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**CITY COUNCIL AGENDA
CITY HALL AUDITORIUM, 250 NORTH 5TH STREET
MONDAY, JANUARY 31, 2011, 7:00 P.M.**

Call to Order

Pledge of Allegiance
Moment of Silence

Appointments

To the Planning Commission/Board of Appeals

Certificates of Appointments

To the Visitor and Convention Bureau Board of Directors

Council Comments

Citizen Comments

***** CONSENT CALENDAR ***®**

1. **Minutes of Previous Meetings**

[Attach 1](#)

Action: Approve the Minutes of the January 19, 2011 Regular Meeting and the Minutes of the January 20, 2011 Special Meeting

2. **Setting a Hearing on Zoning the Housing Authority Annexation, Located at 2910 Bunting Avenue** [File # ANX-2010-364]

[Attach 2](#)

** Indicates Changed Item

*** Indicates New Item

® Requires Roll Call Vote

A request to amend the Comprehensive Plan – Future Land Use Map to Village Center – Mixed Use and to zone the 1.52 acre Housing Authority Annexation, less 0.18 acres of public right-of-way, located at 2910 Bunting Avenue, to an R-24 (Residential 24+ du/ac) zone district.

Proposed Ordinance Amending the Comprehensive Plan from Residential Medium High (8 -16 du/ac) to Village Center – Mixed Use and Zoning the Housing Authority Annexation to R-24 (Residential 24+ du/ac), Located at 2910 Bunting Avenue

Action: Introduction of a Proposed Ordinance and Set a Hearing for February 14, 2011

Staff presentation: Brian Rusche, Senior Planner

3. **Setting a Hearing on the Right-of-Way Vacations of S. 6th Street Between Pitkin and Ute Avenues and Adjacent/Proximate Alleys for the 911 Police-Fire Facilities** [File # VAC-2010-332] [Attach 3](#)

A request to vacate alley rights-of-way within Block 138 and Block 139 of the City of Grand Junction, along with S. 6th Street between Ute and Pitkin Avenues. These rights-of-way are no longer needed for access and are requested to be vacated to permit construction of a new police station and associated public safety facilities.

Proposed Ordinance Vacating Alley Rights-of-Way Located in Block 138 and Block 139 of the City of Grand Junction and that Portion of South 6th Street Between Ute and Pitkin Avenues

Action: Introduction of a Proposed Ordinance and Set a Hearing for February 14, 2011

Staff presentation: Brian Rusche, Senior Planner

4. **Downtown Development Authority Tax Increment Financing Bond Election on April 5, 2011** [Attach 4](#)

In order for additional bonds to be issued under the Downtown Development Authority (DDA) tax increment financing (TIF), a question must be presented to the qualified electors of the DDA for approval. The DDA TIF election will be conducted by mail ballot by Mesa County Elections under the intergovernmental agreement authorized on December 13, 2010. The election is scheduled for April 5, 2011.

Additionally, as a property owner in the TIF District, the City of Grand Junction may appoint a designated voter to cast a vote in the election.

Resolution No. 06-11—A Resolution of the Council of the City of Grand Junction Approving the Downtown Development Authority's Call for an Election to be Held for the Purpose of Submitting a Proposed Ballot Measure to the Qualified Electors of the Downtown Development Authority District, Setting the Ballot Title, Authorizing a Mail Ballot Election and Approving a Mail Ballot Plan

Resolution No. 07-11—A Resolution Appointing a Designated Voter for the City of Grand Junction to Cast a Vote in the Special Election Scheduled April 5, 2011 Regarding Tax Increment Financing Debt

®Action: Adopt Resolution No. 06-11 and Resolution No. 07-11

Staff presentation: Heidi Ham, DDA Executive Director
John Shaver, City Attorney
Stephanie Tuin, City Clerk

5. **Election Notice for the Downtown Development Authority Special Election April 5, 2011** [Attach 5](#)

Both the Charter and the Municipal Election Code have specific content and publication requirements for the election notice. The proposed notice contained within the resolution being presented meets those requirements.

Resolution No. 08-11—A Resolution Setting Forth the Notice of Election for the Downtown Development Authority Special Election to be Held on April 5, 2011 in the City of Grand Junction

®Action: Adopt Resolution No. 08-11

Staff presentation: Stephanie Tuin, City Clerk

6. **Election Notice for the Regular Election April 5, 2011** [Attach 6](#)

Both the Charter and the Municipal Election Code have specific content and publication requirements for the election notice. The proposed notice contained within the resolution being presented meets those requirements.

Resolution No. 09-11—A Resolution Setting Forth the Notice of Election for the Regular Municipal Election to be Held on April 5, 2011 in the City of Grand Junction

®Action: *Adopt Resolution No. 09-11*

Staff presentation: Stephanie Tuin, City Clerk

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

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

7. **Public Hearing—Amending the Optional Premises Ordinance for the Tiara Rado Golf Course** [Attach 7](#)

In 1999, the City Council adopted Ordinance No. 3112 which allowed for alcohol service on the Tiara Rado Golf Course. The ordinance was specific to the current concessionaire under contract, Pinon Grill, Inc. This ordinance will amend Ordinance No. 3112 and provide the authorization to the concessionaire as designated by the City Council.

Ordinance No. 4452—An Ordinance Amending Ordinance No. 3112 Which Provided Standards for an Optional Premises License for the Designated Concessionaire at Tiara Rado Golf Course

®Action: *Hold a Public Hearing and Consider Final Passage and Final Publication in Pamphlet Form of Ordinance No. 4452*

Staff presentation: John Shaver, City Attorney

8. **Public Hearing—Granting a Franchise Agreement to Public Service Company of Colorado d/b/a Xcel Energy and Grand Valley Rural Power Lines, Inc. and Setting a Ballot Title for the April 5, 2011 Election** [Attach 8](#)

The current franchise agreements with Xcel Energy (Public Service Company of Colorado) and Grand Valley Rural Power Lines, Inc. (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.

People's Ordinance No. 37—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

Resolution No. 10-11—A Resolution Setting a Ballot Title and Submitting to the Electorate on April 5, 2011 a Measure Regarding Granting a Franchise by the City of Grand Junction to Public Service Company of Colorado and Grand Valley Rural Power Lines, Inc.

®Action: Hold a Public Hearing and Consider Final Passage and Final Publication in Pamphlet Form of People's Ordinance No. 37 and Adopt Resolution No. 10-11

Staff presentation: John Shaver, City Attorney

9. **Non-Scheduled Citizens & Visitors**
10. **Other Business**
11. **Adjournment**

**Attach 1
Minutes of Previous Meetings**

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

January 19, 2011

The City Council of the City of Grand Junction convened into regular session on the 19th day of January 2011 at 7:00 p.m. in the City Auditorium. Those present were Councilmembers Bonnie Beckstein, Bruce Hill, Tom Kenyon, Gregg Palmer, Bill Pitts, Sam Susuras, and Council President Teresa Coons. Also present were City Manager Laurie Kadrich, City Attorney John Shaver, and City Clerk Stephanie Tuin.

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

Appointments

Councilmember Pitts moved to re-appoint John Williams and appoint Eric Feely and Ron Beach for three year terms expiring December 2013 and appoint Renae Phillips for a one year term expiring December 2011, all to the Visitor and Convention Bureau Board of Directors. Councilmember Palmer seconded the motion. Motion carried by roll call vote.

Presentations

Dr. Gisella Flanigan, Chairperson of the Arts and Culture Commission, presented the Annual State of the Arts Report. She thanked the City Council for their support and that support has resulted in a positive impact on the community. She listed all the various projects including exhibits, art placement in parks and at schools, the Champion of the Arts Awards, the Grand Valley Arts Forum (65 attended), published the annual Artist Source Book, their website has over 310 local artists listed and the Arts Commission has distributed grants to local art and culture events and projects. They estimate 1.5 million people are reached by the various programs and events.

Council President Coons thanked Dr. Flanigan for her report and for the work of the Commission.

Council Comments

Council President Coons noted two events she attended. First, the Martin Luther King, Jr. event held at the new ballroom at Mesa State College which included a dance performance and a church choir performing. Today she gave welcoming remarks for

the joint meeting of the "Fruit Growers" and the Colorado Association of Winemakers at Two Rivers, who are here for a three day conference.

Citizen Comments

Scott Lewandowski, P.O. Box 541, Palisade, Colorado, addressed the City Council regarding police coverage. He read a statement into the record regarding police response to a hit and run that happened to him. His car had already been hooked up to the tow truck before the Police was realized that he was the victim. He was told by the Police Department this type of crime has a low solvability rate. It's been three weeks and he has heard the same story. He found out it was filed wrong and put in limbo for awhile. He then spoke to two other officers and they reiterated that the case is not solvable and there will be no follow-up, even though there was evidence left behind, including a bank statement. He was disappointed and frustrated with the service of the Police Department.

Council President Coons thanked Mr. Lewandowski and said someone will get back with him.

City Manager's Report

City Manager Laurie Kadrach presented her report. The first item relates to Two Rivers Convention Center concessions. Her direction to them is that they are not to bid on any concession contracts. Two Rivers will be the default if the City cannot find a contractor for concessions. She is working on a policy so the direction is clear and also put together a list of events so that the private contractors will know what events they can bid on.

Regarding Open Records charges, there appears to be different research fees charged throughout the City in various departments. She noted that some comments she has heard is that the paperwork has already been done so why are they being charged? However, the majority of the requests that come through the City Clerk's Office come from out-of-community people for the various solicitations. She is working on a process to make things consistent.

Councilmember Palmer asked about emails. City Manager Kadrach said the same will be applied to emails through the archive system. She noted that many times there are email discussion threads and the cost adds up. By 2015 all records will be electronic which will make searches quicker and easier.

The Compressed Natural Gas Project is continuing to move forward. All the equipment is on site and the concrete pad is in place. They are hoping for a February 12, 2011 completion date. Encana is forwarding their check to cover their part. The Purchasing Division is soliciting private contractors to run the fueling station.

On the Public Safety Project, there has been a lot of progress. Concept design is almost complete for the fire station renovations. Next week there will be more discussion on the public safety facility. By March she will have a picture friendly presentation. The site work will begin soon and the infrastructure is being bid out. The groundbreaking is planned for April 4th.

Regarding sales tax, specifically collections, there has been an increase but they still are not up to 2008 levels. The month to month collections are significantly higher than previous months. The pattern of collection has been similar as far as spending patterns that have been seen in the past.

Councilmember Susuras asked when the first time was that the City saw a decline. City Manager Kadrach said January 2009 was the first decline and that was 10%.

Councilmember Beckstein asked if the collections are one month behind the month paid. City Manager Kadrach said yes.

Lastly, she updated the City Council on the delinquent sales tax accounts. All accounts nine months overdue have been collected. There are a small number (46) that are six to eight months delinquent.

Councilmember Palmer said it is his desire not to have any fall into the nine month category.

CONSENT CALENDAR

Councilmember Hill read the Consent Calendar and then moved to approve the Consent Calendar Items #1 through #2. Councilmember Kenyon seconded the motion. Motion carried by roll call vote.

1. **Minutes of Previous Meeting**

Action: Approve the Minutes of the January 5, 2011 Regular Meeting

2. **Setting a Hearing on Amending the Optional Premises Ordinance for the Tiara Rado Golf Course**

In 1999, the City Council adopted Ordinance No. 3112 which allowed for alcohol service on the Tiara Rado Golf Course. The ordinance was specific to the current concessionaire under contract, Pinon Grill, Inc. This ordinance will amend Ordinance No. 3112 and provide the authorization to the concessionaire as designated by the City Council.

Proposed Ordinance Amending Ordinance No. 3112 Which Provided Standards for an Optional Premises License for the Designated Concessionaire at Tiara Rado Golf Course

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

ITEMS NEEDING INDIVIDUAL CONSIDERATION

7th Street Reverse Angle Parking

The Downtown Development Authority (DDA) and the City have received numerous requests for the DDA and the City to reconsider the reverse angle parking that was constructed in 2007. Council is requested to provide “direction” for parking along the 7th Street corridor.

Laurie Kadrach, City Manager, presented this item. She said there have been some concerns from the local business owners regarding the reverse angle parking along 7th Street. Also present are DDA Executive Director Heidi Ham and DDA Board Member Peggy Page. There was a lot of discussion last year on reverse angle parking when it was discussed for Colorado Avenue. Recently she received a call on the existing reverse angle parking. Since then more comments have been received. A survey was sent out to the City survey group which 71% said the reverse angle parking should be eliminated. There were a number of reasons, including that it is difficult and disruptive. However, there have been no accidents. The DDA thought it could be changed in conjunction with the Main Street reconstruction.

Councilmember Susuras asked where the parking spaces would be lost. Engineering Manager Trent Prall said the two spaces will be lost in front of the Cabaret due to their proximity to the roundabout. There is another spot similarly proximate to the roundabout that will be eliminated.

Councilmember Hill asked why reverse angle is so different from parallel parking. City Manager Kadrach said the expectation of the traffic behind the one parking is the confusion. Councilmember Hill noted he has never used it because they are always full so it is being used. Plus there are other parking options.

City Manager Kadrach said the majority of the survey group said they would never use it or they tried it and would never park there again. 23% said they were comfortable with it and would park there again.

Councilmember Kenyon said about a year ago he talked to Public Works and Planning Director Tim Moore about the striping along 7th Street because it had disappeared. It is impossible to see it when there is snow. Also it is hard to see if one’s mirror is not

adjusted. His experience has been that it does stop traffic and then drivers try to pull around. The parking is against the grain. He does hear a lot of comments at the Blue Moon about the reverse parking being difficult. He has not heard any positive comments. It is a real frustration. It's not a big deal but a good number of people don't like it.

Councilmember Palmer said at the time he argued that it looked better on paper than in practicality. He is not unhappy that they tried something new. Nor is he unhappy they are revisiting it. He thanked the DDA for bringing the issue forward and he favors the change.

Councilmember Beckstein, serves on the DDA, shared the discussion at the DDA board meeting. She agreed it was a great thought. However, the street just isn't wide enough. Initially there was to be a lane for the person parking to pull out of traffic. Since that couldn't be accommodated and since it is just in this one area, it is confusing to shoppers.

Councilmember Hill recalled the benefits that were brought forward when this was first discussed and said they made great sense. But when cars are waiting, there is pressure, so there is also a practicality part. He is concerned about the cost of reversing the angle parking and the cost of lost spaces but he has to rely on the expertise of the DDA board. If they say the parking is a priority, then he will support it.

Council President Coons agreed that one problem is the lack of space to pull out of the traffic lane. At first there were a lot of folks using the spaces incorrectly but that is not happening anymore. She agreed the spaces are being used but the Council does need to pay attention to the DDA's recommendation.

Councilmember Palmer moved to authorize the removal the reverse angle parking and replace it with conventional (pull-in) parking. Councilmember Beckstein seconded the motion.

Councilmember Susuras affirmed that the DDA will pay for the change. Councilmember Beckstein said that the project will be added to the Phase II Main Street Project and completed at the same time. Councilmember Beckstein asked if the repair work that has been identified would also be included.

City Manager Kadrich said the parking spaces will be done at the same time as the Main Street project. The repair work has been completed.

Motion carried by roll call vote.

Public Hearing – GJ Regional Airport Annexation and Zoning, Located at 2828 Walker Field Drive [File #ANX-2010-290]

Request to annex and zone 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. The zoning ordinance amends Ordinance No. 3679, the existing planned Development Ordinance, for the Airport to add the additional property for future expansion.

The public hearing opened at 7:55 p.m.

Lori V. Bowers, Senior Planner, presented this item. She described the site, the location, and the request. The property is 614.3 acres. She asked that the Staff Report and attachments be entered into the record. She then put the property maps up and described each. The request meets the criteria of the Grand Junction Municipal Code and the criteria for annexation. She noted the applicant is present, represented by Rex Tippetts and Amy Jordan.

Councilmember Hill noted one area (the most southerly and easterly parcel) is an active recreation area. Ms. Bowers deferred to Mr. Tippetts.

Mr. Tippetts, Airport Manager, said it is the access to an area used by recreationists and that will be fenced off this summer.

Councilmember Hill asked if that has been communicated with BLM and outside visitors that use that access. Mr. Tippetts said they built a new access near the racetrack. Councilmember Hill asked if the Airport will do some outreach because the fence will eliminate the staging current being used by recreationists.

Councilmember Kenyon said something must be done to warn the users; they use that area to set up and so this needs to be communicated. The image of the community depends on that communication. The word will spread, but surprises are not good.

Councilmember Palmer said as the City's representative on the GJ Airport Authority, the concerns are being heard and they will address them.

Councilmember Hill said he appreciates that but this is the first he has heard about it and he serves on the Parks and Recreation Advisory Board. There is much more community outreach that needs to be done.

Councilmember Pitts asked about the time limit. Mr. Tippetts said this annexation was brought to them by the City.

Councilmember Palmer asked about the timing on the fence project. Mr. Tippetts said the fence project will be starting in the next two weeks.

Councilmember Beckstein differentiated the two issues: the annexation (which is housekeeping) and the fencing issue.

Council President Coons agreed the property needs to be annexed and how the fencing issue is communicated is another matter.

Don Pettigrew, CGB Consulting, said he thought there was a dedicated County right-of-way there. No one was aware of such a right-of-way.

Ms. Bowers said the records did not show any dedicated right-of-way.

There were no other public comments.

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

Councilmember Hill said there is a use by right right-of-way which may apply here. He questioned why this has to be fenced right now. He would like to have a conversation about it. He would like to continue the matter until they can address these other issues.

Council President Coons asked if the two issues are related.

City Attorney Shaver said the Council can always make conditions on annexations and it is the City's discretion whether to add property to the City. Another option is to find the statutory criteria for annexation has been met and that it can be annexed. Another option is to continue the matter.

Council President Coons asked Mr. Tippetts when the construction for the fence in this area will commence. Mr. Tippetts said the project is scheduled for 215 days. The fence is to prevent encroachment from other types of users; they spend lots of resources keeping that area cleaned up.

Councilmember Pitts noted that the fencing could take place regardless of annexation. City Attorney Shaver said that is true, as long as they meet regulatory requirements.

a. Accepting Petition

Resolution No. 05-11—A Resolution Accepting a Petition for Annexation, Making Certain Findings, Determining that Property Known as the GJ Regional Airport Annexation, Located at 2828 Walker Field Drive is Eligible for Annexation

Action: Adopt Resolution No. 05-11

b. Annexation Ordinance

Ordinance No. 4450—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

c. Zoning Ordinance

Ordinance No. 4451—An Ordinance Amending Ordinance No. 3679 to Include Newly Annexed Lands and Zoning the GJ Regional Airport Annexation to PAD (Planned Airport Development), Located at 2828 Walker Field Drive

Councilmember Hill moved to continue the matter until they can have some further discussion. Councilmember Kenyon seconded the motion.

Councilmember Palmer stated the Planning Commission reviewed this and recommended approval, finding that the request meets all criteria. He would like to move ahead.

Motion failed by roll call vote of 4 to 3 with Councilmembers Palmer, Pitts, Susuras and Beckstein voting NO.

Councilmember Palmer moved to adopt Resolution No. 05-11, and Ordinance Nos. 4450 and 4451 and ordered them published in pamphlet form. Councilmember Susuras seconded the motion.

Motion carried by roll call vote.

Councilmember Hill moved to schedule a workshop with the Grand Junction Regional Airport Authority to talk about the fencing around the Airport. Councilmember Palmer seconded the motion. Motion carried by roll call vote.

Non-Scheduled Citizens & Visitors

There were none.

Other Business

There was none.

Adjournment

The meeting was adjourned at 8:20 p.m.

Stephanie Tuin, MMC
City Clerk

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

January 20, 2011

The City Council of the City of Grand Junction convened into special session on the 20th day of January 2011 at 6:01 p.m. in the City Auditorium. Those present were Councilmembers, Bruce Hill, Tom Kenyon, Gregg Palmer, Bill Pitts, Sam Susuras, and Council President Teresa Coons. Also present were City Manager Laurie Kadrach, City Attorney John Shaver, and City Clerk Stephanie Tuin. Absent was Councilmember Bonnie Beckstein.

Council President Coons called the meeting to order.

Councilmember Bonnie Beckstein entered the meeting at 6:03 p.m.

City Manager Laurie Kadrach addressed the City Council to provide a timeline and to clear up any misconceptions that are out in the community. The misconception is that the Request for Proposal (RFP) for concessions at Tiara Rado and Lincoln Park Golf Courses was issued when funds were short at Two Rivers. The current agreement with Pinon Grill expired in February 2009. It was agreed that the contract would be extended until February 2010. Another extension was granted in January, 2010 until February 11, 2011. There were questions as to the financial picture of the existing contractor at that time. Recently, there was a review of the financial statements and it appears there may be some discrepancies. Specifically, that the amount of money submitted by the contractor seems to be lower than what the sales tax returns indicated.

Councilmember Palmer asked if Pinon Grill is still running the establishment. City Manager Kadrach said they are but the process is in place to allow Two Rivers to take over on an interim basis until the RFP can be sent out. Councilmember Palmer asked about the letter advising the contractor of the conditions needing to be met for the extension to occur. City Manager Kadrach replied that both Parks and Recreation Director Schoeber and the contractor, Steve Hoefer, signed the letter.

Councilmember Hill asked if the purpose of the meeting is it to clarify or if direction is needed. He was the one that suggested Two Rivers be the default operator. He asked if the contract was extended, why can't Pinon Grill continue until the RFP process occurs?

Council President Coons stated the reason she asked for the meeting was because she wanted all to hear the same information. Regarding the size of the discrepancies, she asked if it could have been a simple bookkeeping error or what is the nature of the City Manager's concern? City Manager Kadrach said it is a significant concern so she felt

she should provide information to the Council that she is going forward with an audit. The current vendor may make statements that the actions are unfair and perhaps retaliatory. Council President Coons said she wanted the information to be provided to Council before any such statements were made in public.

Councilmember Pitts asked if this just came to light the day before. Council President Coons said she only became aware of this yesterday.

Parks and Recreation Director Rob Schoeber said they were missing five of the financial statements required and the information that was provided was just what was owed and the rent statement. It was only recently that the Financial Operations Manager was able to compare those statements with the sales tax returns and saw some discrepancies.

City Attorney Shaver advised the contract did specify the form that financial statements were to be provided and they were not provided in the form specified.

Councilmember Beckstein said there was a contract, the vendor did not perform, so why was this not addressed, and why were they allowed to bid on the latest proposal?

City Manager Kadrach said that was not, until now, a part of the bidding process. Bidders are not screened for these types of services. She recognized that should not be the case and has changed the policy so that if a contractor is not performing to the existing contract they will not be allowed to bid. Financial statements are required for the City to do business with any company.

Councilmember Hill asked if there is documentation on how the City dealt with the contractor being out of compliance. City Manager Kadrach said there were ongoing communications and they were documented.

Councilmember Palmer objected to making allegations in such a public forum. He asked if the allegations can be proved City Manager Kadrach said she met with the current contractor and gave him the information that afternoon and advised him that a full audit will be taking place.

Councilmember Palmer asked, if the allegations prove true, what will the next steps be, recovery of the lost dollars? Will there be criminal charges? City Attorney Shaver said the agreement was very specific and there were very specific standards. If there were underpayments, then there could be civil action to collect. He would caution any specifics as to the source of the information. The contract does allow for an audit and an audit will go forward. There are several remedies hypothetically, collection through a lawsuit, legal authority for collection of taxes, and criminal violation under the sales and use tax code.

Councilmember Palmer said his charge is to be a good steward of the public funds and he wants policies consistently applied.

Councilmember Pitts questioned the limits to their questioning. He can't make a decision unless he knows the answers.

City Attorney Shaver suggested Councilmember Pitts ask his questions and he will be responded to.

Councilmember Beckstein questioned whether it would even be a Council topic. She suggested the meeting is too soon. The City Manager will enforce as necessary whatever is discovered.

City Manager Kadrach asked if the City Council wants the City to just look at the current period of time or would they want the City Manager to go back the entire term of the contract. Presently they are only looking at the current contract term.

Councilmember Pitts noted that three extensions were given to a vendor who may not have been honest with the City and questioned why this has been continuing.

Councilmember Hill said his hope is that the discrepancies are remedied and there is no issue. He is conflicted.

Councilmember Susuras noted the audit is not finished so no one should be accused of anything. He thought at the last session that Pinon Grill would be allowed to continue until the new RFP was completed.

Councilmember Beckstein agreed and thought others felt that way too. She feels that someone jumped the gun. She would like to leave the topic of the discrepancies as that is the City Manager's responsibility. Her concern is that the bid process was partial to Two Rivers getting the contract. The appearance is that the numbers were doctored. City Manager Kadrach said no one doctored the numbers. The people that did the rating changed their own numbers. As can happen in a scoring situation, one changes their opinion after seeing another presentation. Councilmember Beckstein said it does not appear that way.

Council President Coons said this is exactly why she called this meeting, so the City Council and the community have the same information.

Parks and Recreation Director Rob Schoeber described how the RFP process was put out. As with all RFPs, City Staff conducts the review of the RFP. Councilmember Hill argued that it does not have to be that way. Mr. Schoeber said that Two Rivers bid came in on time but it was later in the process when that occurred, so the review committee was expanded to include private business people. He then detailed the

review process, the application, the interview, and the food tasting. Grading sheets were distributed to each committee member. Nothing was discussed about scoring among the committee members until all of the scores and comments were tallied. Two Rivers was not treated any differently.

Councilmember Kenyon asked exactly what services Pinon Grill was to provide. The understanding is that the operator has to do what he needs to do to make money. What will be allowed there in the future? City Manager Kadrach said the primary purpose is to provide food and beverage service to the golfers and events at the golf course. Special events were not to be in conflict with the golf. If there are events when there are still people golfing, there still needs to be accommodations to the golfers.

City Attorney Shaver offered to read that section of the contract.

Councilmember Hill said asked if the information that the facility will not be available to groups under Two Rivers is not true. City Manager Kadrach responded affirmatively.

City Attorney Shaver read from the contract, paragraph E, and others.

Councilmember Kenyon asked if the City owns the equipment. City Attorney Shaver said the City owns some and the operator owns some and ownership is very detailed in the contract.

City Manager Kadrach said the current provider has had difficulty providing concessions at both Tiara Rado and at Lincoln Park so it has been discussed to split the two facilities into different contracts.

Councilmember Susuras asked if Mr. Kennedy and Mr. Hoefler is still operating the restaurant. City Manager Kadrach said Mr. Kennedy is not but Mr. Hoefler wants to transition out of the business on February 4, 2011.

City Manager Kadrach noted this information on the finances has only been brought to light in the last week.

Councilmember Pitts asked for confirmation that the current operator wants to discontinue. City Manager Kadrach said she told him the contract expired February 11th and Mr. Hoefler said he wanted to be out by February 4th.

Councilmember Palmer said he appreciated the update and the Council will address any policy issues that come up.

Councilmember Pitts concurred.

Councilmember Palmer said his opinion is that the financials should just be reviewed for the term of this contract.

Council President Coons said the purpose of the meeting was to have clarification on information to them and out to the public and that was accomplished.

Other Business

Councilmember Hill asked about the workshop with the Airport since fence permits are issued administratively and there was no time element in the motion; he wanted some clarification.

Council President Coons agreed that it needs to be in a short time frame.

Councilmember Pitts asked if the fence permit would be issued for the entire fence. City Attorney Shaver said it is not uncommon to break a fence of that size into separate permits.

Adjournment

The meeting was adjourned at 7:03 p.m.

Stephanie Tuin, MMC
City Clerk



Date: January 12, 2011
 Author: Brian Rusche
 Title/ Phone Ext: Senior Planner / 4058
 Proposed Schedule: 1st
 Reading: Monday, January 31, 2011
 2nd Reading
 (if applicable): Monday, February 14, 2011

CITY COUNCIL AGENDA ITEM

**Attach 2
 Setting a Hearing on Zoning the Housing
 Authority Annexation**

Subject: Zoning the Housing Authority Annexation - Located at 2910 Bunting Avenue
File #: ANX-2010-364
Presenters Name & Title: Brian Rusche, Senior Planner

Executive Summary: A request to amend the Comprehensive Plan – Future Land Use Map to Village Center – Mixed Use and to zone the 1.52 acre Housing Authority Annexation, less 0.18 acres of public right-of-way, located at 2910 Bunting Avenue, to an R-24 (Residential 24+ du/ac) zone district.

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

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.

The proposed annexation meets Goal 5 by providing the opportunity to upgrade an existing apartment complex with Community Development Block Grants (CDBG) through the Grand Junction Housing Authority.

Action Requested/Recommendation: Introduce a Proposed Ordinance and Set a Public Hearing for February 14, 2011.

Board or Committee Recommendation: On January 11, 2011 the Planning Commission forwarded a recommendation of approval of both the Comprehensive Plan designation of Village Center – Mixed Use and the R-24 (Residential 24+ du/ac) zone district.

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

Financial Impact/Budget: The Housing Authority anticipates applying for CDBG funding to upgrade the apartment complex. These monies are a “pass-through” from the federal government through the local jurisdiction and on to grant recipients.

Legal issues: There are none.

Other issues: There are none.

Previously presented or discussed: Referral of the Petition for Annexation was presented on January 5, 2011.

Attachments:

1. Staff report/Background information
2. Annexation/Site Location Map / Aerial Photo Map
3. Comprehensive Plan Map / Blended Residential Map
4. Existing City and County Zoning Map
5. Ordinance

<i>STAFF REPORT / BACKGROUND INFORMATION</i>				
Location:		2910 Bunting Avenue		
Applicants:		Grand Junction Housing Authority		
Existing Land Use:		Multi-family Residential		
Proposed Land Use:		Multi-family Residential		
Surrounding Land Use:	North	Single-family and Two-family Residential		
	South	Vacant land and Multi-family Residential		
	East	Single-family Residential		
	West	Single-family Residential		
Existing Zoning:		County RMF-8 (Residential Multi-family 8 du/ac)		
Proposed Zoning:		R-24 (Residential 24+ du/ac)		
Surrounding Zoning:	North	County RMF-8 (Residential Multi-family 8 du/ac)		
	South	County RMF-8 (Residential Multi-family 8 du/ac)		
	East	County RMF-8 (Residential Multi-family 8 du/ac)		
	West	County RMF-8 (Residential Multi-family 8 du/ac)		
Future Land Use Designation:		Residential Medium High (8-16 du/ac) Adjacent to Village Center – Mixed Use		
Zoning within density range?		X	Yes – Adjacency rule would permit rezone	No

ANALYSIS:

1. Background:

The 1.52 acre Housing Authority Annexation consists of one (1) parcel located at 2910 Bunting Avenue. The Grand Junction Housing Authority (“Housing Authority”) purchased the existing 27 unit apartment complex in 2009 and have been upgrading the property, including redesigning the parking lot to increase the number of spaces. They have requested annexation into the City in order to apply for Community Development Block Grant (CDBG) funding through the City of Grand Junction for further upgrades.

Under the 1998 Persigo Agreement with Mesa County, the City shall zone newly annexed areas with a zone that is either identical to current County zoning or conforms to the Comprehensive Plan Future Land Use Map. The Comprehensive Plan designates the property as Residential Medium High (8-16 du/ac). The current County zoning is RMF-8 (Residential Multi-family 8 du/ac).

The existing density of the property is approximately 20 du/ac. The applicant is requesting an R-24 Zone in order to bring the zoning into conformance with the existing density.

2. Grand Junction Municipal Code – Chapter 21.02 – Administration and Procedures:

Section 21.02.160 of the Grand Junction Municipal Code (GJMC), states that the zoning of an annexation area shall be consistent with the adopted Comprehensive Plan and the criteria set forth. The Comprehensive Plan designates the property as Residential Medium High (8-16 du/ac), which is less than the existing density of 20 du/ac.

Pursuant to Section 21.02.130(d)(1)(v), the Director has the authority to process a rezone without a separate plan amendment if the property is adjacent to the land use designation that would support the requested zone district. This property abuts the Village Center – Mixed Use designation.

A plan amendment is proposed as part of this request in order to maintain consistency within the Plan. Section 21.02.130(c)(1) provides criteria for amending the Comprehensive Plan. These criteria are the same as those cited in Section 21.02.140, which applies to rezone requests, including a zone of annexation and are as follows:

- (1) Subsequent events have invalidated the original premises and findings; and/or

Response: The Grand Junction Housing Authority has purchased the existing apartment complex, which was built in 1982. In order to obtain funding for upgrades to the property through Community Development Block Grants (CDBG), the property must be located within the City of Grand Junction. Therefore, the Housing Authority has petitioned for annexation.

The Comprehensive Plan was intended to provide flexibility with land use designations. This is a property that could have been designated with different possible land uses and been consistent with the goals and policies of the Comprehensive Plan. Though there have not been any subsequent events to invalidate the original premises and findings, this is the situation anticipated where the flexibility was intended to be used.

- (2) The character and/or condition of the area has changed such that the amendment is consistent with the Plan; and/or

Response: The Grand Junction Housing Authority and the City have worked together for years to provide safe and affordable housing to people in the City of Grand Junction. Improvements to this property will further that goal. Appropriate, safe housing will continue to be provided with reasonable access to shopping, including the Walgreens at the corner of North Avenue and 29 Road, which is just a few blocks from the apartment complex. In addition, restaurants are nearby and new offices and storefronts are going in at Plaza on North Avenue at 28 ³/₄ Road.

(3) Public and community facilities are adequate to serve the type and scope of land use proposed; and/or

Response: Public facilities are currently serving the existing apartment complex.

(4) An inadequate supply of suitably designated land is available in the community, as defined by the presiding body, to accommodate the proposed land use; and/or

Response: The Village Center – Mixed Use Future Land Use designation in this area encompasses several blocks north and south of the intersection of 29 Road and North Avenue. However, much of the property is outside City jurisdiction and is zoned for commercial use. The residential portion of the mixed use area is not as established and is an inadequate supply. Adding this property to the Village Center - Mixed Use Future Land Use Designation with an R-24 zone will start the direction for higher density in the area.

(5) The community or area, as defined by the presiding body, will derive benefits from the proposed amendment.

Response: The Housing Authority is upgrading the existing apartment complex. There are other properties in the neighborhood that could be considered underdeveloped, even under the existing County zoning. By amending the Comprehensive Plan to include this property in the Village Center – Mixed Use designation and zoning the property to R-24, the existing density can remain and upgrades to the property can continue. Other properties may be candidates for reinvestment as a result of this action.

The North Avenue Corridor Plan adopted by City Council in December 2007 designates this general area along North Avenue to develop as a “Mixed Use area with residential over retail incorporated with the Governmental Functions and Public Plazas to create a gateway for the 29 Road intersection.” The additional housing which the proposed zoning allows for on this property will contribute to the use and need for such developments; specifically, services are available at the neighborhood level with access by bicyclists and pedestrians from the neighborhood with close by retail, commercial, and public activity areas.

Goal 5 of the Comprehensive Plan is 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. This goal can be met by providing the Housing Authority the appropriate

land use designation and zone district for this property to allow access to grant funding to facilitate further upgrades.

Alternatives:

The zone districts available for this property under Residential Medium High, without the Comprehensive Plan Amendment to Village Center – Mixed Use, are as follows:

- a. R-4
- b. R-5
- c. R-8
- d. R-12
- e. R-16
- f. R-O

In addition to the zoning that the petitioner has requested, the following zone districts would also be consistent with the Comprehensive Plan designation of Village Center – Mixed Use:

- a. R-8
- b. R-12
- c. R-16
- d. R-O
- e. B-1
- f. C-1
- g. MXG-3 or MXG-5
- h. MXR-3 or MXR-5
- i. MXS-3 or MXS-5

PLANNING COMMISSION RECOMMENDATION:

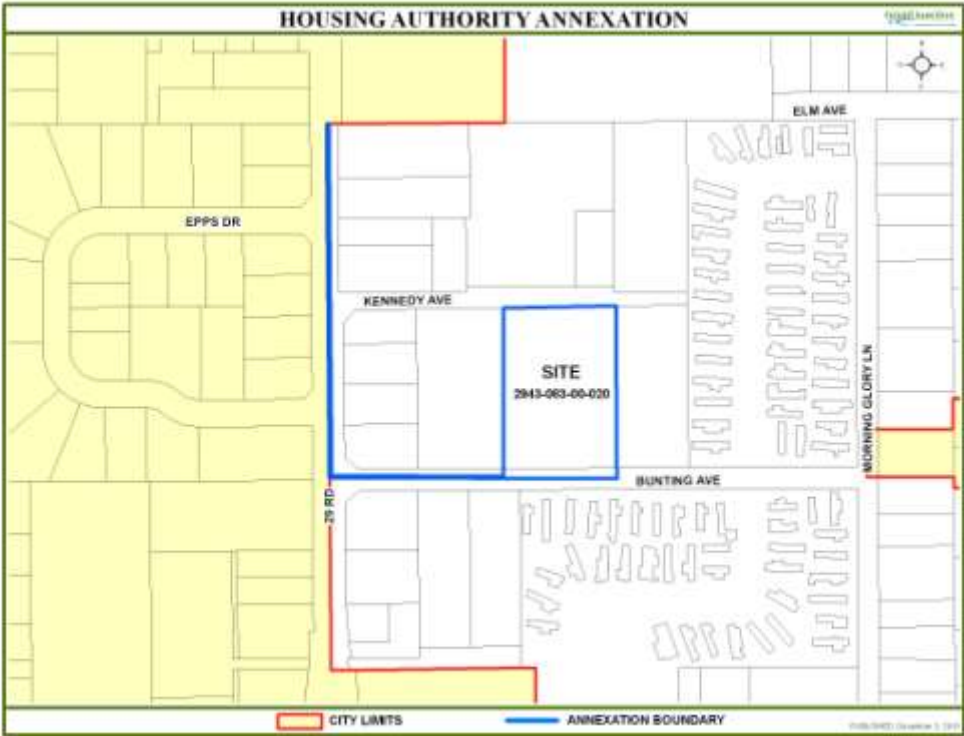
After reviewing the Housing Authority Annexation, ANX-2010-364, for an amendment to the Comprehensive Plan – Future Land Use Map and a Zone of Annexation, the Planning Commission made the following findings of fact and conclusions:

1. The proposed amendment to the Village Center – Mixed Use designation on the Future Land Use Map is consistent with the goals and policies of the Comprehensive Plan;
2. The requested R-24 Zone District is consistent with the goals and policies of the Comprehensive Plan and the Village Center – Mixed Use Future Land Use designation; and
3. The review criteria in Sections 21.02.130 and 21.02.140 of the Grand Junction Municipal Code have been met.

If the Council chooses to not approve the request and instead approves one of the alternative zone designations, specific alternative findings must be made as to why the Council is approving an alternative zone designation.

Annexation / Site Location Map

Figure 1



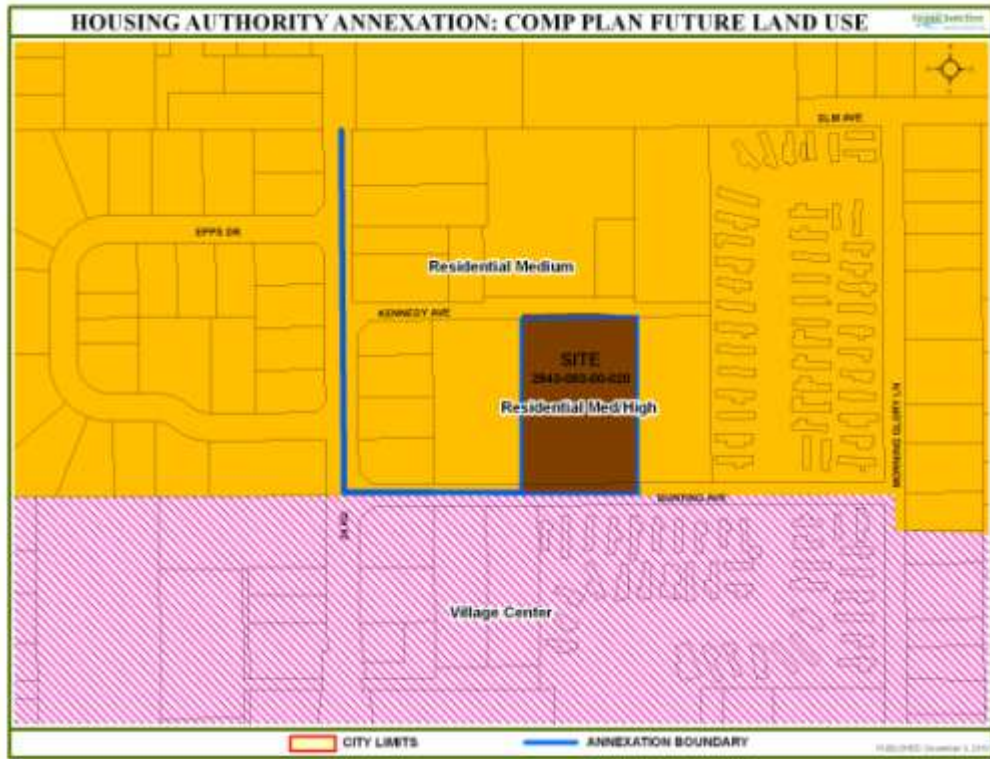
Aerial Photo Map

Figure 2



Comprehensive Plan Map

Figure 3



Blended Residential Map

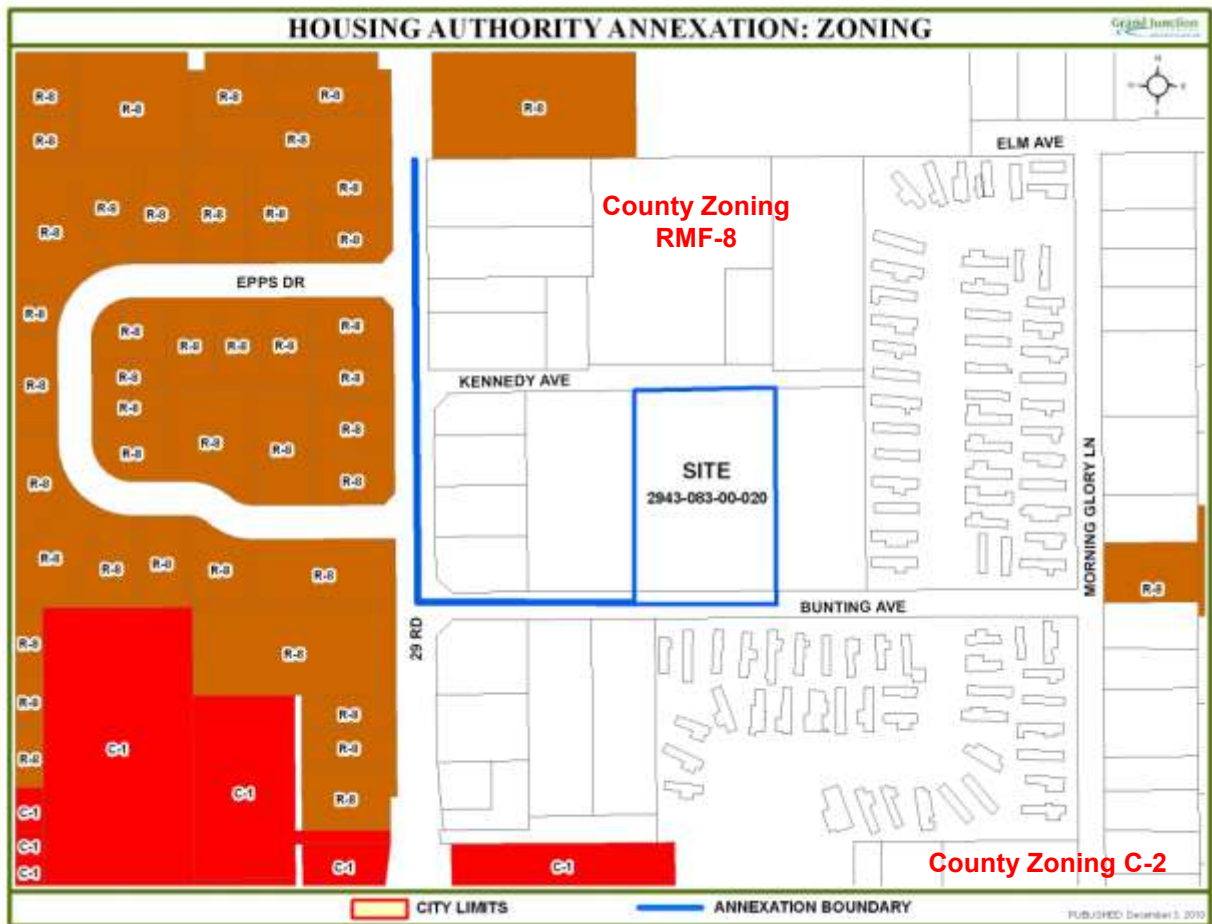
Figure 4



Residential Medium Density (4-16 du/ac)

Existing City and County Zoning Map

Figure 5



CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO.

**AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN
FROM RESIDENTIAL MEDIUM HIGH (8 -16 DU/AC)
TO VILLAGE CENTER – MIXED USE**

AND

**ZONING THE HOUSING AUTHORITY ANNEXATION
TO R-24 (RESIDENTIAL 24+ DU/AC)**

LOCATED AT 2910 BUNTING AVENUE

Recitals

After public notice and public hearing as required by the Grand Junction Zoning and Development Code, the Grand Junction Planning Commission recommended approval of changing the Comprehensive Plan designation from Residential Medium High (8 - 16 du/ac) to Village Center – Mixed Use, finding that the proposed amendment is consistent with the goals and policies of the Comprehensive Plan.

After public notice and public hearing as required by the Grand Junction Municipal Code, the Grand Junction Planning Commission recommended approval of zoning the Housing Authority Annexation to the R-24 (Residential 24+ du/ac) zone district finding that it conforms with the adjacent land use category of Village Center – Mixed Use as shown on the future land use map of the Comprehensive Plan and the Comprehensive Plan's goals and policies and is generally compatible with land uses located in the surrounding area. The zone district meets the criteria found in Sections 21.02.140 of the Grand Junction Municipal Code.

After public notice and public hearing, the Grand Junction City Council finds that the Comprehensive Plan designation of Village Center – Mixed Use is in conformance with the stated criteria in the Comprehensive Plan for an Amendment to the Land Use Map and the criteria in Title 21 Section 02.130 of the Grand Junction Municipal Code.

After public notice and public hearing before the Grand Junction City Council, City Council finds that the R-24 (Residential 24+ du/ac) zone district is in conformance with the stated criteria of Sections 21.02.140 of the Grand Junction Zoning and Development Code.

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

The following property shall be designated Village Center – Mixed Use on the Comprehensive Plan

AND shall be zoned R-24 (Residential 24+ du/ac):

HOUSING AUTHORITY ANNEXATION

A certain parcel of land lying in the Southwest Quarter of the Southwest Quarter (SW 1/4 SW 1/4) of Section 8, Township 1 South, 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 SW 1/4 SW 1/4 of said Section 8 and assuming the West line of the SW 1/4 SW 1/4 of said Section 8 bears N 00°03'58" W with all other bearings mentioned herein being relative thereto; thence, from said Point of Beginning, N 89°57'49" E along the North line of the SW 1/4 SW 1/4 of said Section 8, a distance of 4.00 feet; thence S 00°03'58" E along a line 4.00 feet East of and parallel with the West line of the SW 1/4 SW 1/4 of said Section 8, a distance of 655.25 feet; thence S 89°59'48" E, a distance of 326.98 feet; thence N 00°03'30" W, a distance of 310.73 feet to a point on the South line of Kennedy Avenue, per Book 1368, Page 467, Public Records of Mesa County, Colorado; thence N 89°58'58" E along the South line of said Kennedy Avenue, a distance of 198.00 feet; thence S 00°03'30" E, a distance of 314.80 feet; thence N 89°59'48" W along a line 20.00 feet South of and parallel with, the North line of Bunting Avenue, per Book 1368, Page 467, Public Records of Mesa County, Colorado, a distance of 528.98 feet to a point on the West line of the SW 1/4 SW 1/4 of said Section 8; thence N 00°03'58" W along the West line of the SW 1/4 SW 1/4 of said Section 8, also being the East line of the Central Fruitvale Annexation, per City of Grand Junction Ordinance No. 1133, a distance of 659.25 feet, more or less, to the Point of Beginning.

Containing 66,268 Square Feet or 1.52 Acres, more or less, as described.

Less public Right-of-Way

INTRODUCED on first reading the ____ day of ____, 2011 and ordered published in pamphlet form.

PASSED and **ADOPTED** on second reading the ____ day of ____, 2011 and ordered published in pamphlet form.

ATTEST:

President of the Council

City Clerk



Date: January 12, 2011
Author: Brian Rusche
Title/ Phone Ext: Senior Planner/4058
Proposed Schedule: 1st Reading, Monday, January 31, 2011
2nd Reading: Monday, February 14, 2011

CITY COUNCIL AGENDA ITEM

Attach 3 Setting a Hearing on the Right-of-Way Vacations of S. 6th Street Between Pitkin and Ute Avenues

Subject: Right-of-Way Vacations of S. 6 th Street - Between Pitkin and Ute Avenues and Adjacent/Proximate Alleys for the 911 Police-Fire Facilities
File #: VAC-2010-332
Presenters Name & Title: Brian Rusche, Senior Planner

Executive Summary:

A request to vacate alley rights-of-way within Block 138 and Block 139 of the City of Grand Junction, along with S. 6th Street between Ute and Pitkin Avenues. These rights-of-way are no longer needed for access and are requested to be vacated to permit construction of a new police station and associated public safety facilities.

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

The proposed vacation will allow the construction of public safety facilities, consistent with the following goals of 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.

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

Action Requested/Recommendation:

Introduce the Proposed Ordinance and Set a Hearing for Monday, February 14, 2011.

Board or Committee Recommendation:

At their January 11, 2011 meeting, the Planning Commission forwarded a recommendation of approval.

Background, Analysis and Options:

Please see the attached Staff Report.

Financial Impact/Budget:

N/A.

Legal issues:

N/A.

Other issues:

No other issues.

Previously presented or discussed:

Has not been presented or discussed previously.

Attachments:

Site Location Map / Aerial Photo Map
Comprehensive Plan / Existing City Zoning Map
Ordinance

BACKGROUND INFORMATION					
Location:		Block 138 and 139 – City of Grand Junction S. 6 th Street between Ute and Pitkin Avenues			
Applicants:		City of Grand Junction			
Existing Land Use:		Streets and alleys			
Proposed Land Use:		Police and associated public safety facilities			
Surrounding Land Use:	North	Bus Depot / Office buildings and parking			
	South	Commercial			
	East	Vacant (City owned land)			
	West	Whitman Park			
Existing Zoning:		B-2 (Downtown Business)			
Proposed Zoning:		No change			
Surrounding Zoning:	North	B-2 (Downtown Business)			
	South	C-1 (Light Commercial)			
	East	B-2 (Downtown Business)			
	West	CSR (Community Services and Recreation)			
Future Land Use Designation:		Downtown Mixed Use			
Zoning within density range?		X	Yes		No

ANALYSIS

1. Background:

Block 138 and 139 are part of the original town site of Grand Junction, platted in 1882.

Block 138 is the current site of the Grand Junction Police Department and Grand Junction Fire Station #1. Portions of two original alleys remain in this block, though they are used for parking and internal circulation for police and fire personnel.

All of Block 139 has been acquired by the City and cleared of their previous uses and structures in anticipation of redevelopment. A portion of the block is used for parking.

In order to provide a large enough property for the anticipated construction of a new Police Station, 911 Communications Center, and associated public safety facilities, the existing alley right-of-ways must be vacated. In addition, that portion of S. 6th Street between Ute and Pitkin Avenues is also requested to be vacated, in order to connect the existing and new facilities into one campus.

The Vacation of the right-of-way will allow the City to develop a contiguous, efficient, and secure site design for these public facilities.

2. Section 21.02.100 of the Grand Junction Municipal Code:

The purpose of Section 21.02.100 of the Grand Junction Municipal Codes (GJMC) is to permit the vacation of surplus rights-of-way and/or easements.

The vacation of the right-of-way shall conform to the following:

- a. The Comprehensive Plan, Grand Valley Circulation Plan, and other adopted plans and policies of the City.

The proposed vacation will allow the construction of public safety facilities, consistent with Goal 11 of the Comprehensive Plan. Goal 4 encourages the continued development of the downtown area.

The Grand Valley Circulation Plan designates 6th Street as a local street. The adjacent streets, from which access to the consolidated property will derive, are designated as Principal Arterial (Ute/Pitkin and 5th Street south of Ute) and Minor Arterial (7th Street north of Pitkin).

Granting the right-of-way vacation does not conflict with the Comprehensive Plan, Grand Valley Circulation Plan and/or any other adopted plans and policies of the City.

- b. No parcel shall be landlocked as a result of the vacation.

No parcel will be landlocked as a result of the vacation.

- c. Access to any parcel shall not be restricted to the point where access is unreasonable, economically prohibitive or reduces or devalues any property affected by the proposed vacation.

Access will not be restricted to any parcel. The existing parcel(s) will be combined in the future by plat. Internal circulation will be provided as part of the redevelopment.

- d. There shall be no adverse impacts on the health, safety, and/or welfare of the general community and the quality of public facilities and services provided to any parcel of land shall not be reduced (e.g. police/fire protection and utility services).

The vacation will not have adverse impact on the health, safety, and/or welfare of the community. The land that is currently alley right-of-way(s) will be consolidated with the adjacent parcels. Access to the consolidated

property will be available from Ute, Pitkin, and South 7th Street. The consolidation of property will allow several existing access points to be closed, providing more efficient circulation both within the site and on the adjacent roads.

South 6th Street currently functions as a connection between Ute and Pitkin Avenues, which are one-way roads, as well as access to the Police and Fire Station. It terminates in a cul-de-sac two blocks south of Pitkin. Access to the public safety facilities from Ute and Pitkin will be provided with the redevelopment. 5th Street and 7th Street will remain as two-way access points from Downtown to properties south of the Highway.

- e. The provision of adequate public facilities and services shall not be inhibited to any property as required in Chapter 21.06 of the Grand Junction Municipal Code.

Existing utilities within the proposed vacation will be relocated and/or reconstructed. Service will be maintained to the existing facilities during construction. Temporary easements will be created to allow for access to utilities until relocation and/or permanent easements are created.

- f. The proposal shall provide benefits to the City such as reduced maintenance requirements, improved traffic circulation, etc.

Vacation of these rights-of-way will benefit the public by allowing the project to be built in an efficient and cost effective manner.

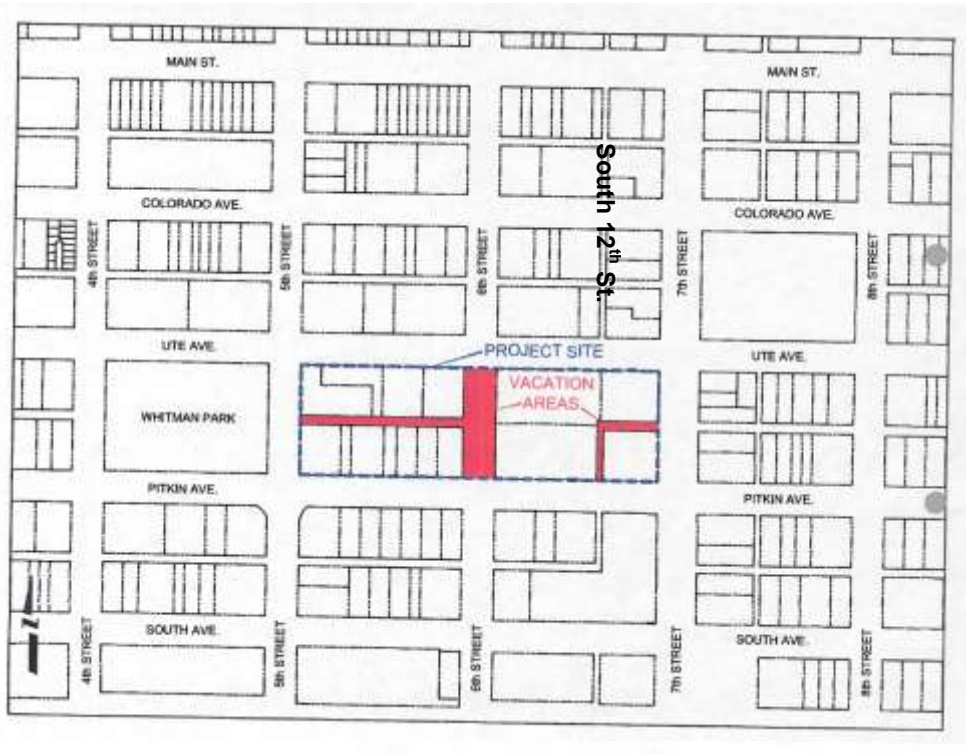
FINDINGS OF FACT/CONCLUSIONS AND CONDITIONS:

After reviewing the 911 Police-Fire Facilities Right-of-Way Vacation application, file number VAC-2010-332, for the vacation of public alleys within Block 138 and Block 139 and a portion of S. 6th Street right-of-way, I make the following findings of fact, conclusions and conditions:

1. The requested right-of-way vacation is consistent with the Comprehensive Plan.
2. The review criteria in Section 21.02.100 of the Grand Junction Municipal Code have all been met.

Site Location Map

Exhibit 1



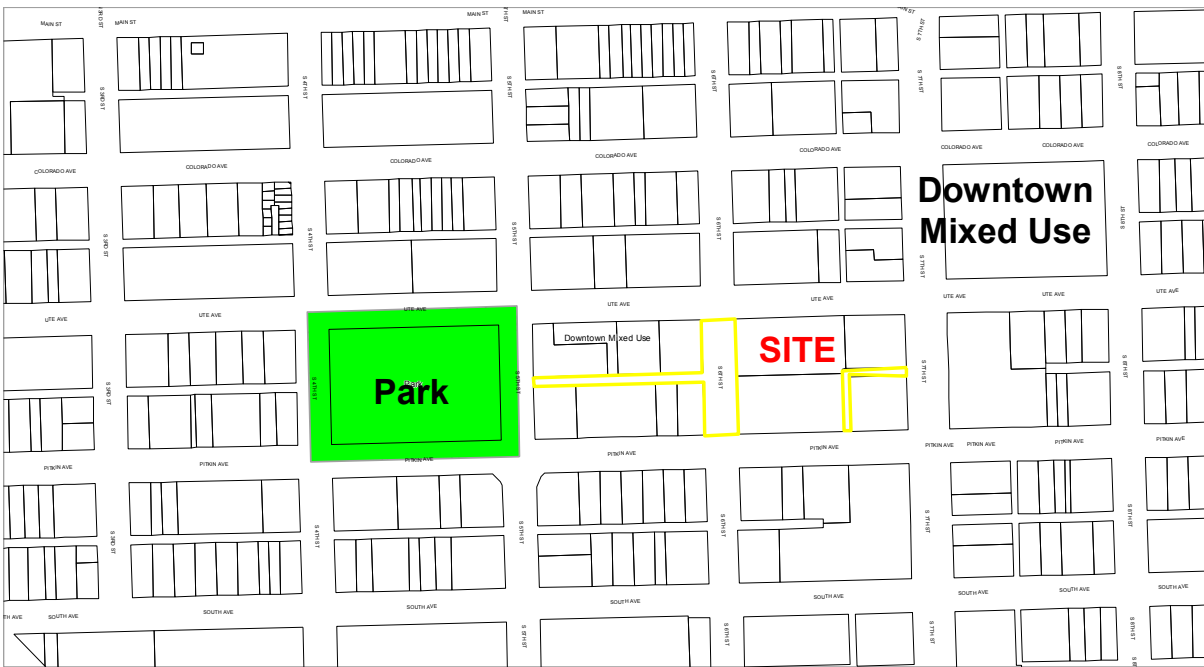
Aerial Photo Map

Exhibit 2



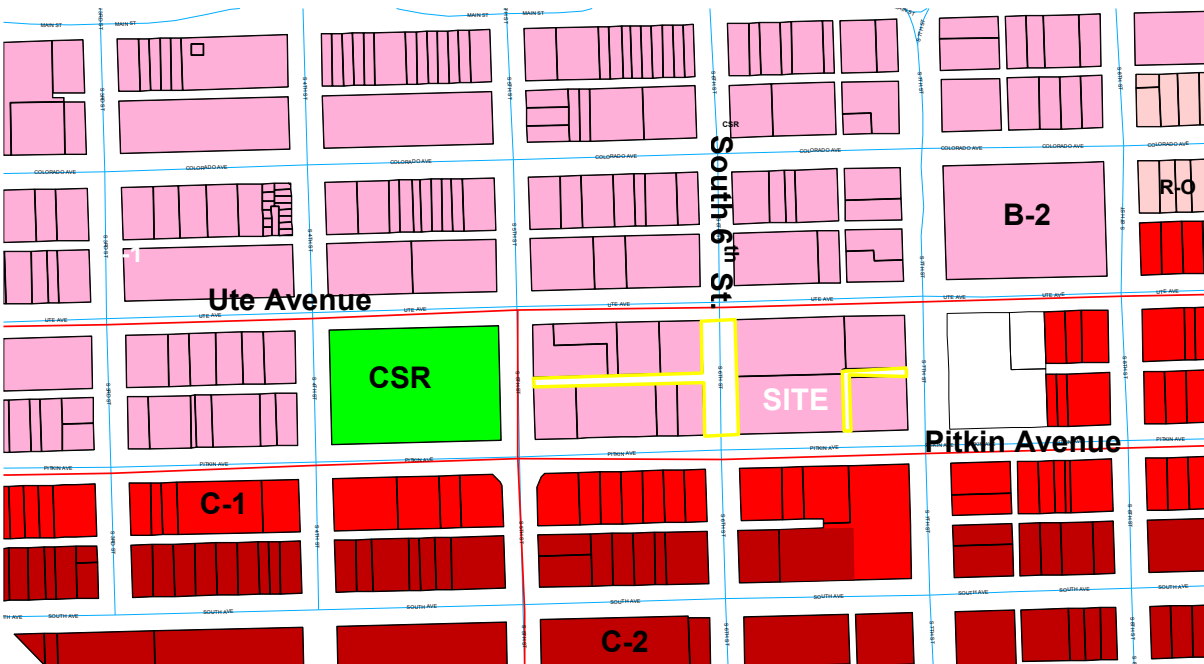
Comprehensive Plan Map

Exhibit 3



Existing City Zoning Map

Exhibit 4



CITY OF GRAND JUNCTION

ORDINANCE NO.

**AN ORDINANCE VACATING
ALLEY RIGHTS-OF-WAY LOCATED IN BLOCK 138 AND BLOCK 139
OF THE CITY OF GRAND JUNCTION
AND
THAT PORTION OF SOUTH 6TH STREET BETWEEN UTE AND PITKIN AVENUES**

RECITALS:

A vacation of dedicated rights-of-way has been requested by the adjoining property owners.

The City Council finds that the request is consistent with the Comprehensive Plan, the Grand Valley Circulation Plan and Section 21.02.100 of the Grand Junction Municipal Code.

The Planning Commission, having heard and considered the request, found the criteria of the Grand Junction Municipal Code to have been met, and recommends that the vacation be approved.

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

The following described dedicated right-of-way for is hereby vacated subject to the listed conditions:

1. Temporary Utility Easements are hereby reserved by the City of Grand Junction on, along, over, under, through and across the area of the right-of-ways to be vacated for the benefit of the public for use of City-approved public utilities as perpetual easements for the installation, operation, maintenance and repair of said utilities and appurtenances including, but not limited to, electric lines, cable TV lines, natural gas pipelines, sanitary sewer lines, storm sewers, waterlines, telephone lines, equivalent other public utility providers and appurtenant facilities.
2. Temporary Public Access Easements are hereby reserved by the City of Grand Junction on, along, over, under, though and across the areas of the right-of-ways to be vacated for installing, maintaining and repairing an access way for vehicular and pedestrian ingress and egress for the benefit of the public.
3. The easements are reserved as temporary easements as it is understood that the easements are needed for the utilities presently in the right-of-way and for access of the public. Once the utilities have been relocated into new easements or right-of-

ways, to the satisfaction of the City Manager or the City Manager's designee, the City Manager or the City Manager's designee may release all interests in the Temporary Utility Easements pursuant to Section 21.02.100(d)(3) of the Grand Junction Municipal Code. In accordance with the same section, the City Manager or the City Manager's designee may release any and/or all interest in the Temporary Public Access Easements included herein if it is determined that the access is no longer needed.

The subject right-of-way is shown on "Exhibit A" as part of this vacation description.

Dedicated right-of-way to be vacated:

BLOCK 138

A certain parcel of land lying in the Southwest Quarter (SW 1/4) of Section 14, Township 1 South, Range 1 West of the Ute Principal Meridian, City of Grand Junction, County of Mesa, State of Colorado and being more particularly described as follows:

ALL of the East-West 20 foot wide alley and the North-South 15 foot wide alley lying entirely within Block 138, the Plat of Part of Second Division Resurvey, as Amended, as same is recorded in Plat Book 3, page 21, Public Records of Mesa County, Colorado, not previously vacated by City of Grand Junction Ordinances 1142 and 1167, lying West of the West right of way for Seventh Street and North of the North right of way for Pitkin Avenue.

CONTAINING 4,913 Square Feet, more or less, as described.

BLOCK 139

A certain parcel of land lying in the Southwest Quarter (SW 1/4) of Section 14, Township 1 South, Range 1 West of the Ute Principal Meridian, City of Grand Junction, County of Mesa, State of Colorado and being more particularly described as follows:

ALL of that certain East-West 20 foot wide alley lying entirely within Block 139 of the Plat of Part of Second Division Resurvey, as Amended, as same is recorded in Plat Book 3, page 21, Public Records of Mesa County, Colorado, lying between the East right of way for Fifth Street and the West right of way for Sixth Street.

CONTAINING 8,031 Square Feet, more or less, as described.

SOUTH SIXTH STREET
(BETWEEN UTE AND PITKIN AVENUES)

A certain parcel of land lying in the Southwest Quarter (SW 1/4) of Section 14, Township 1 South, Range 1 West of the Ute Principal Meridian, City of Grand Junction, County of Mesa, State of Colorado and being more particularly described as follows:

ALL of Sixth Street, lying between Blocks 138 and 139 of the Plat of Part of Second Division Resurvey, as Amended, as same is recorded in Plat Book 3, page 21, Public Records of Mesa County, Colorado, lying between the South right of way for Ute Avenue and the North right of way for Pitkin Avenue.

CONTAINING 21,889 Square Feet, more or less, as described.

INTRODUCED on first reading the ____ day of _____, 2011 and ordered published in pamphlet form.

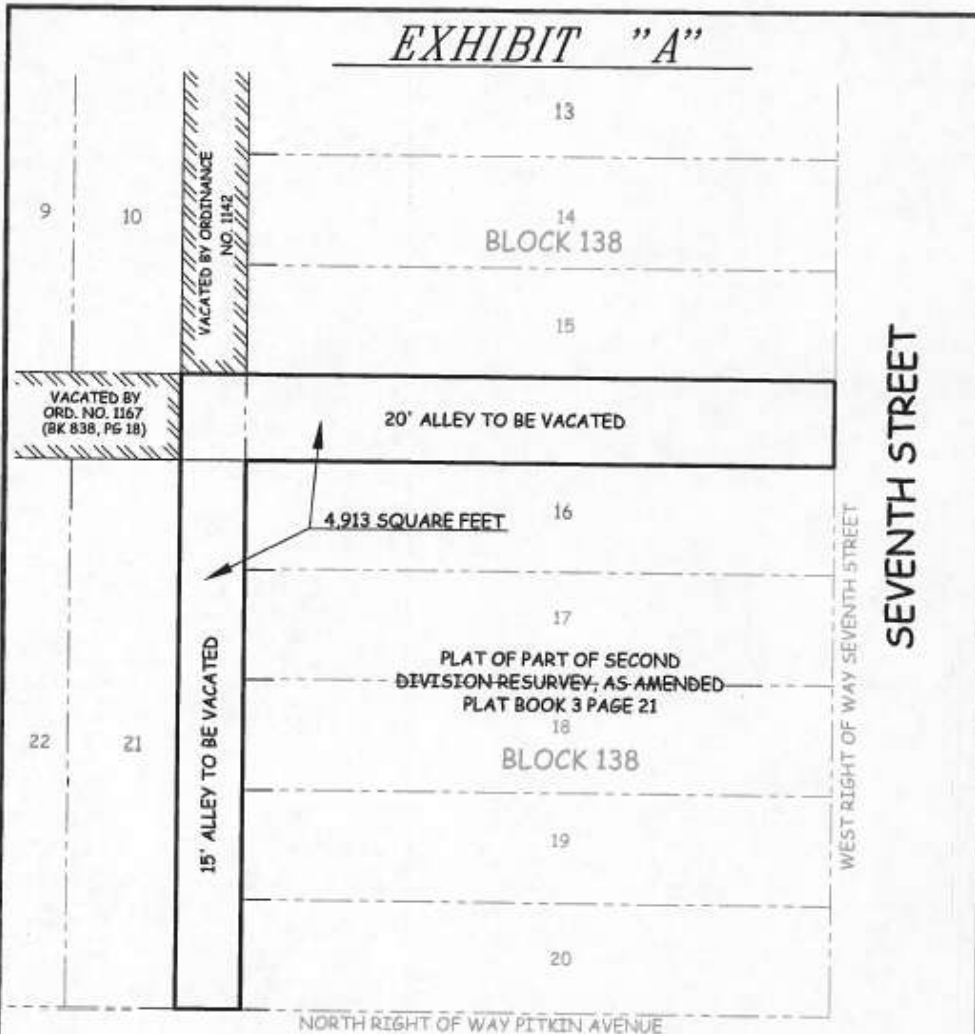
PASSED and ADOPTED on second reading the ____ day of _____, 2011 and ordered published in pamphlet form.

ATTEST:

President of City Council

City Clerk

EXHIBIT "A"



SEVENTH STREET

PITKIN AVENUE

ABBREVIATIONS

BK BOOK
PG PAGE

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.



LINEAL UNITS = US SURVEY FOOT



DRAWN BY: PTK
DATE: 11-22-2010
SCALE: 1" = 30'
APPR. BY: PTK

THE CITY OF GRAND JUNCTION
ALLEY VACATION

BLOCK 138, SECOND DIVISION RESURVEY

CITY OF
Grand Junction
COLORADO

EXHIBIT "A"

UTE AVENUE



PITKIN AVENUE



ABBREVIATIONS

BK BOOK
PG PAGE

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.



LINEAL UNITS = US SURVEY FOOT



DRAWN BY: PTK
DATE: 11-22-2010
SCALE: 1" = 80'
APPR. BY: PTK

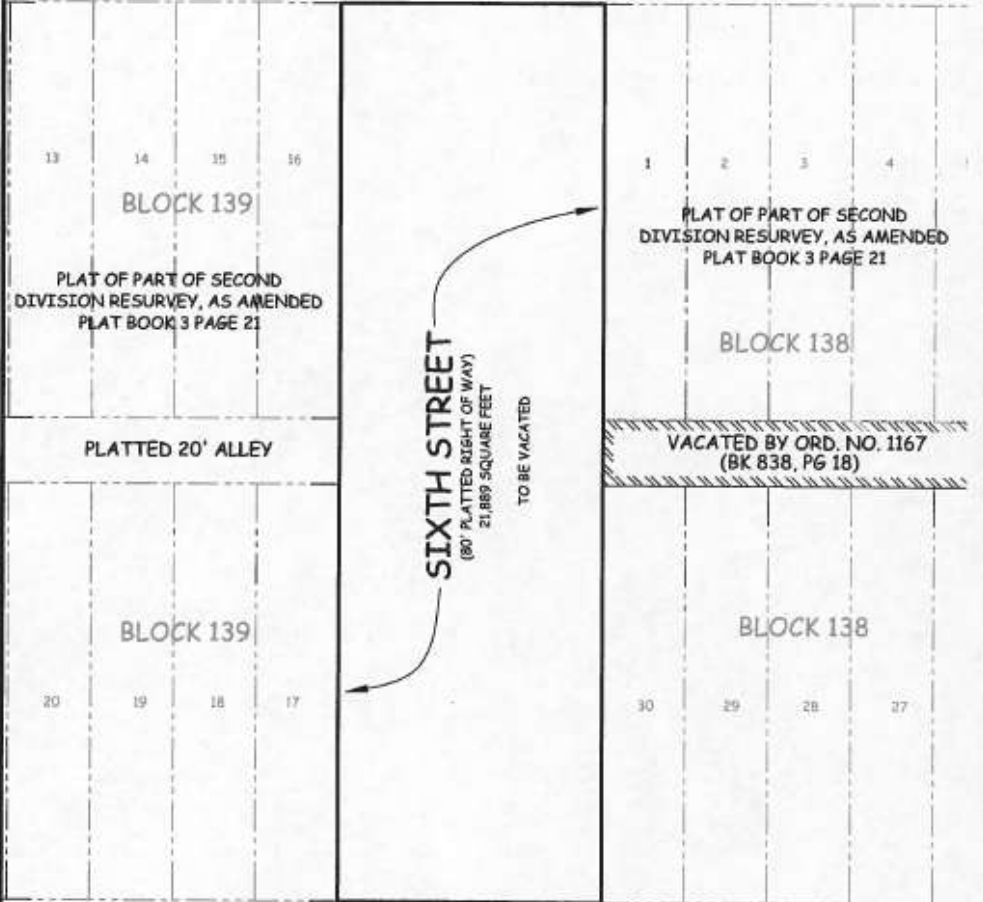
*THE CITY OF GRAND JUNCTION
ALLEY VACATION WITHIN BLOCK 139
BETWEEN 5TH AND 6TH STREET
SECOND DIVISION RESURVEY*



EXHIBIT "A"

UTE AVENUE

SOUTH RIGHT OF WAY UTE AVENUE



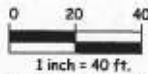
NORTH RIGHT OF WAY PITKIN AVENUE

PITKIN AVENUE

ABBREVIATIONS

BK BOOK
PG PAGE

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.



1 inch = 40 ft.

LINEAL UNITS = US SURVEY FOOT



DRAWN BY: PTK
DATE: 11-22-2010
SCALE: 1" = 40'
APPR. BY: PTK

*THE CITY OF GRAND JUNCTION
SIXTH STREET VACATION
LYING BETWEEN 5TH AND 7TH STREET
AND UTE AND PITKIN AVENUE*





CITY COUNCIL AGENDA ITEM

Attach 4 Downtown Development Authority Tax Increment Financing Bond Election on April 5, 2011

Date: December 29, 2010
Author: Stephanie Tuin and
John Shaver
Title/ Phone Ext: City Clerk and
City Attorney, X1511, X1506
Proposed Schedule: January
31, 2011
2nd Reading (if applicable): NA

Subject: Downtown Development Authority Tax Increment Financing Bond Election on April 5, 2011
File # (if applicable):
Presenters Name & Title: Heidi Ham, DDA Executive Director John Shaver, City Attorney Stephanie Tuin, City Clerk

Executive Summary:

In order for additional bonds to be issued under the Downtown Development Authority (DDA) tax increment financing (TIF), a question must be presented to the qualified electors of the DDA for approval. The DDA TIF election will be conducted by mail ballot by Mesa County Elections under the intergovernmental agreement authorized on December 13, 2010. The election is scheduled for April 5, 2011.

Additionally, as a property owner in the TIF District, the City of Grand Junction may appoint a designated voter to cast a vote in the election.

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.

Voter approved debt financing for the Downtown Development Authority will support the downtown’s vibrancy through continued development.

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

The Tax Increment Financing supports development in the downtown to preserve the character and attraction of the area.

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

The investment in the downtown, and specifically the Downtown Shopping Park, adds to the City's attractive public spaces.

Action Requested/Recommendation:

Adopt Proposed Resolutions

Board or Committee Recommendation:

The Downtown Development Authority Board approved the election and recommended a ballot title on January 13, 2011. Their resolution is attached.

The Economic and Community Development Committee discussed the matter on November 15, 2010 and recommended that it come forward to the City Council.

Background, Analysis and Options:

The original TIF (Tax Increment Financing) authorization was adopted in 1981 with funding commencing in 1982. Due to the economic factors of the local economy at the time, little was realized from this program for nearly a decade. Given the State's "sunset" provision on this funding source at twenty-five years, an extension was ushered through the Legislature in 2002 permitting a five year extension which was approved by the eligible downtown electorate in November, 2004.

In April, 2007, the electorate authorized specific debt instruments for the purpose of financing various downtown improvements. The diversion of funds to focus on downtown capital improvements is valid through 2012. The question being posed to the voters at April 5, 2011 will allow continuation of investment in the downtown through additional debt financing and will not result in a tax increase for downtown property owners (nor would disapproval result in a decrease) for the next 20 years.

Part 8 of Title 31, Article 25 of the Colorado Revised Statutes relates to Downtown Development Authorities and includes TIF elections. The qualifications for electors under this statute are very different from ordinary municipal elections. Specifically, C.R.S. 31-25-802 (9) defines a "qualified elector" as "a resident, a landowner, or a lessee as said terms are defined in this section." Further it states that "any landowner or lessee, which is not a natural person may vote only if it designates by some official action a representative thereof to cast its ballot."

The City owns several parcels in the TIF District and is therefore a landowner and qualified elector. With approval of this resolution by the City Council, City Manager Laurie Kadrach will be the designated voter for the City. When the ballot package is mailed, Ms. Kadrach will receive the ballot on behalf of the City.

Financial Impact/Budget:

The DDA election will be conducted in conjunction with the City's regular municipal election and was anticipated in the intergovernmental agreement authorized by the City Council on December 13, 2010; however, because the DDA question is the

only TABOR question on the ballot, the DDA will be responsible for the cost of distributing the TABOR notice. That cost is estimated at under \$2,000.

Legal issues:

The City Attorney has reviewed the documents and has addressed all legal issues.

Other issues:

N/A

Previously presented or discussed:

The DDA debt financing was discussed by the Economic and Community Development Committee on November 15, 2010.

Attachments:

Proposed Resolution Authorizing the Election and Setting the Ballot Title, which includes DDA's Resolution
Proposed Resolution Appointing a Designated Voter for the City of Grand Junction

RESOLUTION NO. ___-11

A RESOLUTION OF THE COUNCIL OF THE CITY OF GRAND JUNCTION APPROVING THE DOWNTOWN DEVELOPMENT AUTHORITY'S CALL FOR AN ELECTION TO BE HELD FOR THE PURPOSE OF SUBMITTING A PROPOSED BALLOT MEASURE TO THE QUALIFIED ELECTORS OF THE DOWNTOWN DEVELOPMENT AUTHORITY DISTRICT, SETTING THE BALLOT TITLE, AUTHORIZING A MAIL BALLOT ELECTION AND APPROVING A MAIL BALLOT PLAN

WHEREAS, the City of Grand Junction, in the Colorado (the "City"), is a home rule municipal corporation duly organized and existing under laws of the State of Colorado and the City Charter (the "Charter"); and

WHEREAS, Article X, Section 20 of the Constitution ("TABOR") requires voter approval for incurring debt, the creation of any tax, and for spending certain moneys above limits established by TABOR; and

WHEREAS, TABOR requires that ballot issue elections (as defined in TABOR) be held on certain specified election days; and

WHEREAS, April 5, 2011 is the City's regular election and one of the election dates at which ballot issues may be submitted pursuant to TABOR; and

WHEREAS, it is the desire of the City to conduct an independent mail ballot election within the Grand Junction Downtown Development Authority (the "Authority") district on the election date; and

WHEREAS, pursuant to Article II, Section 25 of the Charter, for the purposes of participating in a mail ballot election, the City shall be governed by all applicable provisions of the Municipal Election Code, being Article 10 of Title 31, C.R.S., and the Mail Ballot Election Act, being Article 7.5 of Title 1, C.R.S.; and

WHEREAS, at its regular meeting on January 13, 2011 the Board of Directors of the Authority, by resolution attached as Exhibit A, called for an election ("DDA Election") of the qualified electors of the for the purpose of submitting to the electors a question regarding the issuance of debt by the City to finance development projects in furtherance of the Authority plan of development; and

WHEREAS, Section 31-25-807(3)(b), C.R.S. requires approval by the City Council for such DDA Election; and

WHEREAS, Section 31-25-807(3)(b), C.R.S., requires that the DDA Election be held and conducted in the manner prescribed by law for the holding and conducting of other regular or special elections in the municipality; and

WHEREAS, it is necessary to set forth certain procedures concerning the conduct of the election.

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

All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City and the officers thereof, directed towards the election and the objects and purposes herein stated are hereby ratified, approved and confirmed. Unless otherwise defined herein, all terms used herein shall have the meanings defined in Title 31, Article 25, Part 8, C.R.S. (the "DDA Act"), the Municipal Election Code, the Mail Ballot Election Act, and TABOR.

Pursuant to the applicable laws of the State of Colorado, the Council hereby determines that at the City's regular election to be held on April 5, 2011, there shall be submitted to the qualified electors of the Authority the question set forth in Section 3 below.

The Council hereby authorizes and directs the designated election official to submit to the qualified electors of the Authority, at the election a question in the substantially the following form:

"SHALL CITY OF GRAND JUNCTION DEBT BE INCREASED NOT TO EXCEED \$65,000,000 WITH A REPAYMENT COST OF \$72,000,000, WITHOUT RAISING ADDITIONAL TAXES, TO FINANCE STREETS, PARKS, PLAZAS, PARKING FACILITIES, PLAYGROUNDS, CAPITAL FACILITIES, PEDESTRIAN MALLS, RIGHTS-OF-WAY, STRUCTURES, WATERWAYS, BRIDGES, ACCESS ROUTES TO ANY OF THE FOREGOING, DESIGNED FOR USE BY THE PUBLIC GENERALLY OR USED BY ANY PUBLIC AGENCY WITH OR WITHOUT CHARGE; SUCH DEBT TO BE EVIDENCED BY BONDS, LOANS, ADVANCES OR INDEBTEDNESS PROVIDED THAT THE SPECIFIC TERMS OF THE DEBT, INCLUDING A PROVISION FOR EARLY REPAYMENT WITH OR WITHOUT A PREMIUM, AND THE PRICE AT WHICH IT WILL BE SOLD SHALL BE DETERMINED BY THE CITY AS NECESSARY AND PRUDENT; SHALL THE PLEDGE OF THE TAX INCREMENT FUND TO SUCH DEBT BE AUTHORIZED FOR A PERIOD NOT TO EXCEED THE MAXIMUM TIME PERMITTED BY LAW?"

The City Clerk is hereby appointed as the Designated Election Official for the City for purposes of performing acts required or permitted by law in connection with the election.

The officers of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution.

If any section, subsection, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or

unenforceability of such section, subsection, paragraph, clause, or provision shall in no manner affect any remaining provisions of this Resolution, the intent being that the same are severable.

All orders, resolutions, bylaws, ordinances or regulations of the City, or parts thereof, inconsistent with this resolution are hereby repealed to the extent only of such inconsistency.

ADOPTED AND APPROVED this _____ day of _____, 2011.

(SEAL)

CITY OF GRAND JUNCTION

President of the City Council

Attest:

City Clerk

“EXHIBIT A”

**GRAND JUNCTION DOWNTOWN DEVELOPMENT
AUTHORITY RESOLUTION NO. 01-11**

**A RESOLUTION OF THE BOARD OF THE GRAND JUNCTION
DOWNTOWN DEVELOPMENT AUTHORITY SUBMITTING TO THE
QUALIFIED ELECTORS OF THE GRAND JUNCTION
DOWNTOWN DEVELOPMENT AUTHORITY, AT AN ELECTION
TO BE HELD ON APRIL 5, 2011, A BALLOT QUESTION
AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF
GRAND JUNCTION TO FINANCE DEVELOPMENT PROJECTS
PURSUANT TO THE GRAND JUNCTION DOWNTOWN
DEVELOPMENT AUTHORITY PLAN OF DEVELOPMENT**

WHEREAS, the Grand Junction Downtown Development Authority (the “DDA”), is a duly organized and existing Downtown Development Authority under laws of the State of Colorado; and

WHEREAS, the members of the Board of the Authority (“Board” or “the Board”) have been duly appointed and qualified; and

WHEREAS, the City Council (“the City Council” or “City Council”) of Grand Junction, Colorado (“the City” or “City”) has heretofore approved the Plan of Development (“the Plan” or “Plan”) for the Authority; and

WHEREAS, the interest of the Authority and the public interest and necessity demand and require the financing of certain projects and improvements described in the Plan (“the Projects” or “Projects”); and

WHEREAS, Section 31-25-809 C.R.S. authorizes the City to issue bonds payable solely from tax increment revenues generated by properties within the boundaries of the Authority to pay for all or any part of the Projects; and

WHEREAS, Article X, Section 20 of the Colorado Constitution (“TABOR”) requires voter approval in advance for the creation of any debt by the City; and

WHEREAS, the Plan contemplates the use of tax increment financing as provided in Section 31-25-807(3) C.R.S. to finance the cost of the Projects; and

WHEREAS, pursuant to Section 31-25-807(3)(b) C.R.S. the Board may call an election on the question of issuing bonds or otherwise providing for loans, advances or indebtedness (“Financial Obligations”) and pledging the tax increment revenues to the payment of such Financial Obligations; and

WHEREAS, it is contemplated by the Board that Financial Obligations will be incurred and tax increment revenues pledged for the payment thereof, over the period of time that the use of tax increment financing is available to the Authority, and

WHEREAS, the estimated bonding capacity over twenty years is approximately \$65,000,000; and

WHEREAS, TABOR requires the ballot issue elections (as defined in TABOR) be held on certain, specified election days; and

WHEREAS, April 5, 2011 is the City's regular election and one of the election dates at which ballot issues may be submitted pursuant to TABOR; and

WHEREAS, it is necessary to set forth certain procedures concerning the conduct of the election; and

WHEREAS, the Board desires to call an election to be held on April 5, 2011 subject to approval by the City Council, as provided in Section 31-25-807(3)(b) C.R.S.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GRAND JUNCTION DOWNTOWN DEVELOPMENT AUTHORITY, IN THE CITY OF GRAND JUNCTION, COLORADO:

1. All actions heretofore taken (not inconsistent with the provisions of this resolution) by the City, the Authority Board and/or the officers thereof, directed toward the Election and the objects and purposes herein stated are hereby ratified, approved and confirmed. Unless otherwise defined herein, all terms used herein shall have the meanings set forth in Title 31, Article 25, Part 8, C.R.S. (the "DDA Act"), Title 31, Article 10 ("the Municipal Election Code") and TABOR.
2. Pursuant to the applicable laws of the State of Colorado, the Board hereby calls for an election for the Authority to be held on April 5, 2011, ("the Election.") The Board hereby determines that at the Election there shall be submitted to the qualified electors of the Authority the question set forth herein below. The Authority hereby determines that, upon approval of the City Council, the City Clerk shall conduct the election on behalf of the Authority and act as the Designated Election Official for purposes of performing acts required or permitted by law in connection with the election.
3. The Board hereby authorizes and directs the designated election official to submit to the qualified electors of the Authority, at the Election a question in substantially the following form:

"SHALL CITY OF GRAND JUNCTION DEBT BE INCREASED NOT TO EXCEED \$65,000,000 WITH A REPAYMENT COST OF \$72,000,000, WITHOUT RAISING ADDITIONAL TAXES, TO FINANCE STREETS, PARKS, PLAZAS, PARKING FACILITIES, PLAYGROUNDS, CAPITAL FACILITIES, PEDESTRIAN MALLS, RIGHTS-OF-WAY, STRUCTURES, WATERWAYS, BRIDGES,

ACCESS ROUTES TO ANY OF THE FOREGOING, DESIGNED FOR USE BY THE PUBLIC GENERALLY OR USED BY ANY PUBLIC AGENCY WITH OR WITHOUT CHARGE; SUCH DEBT TO BE EVIDENCED BY BONDS, LOANS, ADVANCES OR INDEBTEDNESS PROVIDED THAT THE SPECIFIC TERMS OF THE DEBT, INCLUDING A PROVISION FOR EARLY REPAYMENT WITH OR WITHOUT A PREMIUM, AND THE PRICE AT WHICH IT WILL BE SOLD SHALL BE DETERMINED BY THE CITY AS NECESSARY AND PRUDENT; SHALL THE PLEDGE OF THE TAX INCREMENT FUND TO SUCH DEBT BE AUTHORIZED FOR A PERIOD NOT TO EXCEED THE MAXIMUM TIME PERMITTED BY LAW?"

4. The officers of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this resolution.
5. If a majority of the votes cast on the question of increasing City debt for the purposes specified in the Plan submitted at the Election shall be in favor of the same, then City, acting on behalf of the Authority, shall be authorized to proceed with the necessary action to comply with such question. Any authority to increase City debt, if conferred by the results of the Election, shall be deemed and considered a continuing authority to increase City debt and neither the partial exercise of the authority so conferred nor any lapse of time shall be considered as exhausting or limiting the full authority so conferred.
6. If any section, subsection, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall in no manner affect any remaining provisions of this Resolution, the intent being that the same are severable.

All orders, resolutions, bylaws or regulations of the Authority, or parts thereof, inconsistent with this Resolution are hereby repealed to the extent only of such inconsistency.

ADOPTED AND APPROVED this 13th day of January 2011.

Grand Junction Downtown
Development Authority

/s/ Peggy Page
Peggy Page
Board Chairperson

ATTEST:

/s/ Diane Keliher
Board Secretary

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

I, Diane Keliher, the duly appointed and qualified secretary to the Grand Junction Downtown Development Authority Board (the "DDA") do hereby certify that:

The foregoing pages are a true, correct and complete copy of a resolution (the "Resolution") which was adopted and approved by the Board at a regular meeting thereof held on January 13, 2011 which Resolution has not been revoked, rescinded or repealed and is in full force and effect on the date hereof.

The Resolution was duly adopted and approved at the meeting of January 13, 2011, by an affirmative vote of a majority of the members of the Board as follows:

<u>Councilmember</u>	<u>Voting "Aye"</u>	<u>Voting "Nay"</u>	<u>Absent</u>	<u>Abstaining</u>
Scott Holschuh	X			
Bonnie Beckstein	X			
Scott Aker	X			
Harry Griff			X	
Stephen Thoms	X			
Peggy Page	X			
Bill Keith	X			
PJ McGovern	X			
Kevin Reimer	X			

The members of the Board were present at such meetings and voted on the passage of such Resolution as set forth above.

The Resolution was approved and authenticated by the signature of the Chairperson of the Board, sealed with the Authority's seal, attested by the Secretary and recorded in the minutes of the Board.

There are no bylaws, rules or regulations of the Board which might prohibit the adoption of said Resolution.

Notice of the meeting of January 13, 2011 in the form attached hereto as Exhibit A was posted no less than 24 hours prior to the meeting in accordance with law.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Grand Junction Downtown Development Authority this 13th day of January 2011.

/s/ Diane Keliher

Secretary to the Board

Grand Junction Downtown Development Authority

(SEAL)



**Grand Junction Downtown
Development Authority (DDA)**

BOARD MEETING AGENDA
Thursday, January 13, 2011, 7:30am
Whitman School, 248 South Fourth Street

- 7:30 am** Call to Order / Roll Call
- 7:32 am** Consent Agenda:
Approval of Agenda
Approval of Minutes – December 9, 2010
- 7:35 am** Action Item: *Ratification of Lease – Five60 Salon*
- 7:40 am** Action Item: *April 2011 Ballot Question*
- 7:55 am** Action Item: *Reappointment of Steve Thoms to Real Estate Committee*
- 8:00 am** Action Item: *Appointments to Avalon Foundation*
- 8:10 am** Executive Director's Report
- 8:55 am** Adjourn

Important Dates:

Next DDA meetings: January 27, February 10, February 24

MAIL BALLOT PLAN

COORDINATED OR OTHER NON-PARTISAN ELECTIONS

COLORADO SECRETARY OF STATE
1700 BROADWAY, SUITE 200
DENVER, COLORADO 80290
PHONE: 303-894-2200
FAX: 303-869-4861

INTRODUCTION

Pursuant to section 1-7.5-105 of the Colorado Revised Statutes and the Colorado Secretary of State's Election Rule 12, the designated election official responsible for conducting a mail ballot election must submit a written mail ballot plan to the Secretary of State.

This mail ballot plan must be submitted at least sixty-five (65) days prior to a regular special district election and no later than fifty-five (55) days prior to any other coordinated or non-partisan election. Additionally, a special district may request a seven (7) day filing extension if the mail ballot plan is for a regular special district election that may be cancelled. Please see Election Rule 12.4.1 for more information.

The following standard fillable form is designed to aid you in your completion and submission of the required mail ballot plan. This form may be completed online and then saved to your computer. Once you have saved the form to your computer, you will be able to submit the entire plan to the Secretary of State's office via email, regular mail, or fax. Please refer to the instruction section below for more complete guidance.

NOTE: Pursuant to section 1-7.5-104, C.R.S., a mail ballot election cannot be held for elections or recall elections that involve partisan candidates or elections held in conjunction with, or on the same day as, a congressional vacancy election.

INSTRUCTIONS

(Please read this section **COMPLETELY**. Failure to do so may result in undue delay in the approval of your plan.)

Spaces and check boxes are provided below for each required aspect of the mail ballot plan. Please fill out the form in its entirety, making sure to check all boxes where applicable. Additional pages may be attached to the end of the mail ballot plan if necessary.

Election Rule 12.4.1 requires the submission of a sample secrecy sleeve or envelope and a written timetable. A copy of the Secretary of State approved secrecy sleeve is included at the end of this form. Please review the secrecy sleeve and indicate your usage of the approved sleeve by checking the box associated with the secrecy sleeve (Item "21." of the mail ballot plan). Additionally, a written timetable is provided at the end of this fillable form. Please fill in the date column of the timetable to indicate the date or range of dates for each required occurrence.

When you have checked each applicable box and supplied all required information, please save the form to your computer. Once the form is saved, you may choose your method of submittal (email, regular mail, or fax). The Secretary of State's office requests that you email your plan as an attachment to state.electiondivision@sos.state.co.us.

Please feel free to contact Michael Hagihara via phone at 303-894-2200 ext. 6331 or via email at michael.hagihara@sos.state.co.us with any questions you may have.

ATTENTION HOME RULE MUNICIPALITIES

The Secretary of State will not review the mail ballot plan of any home rule municipality that fails to read and affirm the following declaration. Please indicate your affirmation by checking the box.

- X Although I am submitting this plan on behalf of a home rule municipality, this mail ballot election will be conducted in accordance with state law. As such, this plan does not contain any locally-adopted election procedures that differ from the state procedures set forth in the Colorado Mail Ballot Election Act (§§ 1-7.5-101 through 1-7.5-111, C.R.S.) or in Election Rule 12.

Name of person submitting plan: Stephanie Tuin

Address: 250 N. 5th Street, Grand Junction, CO 81501

Political Subdivision: City of Grand Junction, Downtown Development Authority

Email: stepht@gjcity.org

1. **Date of the election:** April 5, 2011

2. **Type and name of the jurisdiction(s) involved in the election** (Example: county, municipality, special district, school district, etc.): Municipality, City of Grand Junction; Downtown Development Authority, Grand Junction, Colorado, Downtown Development Authority; County, Mesa County

3. **Description of the type of election to be conducted** (Example: coordinated election, recall election, special election, etc.): special election

4. **Citation of the statute or home rule charter provisions authorizing the election:** [§1-7.5-105, C.R.S.] (please add any additional statutes authorizing the mail ballot election for the jurisdictions involved)
31-10-101 et seq., C.R.S. and Article II, Secs. 3 through 25, City of Grand Junction Charter and 31-25-801 et seq. C.R.S.

5. **Estimated number of eligible electors:** 800
 - X Between twenty-two (22) and eighteen (18) days before the election, the designated election official will mail to each active registered elector a mail ballot packet. [§1-7.5-107(3), C.R.S.]

 - X No later than 30 days prior to the election the designated election official will send a mail ballot packet to each active registered **UOCAVA** elector. [§1-8-103.5, C.R.S.]

6. **Name of the designated election official who will be responsible for all aspects of the election:** [Rule 12.4.1] City Clerk Stephanie Tuin

7. **If the election is NOT being conducted by the County Clerk & Recorder, an indication of whether the County Clerk and Recorder will assist in the election for the entity other than by providing a list of registered electors and other information required by statute** (Please check the appropriate box): [Rule 12.4.1]
 - X Yes, the County Clerk and Recorder will assist in the election for the entity other than by providing a list of registered electors and other information required by statute. (If yes, please read the following statement regarding use of county voting

systems, check the corresponding box if applicable, and provide the requested information.)

- The County Clerk and Recorder will assist in the election for the entity by providing voting systems to be used by the entity during the election. The make and model number of the voting systems to be used is as follows:

Make(s): Elections System and Software Model 650, green light sensor, firmware version 2.1.0.0.

Model Number(s): 650

- No, the County Clerk and Recorder will not assist in the Election for the entity other than by providing a list of registered electors and other information required by statute.

8. The address and hours of operation for all “drop-off locations.” Note: For security reasons, unmonitored freestanding drop-off locations located out-of-doors are not allowed: [Rule 12.4.1]

Three # of drop-off locations

In the space below please provide the address and hours of operation for each drop-off location (attach additional pages if necessary):

City Clerk’s Office
City Hall
250 N. 5th Street
Grand Junction, Co. 81501
Hours: 7:30 a.m. – 5:30 p.m. Monday thru Friday

Mesa County Elections Office
Old Mesa County Courthouse
544 Rood Avenue Suite 301A
Grand Junction, Co. 81501
Hours: 8:00 a.m. – 5:00 p.m. Monday thru Friday

Mesa County Clerk’s Office (Motor Vehicle Division)
Mesa Mall
2424 Hwy 6 & 50, #414
Grand Junction, Co. 81505
Hours: 7:30 a.m. – 5:30 p.m. Monday thru Friday

Please check one of the boxes below:

- All drop-off locations and any walk-in voting locations will be located within the political subdivision.
- At least one or all drop-off locations will be located outside of the county, municipality, or special district. Such drop-off locations are within reasonable proximity to the political subdivision or the majority of electors. The reasons for requesting permission from the Secretary of State for such drop-off locations are as follows:

The Mesa Mall location is outside the boundaries of the Downtown Development Authority. Electors in this political subdivision may receive more than one ballot. If the elector decides to drop off their ballot at the Mesa Mall location it would be inconvenient if they could not drop off both ballots. Allowing the use of the Mesa Mall drop off location is a convenience to the voter. All three drop off locations will be monitored in the same manner.

9. For elections coordinated by the County Clerk and Recorder, the total number of walk-in voting locations, and the location and hours of operation for each walk-in voting location:
[Rule 12.4.1]

of walk-in voting locations

In the space below please provide the address for each walk-in location:

NA

All walk-in voting locations will be open during normal business hours from:
[§1-7.5-107(3)(c), C.R.S.]

Dates: to

Hours: to

Example:

Dates: April 12, 2010 to May 4, 2010

Hours: 8:00 a.m. to 5:00 p.m.

X Walk-in voting locations will not be utilized because this election is being conducted as an independent mail ballot election that is not coordinated with the County Clerk and Recorder.

10. Number of accessible voting machines anticipated being used for walk-in voting locations in elections coordinated by the County Clerk and Recorder: [§1-5-705, C.R.S.]

of accessible voting machines

X The use of accessible voting machines is not applicable because the election will not be coordinated by the County Clerk and Recorder.

11. Length of time accessible voting machines will be available for walk-in voting in elections coordinated by the County Clerk and Recorder: (Please include the dates and hours of operation.)

Example: April 12, 2010 through May 3, 2010, 8:00 a.m. to 5:00 p.m., Monday through Friday; and 7:00 am to 7:00 pm. on May 4th.

X The use of accessible voting machines is not applicable because the election will not be coordinated by the County Clerk and Recorder.

12. Please complete the written timetable near the end of this form. You must provide a date or a range of dates for each occurrence listed in the left-hand column of the timetable.

13. Indication of how postage will be handled for ballot packets returned as undeliverable (Please read and indicate your compliance by checking the box):

- As the designated election official, I hereby affirm that ballot packets will be marked **“DO NOT FORWARD. RETURN SERVICE REQUESTED,” “RETURN POSTAGE GUARANTEED,”** or any other similar language that is in accordance with United States Postal Service regulations. [§1-7.5-107(3)(a), C.R.S.]

14. Indication of procedures to be followed to ensure compliance with statutes and rules, including persons responsible for each stage (Please read and indicate your compliance by checking each box):

- As the designated election official, I hereby affirm that I have read and understand Article 7.5 of Title 1, C.R.S. and Secretary of State Election Rule 12 and that appropriate measures and procedures will be undertaken to ensure compliance with these statutes and rules.

If the designated election official is not the person responsible for such compliance, please check the box and indicate the person responsible:

Individual responsible for compliance:

- The designated election official will supervise the distributing, handling, counting of ballots and the survey of returns in accordance with rules promulgated by the Secretary of State and will take the necessary steps to protect the confidentiality of the ballots cast and the integrity of the election. [§1-7.5-105(3), C.R.S.]

If the designated election official is not the person responsible for such compliance, please check the box and indicate the person responsible:

Individual responsible for compliance: Mesa County Elections Director
Catherine Lenhart

- The Postmaster or local postal representative has been notified of the election and provided with the design of the ballot packet to ensure that postal standards are met:

A ballot packet has been subject to a “Tap Test” by a local postal representative to ensure that all relevant mailing information is visible through the envelope window.

At least one ballot packet has been submitted to the local postal representative to ensure that the ballot packet has been printed correctly.

- For elections where multiple ballots will be included in the same packet or will be sent in separate packets, the ballots and return envelopes shall include distinctive markings or colors to identify political subdivisions when the colors or distinctive markings will aid in the distribution and tabulation of the ballots. [Rule 12.5.2]

Not applicable for the following reason(s) (Please check all that apply):

- This election is being conducted as an independent mail ballot election that is not coordinated with the County Clerk and Recorder. However, there will be distinctive colors to distinguish between the two ballots and the outgoing envelope as well as the instructions or other notice shall have the following notice: "This may not be your only ballot. Other elections may be held by other political subdivisions by mail or by polling place."
- This election will be conducted with the use of one ballot containing all candidates and ballot issues for the coordinating jurisdictions.
- For all coordinated elections where more than one mail ballot is being mailed or polling place elections are being held as well as the mail ballot election, the outgoing envelope as well as the instructions or other notice shall have the following notice: "This may not be your only ballot. Other elections may be held by other political subdivisions by mail or by polling place." [Rule 12.5.5.] NA
- All deposited ballots will be counted as provided in Article 7.5 of Title 1, C.R.S. and by rules promulgated by the Secretary of State. A mail ballot will be valid and counted only if it is returned in the return envelope, the self-affirmation on the return envelope is signed and completed by the eligible elector to whom the ballot was issued, and the information on the return envelope is verified. [§1-7.5-107(6), C.R.S.]
- If the election official determines that an eligible elector to whom a replacement ballot has been issued has voted more than once, the first ballot returned by the elector will be considered the elector's official ballot. [§1-7.5-107(6), C.R.S.]

15. Description of procedures to be used to ensure ballot security at all stages of the process

(Please read and indicate your compliance by checking each box):

- The ballot or ballot label will contain the following warning: [§1-7.5-107(3)(b), C.R.S.]

"WARNING:

Any person who, by use of force or other means, unduly influences an eligible elector to vote in any particular manner or to refrain from voting, or who falsely makes, alters, forges, or counterfeits any mail ballot before or after it has been cast, or who destroys, defaces, mutilates, or tampers with a ballot is subject, upon conviction, to imprisonment, or to a fine, or both."

- The return envelope will have printed on it a self-affirmation substantially in the following form: [§1-7.5-107(3)(b.5)]

"I state under penalty of perjury that I am an eligible elector; that my signature and name are as shown on this envelope; that I have not and will not cast any vote in this election except by the enclosed ballot; and that my ballot is enclosed in accord with the provisions of the "Uniform Election Code of 1992."

Date: _____

Signature of Voter: _____.

- X When not being processed, ballot packets will be placed in a safe, secure area under the supervision of the designated election official, election judge, or person designated by the designated election official.
- X A replacement ballot may be requested if the ballot was destroyed, spoiled, lost, or not received by the elector. The elector requesting the replacement ballot must complete a sworn statement in compliance with section 1-7.5-107(3)(d)(I), C.R.S. The form may be mailed to an elector along with their mail ballot packet, however, it must be returned to the election official on or before Election Day. [§1-7.5-107(3)(d), C.R.S.]
- X Ballots will not be left unattended while being processed. After processing is complete, ballots will be placed in a safe and secure area. Access to the secure area shall be determined by the County Clerk and Recorder or designated election official.

16. Description of procedures for maintaining privacy and security of accessible voting machines to be used in an election coordinated by the County Clerk and Recorder (If this section does not apply to you, please check the box marked “Not applicable and then indicate the reason(s) why this section does not apply to you):

- At the voter’s request, the election judge will instruct the voter on the use of the accessible machine. [Rule 9]
- Each accessible voting device will be positioned as to protect each voter’s privacy while voting. [Rule 12.12.3]
- For elections coordinated by the County Clerk and Recorder, a security plan will be submitted in accordance with Rule 43 in addition to the mail ballot plan, if such security plan has not already been received by the Secretary of State. [Rule 43]
- In an election coordinated by the County Clerk and Recorder, if a voter surrenders a mail ballot to the designated election official and votes in-person on an accessible device provided for the election, the accessible device will be subject to the privacy, security and accuracy standards set forth in the Election Rules and Title 1, C.R.S. [Rule 12.12]
- X Not applicable for the following reason(s) (Please check all that apply):
 - X This election is being conducted as an independent mail ballot election that is not coordinated with the County Clerk and Recorder.
 - X This election will be conducted with the use of paper ballots; no voting machines will be involved in this election.

17. Description of procedures to be used for signature verification (Please read and indicate your compliance by checking each box. If this section does not apply to you, please check the box marked “Not applicable”.): [§1-7.5-107.3, C.R.S.]

- X **Not applicable** as this election is being conducted as an independent mail ballot election that is not coordinated with or conducted by the County Clerk and Recorder.

- An election judge will compare the signature on the self-affirmation on each return envelope with the signature of the eligible elector stored in the statewide voter registration system.
- If, upon comparing the signature on the self-affirmation on the return envelope with the signature of the eligible elector stored in the statewide voter registration system, the election judge determines that the signatures do not match, two other election judges of different political party affiliations will simultaneously compare the signatures.
- If both other election judges agree that the signatures do not match, the County Clerk and Recorder will, within three (3) days after the signature deficiency has been confirmed, but in no event later than two (2) days after the election day, send a letter to the eligible elector explaining the discrepancy in signatures and a form for the eligible elector to confirm that the elector returned a ballot to the County Clerk and Recorder.
- If the County Clerk and Recorder receives the form within eight (8) days after the election confirming that the elector returned a ballot to the County Clerk and Recorder and enclosing a copy of the elector's identification, and if the ballot is otherwise valid, the ballot will be counted.
- If the eligible elector returns the form indicating that the elector did not return a ballot to the County Clerk and Recorder, or if the eligible elector does not return the form within eight (8) days after election day, the self-affirmation on the return envelope will be categorized as incorrect, the ballot will not be counted, and the County Clerk and Recorder will send copies of the eligible elector's signature on the return envelope and the signature stored in the statewide voter registration system to the District Attorney for investigation.
- An original return envelope with an enclosed secrecy envelope containing a voted ballot that is not counted due to a discrepancy in signatures in accordance with the above procedures will be stored under seal in the office of the County Clerk and Recorder in a secure location separate from valid return envelopes and may be removed only under the authority of the District Attorney or by order of a court having jurisdiction.
- In the case of a disagreement among the election judges as to whether the signature of an eligible elector on the self-affirmation on the return envelope matches the signature of the eligible elector stored in the statewide voter registration system, the mail ballot will be counted in the same manner as ballots received in valid, verified return envelopes.
- An election judge will not determine that the signature of an eligible elector on the self-affirmation does not match the signature of that eligible elector stored in the statewide voter registration system solely on the basis of substitution of initials or use of a common nickname.

18. Description of Procedures to be used for ballots returned by electors who have not previously voted in Colorado and have failed to include proper proof of identification: [§ 1-7.5-107(3.5)(d), C.R.S.]

- X Upon receipt of a mail ballot, from an elector who has not previously voted in Colorado, which does not contain a proper form of identification as required under section 1-7.5-107(3.5)(b), C.R.S., the designated election official will, within three (3) days after receipt of the mail ballot, but in no event later than two (2) days after election day, send to the eligible elector a letter explaining the lack of compliance with section 1-7.5-107(3.5)(b), C.R.S.
- X If the designated election official receives a copy of identification in compliance with section 1-7.5-107(3.5)(b), C.R.S. within eight (8) days after election day, and if the mail ballot is otherwise valid, the mail ballot will be counted.

19. Description of procedures to ensure privacy by use of a secrecy sleeve or secrecy envelope so receiving judges cannot tell how the elector voted (Please read and indicate your compliance by checking the box):

- X To protect the voter's privacy, a secrecy sleeve or envelope will be included in the mail ballot package. [§1-7.5-106(1), C.R.S.]

20. Description of procedures to be used to reconcile ballots issued, ballots received, defective ballots and substitute ballots (Please read and indicate your compliance by checking each box):

- X Ballots will be date stamped upon receipt. Each day when ballots come in, a judge will count the ballots, batch them, and record the number of ballots received including those that were returned as undeliverable. [Rule 12.7.3]
- X The designated election official or the County Clerk and Recorder will maintain a daily reconciliation log containing the number of ballots issued, returned, and outstanding. [Rule 12.7.2]

21. Please review the Secretary of State approved Secrecy Sleeve with Voter Instructions at the bottom of this fillable form. (Please read the following statement and indicate your compliance by checking the box):

- X As the designated election official, I hereby affirm that the Secretary of State approved secrecy sleeve with voter instructions or voter instructions page as included at the end of this form will be used in the mail ballot election.
- X As the designated election official, I hereby affirm that the political jurisdiction will be using the attached secrecy sleeve, which is in substantial compliance with the requirements set forth by the Secretary of State.

**MAIL BALLOT PLAN TIMETABLE
COORDINATED OR OTHER NON-PARTISAN ELECTIONS
COLORADO SECRETARY OF STATE
1700 BROADWAY, SUITE 200
DENVER, COLORADO 80290
PHONE: 303-894-2200
FAX: 303-869-4861**

Pursuant to Election Rule 12.4, the designated election official must prepare a written timetable for conducting the mail ballot election with specific dates or range of dates when each activity is to be completed.

Please complete the following timetable by supplying the following dates or range of dates on the right:

Date copy of written plan was submitted to the governing body [Rule 12.4.1]	01/31/2011
Date of approval of election by governing body [Rule 12.4.1]	01/31/2011
Date by which local jurisdictions must submit notice of election to the County Clerk and Recorder if the County Clerk will assist with the election (no later than 40 days before the election) [§1-5-303(1), C.R.S.; Rule 12.4.1]	2/24/2011
Date by which local jurisdictions must submit notice of election to the county assessor, if property owners are eligible to vote in the election (no later than 40 days before the election) [§1-5-304(1), C.R.S.]	2/24/2011
Date by which the County Clerk and Recorder must submit the list of eligible electors to the local jurisdiction conducting the mail ballot election. Also, for special district elections, the date by which the county assessor must submit the list of property owners who are eligible to vote in the election to the jurisdiction. (No later than 30 days before the election) [§1-7.5-107(2), C.R.S.]	3/4/2011
Date of close of registration (29 days before the election) [§1-2-201(3), C.R.S.]	3/7/2011
Date ballots will be mailed (no sooner than 22 days before the election and no later than 18 days before the election) [§1-7.5-107(3), C.R.S.]	3/14/2011 through 3/18/2011
Date ballots will be made available at the designated election official's office, or the office designated in the Mail Ballot Plan (no sooner than 22 days prior to the election) [§1-7.5-107(3), C.R.S.]	3/14/2011
Date by which the County Clerk and Recorder must submit a supplemental list of eligible electors to the local jurisdiction conducting the mail ballot election. Also, for special district elections, the date by which the county assessor must submit a supplemental list of property owners who are eligible to vote in the election to the jurisdiction. (No later than 20 days before the election) [§1-7.5-107(2), C.R.S.]	3/16/2011
Date of publication of notice of election, including information regarding walk-in voting and accessible voting options.(no later than 20 days before the election) [§§1-5-705, 1-7.5-107(2.5), C.R.S.]	3/16/2011
Date verification and counting of ballots will begin (counting may begin 15 days before the election) [§1-7.5-107.5, C.R.S.]	3/21/2011
Date of Election	4/5/2011

Return your ballot

You may return your voted ballot by mail (include adequate postage of \$0.70) or you may hand deliver your ballot to a designated drop-off location. (See Frequently Asked Questions below.)

Ballots must be RECEIVED at the Mesa County Elections office and/or Designated Drop-off/Service Center locations by 7:00 p.m. on Election Day in order for your vote(s) to be counted. Ballots received after 7:00 p.m. on Election Day will not be counted.

Postmarks do not count as a received date.

Frequently Asked Questions:

Where can I drop off my ballot?

City Clerk's Office
City Hall
250 N. 5th Street
Grand Junction, Co. 81501
Hours: 7:30 a.m. – 5:30 p.m. Monday thru Friday

Mesa County Elections Office
Old Mesa County Courthouse
544 Rood Avenue Suite 301A
Grand Junction, Co. 81501
Hours: 8:00 a.m. – 5:00 p.m. Monday thru Friday

Mesa County Clerk's Office (Motor Vehicle Division)
Mesa Mall
2424 Hwy 6 & 50, #414
Grand Junction, Co. 81505
Hours: 7:30 a.m. – 5:30 p.m. Monday thru Friday

All locations will be open 7 a.m until 7 p.m. on Election Day (Tuesday, April 5, 2011)

What do I do if I make a mistake, damage or lose my ballot?

You may request a Replacement Ballot by calling 970-244-1662 during regular business hours, 8 a.m. to 5 p.m. or on Election Day from 7:00 a.m. to 7:00 p.m.

How do I know you received my ballot?

To verify that your Mail-In Ballot was received by the Elections Office, please call 970-244-1662 or visit our website www.mesa-county.us

I've heard that mail ballots are only counted if there are close races. Is that true?

No. All ballots, both polling place and mail, are counted in the same manner. All valid mail ballots are counted in every election in Colorado, regardless of the outcome or closeness of any race.

Are ADA accessible voting machines available?

Yes. ADA accessible voting machines are available for use. For more information, please contact the Mesa County Elections office at 970-244-1662.

SOS Approved 04/20/10

Secrecy Sleeve with Voter Instructions City of Grand Junction Downtown Development Authority Special Election, April 5, 2011

What are the contents of my Official Mail Ballot Packet?

- Official Ballot
- Secrecy Sleeve with Voter Instructions
- Official Return Envelope

How do I vote my ballot?

Follow all the voting instructions shown on your ballot. After you have marked all your voting choices and finished voting:

1. Refold your ballot along the original fold lines.
2. Place your voted ballot in the Secrecy Sleeve.
3. Place the Secrecy Sleeve (with voted ballot) into the Official Return Envelope.
4. Sign and date the "Affidavit of Voter" located on the back of the Official Return Envelope. See example below.

Only one voter's ballot is permitted in your Official Return Envelope. If more than one ballot is placed in your Official Return Envelope, none of the ballots will be counted.

If you are a first time voter who registered to vote in the State of Colorado by mail, you must enclose a photocopy of your identification in the Official Return Envelope. Do not place your ID photocopy in the Secrecy Sleeve with your voted ballot. See the AM I REQUIRED TO PROVIDE ID? section below.

By law, your signature is required on the AFFIDAVIT OF VOTER (located on the back of the Official Return Envelope). If you do not sign the affidavit, your ballot will not be counted.

AFFIDAVIT OF VOTER

I state under penalty of perjury that I am an eligible elector, that my signature and name are as shown on this envelope, that I have not and will not cast any vote in this election except by the enclosed ballot, and that my ballot is enclosed in accord with the provisions of the "Uniform Election Code of 1992."

X George Washington
Voter's Signature – (Signature Required)
TODAY'S DATE July 4, 1776

* Witness _____

* In case of applicant's disability or inability to sign personally, ballot must still be witnessed by another person.

Am I required to provide identification (ID)?

If there are the words "ID REQUIRED" stamped in RED on the outside of your envelope then you must return a copy of an ID listed below:

If you are required to provide ID as indicated above, place a photocopy of one of the following acceptable forms of identification into the Official Return Envelope. (Do not place the photocopied identification in the Secrecy Sleeve with your voted ballot.) All ID's must be current and valid. If your ID shows your address, that address must be in the State of Colorado for the ID to be considered a valid form of identification.

- Colorado driver's license
- Colorado ID card issued by the department of revenue
- United States passport
- Employee ID card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state
- Pilot's license issued by the federal aviation administration or other authorized agency of the United States
- United States military ID card with a photograph of the eligible elector
- A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector. For examples, please visit www.elections.colorado.gov
- Medicare or Medicaid card issued by the United States Health Care Financing Administration
- A certified copy of a birth certificate for the elector issued in the United States
- Certified documentation of naturalization
- Student ID card with a photograph issued by an institution of higher education in Colorado

Thank you for accessing the mail ballot plan online form. Please save this form to your computer so that it may be submitted to our office upon completion. Forms should be submitted via email (state.electiondivision@sos.state.co.us).

Please feel free to contact Michael Hagihara via phone at 303-894-2200 ext. 6331 or via email at michael.hagihara@sos.state.co.us with any questions you may have.

CITY OF GRAND JUNCTION, COLORADO

RESOLUTION NO. _____-11

A RESOLUTION APPOINTING A DESIGNATED VOTER FOR THE CITY OF GRAND JUNCTION TO CAST A VOTE IN THE SPECIAL ELECTION SCHEDULED APRIL 5, 2011 REGARDING TAX INCREMENT FINANCING DEBT

Recitals.

On January 31, 2011, the Grand Junction City Council adopted Resolution No. 06-11 which directed that a question be submitted to the qualified electors of the Downtown Development Authority on a mail ballot April 5, 2011, which if approved, will authorize an increase in the maximum incurred debt and modify the purposes of the Downtown Development Authority.

The provisions of 31-25-801 *et seq*, C.R.S. define how such an election will be conducted and define qualified electors as "a resident, a landowner, or a lessee as said terms are defined in this section." Further the law states that "any landowner or lessee which is not a natural person may vote only if it designates by some official action a representative thereof to cast its ballot."

The City is a landowner and is not a natural person and therefore must designate a representative to vote in the election.

The appointment of a representative by this Resolution satisfies the legal requirements.

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

City Manager Laurie Kadrich is the designated representative to cast a ballot for the April 5, 2011 election on behalf of the City of Grand Junction for the Downtown Development Authority question.

Approved this _____ day of _____, 2011.

President of the Council

ATTEST:

City Clerk



Date: January 20, 2011
 Author: Stephanie Tuin
 Title/ Phone Ext: City Clerk, x1511
 Proposed Schedule: January 31, 2011
 2nd Reading
 (if applicable): _____

CITY COUNCIL AGENDA ITEM

**Attach 5
 Election Notice for the Downtown Development
 Authority Special Election April 5, 2011**

Subject: Election Notice for the Downtown Development Authority Special Election April 5, 2011
File # (if applicable):
Presenters Name & Title: Stephanie Tuin, City Clerk

Executive Summary:

Both the Charter and the Municipal Election Code have specific content and publication requirements for the election notice. The proposed notice contained within the resolution being presented meets those requirements.

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

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

Action Requested/Recommendation:

Adopt Proposed Resolution

Board or Committee Recommendation:

NA

Background, Analysis and Options:

The Charter, Section 17, requires that a notice of election be published three times within the ten days prior to the election. The Mail Ballot Election Act requires that such notice be published at least twenty days prior to the election and that the contents include the voter qualifications. The notice therefore must be published by March 16, 2011 and again March 26, 27 and 28. It is also proposed to publish the notice on February 25, 2011 in order to give the public advance notice of the mail ballot. This is not required nor prohibited. The proposed notice contained within the resolution includes the pertinent information specific to this election.

Financial Impact/Budget:

Publication of these notices is estimated to be \$1,000 and will be paid for by the Downtown Development Authority.

Legal issues:

The notice meets the legal requirements.

Other issues:

None.

Previously presented or discussed:

This has not been presented previously.

Attachments:

Proposed Resolution which contains the notice.

RESOLUTION NO. -11

**A RESOLUTION SETTING FORTH THE NOTICE OF ELECTION FOR THE
DOWNTOWN DEVELOPMENT AUTHORITY SPECIAL ELECTION TO BE HELD
ON APRIL 5, 2011 IN THE CITY OF GRAND JUNCTION**

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

The Election Notice hereinafter be the Notice of the Downtown Development
Authority Special Election to be held in the City on April 5, 2011 and further that the
same be published in accordance with election procedures:

ELECTION NOTICE

**DOWNTOWN DEVELOPMENT AUTHORITY
CITY OF GRAND JUNCTION, COLORADO
NOTICE OF SPECIAL ELECTION
TO BE HELD ON TUESDAY, THE 5TH DAY OF APRIL, 2011**

PUBLIC NOTICE IS HEREBY GIVEN THAT A SPECIAL ELECTION WILL BE
HELD BY MAIL-IN BALLOT ON TUESDAY, THE 5TH DAY OF APRIL, 2011, IN THE
DOWNTOWN DEVELOPMENT AUTHORITY, CITY OF GRAND JUNCTION,
COLORADO.

That said Special Election will be held by mail-in ballot with ballots mailed to all
qualified electors in said Downtown Development Authority, City of Grand Junction.
Ballot packages will be mailed no later than March 18, 2011 and must be returned to
the Mesa County Clerk no later than 7:00 p.m. on Election Day, Tuesday, April 5, 2011.
Voted ballots may be mailed with proper postage affixed and received by Mesa County
Clerk no later than 7:00 p.m. Election Day, or returned to the following locations, also
no later than 7:00 p.m. Election Day:

City Clerk's Office
City Hall
250 N. 5th Street
Grand Junction, Co. 81501

Mesa County Elections Office
Old Mesa County Courthouse
544 Rood Avenue, Suite 301A
Grand Junction, Co. 81501

Mesa County Clerk's Office (Mesa Mall DMV)
Mesa Mall, JC Penney Wing
2424 Hwy 6 & 50, #414
Grand Junction, Co. 81505

On April 5, 2011, the places designated will be open until the hour of 7:00 p.m.
NO voting devices will be provided at any location. The election will be held and
conducted as prescribed by law.

The Mesa County Elections Division at the Old Courthouse will be open for issue of ballots to “inactive voters”, or the reissue of ballots to those who have spoiled, lost, moved, or for some reason did not receive a ballot, for the period 25 days prior to the election, Monday through Friday, from 8:00 a.m. to 5:00 p.m. and on Tuesday, April 5, 2011 from 7:00 a.m. to 7:00 p.m. (Election Day).

Qualified electors within the Downtown Development Authority, City of Grand Junction are residents, landowners or lessees within the Downtown Development Authority boundaries. Any landowner or lessee which is not a natural person may vote only if it designates by some official action a representative thereof to cast its ballot.

The question on the ballot is:

DOWNTOWN DEVELOPMENT AUTHORITY, CITY OF GRAND JUNCTION C

“SHALL CITY OF GRAND JUNCTION DEBT BE INCREASED NOT TO EXCEED \$65,000,000 WITH A REPAYMENT COST OF \$72,000,000, WITHOUT RAISING ADDITIONAL TAXES, TO FINANCE STREETS, PARKS, PLAZAS, PARKING FACILITIES, PLAYGROUNDS, CAPITAL FACILITIES, PEDESTRIAN MALLS, RIGHTS-OF-WAY, STRUCTURES, WATERWAYS, BRIDGES, ACCESS ROUTES TO ANY OF THE FOREGOING, DESIGNED FOR USE BY THE PUBLIC GENERALLY OR USED BY ANY PUBLIC AGENCY WITH OR WITHOUT CHARGE; SUCH DEBT TO BE EVIDENCED BY BONDS, LOANS, ADVANCES OR INDEBTEDNESS PROVIDED THAT THE SPECIFIC TERMS OF THE DEBT, INCLUDING A PROVISION FOR EARLY REPAYMENT WITH OR WITHOUT A PREMIUM, AND THE PRICE AT WHICH IT WILL BE SOLD SHALL BE DETERMINED BY THE CITY AS NECESSARY AND PRUDENT; SHALL THE PLEDGE OF THE TAX INCREMENT FUND TO SUCH DEBT BE AUTHORIZED FOR A PERIOD NOT TO EXCEED THE MAXIMUM TIME PERMITTED BY LAW?”

YES

NO

BY ORDER OF THE CITY COUNCIL

/s/ Stephanie Tuin
Stephanie Tuin, City Clerk”

PASSED and ADOPTED this ____ day of _____, 2011.

President of the Council

ATTEST:

City Clerk



Date: January 20, 2011
 Author: Stephanie Tuin
 Title/ Phone Ext: City Clerk, x1511
 Proposed Schedule: January 31,
2011
 2nd Reading
 (if applicable): _____

CITY COUNCIL AGENDA ITEM

**Attach 6
 Election Notice for the Regular Election April 5,
 2011**

Subject: Election Notice for the Regular Election April 5, 2011
File # (if applicable):
Presenters Name & Title: Stephanie Tuin, City Clerk

Executive Summary:

Both the Charter and the Municipal Election Code have specific content and publication requirements for the election notice. The proposed notice contained within the resolution being presented meets those requirements.

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

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

Action Requested/Recommendation:

Adopt Proposed Resolution

Board or Committee Recommendation:

NA

Background, Analysis and Options:

The Charter, Section 17, requires that a notice of election be published three times within the ten days prior to the election. The Mail Ballot Election Act requires that such notice be published at least twenty days prior to the election and that the contents include the voter qualifications. The notice therefore must be published by March 16, 2011 and again March 26, 27 and 28. It is also proposed to publish the notice on February 25, 2011 in order to give the public advance notice of the mail ballot. This is not required nor prohibited. The proposed notice contained within the resolution includes the pertinent information specific to this election.

Financial Impact/Budget:

Publication of these notices is estimated to be \$1,800.

Legal issues:

The notice meets the legal requirements.

Other issues:

None.

Previously presented or discussed:

This has not been presented previously.

Attachments:

Proposed Resolution which contains the notice.

RESOLUTION NO. -11

**A RESOLUTION SETTING FORTH THE NOTICE OF ELECTION
FOR THE REGULAR MUNICIPAL ELECTION TO BE HELD
ON APRIL 5, 2011 IN THE CITY OF GRAND JUNCTION**

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

The Election Notice hereinafter be the Notice of the Regular Municipal Election to be held in the City on April 5, 2011 and further that the same be published in accordance with election procedures:

“ELECTION NOTICE

**CITY OF GRAND JUNCTION, COLORADO
NOTICE OF REGULAR MUNICIPAL ELECTION
TO BE HELD ON TUESDAY, THE 5TH DAY OF APRIL, 2011**

PUBLIC NOTICE IS HEREBY GIVEN THAT A REGULAR MUNICIPAL ELECTION WILL BE HELD BY MAIL-IN BALLOT ON TUESDAY, THE 5TH DAY OF APRIL, 2011, IN THE CITY OF GRAND JUNCTION, COLORADO.

That said Regular Municipal Election will be held by mail-in ballot with ballots mailed to all active registered voters in said City of Grand Junction. Ballot packages will be mailed no later than March 18, 2011 and must be returned to the Mesa County Clerk no later than 7:00 p.m. on Election Day, Tuesday, April 5, 2011. Voted ballots may be mailed with proper postage affixed and received by Mesa County Clerk no later than 7:00 p.m. Election Day, or returned to the following locations, also no later than 7:00 p.m. Election Day:

City Clerk's Office
City Hall
250 N. 5th Street
Grand Junction, Co. 81501

Mesa County Elections Office
Old Mesa County Courthouse
544 Rood Avenue, Suite 301A
Grand Junction, Co. 81501

Mesa County Clerk's Office (Mesa Mall DMV)
Mesa Mall, JC Penney Wing
2424 Hwy 6 & 50, #414
Grand Junction, Co. 81505

On April 5, 2011, the places designated will be open until the hour of 7:00 p.m. NO voting devices will be provided at any location. The election will be held and conducted as prescribed by law.

The Mesa County Elections Division at the Old Courthouse will be open for issue of ballots to “inactive voters”, or the reissue of ballots to those who have spoiled, lost,

moved, or for some reason did not receive a ballot, for the period 25 days prior to the election, Monday through Friday, from 8:00 a.m. to 5:00 p.m. and on Tuesday, April 5, 2011 from 7:00 a.m. to 7:00 p.m. (Election Day).

Registered voters within the city limits of Grand Junction are qualified to vote. Registration of voters for the said election has taken place in the time and manner provided by law.

Candidates are:

DISTRICT B

Four-Year Term
(Vote for One)

Sam Susuras

DISTRICT C

Four-Year Term
(Vote for One)

Bennett Boeschstein

AT-LARGE

Four-Year Term
(Vote for One)

John L. Ballagh

Jim Doody

Aaron Garth Norris

Jacob N. Richards

Joshua Wussick

Questions on the Ballot:

CITY OF GRAND JUNCTION REFERRED MEASURE A

Shall the City of Grand Junction prohibit the operation of medical marijuana businesses and amend the Grand Junction Municipal Code by the addition of a new section prohibiting certain uses relating to marijuana by Ordinance No. 4437, the title to which shall read:

AN ORDINANCE PROHIBITING THE OPERATION OF MEDICAL MARIJUANA BUSINESSES AND AMENDING THE GRAND JUNCTION MUNICIPAL CODE BY THE ADDITION OF A NEW SECTION PROHIBITING CERTAIN USES RELATING TO MARIJUANA

FOR THE ORDINANCE _____

AGAINST THE ORDINANCE _____

CITY OF GRAND JUNCTION REFERRED MEASURE B

Shall the City of Grand Junction grant franchises to Public Service Company of Colorado, d/b/a Xcel Energy and to Grand Valley Rural Power Lines, Inc. by 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; 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.

FOR THE ORDINANCE _____

AGAINST THE ORDINANCE _____

BY ORDER OF THE CITY COUNCIL

/s/ Stephanie Tuin
Stephanie Tuin, City Clerk”

PASSED and ADOPTED this ____ day of _____, 2011.

President of the Council

ATTEST:

City Clerk



Date: January 10, 2011
 Author: Stephanie Tuin
 Title/ Phone Ext: City Clerk,
X1511
 Proposed Schedule: 1st
reading January 19, 2011
 2nd Reading (if applicable):
January 31, 2011

CITY COUNCIL AGENDA ITEM

**Attach 7
 Public Hearing—Amending the Optional Premises
 Ordinance for the Tiara Rado Golf Course**

Subject: Amending the Optional Premises Ordinance for the Tiara Rado Golf Course
File # (if applicable):
Presenters Name & Title: John Shaver, City Attorney

Executive Summary:

In 1999, the City Council adopted Ordinance No. 3112 which allowed for alcohol service on the Tiara Rado Golf Course. The ordinance was specific to the current concessionaire under contract, Pinon Grill, Inc. This ordinance will amend Ordinance No. 3112 and provide the authorization to the concessionaire as designated by the City Council.

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

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

This amendment will add to the continued use and support of one of the City-owned golf courses by authorizing service on the golf course as determined by the contract with the concessionaire and continuing the City’s reputation as a regional center of recreation and tourism for both the local community and outside visitors.

Action Requested/Recommendation:

Hold a Public Hearing to Consider Final Passage and Final Publication of the Proposed Ordinance

Board or Committee Recommendation:

NA

Background, Analysis and Options:

In 1999, the City Council decided it would be beneficial to allow alcoholic beverage service on the golf course at Tiara Rado. The concessionaire at that time, Pinon Grill, Inc., held a hotel-restaurant liquor license. Under the provisions of the State liquor code, a local jurisdiction cannot authorize such dispensing of alcohol without first adopting by ordinance specific standards for the issuance of what is called an “optional premises” license.

The City Council adopted Ordinance No. 3112 which provided the specific standards but also specified the concessionaire, Pinon Grill, Inc. In order for the ordinance to be applicable to any subsequent concessionaire that the City designates, this ordinance is being recommended.

Financial Impact/Budget:

There is no financial impact for this amendment.

Legal issues:

Rather than amending the optional premises ordinance when the concessionaire changes, it is desirable that the optional premises standards be applied to the facility.

Other issues:

NA

Previously presented or discussed:

First reading was January 19, 2011.

Attachments:

Proposed Ordinance

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO.

**AN ORDINANCE AMENDING ORDINANCE NO. 3112
WHICH PROVIDED STANDARDS FOR AN OPTIONAL PREMISES
LICENSE FOR THE DESIGNATED CONCESSIONAIRE
AT TIARA RADO GOLF COURSE**

Recitals:

The City of Grand Junction owns Tiara Rado Golf course, an eighteen-hole golf course at 2057 S. Broadway.

The City desires that food and beverage (alcoholic and non-alcoholic) service be available both in the restaurant and on the golf course.

Having this service at Tiara Rado relates to the city's Comprehensive Plan Goals and Policies by continuing the City's reputation as a regional center of recreation and tourism for both the local community and outside visitors.

Section 12-47-310 C.R.S. permits a municipality to pass an ordinance to provide optional premises licenses for restaurants that serve liquor on their premises to include an adjacent recreational facility in their license.

Service of liquor, other than 3.2% beer on the Tiara Rado Golf Course would benefit the City as a continuous source of revenue.

This ordinance would permit the sale of liquor on Tiara Rado Golf Course, only, and not any other City-owned golf courses.

From time to time, the City enters into a contract with a concessionaire to provide food and beverage service to the restaurant and golf course at Tiara Rado and would like the ordinance to apply to any designee without the need to amend such ordinance.

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

Ordinance No. 3112, adopted on April 7, 1999 is hereby amended as follows (Additions are in all caps, deletions are shown as strike-throughs):

Section 1. Definitions. For the purposes of this ordinance, the following words or phrases shall have the meanings set forth.

- a. *Optional premises* means the same as that defined in the Colorado Liquor Code under § 12-47-103(22) and 12-47-310, C.R.S. The only type of license authorized in this ordinance, is a “restaurant with optional premises,” which may be referred to as “optional premises” unless otherwise stated.
- b. *Licensee*, for the purpose of this license, means ~~the Piñon Grill~~ THE CITY OR ITS DESIGNEE BY MEANS OF A CONCESSIONAIRE CONTRACT.

Section 2. Standards. The following standards are for the issuance of an optional premises license for the restaurant that holds a liquor license and has an outdoor sports and recreational facility, namely the Tiara Rado Golf Course, adjacent to its facility. The standards are adopted pursuant to the provisions of § 12-47-310 C.R.S. The standards adopted shall be considered in addition to all other standards applicable to the consideration of and/or issuance of licenses under the Colorado Liquor Code and any and all applicable local laws, rules and regulations.

Section 3. Form of Application. Application for the optional premises license shall be made to the City Clerk on forms, which shall contain the following information in addition to information, required by the State. The application shall be heard publicly by the local hearing officer.

- (1) A map or other drawing illustrating the optional premises boundaries and the location of the proposed optional premises license requested; and
- (2) Proposed location(s) for permanent, temporary or moveable structure(s) which are proposed to be used for the sale or service of alcohol beverages and a statement as to whether mobile carts will be used for the sale or service of alcohol beverages; and
- (3) A description of the method which shall be used to identify the boundaries of the optional premises license when it is in use and how the licensee will ensure alcohol beverages are not removed from such premises; and
- (4) Proof of the applicant’s right to possession of the optional premises including a legal description and supporting documentation to the satisfaction of the local licensing authority; and
- (5) A description of the provisions, including a description of facilities, which have been made for storing the alcohol beverages in a secured area on or off the optional premises and for future use on the optional premises if or when alcohol beverages are not served.
- (6) A description of the provisions which will be implemented to control

over service and prevent under age service of alcohol beverages.

Section 4. Eligibility. The licensee is a holder of a hotel-restaurant license which is located on or adjacent to an 18-hole golf course.

Section 5. Size of Premises. There is no minimum size, other than being a regulation 18-hole course, of the optional premises license or number of optional premises licenses for the licensee.

Section 6. Additional Conditions. Nothing contained in this ordinance shall preclude the Licensing Authority in its discretion, from imposing conditions, restrictions or limitations on any optional premises license in order to serve the public health, safety and welfare. Any such conditions may be imposed when the license is initially issued, issued for any specific event, or renewed. The Authority shall have the right to deny any request for an optional premises license or it may suspend or revoke the optional premises license in accordance with the procedures specified by law.

Section 7. Notice filed with Liquor Licensing Authority. It shall be unlawful for alcohol beverages to be served on the optional premises until the optional premises licensee has filed written notice with the State and the Authority stating the specific days and hours during which the optional premises will be used. Notice must be recorded with the Liquor Licensing Authority 48 hours prior to serving alcohol beverages on the optional premises. No notice shall specify any period of use in excess of 180 days nor shall it specify any date more than 180 days after the date of the original notice. The licensee may file with the Liquor Licensing Authority more than one such notice during a calendar year; however, should any special or unusual event be anticipated to occur during any extended period of time, no less than 48 hours' written notice should be given to the Liquor Licensing Authority, which shall have authority to impose any conditions reasonably related toward serving the public health, safety and welfare or it may deny the use after hearing.

Introduced on first reading this 19th day of January, 2011 and order published in pamphlet form.

Passed and adopted on second reading this ___ day of _____, 2011 and ordered published in pamphlet form.

President of the Council

ATTEST:

City Clerk



Date: Jan. 20, 2011
 Author: Kathy Portner
 Title/ Phone Ext: Neighborhood Services Manager/244-1420
 Proposed Schedule: 11-29-10
 2nd Reading
 (if applicable): 01/31/11

CITY COUNCIL AGENDA ITEM

**Attach 8
 Public Hearing—Granting a Franchise Agreement to Public Service Company of Colorado d/b/a Xcel Energy and Grand Valley Rural Power Lines, Inc. and Setting a Ballot Title for the April 5, 2011 Election**

Subject: Franchise Agreements for Public Service Company of Colorado d/b/a Xcel Energy and Grand Valley Rural Power Lines, Inc. and Setting a Ballot Title for the April 5, 2011 Election
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 Rural Power Lines, Inc. (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:

Hold a Public Hearing to Consider Final Passage and Final Publication in Pamphlet Form of People’s Ordinance 37 and Adopt the Proposed Resolution Setting the Ballot Title for the April 5, 2011 Municipal Election

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.
- 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. We also continue 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
Resolution Setting the Ballot Title

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

NOW, THEREFORE BE IT ORDAINED THAT THE FOLLOWING BE APPROVED AS THE FRANCHISE AGREEMENT WITH PUBLIC SERVICE COMPANY OF COLORADO D/B/A XCEL ENERGY:

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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

§4.1 Franchise Fee.

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.

§4.2 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 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

§7.1 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 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 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 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 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 of Grand Junction 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 (§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 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 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 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

NOW, THEREFORE BE IT ORDAINED THAT THE FOLLOWING BE APPROVED AS THE FRANCHISE AGREEMENT WITH GRAND VALLEY RURAL POWER LINES, INC.:

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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 and is Grand Valley Rural Power Lines, Inc. (Grand Valley Power), and its successors and assigns, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.
- §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, meters, meter reading devices, communication and data transfer equipment, control equipment, 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, 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 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 electricity to Residents by the Company under rates approved by the PUC.

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 the 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.

- 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

§4.1 Franchise Fee.

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.

§4.2 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 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. 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 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 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 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 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 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

- §7.1 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 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 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 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 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.

**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 Grand Junction 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 (§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 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. 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 81501

With a copy to:

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

To the Company:

General Manager
Grand Valley Rural Power Lines
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 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 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 reasonably 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.
- §21.18 Council Approval. This grant of franchise shall not become effective unless approved by a majority vote of the City Council.
- §21.19 Company Approval. The Company shall file with the City Clerk its written acceptance of this franchise and of all of its terms and provisions within ten days after the adoption of this franchise by the City Council. The acceptance shall be in form and content approved by the City Attorney. If the Company shall fail to timely file its written acceptance as herein provided, this franchise shall be and become null and void.
- §21.20 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 5th 2011.

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

PASSED, ADOPTED AND APPROVED AND ORDERED PUBLISHED IN PAMPHLET FORM this _____ day of _____, 2011

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 December 1, 8, 15, 22, 29, 2010 and January 5, 2011 and that 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 5, 2011.

Stephanie Tuin, City Clerk

ACCEPTANCE BY PUBLIC SERVICE COMPANY OF COLORADO OF A GAS AND ELECTRIC FRANCHISE GRANTED BY THE CITY OF GRAND JUNCTION, MESA COUNTY, COLORADO, BY PEOPLE'S 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 People's Ordinance No. 37 of the City of Grand Junction, adopted by the City, and entitled in part: 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

NOW, THEREFORE, in consideration of the premises and in pursuance of the provisions of said People's 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 _____, 2011

PUBLIC SERVICE COMPANY OF COLORADO

by: _____
Vice President

ATTEST:

Assistant Secretary

WHEREAS, Grand Valley Rural Power Lines, Inc. and the City of Grand Junction, have negotiated the terms and conditions of a new electric franchise between said Company and the City of Grand Junction, which franchise is as set forth in People's Ordinance No. 37 of the City of Grand Junction, adopted by the City, and entitled in part: 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.

NOW, THEREFORE, in consideration of the premises and in pursuance of the provisions of said People's Ordinance No. 37 of the City of Grand Junction, Grand Valley Rural Power Lines, Inc. does hereby accept the terms and conditions contained in said Ordinance as the franchise agreement between Grand Valley Rural Power Lines, Inc. and the City of Grand Junction, Mesa County, Colorado.

IN WITNESS WHEREOF, Grand Valley Rural Power Lines, Inc. has caused its Corporate name to be hereunto subscribed by its President, and its corporate Seal to be hereunto affixed, attested by its Secretary, as of the _____ day of _____, 2011.

GRAND VALLEY RURAL POWER LINES INC.

by: _____
President

ATTEST:

Secretary

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

Teresa Coons, Mayor

ATTEST:

Stephanie Tuin
Clerk of the City of Grand Junction

APPROVED AS TO FORM:

John P. Shaver
Attorney for the City of Grand Junction

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 5th 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.

Stephanie Tuin, City Clerk

**PUBLIC SERVICE COMPANY OF
COLORADO**

By: _____
Jerome Davis
Regional Vice President
Customer and Community Relations

Attest: _____
Asst. Secretary

**GRAND VALLEY RURAL POWER
LINES, INC**

By: _____
William F. Rooks, President

Attest: _____
S. James O'Connor, Secretary

RESOLUTION NO. __-11

A RESOLUTION SETTING A BALLOT TITLE AND SUBMITTING TO THE ELECTORATE ON APRIL 5, 2011 A MEASURE REGARDING GRANTING A FRANCHISE BY THE CITY OF GRAND JUNCTION TO PUBLIC SERVICE COMPANY OF COLORADO AND GRAND VALLEY RURAL POWER LINES, INC.

RECITALS.

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.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT THE FOLLOWING QUESTION BE PLACED ON THE APRIL 5, 2011 BALLOT:

CITY OF GRAND JUNCTION REFERRED MEASURE B

Shall the City of Grand Junction grant franchises to Public Service Company of Colorado, d/b/a Xcel Energy and to Grand Valley Rural Power Lines, Inc. by 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; 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.

FOR THE ORDINANCE _____

AGAINST THE ORDINANCE _____

Adopted this ____ day of _____, 2011.

President of the Council

ATTEST:

City Clerk