25 Option Letters, and, to replace the Special Provisions Section 29., with the attached revised Special Provisions; and,
6. The Parties enter into this Amendment pursuant to the provisions of Colorado Revised Statutes, Sections 24-30-1401 et seq. Section 43-1-106, and Section 43-1-110 as amended.

NOW THEREFORE, it is hereby agreed that:

Consideration for this Amendment consists of the payments that shall be made pursuant to this Amendment and the promises and agreements herein set forth.

1. This Amendment is supplemental to the Basic Contract, which is, by this reference, incorporated herein and made a part hereof, and all terms, conditions, and provisions thereof, unless specifically modified herein, are to apply to this Amendment as though they were expressly rewritten, incorporated, and included herein.
2. The Basic Contract is and shall be modified, altered, and changed in the following respects only:

a. RECITAL Number 1 (Page 1 of 17 of the Basic Contract) shall be amended to read as follows:

Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Object 2312 1/P Function 3301, 3020 GL Acct 4231200011 WBS Elements 16730.10.30, 16730.10.20,16730.10.10
Contract Encumbrance Amount: \$65,000.00

b. EXHIBIT C-1 FUNDING PROVISIONS attached hereto.

Exhibit C-1 is hereby added to the Basic Contract and incorporated herein by this Amendment.

(Replaces EXHIBIT C of the Basic Contract)

c. Section 29 SPECIAL PROVISIONS

The attached Special Provisions dated 1-1-09 are hereby added to the Basic Contract and incorporated herein by this Amendment

(Replaces Section 29 Special Provisions of the Basic Contract)

SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL.** CRS §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY.** CRS §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION.** Governor's Executive Order D 002 00. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.** CRS §§24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. **VENDOR OFFSET.** CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
11. **PUBLIC CONTRACTS FOR SERVICES.** CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.
12. **PUBLIC CONTRACTS WITH NATURAL PERSONS.** CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised 1-1-09

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

LOCAL AGENCY:

STATE OF COLORADO:
BILL RITTER, JR., GOVERNOR

CITY OF GRAND JUNCTION
Legal Name of Contracting Entity

By: _____
For the Executive Director
Colorado Department of Transportation

2000027
CDOT Vendor Code

LEGAL REVIEW:
JOHN W. SUTHERS, ATTORNEY GENERAL

Signature of Authorized Officer

By _____

Print Name & Title of Authorized Officer

LOCAL AGENCY:
(A Local Agency Attestation is required.)

Attest (Seal) By: _____
Town / City / County Clerk (Place Local Agency Seal here, if available.)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:
DAVID J. MC DERMOTT, CPA

By : _____

Date: _____

EXHIBIT C-1 FUNDING PROVISIONS

A. The Local Agency has estimated the total cost the Project to be \$1,116,358.00 which is to be funded as follows:

1 BUDGETED FUNDS						
a. Federal Funds						\$828,000.00
	(90% of Participating Costs)					
b. Local Agency Matching Funds						\$92,000.00
	(10% of Participating Costs)					
c. Local Agency Over-Matching Funds						\$196,358.00
TOTAL BUDGETED FUNDS						\$1,116,358.00
2 ESTIMATED CDOT-INCURRED COSTS						
a. Federal Share						\$0.00
	(90% of Participating Costs)					
b. Local Share						\$0.00
	Local Agency Share of Participating Costs					
	Non-Participating Costs (Including Non-Participating In-directs)					\$0.00
	Estimated to be Billed to Local Agency					\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS						\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY						
a. Federal Funds Budgeted (1a)						\$828,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)						\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY						\$828,000.00
FOR CDOT ENCUMBRANCE PURPOSES						
Total Encumbrance Amount						
1 a) Fed Funds \$920,000.00 90% 1 b) LA Match \$92,000.00 10%						
1 c) LA Overmatch \$196,358.00						
a. CDOT Encumbrance Anticipated Amount						\$1,116,358.00
CDOT Encumbrance						\$1,116,358.00
Net to be encumbered as follows:						\$65,000.00
<i>*Note only \$17,000.00 in Design Funds and \$48,000.00 in ROW incidental funds are currently available. Construction funding to be added after federal authorization via Option Letter or Formal Amendment *</i>						
	\$48,000 ROW ~ Incidentals	WBS Element 16730.10.10	ROW	3114		\$48,000.00
	\$17,000.00 ~ Design	WBS Element 16730.10.30	Design	3020		\$17,000.00
	\$941,858.00 ~ Construction	WBS Element 16730.20.10	Const	3200		\$0.00
TOTAL ENCUMBRANCE						\$65,000.00

B. The matching ratio for the federal participating funds for this project is 90% federal-aid funds (CFDA #20 2050) to 10% Local Agency funds, it being understood that such ratio applies only to the \$920,000.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$920,000.00, and additional federal funds are made available for the project, the Local Agency shall pay 10% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the local agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$920,000.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State. The maximum amount payable to the Local Agency under this contract shall be \$828,000.00. For CDOT accounting purposes, the federal funds of \$828,000.00 (90%) and local matching funds of \$92,000.00 (10%), and Local Agency Overmatching Funds of \$196,358.00 will be encumbered for the anticipated total encumbrance of \$1,116,358.00 (Less \$109,500.00 in ROW Acquisition per CDOT ROW Policies & Procedures) for an encumbrance of \$1,006,858.00, unless such amount is increased by an appropriate written modification to this contract executed before any increased cost is incurred.

**** Note only \$17,000.00 in Design Funds and \$48,000.00 in ROW incidental funds are currently available Construction funding to be added after federal authorization via Option Letter or Formal Amendment ****

It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this contract, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from federal and/or state and/or Local Agency sources, as applicable. Should these sources, either federal or Local Agency, fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.



Date: 10/27/2010
 Author: Scott Hockins
 Title/ Phone Ext: Purchasing
Supervisor, ext 244-1484
 Proposed Schedule:
11/29/2010
 2nd Reading
 (if applicable): _____

CITY COUNCIL AGENDA ITEM

**Attach 9
 Contract for Downtown Uplift – Main Street Phase
 II Construction**

Subject: Contract for Downtown Uplift – Main Street Phase II Construction
File # (if applicable):
Presenters Name & Title: Tim Moore, Public Works and Planning Director Jay Valentine, Assistant Financial Operations Manager

Executive Summary:

This is the contract award for the complete reconstruction of three blocks of Main Street between 4th Street and 7th Street. This phase of the project will provide replacement of deteriorated sidewalks, waterlines, storm drains, and brick planters. In addition, amenities will be added for the beautification to include replacement of dying trees, installation of water features, play areas, shade shelters and drinking fountains. With the exception of the waterline replacement, the project is being funded by the Downtown Development Authority with design and project oversight provided by the City.

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

The Downtown Uplift Project supports the following Goals from the comprehensive plan:

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

Reinvestment in the infrastructure of Main Street is an essential component of continued development in the downtown area. The design has specifically addressed the varying economic and social needs for the core of the City by incorporating greater accessibility for all community members, family-friendly features, high-quality amenities, and intentional focus on the needs and desires of merchants and property owners.

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

The award-winning design of Main Street from the 1960's has served the community well and garnered national attention for its vision. Nearly 50 years later, many components of the design are worn out, dated, or broken. The iconic urban forest, serpentine street, and Art on the Corner elements have withstood the test of time and are included in the design.

This project compliments the architectural character of the Downtown Area and complies with the guidelines and design standards of the Strategic Downtown Master Plan. This project will incorporate historical lighting, colored concrete surfaces, landscaping, gathering areas, and other furnishings that enhance the cultural and social vitality of Main Street.

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.

This project supports the ongoing Strategic Downtown Master Plan, while adhering to the City of Grand Junction's Transportation Engineering Design Standards and guidelines. This project will continue to maintain mobility to the traveling public as well as direct access to the Downtown Area by ensuring sufficient on-street parking spaces to supplement existing parking lots and garage spaces.

This project emphasizes "walkability" within the Downtown Area by making capital improvements to accessibility, pedestrian crossings and bicycle facilities (e.g. bike lane on streets, bike racks at strategic locations). Downtown entries are provided with landscaped medians and corner bulbouts for pedestrian refuge, and the Wayfinding and Signage Strategy map guidelines will provide the required balance for proper pedestrian and vehicular traffic circulation.

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

Reconstruction of the Downtown Shopping Park will provide a more pedestrian friendly environment, complete with sitting and gathering areas such as small plazas, play areas, water fountains, and performance venues. These improvements combined with a year-round schedule of promotions and special events will boost the energy and economic vigor of our community and region.

Action Requested/Recommendation:

Authorize the Purchasing Division to Enter into a Contract with Sorter Construction, Inc. for the Downtown Uplift-Main Street Phase II project in the Amount of \$2,888,562.10.

Board or Committee Recommendation:

On October 28, 2010 the Downtown Development Authority Board reviewed the bid results and recommends that Council approve Sorter Construction, Inc. with low bid of \$2,888,562.10 for the project.

Background, Analysis and Options:

A formal solicitation was advertised in the Daily Sentinel, and sent to the Western Colorado Contractors Association (WCCA). Five bids were received and from the following firms:

Firm	Location	Amount
Sorter Construction, Inc.	Grand Junction	\$2,888,562.10
FCI Constructors	Grand Junction	\$2,959,783.90
United Companies	Grand Junction	\$3,344,596.72
Concrete Express, Inc.	Denver	\$3,598,579.76
M.A. Concrete Construction, Inc.	Grand Junction	\$3,650,781.89

All of the supplies and materials for this project will be received from West Slope companies. Staff has no reservations regarding Sorter Construction's qualifications or capability to complete this project

Same as in Phase 1, included in the bids received is an incentive amount of up to \$2,500 for each calendar day that final completion (up to \$75,000) earlier than the June 8, 2011 final completion date. Not included in the bid, however included in the bid documents, there are disincentives of \$4,000 per day should the contractor extend over the contract time.

Main Street will be closed to traffic from 4th Street to the west side of 7th Street from January 3, 2011 to June 8, 2011. 5th Street may be closed to traffic up to three consecutive weeks (21 calendar days) for demolition and reconstruction of the 5th Street & Main Street intersection. 5th Street traffic shall be detoured onto Grand Avenue during the period of time when 5th Street is closed.

The project schedule is as follows:

Downtown Uplift Phase II Construction Start. January 3, 2011

Downtown Uplift Phase II Final Completion and Acceptance of all work. June 8, 2011

Financial Impact/Budget:

The total project costs are summarized below:

Project Costs:

Funding Source	Description	Contract Amount
DDA-Tax Increment Fund	Reinvestment into improvement of infrastructure	\$ 2,630,331.10
City - Water Fund	Replacement of main waterline and service line connections to properties	\$ 237,593.00
City - Sewer Fund	Replacement of sewer main and service connections	\$ 20,638.00
	Total:	\$ 2,888,562.10

Adequate funds from the DDA and utility divisions are available for this project.

Legal issues:

N/A

Other issues:

N/A

Previously presented or discussed:

October 28, 2010 - Downtown Development Authority Board

Attachments:

N/A



Date: November 22, 2010
 Author: Debbie Kovalik
 Title/ Phone Ext: Economic, Convention & Visitor Services
Director 244-1480
 Proposed Schedule:
November 29, 2010
 2nd Reading (if applicable):

CITY COUNCIL AGENDA ITEM

**Attach 10
 Maximize Use of The Avalon Theatre**

Subject: Downtown Development Authority and Grand Junction Symphony Orchestra Partnership to Maximize Use of The Avalon Theatre	
File # (if applicable):	
Presenters Name & Title:	Debbie Kovalik, Economic, Convention & Visitor Services Department Director Heidi Hoffman Ham, Downtown Development Authority Executive Director Michael Schwerin, Grand Junction Symphony Orchestra Executive Director

Executive Summary:

In January 2009, the Grand Junction Symphony Orchestra (GJSO) and the Downtown Development Authority (DDA) jointly funded a feasibility study to determine the building improvements needed for the GJSO to become the primary, but non-exclusive, tenant of The Avalon Theatre. The findings of the study suggest that the GJSO would be an appropriate tenant for The Avalon as long as building improvements were made. The renovations suggested by the study would meet the diverse needs of all the current and potential users of the Theatre.

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

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

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

A strong cultural arts community not only enhances the quality of life for residents but also can attract out-of-town visitors to attend events and performances. Improvements and upgrades to The Avalon Theatre could attract a more diverse and popular group of artists and expand the number of concerts and performances held each year at the Theatre. Increased attendance at Theatre functions would generate more customers for downtown businesses.

Action Requested/Recommendation:

Authorize the Grand Junction Symphony Orchestra to enter into an agreement with the City to be the primary, but non-exclusive tenant of The Avalon Theatre, with a long-term lease agreement of 50 years, so that the GJSO can initiate a capital campaign to fund improvements as described in Westlake Reed Leskosky's Avalon Theatre Master Plan Study, and further authorize the City Manager to negotiate the necessary operating agreement.

Board or Committee Recommendation:

N/A

Background, Analysis and Options:

In early 2009, the City, DDA, and the GJSO commissioned a master plan study for The Avalon Theatre. That study included an analysis of the condition of the facility and an assessment of an operating plan to include projected use, revenues and expenses. After completion of the study, the DDA and GJSO agreed that a phased approach to fundraising, construction and operations was the preferred alternative.

The City, as owner of the Theatre, will serve as the project manager for any and all future remodeling/reconstruction of the Theatre approved by the City Council, while the GJSO and the DDA agree to fund the costs of the capital campaign and building improvements.

Financial Impact/Budget:

N/A

Legal issues:

After Council authorization the parties will negotiate and enter into agreements for the purposes stated.

Other issues:

N/A

Previously presented or discussed:

N/A

Attachments:

Grand Junction Symphony Orchestra Proposal

Introduction

The Grand Junction Symphony Orchestra is pleased to submit this proposal concerning the Avalon Theatre to the City of Grand Junction for their consideration. This proposal is a culmination of many years of work that the Grand Junction Symphony Orchestra (GJSO) has done as a new, permanent home for the Symphony has progressed. The GJSO has determined that after a complete renovation, the Avalon Theatre will be the best option for the organization, meeting all of the required performance space, acoustics, audience seating, and other requirements that the GJSO is looking for in a permanent home. The Grand Junction Symphony believes that when the renovations are complete the Avalon Theatre will become the premiere performance space in Western Colorado, meeting the needs not only of the GJSO, but also the needs of all of the current and potential users of the theatre.

This proposal is based on the Master Plan created by the firm Westlake, Reed, Leskosky, which was jointly commissioned by the Downtown Development Authority and Grand Junction Symphony, with assistance from the City of Grand Junction. The proposal seeks to create a facility that can be used by as many entities as possible, thus creating the biggest impact to the Grand Junction community. Considerations have been made to keep the costs for the renovations and operations of the building in line with what the community is comfortable with.

Renovation

The proposed renovation of the Avalon Theatre consists of a three phased project as recommended by the consultant, Westlake, Reed, Leskosky (WRL). These recommendations are based on interviews with current and potential users of the Avalon Theatre to ensure that as many organizations as possible can use the theatre. The Downtown Development Authority and the Grand Junction Symphony relied on the knowledge and expertise of WRL to ensure that the needs of all potential and current organizations were met, while keeping the proposal in line with what the Grand Junction community is able to support. Based on the conversations with current and potential users, as well as community leaders and potential donors, a great deal of consideration was given to ensure that the needs were met without creating too elaborate of a building.

The first phase of the project consists of a complete renovation of the interior of the audience chamber of the theatre. The theatre will have variable acoustical treatments for the theatre so that the theatre can hold performances that require sound amplification and those that do not. The theatre will have completely new seats and the seating area will be redesigned to meet ADA requirements and improve sight lines to the stage. The stage itself will be enlarged to a standard theatrical stage size, with an orchestra pit (created by expanding the foot print of the building to the south). The mechanical and electrical systems will be upgraded to meet the needs of the building, and the stage will have all required sound and lighting equipment needed for a proper theatre, as well as the theatrical rigging necessary. Since this phase completely renovates the audience chamber and stage area, the theatre will be able to immediately be used by all of the current and potential users. It is important to note that the Avalon Theatre will need to be closed during most of the first phase of renovation, lasting from 9-12 months. The total cost for this phase (including soft costs) will run approximately \$7.5 Million.

The second phase of the project will include expanding the footprint of the building to the East (into the adjacent parking lot). This expansion will include new space for concessions, restrooms on all floors, a box office, an elevator, and a multipurpose room that will be furnished in the final phase. The increased footprint will also include the basement level, providing for more space for performers that will be built out in the final phase as well. This phase completes all of the ADA

requirements for the theatre, as well as providing for all of the patron amenities that are needed. The total cost for this phase will run approximately \$4.5 Million.

The third and final phase includes the build out of the multipurpose room, including retractable seating, a film projection and sound system, and basic acoustics for the facility to be used for meetings, performances, and film showing. This is also where all of the performer amenities will be completed. The basement will have a build out of all of the dressing and green rooms, as well as storage space. The cost of this final phase is approximately \$1.5 Million.

The cost of the three phases is as follows:

Phase 1 (complete renovation of the audience chamber and stage)	\$7.5 Million
Phase 2 (finishing all patron amenities required and expansion of building)	\$4.5 Million
<u>Phase 3 (build out of multipurpose room and performer amenities)</u>	<u>\$1.5 Million</u>
Total Cost of the Capital Project	
\$13.5 Million	

The Grand Junction Symphony also estimates a cost of approximately \$750,000 to \$1 Million to run the capital campaign. This number was based on discussions with potential consultants, as well as the administrative staff of Hospice and Palliative Care of Western Colorado, who just completed a capital campaign of similar scope. This brings the total cost of this project to approximately \$14.5 Million.

Capital Campaign

The Grand Junction Symphony and the Downtown Development Authority (DDA) have agreed that the DDA will fund up to \$3 Million of the capital costs for this project, with a 3:1 matching requirement. This leaves approximately \$11.5 Million to be raised through a capital campaign. As the primary tenant for the building, the Grand Junction Symphony is committed to coordinate this campaign, but this campaign will be a community-wide campaign that will include all current and potential users of the Avalon Theatre, as well as community leaders from a wide cross-section of the community.

The capital campaign will begin with the Symphony building the Steering Committee for the campaign. The GJSO has already begun speaking with several potential members, and upon agreement of this proposal by the City of Grand Junction will formally create this committee. The committee will include a diverse group of people that will include local business leaders, local philanthropists, members from the arts community, as well as community volunteers.

As this Steering Committee is being formed, the Grand Junction Symphony will also begin the process of hiring a fundraising consultant to help coordinate this campaign. The GJSO will send out a request for proposals, and members of the steering committee will be included on the selection committee for the consultant. Particular interest will be given during this process to ensure the consultant has experience working on a capital campaign for a performing arts complex of similar size and scope as the Avalon Theatre.

The feasibility of raising funds for the Avalon Theatre was first looked at by Third Sector Innovations, a local consulting firm in 2008 at the request of the Avalon Theatre Advisory Committee. The Grand Junction Symphony had Illene Roggensack review her study from 2008 in response to this new plan and the current economic circumstances. Her considerations can be found as Attachment 1 to this document. The important factors that Ms. Roggensack was able to consider

was that based on current conditions (removing some potential funds that are no longer a possibility), the amount of funding needed for the first phase of renovations (minus the funds committed by the DDA) is well within the range of potential for this project. Grand Junction Symphony Orchestra
Avalon Project – Page 3

Commitments by the Grand Junction Symphony to the City of Grand Junction

In order to ensure the success of the Avalon Theatre moving forward, the Grand Junction Symphony is willing to make the following commitments to the City of Grand Junction:

1. The Symphony is committed to helping to ensure that the Avalon Theatre is a success following these renovations. To show our level of commitment to the building and its importance to both the City's and the Symphony's futures, we are committed to negotiating a long-term lease (up to 50 years) to be the primary tenant of the Theatre.
2. Because of the significant investment in money and resources that it would take to operate, the Grand Junction Symphony is willing to commit to operate the Box Office for the theatre. Based on conversations with current and potential users, this is a significant need for a renovated theatre. The Master Plan has shown that the renovated Avalon would need a Box Office to meet the needs of all of the users of the building. Since the expenses are primarily personnel and up front capital purchases and income is strictly based on per ticket fees to the renters of the theatre, there is a risk associated with taking on these responsibilities. The Symphony is prepared and able to take on this risk to ensure the success of this project.
3. As the primary tenant of the building, the Symphony is willing to have its staff and Board work in conjunction with the City employees and the Avalon Board to help work towards an operations plan that works toward having no deficit.

Other Considerations

The Grand Junction Symphony is interested in ensuring a proper renovation of the Avalon Theatre because of the importance that this theatre can have to Downtown Grand Junction, the entire City of Grand Junction, and Mesa County. This facility has the ability to have a significant impact on all of these entities, as well as the organizations that use the theatre, both in visibility or status of the community and in economic returns. Both of these are important factors to consider, especially during the current economic circumstances.

According to the business plan presented by AMS Planning & Research, after the third phase of renovations, approximately 70,000-75,000 people will walk through the doors annually. The possible impact of this number of people moving through downtown Grand Junction is dramatic to say the least. If each of these people spends an average of \$25 on their way to or from the Avalon in Downtown, that would mean a \$1.75 Million impact.

A state-of-the-art performance hall provides its home community with the prestige of being a community that has a stable, established cultural and entertainment sector. As employers in the Grand Valley look to recruit potential employees, as well as when companies look to expand or relocate their businesses into the area, the availability and quality of the cultural amenities almost always has an impact. The Grand Junction Symphony's First Vice-President, Roger Davidson, documented this point very articulately in his guest column in the September 5, 2010, edition of *The Daily Sentinel*. His article, "Revamped Avalon, with symphony, can be crown jewel of Main Street," Mr. Davidson detailed how the symphonies, and the performance halls that they occupy, in Sioux

Falls (SD), Nashville (TN), and Raleigh (NC) did exactly this to their home communities. Please see the Attachment 2 for a copy of Mr. Davidson's full column.

Conclusion

The Grand Junction Symphony is pleased to present this proposal to the Grand Junction Symphony Orchestra partnership forged with the City of Grand Junction, the Downtown Dev Avalon Project – Page 4 the GJSO creates the necessary group of organizations to make the Avalon Theatre the best multipurpose performing arts theatre in the region. This proposal meets the requirements of all three groups, thus creating the best possible use for the theatre over the next 50+ years. The Symphony is excited to work with both the City and DDA to make the Avalon Theatre the crown jewel of Main Street and Grand Junction.

ATTACHMENT 1

THIRD SECTOR INNOVATIONS

November 20, 2010

From: Illene Roggensack, Third Sector Innovations
Re: Avalon Fundraising Feasibility Study Report 2008

The following highlights from the report, which was based on interviews with 33 key community opinion leaders and major donors, are provided for clarification and consideration as the Grand Junction Symphony now proposes to raise ~\$7.5 million for first-phase improvements to the Avalon Theater:

- Those participating in the study noted that improvements to the Avalon Theatre are quite highly important (average 8.2 on 10-point scale). More than 40% stated that providing financial support to this effort is a high personal giving priority, with projected gifts ranging up to \$250,000+ per donor/family.
- Nearly one-half of respondents stated that it is “somewhat likely” that a campaign could raise \$18 million, the amount proposed (without project phasing) at the time of the 2008 study.
- The report stated: “It is unlikely that a local fundraising effort will net the desired results without significant and early support from the City of Grand Junction and/or Grand Junction Downtown Development Authority.” Having conducted all of these interviews myself, I will say that most participants felt strongly that local government and facility ownership should take a significant leadership role in providing financial resources to meet the capital needs of the Avalon. Therefore, the current DDA commitment/ challenge marks a significant step toward a successful campaign effort.
- The study projected total fundraising capacity at \$3.2-8.4 million, not including City/DDA funds. Even if the full projected contributions of \$1.5 million from The Daily Sentinel (change in ownership) and local/regional energy companies (reduced involvement in the community) are deducted from the total, the projected fundraising capacity is still at \$3.2-6.9 million plus City/DDA funds.

Additionally, several significant changes that have occurred since the study was conducted are of note:

- Construction costs have dropped significantly, and may benefit the project if it is pursued in a timely manner. Further, charitable foundations are receiving fewer requests for capital funds at this time, which indicates greater opportunity for Avalon Theatre receipt of support from these sources if pursued in the near future.
- When the study was conducted, the perception was strong that the Grand Junction Symphony board of directors and many of the organization’s supporters were uncommitted to the Avalon Theatre improvement project (several interviews confirmed this sentiment). Today, this same organization is grooming staff and volunteers to take the lead in a fundraising campaign (with leadership noted in the 2008 study as *the* key factor to fundraising success). Additionally, the least

favorable aspect of the 2008 proposed project was the movie-viewing auditorium, which has been removed from the current plans and thus speaks well to likely positive donor response.

- Due to the 2010 abandonment of a Cultural District effort, there will be less confusion among patrons of the arts as donors are asked to provide financial support for the Avalon project.

In all, it is my personal/professional belief that in any fundraising effort, the numerical projections – high or low – are not nearly as predictive of success as are the enthusiasm and commitment of the “right” people. Any success that will come to the Avalon Theatre capital campaign will be the direct result of community leaders/mobilizers determining that this **will** happen and then making it so.

Third Sector Innovations, Inc. 800.406.7274 970.241.1139 970.241.1338 fax
730 Bunting Avenue Grand Junction, CO 81501
thirdsec@earthlink.net www.thirdsectoronline.com

ATTACHMEN

COMMENTARY

The Daily Sentinel • Sunday, September 5, 2010 7B

Revamped Avalon, with symphony, can be crown jewel of Main Street

Physicist David Bohm, protégé of Albert Einstein, spoke of matter as frozen light and music as “pure implicate order.” The implicate order being the subtle quantum energy from which, according to Bohm, all experience springs.

Philosopher Susanne Langer proposed that language arose from singing, and that singing arose from spontaneous expressions of ecstasy and joy. And Plato said that if he could choose the music young people listen to and performed, he could determine the society they would bring about.

What better way to express the value of a symphony orchestra to our community than the comments above. Moving the Grand Junction Symphony Orchestra concerts from Grand Junction High School to the rejuvenated Avalon Theatre, as envisioned by Westlake, Reed and Leskosky, would add a new level of cultural development to Grand Junction and western Colorado.

Westlake, Reed and Leskosky is the consulting architectural firm, hired jointly by the Downtown Development Authority and the Grand Junction Symphony, to put together a cohesive plan to restore the Avalon Theatre into a first rate, multi-use performance venue.

Here's some evidence of the importance of symphonies to other communities.

Nancy Wood, executive director of the Noblesville Symphony Orchestra, recently wrote an article: “The Noblesville Symphony



ROGER DAVIDSON

Orchestra in 3 Movements.” The article is accessible at www.noblesville-symphony.org.

Noblesville, Ind., has an approximate population of 43,000, very similar to Grand Junction. An excerpt from Part 2 of Wood's article, “What a Symphony Brings to a Community,” quotes Boston Conservatory faculty member and director of the

music division, Karl Paulnack, at a welcoming address to new freshman and their parents:

“I have come to understand that music is not a part of ‘arts and entertainment’ as the newspaper section would have us believe. It's not a luxury, a lavish thing that we fund from leftovers of our budgets, not a plaything or an amusement or a pass time. Music is a basic need of human survival. Music is one of the ways we make sense of our lives, one of the ways in which we express feelings when we have no words, a way for us to understand things with our hearts when we cannot with our minds.”

In talking to Linda Clement, development director for the South Dakota Symphony Orchestra, located in Sioux Falls, S.D., I learned that two of the community's medical centers are major contributors to the symphony. The medical centers indicate that a strong arts development, including a symphony orchestra, is essential to attract top medical talent to the Sioux Falls region.

Sioux Falls recently completed an overhaul

of its performance hall. Since then, ticket sales have soared, additional performances had to be scheduled and the merchants in the vicinity have enjoyed increased revenue.

I have received copies of 10 letters written to the North Carolina Symphony, from business firms, expressing their appreciation and support. Here are some excerpts:

✓ “When businesses consider where to locate, cultural diversity and educational quality are at the top of the list. The Symphony is a key ingredient in both.” — Parker and Poe.

✓ “It should be firmly established in the eyes and ears of government support just what the Arts — particularly ‘classical music’ — bring to the education of a child: persistence in tackling problems, observational acuity, expressive clarity, relative capacity to question and to judge, ability to envision alternative possibilities ... Students who take four years of music in high school score 100 points better on the SAT, are four times more likely to be recognized for academic achievement, three times more likely to attend school. Music education does this.” — North Carolina State University.

✓ “The N.C. Symphony enriches communities across our state and is a strong business recruitment tool. When businesses are looking to relocate, one factor they consider is the strength of the arts community. Companies want to relocate to a place that will offer their employees a diverse plate of interesting and engaging cultural activities.” — Progress Energy.

When CVS Caremark was considering a

corporate headquarters move, one of the areas considered was Nashville, Tenn. The Nashville Symphony was actively involved in meeting with the company, explaining what Caremark employees could expect in the way of arts involvement. One of the key points for CVS Caremark in moving to the Nashville area was the Nashville Symphony and its new performance hall. As a result, CVS Caremark moved approximately 1,000 employees to the Nashville area, and contributed \$2 million to the symphony's “A Time For Greatness” campaign.

Alan D. Valentine, president and CEO of the Nashville Symphony, said: “There is much more to the story of economic development as it relates to the Symphony. We were instrumental in the relocation of Nissan North America as well as a number of others. Every time a corporate relocation client is in town, the Chamber of Commerce staff brings them to tour our facility, and if they are in town for the evening, they often attend one of our concerts.”

I am the former owner of a multi-city personnel service. I can attest to the importance of having a strong arts community when trying to relocate personnel from a large metro area to a smaller community.

I want to propose an affirmation or mantra for the reborn Avalon: “The new Avalon: Crown jewel at Seventh and Main.”

Let's add more “Grand” to Grand Junction.

Roger Davidson is first vice president of the Grand Junction Symphony board of directors.



Date: November 3, 2010
 Author: Jerod Timothy
 Title/ Phone Ext: 244-1565
 Proposed Schedule: 1st reading
October 4, 2010
 2nd Reading
 (if applicable): 11/29/2010

CITY COUNCIL AGENDA ITEM

Attach 11
Assessment for Alley Improvement District No. ST-10

Subject: Assessment for Alley Improvement District No. ST-10
File # (if applicable):
Presenters Name & Title: Tim Moore, Public Works and Planning Director

Executive Summary:

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

- East/West Alley from 11th to 12th, between Belford Avenue and North Avenue

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

Local improvement districts provide a service to citizens seeking to improve their neighborhood and enhance the look and appeal of the City as a whole.

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

Policy B: Construct streets in the City Center, Village Centers, and Neighborhood Centers to include enhanced pedestrian amenities.

Action Requested/Recommendation:

Hold a Public Hearing and Consider Final Passage and Final Publication of a Proposed Ordinance for Alley Improvement District ST-10.

Board or Committee Recommendation:

N/A

Background, Analysis and Options:

People's Ordinance No. 33 gives the City Council authority to create improvement districts and levy assessments when requested by a majority of the property owners to be assessed. These alleys were petitioned for reconstruction by more than 50% of the

property owners. Assessment rates for alleys are based on percentages of total assessable costs the City will contribute for three property uses: 85% per abutting foot for residential single-family uses, 75% per abutting foot for residential multi-family uses, and 50% per abutting foot for non-residential uses.

A summary of the process that follows submittal of the petition is provided below. Items preceded by a √ indicate steps already taken with this Improvement District and the item preceded by a ► indicates the step being taken with the current Council action.

1. √ City Council passes a Resolution declaring its intent to create an improvement district. The Resolution acknowledges receipt of the petition and gives notice of a public hearing.
2. √ Council conducts a public hearing and passes a Resolution creating the Improvement District.
3. √ Council awards the construction contract.
4. √ Construction.
5. √ After construction is complete, the project engineer prepares a Statement of Completion identifying all costs associated with the Improvement District.
6. √ Council passes a Resolution approving and accepting the improvements, gives notice of a public hearing concerning a proposed Assessing Ordinance, and conducts the first reading of the proposed Assessing Ordinance.
7. ► Council conducts a public hearing and second reading of the proposed Assessing Ordinance.
8. The property owners have 30 days from final publication to pay their assessment in full. Assessments not paid in full will be amortized over a ten-year period. Amortized assessments may be paid in full at anytime during the ten-year period.

The second reading and public hearing is scheduled for the November 15, 2010 Council meeting. The published assessable costs include a one-time charge of 6% for costs of collection and other incidentals. This fee will be deducted for assessments paid in full by December 20, 2010. Assessments not paid in full will be turned over to the Mesa County Treasurer for collection under a 10-year amortization schedule with simple interest at the rate of 8% accruing against the declining balance.

Financial Impact/Budget:

The total alley construction costs from 11th-12th, Belford to North are summarized below:

Construction Costs:

Assessed to Property Owners
Amount paid by City

\$28,850.81

\$34,960.79

Total Alley Construction

\$63,811.60

Legal issues:

N/A

Other issues:

N/A

Previously presented or discussed:

The First Reading of this proposed Assessing Ordinance was conducted at the October 4, 2010 City Council Meeting.

Attachments:

- 1) Summary Sheets
- 2) Maps
- 3) Assessing Ordinance

SUMMARY SHEET

PROPOSED ALLEY IMPROVEMENT DISTRICT 11TH STREET TO 12TH STREET BELFORD AVENUE TO NORTH AVENUE

OWNER	FOOTAGE	COST/FOOT	ASSESSMENT
Zancanelli Family Trust	50	35.96	\$1,798.00
Zancanelli Family Trust	50	35.96	\$1,798.00
** Bellio Grand Junction Holdings LLLP	50	35.96	\$1,798.00
** Bellio Grand Junction Holdings LLLP	50	35.96	\$1,798.00
** Bellio Grand Junction Holdings LLLP	112.5	35.96	\$4045.50
** Larry Barnett & Jeanne Lynette Allen	50	35.96	\$1,798.00
Lora E. Greer	50	10.79	\$539.50
David R. & Vicki L. Evarts	50	35.96	\$1,798.00
David & Vicki Evarts 1997 Trust	143.65	35.96	\$5,165.65
** Stanfield-Dwire Investments LLC	50	35.96	\$1,798.00
** Felix & Sarah Tornare	100	17.98	\$1,798.00
** The Bailey Company LLLP	<u>131.15</u>	35.96	<u>\$4,716.15</u>
ASSESSABLE FOOTAGE	TOTAL	887.3	\$28,850.81

Cost to Construct	\$ 63,811.60
Absolute Cost to Owners	<u>\$ 28,850.81</u>
Cost to City	\$ 34,960.79

Assessments may be paid in full upon completion of project or may be paid over a ten-year period, in which event, a one-time charge of 6% will be added to the principal balance to which simple interest will accrue at the rate of 8% per annum on the declining balance.

** Indicates owners in favor of improvements are 7/12 or 58% and 61% of the assessable footage.

ALLEY IMPROVEMENT DISTRICT 11TH STREET TO 12TH STREET BELFORD AVENUE TO NORTH AVENUE



ORDINANCE NO. ____

AN ORDINANCE APPROVING THE ASSESSABLE COST OF THE IMPROVEMENTS MADE IN AND FOR ALLEY IMPROVEMENT DISTRICT NO. ST-10 IN THE CITY OF GRAND JUNCTION, COLORADO, PURSUANT TO ORDINANCE NO. 178, ADOPTED AND APPROVED THE 11TH DAY OF JUNE, 1910, AS AMENDED; APPROVING THE APPORTIONMENT OF SAID COST TO EACH LOT OR TRACT OF LAND OR OTHER REAL ESTATE IN SAID DISTRICTS; ASSESSING THE SHARE OF SAID COST AGAINST EACH LOT OR TRACT OF LAND OR OTHER REAL ESTATE IN SAID DISTRICTS; APPROVING THE APPORTIONMENT OF SAID COST AND PRESCRIBING THE MANNER FOR THE COLLECTION AND PAYMENT OF SAID ASSESSMENT

WHEREAS, the City Council and the Municipal Officers of the City of Grand Junction, in the State of Colorado, have complied with all the provisions of law relating to certain improvements in Alley Improvement District No. ST-10 in the City of Grand Junction, pursuant to Ordinance No.178 of said City, adopted and approved June 11, 1910, as amended, being Chapter 28 of the Code of Ordinances of the City of Grand Junction, Colorado, and pursuant to the various resolutions, orders and proceedings taken under said Ordinance; and

WHEREAS, the City Council has heretofore caused to be published the Notice of Completion of said local improvements in said Alley Improvement District No. ST-10 and the apportionment of the cost thereof to all persons interested and to the owners of real estate which is described therein, said real estate comprising the district of land known as Alley Improvement District No. ST-10 in the City of Grand Junction, Colorado, which said Notice was caused to be published in The Daily Sentinel, the official newspaper of the City of Grand Junction (the first publication thereof appearing on October 6, 2010, and the last publication thereof appearing on October 8, 2010 and

WHEREAS, said Notice recited the share to be apportioned to and upon each lot or tract of land within said Districts assessable for said improvements, and recited that complaints or objections might be made in writing to the Council and filed with the Clerk within thirty (30) days from the first publication of said Notice, and that such complaints would be heard and determined by the Council at its first regular meeting after the said thirty (30) days and before the passage of any ordinance assessing the cost of said improvements; and

WHEREAS, no written complaints or objections have been made or filed with the City Clerk as set forth in said Notice; and

WHEREAS, the City Council has fully confirmed the statement prepared by the City Engineer and certified by the President of the Council showing the assessable cost of said improvements and the apportionment thereof heretofore made as contained in that certain Notice to property owners in Alley Improvement District No. ST-10 duly published in the Daily Sentinel, the official newspaper of the City, and has duly ordered that the cost of said improvements in said Alley Improvement District No.

ST-10 assessed and apportioned against all of the real estate in said District in the portions contained in the aforesaid Notice; and

WHEREAS, from the statement made and filed with the City Clerk by the City Engineer, it appears that the assessable cost of the said improvements is \$30,581.85; and

WHEREAS, from said statement it also appears the City Engineer has apportioned a share of the assessable cost to each lot or tract of land in said District in the following proportions and amounts, severally, to wit:

ALLEY 11TH TO 12TH STREET, BELFORD AVENUE TO NORTH AVENUE		
Tax Schedule No.	Legal Description	Assessment
2945-141-06-001	Lots 1 & 2, Block 1, City of Grand Junction	\$ 1,905.88
2945-141-06-002	Lots 3 & 4, Block 1, City of Grand Junction	\$ 1,905.88
2945-141-06-003	Lots 5 & 6, Block 1, City of Grand Junction	\$ 1,905.88
2945-141-06-004	Lots 7 & 8, Block 1, City of Grand Junction	\$ 1,905.88
2945-141-06-011	Lots 27 & 28, Block 1, City of Grand Junction	\$ 1,905.88
2945-141-06-012	Lots 25 & 26, Block 1, City of Grand Junction	\$ 571.87
2945-141-06-013	Lots 23 & 24, Block 1, City of Grand Junction	\$ 1,905.88
2945-141-06-022	Lots 18 through 22, inclusive, Block 1, City of Grand Junction, except the East 10 for right of way per Book 1100, Page 331	\$ 5,475.59
2945-141-06-023	Lots 29 & 30, Block 1, City of Grand Junction	\$ 1,905.88
2945-141-06-024	Lots 31 through 34, inclusive, Block 1, City of Grand Junction	\$ 1,905.88
2945-141-06-025	Lots 9 through 12, inclusive, and the West 1/2 of Lot 13, Block 1, City of Grand Junction, except right of way as recorded in Book 1971, Page 926	\$ 4,288.23
2945-141-06-026	The East 1/2 of Lot 13 and all of Lots 14 through 17, Block 1, City of Grand Junction, except the east 10 feet for right of way as recorded in Book 1109, Page 237	\$ 4,999.12

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

Section 1. That the assessable cost and apportionment of the same, as hereinabove set forth, is hereby assessed against all the real estate in said District, and to and upon each lot or tract of land within said District, and against such persons in the portions and amounts which are severally hereinbefore set forth and described.

Section 2. That said assessments, together with all interests and penalties for default in payment thereof, and all cost of collecting the same, shall from the time of final publication of this Ordinance, constitute a perpetual lien against each lot of land herein described, on a parity with the tax lien for general, State, County, City and school taxes, and no sale of such property to enforce any general, State, County, City or school tax or other lien shall extinguish the perpetual lien of such assessment.

Section 3. That said assessment shall be due and payable within thirty (30) days after the final publication of this Ordinance without demand; provided that all such assessments may, at the election of the owner, be paid in installments with interest as hereinafter provided. Failure to pay the whole assessment within the said period of thirty days shall be conclusively considered and held an election on the part of all persons interested, whether under disability or otherwise, to pay in such installments. All persons so electing to pay in installments shall be conclusively considered and held as consenting to said improvements, and such election shall be conclusively considered and held as a waiver of any and all rights to question the power and jurisdiction of the City to construct the improvements, the quality of the work and the regularity or sufficiency of the proceedings, or the validity or correctness of the assessment.

Section 4. That in case of such election to pay in installments, the assessments shall be payable in ten (10) equal annual installments of the principal. The first of said installments of principal shall be payable at the time the next installment of general taxes, by the laws of the State of Colorado, is payable, and each annual installment shall be paid on or before the same date each year thereafter, along with simple interest which has accrued at the rate of 8 percent per annum on the unpaid principal, payable annually.

Section 5. That the failure to pay any installments, whether of principal or interest, as herein provided, when due, shall cause the whole unpaid principal to become due and payable immediately and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate of 8 percent per annum until the day of sale, as by law provided; but at any time prior to the date of sale, the owner may pay the amount of such delinquent installment or installments, with interest at 8 percent per annum as aforesaid, and all penalties accrued, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered. The owner of any piece of real estate not in default as to any installments may at any time pay the whole of the unpaid principal with interest accrued.

Section 6. That payment may be made to the City Finance Director at any time within thirty days after the final publication of this Ordinance, and an allowance of the six percent added for cost of collection and other incidentals shall be made on all payments made during said period of thirty days.

Section 7. That the monies remaining in the hands of the City Finance Director as the result of the operation and payments under Alley Improvement District No. ST-10 shall be retained by the Finance Director and shall be used thereafter for the purpose of further funding of past or subsequent improvement districts which may be or may become in default.

Section 8. That all provisions of Ordinance No. 178 of the City of Grand Junction, as amended, being Chapter 28 of the Code of Ordinances of the City of Grand Junction, Colorado, shall govern and be taken to be a part of this Ordinance with respect to the creation of said Alley Improvement District No. ST-10, the construction of the improvements therein, the apportionment and assessment of the cost thereof and the collection of such assessments.

Section 9. That this Ordinance, after its introduction and first reading shall be published once in full in the Daily Sentinel, the official newspaper of the City, at least ten days before its final passage, and after its final passage, it shall be numbered and recorded in the City ordinance record, and a certificate of such adoption and publication shall be authenticated by the certificate of the publisher and the signature of the President of the Council and the City Clerk, and shall be in full force and effect on and after the date of such final publication, except as otherwise provided by the Charter of the City of Grand Junction.

Introduced on first reading this 4th day of October, 2010.

Passed and Adopted on the _____ day of _____, 2010.

Attest:

City Clerk

President of the Council



Date: November 9, 2010
 Author: Greg Moberg
 Title/ Phone Ext: Planning Supervisor, Ext. 4023
 Proposed Schedule:
 1st Reading: November 17, 2010
 2nd Reading: November 29, 2010

CITY COUNCIL AGENDA ITEM

**Attach 12
 Amendment to the 2010 Zoning and Development Code**

Subject: Amendment to the 2010 Zoning and Development Code, Codified as Title 21 of the Grand Junction Municipal Code.
File # : RZN-2010-260
Presenters Name & Title: Greg Moberg, Planning Supervisor

Executive Summary:

A proposed amendment to the Grand Junction Municipal Code to allow Two Family Dwellings (duplexes), upon approval of a Conditional Use Permit, in the B-1 (Neighborhood Business) zone district in anticipation of future residential development.

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

The proposed amendment furthers the following goals and policies of the Comprehensive Plan:

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

Policy 3B. Create opportunities to reduce the amount of trips generated for shopping and commuting and decrease vehicle miles traveled thus increasing air quality.

Goal 5: To provide a broader mix of housing types in the community to meet the needs of a variety of incomes, family types and life stages.

Policy 5C: Increasing the capacity of housing developers to meet housing demand.

Goal 7: New development adjacent to existing development (of a different density/unit type/land use type) should transition itself by incorporating appropriate buffering.

Policy: 7A. In making land use and development decisions, the City and County will balance the needs of the community.

Action Requested/Recommendation: Hold a Public Hearing and Consider Final Passage and Final Publication of Proposed Ordinance.

Board or Committee Recommendation:

N/A.

Background, Analysis and Options:

Pursuant to Section 21.02.140(c)(3) of the Grand Junction Municipal Code (GJMC), an application for a text amendment to the Zoning and Development Code shall address in writing the reasons for the proposed amendment.

On April 5, 2010 the Grand Junction City Council adopted the updated 2010 Zoning and Development Code, codified as Title 21 of the GJMC, to implement the Comprehensive Plan. The update included changes to the Use Table (Section 21.04.010). Under the new Code, many uses that had previously required a Conditional Use Permit (CUP) were made uses by right in certain zone districts. Also, uses that could possibly be considered a hindrance in implementing the Comprehensive Plan were eliminated from certain zone districts.

Under the former Code, a *Two Family Dwelling* was a use that was allowed in the B-1 zone district with a CUP. In the updated Code, single family detached dwellings are allowed with a CUP in the B-1 zone district. The single family residential use was considered consistent with the commercial designation of the Comprehensive Plan because a structure housing such a use could be easily converted to commercial with few or no alterations and minor impacts to surrounding property owners. Multifamily residential remained a use by right in the B-1 zone. The multifamily use was considered to be consistent with the Comprehensive Plan. Two family dwellings were eliminated, however, as that use was considered inconsistent.

Recently the City has been in contact with a potential developer who proposes to develop two family dwellings in a B-1 zone district in a Neighborhood Center in the City. Staff believes that two family dwellings can serve as a buffer or transition between potential commercial development in the B-1 zone district and adjacent single family residential neighborhoods. In addition, allowing two family dwellings in a B-1 zone district will in fact serve the goals and policies of the Comprehensive Plan as described above.

Therefore it is requested that City Council approve an ordinance which would amend the Use Table to allow *Two Family Dwellings*, with approval of a Conditional Use Permit, in the B-1 zone district.

FINDINGS OF FACT/CONCLUSIONS:

Upon review of RZN-2010-260, Title 21 Amendment, the following findings of fact and conclusions has been determined:

1. The requested amendment is consistent with the goals and policies of the Comprehensive Plan as noted in this report;
2. The reasons for the requested amendment have been provided in writing and are sound; and
3. The Code should be amended in accordance with the proposed ordinance.

Financial Impact/Budget:

N/A

Legal and other issues:

Planning and Legal staff will be available to discuss the proposed Ordinance.

Previously presented or discussed:

N/A

Attachments:

Ordinance

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO.

AN ORDINANCE AMENDING SECTION 21.04.010 USE TABLE, TO ALLOW TWO FAMILY DWELLINGS, WITH APPROVAL OF A CONDITIONAL USE PERMIT, IN THE B-1 ZONE DISTRICT

Recitals:

After public notice and public hearing as required by the Charter and Ordinances of the City, the City Council of the City of Grand Junction approved the proposed amendment to the 2010 Zoning and Development Code because the proposed amendment will implement the vision, goals and policies of the Comprehensive Plan and is in the best interest of the City and its inhabitants.

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

Section 21.04.010 is amended to revise the following table:

USE CATEGORY	PRINCIPAL USE	R-R	R-E	R-1	R-2	R-4	R-5	R-8	R-12	R-16	R-24	R-O	B-1	B-2	C-1	C-2	CSR	M-U	BP	I-O	I-1	I-2	MX-	Std.	
RESIDENTIAL																									
Household Living – residential occupancy of a dwelling unit by a “household”	Business Residence											A	A	A	A	A	A	A	A	A	A			See GJMC 21.03.090	<u>21.04.030(i)</u>
	Rooming/Boarding House							A	A	A	A	A	A	A											
	Two Family Dwelling				A	A	A	A	A			A	C												
	Single-Family Detached	A	A	A	A	A	A	A				A	C	C			A								<u>21.04.030(m)</u>
	Multifamily						A	A	A	A	A	A	A	A	A				A	A					<u>21.04.030(n)</u>
	Accessory Dwelling Unit	A	A	A	A	A	A	A	A				A		A										<u>21.04.040(f)</u>

All other provisions of Section 21.04.010 shall remain in full force and effect.

INTRODUCED on first reading the 17th day of November, 2010 and ordered published.

PASSED and ADOPTED on second reading the _____ day of _____, 2010 and ordered published.

ATTEST:

President of the City Council

City Clerk