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**CITY COUNCIL AGENDA
MONDAY, MAY 2, 2011
250 NORTH 5TH STREET
6:30 P.M. – PLANNING DIVISION CONFERENCE ROOM
7:00 P.M. – REGULAR MEETING – CITY HALL AUDITORIUM**

Call to Order
(7:00 P.M.)

Pledge of Allegiance
Invocation – Bishop Bud Hawley, Church of Jesus Christ of
Latter Day Saints – Fruita 4th Ward

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

Proclamations/Recognitions

Proclaiming May 7, 2011 as “National Train Day” in the City of Grand Junction

Proclaiming May 14, 2011 as “Grand Junction Letter Carriers Stamp Out Hunger Day” in the City of Grand Junction

Election of Mayor and Mayor Pro Tem/Administer Oaths of Office

Council Comments

Citizen Comments

***** CONSENT CALENDAR ***®**

*** Indicates Changed Item*

**** Indicates New Item*

® Requires Roll Call Vote

1. **Minutes of Previous Meeting** [Attach 1](#)

Action: Approve the Minutes of the April 18, 2011 and April 20, 2011 Regular Meetings and the Minutes from the April 20, 2011 Special Session

2. **Setting a Hearing on the Hatch Annexation, Located at 2063 S. Broadway**
[File # ANX-2011-698] [Attach 2](#)

A request to annex 4.39 acres, located at 2063 S. Broadway. The Hatch Annexation consists of five (5) parcels. There is no public right-of-way contained within this annexation area.

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

Resolution No. 20-11—A Resolution Referring a Petition to the City Council for the Annexation of Lands to the City of Grand Junction, Colorado, Setting a Hearing on Such Annexation, and Exercising Land Use Control, Hatch Annexation, Located at 2063 S. Broadway

®Action: Adopt Resolution No. 20-11

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

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado Hatch Annexation, Approximately 4.39 Acres, Located at 2063 S. Broadway

Action: Introduction of a Proposed Ordinance and Set a Hearing for June 13, 2011

Staff presentation: Scott D. Peterson, Senior Planner

3. **Setting a Hearing on an Ordinance Amending Title 21 of the Grand Junction Municipal Code, Concerning Language to Grant an Extension for the Recording of Subdivisions** [File # ZCA-2011-632] [Attach 3](#)

These text amendments to Sections 21.02.070(u)(4), 21.020.070(a)(8), 21.020.070(r)(6) and 21.020.070(s)(4) of the Grand Junction Municipal Code, are made to revise Code language to grant an extension for the recording of subdivisions.

Proposed Ordinance Amending Certain Sections of Title 21 of the Grand Junction Municipal Code Concerning the Recording of Subdivisions

Action: Introduction of Proposed Ordinance and Set a Hearing for May 16, 2011

Staff presentation: Lisa Cox, Planning Manager

4. **Somerville Ranch Irrigation Efficiency Project** [Attach 4](#)

Request to enter into a contract with the Natural Resources Conservation Service (NRCS) under the Environmental Quality Incentives Program (EQIP) to install underground pipe and gated surface pipe to improve the irrigation efficiency at the City-owned Somerville ranch. This would be a partnership between the City, Howard and Janie Van Winkle (Somerville Ranch lessee) and the NRCS.

Action: Authorize the Utilities, Street Systems, and Facilities Director to Sign a Conservation Program Contract with the Natural Resources Conservation Service (NRCS)

Staff presentation: Greg Trainor, Utilities, Street Systems, and Facilities Director
Rick Brinkman, Water Services Manager

5. **Persigo Wastewater Treatment Plant Dissolved Air Flotation Specialty Equipment Purchase** [Attach 5](#)

This request is for the purchase of Dissolved Air Flotation (DAF) system equipment for the Persigo Wastewater Treatment Plant (WWTP). Based on previous process improvement evaluation studies at the WWTP, Staff has identified the need to improve the plant system for solids handling. This change will allow Operators at the WWTP to optimize solids handling throughout the entire WWTP, and during winter months when current plant processes are reaching design capacity.

Action: Authorize the Purchasing Division to Execute a Contract with World Water Works, Inc. for the Purchase of a Dissolved Air Flotation Unit for the Persigo WWTP DAF Project in the Amount of \$400,000

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

6. **Outdoor Dining Lease Amendment for Dynamic Adventures Limited DBA Le Rouge Restaurant, Located at 317 Main Street** [Attach 6](#)

Dynamic Adventures Limited DBA Le Rouge Restaurant is requesting an additional area to be added to the existing Outdoor Dining Lease for an area measuring 8.67 feet by 25.4 feet. Le Rouge currently leases 23 feet by 7.83 feet directly in front of the property located at 317 Main Street. The Outdoor Dining Lease would permit the business to have a revocable license from the City of Grand Junction to expand their licensed premise and allow alcohol sales in these areas.

Resolution No. 21-11—A Resolution Amending the Lease of Sidewalk Right-of-Way to Dynamic Adventures Limited DBA Le Rouge Restaurant

®Action: Adopt Resolution No. 21-11

Staff presentation: Heidi Hoffman Ham, DDA Executive Director

7. **Airport Improvement Program Grant for the Acquisition of Snow Removal Equipment** [Attach 7](#)

AIP-47 is a grant for \$456,041.00 for the acquisition of Snow Removal Equipment to help ensure the safe operation of the Grand Junction Regional Airport. The Supplemental Co-sponsorship Agreement is required by the FAA as part of the grant acceptance by the City.

Action: Authorize the Mayor and City Attorney to Sign the Original FAA AIP-47 Grant Documents for acquisition of Snow Removal Equipment at the Grand Junction Regional Airport and Authorize the City Manager to Sign the Supplemental Co-sponsorship Agreements for AIP-47

Staff presentation: Rex A. Tippetts, AAE, Director of Aviation

8. **Sale of Property Described as Lot One of the Parkway Viaduct Subdivision, Located at 1554 Independent Avenue** [Attach 8](#)

The City has entered into a contract with Paul Horbetz for the sale of the real property located at 1554 Independent Avenue.

Resolution No. 22-11—A Resolution Authorizing the Sale by the City of Grand Junction, Colorado, of Certain Real Property; Ratifying Actions Heretofore Taken in Connection Therewith (Lot 1, Parkway Viaduct Subdivision)

®Action: *Adopt Resolution No. 22-11*

Staff presentation: John Shaver, City Attorney

- 9. **Peppermill Lofts Fee Request** [File #SPR-2009-068] [Attach 9](#)

A request to have the City pay certain development fees for Peppermill Lofts, a proposed multi-family development, consisting of 48 units, located at 2823 North Avenue and 497 and 491 28 ¼ Road.

Action: *Approval of the Request Regarding Development Fees*

Staff presentation: Tim Moore, Public Works and Planning Director
Kathy Portner, Neighborhood Services Manager

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

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

- 10. **Commission on Arts and Culture’s Grant Recommendations Supporting Arts and Cultural Events and Projects for 2011** [Attach 10](#)

The Commission on Arts and Culture recommendations are for grant awards to local non-profit organizations to support arts and cultural events, projects, and programs in Grand Junction, which are expected to reach an audience of over 250,000 citizens and visitors and help promote employment, education, exhibit, and sales opportunities for many artists, musicians, and non-profit sector employees in our community.

Action: *Approve the Recommendations from the Commission on Arts and Culture for Grants to Help with the Cultural Events and Arts Projects*

Staff presentation: Rob Schoeber, Parks and Recreation Director
Gisela Flanigan, Commission on Arts and Culture Chair

- 11. **Contract with the Colorado Department of Transportation and the Union Pacific Railroad to Furnish and Install Traffic Safety Features at the River Road Spur, East of Railroad Boulevard** [Attach 11](#)

A contract with CDOT and UPRR for the installation of flashing lights, gates, bells, constant warning circuitry, and new control cabinet at railroad milepost 453.56, located on River Road east of Railroad Boulevard. Traffic control for the crossing

consists only of the required signing installed by the railroad, which is an advance railroad warning sign and a cross-buck railroad sign at the crossing. The request is to design and construct flashing lights, gates and a concrete grade crossing.

Resolution No. 23-11—A Resolution Authorizing the City Manager to Sign a Contract with the Colorado Department of Transportation and the Union Pacific Railroad for the Installation of Rail Crossing Warnings at the Railhead Spur (Railroad Milepost 453.56) in the City of Grand Junction

®Action: Adopt Resolution No. 23-11

Staff presentation: Tim Moore, Public Works and Planning Director

12. **Public Hearing—Hyre Heights Rezone, Located at 2674 F Road** [File # RZN-2011-643] [*Attach 12*](#)

Request to rezone 0.64 acres located at 2674 F Road from R-4, (Residential – 4 du/ac) to MXG-3 (Mixed Use General Form District – 3 stories) zone district.

Ordinance No. 4467—An Ordinance Rezoning the Hyre Rezone Property Located at 2674 F Road from R-4 (Residential – 4 Dwelling Units per Acre) to MXG-3 (Mixed Use General Form District – 3 Stories)

®Action: Hold a Public Hearing and Consider Final Passage and Final Publication in Pamphlet Form of Ordinance No. 4467

Staff presentation: Brian Rusche, Senior Planner

13. **Public Hearing—Amendments to the Grand Junction Municipal Code, Chapter 6.12, Dogs and Cats, Concerning Barking Dogs** [*Attach 13*](#)

The Grand Junction Municipal Code (“Code”) had a comprehensive review as part of a contract with Code Publishing Company. A misunderstanding developed during that review and, mistakenly, a change was made to section 6.12.060, Barking Dogs, due to that misunderstanding. The amendment concerning this section 6.12.060 will remedy that mistake.

Ordinance No. 4468—An Ordinance Amending Section 6.12.060 of Chapter 6 of the Grand Junction Municipal Code Concerning Barking Dogs

®Action: *Hold a Public Hearing and Consider Final Passage and Final Publication in Pamphlet Form of Ordinance No. 4468*

Staff presentation: John Shaver, City Attorney

14. **Non-Scheduled Citizens & Visitors**
15. **Other Business**
16. **Adjournment**

**Attach 1
Minutes of Previous Meetings**

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

April 18, 2011

The City Council of the City of Grand Junction convened into regular session on the 18th day of April 2011 at 7:00 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 Deputy City Manager Rich Englehart, City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Coons called the meeting to order. Girl Scout Troop #121 was in attendance and led the Pledge of Allegiance followed by a moment of silence.

Council President Coons also recognized Boy Scout Troop #357 in attendance.

Presentation

Appreciation Plaques were presented to outgoing City Councilmember Bruce Hill and Gregg Palmer.

Council President Coons lauded the public service of both Councilmember Bruce Hill and Councilmember Gregg Palmer. She thanked them for all of their help and service to the community. She announced that there is a reception scheduled on April 26th starting at 3:30 p.m. for the outgoing Councilmembers here at City Hall.

Councilmember Pitts thanked both outgoing Councilmembers for their service and said he has learned a lot from working with them.

Councilmember Kenyon thanked both for telling the new Councilmembers the history of the last eight years and said Councilmembers Palmer and Hill have performed exemplary in their service. He complimented their stewardship and their knowledge and wisdom. Few understand the amount of time it takes to serve the community as a City Councilmember.

Councilmember Susuras thanked both for their help and said he appreciated their history which helped add value to the Council meetings.

Council President Coons noted that both also served as Mayor and served very well. She then read and presented them each with their appreciation plaques.

Proclamations

Proclaiming the Week of May 1 through May 8, 2011 as “Days of Remembrance” in the City of Grand Junction

Proclaiming the Week of April 24 through 30, 2011 as “Administrative Professionals Week” and Wednesday, April 27 as “Administrative Professionals Day” in the City of Grand Junction

Council Comments

Councilmember Pitts said he attended three events in the last week; the first was School District 51 honoring 460 classroom volunteers, the second was the ribbon cutting of the Rural Election Association new geo thermal run building and the third was the Arborfest Chili Cook off.

Council President Coons thanked Councilmember Kenyon for stepping in as Acting Mayor Pro Tem in her absence.

Citizen Comments

There were none.

CONSENT CALENDAR

Councilmember Hill read the Consent Calendar and then moved to approve Items #1 through #4. Councilmember Susuras seconded the motion. Motion carried by roll call vote.

1. Minutes of Previous Meetings

Action: Approve the Minutes of the April 4, 2011 and April 6, 2011 Regular Meetings and the Minutes of the April 6, 2011 Special Session

2. Setting a Hearing on Hyre Heights Rezone, Located at 2674 F Road [File # RZN-2011-643]

Request to rezone 0.64 acres located at 2674 F Road from R-4, (Residential – 4 du/ac) to MXG-3 (Mixed Use General Form District – 3 stories) zone district.

Proposed Ordinance Rezoning the Hyre Rezone Property Located at 2674 F Road from R-4 (Residential – 4 Dwelling Units per Acre) to MXG-3 (Mixed Use General Form District – 3 Stories)

Action: Introduction of a Proposed Ordinance and Set a Hearing for May 2, 2011

3. **Setting a Hearing on Amendments to the Grand Junction Municipal Code, Chapter 6.12, Dogs and Cats, Concerning Barking Dogs**

The Grand Junction Municipal Code (“Code”) had a comprehensive review as part of a contract with Code Publishing Company. A misunderstanding developed during that review and, mistakenly, a change was made to section 6.12.060, Barking Dogs, due to that misunderstanding. The amendment concerning this section 6.12.060 will remedy that mistake.

Proposed Ordinance Amending Section 6.12.060 of Chapter 6 of the Grand Junction Municipal Code Concerning Barking Dogs

Action: Introduction of a Proposed Ordinance and Set a Hearing for May 2, 2011

Staff presentation: John Shaver, City Attorney

4. **Indemnifying William Baker, John Camper, Rick Dyer, William Gardner, and John Zen in Civil Action 10CV01719 MSK KLM**

Misti Schneider has sued the City along with four current and one former Police Department employees. Recently the Plaintiff, Ms. Schneider, filed to amend her lawsuit to state punitive damage claims against the current and former Police Department employees. By making the allegations the Plaintiff is now seeking personal, individual payment from the defendants for events that arose out of their employment with the City.

Under the Colorado Governmental Immunity Act, the City, upon a finding that it is in the public interest to do so, may defend, pay or settle punitive damage claims against public employees. It is the purpose of the proposed resolution to acknowledge the defense of those persons named in the resolution.

Resolution No. 18-11—A Resolution Acknowledging the Defense of William Baker, John Camper, Rick Dyer, William Gardner, and John Zen in Civil Action No. 10CV01719 MSK KLM

Action: Adopt Resolution No. 18-11

ITEMS NEEDING INDIVIDUAL CONSIDERATION

Public Hearing—An Amendment to Chapter 6 of the City of Grand Junction Municipal Code Pertaining to Dogs Running at Large and the Presence of Dogs and Other Animals at Downtown Grand Junction Events

At the request of the Grand Junction Downtown Development Authority and the Downtown Association, the City Attorney has written a proposed clarification and expansion of the restrictions in Chapter 6 of the City of Grand Junction Municipal Code regarding dogs in common areas and dogs and other animals at downtown events.

The public hearing was opened at 7:22 p.m.

Heidi Hoffman Ham, DDA Executive Director, and representing the Downtown Partnership, presented this item. She explained the reason for the proposed ordinance. She noted that it does not come forward lightly but there have been many incidents and complaints that have caused this item to come forward. The City of Fruita adopted a similar ordinance in 2004. Allowing animals is not only impacting the attendees, it is not a good situation for the animals either with hot pavement and no fresh water available; it makes for a stressful event for an animal. There are provisions for exemptions for animal events. A letter was submitted by the Animal Welfare Program that supported the adoption of the ordinance which she read (attached).

City Attorney Shaver was available for questions.

Councilmember Kenyon asked Police Chief Camper about assigning more officers to enforce existing ordinances.

Police Chief John Camper said the kind of event is what determines the number of officers at the event. It also depends on the call volume. There is usually at least two officers at Farmers' Market. They do not anticipate more officers being assigned but perhaps at the beginning of the Farmers' Market season they can have more officers available to hand out informational brochures and to educate people about the ordinance. The Police Department anticipates enforcement only for those who are repeat offenders.

George Rossman, 276 Copper Lane, is the event coordinator for the Downtown events, said that the dogs have created most of the problems. She listed a number of the things that have occurred. She said it has been worrisome.

Brittany Vandermark, 645 Oxbow Road, is against the ordinance. She agreed that one hears about the bad things but they don't hear from the dog lovers. She noted that there are a lot of ill-behaved and disruptive children as well as dogs. She asked if there could be another solution rather than banning dogs at such events altogether. She felt that

there should be some middle ground. She would not attend Grand Junction's Farmers' Market if they are not allowed.

Milton "Tony" Long, 237 White Ave, Apt. B, asked what will be done when children and adults misbehave. The same standard should be applied to dog owners. He said take care of the dogs that are the problem and keep allowing dogs at events.

Gary Ames, 324 Sherman Drive, professional dog whisperer, said there are both well behaved dogs and ill behaved dogs and there are ordinances on the books that can take care of the problem instead of having another ordinance.

There were no other public comments.

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

Councilmember Susuras asked if dogs will be banned at all events. Ms. Ham said they will be.

Councilmember Kenyon noted for clarification that the Downtown Development Authority authorizes these special events and they are noticed for the public regarding the specific hours in which this ordinance specifically applies.

Councilmember Palmer said as a retailer downtown he has seen the Farmers' Market grow. The number of people and the number of dogs has grown. In the last several years he has heard and witnessed a lot of incidents with dogs. While it is true that some ruin it for everybody, it is really a people event and there have been a lot of issues and a lot of complaints.

Councilmember Hill said when he first heard about the ordinance he didn't like any idea of prohibiting dogs, but it has gotten to a point that he does worry about his kids at events with a lot of dogs he doesn't know. He sees the same kind of regulations in other towns, such as Frisco, which are very dog-friendly towns. He wants Grand Junction to stay a dog friendly town but he agreed with the ordinance.

Ordinance No. 4459—An Ordinance Amending Chapter 6 of the Grand Junction Municipal Code Relating to Pets and Dogs in Common and Public Areas

Councilmember Palmer moved to adopt Ordinance No. 4459 and ordered it published in pamphlet form. Councilmember Pitts seconded the motion.

Council President Coons noted the difficulty of enforcing the current ordinances, like when a dog defecates and the owner disappears into the crowd without cleaning it up or a child gets bit and then it's too late. She too is a dog owner but knows that dogs can be unpredictable, especially in crowds or when stressed, and even when they are very well

behaved. She sees the difficulty of mixing families and pets in these close circumstances.

Motion carried by roll call vote.

Public Hearing—Providing Standards and Allowing for Optional Premises Liquor License in Conjunction with a Hotel and Restaurant Liquor License for Mesa State College

Mesa State College has requested that, in addition to licensing their new College Center with a Hotel and Restaurant Liquor License, that it be allowed optional premise permits for three of their recreational facilities. The State Liquor Code requires that in order for the municipality to issue optional premises permits, it must adopt specific standards by ordinance and eliminate the distance restriction for optional premises permits in the same manner it eliminated the distance restriction for hotel and restaurant liquor licenses by Ordinance No. 3620 in 2004.

The public hearing was opened at 7:43 p.m.

John Shaver, City Attorney, presented this item. He explained the necessity of the ordinance by State Law that the Council must adopt specific standards for optional premises permits. It identifies the specific areas for service and details specific restrictions. The base license will be at the College Center and the optional premises will be at the other locations. The ordinance will also eliminate the distance restriction for optional premise permits.

Councilmember Pitts asked what kind of liquor will be permitted. City Attorney Shaver said it will be full service. City Attorney Shaver said this action is not issuing the liquor license. This is authorization for them to proceed through the process. They must meet all the requirements of the application process.

Councilmember Palmer asked about the specific standards. City Attorney Shaver said the ordinance denoted the specific locations and they are in conjunction with the College Center. Mr. Shaver noted it also ensures responsible service.

Councilmember Kenyon said it makes sense that they would like to serve alcohol at their special events and it is limited to those areas delineated on the map. City Attorney Shaver concurred noting that currently the College must apply for each special event and those permits are limited to ten per year.

Councilmember Susuras asked if the service will be extended to Stocker Stadium. City Attorney Shaver said no. Councilmember Susuras asked if the City has any liability in the event that they serve underage patrons. City Attorney Shaver said the City would be pursuing any such violations.

Derrick Wagner, 1100 North Avenue, representing the College, said they have been working on this for some time and he thanked the City Staff for being patient and suggesting options and working with them.

Milton “Tony” Long, 237 White Avenue, Apt. B, said he is opposed to alcohol abuse and wonders why Mesa State College wants to sell alcohol.

There were no other public comments.

The public hearing was closed at 7:52 p.m.

Councilmember Susuras said it makes more sense for the College to hold a permanent license rather than apply for each special event.

Councilmember Palmer said this is logical with the expanded service of the College.

Ordinance No. 4460—An Ordinance for Optional Premises Permits for Mesa State College’s Brownson Arena, Walker Field Soccer Stadium, and Elliott Tennis Center, all on the Mesa State College Campus and to Amend the Grand Junction Municipal Code Section 5.12.220 to Eliminate the Distance Restriction for Optional Premises Permits in Conjunction with Hotel and Restaurant Liquor Licenses

Councilmember Kenyon moved to adopt Ordinance No. 4460 and ordered it published in pamphlet form. Councilmember Palmer seconded the motion. Motion carried by roll call vote.

Public Hearing—Correcting the Boundaries for the Grand Junction, Colorado Downtown Development Authority (DDA)

Certain parcels have been identified by the Mesa County Assessor’s Office and the City as having changed, possibly since the creation of the DDA database in 1981, so that the boundaries of those parcels are no longer accurately recorded. The DDA has worked with City and County Staff to correct these maps and GIS databases of District properties. This ordinance makes the corrections complete and lawful.

The public hearing was opened at 7:54 p.m.

Heidi Hoffman Ham, DDA Executive Director, presented this item. She explained the reasons for the boundary corrections requested. Property lines have changed over the years and this will correct the assessments. Letters have been sent to every property owner affected. Many have contacted her and she has had good conversations with them and they understand the need for corrections. The letter included the date of the public hearing if anyone wanted to come and speak.

Councilmember Kenyon inquired how this has happened. Ms. Ham gave a few examples of when a property owner buys an adjacent parcel and then the lot line is adjusted through redevelopment.

City Attorney Shaver noted it is also happening in the special districts.

Councilmember Kenyon asked if the County Assessor's office is aware and supportive.

City Attorney Shaver said they are and he expressed appreciation to them since this has been a big undertaking.

There were no public comments.

The public hearing was closed at 7:58 p.m.

Ordinance No. 4461—An Ordinance Determining the Boundaries for the Grand Junction, Colorado Downtown Development Authority

Councilmember Kenyon asked about the new map and the individual parcel corrections. City Attorney Shaver said that two maps were provided, one showing the parcels to be corrected and one that shows the final boundaries. He noted that this map will be coming forward again when an ordinance comes forward to reconstitute the DDA for another 30 years.

Councilmember Susuras moved to adopt Ordinance No. 4461 and ordered it published in pamphlet form. Councilmember Pitts seconded the motion. Motion carried by roll call vote.

Public Hearing—Gay Johnson's Alley Right-of-Way Vacation, Located at 333 N. 1st Street [File #VAC-2010-314] – Continued from April 4, 2011

A request to vacate the entire north/south alley way between Grand Avenue and White Avenue, west of N. 1st Street, and east of North Spruce Street. The vacation of this alley will allow for an expansion of the business located at 333 N. 1st Street.

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

Lori V. Bowers, Senior Planner, presented this item. She described the site, the location, and the request. She asked that the Staff Report and attachments be entered into the record. The requested right-of-way vacation is consistent with the Comprehensive Plan goals. The criteria of the Grand Junction Municipal Code has been met. Easement for utilities will be retained in a 20 foot alley. The applicant is present but does not need to make a presentation.

Councilmember Susuras asked who was invited to the neighborhood meeting in February. Ms. Bowers said everyone within 500 feet was invited and two people showed up.

Council President Coons asked if the alley is being used for access. Ms. Bowers said the site is being accessed and the curb cuts will remain.

There were no public comments.

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

Councilmember Kenyon asked about the moniker "Gay Johnson's Alley" if that is the legal name. City Attorney Shaver said it is not, it is just for description purposes. The legal description will be recorded.

Councilmember Pitts noted that the vacation will allow the owner to expand and develop without the definition of an alley.

Ordinance No. 4464—An Ordinance Vacating Right-of-Way for Gay Johnson's Alley, Located at 333 N. 1st Street

Councilmember Hill moved to adopt Ordinance No. 4464 and ordered it published in pamphlet form. Councilmember Pitts seconded the motion. Motion carried by roll call vote.

Public Hearing—Pomona 24 Road Annexation, Located South of H Road along 24 Road [File # ANX-2011-653]

Request to annex 1.17 acres of 24 Road right-of-way, located south of H Road and north of I-70. The Pomona 24 Road Annexation consists only of right-of-way.

The public hearing was opened at 8:06 p.m.

Brian Rusche, Senior Planner, presented this item. He described the site, the location, and the request. The annexation is only right-of-way and there is a need to repair the sewer main in the right-of-way. Thus is the need for the annexation.

Councilmember Palmer asked if the annexation will create an enclave. Mr. Rusche said right-of-way is not counted for purposes of creating an enclave and so it will not. There were no public comments.

The public hearing was closed at 8:09.

a. Accepting Petition

Resolution No. 19-11—A Resolution Accepting a Petition for Annexation, Making Certain Findings, Determining that Property Known as the Pomona 24 Road Annexation, Approximately 1.17 Acres of Public Right-of-Way for 24 Road, Located South of H Road and North of I-70 is Eligible for Annexation

b. Annexation Ordinance

Ordinance No. 4465—An Ordinance Annexing Territory to the City of Grand Junction, Colorado Pomona 24 Road Annexation, Approximately 1.17 Acres of Public Right-of-Way for 24 Road, Located South of H Road and North of I-70

Councilmember Palmer moved to adopt Resolution No. 19-11 and Ordinance No. 4465, and ordered it published in pamphlet form. Councilmember Hill seconded the motion. Motion carried by roll call vote.

Public Hearing—Text Amendments to Section 21.06.010(b)(3) of Title 21 of the Grand Junction Municipal Code, Concerning Nonresidential Streets [File #ZCA-2011-633]

This text amendment to Section 21.06.010(b)(3), Existing Residential Streets, of the Grand Junction Municipal Code is to allow the Director authority to determine the minimum acceptable standards for local nonresidential streets and to defer construction of local nonresidential street improvements if certain criteria are met.

The public hearing was opened at 8:10 p.m.

Lisa Cox, Planning Manager, presented this item. She explained the reason for the proposed Code Amendment which is to provide some flexibility to development customers. There are many areas that developed in unincorporated Mesa County. In many cases, when developed in the County the properties do not have the same facilities as they would in the City due to a difference in standards. Sometimes a piece of property will get developed in an area where there are not streets with curb, gutter, and sidewalk, so to require a parcel that is developing to install those improvements when there are none to connect to, the Director will have the authority to defer those improvements. There would be an agreement entered into that would require the improvements in the future. At the March 8th Planning Commission meeting, the Commission made a recommendation for approval.

Council President Coons asked how this will allow those improvements to happen in the future, and will this violate stormwater regulations? Ms. Cox said this amendment will only apply to certain properties (2 acres or less) in industrial and commercial areas. The amendment will encourage development of these smaller parcels but will still allow the

City to come in later and require those improvements when it makes sense. It shouldn't be an issue with stormwater permits but deferred to the Director of Public Works and Planning, Tim Moore.

Public Works and Planning Director Tim Moore noted that this was approved in the residential districts a few years ago and at that time the City Council asked that it be reviewed over time and see if it made sense to apply it in the industrial and commercial areas. This will just affect the smaller infill areas. None of the stormwater regulations will be affected; the developer will still have to meet stormwater regulations.

David Gross, 2630 New Orchard Court, said they are trying to do a project, and it does not make sense to do this in an area where there will be very little traffic.

Reford Theobald, 3760 Beechwood, said the overall theme is to make things easier and he supports that but it sounds like the agreement will be like a power of attorney. Such instruments have been problematic in the past so he cautioned the Council in depending on them for future improvements.

There were no other public comments.

The public hearing was closed at 8:35 p.m.

Councilmember Hill mentioned the Transportation Capacity Payment (TCP) and said this is a question for the next Council. The TCP really needs to be reviewed for clarity. There is a piece that is inconsistent. On a main collector, the developer pays a fee and is done. On interior streets, a developer has to pay the TCP and do the half-street improvements. If the City just charged the TCP consistently everywhere, then this ordinance would not even be needed. However, he will support the ordinance.

Councilmember Susuras asked if a signed agreement will be executed for improvements at a later time. Public Works and Planning Director Tim Moore said yes.

Councilmember Kenyon agreed that there are isolated parcels where it doesn't make sense; the County has the same problem. However, what happens when the company goes bankrupt, how is the agreement enforced? If it is an obligation to the deed, it becomes very detrimental to the property ever actually getting developed. He is concerned how the City will make good on these agreements in the future.

City Attorney Shaver said Councilmember Kenyon is absolutely right and the agreement will run with the land. He concurred with Mr. Theobald's comments about past use of powers of attorney.

Councilmember Palmer agreed and said he too is very cautious and there is a lot about it that concerns him. Many decisions are being delegated to the Director and he is not sure

that best represents the citizens. He is not convinced that this is the right way and he is not supportive.

Councilmember Pitts said he is having a hard time pinpointing an example where this would apply. He has a problem with it.

Council President Coons asked about improvements through special improvement districts and asked the City Attorney to provide details.

City Attorney Shaver said power of attorneys in the past designate the City Clerk as the authority to sign on behalf of the property owners on a petition to form a special improvement district. Over 50% of the property owners would have to sign the formation petition. In the past, new owners many times object to those powers of attorney as it was a previous owner that gave that authorization. Another option is to require the payment on the sale of the property. The City also finances those costs through an annual assessment on the property tax bill plus 8% interest.

Council President Coons asked when those improvements would be triggered. City Attorney Shaver advised either a large development would take place causing the need for the improvements or several lots would develop at one time thus necessitating the improvements.

Councilmember Susuras inquired if the experience with applying this same method on residential development has been sufficient. Public Works and Planning Director Tim Moore said the experience has been with less than twelve sites where this tool has been used.

Ordinance No. 4466—An Ordinance Amending Section 21.06.010(b)(3), of the Grand Junction Municipal Code, Infrastructure Standards, Concerning Nonresidential Streets

Councilmember Hill moved to adopt Ordinance No. 4466, and ordered it published in pamphlet form. Councilmember Susuras seconded the motion.

Councilmember Kenyon said he will support the ordinance with skepticism and encouraged the Council to further discuss the TCP issue.

Council President Coons noted that in previous TCP discussions the goal was to make things more development friendly which resulted in delegating authority to the Director. She still supports delegating authority to speed up the development process.

Motion carried by roll call vote with Councilmembers Palmer and Pitts voting NO.

Non-Scheduled Citizens & Visitors

There were none.

Other Business

Council President Coons reminded the public that the Council will be holding a candidate forum on Wednesday to interview candidates for the District D seat. She invited the public to attend and participate.

Adjournment

The meeting was adjourned at 8:40 p.m.

Stephanie Tuin, MMC
City Clerk



**Mesa County Animal
Welfare Forum**

Date: April 14, 2011

CONTACT:

Thomas C. Melzer, DVM
Orchard Mesa Veterinary Hospital
Veterinary Representative 970.241.9866

Thomas Suplizlo, DVM
Animal Medical Clinic
Veterinary Representative 970.434.4094

Elaine Johnson, President
Roice-Hurst Humane Society
970.244.8957

Dr. Joe Maruca, President
Grand Rivers Humane
970.216.2901

Penny McCarty, Director
Mesa County Animal Services
970.255.5003

Position Statement - Proposed restrictions in the City of Grand Junction Code of Ordinances regarding dogs at downtown events

The Mesa County Animal Welfare Forum is comprised of representatives from the veterinary community, the animal welfare community, local citizens and Mesa County officials. In July of 2009, these agencies and individuals joined forces to identify meaningful goals on how our community will handle displaced pets and to determine what level of services are required to successfully manage the pet population in Mesa County. This position statement was determined by those in the organization that specialize in or manage the Mesa County canine population.

- While the Mesa County Animal Welfare Forum strongly believes and encourages socialization and exercise of Mesa County dogs, we believe that the location in which those activities take place should be conducive to a healthy and safe environment for both the public and pets. It is our belief that the crowded and active atmosphere at a successful downtown event could result in overstimulation and stress for many dogs. In addition, the nature of a large crowd can cause unintended contact between dogs and members of the public or atypical behavior by a dog. This can be result in injury to another animal or person.

The Mesa County Animal Welfare Forum supports the proposed expansion of the restrictions in the City of Grand Junction Code of Ordinances regarding dogs at downtown events.

Mesa County Animal Welfare Forum
P. O. Box 20,000-5002
Grand Junction, CO 81502-5002
970.255.5003

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

April 20, 2011

The City Council of the City of Grand Junction convened into regular session on the 20th day of April 2011 at 8:39 p.m. in the City Auditorium. The purpose of the meeting was to fill the vacant District D seat. The regular meeting was noticed and convened following a public candidate's forum. 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.

Council President Coons called the meeting to order.

Councilmember Pitts nominated John Ballagh. Councilmember Susuras seconded the nomination.

Councilmember Palmer nominated Reford Theobald. Councilmember Kenyon seconded the nomination.

Councilmember Hill nominated Laura Luke. Councilmember Kenyon seconded the nomination.

Councilmember Coons asked if there were any other nominations.

There were none.

Councilmember Coons stated there were three candidates nominated: John Ballagh, Reford Theobald, and Laura Luke.

Councilmember Hill reiterated that the Candidate Forum was a wonderful reflection of the quality of people that are in this community. He thanked all six candidates for their interest. He said this community continues to be in good hands with people like this.

Councilmember Susuras agreed.

Councilmember Kenyon agreed and said he would be honored to serve with any of the candidates. He thanked them for going through the process.

Council President Coons reminded Council that it takes four votes to select the person to fill the District D seat.

A roll call vote was called and each candidate received two votes. Councilmembers Susuras and Pitts voted for John Ballagh. Councilmembers Palmer and Kenyon voted for Reford Theobold. Councilmembers Hill and Council President Coons voted for Laura Luke.

Council President Coons asked the City Attorney for suggestions on how to proceed. City Attorney Shaver suggested the Council discuss the pros and cons of each candidate.

Councilmember Pitts said he really liked the candor and direct approach from John Ballagh. None of the candidates stood head and shoulders above the rest. Councilmember Pitts stated Mr. Ballagh is familiar with the valley and his approach provides a new and fresh perspective.

Councilmember Hill said he nominated Laura Luke from a perspective of diversity and he was impressed with her interest with the Master Panel Survey group. He noted that Ms. Luke brings the tools that previous Councilmember Beckstein had which were financial and accounting backgrounds.

Councilmember Palmer said he did ask the two Council-elects and got their opinion. His opinion was based on the candidate's way of expressing and articulating. His deference is for experience since with the three seasoned Councilmembers leaving, 22 years of experience are leaving the Council. Mr. Theobold has the basic understanding and has the background. He has institutional memory.

Councilmember Kenyon stated a number of candidates said a number of times "I agree with Reford". Mr. Theobold has experience and is well-thought of in the community.

Councilmember Susuras said he thought all of the candidates did very well and he would be happy to serve with any of them. He said his vote will stay with Mr. Ballagh.

Council President Coons agreed with Ms. Luke having fiscal experience, and she too would like to see diversity on the Council. Without another women on the Council, the community isn't accurately represented by the sitting Council.

Councilmember Pitts said he objects to Council President Coons favoring Ms. Luke because she wants another woman on the Council. Council President Coons responded that was not what she said clarifying that the Council should reflect the make-up of the community.

Council President Coons asked the City Attorney for direction on breaking the tie. City Attorney Shaver said they could decide by lot such as flipping a coin, or continue to deliberate. He suggested the Council be polled on their top two. That vote was taken by roll call and John Ballagh and Laura Luke were the top two choices. Councilmember

Susuras voted for John Ballagh and Reford Theobold, Councilmember Hill voted for John Ballagh and Laura Luke, Councilmember Kenyon voted for John Ballagh and Reford Theobold, Councilmember Palmer voted for Reford Theobold and Laura Luke, and Council President Coons voted for John Ballagh and Laura Luke. Council President Coons then called a roll call vote on the two candidates and another tie was the result. Councilmembers Susuras, Kenyon, and Pitts voted for John Ballagh. Councilmembers Hill, Palmer, and Council President Coons voted for Laura Luke.

Councilmember Palmer asked if the Council-elects should be allowed to give some input.

Councilmember Kenyon suggested that each of the two Council-elects be given an opportunity to address the City Council.

City Attorney Shaver said they are not sworn in so he would advise against it.

Councilmember Kenyon said he would like to hear what they have to say.

Council President Coons asked if that is in addition to asking the candidates to address the City Council.

Councilmember Hill said he thinks this is a an appropriate opportunity for the Council candidates to give closing summaries in order for those voting to have more clarity on their choice.

City Manager Kadrach suggested that the candidates offer a closing statement.

Councilmember Pitts concurred with City Manager Kadrach.

Council President Coons asked John Ballagh to come forward.

Mr. Ballagh said he stood and was elected six times on the Clifton Water District. He also served on a State Board. He has been in an elected position and has also served on elected board. In consideration of both of those situations, one being an enterprise fund and one being supported by a mill levy, he has the experience and would not need a lot of startup time. He has also served on Planning Commissions.

Laura Luke said experience comes in a lot of different forms. She knows what it is like to compete with other candidates and land the position. She knows what it means to develop partnerships in the community. Experience is very important and she has experience in many areas. Together as a team they can conquer great things. She comes with a fresh perspective. She will have a steep learning curve but she comes with ability to learn. She has a very strong stake here. There are a lot of energy issues and she has the experience to talk intelligently on those issues.

Council-elect Bennett Boeschstein came forward and expressed his appreciation to the process and to all the candidates. He has worked with John Ballagh for thirty years and he has a lot of respect for him. He lauded a number of things Mr. Ballagh has accomplished. However, his vote goes to Laura Luke. He thought she did a wonderful job with the questions she was asked.

Council-elect Jim Doody complimented all the candidates. He said he read Laura Luke's application five or six times and he could feel the energy. Her background reminded him of former Councilmember Beckstein. He has known John Ballagh for about six years with the 5-2-1 Drainage District and respects him. However, he will support Laura Luke.

Council President Coons then called for another roll call vote. Laura Luke received five votes, John Ballagh received one vote. Councilmembers Hill, Kenyon, Palmer, Pitts and Council President Coons voted for Laura Luke. Councilmember Susuras voted for John Ballagh. Laura Luke was duly elected by the City Council.

Council President Coons advised that the oath of office to newly elected District D Representative Laura Luke, who was selected, will be given along with the newly elected Councilmembers Boeschstein and Doody on May 2nd at 10:00 a.m.

Adjournment

The meeting was adjourned at 9:16 p.m.

Stephanie Tuin, MMC
City Clerk

GRAND JUNCTION CITY COUNCIL

SPECIAL SESSION MINUTES

APRIL 20, 2011

The City Council of the City of Grand Junction, Colorado met in Special Session on Monday, April 20, 2011 at 11:35 a.m. in the Administration Conference Room, 2nd Floor, City Hall, 250 N. 5th Street. Those present were Councilmembers Tom Kenyon, Gregg Palmer, Bill Pitts, Sam Sursuras, and President of the Council Teresa Coons. Absent was Councilmember Bruce Hill.

Council President Coons called the meeting to order.

Councilmember Kenyon moved to go into Executive Session for discussion of personnel matters under Section 402 (4)(f)(I) of the Open Meetings Law Relative to City Council Employees Specifically the City Manager and Council will not be returning to open session. Councilmember Palmer seconded the motion. The motion carried.

The City Council convened into executive session at 11:36 p.m.

Stephanie Tuin, MMC
City Clerk



Date: April 19, 2011
 Author: Scott D. Peterson
 Title/ Phone Ext: Senior Planner/1447
 Proposed Schedule: Resolution Referring Petition – May 2, 2011
 2nd Reading
 (if applicable): June 13, 2011

CITY COUNCIL AGENDA ITEM

**Attach 2
 Setting a Hearing on the Hatch Annexation**

Subject: Hatch Annexation, Located at 2063 S. Broadway
File #: ANX-2011-698
Presenters Name & Title: Scott D. Peterson, Senior Planner

Executive Summary:

A request to annex 4.39 acres, located at 2063 S. Broadway. The Hatch Annexation consists of five (5) parcels. There is no public right-of-way contained within this annexation area.

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

The proposed Annexation meets with Goals 3 and 5 of the Comprehensive Plan by creating the potential for a broader mix of housing types in the community and creating balanced and future growth spread within the community.

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

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.

Action Requested/Recommendation:

Adopt a Resolution Referring the Petition for the Hatch Annexation, Introduce the Proposed Ordinance and Set a Hearing for June 13, 2011.

Board or Committee Recommendation:

The Planning Commission will consider the Zone(s) of Annexation at a later date.

Background, Analysis and Options:

See attached Staff Report/Background Information.

Financial Impact/Budget:

None.

Legal issues:

None.

Other issues:

None.

Previously presented or discussed:

None.

Attachments:

1. Staff Report/Background information
2. Annexation Summary / Site Location Map; Aerial Photo Map
3. Comprehensive Plan Map; Blended Residential Map
4. Existing City and County Zoning Map
5. Resolution Referring Petition
6. Annexation Ordinance

STAFF REPORT / BACKGROUND INFORMATION			
Location:		2063 S. Broadway	
Applicants:		Robert C. and Suzanne M. Hatch	
Existing Land Use:		Vacant land and the "old Beach property"	
Proposed Land Use:		Two-Family and Multi-Family Residential and potential small Commercial Development	
Surrounding Land Use:	North	Driving range for Tiara Rado Golf Course	
	South	10 th Hole at Tiara Rado Golf Course	
	East	Residential subdivision - Fairway Villas	
	West	Clubhouse for Tiara Rado Golf Course and Six Single-Family Attached Dwelling Units.	
Existing Zoning:		County (PUD), (Planned Unit Development)	
Proposed Zoning:		R-12, (Residential – 12 du/ac) and B-1, (Neighborhood Business)	
Surrounding Zoning:	North	City CSR, (Community Services and Recreation)	
	South	City CSR, (Community Services and Recreation)	
	East	City PD, (Planned Development)	
	West	City CSR, (Community Services and Recreation) and County PUD (Planning Unit Development)	
Future Land Use Designation:		Residential Medium High (8 – 16 du/ac) and Commercial	
Zoning within density range?		X	Yes
			No

Staff Analysis:

ANNEXATION:

This annexation area consists of 4.39 acres of land and is comprised of five (5) parcels. The property owners have requested annexation into the City to allow for development of the property. Under the 1998 Persigo Agreement all proposed development within the Persigo Wastewater Treatment boundary requires annexation and processing in the City.

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

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

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

The following annexation and zoning schedule is being proposed.

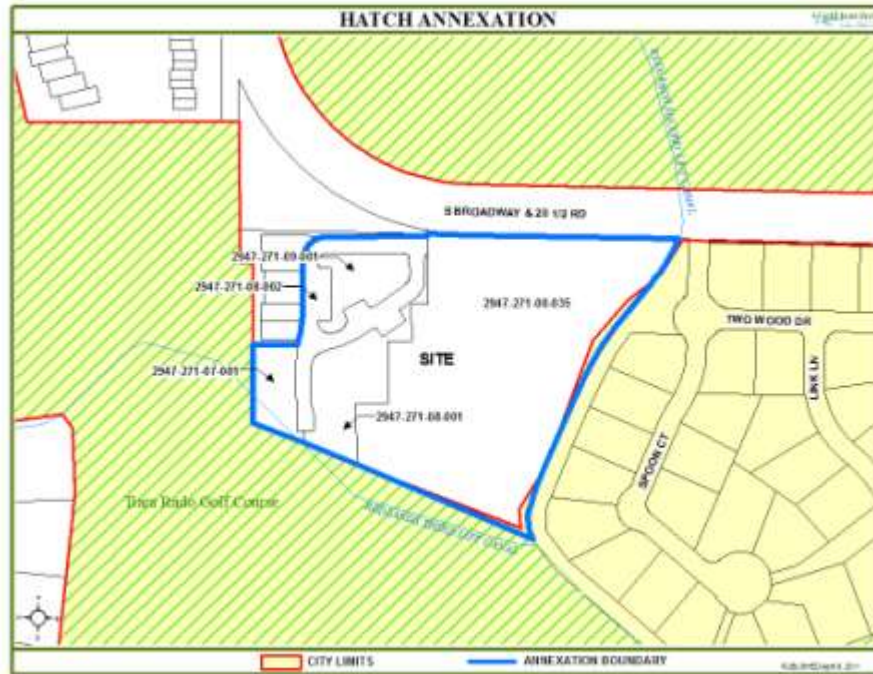
<u><i>ANNEXATION SCHEDULE</i></u>	
May 2, 2011	Referral of Petition (30 Day Notice), Introduction Of A Proposed Ordinance, Exercising Land Use
To be determined	Planning Commission considers Zone(s) of Annexation
To be determined	Introduction Of A Proposed Ordinance on Zoning by City Council
June 13, 2011	Acceptance of Petition and Public Hearing on Annexation by City Council
July 15, 2011	Effective date of Annexation

HATCH ANNEXATION SUMMARY

File Number:	ANX-2011-698	
Location:	2063 S. Broadway	
Tax ID Number:	2947-271-09-001; 2947-271-08-002; 2947-271-07-001; 2947-271-08-001; 2947-271-00-035	
# of Parcels:	5	
Estimated Population:	0	
# of Parcels (owner occupied):	0	
# of Dwelling Units:	0	
Acres land annexed:	4.39	
Developable Acres Remaining:	4.39	
Right-of-way in Annexation:	0	
Previous County Zoning:	PUD, (Planned Unit Development)	
Proposed City Zoning:	R-12, (Residential – 12 du/ac) and B-1, (Neighborhood Business)	
Current Land Use:	Vacant land and the “old Beach property”	
Future Land Use:	Two-Family and Multi-Family Residential and potential small Commercial Development	
Values:	Assessed:	\$299,550
	Actual:	\$1,032,910
Address Ranges:	2063 S. Broadway	
Special Districts:	Water:	Ute Water Conservancy District
	Sewer:	Persigo - 201
	Fire:	Grand Junction Rural – Redlands Subdistrict
	Irrigation/ Drainage:	Redlands Water and Power Company
	School:	Mesa County School District #51
	Pest:	N/A.

Site Location Map

Figure 1



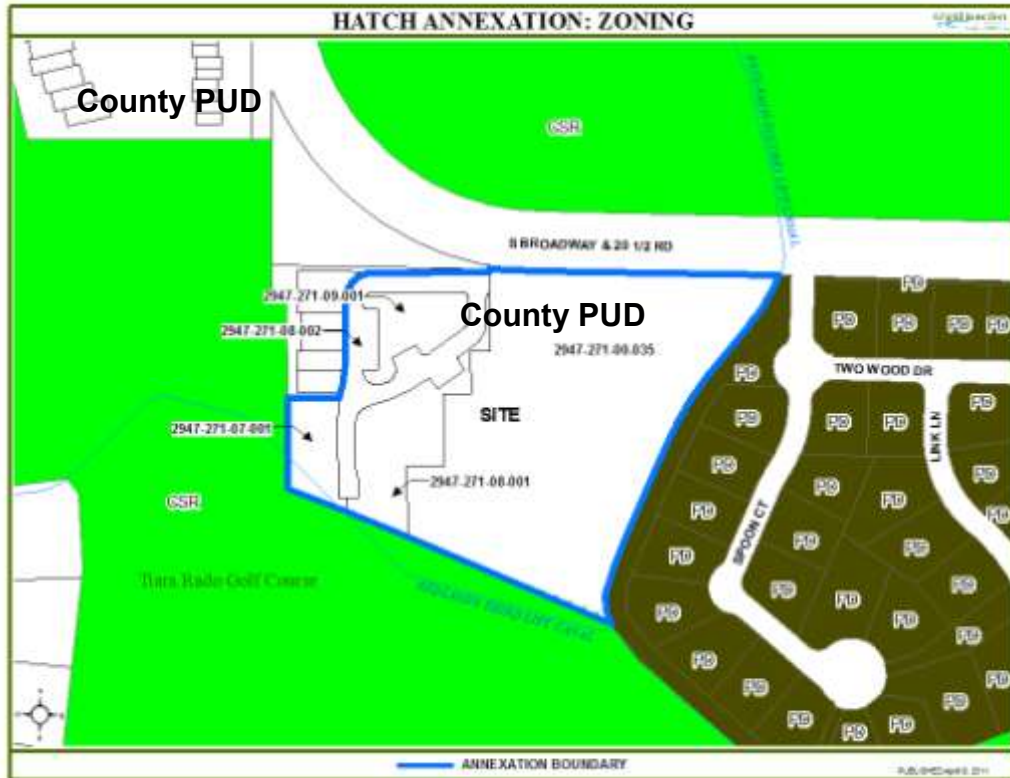
Aerial Photo Map

Figure 2



Existing City and County Zoning

Figure 5



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

NOTICE IS HEREBY GIVEN that at a regular meeting of the City Council of the City of Grand Junction, Colorado, held on the 2nd day of May, 2011, the following Resolution was adopted:

CITY OF GRAND JUNCTION, COLORADO

RESOLUTION NO. ____

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

HATCH ANNEXATION

LOCATED AT 2063 S. BROADWAY

WHEREAS, on the 2nd day of May, 2011, a petition was referred to the City Council of the City of Grand Junction, Colorado, for annexation to said City of the following property situate in Mesa County, Colorado, and described as follows:

HATCH ANNEXATION

A certain parcel of land lying in the Northwest Quarter of the Northeast Quarter (NW 1/4 NE 1/4) of Section 27, Township 11 South, Range 101 West of the 6th Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

ALL of the plat of Replat of the Fairway, as same is recorded in Plat Book 13, Page 243, Public Records of Mesa County, Colorado, LESS HOWEVER, Lots 1 through 6 inclusive of Block One and all of Tract A, TOGETHER WITH, all the lands lying East of said Replat of the Fairway; North of the Northerly limits of the Tiara Rado Golf Course Annexation, City of Grand Junction Ordinance No. 2982, as same is recorded in Book 2305, Page 834, Public Records of Mesa County, Colorado; West of the Westerly limits of the South Camp Annexation, City of Grand Junction Ordinance No. 2759, as same is recorded in Book 2092, Page 214, Public Records of Mesa County, Colorado; and South of the North line of the NW 1/4 NE 1/4 of said Section 27.

CONTAINING 191,429 Square Feet or 4.39 Acres, more or less, as described.

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

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

1. That a hearing will be held on the 13th day of June, 2011, in the City Hall auditorium, located at 250 North 5th Street, City of Grand Junction, Colorado, at 7:00 PM to determine whether one-sixth of the perimeter of the area proposed to be annexed is contiguous with the City; whether a community of interest exists between the territory and the city; whether the territory proposed to be annexed is urban or will be urbanized in the near future; whether the territory is integrated or is capable of being integrated with said City; whether any land in single ownership has been divided by the proposed annexation without the consent of the landowner; whether any land held in identical ownership comprising more than twenty acres which, together with the buildings and improvements thereon, has an assessed valuation in excess of two hundred thousand dollars is included without the landowner's consent; whether any of the land is now subject to other annexation proceedings; and whether an election is required under the Municipal Annexation Act of 1965.
2. Pursuant to the State's Annexation Act, the City Council determines that the City may now, and hereby does, exercise jurisdiction over land use issues in the said territory. Requests for building permits, subdivision approvals and zoning approvals shall, as of this date, be submitted to the Public Works and Planning Department of the City.

ADOPTED the _____ day of _____, 2011.

Attest:

President of the Council

City Clerk

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

City Clerk

<i>DATES PUBLISHED</i>
May 4, 2011
May 11, 2011
May 18, 2011
May 25, 2011

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO.

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

HATCH ANNEXATION

APPROXIMATELY 4.39 ACRES

LOCATED AT 2063 S. BROADWAY

WHEREAS, on the 2nd day of May, 2011, the City Council of the City of Grand Junction considered a petition for the annexation of the following described territory to the City of Grand Junction; and

WHEREAS, a hearing on the petition was duly held after proper notice on the 13th day of June, 2011; and

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

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

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

HATCH ANNEXATION

A certain parcel of land lying in the Northwest Quarter of the Northeast Quarter (NW 1/4 NE 1/4) of Section 27, Township 11 South, Range 101 West of the 6th Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

ALL of the plat of Replat of the Fairway, as same is recorded in Plat Book 13, Page 243, Public Records of Mesa County, Colorado, LESS HOWEVER, Lots 1 through 6 inclusive of Block One and all of Tract A, TOGETHER WITH, all the lands lying East of said Replat of the Fairway; North of the Northerly limits of the Tiara Rado Golf Course Annexation, City of Grand Junction Ordinance No. 2982, as same is recorded in Book 2305, Page 834, Public Records of Mesa County, Colorado; West of the Westerly limits of the South Camp Annexation, City of Grand Junction Ordinance No. 2759, as same is recorded in Book 2092, Page 214, Public Records of Mesa County, Colorado; and South of the North line of the NW 1/4 NE 1/4 of said Section 27.

CONTAINING 191,429 Square Feet or 4.39 Acres, more or less, as described.

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

INTRODUCED on first reading on the ____ day of _____, 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: April 21, 2011
Author: Lisa Cox
Title/ Phone Ext: Planning
Manager/ Ext: 1448
Proposed Schedule:
1st Reading: May 2, 2011
2nd Reading: May 16, 2011

CITY COUNCIL AGENDA ITEM

Attach 3 Setting a Hearing on an Ordinance Amending the Code, Concerning Language to Grant an Extension for the Recording of Subdivisions

Subject: Text Amendments to Title 21 of the Grand Junction Municipal Code, Concerning Language to Grant an Extension for the Recording of Subdivisions
File # (if applicable): ZCA-2011-632
Presenters Name & Title: Lisa Cox, Planning Manager

Executive Summary:

These text amendments to Sections 21.02.070(u)(4), 21.020.070(a)(8), 21.020.070(r)(6) and 21.020.070(s)(4)(iv) of the Grand Junction Municipal Code, are made to revise Code language to grant an extension for the recording of subdivisions.

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

The proposed amendments are consistent with the following goals and policies of the Comprehensive Plan:

Policy 6A: In making land use and development decisions, the City and County will balance the needs of the community.

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

The proposed Code amendment supports the vision and goals of the Comprehensive Plan by protecting of the City's interests by ensuring that developments meet the requirements of current Code and the Comprehensive Plan while being flexible enough to allow for extensions of time for projects to be completed in a serious economic downturn.

Action Requested/Recommendation:

Introduce a Proposed Ordinance and Set a Public Hearing for May 16, 2011.

Board or Committee Recommendation:

The Planning Commission voted to recommend approval of the proposed amendments at its April 12, 2011 meeting with the following findings of fact and conclusions:

1. The proposed amendments are consistent with the goals and policies of the Comprehensive Plan.
2. The proposed amendments will help implement the vision, goals and policies of the Comprehensive Plan.

Background, Analysis and Options:

On April 5, 2010 the Grand Junction City Council adopted the updated 2010 Zoning and Development Code, codified as Title 21 of the Grand Junction Municipal Code. City Council has requested that staff propose amendments to Title 21 as needed to maintain a dynamic, responsive Zoning Code. The following proposed amendments enhance the effectiveness of the Zoning Code.

The Zoning and Development Code provides that a preliminary subdivision plan approval is good for two years unless extended. The granting of extensions by the Director and/or by the decision-making body requires a finding of good cause.

The City has received and processed several requests in the past year to extend the approval for Preliminary Plans. Many of the requests have cited the downturn in the local economy and housing market as the reason to extend the subdivision approval. It is questionable whether an economic downturn satisfies the requirement of a finding of good cause, because it applies to everyone equally, is not project-specific, and does not address whether or not the project can reasonably be completed with a given time. If the City, as a matter of policy, desires to make accommodations to developers because of the state of the economy in general by extending subdivision approvals, such a policy should be reflected in the Code.

Staff therefore proposes amendments to Section 21.02.070 concerning extensions of time for preliminary subdivision plan approvals and approvals of final plats which we believe to be protective of the City's interests in ensuring the developments meet the requirements of current Code and the Comprehensive Plan while being flexible enough to allow for extensions of time for projects to be completed in a serious economic downturn.

Financial Impact/Budget:

There are no anticipated financial or budget impacts.

Legal issues:

The proposed amendment has been reviewed and is supported by the Legal Division.

Other issues:

N/A

Previously presented or discussed:

N/A

Attachments:

Proposed Ordinance

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO.

AN ORDINANCE AMENDING CERTAIN SECTIONS OF TITLE 21 OF THE GRAND JUNCTION MUNICIPAL CODE CONCERNING THE RECORDING OF SUBDIVISIONS

Recitals:

On April 5, 2010 the Grand Junction City Council adopted the updated 2010 Zoning and Development Code, also known as Title 21 of the Grand Junction Municipal Code of Ordinances.

Staff makes the following proposals in an effort to maintain the effectiveness of the Zoning Code.

After public notice and a public hearing as required by the Charter and Ordinances of the City, the Grand Junction Planning Commission recommended approval of the proposed amendments for the following reasons:

1. The request is consistent with the goals and policies of the Comprehensive Plan.
2. The proposed amendment will help implement the vision, goals and policies of the Comprehensive Plan.

After public notice and a public hearing before the Grand Junction City Council, the City Council hereby finds and determines that the proposed amendments will implement the vision, goals and policies of the Comprehensive Plan and should be adopted.

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

Section 21.02.070(u)(4) is amended as follows. (Amendatory language is shown by underline or strikethrough)

- (4) If the applicant does not complete all steps in preparation for recording a final plat within two years of approval of the preliminary subdivision plan, the preliminary subdivision plan shall require another review and processing as per this section and shall then meet all the required current code regulations at that time. One extension of 12 months may be granted by the Director ~~for good cause~~ so long as the plan is consistent with the Comprehensive Plan and current zoning requirements. ~~Any aAdditional extensions must~~ may be granted by the Planning Commission so long as the plan is consistent with the Comprehensive Plan and current zoning requirements. ~~The Planning Commission must find good cause for granting the extension.~~

All other provisions of Section 21.02.070(u) shall remain in full force and effect.

Section 21.020.070(a)(8)(ii) is amended as follows. (Amendatory language is shown by underline or strikethrough)

(ii) The Director may extend the permit for up to 180 more days if the applicant proves he/she can complete the project in conformance with currently adopted codes and policies, except the Director may grant one extension of 12 months for a preliminary subdivision or unrecorded final plat, in accordance with Section 21.020.070(u)(4).

All other provisions of Section 21.020.070(a)(8) shall remain in full force and effect.

Section 21.020.070(r)(6) is amended as follows. (Amendatory language is shown by underline or strikethrough)

(6) Validity. The applicant may propose a development phasing schedule at the time of application for a preliminary subdivision plan for consideration by the Director. In the absence of an approved phasing schedule, a preliminary subdivision plan approval shall be valid for only two years, during which the applicant shall obtain final plat approval for all or a portion of the property. If a part of the property in the preliminary subdivision plan is final platted within two years, the preliminary subdivision plan approval shall be automatically renewed for an additional one year following the recording of each final plat, unless the Director notifies the applicant, in writing, to the contrary. The applicant shall plat the entire property included in the preliminary subdivision plan within six years of the initial plan approval date. After six years, approval of unplatted portions of the preliminary subdivision plan shall be considered void unless an extension is requested and approved by the decision-making body in accordance with Section 21.020.070(u)(4).

All other provisions of Section 21.020.070(r) shall remain in full force and effect.

Section 21.02.070(s)(4)(iv) regarding approval of final plats shall be amended as follows (Amendatory language is shown by underline or strikethrough):

(iv) Form of Final Action. The form of final approval by the Director shall be the recording of the plat as provided in subsection (u) of this section. If the Director approves the final plat, then the applicant's surveyor or engineer shall then make any changes necessary or required to comply with final approval conditions. The plat shall then be recorded within two years of action by the Director or as directed in the approved phasing plan/development schedule, subject to extensions granted in accordance with Section 21.020.070(u)(4).

All other provisions of Section 21.020.070(s)(4) shall remain in full force and effect.

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: April 19, 2011
 Author: Rick Brinkman
 Title/ Phone Ext: 244-1429
 Proposed Schedule: May 2, 2011
 2nd Reading
 (if applicable): _____

CITY COUNCIL AGENDA ITEM

**Attach 4
 Somerville Ranch Irrigation Efficiency Project**

Subject: Somerville Ranch Irrigation Efficiency Project
File # (if applicable): N/A
Presenters Name & Title: Greg Trainor, Utilities, Street Systems, and Facilities Director Rick Brinkman, Water Services Manager

Executive Summary:

Request to enter into a contract with the Natural Resources Conservation Service (NRCS) under the Environmental Quality Incentives Program (EQIP) to install underground pipe and gated surface pipe to improve the irrigation efficiency at the City-owned Somerville ranch. This would be a partnership between the City, Howard, and Janie Van Winkle (Somerville Ranch lessee) and the NRCS.

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

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

The City-owned Somerville ranch has a long tradition of ranching and farming in the Whitewater Creek basin. The Van Winkles who currently lease the ranch from the City have a large family-run cattle and farming operation. Improving the irrigation efficiency at the ranch will increase farm productivity, reduce volumes of water needed for irrigation, reduce salt loading in the Gunnison Basin, and appropriately utilize the City's water rights.

Action Requested/Recommendation:

Authorize the Utilities, Street Systems, and Facilities Director to Sign a Conservation Program Contract with the Natural Resources Conservation Service (NRCS).

Board or Committee Recommendation:

N/A

Background, Analysis and Options:

The Van Winkles have applied for and received a contract (grant) with the NRCS through the EQIP program to fund irrigation improvements on the Somerville ranch. EQIP is a voluntary program that provides financial and technical assistance to agricultural producers through contracts up to a maximum term of ten years in length. These contracts provide financial assistance to help plan and implement conservation practices that address natural resource concerns and for opportunities to improve soil, water, plant, animal, air and related resources on agricultural land and non-industrial private forestland.

The Somerville ranch has traditionally been farmed for hay used to feed cattle. The hay fields have always been irrigated using flood irrigation techniques. The conservation practices which will be implemented under the EQIP contract, will increase the irrigation efficiency on the ranch by 30%. The Van Winkles will use the increased irrigation efficiency to increase productivity of the existing and fallowed hay fields. This is a five year project.

The City is a co-signer of the contract with the Van Winkles and NRCS since we are the property owners.

The Van Winkles are estimating that they will be able to harvest 100 tons of hay/alfalfa per year as a result of this project, as well as provide winter grazing feed for their cattle. Currently there is no harvesting of hay/alfalfa, only hay grass for grazing.

The NRCS estimates that once the project is fully implemented in 2016 that there will be 110 tons of salt savings per year (salt not entering the Colorado River system).

Financial Impact/Budget:

There will be no financial impact to the City Water Enterprise Fund as this project will be funded by a grant from the NRCS through their EQIP program. The City will purchase the materials for the project and provide "in kind" labor and equipment to help install the system. The City will be reimbursed for the materials, labor, and equipment use through the grant.

Total Grant Amount \$200,115

Total Acreage included in the project 180.3

Year	Acres	Amount
2012	52.1	\$47,610
2013	38	\$34,700
2014	37.5	\$43,074
2015	17.8	\$22,732
2016	34.9	\$51,476
2017	0	\$523

Legal issues:

An Operation and Maintenance Agreement will be signed by the Van Winkles and the City. This agreement requires that the structural and vegetative practices that are applied to the contract with NRCS, be operated and maintained for a period of 15 years, Failure to operate or maintain the structural or vegetative practices for the 15 year period could result in the Van Winkles and/ or City having to refund any payments received under the contract.

Other issues:

N/A

Previously presented or discussed:

N/A.

Attachments:

1. Conservation Program Contract Form NRCS-CPA-1202
2. Appendix to Form NRCS-CPA-1202 Conservation Program Contract
3. Conservation Plan or Schedule of Operations Form NRCS-CPA-1155
4. NRCS Operation and Maintenance Agreement
5. Map of the Somerville ranch showing the structures and vegetative practices to be implemented as part of the Conservation Program Contract

CONSERVATION PROGRAM CONTRACT

Participant: HOWARD VAN WINKLE	Program and Contract Number: EQIP 2008 748B05110AL
County and State: MESA County, CO	Subaccount: Salinity - Grand Valley - Salinity - Grand Junction (Salinity - Grand Junction)
Watershed: Little Salt Wash	This agreement is effective on the date signed by the Natural Resources Conservation Service approving official and extends through 12/31/2018

- The undersigned participants enter into this contract with the Natural Resources Conservation Service (NRCS) to implement and or maintain specific conservation practices, as set forth in the Conservation Plan or Schedule of Operations (NRCS-CPA-1155), on the property as identified on the plan map. In consideration for the implementation and or maintenance of the practices, the NRCS will make payments to the participant(s) in the amount(s) described in the Schedule of Operations as outlined in the appendix.
- This agreement is comprised of this Conservation Program Contract form NRCS-CPA-1202, NRCS-CPA-1202 Appendix; NRCS-CPA-1155 Conservation Plan or Schedule of Operations and plan map which are fully incorporated by reference into this document and are binding upon the participant(s). The NRCS-CPA-1155 may be modified (NRCS-CPA-1156) upon agreement of NRCS and the participant and becomes a part of the contract when signed by the NRCS approving official.
- The participant(s) agree: A) to implement and maintain conservation practices identified on the plan map in compliance with the plan or schedule of operations (NRCS-CPA-1155) and in accordance with the standards, specifications, and other special program criteria obtained from the local field office of the NRCS; B) to forfeit further payments under this agreement and refund the United States, in amounts determined by NRCS, payments received hereunder upon NRCS determination that participant(s) have violated the material terms of this agreement or accept such payment adjustments as NRCS may deem appropriate if NRCS decides that the participant's violation does not warrant termination of the agreement; and C) to forfeit all rights to further payments under the agreement and refund to the United States, in amounts determined by NRCS, payments received hereunder if the subject land is transferred to a non-participant during the term of this agreement, unless the third party agrees to assume this agreement, and the NRCS consents to the modification.

4. CONTRACT PARTICIPANTS

Name, Address, Telephone HOWARD VAN WINKLE 2043 N RD FRUITA, CO 81521 (970) 858-5273	SSN or TAX ID if applicable *****0345
Signature	Payment Shares 100.00%
Date	
Signature required for modifications <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Signature acceptable for payments <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

One or more members of the entity or joint operation requesting this contract is currently ineligible based on a failure to meet the Adjusted Gross Income requirements. All contract payments will be reduced commensurate with the ownership shares attributed to ineligible members.

5. CONTRACT OBLIGATIONS

2012	2013	2014	2015	2016	2017					Total
\$47,610	\$34,700	\$43,074	\$22,732	\$51,476	\$523					\$200,115
										\$200,115

6. NRCS APPROVING OFFICIALS

Application Approval EDWARD NEILSON USDA electronic signature; manual signature not required. Date: 2/24/2011	Contract Obligation Date:
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CONSERVATION PROGRAM CONTRACT

Participant: HOWARD VAN WINKLE	Program and Contract Number: EQIP 2008 748B05110AL
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4. CONTRACT PARTICIPANTS (continued)

Name, Address, Telephone CITY OF GRAND JUNCTION 250 N 5TH ST # 6 GRAND JUNCTION , CO 81501	SSN or TAX ID if applicable
Signature	Payment Shares 0.00%
Date	AGI Eligible Payment Shares 0.00%
Signature required for modifications <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Signature acceptable for payments <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name, Address, Telephone JANIE VAN WINKLE 2043 N RD FRUITA , CO 81521 (970) 243-3201	SSN or TAX ID if applicable *****7438
Signature	Payment Shares 0.00%
Date	
Signature required for modifications <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Signature acceptable for payments <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

OMB DISCLOSURE STATEMENT

According to the Paper Work Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0578-0013. The time required to complete this information collection is estimated to average 0.69 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (U.S.C. 522a). Furnishing this information is voluntary; however, failure to furnish correct, complete information will result in the withholding or withdrawal of such technical or financial assistance. The information may be furnished to other USDA agencies, the Internal Revenue Service, the Department of Justice, or other state or federal law enforcement agencies, or in response to orders of a court, magistrate, or administrative tribunal.

NONDISCRIMINATION STATEMENT

The United States Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (202) 720-5984.

U. S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation (CCC)

**APPENDIX TO FORM NRCS-CPA-1202
CONSERVATION PROGRAM CONTRACT**
For
Environmental Quality Incentives Program (EQIP)

1 PROGRAM ELIGIBILITY REQUIREMENTS

- A** The Participant must complete and file Form AD-1026 (Highly Erodible Land Conservation and Wetland Conservation Certification) and meet the requirements set forth therein, in accordance with the Food Security Act of 1985, as amended. By signing this Conservation Program Contract (Contract), the Participant certifies that the Participant has completed and filed the AD-1026 and meets the requirements set forth in the Highly Erodible Land Conservation-Wetland Conservation (HELC-WC) provisions. AMA participants are not required to meet the HELC-WC provisions.
- B** The Participant must meet the requirements of, complete and file Form CCC-926 (Payment Eligibility Average Adjusted Gross Income Certification). By signing this Contract, the Participant certifies that the Participant has met the requirements of, completed and filed Form CCC-926. A person or legal entity shall not be eligible to receive any benefit during a crop, fiscal, or program year, as appropriate, if the average adjusted gross non-farm income of the person or legal entity exceeds \$1,000,000, unless not less than 66.66 percent of the average adjusted gross income of the person or legal entity is average adjusted gross farm income. The amount of any payment or benefit shall be reduced by an amount that is commensurate with the direct and indirect ownership interest in the entity of each person who has an average adjusted gross income, average adjusted gross farm income, or average adjusted gross non-farm income in excess of the applicable limitation specified. This limitation may be waived on a case-by-case basis by the NRCS Chief as allowed by the authorizing legislation.
- C** The Participant must complete and file Form CCC-901 (Member's Information), or its equivalent, if the Participant represents a business classified as a legal entity or joint operation by the U.S. Department of Agriculture (USDA) under 7 CFR part 1400.
- D** The Participant must have control of the land for this Contract period. By signing this Contract, the Participant certifies that the Participant will control the land subject to this Contract for the term of this Contract and shall, upon request, provide evidence to Commodity Credit Corporation (CCC) demonstrating that such Participant will control the land for that period. Where applicable, the Bureau of Indian Affairs and the Natural Resources Conservation Service (NRCS) will determine Tribal land eligibility.
- E** The Participant shall not be eligible for Contract payments for any of the following: (1) practices that are required to meet HELC and WC compliance requirements found in 7 CFR part 12 (not applicable to AMA participant); (2) practices that are included in maintenance agreements

(with financial reimbursements for maintenance) that existed prior to participation; (3) a non-land based structure that is not integral to a land based practice; and (4) practices that were applied with financial assistance through any other USDA conservation program.

- F** Land otherwise eligible for the covered conservation programs shall not be eligible if the land is subject to a deed or other restriction prohibiting the application of the conservation plan and associated practices, or where a benefit has or will be obtained from a Federal, or State agency (including political subdivisions and entities thereof) in return for the Participant's agreement not to implement the conservation plan and associated practices on the land during the same time as the land would be enrolled in this Contract. By applying for the program Contract, the Participant certifies as a condition for payment that no such restrictions apply to the subject land. In regard to WHIP, NRCS shall not provide cost-share assistance for conservation practices or activities on public land.
- G** The Participant is responsible for obtaining the authorities, permits, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices and activities in accordance with applicable laws and regulations. A Participant must comply with all laws and is responsible for all effects or actions resulting from the Participant's performance under this Contract.

2 OFFERS FROM APPLICANTS

Form NRCS-CPA-1200, Conservation Program Contract Application, and this NRCS-CPA-1202-CPC (Appendix) represents a request to enter into the program under the terms specified in this Contract.

3 AGREEMENT

The Participant agrees to:

- (1) Place eligible land into the program for the period of time as specified on Form NRCS-CPA-1202 beginning on the date this Contract is executed by CCC;
- (2) Not start any financially assisted practice or activity or engage the reimbursable services of a certified Technical Service Provider (TSP) before this Contract is executed by CCC unless a waiver is approved by NRCS. The Participant may request, in writing, a waiver of this requirement for financially assisted practices by the NRCS State Conservationist (STC), or designee;
- (3) Secure funding for the desired services of a TSP through contract development or contract modification with NRCS before engaging the services of a TSP;
- (4) Apply or commence a financially assisted practice within the first 12 months from the date this Contract is signed by NRCS.
- (5) Complete all practices at least one year before the expiration date of the Contract;

- (6) Establish, to NRCS Standards and Specifications, conservation practices or activities described in this Contract as scheduled, to operate and maintain these practices or activities for the intended purpose and life span identified in this Contract, and to comply with the terms and conditions of this Contract and all applicable Federal, State, Tribal, and local laws. In cases where the land is transferred to new ownership during the contract period, the Participant must also ensure these responsibilities are transferred to subsequent owners;
- (7) Notify NRCS within 60 days of the transfer of interest to an eligible transferee who accepts the contract's terms and conditions by completing the Transfer Agreement, Form NRCS-CPA-152, or the contract will be terminated;
- (8) Share responsibility for ensuring that Form NRCS-CPA-1155, Conservation Plan or Schedule of Operations, is accurate and complete. NRCS has no authority to compensate participants for practices and/or activities that are not in the Contract at the time of obligation;
- (9) Not undertake any action on land under the Participant's control which tends to defeat the purposes of the program, as determined by CCC;
- (10) Discontinue work in the general area of the site and notify NRCS immediately if during the construction of any practice a previously unidentified endangered species, archeological, or historical site is encountered;
- (11) Provide receipts, as necessary, as proof of payments, and to maintain proof of payment documentation for three (3) years after the end of the Federal fiscal year in which the practice or activity was completed, and to present this documentation to CCC within 30 days if selected for administrative compliance check;
- (12) Allow access to the land under Contract to the CCC representative or their agent, including Technical Service Providers representing NRCS, for monitoring progress on this Contract;
- (13) Supply records and information as required by CCC to determine compliance with the Contract and requirements of the program within 30 days of request;
- (14) Develop and implement all practices identified in a comprehensive nutrient management plan in those contracts that include a waste storage or treatment facility; develop and implement all practices identified in a forest management plan; and develop and carry-out an organic system plan or those conservation practices that are consistent with an organic system plan for contracts funded under EQIP, 16 U.S.C. 3839; and
- (15) Accept applicable program payment limits: The Participant, defined as a person, or legal entity hereby agrees that the total amount of all payments received in any of the covered programs do not exceed the following:

- **AMA** - payments received by a Participant from all AMA sources (NRCS, RMA, and AMS or any legal entity acting on behalf of these agencies), shall not exceed a total of **\$50,000 per Participant for any fiscal year**;
- **WHIP** - payments made to a Participant directly or indirectly, under the program may not exceed, in the aggregate, **\$50,000 per fiscal year**;
- **EQIP** - payments made to a Participant in fiscal years **2009 – 2014** may not exceed an aggregate of **\$300,000**, directly or indirectly, for all contracts, including prior year contracts during this six-year period; except for waivers granted for projects having special environmental significance, in such cases the payments will be limited to \$450,000; and
- **EQIP-Organic** - payments for conservation practices related to organic production to a Participant directly or indirectly, may not exceed in aggregate **\$20,000 per fiscal year or \$80,000 during any six-year period**.

(a) The following items are applicable to all of the above listed programs:

(i) Payments received in excess of these limits are subject to refund.

(ii) Annual payment limitations may not be waived.

(iii) Split payments are not allowed. When payment requests for satisfactorily completed practices exceed the annual limitation for a person or legal entity, that portion that exceeds the limitation will not be deferred to the next FY. The balance will be deobligated.

(iv) Certification of satisfactorily completed practices will not be delayed or postponed to circumvent the annual payment limitations.

4 CONSERVATION PLAN

By signing the Contract, the Participant agrees:

- (1) That the NRCS-CPA-1155, Conservation Plan or Schedule of Operations is hereby incorporated as a part of the Contract; and
- (2) To implement and maintain the practices and activities as identified and scheduled on Form NRCS-CPA-1155 and in compliance with Paragraph 6 of this Appendix—Operation and Maintenance of Conservation Practices.

5 PAYMENTS

A Subject to the availability of funds, CCC will make payments at the rate and applied amount specified in this Contract after a determination by CCC that an eligible conservation practice or activity has been established in compliance with the conservation plan, and in accordance with appropriate standards and specifications. In order to receive payments, the Participant, upon technical certification of the completed practice or activity, must execute and file with CCC a Form NRCS-CPA-1245, Practice Approval and Payment Application, along with any receipts, as necessary.

- B** Payments will be issued based on the payment rate and the applied amount as documented on Form NRCS-CPA-1245. Form NRCS-CPA-1155, Plan/Schedule of Operations and Form NRCS-CPA-1156, Revision of Plan/Schedule of Operations or Modification of a Contract reflect payment rates in effect for the year of Contract obligation. **Subject to the availability of funds**, payments for a practice implemented according to or ahead of schedule **may** be increased to reflect an indexed payment based on the Engineering News Record Construction Cost Index and Prices Paid Index in effect for the year the practice is completed. The indexed payment increase shall not exceed 25% of the payment rate as shown on the Form NRCS-CPA-1155 or Form NRCS-CPA-1156. A conservation practice that requires modification to delay application will not receive the increased payment, but will be paid based on the payment rate applicable to the originally scheduled year.
- C** In order to be reimbursed for technical services approved under this agreement and performed by a certified TSP hired by the Participant, a Participant must execute a request for payment on Form NRCS-CPA-1245. The Participant must also submit to CCC an invoice from the TSP for the work performed, as well as any documentation CCC may require in order to ensure that the technical services were carried out in accordance with NRCS requirements.
- It is the Participant's responsibility to ensure that the technical services obtained from a TSP hired by the Participant meet program requirements. CCC will not reimburse the Participant if the technical services provided by the TSP do not meet the program requirements. If CCC terminates this Contract as provided under Paragraph 11 of this Appendix, CCC may seek refund of any TSP payments made to the Participant.
- D** All payments received as part of a Contract are reported to the United States Internal Revenue Service (IRS). For information related to tax liabilities, consult with a tax accountant or refer to IRS publication 225, Farmers Tax Guide.
- E** Payments will only be issued for practices or activities that meet or exceed the practice standards described in the NRCS Field Office Technical Guide.
- F** Collection of amounts due from a Participant for improper payment or any other reason will follow procedures of the Debt Collection Improvement Act of 1996. NRCS will notify the Participant to identify the reason for the collection and the amount owed. Based on this notification, a bill will be entered into the National Finance Center's IBIL (Internet Billing). Unpaid bills accrue interest beginning 30 days after the billing date at the current value of funds rate published in the Federal Register by the United States Department of Treasury.
- G** Any Participant that will receive financial benefit from the implementation of this Contract must be a signatory on the Contract. Unless signature authority is not granted or assigned on the Contract, any Participant on the Contract may approve payment applications for the Contract.
- H** Any payment that has or will be received through another USDA program or from other sources must be disclosed to the NRCS Approving Official at the time a payment application is filed. NRCS may reduce payments to account for the funds received from other sources.

- I Historically underserved EQIP participants may receive advance payments up to 30 percent of the amount needed to implement conservation practices for the purpose of purchasing "immediately needed" materials and services. The scheduled practice for which the advance is requested must have a NRCS approved design prior to issuance of the advance payment. Participants must complete the practice within 30 days of advance payment approval. The State Conservationist may extend this amount of time on a case by case basis. Advanced payments will be subject to all terms and conditions including those identified in Paragraph 12 of this Appendix—Recovery of Costs.
- J If a Participant receiving a Contract payment is indebted to another Federal agency and the outstanding debt has been referred to the Treasury Offset Payment System, the Contract payment due to the Participant will be reduced by Treasury for the amount owed the U. S. Government. The Participant will not be notified by NRCS that a payment offset has occurred and NRCS records will reflect full Contract payment to the Participant.

6 OPERATION AND MAINTENANCE OF CONSERVATION PRACTICES (Operation and Maintenance Agreement)

The Participant agrees to the operation and maintenance (O&M) of all conservation practices included within this Contract.

These practices shall be operated and maintained for the practice lifespan as listed on Form NRCS-CPA-1155, Conservation Plan or Schedule of Operations, and any subsequent practices resulting from revisions on Form NRCS-CPA-1156, Revision of Plan/Schedule of Operations or Modification of a Contract. This requirement also extends to those conservation practices installed before Contract execution, but included in the Contract to obtain the environmental benefits agreed upon in the ranking process.

- A The term O&M as used in the Contract shall collectively include:
- **Operation:** The administration, management, and performance of non-maintenance activities necessary to keep a practice safe and functioning as planned;
 - **Maintenance:** The recurring activities necessary to retain or restore a practice in a safe and functioning condition, including, but not limited to, the management of vegetation, the repair or replacement of failed components or conservation practices, the prevention or treatment of deterioration, and the repair of damages caused by vandalism or negligence, but excluding damage caused by a local, state or nationally recognized natural disaster;
 - **Repair:** The actions to return a deteriorated, damaged, abandoned, or failed practice and/or component to an acceptable and functional condition; and
 - **Replacement:** The removal of a practice or component and installation of a similar, functional practice or component.
- B The Participant is responsible for the O&M activities and acknowledges that these activities may require labor, funds, and management in order to ensure the appropriate program purposes are met.

- C The Participant O&M responsibilities begin when the practice installation is completed, as determined by NRCS, and shall continue through the end of the practice lifespan.
- D The Participant acknowledges that the "practice lifespan" is the time period in which the conservation practices are to be used and maintained for their intended purposes as defined by NRCS technical references and documented on either Forms NRCS-CPA-1155 or NRCS-CPA-1156.
- E Specific O&M requirements for conservation practices covered within this Contract are defined in the conservation practice standard and are documented within the conservation plan narrative, Contract provision, and/or job sheet.
- F The Participant acknowledges that conservation practices installed before the contract execution, but included in the Contract to obtain the environmental benefits agreed upon within the application ranking process, must be operated and maintained as specified in the Contract and within this paragraph.
- G The Participant agrees to the O&M requirements as listed within this Paragraph (6) and failure to carry-out the terms and conditions listed may result in CCC termination of this Contract. (Refer to Paragraph 11 of this Appendix—Contract Termination).

7 PROVISIONS RELATING TO TENANTS AND LANDLORDS

No payment will be approved for the current year if CCC determines that any of the following conditions exist:

- (1) The landlord or operator has not given the tenants that have an interest in the agricultural operation covered by the Contract, or that have a lease that runs through the Contract term at the time of sign-up, an opportunity to participate in the benefits of the program.
- (2) The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant of any benefits to which such tenant would otherwise be entitled. If any such conditions occur or are discovered after payments have been made, all or any part of the payments, as determined by CCC, must be refunded according to Paragraph 5F of this Appendix and no further payments shall be made.

8 MISREPRESENTATION AND SCHEME OR DEVICE

- A A Participant who is determined to have erroneously represented any fact affecting a determination with respect to this Contract and the regulations applicable to this Contract, adopted any scheme or device which tends to defeat the purposes of this Contract, or made any fraudulent representation with respect to this Contract, will not be entitled to payments or any other benefits made under this Contract. The Participant must refund to CCC all payments received plus interest. In addition, CCC may terminate the Participant's interest in all conservation program contracts.
- B CCC will charge interest on monies it determines to be due and owing to CCC under this Contract. Under debt collection procedures, unpaid bills accrue

interest beginning 30 days after the billing date. The interest rate will be determined using the current value of funds rate, published annually in the Federal Register by the United States Department of Treasury.

- C** The provisions of Paragraph 8A of this Appendix shall be applicable in addition to any other criminal and civil fraud statutes.

9 CHANGES TO TERMS AND CONDITIONS OF THIS CONTRACT

- A** If any changes to the terms and conditions of this Contract become necessary prior to the date that this Contract is approved on behalf of CCC, CCC will notify, in writing, the Applicant that signed Form NRCS-CPA-1202 of such change and such person(s) will be given 10 days from the date of notification in which to agree to the revised terms and conditions or to withdraw from this Contract request. The Applicant agrees to notify, in writing, the CCC of an intention to withdraw the program participation request within 10 days from the date of the issuance of such notice and further agrees that failure to notify the CCC will constitute agreement to the revised terms and conditions.
- B** CCC may unilaterally modify this Contract when the installed practice would cause adverse impacts to significant cultural and/or environmental resources without mitigation action.
- C** Subject to the availability of funds, CCC may unilaterally modify this Contract when the amount of payment for a single contract item (practice or activity) increases by not more than five hundred dollars (\$500) as the result of an increase in the number of units performed (quantity variation) by the Participant.
- D** The Participant and CCC may modify this Contract by mutual agreement when:
- (1) Both the Participant and the appropriate approving authority (STC or designated conservationist) agree to this modification;
 - (2) At the request of the Participant, and upon approval of CCC, the modification is consistent with the purposes of the program; and
 - (3) A transfer of this Contract occurs, provided CCC approval is obtained, and an eligible transferee accepts all terms and responsibilities under this Contract including operation and maintenance of those practices already installed or to be installed.
- E** The Participant and CCC may modify this Contract by mutual agreement to revise or add to those practices already installed, provided that such revisions or additions are within the scope of this Contract. If any such changes cause an increase in the cost of performance of any part of the work under the Contract, the authorized CCC official shall make an equitable adjustment in the total contract payment and shall modify the contract.
- F** All modifications that require CCC approval processed through Paragraph 9D of this Appendix must be approved in writing by the authorized CCC official and the Participant or an individual granted signature authority through a valid Power of Attorney filed in the local Service Center. Unless signature authority is not

granted or assigned on the Contract, any Participant on the Contract may approve modifications for the Contract.

10 CORRECTIONS

CCC reserves the right to correct all errors in entering data or the results of computations in this Contract.

11 CONTRACT TERMINATION

A If a Participant fails to carry-out the terms and conditions of this Contract, CCC may terminate this Contract. CCC may require the Participant to refund payments received under this Contract, or require the Participant to accept such adjustments in subsequent payments as are determined to be appropriate by CCC. Refunds shall be subject to the provisions in Paragraph 5F of this Appendix.

B The CCC may terminate this Contract, in whole or in part, without liability, if CCC determines that continued operation of this Contract will result in the violation of a Federal statute or regulation, or if CCC determines that termination would be in the public interest.

12 RECOVERY OF COST

A In the event a Participant violates the terms of this Contract, the Participant voluntarily terminates this Contract before any contractual payments have been made, or this Contract is terminated with cause by CCC, the CCC will incur substantial costs in administering this Contract which may not be possible to quantify with certainty. Therefore, in addition to the refund of payments as set forth in Paragraph 11 of this Appendix, the **Participant agrees to pay liquidated damages in an amount equal to 10 percent of the total financial assistance obligated to the Participant in this Contract**, at the time of termination. This liquidated damages payment is for recovery of administrative costs and technical services and is not a penalty.

B The Participant may be required by the CCC to refund all or a portion of any assistance earned under the program if the Participant sells or loses control of the land under this Contract and the new owner or transferee is not eligible for the program, or refuses to assume responsibility under the Contract.

13 EFFECTIVE DATE

This Contract is effective when signed by the Participant and an authorized representative of CCC. Except as otherwise provided for herein, this Contract may not be terminated or modified unless by mutual agreement between the parties. Within the dates established by CCC, this Contract must be signed by all required Participants. In the event that a statute is enacted during the period of this Contract which would materially change the terms and conditions of this Contract, the CCC may require the Participant to elect between modifying this Contract consistent with the provisions of such statute or Contract termination.

14 GENERAL TERMS

- A** The regulations in 7 CFR part 1465 for AMA, 7 CFR part 636 for WHIP, 7 CFR part 1466 for EQIP, and any other applicable regulations are incorporated, by reference, herein. In the event of a conflict between these regulations and the terms of this Appendix, the provisions of the regulations will prevail.
- B** This Contract shall be carried out in accordance with all applicable Federal statutes and regulations. Any ambiguities in this Contract and questions as to the validity of any of its specific provisions shall be resolved in favor of CCC so as to give maximum effect to the conservation purposes of this Contract.
- C** NRCS is administering this Contract on behalf of the CCC. Therefore, where this Contract refers to "CCC", NRCS may act on its behalf for the purposes of administering this Contract. When the term "Participant" is used in this Contract, it shall be construed to mean all Participants signing this Contract. Likewise, when the term "Applicant" is used in this Contract, it means all Applicants signing the program application.
- D** Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions (7 CFR part 3017 or 2 CFR part 417 and 2 CFR part 180, as applicable).
- (1) The Participant certifies to the best of the Participant's knowledge and belief, that the Participant and his or her principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within the three-year period preceding this agreement had a criminal conviction or civil judgment rendered against them for commission of fraud in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local government) contract, including violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses set forth above in Paragraph 14D(1)(b) of this certification; and
 - (d) Have not within the three-year period preceding this agreement had one or more public contracts (Federal, State or local) terminated for cause or default.
- (2) If the Participant is unable to certify to any of the statements set forth in paragraph 14D (1), the Participant shall attach an explanation to this agreement.

- E** This Contract is a financial assistance agreement, not a procurement contract. As such, it is **not subject to 5 CFR part 1315, Prompt Payment Act** and is governed by the terms set forth herein.
- F** The term "Contract" as used in this Appendix means the program documents, including: Conservation Program Contract, Form NRCS-CPA-1202 along with the—
- Appendix to Form NRCS-CPA-1202, Form NRCS-CPA-1202-CPC (Appendix);
 - Conservation Plan Schedule of Operations, Form NRCS-CPA-1155;
 - Revision of Plan/Schedule of Operations or Modification of a Contract, Form NRCS-CPA-1156; and
 - Transfer Agreement, form NRCS-CPA-152 for the transferee(s).
- Such Contract shall set forth the terms and conditions for Conservation Program participation and receipt of Conservation Program payments.
- G** The term "Socially Disadvantaged" means an individual or entity who is a member of a socially disadvantaged group. For an entity, at least 50 percent ownership in the farm business must be held by socially disadvantaged individuals. A socially disadvantaged group is a group whose members have been subject to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. These groups consist of the following:
- American Indians or Alaskan Natives
 - Asians
 - Blacks or African Americans
 - Native Hawaiians or other Pacific Islanders
 - Hispanics.
- Note: Gender alone is not a covered group for the purposes of NRCS conservation programs. And entities reflect a broad interpretation to include partnerships, couples, legal entities, etc.
- H** "Indian Tribe" means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.
- Note: "Indian tribes recognized as eligible to receive services by the United States Bureau of Indian Affairs" is available at:
<http://edocket.access.gpo.gov/2009/pdf/E9-19124.pdf>
- I** A Limited Resource Farmer or Rancher is a participant:
- With direct or indirect gross farm sales not more than the current indexed value in each of the previous two years, and
 - Who has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years.

A legal entity or joint operation can be a Limited Resource Farmer or Rancher only if all individual members independently qualify.

A Self-Determination Tool is available to the public and may be completed on-line or printed and completed hardcopy at:

<http://www.lrftool.sc.egov.usda.gov/>

Participants who self-certify eligibility as a Limited Resource Farmer or Rancher may be requested to provide records to justify their claim.

It is the responsibility of the participant to provide accurate data. False certifications are subject to criminal and civil fraud statutes.

J A Beginning Farmer or Rancher is a participant who:

- Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years. This requirement applies to all members of a legal entity, and who
- will materially and substantially participate in the operation of the farm or ranch.

In the case of a contract with an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

In the case of a contract made with a legal entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Participants who self-certify eligibility as a Beginner Farmer or Rancher may be requested to provide records to justify their claim. It is the responsibility of the participant to provide accurate data. False certifications are subject to criminal and civil fraud statutes.

15 RIGHTS TO APPEAL AND REQUEST EQUITABLE RELIEF

- A** The Participant may appeal an adverse decision under this Contract in accordance with the appeal procedures set forth at 7 CFR part 11, Subpart A, and part 614. Pending the resolution of an appeal, no payments shall be made under this agreement. Before a Participant seeks judicial review, the Participant must exhaust all appeal rights granted within these regulations.
- B** The Participant may also request equitable relief as provided under 7 U.S.C. 7996 and 7 CFR part 635 with the requirements of that provision.

16 EXAMINATION OF RECORDS

- A** The Participant agrees to give the CCC or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this Contract. The Participant agrees to retain all records related to this agreement for a period of three (3) years after completion of the terms of this agreement in accordance with the applicable Office of Management and Budget circular.

- B** The Participant authorizes CCC to obtain tax data from the Internal Revenue Service (IRS) for Adjusted Gross Income compliance verification purposes and the Participant will take all necessary actions required by the terms and conditions of the IRS disclosure laws so that CCC can obtain such data.

17 DRUG-FREE WORKPLACE (7 CFR part 3021)

By signing this Contract, the Participant certifies that the Participant will comply with the requirements of 7 CFR part 3021. If it is later determined that the Participant knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.; 7 CFR part 3021,) CCC, in addition to any other remedies available to the United States, may take action authorized under the Drug-Free Workplace Act.

**18 CERTIFICATION REGARDING LOBBYING (7 CFR part 3018)
(Applicable if this agreement exceeds \$100,000)**

The Participant certifies, to the best of the Participant's knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Participant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- (3) The Participant shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including sub contracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

19 CERTIFICATION AND ASSURANCES REGARDING COMPLIANCE WITH PROVISIONS APPLICABLE TO FINANCIAL ASSISTANCE (See generally 7 CFR parts 3015, 3016, and 3019)

- A** As a condition of this Contract, the Participant certifies and assures that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 CFR 3115.205(b) applicable to non-profit institutions, which are hereby incorporated into this Contract by reference, and such other regulatory and statutory provisions as are specifically set forth herein.

- B** Without limiting the general applicability of Paragraph 19A, the Participant, if it is a non-profit, further agrees to comply with the provisions of 7 CFR part 3019, including the contract provisions required at Appendix A.

20 CERTIFICATION AND ASSURANCES REGARDING COMPLIANCE WITH PROVISIONS APPLICABLE TO REQUIREMENTS FOR FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT IMPLEMENTATION (See 2 CFR part 25 and 2 CFR Part 170)

- A** As a condition of this Contract, the Participant certifies and assures that it is in compliance with and will comply in the course of the agreement with all requirements for applicants other than individuals, with some specific exceptions, to have Dun and Bradstreet Data Universal Numbering System (DUNS) numbers and maintain current registrations in the Central Contractor Registration (CCR) database as set out in Appendix A to Part 25.
- B** As a condition of this Contract, the Participant certifies and assures that it is in compliance with and will comply in the course of the agreement with all requirements for applicants other than individuals, with some exception to report first-tier sub awards to an entity and executive salary compensation as set out in Appendix A to Part 170.

The following Participants by entering their signature acknowledge receipt of this Form NRCS-CPA-1202-CPC (Appendix) and agree to its terms and conditions thereof. Further, if the undersigned are succeeding to an existing Contract, the undersigned agree and certify that no agreement exists or will be entered into between the undersigned, the previous owner and operator of the property, or mortgage holder that would, maintain or create an interest in the property for any previous Participant on this Contract for that property, or to receive payments under the contracts.

_____ Date _____

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The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

US DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE		CONSERVATION PLAN OR SCHEDULE OF OPERATIONS			NRCS-CPA-1155 OMB 0578-0013 Expires 5/31/2012		
PARTICIPANT HOWARD VAN WINKLE		COUNTY AND STATE MESA County, CO		PROGRAM AND CONTRACT NUMBER EQIP 2008 748B05110AL		SUBACCOUNT Salinity - Grand Valley - Salinity - Grand Junction (Salinity - Grand Junction)	
LAND UNITS OR LEGAL DESCRIPTION Farm:2861 Tract(s):6548.				WATERSHED Little Salt Wash		ACRES 180.3	
						EXPIRATION DATE 12/31/2018	

Contract Item 1: Irrigation System, Surface and Subsurface(443)				Practice Lifespan: 15 years				Status: Draft 2012						
A Surface and/or Subsurface Irrigation system will be installed to efficiently convey and distribute irrigation water to the surface and/or subsurface point of application without causing excessive water loss, erosion, or water quality impairment, or to apply chemicals and/or nutrients as part of an irrigation system in accordance with standard and specification #443, NRCS approved design & job sheets and IWM Plan. Will be Operated and maintained according to the attached Operation & Maintenance Agreement.														
Fields: Tract: 6548 Fields: 2:														
Contract Item	Planned Conservation Treatment	Planned Amount	Unit Cost	Cost Share Rate/Method	COMPLETION SCHEDULE AND ESTIMATED COST-SHARE OR PAYMENT BY YEAR									
					2012 \$	2013 \$	2014 \$	2015 \$	2016 \$	2017 \$				
1	Irrigation System, Surface and Subsurface(443)	52.1 ac			47,610 ²									
1a	Buried Pipe to Gated Pipe w/o Surge	52.1 Ac	\$1,100.0000 / Ac	PR ¹	57,310									
Notes: ¹ Payment rates define the unit cost rate of compensation to be received by the participant. ² Payment is limited to the maximum amount allowed for the practice.														

Contract Item 2: Irrigation System, Surface and Subsurface(443)				Practice Lifespan: 15 years				Status: Draft 2013						
A Surface and/or Subsurface Irrigation system will be installed to efficiently convey and distribute irrigation water to the surface and/or subsurface point of application without causing excessive water loss, erosion, or water quality impairment, or to apply chemicals and/or nutrients as part of an irrigation system in accordance with standard and specification #443, NRCS approved design & job sheets and IWM Plan. Will be Operated and maintained according to the attached Operation & Maintenance Agreement.														
Fields: Tract: 6548 Fields: 2A:														
Contract Item	Planned Conservation Treatment	Planned Amount	Unit Cost	Cost Share Rate/Method	COMPLETION SCHEDULE AND ESTIMATED COST-SHARE OR PAYMENT BY YEA									
					2012 \$	2013 \$	2014 \$	2015 \$	2016 \$	2017 \$				
2	Irrigation System, Surface and Subsurface(443)	38 ac				34,700 ²								
2a	Buried Pipe to Gated Pipe w/o Surge	38 Ac	\$1,100.0000 / Ac	PR ¹		41,800								
Notes: ¹ Payment rates define the unit cost rate of compensation to be received by the participant. ² Payment is limited to the maximum amount allowed for the practice.														

Contract Item 3: Structure for Water Control(587)				Practice Lifespan: 20 years				Status: Draft 2014			
A structure will be installed so that the practice may be applied as a management component of a water management system to control the stage, discharge, distribution, delivery or direction of water flow in accordance with standard and specification #587, NRCS approved design & job sheets. Will be Operated and maintained according to the attached Operation & Maintenance Agreement.											
Fields: Tract: 6548 Fields: 9:											

US DEPARTMENT OF AGRICULTURE
 NATURAL RESOURCES CONSERVATION SERVICE

CONSERVATION PLAN OR SCHEDULE OF OPERATIONS

NRCS-CPA-1155
 OMB 0578-0013 Expires 5/31/2012

PARTICIPANT HOWARD VAN WINKLE	COUNTY AND STATE MESA County, CO	PROGRAM AND CONTRACT NUMBER EQIP 2008 748B05110AL	SUBACCOUNT Salinity - Grand Valley - Salinity - Grand Junction (Salinity - Grand Junction)
LAND UNITS OR LEGAL DESCRIPTION Farm:2861 Tract(s):6548.		WATERSHED Little Salt Wash	ACRES 180.3
			EXPIRATION DATE 12/31/2018

Contract Item	Planned Conservation Treatment	Planned Amount	Unit Cost	Cost Share Rate/Method	COMPLETION SCHEDULE AND ESTIMATED COST-SHARE OR PAYMENT BY YEAR									
					2012 \$	2013 \$	2014 \$	2015 \$	2016 \$	2017 \$				
3	Structure for Water Control(587)	2 no					5,544							
3a	All structures and structure components	6.6 Strc Unt	\$840,000/ Strc Unt	PR ¹			5,544							

Notes: ¹Payment rates define the unit cost rate of compensation to be received by the participant.

Contract Item 4: Irrigation Water Conveyance Pipeline(430) **Practice Lifespan:** 20 years **Status:** Draft 2014

A pipeline will be installed to prevent erosion or losses of water quality or damage to the land, to make possible proper management of irrigation water, and to reduce water conveyance losses in accordance with standard and specification #430, NRCS approved design & job sheets. Will be Operated and maintained according to the attached Operation & Maintenance Agreement.

Fields:
 Tract: 6548 Fields: 9;

Contract Item	Planned Conservation Treatment	Planned Amount	Unit Cost	Cost Share Rate/Method	COMPLETION SCHEDULE AND ESTIMATED COST-SHARE OR PAYMENT BY YEAR									
					2012 \$	2013 \$	2014 \$	2015 \$	2016 \$	2017 \$				
4	Irrigation Water Conveyance Pipeline(430)	450 ft					3,380							
4a	Irrigation Pipeline	4506.07 Pipe Ut.	\$0.7500/ Pipe Ut.	PR ¹			3,380							

Notes: ¹Payment rates define the unit cost rate of compensation to be received by the participant.

Contract Item 5: Irrigation System, Surface and Subsurface(443) **Practice Lifespan:** 15 years **Status:** Draft 2014

A Surface and/or Subsurface Irrigation system will be installed to efficiently convey and distribute irrigation water to the surface and/or subsurface point of application without causing excessive water loss, erosion, or water quality impairment, or to apply chemicals and/or nutrients as part of an irrigation system in accordance with standard and specification #443, NRCS approved design & job sheets and TWM Plan. Will be Operated and maintained according to the attached Operation & Maintenance Agreement.

Fields:
 Tract: 6548 Fields: 9;

Contract Item	Planned Conservation Treatment	Planned Amount	Unit Cost	Cost Share Rate/Method	COMPLETION SCHEDULE AND ESTIMATED COST-SHARE OR PAYMENT BY YEAR									
					2012 \$	2013 \$	2014 \$	2015 \$	2016 \$	2017 \$				
5	Irrigation System, Surface and Subsurface(443)	37.5 ac					34,150 ²							
5a	Buried Pipe to Gated Pipe w/o Surge	37.5 Ac	\$1,100,000/ Ac	PR ¹			41,250							

Notes: ¹Payment rates define the unit cost rate of compensation to be received by the participant.
² Payment is limited to the maximum amount allowed for the practice.

US DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE		CONSERVATION PLAN OR SCHEDULE OF OPERATIONS			NRCS-CPA-1155 OMB 0578-0013 Expires 5/31/2012		
PARTICIPANT HOWARD VAN WINKLE		COUNTY AND STATE MESA County, CO		PROGRAM AND CONTRACT NUMBER EQIP 2008 748B05110AL		SUBACCOUNT Salinity - Grand Valley - Salinity - Grand Junction (Salinity - Grand Junction)	
LAND UNITS OR LEGAL DESCRIPTION Farm:2861 Tract(s):6548.			WATERSHED Little Salt Wash		ACRES 180.3	EXPIRATION DATE 12/31/2018	

Contract Item 6: Structure for Water Control(587)				Practice Lifespan: 20 years				Status: Draft 2015						
A structure will be installed so that the practice may be applied as a management component of a water management system to control the stage, discharge, distribution, delivery or direction of water flow in accordance with standard and specification #587. NRCS approved design & job sheets. Will be Operated and maintained according to the attached Operation & Maintenance Agreement.														
Fields: Tract: 6548 Fields: 7;														
Contract Item	Planned Conservation Treatment	Planned Amount	Unit Cost	Cost Share Rate/Method	COMPLETION SCHEDULE AND ESTIMATED COST-SHARE OR PAYMENT BY YEAR									
					2012 \$	2013 \$	2014 \$	2015 \$	2016 \$	2017 \$				
6	Structure for Water Control(587)	1 no						2,772						
6a	All structures and structure components	3.3 Strc Unt	\$840.0000/ Strc Unt	PR ¹				2,772						
Notes: ¹ Payment rates define the unit cost rate of compensation to be received by the participant.														

Contract Item 7: Irrigation Water Conveyence Pipeline(430)				Practice Lifespan: 20 years				Status: Draft 2015						
A pipeline will be installed to prevent erosion or losses of water quality or damage to the land, to make possible proper management of irrigation water, and to reduce water conveyence losses in accordance with standard and specification #430. NRCS approved design & job sheets. Will be Operated and maintained according to the attached Operation & Maintenance Agreement.														
Fields: Tract: 6548 Fields: 7;														
Contract Item	Planned Conservation Treatment	Planned Amount	Unit Cost	Cost Share Rate/Method	COMPLETION SCHEDULE AND ESTIMATED COST-SHARE OR PAYMENT BY YEAR									
					2012 \$	2013 \$	2014 \$	2015 \$	2016 \$	2017 \$				
7	Irrigation Water Conveyence Pipeline(430)	450 ft						3,380						
7a	Irrigation Pipeline	4506.07 Pipe Ut.	\$0.7500/ Pipe Ut.	PR ¹				3,380						
Notes: ¹ Payment rates define the unit cost rate of compensation to be received by the participant.														

Contract Item 8: Irrigation System, Surface and Subsurface(443)				Practice Lifespan: 15 years				Status: Draft 2015			
A Surface and/or Subsurface Irrigation system will be installed to efficiently convey and distribute irrigation water to the surface and/or subsurface point of application without causing excessive water loss, erosion, or water quality impairment, or to apply chemicals and/or nutrients as part of an irrigation system in accordance with standard and specification #443. NRCS approved design & job sheets and IWM Plan. Will be Operated and maintained according to the attached Operation & Maintenance Agreement.											
Fields: Tract: 6548 Fields: 7;											

US DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE

CONSERVATION PLAN OR SCHEDULE OF OPERATIONS

NRCS-CPA-1155
OMB 0578-0013 Expires 5/31/2012

PARTICIPANT HOWARD VAN WINKLE	COUNTY AND STATE MESA County, CO	PROGRAM AND CONTRACT NUMBER EQIP 2008 748B05110AL	SUBACCOUNT Salinity - Grand Valley - Salinity - Grand Junction (Salinity - Grand Junction)
LAND UNITS OR LEGAL DESCRIPTION Farm:2861 Tract(s):6548.		WATERSHED Little Salt Wash	ACRES 180.3
			EXPIRATION DATE 12/31/2018

Contract Item	Planned Conservation Treatment	Planned Amount	Unit Cost	Cost Share Rate/Method	COMPLETION SCHEDULE AND ESTIMATED COST-SHARE OR PAYMENT BY YEAR									
					2012 \$	2013 \$	2014 \$	2015 \$	2016 \$	2017 \$				
8	Irrigation System, Surface and Subsurface(443)	17.8 ac							16,580 ²					
8a	Buried Pipe to Gated Pipe w/o Surge	17.8 Ac	\$1,100,0000 / Ac	PR ¹				19,580						

Notes: ¹Payment rates define the unit cost rate of compensation to be received by the participant.
² Payment is limited to the maximum amount allowed for the practice.

Contract Item 9: Structure for Water Control(587) **Practice Lifespan:** 20 years **Status:** Draft 2016

A structure will be installed so that the practice may be applied as a management component of a water management system to control the stage, discharge, distribution, delivery or direction of water flow in accordance with standard and specification #587, NRCS approved design & job sheets. Will be Operated and maintained according to the attached Operation & Maintenance Agreement.

Fields:
Tract: 6548 Fields: 8;

Contract Item	Planned Conservation Treatment	Planned Amount	Unit Cost	Cost Share Rate/Method	COMPLETION SCHEDULE AND ESTIMATED COST-SHARE OR PAYMENT BY YEAR									
					2012 \$	2013 \$	2014 \$	2015 \$	2016 \$	2017 \$				
9	Structure for Water Control(587)	1 no								2,772				
9a	All structures and structure components	3.3 Strc Unt	\$840,0000/ Strc Unt	PR ¹						2,772				

Notes: ¹Payment rates define the unit cost rate of compensation to be received by the participant.

Contract Item 10: Irrigation Water Conveyance Pipeline(430) **Practice Lifespan:** 20 years **Status:** Draft

A pipeline will be installed to prevent erosion or losses of water quality or damage to the land, to make possible proper management of irrigation water, and to reduce water conveyance losses in accordance with standard and specification #430, NRCS approved design & job sheets. Will be Operated and maintained according to the attached Operation & Maintenance Agreement.

Fields:
Tract: 6548 Fields: 8;

Contract Item	Planned Conservation Treatment	Planned Amount	Unit Cost	Cost Share Rate/Method	COMPLETION SCHEDULE AND ESTIMATED COST-SHARE OR PAYMENT BY YEAR									
					2012 \$	2013 \$	2014 \$	2015 \$	2016 \$	2017 \$				
10	Irrigation Water Conveyance Pipeline(430)	2200 ft								16,191 ²				
10a	Irrigation Pipeline	22029.7 Pipe Ut.	\$0,7500/ Pipe Ut.	PR ¹						16,523				

Notes: ¹Payment rates define the unit cost rate of compensation to be received by the participant.
² Payment is limited to the maximum amount allowed for the practice.

US DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE		CONSERVATION PLAN OR SCHEDULE OF OPERATIONS			NRCS-CPA-1155 OMB 0578-0013 Expires 5/31/2012
PARTICIPANT HOWARD VAN WINKLE		COUNTY AND STATE MESA County, CO	PROGRAM AND CONTRACT NUMBER EQIP 2008 748B05110AL		SUBACCOUNT Salinity - Grand Valley - Salinity - Grand Junction (Salinity - Grand Junction)
LAND UNITS OR LEGAL DESCRIPTION Farm:2861 Tract(s):6548.			WATERSHED Little Salt Wash	ACRES 180.3	EXPIRATION DATE 12/31/2018

Contract Item 11: Irrigation System, Surface and Subsurface(443)				Practice Lifespan: 15 years				Status: Draft 2016						
A Surface and/or Subsurface Irrigation system will be installed to efficiently convey and distribute irrigation water to the surface and/or subsurface point of application without causing excessive water loss, erosion, or water quality impairment, or to apply chemicals and/or nutrients as part of an irrigation system in accordance with standard and specification #443, NRCS approved design & job sheets and IWM Plan. Will be Operated and maintained according to the attached Operation & Maintenance Agreement.														
Fields: Tract: 6548 Fields: 8;														
Contract Item	Planned Conservation Treatment	Planned Amount	Unit Cost	Cost Share Rate/Method	COMPLETION SCHEDULE AND ESTIMATED COST-SHARE OR PAYMENT BY YEAR									
					2012 \$	2013 \$	2014 \$	2015 \$	2016 \$	2017 \$				
11	Irrigation System, Surface and Subsurface(443)	34.9 ac								31,990 ²				
11a	Buried Pipe to Gated Pipe w/o Surge	34.9 Ac	\$1,100,000 / Ac	PR ¹						38,390				
Notes: ¹ Payment rates define the unit cost rate of compensation to be received by the participant. ² Payment is limited to the maximum amount allowed for the practice.														

Contract Item 12: Irrigation Water Management(449)				Practice Lifespan: 1 year				Status: Draft 2016						
Irrigation water will be managed so that soil moisture will promote desired crop response, optimize use of available water supplies, minimize irrigation induced soil erosion, decrease non-point source pollution of surface and groundwater resources, manage salts in the crop root zone and/or manage air, soil, or plant micro-climate in accordance with standard and specification #449 and approved IWM plan. Will be Operated and maintained according to the attached Operation & Maintenance Agreement.														
Fields: Tract: 6548 Fields: 2, 2A, 7, 8, 9;														
Contract Item	Planned Conservation Treatment	Planned Amount	Unit Cost	Cost Share Rate/Method	COMPLETION SCHEDULE AND ESTIMATED COST-SHARE OR PAYMENT BY YEAR									
					2012 \$	2013 \$	2014 \$	2015 \$	2016 \$	2017 \$				
12	Irrigation Water Management(449)	180.3 ac								523				
12a	Low Intensity - Basic IWM principles, record keeping, soil moisture is determined by feel method, control and measurement of irrigation water to the farm and monitoring.	180.3 Ac	\$2,900/ Ac	PR ¹						523				
Notes: ¹ Payment rates define the unit cost rate of compensation to be received by the participant.														

Contract Item 13: Irrigation Water Management(449)				Practice Lifespan: 1 year				Status: Draft 2017			
Irrigation water will be managed so that soil moisture will promote desired crop response, optimize use of available water supplies, minimize irrigation induced soil erosion, decrease non-point source pollution of surface and groundwater resources, manage salts in the crop root zone and/or manage air, soil, or plant micro-climate in accordance with standard and specification #449 and approved IWM plan. Will be Operated and maintained according to the attached Operation & Maintenance Agreement.											
Fields:											

US DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE		CONSERVATION PLAN OR SCHEDULE OF OPERATIONS			NRCS-CPA-1155 OMB 0578-0013 Expires 5/31/2012
PARTICIPANT HOWARD VAN WINKLE		COUNTY AND STATE MESA County, CO	PROGRAM AND CONTRACT NUMBER EQIP 2008 748B05110AL		SUBACCOUNT Salinity - Grand Valley - Salinity - Grand Junction (Salinity - Grand Junction)
LAND UNITS OR LEGAL DESCRIPTION Farm:2861 Tract(s):6548.		WATERSHED Little Salt Wash	ACRES 180.3	EXPIRATION DATE 12/31/2018	

Tract: 6548 Fields: 2, 2A, 7, 8, 9:														
Contract Item	Planned Conservation Treatment	Planned Amount	Unit Cost	Cost Share Rate/Method	COMPLETION SCHEDULE AND ESTIMATED COST-SHARE OR PAYMENT BY YEAR									
					2012 \$	2013 \$	2014 \$	2015 \$	2016 \$	2017 \$				
13	Irrigation Water Management(449)	180.3 ac									523			
13a	Low Intensity - Basic IWM principles, record keeping, soil moisture is determined by feel method, control and measurement of irrigation water to the farm and monitoring.	180.3 Ac	\$2,9000/ Ac	PR ¹							523			
Notes: ¹ Payment rates define the unit cost rate of compensation to be received by the participant.														

US DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE		CONSERVATION PLAN OR SCHEDULE OF OPERATIONS		NRCS-CPA-1155 OMB 0578-0013 Expires 5/31/2012
PARTICIPANT HOWARD VAN WINKLE	COUNTY AND STATE MESA County, CO	PROGRAM AND CONTRACT NUMBER EQIP 2008 748B05110AL	SUBACCOUNT Salinity - Grand Valley - Salinity - Grand Junction (Salinity - Grand Junction)	
LAND UNITS OR LEGAL DESCRIPTION Farm:2861 Tract(s):6548.		WATERSHED Little Salt Wash	ACRES 180.3	EXPIRATION DATE 12/31/2018

Year	Total Cost-Share or Payment by Year							Total Contract Payment
	2012	2013	2014	2015	2016	2017		
Amount(\$)	\$47,610	\$34,700	\$43,074	\$22,732	\$51,476	\$523		\$200,115

NOTES: A. All items numbers on form NRCS-CPA-1155 must be carried out as part of this contract to prevent violation.
 B. When established, the conservation practices identified by the numbered items must be maintained by the participant at no cost to the government.
 C. All cost share rates are based on average cost (AC) with the following exceptions:
 AA = Actual cost not to exceed average cost; FR = Flat Rate; NC = Non cost-shared; AM = Actual cost not to exceed a specified maximum; PR = Payment rates.
 D. By signing, the participant acknowledges receipt of this conservation plan including this form NRCS-CPA-1155 and agrees to comply with the terms and conditions here of.

Certification of Participants			
Signature	Date	Signature	Date
HOWARD VAN WINKLE			

Signatures of Reviewing Officials	
District Conservationist - Technical Adequacy Certification	NRCS Approving Official
Signature:	Signature:
Date:	Date:

PUBLIC BURDEN STATEMENT

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collections is 0578-0013. The time required to complete this information collection is estimated to average 45/0.75 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

PRIVACY ACT

The above statements are made in accordance with the Privacy Act of 1974 (5 U.S.C 522a). Furnishing this information is voluntary; however failure to furnish correct, complete information will result in the withholding or withdrawal of such technical or financial assistance. The information may be furnished to other USDA agencies, the Internal Revenue Service, the Department of Justice, or other state or federal law enforcement agencies, or in response to orders of a court, magistrate, or administrative tribunal.

USDA NON-DISCRIMINATION STATEMENT

"The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer."

**OPERATION AND MAINTENANCE AGREEMENT
Pasture, Hay, Crop**

Structural and Vegetative Practices

Structural and vegetative practices will be operated and maintained for the lifespan of the practice shown in table 1.

Table 1.

STRUCTURAL/VEGETATIVE PRACTICE	PRACTICE LIFESPAN
Irrigation System, Surface & Subsurface (443)	15 years
Irr. Water Conveyance Pipeline (430)	25 years
Gated Pipe (431)	15 years
Structure for Water control (587)	20 years

An Operation and Maintenance Plan tailored for each individual Structural or Vegetative practice in the contract will be provided to the participant with the practice design. If an Operation and Maintenance Plan is not provided with the practice design the following requirements will be used.

Irrigation Water Conveyance – Underground Plastic Pipeline & Inlet Structures, Codes 430DD and 430 EE.

1. Check all vents, pressure relief, air-vacuum valves each year prior to filling pipeline to ensure that they are in proper operating condition, are clear of debris, and are not stuck in a closed or open position.
2. Before filling pipeline, inspect all drains to be sure that drain valves are closed. Allow the time to fill the pipeline gradually when being put into use after shut down or draining. Allow the pipeline to fill gradually when being put into use after shut down or draining. The maximum flow during filling should not exceed a velocity of 1 foot per second, 1 cfs, or 450 gpm
3. When in operation, close all hydrants and valves slowly to prevent water hammer.
4. Maintain the design depth of cover over the pipeline and backfill around structures.
5. Limit traffic over the pipeline to designated sections that were designed for traffic loads.
6. Avoid travel over pipelines by tillage equipment when the soil is saturated.
7. Avoid any sub-soiling operation that may disturb the pipeline.
8. Maintain all screens and filters in good working condition and promptly repair or replace.

9. Remove all foreign debris that hinders system operation.
10. Maintain, where necessary, coverings and insulation to prevent damage by freezing. In the fall, drain all pipelines not designed for winter operation. Leave drain valves, drain plugs, and in-line valves open during winter shutdown.
11. If the pipeline is connected to a continuous flowing source, such as a spring, maintain flow through the pipe to avoid freezing.
12. Where sacrificial anodes are used for cathodic protection of steel pipelines, check their condition on a regular basis as outlined below or in the design. Repair or replace as necessary.
13. Check exterior coatings on above-ground and on-ground pipeline installations. Repair any damage immediately.
14. Eradicate or otherwise remove all rodents or burrowing animals. Immediately repair any damage caused by their activity.
15. Immediately repair any vandalism, vehicular, or livestock damage to the pipeline or to any outlets and appurtenances.

Irrigation Water Conveyance – Above ground Multi-Outlet Pipe, Code 431

1. Gated pipe shall always be filled slowly to prevent water hammer.
2. Check to make sure all valves and air vents are set at the proper operating condition providing protection to the pipeline.
3. Allow the pipeline to fill gradually when being put into use after shut down or draining. The maximum flow during filling should not exceed a velocity of 1 foot per second, 0.5 cfs, or 225 gpm.
4. Always slowly open and close or adjust the settings of in-line valves.
5. Periodically check and repair all valves, gates and regulators to the system requirements following the manufacturer's recommendations.
6. Maintain/replace socks and/or in-line valves when needed to control or limit system operating pressure.
7. Repair or replace damaged, leaky or stuck gates.
8. Remove all foreign debris that hinders system operation.
9. Limit traffic and tillage operations near the pipeline.
10. Drain the system and components in areas that are subject to freezing. If parts of the system cannot be drained, the pipeline should be pumped out or an adequate amount of anti-freeze solution shall be added.
11. Dismantle and stack pipe during long periods of non-use.
12. Maintain vigorous growth of vegetative coverings. This includes reseeding, fertilization and application of herbicides when necessary. Periodic mowing may also be needed to control height.
13. Immediately repair any vandalism, vehicular, or livestock damage to any outlets and appurtenances.
14. Inspect for damage from rodents or burrowing animals. Repair any damage. Take appropriate corrective actions to alleviate further damage. Pipe should be periodically flushed of sediment or other foreign material.
15. Damage gated pipe shall be repaired or replaced as necessary to maintain the system in keeping with its intended purpose.

Irrigation System - Surface, Code 443

1. Only operate the system when needed to furnish water for plant growth, salt management or to store moisture within the rooting depth of the plant. Monitor crops regularly noting areas of moisture stress and repair or adjust system operation as needed.
2. Operate the system at the pressure, discharge rate, irrigation duration and frequency as designed.
3. Ensure that runoff water is promptly removed by a drainage or tail-water recovery system.
4. Periodic land leveling or grading of surface irrigated fields is required to maintain uniform field grades for application uniformity.
5. Maintain system components such as ditches, pipes, pumps, structures, etc.
6. Immediately remove any debris, foreign material, obstructions, or blockage from ditch/pipe inlets or outlets and from structures.
7. Periodically remove sediment from traps and/or storage facilities to maintain design capacity and efficiency.
8. Promptly repair all leaks in delivery facilities by replacing valves, fittings, gaskets, worn parts, or damaged parts.
9. Maintain all screens, filters, valves, timers, and other electrical and mechanical equipment in good operating condition following manufacturer's recommendations. Drain and protect equipment from freezing, as necessary.
10. During non-seasonal use, place appurtenances in an area where they will not be damaged but are secure, if necessary.
11. Eradicate or otherwise remove all rodents and/or burrowing animals that have or can potentially damage any part of the delivery or application facilities. Immediately repair any damage caused by their activity.
12. Immediately repair any vandalism, vehicular, or livestock damage.

Structure for Water Control, Code 587

1. Maintain the width, height, and side slopes of soil berms and embankments.
2. Periodically inspect control gates, valves and weirs for proper functioning and their ability to maintain the water level to design elevations. Remove debris or flow blockages.
3. Inspect metal surfaces for rust and other damage. Especially inspect sections in contact with earth-fill and/or other materials. Repair or replace damaged sections and apply a protective covering.
4. Investigate settlement or cracks in earthen sections to determine the cause and make all necessary repairs.
5. Check concrete surfaces for accelerated weathering, spalling, settlement, alignment or cracks. Repair damaged concrete.
6. Check all rock riprap and erosion control matting sections for accelerated weathering and displacement of materials. Replace to original shape and grade if necessary.
7. Maintain vigorous growth of vegetative coverings. This includes reseeding, fertilizing and application of herbicides when necessary. Periodic mowing or short term grazing may also be needed to control height.

- 8. Drain structures when not being used. Remove accumulated soil and debris and any blockage that may restrict capacity.
- 9. If livestock are present, prevent access to components subject to damage by livestock. Repair any vandalism, vehicular, or livestock damage

MANAGEMENT PRACTICES

Management Practices will be applied for a period of time equal to the shortest lifespan of any structural or vegetative practices (See Table 1 above) that are applied with this contract to facilitate proper management. (See specific management plans included with the contract).

Irrigation Water Management, Code 449

- 1. Irrigation Water Management will be applied according to the NRCS Irrigation Water Management Plan included with this contract. This practice will be utilized for a period of time equal to the shortest lifespan of any structural or vegetative practices (See Table 1 above) that are applied with this contract to facilitate proper Irrigation Water Management which is, Practice 443 Lifespan 15 years.
(See Irrigation Water Management Plan)

NRCS personnel and the participant will periodically evaluate operation and maintenance of all structural practices, vegetative practices, and management practices that were/are contracted. If desired, the O&M plan will be modified as agreed to by both NRCS and the participant

Participant Signature

Date

Owner Signature

Date

District: MESA CONSERVATION DISTRICT

Date: 8/25/2010

Legal Description: Sec. 12,13&14, T12S, R98W US 6th PM

Sec. 22,23,26,27,28,29,33,34,35,36, T1S, R2E Ute PM

Sec. 1,2,9,10,11,12 T2S, R2E, Ute PM

Van Winkle Plan Map - WW

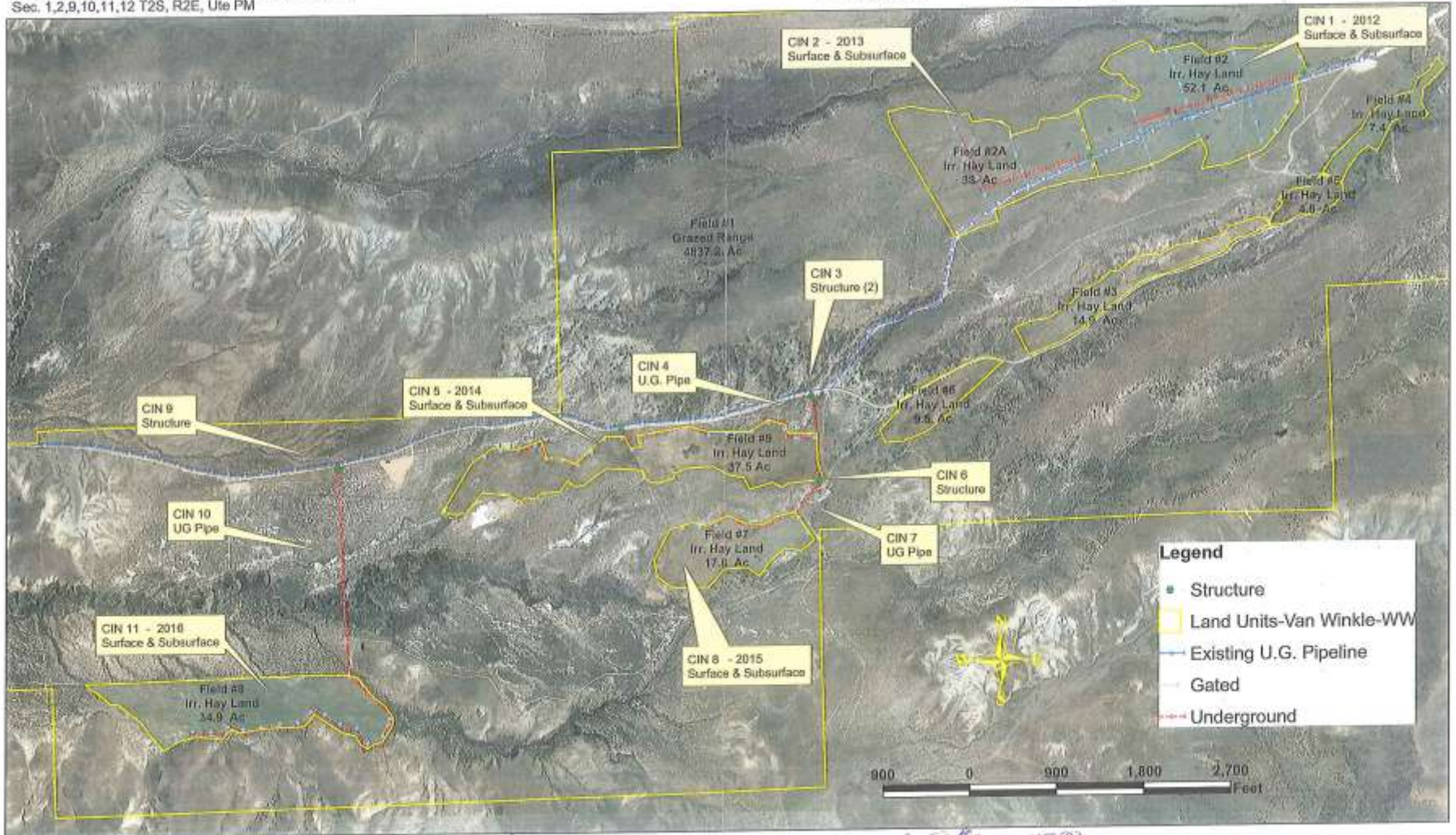
Farm #2861
Tract #6548

Field Office: GRAND JUNCTION SERVICE CENTER

Agency: USDA - NRCS

Assisted By: Lenny Lang/Dennis Gorsett

State and County: CO, MESA



est. \$233,747.00

cap @ \$200,115.00



Date: April 21, 2011
 Author: Bret Guillory, Utility Engineer
 Title/ Phone Ext: 970-244-1590
 Proposed Schedule: May 2, 2011
 2nd Reading
 (if applicable): _____

CITY COUNCIL AGENDA ITEM

**Attach 5
 Persigo WWTP Dissolved Air Floatation Specialty
 Equipment Purchase**

Subject: Persigo Wastewater Treatment Plant Dissolved Air Floatation Specialty Equipment Purchase
File # (if applicable):
Presenters Name & Title: Tim Moore, Public Works and Planning Director Jay Valentine, Assistant Financial Operations Manager

Executive Summary:

This request is for the purchase of Dissolved Air Floatation (DAF) system equipment for the Persigo Wastewater Treatment Plant (WWTP). Based on previous process improvement evaluation studies at the WWTP, Staff has identified the need to improve the plant system for solids handling. This change will allow Operators at the WWTP to optimize solids handling throughout the entire WWTP, and during winter months when current plant processes are reaching design capacity.

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 process modification project will provide for safe, and more efficient, treatment of the waste stream now, and into the future with build-out of the WWTP.

Action Requested/Recommendation:

Authorize the Purchasing Division to Execute a Contract with World Water Works, Inc. for the Purchase of a Dissolved Air Floatation Unit for the Persigo WWTP DAF Project in the Amount of \$400,000

Board or Committee Recommendation:

n/a

Background, Analysis and Options:

Solids handling at the Persigo WWTP consist of two treatment processes to stabilize sludge. Primary clarifiers separate solids for treatment in two anaerobic digesters. Secondary solids are wasted to an aerobic digester. The digested solids are then combined and dewatered using a belt filter press. Dewatered solids are hauled to the composting facility at the Mesa County landfill.

A study was completed in 2010 to evaluate alternatives to enhance capacity of the aerobic digestion process which has reached its design capacity. During winter conditions, it becomes difficult to remove adequate amounts of water from the sludge. As a result, the aerobic digester basins fill with solids causing operational challenges for solids handling at the plant. Based on the results of the study, installation of a DAF unit proved to be the most cost effective means to increase the ability to manage solids within the WWTP. This will also increase treatment capacity of the existing aerobic digesters, while meeting current Colorado Department of Public Health and Environment (CDPHE) requirements that the existing aerobic digester process does not meet.

A design contract was then executed by the City Manager in September of 2010 to allow for detailed design of the DAF project and submittal to CDPHE for review.

There are several types of equipment currently available to accomplish the end result of improved solids handling. As a component of the design effort, Stantec provided Staff with a detailed evaluation of three types of equipment. Staff evaluated the equipment using a selection matrix that included evaluation of the following: equipment footprint requirements, process compatibility with future WWTP process conditions, maintenance requirements, operational requirements, power consumption, review of experience at other installations, availability of spare parts and local servicing facilities, and relative capital/annual operating costs, and life cycle cost analysis for each alternative. Results of the evaluation heavily favored the World Water Works DAF unit due to the limited maintenance and operator labor compared to the other equipment. All three manufacturers are located in the United States, but none are located in Colorado.

The City received approval from CDPHE for the DAF project on March 29, 2011.

There is a long lead time for this equipment. In order to maintain the project schedule Utilities plans to purchase the equipment in advance of the construction contract. Installation of this equipment will be included with the bid for construction of the improvement later this summer.

Financial Impact/Budget:

This project was originally budgeted at \$900,000 in 2010, however due to coordination with other ongoing studies and projects at the WWTP, the budget was reduced in 2010 and re-appropriated in 2011.

Project Costs:

Total Design and Engineering services (approved 9/1/10)	\$97,310.00
Equipment Purchase	\$400,000.00
Construction Project Cost	\$250,000.00
<u>City Construction Inspection & Contract Administration</u>	<u>\$25,000.00</u>
Total Estimated Project Cost	\$772,310.00

Legal issues:

n/a

Other issues:

n/a

Previously presented or discussed:

n/a

Attachments:

n/a



CITY COUNCIL AGENDA ITEM

Date: April 15, 2011
Author: Heidi Hoffman Ham
Title/ Phone Ext: DDA Exec
Director / 256-4134
Proposed Schedule: May 2, 2011
2nd Reading: _____

**Attach 6
Outdoor Dining Lease Amendment for Dynamic
Adventures Limited DBA Le Rouge Restaurant**

Subject: Outdoor Dining Lease Amendment for Dynamic Adventures Limited DBA Le Rouge Restaurant, Located at 317 Main Street
File # (if applicable):
Presenters Name & Title: Heidi Hoffman Ham, DDA Executive Director

Executive Summary:

Dynamic Adventures Limited DBA Le Rouge Restaurant is requesting an additional area to be added to the existing Outdoor Dining Lease for an area measuring 8.67 feet by 25.4 feet. Le Rouge currently leases 23 feet by 7.83 feet directly in front of the property located at 317 Main Street. The Outdoor Dining Lease would permit the business to have a revocable license from the City of Grand Junction to expand their licensed premise and allow alcohol sales in these areas.

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.*

The addition of outdoor dining areas continues to support the vibrant atmosphere of the downtown area, particularly along the newly-renovated Main Street.

Action Requested/Recommendation:

Adopt the Resolution Approving the Outdoor Dining Lease for Dynamic Adventures Limited, DBA Le Rouge, located at 317 Main Street.

Board or Committee Recommendation:

N/A

Background, Analysis and Options:

Council approved the expansion of sidewalk dining with liquor service in July 2004. However, at that time, it was made clear that permission to serve alcohol on the sidewalk would require a specific lease of the public right-of-way in order to expand the licensed premise under their individual liquor license. Approval of this lease will allow for the applicant to apply for expansion of their premise through the proper State and City agencies. The Lease includes standards for appropriate access and control of the premise and is in keeping with the standards that have been in place in other communities in Colorado and that have worked well in Grand Junction.

This Lease reflects an expansion of the outdoor dining space for Le Rouge from previous leases, adding 180SF in an additional detached patio closer to the street for a total of 400SF. The same requirements for enclosure and appearance apply with particular consideration given to the width of pedestrian right of way. This change will also require modification of the liquor license.

Financial Impact/Budget:

There is no financial impact to the City.

Legal issues:

N/A

Other issues:

N/A

Previously presented or discussed:

N/A

Attachments:

- Resolution
- Outdoor Dining Lease Agreement
- Exhibit A – Depiction of Proposed Leased Area

RESOLUTION NO. _____

A RESOLUTION AMENDING THE LEASE OF SIDEWALK RIGHT-OF-WAY TO DYNAMIC ADVENTURES LIMITED DBA LE ROUGE RESTAURANT

Recitals:

The City has negotiated an agreement for Dynamic Adventures Limited, DBA Le Rouge Restaurant, to lease a portion of the sidewalk right-of-way located in front of 317 Main Street from the City for use as outdoor dining; and

The City Council deems it necessary and appropriate that the City lease said property to Dynamic Adventures Limited.

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

The City Manager is hereby authorized and directed to sign the Lease Agreement leasing the city-owned sidewalk right-of-way for a period of twelve months at \$400.00 per year, to Dynamic Adventures Limited.

PASSED and ADOPTED this ____ day of _____, 2011.

President of the Council

Attest:

City Clerk

OUTDOOR DINING LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made and entered into as of May 2, 2011, by and between THE CITY OF GRAND JUNCTION, COLORADO, a municipal corporation, as Lessor, hereinafter City and Dynamic Adventures Limited, DBA Le Rouge Restaurant, as Lessee, hereinafter Lessee.

RECITALS:

The City by Ordinance No. 3650 and subsequently amended by Ordinance No. 4120 established a Sidewalk Restaurant commercial activity permit for restaurants in the Downtown Shopping Park (DSP) on Main Street, Seventh Street and Colorado Avenue.

In accordance with that authority the City Council and the Downtown Development Authority (DDA) desire to make certain areas of the sidewalk in the DSP available by lease to approximate land owners and/or lessees that want to make use of a portion of the sidewalk in the DSP for restaurant and/or alcohol service.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein, it is agreed as follows:

1. The City does hereby lease to Lessee approximately 400 square feet of the sidewalk in the DSP located in front of 317 Main Street, hereinafter the Leased Area; specifically the Leased Area is that portion of the sidewalk immediately across the sidewalk from the Lessee's business. The Leased Area is depicted on the attached Exhibit A.
2. The City does hereby grant an easement across the abutting sidewalk for the purpose of transporting alcohol beverages and providing food service. Such easement runs concurrent with said lease and terminates when said lease terminates.
3. The term of this amended lease shall be for a period of one year beginning on May 2, 2011, and terminating on February 2, 2012. The additional rent shall be calculated at \$1.00 per square foot per year, prorated for the nine-month term. As rent for the additional Leased Area, Lessee agrees to pay the City the total sum of \$135.00, which sum shall be payable in advance on or before May 2, 2011, at the offices of the City Clerk, Grand Junction City Hall, 250 North 5th Street, Grand Junction, Colorado 81501.

If the rent payment is not paid in full when due, a Lease shall not issue.

4. Lessee agrees to use the Leased Area for the sole purpose of selling and dispensing food and/or beverages to the public. The Leased Area shall be open to the public, weather permitting, during the Lessee's normal business hours but in no event shall food and/or beverage service be extended beyond 12:00

midnight. Food shall be available to be served in the Leased Area during all hours that it is open to the public and in accordance with the Lessee's liquor license.

5. Lessee further agrees to use the Leased Area for no purpose prohibited by the laws of the United States, the State of Colorado or ordinances of the City of Grand Junction. Further, Lessee agrees to comply with all reasonable recommendations by DDA relating to the use of the Leased Area. Prior to alcohol service the Lessee shall modify its liquor licensed premises as required by the laws of the State and City. **Inclusion of the licensed premises in the licensed liquor service area, in accordance with Colorado law, is a precondition to exercise the authority allowed for by this lease.**
6. Lessee shall remove any improvements, enclosures, furniture, fixtures, equipment or structures installed by it or at its direction on the Leased Area promptly upon expiration of this Lease. Failure to remove the same within ten (10) days of expiration shall result in ownership thereof transferring to the DDA.
7. Lessee agrees to keep the Leased Area in good repair and free from all litter, dirt and debris and in a clean and sanitary condition; to neither permit nor suffer any disorderly conduct or nuisance whatsoever, which would annoy or damage other persons or property by any alteration to the Leased Area or by any injury of accident occurring thereon. Further, Lessee does, by execution of this Lease, indemnify and hold harmless the City of Grand Junction and the DDA and its employees, elected and appointed officials, against any and all claims for damages or personal injuries arising from the use of the Leased Area. Lessee agrees to furnish certificate(s) of insurance as proof that it has secured and paid for a policy of public liability insurance covering all public risks related to the leasing, use, occupancy, maintenance and operation of the Leased Area. Insurance shall be procured from a company authorized to do business in the State of Colorado and be satisfactory to the City. The amount of insurance, without co-insurance clauses, shall not be less than the maximum liability that can be imposed upon the City under the laws of the State, as amended. Lessee shall name the City and the DDA as named insureds on all insurance policies and such policies shall include a provision that written notice of any non-renewal, cancellation or material change in a policy by the insurer shall be delivered to the City no less than ten (10) days in advance of the effective date.
8. All construction, improvements, furniture, fixtures and/or equipment on the Leased Area shall comply with the following:
 - a. Not be wider than the street frontage of the business nor extend to the extent that pedestrian traffic is impeded.
 - b. No portion of the Lessee's furniture, fixtures or equipment shall extend beyond the boundaries of the Leased Area; this shall be construed to include perimeter enclosures, planters, shade structure(s), umbrellas

while closed or open and any other fixtures, furniture or equipment placed or utilized by the Lessee.

- c. The perimeter enclosure shall be angled at forty-five (45) degrees with a minimum of four (4) feet in length on the diagonal(s) with the exception that if the Lessee obtains written consent from the adjacent business, a ninety (90) degree angle will be permitted on the side(s) for which the Lessee has obtained such written consent.
- d. The perimeter of the Leased Area shall be enclosed by a black wrought-iron fence (perimeter enclosure) as approved by DDA, no less than thirty (30) inches in height. Openings in the fence shall not be less than 44 inches wide. If there is a gate which is not self-closing and bi-directional it must swing inward to prevent obstruction of the sidewalk.
- e. No cooking shall be located on the Leased Area.
- f. Lessee may place furniture, fixtures and equipment in the Leased Area so long as the same are not allowed to encroach into the public right of way or otherwise to endanger any passerby or patron and are secured to resist wind.
- g. The Lessee shall allow its fixtures and perimeter fencing to remain in place at its own discretion and liability and shall accept and retain full responsibility and liability for any damage to such fixtures and perimeter fencing caused thereby.
- h. Neither electric (alternating current) nor gaslights are allowed on the Leased Area. Candles and battery powered lights are allowed.
- i. Between and including the dates of November 1 - March 1 the Lessee shall remove and store separate and away from the Leased Area all fixtures and furnishings including but not limited to umbrellas, chairs, tables, signs and food/beverage preparation and service equipment.
- j. On and after March 1, 2012 the Lessee shall not allow signage, including but not limited to banners, on the Leased Area. Similarly signage shall be disallowed on furniture, which includes but is not limited to, chairs, benches, tables, umbrellas, planters and the perimeter fence of the Leased Area. Menu signs shall be allowed in accordance with provisions of the City of Grand Junction sign code and subject to review by the DDA.
- k. At those locations where Lessee uses public trash and/or recycling receptacles for refuse generated from Leased Area, the Lessee shall periodically empty those receptacles. For those locations which regularly use public receptacles the Lessee may request that the DDA provide

trash bags/container liners for the Lessee's use in the public containers in accordance with the terms of this paragraph.

9. The leased premises and improvements, additions and fixtures, furniture and equipment thereon shall be maintained and managed by Lessee.
10. Lessee agrees to permit agents of the City and/or the DDA to enter upon the premises at any time to inspect the same and make any necessary repairs or alterations to the sidewalks, utilities, meters or other public facilities as the City may deem necessary or proper for the safety, improvement, maintenance or preservation thereof.

Lessee further agrees that if the City shall determine to make changes or improvements to the DSP, which may affect any improvements placed by the Lessee, that the Lessee, by execution of this Agreement, hereby waives any and all right to make any claim for damages to the improvements (or to its leasehold interest) and agrees to remove any structures necessary during such construction periods. The City agrees to rebate all rents in the event it undertakes major structural changes during a lease period.

11. The City by this demise hereby conveys no rights or interest in the public way except the right to the uses on such terms and conditions as are above described and retains all title thereto.
12. Lessee agrees not to sublet any portion of the Leased Area, not to assign this lease without the prior written consent of the City being first obtained.
13. Lessee hereby affirms that Lessee is the owner and/or lessee of the abutting property and agrees that on sale or other transfer of such ownership interest, Lessee will so notify the City of the transfer in interest and all right and interest under this Lease shall terminate.
14. Lessee agrees to surrender and deliver up the possession of the Leased Area promptly upon the expiration of this Lease or upon five (5) days' written notice in the case of the termination of this Lease by City by reason of a breach in any provisions hereof.
15. If legal action is taken by either party hereto to enforce any of the provisions of this Lease, the prevailing party in any legal action shall be entitled to recover from the other party all of its cost, including reasonable attorney's fees.
16. It is further agreed that no assent, expressed or implied, to any breach of any one or more of the covenants or agreements herein shall be deemed or taken to be a waiver of any succeeding or any other breach.
17. Lessee agrees to comply with all laws, ordinances, rules and regulations that may pertain or apply to the Leased Area and its use. In performing under the

Lease, Lessee shall not discriminate against any worker, employee or job applicant, or any member of the public because of race, color, creed, religion, ancestry, national origin, sex, age, marital status, physical handicap, status or sexual orientation, family responsibility or political affiliation, or otherwise commit an unfair employment practice.

18. Lessee and City agree that all correspondence concerning the Lease shall be in writing and either hand delivered or mailed by first class certified mail to the following parties:

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

Lessee:
Dynamic Adventures Limited DBA Le Rouge Restaurant
317 Main Street
Grand Junction, CO 81501

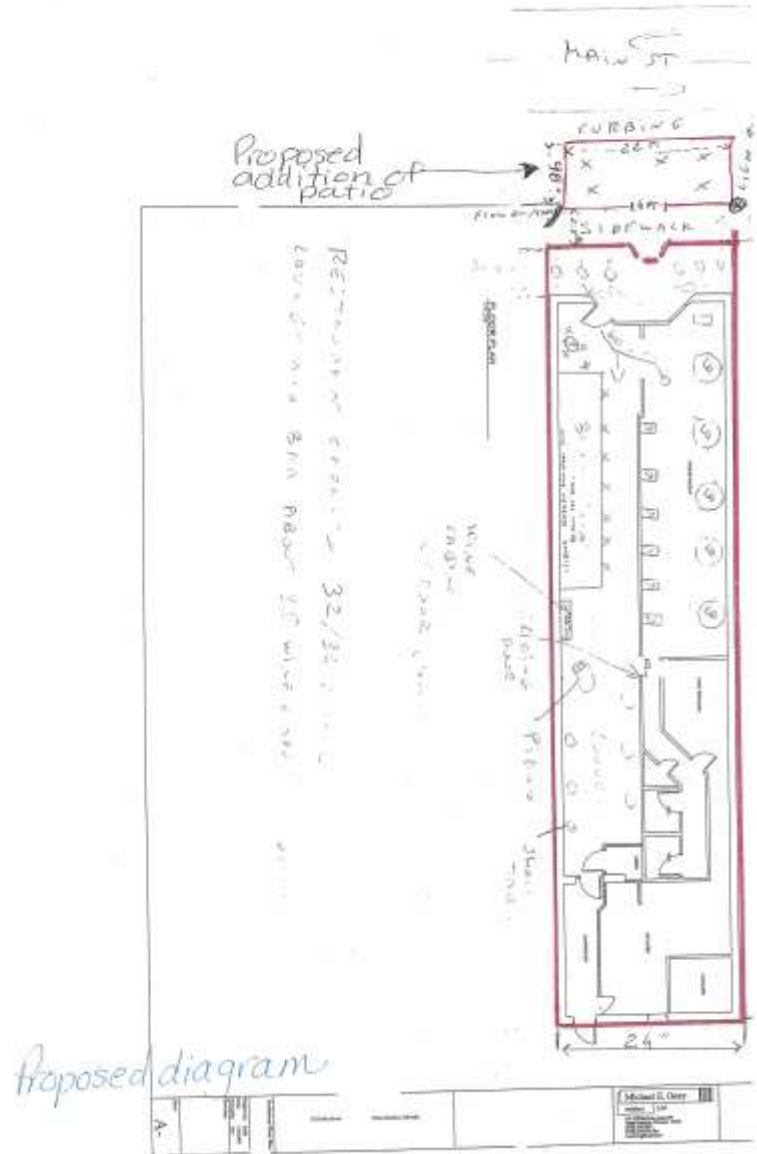
CITY OF GRAND JUNCTION

Laurie M. Kadrach, City Manager

LESSEE

Business Owner

EXHIBIT A





Date: April 19, 2011
Author: Eddie F. Storer
Title/ Phone Ext: Asst. Director/
Construction Manager 248-8595
Proposed Schedule: May 2, 2011
Consent Agenda

CITY COUNCIL AGENDA ITEM

**Attach 7
Airport Improvement Program Grant for the
Acquisition of Snow Removal Equipment**

Subject: Airport Improvement Program Grant for the Acquisition of Snow Removal Equipment
File # (if applicable):
Presenters Name & Title: Rex A. Tippetts, AAE, Director of Aviation

Executive Summary:

AIP-47 is a grant for \$456,041.00 for the acquisition of Snow Removal Equipment to help ensure the safe operation of the Grand Junction Regional Airport. The Supplemental Co-sponsorship Agreement is required by the FAA as part of the grant acceptance by the City.

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

This grant acceptance will support the Council's **Goal # 9** by enhancing and maintaining the air transportation system within the region.

Action Requested/Recommendation:

Authorize the Mayor and City Attorney to Sign the Original FAA AIP-47 Grant Documents for Acquisition of Snow Removal Equipment at the Grand Junction Regional Airport and Authorize the City Manager to Sign the Supplemental Co-sponsorship Agreements for AIP-47

Board or Committee Recommendation:

The Grand Junction Regional Airport Authority accepted the AIP-47 at their April 19, 2011 meeting.

Financial Impact/Budget:

No funds are being requested of the City of Grand Junction.

Legal issues:

Standard review by the City Attorney.

Other issues:

None.

Previously presented or discussed:

No

Background, Analysis and Options

The benefit of AIP-47 is to purchase additional Snow Removal Equipment to provide for better safety and efficiency of snow removal at the Grand Junction Regional Airport.

Attachments:

1. Draft Grant Agreement for AIP-47
2. Supplemental Co-sponsorship Agreement
3. 2011 Sponsor Assurances (Latest Addition)
4. Current FAA Advisory Circular List



U.S. Department
of Transportation
**Federal Aviation
Administration**

Denver Airports District Office
26905 E. 68th Avenue, Room 224
Denver, Colorado 80249

PLEASE READ BEFORE EXECUTING GRANT

The Honorable Teresa Coons, Mayor
City of Grand Junction
250 North Fifth Street
Grand Junction, CO, 81501

Mr. Craig J. Meis, Chairman
Board of Mesa County Commissioners
750 Main Street
Grand Junction, CO, 81501

Mr. Dan Lacy, Chairman
Grand Junction Regional Airport Authority
2828 Walker Field Drive, Suite 301
Grand Junction, CO, 81506

Dear Mayor Coons, Commissioner Meis and Mr. Lacy:

Enclosed are four copies of a grant offer for Airport Improvement Program Project No. 3-08-0027-47 for the Grand Junction Regional Airport in which \$456,041.00 of Federal funds have been obligated to accomplish the project described on page 1 of the grant offer. Please complete Part II (Acceptance) by having the authorized officials execute the last page of the grant offer. **Certification by the attorney should be completed following the acceptance and dated on or after the acceptance date.**

Your normal procedures for accepting documents such as this in accordance with local and state law should be followed, but evidence of such procedure is not required by the Federal Aviation Administration.

After execution and certification of the grant agreement, please return one copy to this office. The other copies are for your records.

All applicable project-related requirements pertaining to environmental analysis and approval for this grant have been met in accordance with the guidelines contained in FAA Order 5050.4B, Airport Environmental Handbook (2006).

Sincerely,

John P. Bauer, Manager
Denver Airports District Office

Enclosures

GRANT AGREEMENT

Federal Aviation
Administration

Part I - Offer

Date of Offer:

Airport: Grand Junction Regional

Project Number: 3-08-0027-47

Contract Number: DOT-FA11NM-10XX

DUNS #: 156135394

To: City of Grand Junction and the County of Mesa, Colorado and the Grand Junction Regional Airport Authority (herein called the "Sponsor")

From: The United States of America (acting through the Federal Aviation Administration, herein called the "FAA")

Whereas, the Sponsor has submitted to the FAA a Project Application dated November 8, 2010 for a grant of Federal funds for a project at or associated with the Grand Junction Regional Airport, which Project Application, as approved by the FAA, is hereby incorporated herein and made a part hereof; and

Whereas, the FAA has approved a project for the Airport (herein called the "Project") consisting of the following:

Acquire Snow Removal Equipment

all as more particularly described in the Project Application.

NOW THEREFORE, pursuant to and for the purpose of carrying out the provisions of Title 49, United States Code, as amended, herein called "the Act", and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application and its acceptance of this offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the assurances and conditions as herein provided, **THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES** to pay, as the United States share of the allowable costs incurred in accomplishing the Project, 95.00 per centum thereof.

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

Conditions

1. The maximum obligation of the United States payable under this offer shall be \$456,041. For the purpose of any future grant amendments, which may increase the foregoing maximum obligation of the United States under the provisions of Section 47108(b) of the Act, the following amounts are being specified for this purpose:

\$-0- for planning
\$456,041 for airport development.
2. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under the Act.
3. Payment of the United States share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary shall prescribe. Final determination of the United States share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
4. The sponsor shall carry out and complete the Project without undue delay and in accordance with the terms hereof, and such regulations and procedures as the Secretary shall prescribe, and agrees to comply with the assurances which were made part of the project application.
5. The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the sponsor.
6. This offer shall expire and the United States shall not be obligated to pay any part of the costs of the project unless this offer has been accepted by the sponsor on or before May 20, 2011, or such subsequent date as may be prescribed in writing by the FAA.
7. The Sponsor shall take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or disbursed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement. It shall obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. It shall return the recovered Federal share, including funds recovered by settlement, order or judgment, to the Secretary. It shall furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or

other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by the Secretary.

8. The United States shall not be responsible or liable for damage to property or injury to persons, who may arise from, or be incident to, compliance with this grant agreement.

Special Conditions

9. The sponsor will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the "Current FAA Advisory Circulars Required For Use In AIP Funded and PFC Approved Projects," dated June 2, 2010, and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.
10. The Sponsor agrees to request cash drawdowns on the letter of credit only when actually needed for its disbursements and to timely reporting of such disbursements as required. It is understood that failure to adhere to this provision may cause the letter of credit to be revoked.
11. It is mutually understood and agreed that if, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000.00 or five percent (5%), whichever is greater, the maximum obligation of the United States can be unilaterally reduced by letter from the FAA advising of the budget change. Conversely, if there is an overrun in the total actual eligible and allowable project costs, FAA may increase the maximum grant obligation of the United States to cover the amount of the overrun not to exceed the statutory percent limitation and will advise the Sponsor by letter of the increase. It is further understood and agreed that if, during the life of the project, the FAA determines that a change in the grant description is advantageous and in the best interests of the United States, the change in grant description will be unilaterally amended by letter from the FAA. Upon issuance of the aforementioned letter, either the grant obligation of the United States is adjusted to the amount specified or the grant description is amended to the description specified.
12. Unless otherwise approved by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for airport development or noise compatibility for which funds are provided under this grant. The Sponsor will include in every contract a provision implementing this special condition.
13. In accordance with Section 47108(b) of the Act, as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:
 - a. may not be increased for a planning project;
 - b. may be increased by not more than 15 percent for development projects;
 - c. may be increased by not more than 15 percent for land projects.
14. The Sponsor agrees to comply with the Assurances attached to this offer, which replaces the assurances that accompanied the Application for Federal Assistance.

15. The FAA in tendering this Grant Offer on behalf of the United States recognizes the existence of a Co-Sponsorship Agreement between the Grand Junction Regional Airport Authority and the City of Grand Junction entered into between the parties on September 23, 2010. By acceptance of the Grant Offer, said parties assume their respective obligations as set forth in said Co-Sponsorship Agreement. It is understood and agreed that said Agreement will not be amended, modified, or terminated without prior written approval of the FAA.
16. The FAA in tendering this Grant Offer on behalf of the United States recognizes the existence of a Co-Sponsorship Agreement between the Grand Junction Regional Airport Authority and Mesa County entered into between the parties on September 23, 2010. By acceptance of the Grant Offer, said parties assume their respective obligations as set forth in said Co-Sponsorship Agreement. It is understood and agreed that said Agreement will not be amended, modified, or terminated without prior written approval of the FAA.
17. The sponsor agrees to monitor progress on the work to be accomplished by this grant. For consultant services, the Sponsor agrees to make payment only for work that has been satisfactorily completed. It is understood by and between the parties hereto that the approximate value of the final project documentation is ten percent (10%) of the total value of the engineering services contract, and that amount will not be paid to the Engineer until acceptable final project documentation is provided.
18. **TRAFFICKING IN PERSONS:**
 - a. Provisions applicable to a recipient that is a private entity.**
 1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
 2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity—
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.
 - b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity--**
 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either--
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.
 - c. Provisions applicable to any recipient.**

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. "Employee" means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

19. **A-133 AUDIT:** The Sponsor shall provide for a Single Audit in accordance with Office of Management and Budget Circular A-133. The Sponsor shall submit the Single Audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/fac/collect/dde/index.html>. The Sponsor shall also provide one copy of the completed A-133 Audit to the Denver Airports District Office.

#

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by Title 49, U.S.C., Subtitle VII, Part B, as amended constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**

Manager, Denver Airports District Office

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and do hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

Executed this _____ day of _____, 2011.

CITY OF GRAND JUNCTION, COLORADO

(SEAL)

(Signature Sponsor's Designated Official Representative)

By: _____
(Typed Name of Sponsor's Designated Representative)

Attest: _____

(Typed Title of Sponsor's Designated Official Representative)

Certificate of Sponsor's Attorney

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Colorado. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____ this _____ day of _____, 2011.

Signature of Sponsor's Attorney

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and do hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

Executed this _____ day of _____, 2011.

COUNTY OF MESA, COLORADO

(SEAL)

(Signature Sponsor's Designated Official Representative)

By: _____
(Typed Name of Sponsor's Designated Representative)

Attest: _____

(Typed Title of Sponsor's Designated Official Representative)

Certificate of Sponsor's Attorney

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Colorado. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____ this _____ day of _____, 2011.

Signature of Sponsor's Attorney

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and do hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

Executed this _____ day of _____, 2011.

**GRAND JUNCTION REGIONAL AIRPORT
AUTHORITY**

(SEAL)

(Signature Sponsor's Designated Official Representative)

By: _____
(Typed Name of Sponsor's Designated Representative)

Attest: _____

(Typed Title of Sponsor's Designated Official Representative)

Certificate of Sponsor's Attorney

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Colorado. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at _____ this _____ day of _____, 2011.

Signature of Sponsor's Attorney

SUPPLEMENTAL CO-SPONSORSHIP AGREEMENT

This Supplemental Co-Sponsorship Agreement is entered into and effective this _____ day of _____, 2011, by and between the Grand Junction Regional Airport Authority ("Airport Authority"), and the City of Grand Junction (City).

RECITALS

A. The Airport Authority is a political subdivision of the State of Colorado, organized pursuant to Section 41-3-101 et seq., C.R.S. The Airport Authority is a separate and distinct entity from the City.

B. The Airport Authority is the owner and operator of the Grand Junction Regional Airport, located in Grand Junction, Colorado ("Airport").

C. Pursuant to the Title 49, U.S.C., Subtitle VII, Part B, as amended, the Airport Authority has applied for monies from the Federal Aviation Administration ("FAA"), for the construction of certain improvements upon the Airport, pursuant to the terms, plans and specifications set forth in AIP Grant Application No. 3-08-0027-47 ("Project").

D. The FAA is willing to provide approximately \$456,041.00 toward the estimated costs of the Project, provided the City of Grand Junction and Mesa County execute the Grant Agreement as co-sponsors with the Airport Authority. The FAA is insisting that the City and County execute the Grant Agreement as co-sponsors for two primary reasons. First, the City and County have taxing authority, whereas the Airport Authority does not; accordingly, the FAA is insisting that the City and County execute the Grant Agreement so that public entities with taxing authority are liable for the financial commitments required of the Sponsor under the Grant Agreement, should the Airport Authority not be able to satisfy said financial commitments out of the net revenues generated by the operation of the Airport. In addition, the City and County have jurisdiction over the zoning and land use regulations of the real property surrounding the Airport, whereas the Airport Authority does not enjoy such zoning and land use regulatory authority. By their execution of the Grant Agreement, the City and County would be warranting to the FAA that the proposed improvements are consistent with their respective plans for the development of the area surrounding the Airport, and that they will take appropriate actions, including the adoption of zoning laws, to restrict the use of land surrounding the Airport to activities and purposes compatible with normal Airport operations.

E. The City is willing to execute the Grant Agreement, as a co-sponsor, pursuant to the FAA's request, subject to the terms and conditions of this Supplemental Co-Sponsorship Agreement between the City and Airport Authority.

Therefore, in consideration of the above Recitals and the mutual promises and representations set forth below, the City and Airport Authority hereby agree as follows:

AGREEMENT

1. By its execution of this Agreement, the City hereby agrees to execute the Grant Agreement, as a co-sponsor, pursuant to the FAA's request.
2. In consideration of the City's execution of the Grant Agreement, as co-sponsor, the Airport Authority hereby agrees to hold the City, its officers, employees, and agents, harmless from, and to indemnify the City, its officers, employees, and agents for:
 - (a) Any and all claims, lawsuits, damages, or liabilities, including reasonable attorney's fees and court costs, which at any time may be or are stated, asserted, or made against the City, its officers, employees, or agents, by the FAA or any other third party whomsoever, in any way arising out of, or related under the Grant Agreement, or the prosecution of the Project contemplated by the Grant Agreement, regardless of whether said claims are frivolous or groundless, other than claims related to the City's covenant to take appropriate action, including the adoption of zoning laws, to restrict the use of land surrounding the Airport, over which the City has regulatory jurisdiction, to activities and purposes compatible with normal Airport operations, set forth in paragraph 21 of the Assurances incorporated by reference into the Grant Agreement ("Assurances"); and
 - (b) The failure of the Airport Authority, or any of the Airport Authority's officers, agents, employees, or contractors, to comply in any respect with any of the requirements, obligations or duties imposed on the Sponsor by the Grant Agreement, or reasonably related to or inferred there from, other than the Sponsor's zoning and land use obligations under Paragraph 21 of the Assurances, which are the City's responsibility for lands surrounding the Airport over which it has regulatory jurisdiction.
3. By its execution of this Agreement, the Airport Authority hereby agrees to comply with each and every requirement of the Sponsor, set forth in the Grant Agreement, or reasonably required in connection therewith, other than the zoning and land use requirements set forth in paragraph 21 of the Assurances, in recognition of the fact that the Airport Authority does not have the power to effect the zoning and land use regulations required by said paragraph.
4. By its execution of this Agreement and the Grant Agreement, the City agrees to comply with the zoning and land use requirements of paragraph 21 of the Assurances, with respect to all lands surrounding the Airport that are subject to the City's regulatory jurisdiction. The City also hereby warrants and represents that, in accordance with paragraph 6 of the Special Assurances; the Project contemplated by the Grant Agreement is consistent with present plans of the City for the development of the area surrounding the Airport.
5. The parties hereby warrant and represent that, by the City's execution of the Grant Agreement, as a co-sponsor, pursuant to the FAA's request, the

City is not a co-owner, agent, partner, joint venturer, or representative of the Airport Authority in the ownership, management or administration of the Airport, and the Airport Authority is, and remains, the sole owner of the Airport, and solely responsible for the operation and management of the Airport.

Done and entered into on the date first set forth above.

GRAND JUNCTION REGIONAL AIRPORT AUTHORITY

By _____
Dan Lacy, Chairman

CITY OF GRAND JUNCTION

By _____
City Manager

ASSURANCES
Airport Sponsors

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. **Airport Development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.** The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with Federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.
2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.** The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.
3. **Airport Planning Undertaken by a Sponsor.** Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in section C apply to planning projects. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the project.

- C. Sponsor Certification.** The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.** It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act - 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - Title 42 U.S.C. 4601, et seq.^{1,2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
- o. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- p. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- q. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.¹
- r. Power Plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- t. Copeland Anti Kickback Act - 18 U.S.C. 874.1
- u. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- v. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

Executive Orders

- Executive Order 11246 - Equal Employment Opportunity¹
- Executive Order 11990 - Protection of Wetlands
- Executive Order 11988 – Flood Plain Management
- Executive Order 12372 - Intergovernmental Review of Federal Programs
- Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
- Executive Order 12898 - Environmental Justice

Federal Regulations

- a. 14 CFR Part 13 - Investigative and Enforcement Procedures.
- b. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- c. 14 CFR Part 150 - Airport noise compatibility planning.
- d. 29 CFR Part 1 - Procedures for predetermination of wage rates.¹
- e. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- f. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- g. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- h. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- i. 49 CFR Part 20 - New restrictions on lobbying.
- j. 49 CFR Part 21 - Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- k. 49 CFR Part 23 - Participation by Disadvantaged Business Enterprise in Airport Concessions.
- l. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.^{1 2}
- m. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- n. 49 CFR Part 27 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.¹
- o. 49 CFR Part 29 – Government wide debarment and suspension (nonprocurement) and government wide requirements for drug-free workplace (grants).
- p. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- q. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.¹

Office of Management and Budget (OMB) Circulars

- a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
- b. A-133 - Audits of States, Local Governments, and Non-Profit Organizations

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

³ 49 CFR Part 18 and OMB Circular A-87 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

2. Responsibility and Authority of the Sponsor.

- a. **Public Agency Sponsor:** It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
- b. **Private Sponsor:** It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability. It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or

modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall ensure that such arrangement also requires compliance therewith.
- g. It will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport.

6. **Consistency with Local Plans.** The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.
7. **Consideration of Local Interest.** It has given fair consideration to the interest of communities in or near where the project may be located.
8. **Consultation with Users.** In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which the project is proposed.
9. **Public Hearings.** In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.
10. **Air and Water Quality Standards.** In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty (60) days after the project application has been received by the Secretary.
11. **Pavement Preventive Maintenance.** With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.
12. **Terminal Development Prerequisites.** For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for

access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates. It shall include, in all contracts in excess of \$2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference. It shall include in all contracts for work on any project funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications. It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and

schedules shall also be subject to approval of the Secretary, and incorporated into the grant agreement.

- 17. Construction Inspection and Approval.** It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.
- 18. Planning Projects.** In carrying out planning projects:

 - a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
 - b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
 - c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
 - d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
 - e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
 - f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
 - g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
 - h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.
- 19. Operation and Maintenance.**

 - a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon

which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- (1) Operating the airport's aeronautical facilities whenever required;
- (2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
- (3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation. It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use. It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

- (1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
 - d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
 - e. Each air carrier using such airport (whether as a tenant, non tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non tenants and signatory carriers and non signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
 - f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
 - g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
 - h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
 - i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.
- 23. Exclusive Rights.** It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a

single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure. It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit

report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections. It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft. It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or

- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.
- 28. Land for Federal Facilities.** It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.
- 29. Airport Layout Plan.**
- a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
 - b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.
- 30. Civil Rights.** It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or

benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (2) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such

land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. **Engineering and Design Services.** It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement **prescribed** for or by the sponsor of the airport.
33. **Foreign Market Restrictions.** It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.
34. **Policies, Standards, and Specifications.** It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated _____ and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.
35. **Relocation and Real Property Acquisition.** (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.
36. **Access By Intercity Buses.** The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.
37. **Disadvantaged Business Enterprises.** The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non discrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program,

the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801).

- 38. Hangar Construction.** If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.
- 39. Competitive Access.**
- a. If the airport owner or operator of a medium or large hub airport (as defined in Section 47102 of Title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 - (1) Describes the requests;
 - (2) Provides an explanation as to why the requests could not be accommodated; and
 - (3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
 - b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six (6) month period prior to the applicable due date.

**CURRENT FAA ADVISORY CIRCULARS REQUIRED FOR USE IN
AIP FUNDED AND PFC APPROVED PROJECTS**

Dated: 6/2/2010

View the most current versions of these ACs and any associated changes at:
http://www.faa.gov/airports/resources/advisory_circulars

NUMBER	TITLE
70/7460-1K	Obstruction Marking and Lighting
150/5000-13A	Announcement of Availability—RTCA Inc., Document RTCA-221, Guidance and Recommended Requirements for Airports Surface Movement Sensors
150/5020-1	Noise Control and Compatibility Planning for Airports
150/5070-6B Change 1	Airport Master Plans
150/5070-7	The Airport System Planning Process
150/5200-28D	Notices to Airmen (NOTAMS) for Airport Operators
150/5200-30C	Airport Winter Safety and Operations
150/5200-33B	Hazardous Wildlife Attractants On or Near Airports
150/5210-5D	Painting, Marking and Lighting of Vehicles Used on an Airport
150/5210-7D	Aircraft Fire and Rescue Communications
150/5210-13B	Water Rescue Plans, Facilities, and Equipment
150/5210-14B	Aircraft Rescue Fire Fighting Equipment, Tools, and Clothing
150/5210-15A	Airport Rescue & Firefighting Station Building Design
150/5210-18A	Systems for Interactive Training of Airport Personnel
150/5210-19A	Driver's Enhanced Vision System (DEVS)
150/5220-4B	Water Supply Systems for Aircraft Fire and Rescue Protection
150/5220-13B	Runway Surface Condition Sensor Specification Guide
150/5220-16C	Automated Weather Observing Systems for Non-Federal Applications
150/5220-17A and Change 1	Design Standards for an Aircraft Rescue Firefighting Training Facility
150/5220-18A	Buildings for Storage and Maintenance of Airport Snow and Ice Control Equipment and Materials
150/5220-20 and Change 1	Airport Snow and Ice Control Equipment
150/5220-21B	Guide Specification for Lifts Used to Board Airline Passengers With Mobility Impairments
150/5220-22A	Engineered Materials Arresting System (EMAS) for Aircraft Overruns
150/5220-23	Frangible Connections
150/5220-24	Foreign Object Debris Detection Equipment
150/5300-13 and Changes 1 –15	Airport Design
150/5300-14B	Design of Aircraft Deicing Facilities
150/5300-16A	General Guidance and Specifications for Aeronautical Surveys: Establishment of Geodetic Control and Submission to the National Geodetic Survey
150/5300-17B	General Guidance and Specifications for Aeronautical Survey Airport Imagery Acquisition
150/5300-18B	General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GIS) Standards
150/5320-5C and Change 1	Surface Drainage Design
150/5320-6E	Airport Pavement Design and Evaluation
150/5320-12C and Changes 1 through 8	Measurement, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces
150/5320-14	Airport Landscaping for Noise Control Purposes
150/5320-15A	Management of Airport Industrial Waste
150/5325-4B	Runway Length Requirements for Airport Design
150/5335-5A	Standardized Method of Reporting Airport Pavement Strength PCN
150/5340-1J and Change 2	Standards for Airport Markings (Change 1&2)
150/5340-5C	Segmented Circle Airport Marker System
150/5340-18E	Standards for Airport Sign Systems
150/5340-30D	Design and Installation Details for Airport Visual Aids
150/5345-3F	Specification for L821 Panels for the Control of Airport Lighting
150/5345-5B	Circuit Selector Switch
150/5345-7E	Specification for L824 Underground Electrical Cable for Airport Lighting Circuits

150/5345-10F	Specification for Constant Current Regulators Regulator Monitors
150/5345-12E	Specification for Airport and Heliport Beacon
150/5345-13B	Specification for L841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits
150/5345-26D	Specification for L823 Plug and Receptacle, Cable Connectors
150/5345-27D	Specification for Wind Cone Assemblies
150/5345-28F	Precision Approach Path Indicator (PAPI) Systems
150/5345-39C	FAA Specification L853, Runway and Taxiway Retroreflective Markers
150/5345-42F	Specification for Airport Light Bases, Transformer Housings, Junction Boxes and Accessories
150/5345-43F	Specification for Obstruction Lighting Equipment
150/5345-44H	Specification for Taxiway and Runway Signs
150/5345-45C	Low-Impact Resistant (LIR) Structures
150/5345-46D	Specification for Runway and Taxiway Light Fixtures
150/5345-47B	Specifications for Series to Series Isolation Transformers for Airport Lighting System
150/5345-49C	Specification L854, Radio Control Equipment
150/5345-50B	Specification for Portable Runway and Taxiway Lights
150/5345-51A	Specification for Discharge-Type Flasher Equipment
150/5345-52A	Generic Visual Glideslope Indicators (GVGI)
150/5345-53C	Airport Lighting Equipment Certification Program
150/5345-54B	Specification for L-1884, Power and Control Unit for Land and Hold Short
150/5345-55A	Specification for L893, Lighted Visual Aid to Indicate Temporary Runway Closure
150/5345-56A	Specification for L-890 Airport Lighting Control and Monitoring System (ALCMS)
150/5360-9	Planning and Design of Airport Terminal Facilities at NonHub Locations
150/5360-12E	Airport Signing and Graphics
150/5360-13 and Change 1	Planning and Design Guidance for Airport Terminal Facilities
150/5370-2E	Operational Safety on Airports During Construction
150/5370-10E	Standards for Specifying Construction of Airports
150/5370-11A	Use of Nondestructive Testing Devices in the Evaluation of Airport Pavement
150/5380-6B	Guidelines and Procedures for Maintenance of Airport Pavements
150/5390-2B	Heliport Design
150/5390-3	Vertiport Design
150/5395-1	Seaplane Bases

THE FOLLOWING ADDITIONAL APPLY TO AIP PROJECTS ONLY

DATED: 6/2/2010 NUMBER	TITLE
150/5100-14D	Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects
150/5100-15A	Civil Rights Requirements for the Airport Improvement Program
150/5100-17 and Changes 1 - 6	Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects
150/5200-37	Introduction to Safety Management Systems (SMS) for Airport Operators
150/5300-15A	Use of Value Engineering for Engineering Design of Airports Grant Projects
150/5320-17	Airfield Pavement Surface Evaluation and Rating (PASER) Manuals
150/5370-6D Change 1-4	Construction Progress and Inspection Report – Airport Grant Program
150/5370-12A	Quality Control of Construction for Airport Grant Projects
150/5370-13A	Offpeak Construction of Airport Pavements Using Hot-Mix Asphalt
150/5380-7A	Airport Pavement Management Program
150/5380-8A	Handbook for Identification of Alkali-Silica Reactivity in Airfield Pavements

THE FOLLOWING ADDITIONAL APPLY TO PFC PROJECTS ONLY

DATED: 6/2/2010 NUMBER	TITLE
150/5000-12	Announcement of Availability – Passenger Facility Charge (PFC) Application (FAA Form 5500-1)



Date: April 26, 2011
 Author: Belinda White
 Title/ Phone Ext: Sr. Admin.
Assist./Ext. 1508
 Proposed Schedule: May 2,
2011
 2nd Reading
 (if applicable): _____

CITY COUNCIL AGENDA ITEM

**Attach 8
 Sale of Property Located at 1554 Independent
 Avenue**

Subject: Sale of Property Described as Lot One of the Parkway Viaduct Subdivision, Located at 1554 Independent Avenue
File # (if applicable):
Presenters Name & Title: John Shaver, City Attorney

Executive Summary:

The City has entered into a contract with Paul Horbetz for the sale of the real property located at 1554 Independent Avenue.

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

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

The sale of the property will allow re-use of this remnant.

Action Requested/Recommendation:

Adopt a Resolution authorizing the sale of the property (+/-,466 acres/20298sqft.) for \$80,000.00.

Board or Committee Recommendation:

The City Council Property Committee has reviewed the proposed sale and a majority of the members of the Committee recommend the sale on the terms established.

Background, Analysis and Options:

The property was purchased by the City in 2005 for the construction of the Riverside Parkway. The property that is being sold is the remnant from that which was used for the Parkway construction. The agreed upon price reflects the fact that the parcel is valued principally for assemblage. Mr. Horbetz is buying the property to assemble with his property immediately to the East of the subject parcel.

Financial Impact/Budget:

The buyer will pay \$80,000.00 for the property.

Legal issues:

The contract is contingent on City Council ratification.

Previously presented or discussed:

The City Council Property Committee has previously considered the sale and a majority of the Committee recommends that the City Council approve the sale.

Attachments:

Resolution with Map Attached

RESOLUTION NO. __-11

**A RESOLUTION AUTHORIZING THE SALE BY THE CITY OF GRAND JUNCTION,
COLORADO, OF CERTAIN REAL PROPERTY LOCATED AT 1554 INDEPENDENT
AVENUE; RATIFYING ACTIONS HERETOFORE TAKEN IN CONNECTION
THEREWITH (LOT 1, PARKWAY VIADUCT SUBDIVISION)**

Recitals:

The City of Grand Junction has entered into a contract with Paul Horbetz for the sale by the City of that certain real property described as Lot 1 of the Parkway Viaduct Subdivision as recorded on plat in the Mesa County land records ("Property" or "the Property.")

The City Council Property Committee has reviewed the proposed sale and a majority of the members of the Committee recommend the sale on the terms established.

The City Council must consider the recommendation of the Property Committee and if that recommendation is favorably considered by a majority of the City Council, then the Council will ratify the sales agreement.

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

1. That the City Council hereby authorizes the sale of the Property, Lot 1, Parkway Viaduct Subdivision (see Exhibit A attached) by the City to Paul Horbetz for \$80,000.00.
2. All actions heretofore taken by the officers, employees and agents of the City relating to the purchase/sale of the Property which are consistent with the provisions of the contract and this Resolution are hereby ratified, approved and confirmed.
3. That the officers, employees and agents of the City are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Resolution and the contract, including but not limited to the delivery of the deed.

PASSED and ADOPTED this ____ day of _____ 2011.

Attest:

President of the City Council

City Clerk

EXHIBIT "A"





Date: April 21, 2011
 Author: Kathy Portner
 Title/ Phone Ext: Neighborhood Services Manager/1420
 Proposed Schedule: May 2, 2011
 2nd Reading
 (if applicable): _____

CITY COUNCIL AGENDA ITEM

**Attach 9
 Peppermill Lofts Fee Request**

Subject: Peppermill Lofts Fee Request
File # (if applicable): SPR-2009-068
Presenters Name & Title: Tim Moore, Public Works and Planning Director Kathy Portner, Neighborhood Services Manager

Executive Summary:

A request to have the City pay certain development fees for Peppermill Lofts, a proposed multi-family development, consisting of 48 units, located at 2823 North Avenue and 497 and 491 28 ¼ Road.

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

Peppermill Lofts, meets the following draft goals and policies:

- **Goal 3:** The Comprehensive Plan will create ordered and balanced growth and spread future growth throughout the community.
 - The Peppermill Lofts development will create opportunities to reduce the amount of trips generated for shopping and commuting and decrease vehicle miles traveled, thus increasing air quality, by introducing residential uses in this, predominantly, commercial area.
- **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 Peppermill Lofts project maximizes residential density in the context of the North Avenue commercial corridor.
- **Goal 8:** Create attractive public spaces and enhance the visual appeal of the community through quality development.
 - Peppermill Lofts will revitalize an area of the North Avenue commercial corridor.

Action Requested/Recommendation:

Approval of the Request Regarding Development Fees.

Board or Committee Recommendation:

The City Council Community and Economic Development Committee, on August 31, 2009, recommended that the request be forwarded to the full Council for consideration. The Committee noted that the Peppermill Lofts project would advance the goals of the North Avenue Corridor Plan and the Housing Strategy by providing much needed multifamily housing along the corridor and, potentially, spurring additional re-investment

in the area. Subsequent to that meeting, requests for financial incentives for infill and redevelopment were put on hold pending the outcome of budget discussions.

Background, Analysis and Options:

The Peppermill Lofts project site is along North Avenue and 28 ¼ Road, and formerly contained a carwash and a miniature golf facility. The prior uses had been abandoned for several years, leading to the deterioration of the structures and grounds. The owner agreed to clear the site and worked closely with the City to identify a use that would further the goals of the North Avenue corridor plan to introduce housing into the mix of uses along the corridor.

Peppermill Lofts is a proposed apartment complex, consisting of 4 three-story buildings, for a total of 48 units. Access will be from 28 ¼ Road via a new east/west street, with the existing access to North Avenue being closed. The alignment of the proposed east/west street will allow for the continuation to the west, that could accommodate future redevelopment of the Furr’s and K-Mart sites.

The Peppermill Lofts development was approved mid-2009, but put on hold pending financing for the project. The developer has now secured financing through HUD and is ready to move forward on construction. The project is a much needed improvement to the North Avenue corridor that continues to see decline with the closure of the Eastgate City Market and the future relocation of Hobby Lobby. Multifamily housing is key to furthering the goals of the adopted North Avenue Corridor Plan, which promotes mixed use, including affordable residential uses. In addition, the Grand Valley Housing Strategy identified a 10-year demand for 440 rental units annually. Although market conditions have changed dramatically, we still see the need to continue building the supply of rental units and to diversify the housing product type.

The applicant was informed that all of the fees could be considered for deferral; however, the applicant is requesting that the fees be “waived”. In the past the City Council has not waived fees from the City’s Enterprise funds, but rather has paid fees out of the General Fund to keep the water and sewer enterprise funds whole. Likewise, the TCP, Utility Undergrounding and Drainage funds would be kept whole by transferring the required fee amounts into those funds.

Financial Impact/Budget:

The applicant is requesting the City pay the following development fees:

• Water Tap (City)	\$ 3,750
• Sewer PIF	\$ 91,744
• TCP	\$ 61,937
• Utility Undergrounding	\$ 7,435
• Drainage	<u>\$ 2,500 (estimate)</u>
• Total	\$167,366

Funding for the request is not in the current budget but if Council authorizes payment it would come from General Fund Reserves.

Legal issues:

N/A

Other issues:

N/A

Previously presented or discussed:

N/A

Attachments:

Applicant's Request Letter
Project Site Plan

480 W. Park Drive Ste. 200
Grand Junction, CO 81505

To: City Council Members
From: Northvin, LLC.
Rep: Ciavonne, Roberts, & Assoc., Bruce Milyard – Owner Dep.

City Council Members,

In 2009 Northvin, LLC was approved to construct a 48-unit apartment complex, Peppermill Lofts, to be located at 2823 North Ave.

On July 16, 2009, the City Council Sub –Committee met to consider a fee waiver request for the Peppermill Lofts infill development. (Copy of request enclosed.) The request was tabled as a result of the city budget deficit and the project's financing request with HUD was not approved.

The current status of the project is HUD firm commitment for financing was approved on March 4, 2011. Even though the rental market statistics indicates the project is feasible, we are requesting City of Grand Junction assistance for this project. Subsequent to City approval for the Peppermill project, Eastgate City Market has closed, Hobby Lobby is relocating to the West side of Grand Junction, and the Furr's building continues to be an eyesore for the North Avenue corridor. If this project proceeds and anchors the rejuvenation this area of North Avenue demands, we need City assistance as follows:

TCP Credit of \$ 61,937.00

The public street designed and providing access to our project is public to accommodate potential connectivity to the west of Peppermill. The Public status of this street is a request of the city and is not essential for this project. We are requesting the TCP credit be granted to use towards building the Public Road.

Sewer Tap Fee Credit of \$91,744.00

We are requesting the sewer tap fee for the project be waived.

Water Tap Fee Credit of \$3,750.00

We are requesting the water tap fee for the project be waived.

Drainage Fee Credit of \$2,500.00

We are requesting the drainage fee for the project be waived.

Utility Underground Fee Credit of \$7,435.00

We are requesting the utility fees calculated for the project be waived.

Total Credits requested \$167,366.00.

The requested credits listed above are necessary for this project to proceed. We appreciate the City of Grand Junction considering of our request.

Background

The applicant/developer, Northvin, LLC, is proposing an infill development of multifamily housing to be known as Peppermill Lofts.

Peppermill Lofts is an infill project which has the opportunity to provide significant public benefit to the entire City of Grand Junction as well as the immediate neighborhood with the cooperation of the City of Grand Junction.

The 2.19 acre residential multi-family project is comprised of 4, 3-story buildings which provide 48 dwelling units of 1-2 bedrooms each having approximately 850 s.f. of living space.

The applicant has worked intimately with Staff to develop Peppermill Lofts which will address the significant community need for lower income housing opportunities. The cooperation with Staff has also lead to the generation of a site layout which conforms to the goals and intentions of the North Avenue Corridor Study, the predicted future development of the surrounding area (specifically the existing Kmart site), and all other adopted plans and policies of the City of Grand Junction.

The most significant benefit from working so closely with staff throughout the design process has been the mutual acknowledgment of the complexities and burdens of cost, time, and design compromises associated with infill projects such as this. Most importantly, the City has recognized there are additional costs to the applicant to develop this infill site, and the applicant has recognized the City is not currently maintaining a funded account with which to offer monetary participation in infill projects, which is thought to be in large part due to monetary budget constraints at the City resulting from the current economy. In light of this understanding the applicant proposes fee waiver requests that would offset the burdens of infill development without requiring a direct payment or participation from the City.

As a result the proposed plan offers significant public benefit throughout a spectrum of Community Interests as described below...

Affordable Housing:

Affordable housing and apartments have been identified as a much needed option for the citizens of Grand Junction in every major study conducted internally by the City or by external consultants on behalf of the City of Grand Junction. City Council has also commented in this regard at numerous Public Hearings in recent years. Peppermill Lofts will provide 48 residences of 1-2 bedroom options. The project will provide housing for young families, single parents, individuals, and low income households throughout the valley.

In addition to providing affordable housing where low income households can reside, the location of Peppermill Lofts is in close proximity to job opportunities ranging from service to retail positions, and services such as hospitals, child care, schools, groceries, etc. Such a location significantly reduces the commuting needs of the residents and is beneficial to the City of Grand Junction by reducing the impact on infrastructure. The reduced commute lowers the cost of living for the residents of Peppermill Lofts and therefore offers an 'affordable lifestyle' in addition to 'affordable housing'.

Infrastructure:

Reducing the commute of the residents of the Peppermill Lofts has far reaching benefits for the City of Grand Junction that go beyond providing affordable lifestyle and housing options for its citizens. Development trends in the Grand Valley over the past decade have seen new housing grow outward and away from the Police and Fire Departments, existing utility facilities such as sewer and water, and the road systems which have been improved over the years to engineering standards that provide maximum safety and flow of traffic. This 'Urban Sprawl' increases costs to the City to build new facilities for safety, utilities and traffic and then find ways to pay for the maintenance and upkeep of the new facilities along with the impact they have on the existing facilities. The infill nature of Peppermill Lofts and its proximity to existing infrastructure eliminates the costs associated with urban sprawl which are a part of the equation for calculating the typical development fees imposed by the City.

From a traffic standpoint Peppermill Lofts is designed to relieve any traffic concerns regarding access to North Avenue by removing the two existing access points on North Ave. and directing the flow of traffic from the project to 28 ¼ Road which will then direct them to the stop light at 28 ¼ Rd and North Ave. Multiple CDOT permits (and the associated time and cost of processing) were required to make this possible.

Another benefit to the City of Grand Junction resulting from the infill development of Peppermill Lofts is the immediate access to mass transit systems such as the GVT Bus system. There are 2

bus stops along North Ave. within a ½ block radius to the west, and a third bus stop not more than a ¼ block to the east. The proximity of Peppermill Lofts to GVT multiplies the positive effects on affordable lifestyles for the residents and reduces development related costs of infrastructure to the City.

Upon numerous meetings with Planning Staff at the outset of this project a need was identified by the City to address the future redevelopment of the area to the west of Peppermill Lofts between the proposed site and 28 Road (Kmart and Furs Restaurant properties). After reviewing the North Ave. Corridor Plan (NACP) and assessing the traffic impacts of implementation of the NACP it was determined that a public road would be necessary through the proposed Peppermill Lofts site to provide interconnectivity to 28 ¼ Road to the east. A public road is not depicted on any existing or proposed plans or policies adopted by the City of Grand Junction at this location and is a perfect example of the unknown burdens of infill and redevelopment. Incorporating a public road through the site required the design team to acknowledge the area needed for the ROW would reduce the number of units that could be developed as well as design a road that could convey portions of the retail/commercial traffic from future redevelopment to the west through the proposed residential use of Peppermill Lofts without compromising the safety of the residents of Peppermill Lofts. The design team referenced the design and function of Main Street and the recent improvements to 7th Street in our proposal for the east/west public road to be known as Peppermill Street which has been approved by Staff. The public benefit of the provision of Peppermill Street will be recognized as the Grand Valley continues to grow in the coming years and decades, but the burden of cost for designing and providing such benefits must be incurred now by the developer of such an infill project.

City Master Plan & Adopted Policies:

By working closely with Planning Staff and Public Works the proposed Peppermill Lofts has successfully maneuvered through the obstacles associated with conforming to the Master Plans, Adopted Policies, and requirements of outside review agencies that affect development of the proposed site along with the unknowns associated with an infill redevelopment. The Plans, Policies, and Agencies accommodated by Peppermill Lofts are as follows:

- North Avenue Corridor Plan
- Land Use Code regarding Multi-Family Development
- Future Land Use Plan
- Circulation Plan
- 521 Drainage Authority
- CDOT

We commend Staff for their expertise and cooperation in maneuvering through the unknown obstacles of this infill redevelopment.

Existing Site Improvements:

For a number of years the site existed as a vacant building which was once Kathy's Carwash. Prior to the proposed infill development of Peppermill Lofts the site was a public nuisance often illegally occupied by vagrants. The demolition of the building has resolved that issue.

Additionally, the building was determined to have hazardous materials associated with it which required an effort to clean up and monitor the site per environmental laws.

One of the hardest aspects of infill redevelopment is paying for the perceived value of existing improvements and structures on the site at the time of purchase and then demolishing them to prepare the site for redevelopment. The cost of addressing this issue is three-fold...there is the initial cost of purchase of the structures and/or improvements, then the cost of demolition is incurred (which includes hazardous materials abatement), followed by the cost of relocating or abandoning the utility services, access points, etc. Such existing features also carry heavy value in the form of existing utility services and access permits (i.e Sewer tap, Water tap, CDOT permits, etc.). Throwing away such value in order to redevelop an infill site requires significant consideration when deciding to develop at the outskirts of town vs. redeveloping in a central location.

Northvin, LLC is excited to bring Peppermill Lofts on line to begin construction in the near future and is proud of the significant public benefit the project will bring to the City of Grand Junction. However, due to the infill nature of the project, such significant public benefit does not go without additional costs of design, time, and implementation that greatly exceed what would be incurred if the project was located in the sprawling urban areas of the Grand Valley.

Respectfully submitted,

Northvin, LLC
Bruce Milyard, Mgr.





Date: April 14, 2011
 Author: Lorie Gregor
 Title/ Phone Ext: Recreation
 Coordinator #3876
 Proposed Schedule: May 2, 2011
 2nd Reading (if applicable): n/a

CITY COUNCIL AGENDA ITEM

**Attach 10
 Commission on Arts and Culture’s Grant
 Recommendations**

Subject: Commission on Arts and Culture’s Grant Recommendations Supporting Arts and Cultural Events and Projects for 2011
File # (if applicable):
Presenters Name & Title: Rob Schoeber, Parks and Recreation Director Gisela Flanigan, Commission on Arts and Culture Chair

Executive Summary:

The Commission on Arts and Culture recommendations are for grant awards to local non-profit organizations to support arts and cultural events, projects, and programs in Grand Junction, which are expected to reach an audience of over 548,555 citizens and visitors and help promote employment, education, exhibit, and sales opportunities for many artists, musicians, and non-profit sector employees in our community.

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

The aim of the grant program this year is in large part about local economic stimulus and employment stabilization in the arts and cultural community. These program goals and many of the recommended grants relate directly to the City’s Comp 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.*

This grant program will support 20 local nonprofit arts organizations that provide arts and culture programs, city wide events, educational programming, and enrichment activities to 548,555 residents and tourists.

Action Requested/Recommendation:

Approve the recommendations from the Commission on Arts and Culture for grants to help with the Cultural Events and Arts Projects.

Board or Committee Recommendation:

These recommendations are from the Grand Junction Commission on Arts and Culture, after careful review of the applications and presentations to the Commission by the applicant organizations.

Background, Analysis and Options:

The Arts Commission's annual granting program has been in place since 1992 and was instituted in lieu of the Arts Commission producing its own cultural events, and also as a way to increase and develop high quality cultural projects and arts activities for residents and tourists, support local non-profit cultural organizations and those working in creative industries, and nurture the arts in the Grand Junction area.

Financial Impact/Budget:

There is currently \$36,000 appropriated in the Arts Commission budget for this program, of which \$6,500 is a grant from the Colorado Council on the Arts to supplement this program.

Legal issues:

A brief contract is always executed with each organization receiving funds to hold the City harmless, ensure that the City's only obligation is their financial support not helping accomplish the event or project, and requiring that credit be given for the City's support.

Other issues:

None.

Previously presented or discussed:

N/A

Attachments:

Recommendation List

Grand Junction Commission on Arts and Culture 2011 Grant Recommendations

Grand Junction Centennial Band music purchase	\$1,500
Grand Valley Art Students League **	\$2,000
The Schumann Singers music folder purchase	\$750
Messiah Choral Society "Messiah" Concert	\$1,000
Grand Junction Downtown Partnership Art & Jazz Festival	\$3,000
Hospice & Palliative Care of Western Co. Child & Teen Art Show *	\$1,500
Bookcliff Barbershop Harmony Chorus Youth in Harmony Project	\$1,500
Grand Junction Symphony "A Monumental Celebration"	\$3,000
Riverside Education Center after School Art Classes	\$2,500
Talking Rhythms Musicians in Residence program	\$1,000
Rocky Mountain PBS KRMJ-TV "Western Bounty"	\$2,000
High Desert Opera "My Fair Lady"	\$2,000
Western Colorado Chorale "Christmas Carols" concert	\$1,350
Artspace & Open Studios Educational Business Seminars	\$1,000
Mesa County Library Foundation Culture Fest	\$2,100
Salt Wash Dance Theatre Grand Valley Performing Arts Festival *	\$3,000
Mesa County Land Trust Conservation Land Photo Project	\$500
KAFM Radio Arts & Entertainment Calendar	\$3,000
HomewardBound of the Grand Valley Homeless Exhibit	\$500
<u>Western Colorado Writers' Forum Poetry in the Streets II</u>	<u>\$2,800</u>
Total Support	\$36,000

* New events/projects

** Second year events/projects

Not funded due to not meeting criteria:
Western Colorado Watercolor Society

Western Colorado Center for the Arts Summer Art Camp



Date: April 20, 2011
 Author: Jody Kliska and Trent Prall
 Title/ Phone Ext: 4047
 Proposed Schedule: May 2, 2011
 2nd Reading: N/A

CITY COUNCIL AGENDA ITEM

Attach 11

Contract with the CDOT and UPR to Furnish and Install Traffic Safety Features at the River Road Spur

Subject: Contract with the Colorado Department of Transportation and the Union Pacific Railroad to Furnish and Install Traffic Safety Features at the River Road Spur, East of Railroad Boulevard
File # (if applicable): N/A
Presenters Name & Title: Tim Moore, Public Works and Planning Director

Executive Summary: A contract with CDOT and Union Pacific Railroad (UPRR) for the installation of flashing lights, gates, bells, constant warning circuitry, and new control cabinet at railroad milepost 453.56, located on River Road east of Railroad Boulevard. Traffic control for the crossing consists only of the required signing installed by the railroad, which is an advance railroad warning sign and a cross-buck railroad sign at the crossing. The request is to design and construct flashing lights, gates and a concrete grade crossing.

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

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

The upgraded crossing will increase safety for rail freight traffic accessing industrial area within the Railhead Subdivision as well as River Road truck and vehicle traffic through the installation of the new crossing arms and gates.

Action Requested/Recommendation: Adopt Resolution which Authorizes the City Manager to Sign the Contract with CDOT and the Union Pacific Railroad for the Installation of Rail Crossing Warnings at the Railhead Spur (Milepost 453.56) in the City of Grand Junction

Board or Committee Recommendation: Not applicable.

Background, Analysis and Options: City Staff applied for Federal Rail Hazard Elimination funds through the Colorado Department of Transportation in 2007 and was successful in receiving the grant. In 2010, Staff made application to the Colorado Public Utilities Commission for the installation of the flashing lights, gates, bells,

constant warning circuitry and new cabin for the rail spur crossing on River Road. The application was granted and approval authorized by the PUC at its September 22, 2010 meeting to proceed with the installation.

The project is in the adopted TIP with the Grand Valley Regional Transportation Planning Organization in the amount of \$392,000. A representative from UP Railroad indicated construction would likely begin in the fall of 2011.

In recent years the City has received complaints from the public about the rough pavement condition of the spur crossing and from employees of Burlington Northern about perceived safety issues with the crossing. The crossing serves the Railhead Industrial Park and delivers gasoline tankers to Conoco Phillips and Colorado Refining Company as well as natural gas to Amerigas Eagle Propane. The Union Pacific Railroad operates the crossing and has replaced the pavement at the crossing two years ago.

Traffic control for the crossing consists only of the required signing installed by the railroad, which is an advance railroad warning sign and a cross-buck railroad sign at the crossing. The request is to design and construct flashing lights, gates and a concrete grade crossing.

Existing traffic on River Road is 2800 vehicles per day, with 44% heavy truck traffic. The posted speed limit is 45 MPH, with a measured 85th percentile speed of 51 MPH.





Eastbound River Road at the rail spur.

Financial Impact/Budget: The City's contribution to the project is anticipated to be payment of temporary traffic control and permanent signing and striping which is anticipated to be less than \$20,000. The Federal Hazard Elimination grant picks up the balance of the \$392,000. That money will be paid directly to Union Pacific Railroad through CDOT.

Legal issues: None at this time.

Other issues: None at this time.

Previously presented or discussed: City Council directed Staff to apply for the Federal Rail Hazard Elimination funds at its June 6, 2007 meeting.

Attachments:

Resolution
Contract

RESOLUTION NO. ____-11

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN
A CONTRACT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION AND
THE UNION PACIFIC RAILROAD FOR THE INSTALLATION OF RAIL CROSSING
WARNINGS AT THE RAILHEAD SPUR (RAILROAD MILEPOST 453.56)
IN THE CITY OF GRAND JUNCTION**

RECITALS:

In 2007 the City applied for Federal rail hazard elimination grant funding through the Colorado Department of Transportation (CDOT) to improve the safety of the Railhead crossing on River Road. In late 2010 the City was notified that grant funds were awarded to the crossing project. The anticipated cost of construction of the improvements is \$392,000.00.

Pursuant to the terms of the grant agreement the City must enter into a contract for the funding of the lights, signals, gates and bells and the supporting infrastructure for the crossing project. The total construction cost of the crossing improvements are to be funded as follows.

The total funding in the amount of \$392,000 consists of \$372,000 Federal and railroad funds and \$20,000 City funds for temporary traffic control and permanent signing and striping.

The City Council hereby approves and authorizes the City Manager to sign the contract with the Colorado Department of Transportation and the Union Pacific Railroad for the improvements described herein and detailed in the contract agreement.

PASSED AND APPROVED this _____ day of _____, 2011

Attest:

President of the Council

City Clerk

CDOT Project No. SRP 0063-032, 17623

CONTRACT

BETWEEN THE

**COLORADO DEPARTMENT OF
TRANSPORTATION,**

CITY OF GRAND JUNCTION

AND THE

UNION PACIFIC RAILROAD COMPANY

COVERING

FURNISH AND INSTALL FLASHING LIGHT SIGNALS, GATES, BELLS,
CONSTANT WARNING CIRCUITRY, AND NEW CABIN

AT

RAILROAD MILE POST 453.56, GREEN RIVER SUBDIVISION

CDOT Project No. SRP 0063-032, 17623

DOT No. 254-295W

IN

GRAND JUNCTION, COLORADO

SRP 0063-032, 17623
River Road
Grand Junction
DOT No. 254-295W
UPRR M.P. 453.56; Green River Subdivision

**CONTRACT
FOR UPGRADING HIGHWAY/RAILROAD GRADE CROSSING WARNING
DEVICES
UNDER FEDERAL SECTION 130 PROGRAM**

THIS CONTRACT, by and among the **STATE OF COLORADO** for the use and benefit of the STATE DEPARTMENT OF TRANSPORTATION, DIVISION OF ENGINEERING, DESIGN AND CONSTRUCTION ("State"), **CITY OF GRAND JUNCTION**, of the State of Colorado "(Local Agency)", and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad")

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund Number 400, Function 3987, GL Account No. 423110001, WBS Element 17623.20.10, Contract Encumbrance Amount \$298,412.00; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, this contract is executed by the State under authority of section 43-1-110, C.R.S., by both the State and Local Agency under the authority of sections 29-1-203 and 43-2-144, C.R.S., and by the Local Agency pursuant to an appropriate ordinance or resolution duly passed and adopted by the Local Agency; and

WHEREAS, pursuant to Title I, Subtitle A, Section 1108 of the "Transportation Equity Act for the 21st Century" of 1998 (TEA-21) and/or the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) of 2005, and to applicable provisions of Title 23, United States Code, and the regulations promulgated thereunder, certain federal funds have been and will in the future be made available for the elimination of hazards at certain highway/railroad grade crossings on the Federal-aid Urban System and on roads not on any Federal-aid System, by the installation of warning devices, such projects being hereinafter referred to as the Section 130 Program.

WHEREAS, projects selected under the Section 130 Program are eligible for funding at the rate of 100% Federal-aid funds, provided the project costs are incurred in accordance with the conditions set forth herein, all without cost to the State and the Railroad Company, it being understood that such ratio applies only to such costs as are eligible for Federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%; and

WHEREAS, Federal regulations (23 CFR §§646.200 et.seq. (2010)) require the State to contract with railroad companies on Federal-aid projects involving use of railroad property or adjustment to railroad facilities; and

WHEREAS, the State is responsible for the administration of the Section 130 program and will act in the relative position of the Federal Highway Administration (FHWA) in reviewing and approving highway/railroad projects and in authorizing expenditure of Federal-aid funds on said projects; and

WHEREAS, the FHWA has determined that the use of a three-party contract is required in order for the State to fulfill its administrative responsibilities, including the responsibility of assuring that work is not performed prior to authorization by the State; and

WHEREAS, the Local Agency and the Railroad understand that, pursuant to 23 CFR §646.220, the State is responsible for issuing written authorization for all phases of the work described herein, and that the costs for such work will be eligible for reimbursement only if the work is performed after written authorization by the State; and

WHEREAS, the State may authorize advance preliminary engineering and/or the early purchasing of materials for the crossing, upon receipt of the Railroad's cost estimates (**Exhibit C and C-1**) for the Railroad Work, in the form of the Preliminary Engineering authorization letter, attached hereto as **Exhibit D**; and

WHEREAS, the State has initiated this Section 130 Program project numbered SRP 0063-032, 17623; and

WHEREAS, the project is not located on the State Highway System, but is under the legal jurisdiction of the Local Agency; and

WHEREAS, this contract provides for highway/railroad grade crossing improvements consisting of: installing flashing light signals, gates, bells, constant warning time circuitry, and concrete crossing surface as more specifically described herein; and

WHEREAS, the proposed improvements provided for herein are located on River Road, City of Grand Junction, Colorado, at the Railroad's track, DOT No. 254-295W, Railroad milepost 453.56 of the Green River Subdivision; and

WHEREAS, the Local Agency is responsible for complying with all terms and conditions of this contract for project SRP 0063-032, 17623; and

WHEREAS, the Railroad has agreed to be responsible for the installation and operation of the crossing warning devices installed hereunder; and

WHEREAS, the Railroad is adequately staffed and suitably equipped to undertake and satisfactorily complete the proposed improvements, and can perform the Railroad Work more advantageously and more cost effectively than the State; and

WHEREAS, it is in the public interest that the Railroad Work be performed by the Railroad's forces, on a Force Account basis; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, and the faithful performance thereof, the parties hereto promise and agree as follows:

**ARTICLE I
GENERAL PROVISIONS**

SECTION A. DEFINITIONS

1. FHWA - U. S. Department of Transportation Federal Highway Administration
2. CFR - Code of Federal Regulations
3. MUTCD - The Manual on Uniform Traffic Control Devices for Streets and Highways, Year 2003 Edition
4. PUC - Public Utilities Commission of Colorado
5. CRS - Colorado Revised Statutes
6. The term "Eligible Charges" shall include only those actual incurred costs, as provided in 23 CFR, Part 140, which are directly attributable to Project No. SRP 0063-032, 17623, including, without limitation, all applicable Federal additives which are incurred following written authorization by the State for the various work functions, except as provided in Article II, Section A.
7. The term "Railroad Work" shall consist of work done by Railroad forces and shall include the following:

Furnish and install flashing light signals, gates, bells, constant warning time circuitry, concrete crossing surface, and new cabin as well as all preliminary engineering design and review.

8. The term "Project" shall mean State Project No. SRP 0063-032, 17623.

SECTION B. EXHIBITS

The exhibits listed below are attached hereto and made a part of this contract:

- Exhibit A - Local Agency PUC Application or Order
- Exhibit B - Print Showing Crossing Location
- Exhibit C - The Railroad Company's Force Account Estimate
- Exhibit C-1 - The Railroad Company's Surface Estimate
- Exhibit D - Preliminary Engineering Authorization Letter
- Exhibit E - Civil Rights Exhibit

SECTION C. REFERENCE DOCUMENTS

The following are made a part of this contract by reference the same as if attached hereto including any supplements or amendments thereto dated prior to date of this contract:

23 CFR §§140.900 et.seq. (2010)

23 CFR §§646.101 et. seq. (2010)

23 CFR §§646.200 et. seq. (2010)

MUTCD, Dated 2003

SECTION D. DESIGN DATA

The Project provided herein consists generally of installing highway/railroad grade crossing improvements consisting of flashing light signals, gates, bells, constant warning time circuitry, and an new cabin located on River Road, City of Grand Junction, Colorado and the Railroad's track, DOT No. 254-295W, Railroad milepost 453.56 of the Green River Subdivision. Only those crossing warning device improvements detailed in the Railroad's estimate for this project are eligible for federal-aid participation under this contract.

ARTICLE II
COMMITMENTS ON THE PART OF THE LOCAL AGENCY

SECTION A. PRE-CONTRACT ADMINISTRATIVE TASKS

Certain administrative tasks are necessary to be performed prior to execution of this contract and the Local Agency agrees that the costs of those tasks, whether incurred by the Local Agency or the State shall be eligible for reimbursement from Project funds. Said tasks include, but are not limited to, attending pre-design meetings, help obtaining FHWA approvals and preparation of this contract. In the event Federal-aid funds are not made available, or are withdrawn for the project, the Local Agency shall reimburse the State for costs incurred by the State, subject to the limits provided in Article IV, Section B., in administering this contract.

SECTION B. PUC APPLICATION

The Local Agency will make application to the Public Utilities Commission requesting a PUC order providing for the improvement provided for herein. The Local Agency shall include a copy of this fully executed contract with the PUC application or submit it to the PUC as a late-filed exhibit. The Local Agency shall participate in any hearing before the PUC in this matter. The State's issuance of authorization to proceed with the Railroad Work shall be contingent upon the PUC approval.

SECTION C. UTILITIES

The Local Agency shall be responsible for obtaining proper clearance or approval, in writing, or formal agreement if utility adjustments are required, from utility companies which may be involved in the project. The Local Agency shall furnish the State with documentation of such clearance or approval prior to installation of the proposed improvements.

SECTION D. RIGHT-OF-WAY

The Local Agency shall provide written certification to the State that the proposed project will be constructed on existing right-of-way or that if right-of-way is acquired for the completion of the project that such acquisition was made in accordance with FHWA and State regulations.

SECTION E. COST ESTIMATES

Prior to execution of this contract, the Local Agency shall review the Railroad's plan and estimate (**Exhibits C and C-1**) for the Railroad Work defined in Article I, Section A, and shall notify the State, in writing whether the estimate is not acceptable as a basis for reimbursing the Railroad for eligible charges. The Local Agency shall also provide the State, if requested, with the Local Agency's cost estimate for construction zone signing, including detouring of traffic if required, pavement marking, and any other work the Local Agency will be responsible for in connection with this crossing improvement. The State will assist in determining these costs if requested by the Local Agency.

SECTION F. CROSSING IMPROVEMENT WORK

The Local Agency shall coordinate crossing improvement work and shall inspect the Railroad Work performed by Railroad forces. The Local Agency shall not initiate or authorize any crossing improvement work, including the Railroad Work until the State has issued the Notice to Proceed, Article IV, Section A, to the Local Agency and the Railroad. In the event that such work is initiated by the Local Agency prior to issuance of the notice to proceed, the Local Agency shall be solely responsible for all costs incurred for work performed prior to such issuance. The Local Agency shall be responsible for providing a traffic control plan that meets the criteria of the most current edition of the MUTCD. The Local Agency shall submit a traffic control plan to the Region 3 Utility Engineer before the Notice to Proceed will be issued.

SECTION G. RAILROAD COMPANY REIMBURSEMENT

Upon receipt of the Railroad's billings from the State's Railroad Coordinator, the Local Agency shall review and verify the billings for the Railroad Work performed hereunder to ensure that the billings are for eligible charges for work actually performed. After Local Agency verification, the designated representative from the Local Agency shall send written confirmation to the Region 3 Utility Engineer and the State's Railroad Program Manager that the work has been accomplished. The Railroad bill, whether a progress billing or a final billing shall be paid by the State within forty-five (45) days of the State's receipt of the Railroads bill, subject to the continued availability of sufficient encumbered funds therefore as provided in Article V, Section A. The Region 3 Utility Engineer will approve the bill for payment by the State to the Railroad.

SECTION H. MAINTENANCE

Upon completion of this Project, the Local Agency shall maintain the roadway approaches of River Road, to the crossing described in Article I, Section D. Roadway approaches shall be considered that section of roadway in the vicinity of the crossing beginning at the railroad crossing advance warning signs and extending to the ends of the railroad track cross ties. The Local Agency shall also be responsible for maintaining advance warning signs and pavement markings. The Local Agency shall not be responsible for maintaining the Railroad's facilities.

SECTION I. INSPECTION AND AUDIT

The Local Agency shall, during all phases of the work, permit duly authorized agents and employees of the State and the FHWA to inspect the project and to inspect, review and audit the project records. The Local Agency shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and to make such materials available at all reasonable times during the construction of the project and for three (3) years from the date of final payment. Copies of such records shall be furnished by the Local Agency if requested.

ARTICLE III
COMMITMENTS ON THE PART OF THE RAILROAD COMPANY

SECTION A. CROSSING AT GRADE

1. Warning Devices. The Railroad agrees to accomplish by force account all the Railroad Work defined in Article I, Section A, as provided hereunder, provided that the Railroad shall obtain written notice to proceed from the State before it starts to perform or authorizes the performance of such railroad force account work. In the event that such work is initiated prior to the issuance by the State of the written notice to proceed, the Railroad shall be solely responsible for all costs incurred for such work.

2. Railroad Participation. The Railroad will voluntarily participate in the cost of the Surface project (**Exhibit C-1**) per Colorado Public Utilities Regulation 7211, (a).

7211 (a) A railroad, railroad corporation, rail fixed guideway, transit agency, or the owner of the track shall maintain the grade crossing surface from the outside end of the tie to the outside end of the tie at single track crossings. The roadway authority shall bear the cost of the materials to maintain, repair, or replace the crossing surface. The railroad, railroad corporation, rail fixed guideway, transit agency, or owner of the track shall bear the cost of installation, maintenance, repair, or replacement of the crossing surface. Railroads, railroad corporations, rail fixed guideways, transit agencies, and owners of the track shall promptly assist any roadway authority to the extent required to maintain the roadway surface between tracks at multiple track locations.

The Railroad's participation is labor, \$41,889 in **Exhibit C-1**.

3. Plans and Force Account Estimate. Prior to execution of this contract, the Railroad shall submit a general plan showing the crossing, the type(s) and location of crossing warning devices to be installed, and the approximate approach lengths and/or warning time for the devices along with an itemized cost estimate (**Exhibit C**) for the proposed Railroad Work to the Local Agency and the State. Said estimate shall take into account the value of all existing material that can be salvaged. The Local Agency shall be afforded the opportunity to inspect salvaged material. The cost estimate shall conform to the requirements of 23 CFR, Part 140, Subpart I, and shall be of the form prescribed in 23 CFR, Part 646, Subpart B.

4. Changes in the Railroad Work. No change shall be made in the Railroad Work which will alter the character or scope of the Railroad Work without the prior written concurrence from the Local Agency and prior written authorization by the State. The Railroad shall be responsible for cost increases resulting from unauthorized changes in the Railroad Work.

SECTION B. COORDINATION

After receipt of the notice to proceed from the State, the Railroad shall notify the Local Agency and the State at least ten working days in advance of beginning the Railroad Work so that the Local Agency can arrange for construction zone traffic control and inspection. The Railroad shall also furnish the Local Agency and the State a copy of the completion notice the Railroad furnishes to the PUC.

SECTION C. THE RAILROAD'S BILLINGS TO THE STATE

Progress billings for "eligible charges" for the Railroad Work shall be acceptable in minimum amounts of \$500 for each billing. The Railroad shall provide its final and complete billings of all incurred costs to the State's Railroad Program Manager within one-year following completion of the Railroad Work as described in Article I, Section C. The billing for such work shall reference the Project No. SRP 0063-032, 17623. EACH INVOICE SHALL SPECIFICALLY STATE THE WORK PERFORMED AND SHALL BE THE SAME AS THE WORK AUTHORIZED. IF PAYMENT IS NOT MADE WITHIN 45 DAYS OF THE STATE'S RECEIPT OF AN INVOICE, THE STATE SHALL PAY INTEREST TO THE RAILROAD NOT TO EXCEED 1% PER MONTH UNTIL PAYMENT IS MADE SUBJECT TO THE TERMS AND CONDITIONS OF SECTION 24-30-202 (24), C.R.S. The State shall provide the Railroad with written notice of the completion of the work, thus marking the beginning of the one-year period. If the Railroad does not present the final bill to the State's Railroad Program Manager within that one-year time period, as required by 23 CFR §140.922 of, then previous payments to the Railroad for the Railroad Work may be considered as final and complete reimbursement for that work, and the State may close out the project with no further financial obligation. Railroad's billings for incurred costs for the Railroad Work shall be audited by the State for compliance with 23 CFR, Part 140, Subpart 1.

SECTION D. MAINTENANCE

Upon completion of the work required under this contract, the Railroad shall thereafter operate, maintain, repair and keep its roadbed, track and appurtenances, including the railroad grade crossing warning devices installed hereunder, in proper working condition. In the event any federal, state or other funds become available for use in the operation, maintenance, or repair of the crossing warning devices installed hereunder, the Railroad shall be free to apply for such funds.

SECTION E. CIVIL RIGHTS

The Railroad, in the prosecution of the work herein prescribed, will adhere to the requirements of the Civil Rights (**Exhibit E**), and will include the provisions of the said Civil Rights Exhibit in every subcontract; including procurement of materials and leases of equipment, unless exempt by the regulations, orders or instructions issued pursuant thereto.

**ARTICLE IV
COMMITMENTS ON THE PART OF THE STATE**

SECTION A. PROJECT ADMINISTRATION

1. Approvals by the State. The State, acting in the relative position of the FHWA, shall be responsible for approving the various work functions relative to this Project. The work functions include, but are not limited to, preliminary engineering, right-of-way, utility adjustments, Railroad Work, and work by the Local Agency.

2. Notice to Proceed. The State's Regional Utility Engineer, Region 3, shall issue written notice to proceed for the various work functions as may be required. Any work function performed by the Local Agency for the Railroad prior to the issuance of the notices to proceed shall not be eligible for reimbursement from Federal-aid funds other than advance preliminary engineering as may be authorized in writing by the State's Chief Engineer (**Exhibit D**).

3. Contract Management System. The provisions of Article V, Section L, relating to the requirements of the Contract Management System, are the sole responsibility of the State and not the Railroad or the Local Agency.

SECTION B. STATE'S SUPPORT SERVICES AND CHARGES

The State shall perform the support services necessary for the approval and administration of this contract. These services may be performed in preparation for any conditions or requirements of this contract, including prior FHWA approval of project work. At the request of the Local Agency, the State may also provide other assistance under this contract as agreed in writing. However, in the event that Federal funding is either not made available or is withdrawn for this contract, or if the Local Agency terminates this contract prior to Project completion for any reason, then all actual incurred costs of such services and assistance provided by the State shall be at the sole expense of the Local Agency. The Local Agency shall reimburse the State the actual costs incurred by the State in performing such assistance.

**ARTICLE V
ADDITIONAL PROVISIONS**

SECTION A. FINANCIAL PROVISIONS

1. Contract Amount. The total encumbrance for this Project is \$298,412.00. Federal funds are 100% of the amount. The State's maximum financial obligation for all Eligible Charges and other work costs under this contract is currently limited to that total encumbrance amount. The State will budget, appropriate and make funds available to pay the Railroad for additional work on this Project as long as the additional work is legitimate and the Railroad has

SECTION C. NO BENEFITS TO THE RAILROAD

In accordance with 23 CFR §646.210 (b)(1) (2009), it is determined that the improvements herein provided will not result in ascertainable benefits to the Railroad and, consequently, liability for the cost thereof shall not be required of the Railroad.

SECTION D. CANCELLATION

In the event delays or difficulties arise in securing necessary approvals, or in acquiring necessary right of way, or in settling damages or damage claims, or for any other reason, which, in the opinion of the State render it impracticable to utilize funds from the current appropriation for the construction of the project, then at any time before actual construction is started pursuant to proper approval or authority, the State may serve formal notice of cancellation upon the Railroad and this contract shall thereupon become null and void. In the event of any such cancellation, the State shall reimburse the Railroad for all related preliminary engineering costs incurred by the Railroad prior to the effective cancellation date.

SECTION E. FUTURE USE OF WARNING DEVICES

If, hereafter, by agreement, negotiation, or order of competent public authority, the grade crossing warning devices are rendered unnecessary, undesirable or improper by closing of said crossing, by relocation, by separation of grades, or by developments or improvements in crossing protection or otherwise, such devices shall be removed, and if by mutual agreement the grade crossing warning devices are deemed suitable for reuse at another location, they shall be reinstalled at that location by the Railroad under a separate agreement for relocation between the State, Local Agency, and the Railroad, as approved by the PUC. If the Local Agency widens the highway, or makes any changes therein which require relocation of said devices, the Local Agency will bear the entire cost of making such changes. Whenever by reason of Railroad changes said devices are removed, relocated or replaced, the entire cost thereof shall be borne by the Railroad.

SECTION F. TERM

The term of this contract, except for the provisions regarding roadway maintenance and future use of warning devices, shall continue through completion and final acceptance of this project by the State and the FHWA. The covenants regarding roadway maintenance and future use of warning devices constructed under this contract shall remain in effect in perpetuity or until such time as the Local Agency or the Railroad is, by law or otherwise, relieved of such responsibility.

SECTION G. FEDERAL AID PROJECTS

It is understood that the project herein contemplated shall be financed from funds made available by the federal government and expended under federal regulations; that all plans, estimates of cost, specification, authorizations, awards of contracts, acceptances of work and

communicated with the State Project Engineer to allocate more funds. The Railroad must communicate with the State regarding the allocation of more funds before the work is performed if practicable. Additional work is work that falls under the definition of "Railroad Work" contained in Article I(A)(7) and includes increases in costs of "Railroad Work" due to labor and materials. It is specifically agreed that Railroad labor costs can include as additives, prorated equipment costs as specified in 23 CFR 140.910. The State shall not be responsible for any unauthorized extra work. Extra work is work that does not fall under the definition of "Railroad Work" contained in Article I (A) (7). If Project costs under-run the estimated total budget, the Federal portion of such under-run shall be reallocated within the framework of the State's Section 130 Program as mutually agreed upon by the State and the FHWA.

SECTION B. REPRESENTATIVES

1. To Local Agency:
Tim Moore
Director, Public Works and Planning
City of Grand Junction
250 N. 5th Street
Grand Junction, CO 81501
Phone: 970-244-1557; fax: 970-256-4022
2. To Railroad:
Kelly Abaray
Manager – Industry and Public Projects
Union Pacific Railroad Company
1400 West 52nd Avenue
Denver, CO 80221-1589
Phone: 303-964-4099; fax: 303-964-4054
3. To State:
Dwight Burgess, Project Manager
Colorado Department of Transportation
222 South 6th Street
Grand Junction, CO 81501
Phone: 970-683-6209 fax: 970-683-6205
4. Billings Sent To:
Bill Snowden
State Railroad Coordinator
Colorado Department of Transportation
4201 East Arkansas Avenue. 3rd Floor
Denver, CO 80222
Phone: 303-757-9268; fax: 303-757-9219

procedures in general are subject at all times to all federal laws, rules, regulations, orders and approvals applying to federal projects.

SECTION H. SUCCESSORS AND ASSIGNS

All of the covenants and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

SECTION I. SIGNATURE AUTHORITY

The Railroad represents and warrants that it has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law, to legally authorize the undersigned signatory to execute this contract on behalf of the Railroad and to bind the Railroad to its terms.

SECTION J. EXCEPTIONS TO SPECIAL PROVISIONS

1. The parties hereto agree that the final sentence of paragraph 4, Independent Contractor. (4 CCR 801-2) of Section K., Special Provisions, is replaced with the following:

Contractor shall provide and keep in force such types of Workers' Compensation Insurance, in the amounts required by law (and provide proof of such insurance, if such insurance is required by law, when requested by the State) and Unemployment Compensation Insurance, if required by law, in the amounts required by law, and shall be solely responsible for the acts of the Contractor, its employees, and agents.

2. The parties hereto agree that the first sentence of paragraph 6, Choice Of Law, of Section K., Special Provisions, is replaced with the following:

The laws of the State of Colorado and rules and regulations issued pursuant thereto, to the extent not preempted by federal law, shall be applied in the interpretation, execution, and enforcement of this contract.

3. The parties hereto agree that paragraph 7, Vendor Offset. (CRS §§ 24-30-202 (1) & 24-30-202.4) shall apply to this contract, to the extent not preempted by federal law.

SECTION K. SPECIAL PROVISIONS Revised 01/01/09

1. Controller's Approval. (CRS §24-30-202(1)).

This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

2. Fund Availability. (CRS §24-30-202(5.5)).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. Governmental Immunity.

No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. Independent Contractor.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

5. Compliance with Law.

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. Choice of Law.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.

7. Binding Arbitration Prohibited.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

8. Software Piracy Prohibition. (Governor's Executive Order D 002 00).

State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. Employee Financial Interest/Conflict Of Interest. (CRS §§24-18-201 and 24-50-507).

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. Vendor Offset. (CRS §§24-30-202 (1) and 24-30-202.4).

Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. Public Contracts For Services. (CRS §8-17.5-101,102).

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ

or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. Public Contracts With Natural Persons. (CRS §24-76.5-101).

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

SECTION L. SPECIAL PROVISIONS FOR STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this § L applies.

Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a

final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Colorado Department of Transportation, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

STATE OF COLORADO
JOHN W. HICKENLOOPER, GOVERNOR

UNION PACIFIC RAILROAD COMPANY

By _____
Chief Engineer
Colorado Department of Transportation

by John Avramovic
Title **AVP ENGINEERING**
Attest Maureen Fong Hinners
1400 Douglas Street
Omaha, NE 68179
Maureen Fong Hinners
Assistant Secretary

CITY OF GRAND JUNCTION, COLORADO

Attest _____

By _____

Title
250 N. 5th Street
Grand Junction, CO 81501

APPROVED:
JOHN SUTHERS
Attorney General

By _____
Kathryn Young
Assistant Attorney General

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, sign it. Except for preliminary engineering review performed by the Railroad the Local Agency or their contractor as set forth in this Contract, the Railroad is not authorized to begin performance until the Contract is signed and dated below. Except for preliminary engineering review performed by the Railroad, Local Agency or its contractors as set forth in this Contract, if performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

State Controller
David J. McDermott

By _____
CDOT Controller

Date _____

EXHIBIT A

To Contract

Local Agency PUC Application

or Order

Decision No. C10-1039

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10A-560R

IN THE MATTER OF CITY OF GRAND JUNCTION, FOR THE AUTHORITY TO MAKE
ROADWAY CROSSING IMPROVEMENTS AT THE AT-GRADE CROSSING OF RIVER
ROAD AND UNION PAIFIC RAILROAD RAIL SPUR.

**COMMISSION ORDER DEEMING APPLICATION
COMPLETE AND GRANTING APPLICATION**

Mailed Date: September 23, 2010
Adopted Date: September 22, 2010

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application (Application) filed by the City of Grand Junction (Grand Junction) on August 16, 2010 seeking authority to install new flashing light signals with automatic gate arms, bells, constant warning time circuitry, new cabin, and new concrete crossing surface at the crossing of River Road with the Union Pacific Railroad Company (UPRR) spur serving Suncor Energy and National Propane, National Inventory No. 254295W, in Grand Junction, Mesa County, State of Colorado.

2. Notice of the Application was provided by the Commission to all interested parties, including adjacent property owners pursuant to § 40-6-108(2), C.R.S., on August 18, 2010.

3. On August 31, 2010, UPRR filed an Entry of Appearance and Notice of Intervention. UPRR is not opposing or contesting the granting of the Application, but rather indicates that it will participate in any hearing regarding the Application.

4. Grand Junction omitted specific information from the Application including a detailed plan and profile drawing. The configuration and grades of River Road are not being changed as part of this project; only work necessary to install the active warning will occur. Our Rule 4 *Code of Colorado Regulations* (CCR) 723-7-7204(c) allows an applicant to omit required information the applicant believes is excessive compared to the scope of the proposed project provided the application specifically justifies the omission. Given the scope of this project, we agree with Grand Junction that the detailed plans and profile drawing are not necessary for this Application.

5. The Commission has reviewed the record in this matter and deems that the Application is complete within the meaning of § 40-6-109.5, C.R.S.

6. Now being fully advised in the matter, we grant the Application.

B. Findings of Fact

7. The Commission gave notice to all interested parties, including the adjacent property owners. No intervention was received opposing the Application.

8. Grand Junction is proposing to install active warning at the crossing of River Road with the UPRR spur serving Suncor Energy and National Propane consisting of flashing lights, gates, bells, constant warning time circuitry, and a new concrete crossing surface. Grand Junction is proposing these crossing upgrades given that bulk gasoline comes in by rail service through this crossing six days per week, the speed of traffic on River Road, and the significant heavy vehicle usage of River Road.

9. Current average daily traffic volumes on River Road are 2,200 vehicles per day (VPD) at a measured 85th percentile speed of 50 miles per hour and 44 percent heavy vehicle usage. Vehicle use of River Road is projected to increase to 3,600 VPD by 2035. There are

currently daily deliveries of bulk gasoline on the spur with two train movements per day through the crossing six days per week. There are no projected increases or decreases in train traffic projected within the next five years.

10. Grand Junction proposes to start construction in March 2011 and be complete by June 2011. Grand Junction will be required to inform the Commission in writing that the crossing upgrades and signal installation work is complete and operational within ten days of completion. Based on the dates provided by Grand Junction, the Commission will expect this letter by June 30, 2011. However, the Commission does understand this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule. Grand Junction shall also be required to file signed copies of the Construction and Maintenance Agreement for the crossing prior to the start of construction. We will expect this agreement to be filed by February 28, 2011 and expect that construction at the crossing will not begin until the signed agreement has been filed.

11. We will require UPRR to file a copy of the crossing inventory form to show the updated information for this crossing. The Commission will expect this information to be filed with the completion of the crossing work by June 30, 2011.

12. Grand Junction estimates the cost of the crossing work at River Road at approximately \$340,301. Federal Section 130 funds will pay for 100 percent of the costs.

13. Once construction of the crossing is complete, UPRR will maintain, at its expense, all railroad track, appurtenances, crossing surfaces, and warning devices and Grand Junction will maintain the roadway approaches to the crossing, advance working signs, and pavement markings, at its expense, pursuant to the Commission's Rules at 4 CCR 723-7-7211(a) and (c) respectively.

C. Conclusions

14. The Commission has jurisdiction in this matter under §§ 40-4-106(2)(a) and (3)(a), C.R.S.

15. No intervenor that filed a petition to intervene or other pleading contests or opposes the Application.

16. Because the Application is unopposed, the Commission finds that it will determine this matter upon the record, without a formal hearing under § 40-6-109(5), C.R.S., and Commission Rules of Practice and Procedure, 4 CCR 723-1-1403.

17. We find that good cause exists to grant the Application consistent with the above discussion in paragraphs 8 through 13.

II. ORDER

A. The Commission Orders That:

1. The application (Application) filed by the City of Grand Junction (Grand Junction) on August 16, 2010 seeking authority to install new flashing light signals with automatic gate arms, bells, constant warning time circuitry, new cabin, and new concrete crossing surface at the crossing of River Road with the Union Pacific Railroad Company (UPRR) spur serving Suncor Energy and National Propane, National Inventory No. 254295W, in Grand Junction, Mesa County, State of Colorado is deemed complete within the meaning of § 40-6-109.5, C.R.S.

2. The Intervention by Right of UPRR is noted.

3. The Application is granted.

4. Grand Junction is authorized and ordered to proceed with the installation of active warning equipment consisting of flashing lights, gates, bells, and constant warning time circuitry

with a new concrete crossing surface at the crossing of River Road with the UPRR spur serving Suncor Energy and National Propane in Grand Junction, Mesa County, Colorado.

5. Grand Junction shall maintain the roadway approaches up to the end of tie, pavement markings, and advance warning signs at the crossing at its expense pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-7-7211(c).

6. UPRR shall maintain its track, rails, ties appurtenances, crossing surface, and active warning equipment at its expense pursuant to Rule 4 CCR 723-7-7211(a).

7. Grand Junction shall inform the Commission in writing that the active warning installation and surface installation are complete and operational within ten days of completion. The Commission will expect this letter by June 30, 2011. However, the Commission understands this letter may be provided earlier or later than this date depending on changes or delays to the construction schedule.

8. Grand Junction shall file copies of the signed Construction and Maintenance Agreement prior to the start of any crossing construction. Based on the proposed project dates, we expect this filing will be made no later than February 28, 2011.

9. UPRR will be required to file a copy of the crossing inventory form for the updated crossing at the end of the project on or about June 30, 2011.

10. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Order.

11. The Commission retains jurisdiction to enter further orders as necessary.

12. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 22, 2010.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

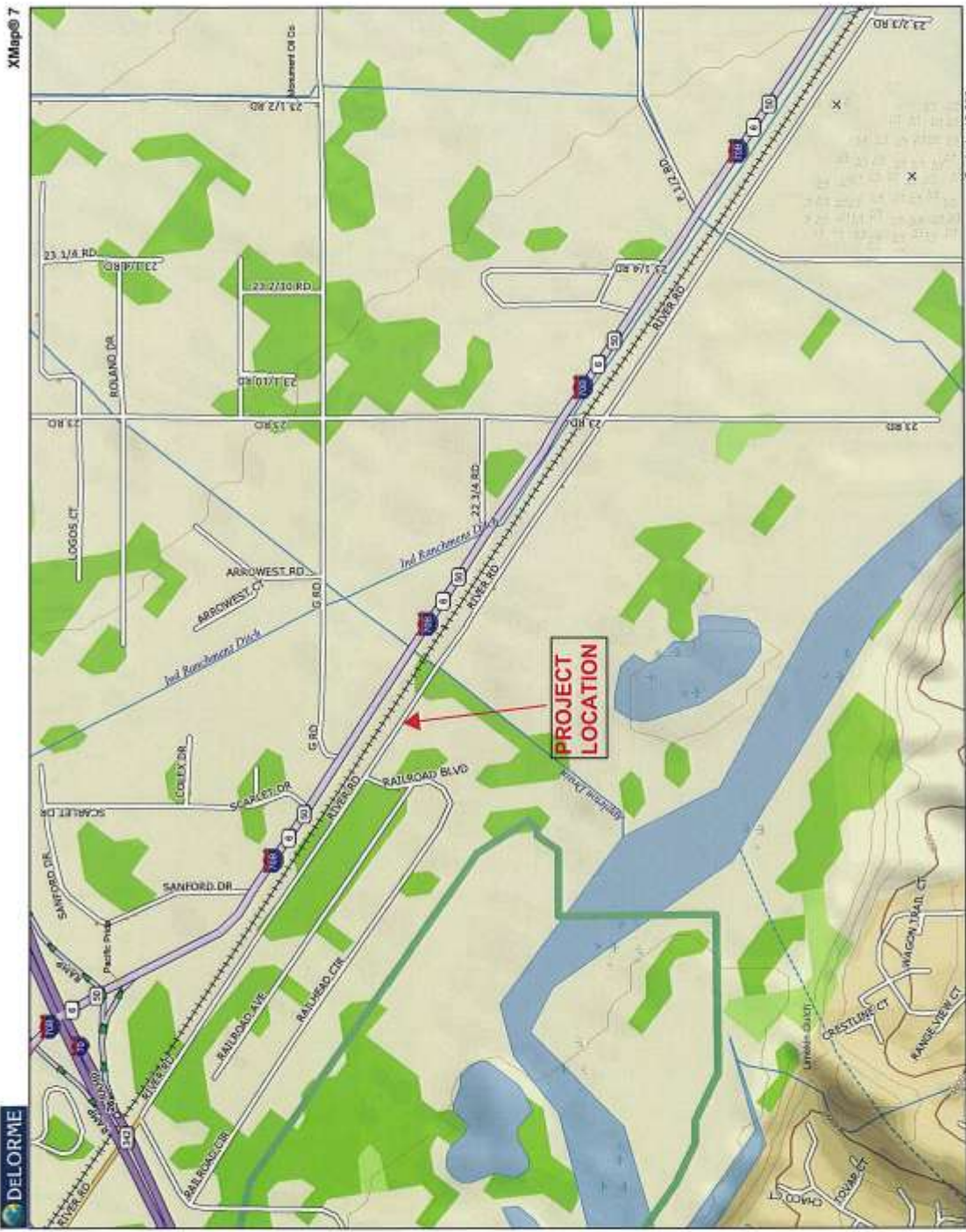
Commissioners

COMMISSIONER JAMES K. TARPEY
ABSENT.

EXHIBIT B

To Contract

Print Showing Crossing Location



North Arrow

EXHIBIT C

To Contract

Railroad Company's Force Account Estimate

DATE: 2011-01-20

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
 BY THE
 UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2011-07-21

DESCRIPTION OF WORK:
 INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS
 WITH GATES AT GRAND JUNCTION, CO. RIVER ROAD M.P. 453.56
 ON THE GREEN RIVER SUB. DOT #254295W
 WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:
 SIGNAL/TRACK - FEDERAL - 100%

PID: 68837 AWO: 05328 MP,SUBDIV: 453.56, GREENRIVER
 SERVICE UNIT: 14 CITY: GRAND JUNCTION STATE: CO

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			3303		3303		3303
LABOR ADDITIVE 105.61%			8530		8530		8530
SIG-HWY XNG			4821		4821		4821
TOTAL ENGINEERING			16654		16654		16654
SIGNAL WORK							
BILL PREP			900		900		900
CONTRACT				5387	5387		5387
LABOR ADDITIVE 105.61%			38897		38897		38897
MATL STORE EXPENSE				7	7		7
METER SERVICE				30000	30000		30000
PERSONAL EXPENSES				20250	20250		20250
ROCK/GRAVEL/FILL				700	700		700
SIGNAL			35931	53875	89806		89806
TRANSP/IB/OB/RCLW CONTR				9269	9269		9269
TOTAL SIGNAL			75728	119488	195216		195216
TRACK & SURFACE WORK							
ENVIRONMENTAL-PERMIT				1	1		1
FIELD WELD			150		150		150
LABOR ADDITIVE 142.44%			2528		2528		2528
MATL STORE EXPENSE				681	681		681
OSM				4139	4139		4139
OTM			2795	8738	11533		11533
WELD				762	762		762
TOTAL TRACK & SURFACE			5473	14321	19794		19794
LABOR/MATERIAL EXPENSE			97855	133809			
RECOLLECTIBLE/UPRR EXPENSE					231664	0	
ESTIMATED PROJECT COST							231664
EXISTING REUSEABLE MATERIAL CREDIT					0		
SALVAGE NONUSEABLE MATERIAL CREDIT					0		
RECOLLECTIBLE LESS CREDITS							

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

EXHIBIT C-1

To Contract

Railroad Crossing Surface Material Estimate

DATE: 2011-01-20

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS 2011-07-21

DESCRIPTION OF WORK:
2010 RECOLLECTIBLE PROJECT
GREEN RIVER SUB / M.P. 453.56
GRAND JUNCTION, CO. / RIVER ROAD / DOT #254295W
INSTALL 64 TF OF CONCRETE CROSSING SURFACE WITH RAIL AND TIES
COST: MATERIAL 100% CODOT / LABOR 100% UPRR
ESTIMATED USING STANDARD RAILROAD LABOR ADDITIVES - 154%

FID: 68838 AWO: 05339 MP, SUBDIV: 453.56, GREENRIVER
SERVICE UNIT: 14 CITY: GRAND JUNCTION STATE: CO

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			5638			5638	5638
LABOR ADDITIVE 154%			8682			8682	8682
TOTAL ENGINEERING			14320			14320	14320
SIGNAL WORK							
LABOR ADDITIVE 154%			1634			1634	1634
SALES TAX				7	7		7
SIGNAL			1061	175	175	1061	1236
TOTAL SIGNAL			2695	182	182	2695	2877
TRACK & SURFACE WORK							
BALAST	2.00	CL	717	1533	1533	717	2250
BILL PREP				900	900		900
DRAINAGE IMPROVEMENTS				5000	5000		5000
ENVIRONMENTAL PERMITS				1	1		1
EQUIPMENT RENTAL W/OPER				5000	5000		5000
FIELD WELD			257			257	257
FOREIGN LINE FREIGHT				266	266		266
HOME LINE FREIGHT				900	900		900
LABOR ADDITIVE 154%			12074			12074	12074
MATL STORE EXPENSE				438	438		438
OTM			1057	6876	6876	1057	7933
RAIL	160.00	LF	461	3116	3116	461	3577
RDGING	64.00	TF	2040	13278	13278	2040	15318
ROADWAY APPROACH WORK				7500	7500		7500
SALES TAX				1213	1213		1213
SAW CUT STREET APPROACH				5000	5000		5000
TRAFFIC CONTROL				5000	5000		5000
TRK-SURF, LIN			2638			2638	2638
TRUCK IN BALLAST				5000	5000		5000
WELD			2736	636	636	2736	3372
XTR	90.00	EA	2894	4909	4909	2894	7803
TOTAL TRACK & SURFACE			24874	66566	66566	24874	91440
LABOR/MATERIAL EXPENSE							
			41889	66748			
RECOLLECTIBLE/UPRR EXPENSE							
					66748	41889	
ESTIMATED PROJECT COST							
							108637
EXISTING REUSEABLE MATERIAL CREDIT							
					0		
SALVAGE NONUSEABLE MATERIAL CREDIT							
					0		
RECOLLECTIBLE LESS CREDITS							

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

EXHIBIT D

To Contract

Preliminary Engineering Authorization Letter

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION
Traffic Engineering Branch
4201 East Arkansas Avenue, 3rd Floor
Denver, Colorado 80222
(303) 757-9654 Voice
(303) 757-9219 Fax



November 23, 2009

Kelly Abaray
Manager, Industry and Public Projects
Union Pacific Railroad
1400 West 52nd Avenue
Denver, CO 80221-1529

Re: Preliminary Engineering Authorization

Dear Ms. Abaray:

This letter is the State's authorization to the UPRR, pursuant to 23 CFR 646, Subpart B, to perform the preliminary engineering services required for the following CDOT project(s):

SA 17263, SRP 0063-032, UPRR - River Road, Grand Jct., Mesa County
SA 17624, SRP 0063-033, UPRR - 17 Road in Fruita, Mesa County
SA 17625, SRP 0402-077, UPRR - US 40 West of Hayden, Routt County
SA 17695, SRP C030-037 UPRR - Weld County RD 22
SA 17696 SRP C030-038 UPRR - Weld County RD 40
SA 17697 SRP C030-039 UPRR - Weld County RD 42

Subject to the following conditions:

- a. The authorization is for the maximum amount of \$5,000.00 for each project and only for engineering services after the date of this notice. Services performed prior to the date of this notice are not reimbursable by the State;
- b. The maximum amount shall not be exceeded without first obtaining further authorization, in writing, from the State. The authorization amount in the above paragraph a. shall be included in the Railroad's written cost estimate for the project.
- c. This authorization is for preliminary engineering only and is not for the actual performance of the project installation work.

Under section 7-101.06 of the State's Procurement Code, 1 CCR 101.9 (4/87), the preliminary engineering that is an essential "pre-contract cost" can be authorized prior

to the execution to the contract for the project, but only if the contract is subject to the stated conditions below.

Preliminary engineering shall mean the work necessary to produce construction plans, specifications, and estimates to the degree of completeness required for undertaking construction thereunder, including locating, surveying, designing, and related work.

An itemized estimate that is developed as a result of preliminary engineering services shall take into account the value of all existing material that can be salvaged and/or scrapped. If there is no salvageable and/or scrapped material that has value, the estimate shall so state. The State shall have a reasonable opportunity to inspect the salvaged and/or scrapped material.

Eligible costs include only those actual incurred costs, as provided in 23 CFR 140, Subpart I.

If you have any questions, please contact Bill Snowden at 303-757-9268.

Sincerely,



Gabriela C. Vidal, P.E.
Branch Manager

cc: Dwight Burgess, R3
Rocky Baker, R3 Business Office
Rudy Sipnefski, R4
Bryan Shafer, R4 Business Office
File

EXHIBIT E

To Contract

Civil Rights Exhibit

CIVIL RIGHTS EXHIBIT

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

A. Compliance with Regulations. The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

B. Nondiscrimination. The Contractor, with regard to the work performed by it after ward and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractors' obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

D. Information and Reports. The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate, and shall set forth what efforts have been made to obtain the information.

E. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- (1) Withholding of payments to the Contractor under the contract until the Contractor complies, and/or;
- (2) Cancellation, termination or suspension of the contract, in whole or in part.

F. Incorporation of Provisions. The Contractor will include the provisions of Paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter such litigation to protect the interests of the State and, in addition, the Contractor may request FHWA to enter into such litigation to protect the interest of the United States.



Date: April 20, 2011
 Author: Brian Rusche
 Title/ Phone Ext: Senior Planner/4058
 Proposed Schedule: 1st Reading: April 18, 2011
2nd Reading: May 2, 2011

CITY COUNCIL AGENDA ITEM

**Attach 12
 Public Hearing—Hyre Hieghts Rezone**

Subject: Hyre Heights Rezone, Located at 2674 F Road
File #: RZN-2011-643
Presenters Name & Title: Brian Rusche, Senior Planner

Executive Summary:

Request to rezone 0.64 acres located at 2674 F Road from R-4, (Residential – 4 du/ac) to MXG-3 (Mixed Use General Form District – 3 stories) zone district.

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

The proposed zoning will implement several goals of the Comprehensive Plan:

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

Policy A: To create large and small “centers” throughout the community that provide services and commercial areas.

The intersection of 12th Street and Patterson / F Road is designated as a Neighborhood Center and is located approximately ¼ mile from the subject property.

Goal 6: Land use decisions will encourage preservation of existing buildings and their appropriate reuse.

The applicant is interested in converting the existing residence to an office use.

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

The subject property is within an identified Mixed Use Opportunity Corridor.

Action Requested/Recommendation:

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

Board or Committee Recommendation:

The Planning Commission recommended approval of the requested rezone at their April 12, 2011 meeting.

Background, Analysis and Options:

See attached Staff Report.

Financial Impact/Budget:

N/A.

Legal issues:

None.

Other issues:

None.

Previously presented or discussed:

First reading of the proposed ordinance was held on April 18, 2011.

Attachments:

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

BACKGROUND INFORMATION				
Location:		2674 F Road		
Property Owner:		Hyre Heights LLC		
Existing Land Use:		Single-family Residential		
Proposed Land Use:		Office		
Surrounding Land Use:	North	Single-family Residential		
	South	Medical Office		
	East	St. Mary's Parking Lot Single-family Residential		
	West	Single-family Residential		
Existing Zoning:		R-4 (Residential 4 du/ac)		
Proposed Zoning:		MXG-3 (Mixed Use General Form District – 3 stories)		
Surrounding Zoning:	North	R-4 (Residential 4 du/ac)		
	South	B-1 (Neighborhood Business)		
	East	R-4 (Residential 4 du/ac) PD (Planned Development) – St. Mary's Hospital		
	West	R-4 (Residential 4 du/ac)		
Future Land Use Designation:		Residential Medium (4 – 8 du/ac) Mixed Use Opportunity Corridor (Patterson Road)		
Zoning within density range?		X	Yes	No

1. Background:

The subject property is a single-family residence constructed in 1939 on approximately 0.64 acres. The property is currently zoned R-4 (Residential – 4 du/ac).

The applicant has been marketing the property for nearly two years and has only found interest in using the existing home for business purposes, due in part to its location on Patterson / F Road and proximity to St. Mary's Hospital.

A neighborhood meeting was held on October 27, 2010. Several neighbors were in attendance and expressed concerns regarding the existing traffic volume and access to the neighborhood from Patterson / F Road. The owners explained that the only prospects for the sale of the property were to utilize the existing residence for office or other commercial purposes. The planner discussed the concept of the Mixed Use Opportunity Corridor as well as the form district provisions, which were adopted in 2010.

Areas within a Mixed Use Opportunity Corridor that are currently zoned for residential purposes may be rezoned for more intense use (including nonresidential uses), provided that Form Districts are utilized and the depth of the lot is at least 150 feet (Grand Junction Municipal Code Section 21.02.140.c.2). The property is approximately 275 feet in depth, excluding right-of-way.

The request to rezone the property to MXG-3 (Mixed Use General Form District – 3 stories) would allow the existing structure to be used for offices, which is currently not permitted within the R-4 zone.

The building types permitted within the Mixed Use General (MXG) districts include general, apartment, townhouse, and civic. The standards for each building type would apply to new structures built upon the property.

2. Title 21, Section 02.140 of the Grand Junction Municipal Code:

In order to maintain internal consistency between this Code and the Zoning Maps, map amendments must only occur if:

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

Response: The adoption of the Comprehensive Plan in 2010 created a Mixed Use Opportunity Corridor along Patterson / F Road. The Mixed Use Opportunity Corridor allows for the consideration of commercial uses along major corridors for some properties that previously could not be considered, provided that the properties are included in a Form-based District, which was developed as part of the Comprehensive Plan. The designation as a Mixed Use Opportunity Corridor changes the potential for the property, which has been marketed for nearly two years, with no interest expressed in continued use as a single family dwelling.

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

Response: The property has been marketed for nearly two years, with no interest expressed in continued use as a single-family dwelling. The proximity to Patterson / F Road, a major transportation corridor, along with the expansion of St. Mary's Hospital, are two factors cited by the applicants. The adoption of the Comprehensive Plan created an opportunity for mixed uses along the Patterson / F Road corridor.

Parcels along Patterson / F Road, particularly in proximity to existing commercial uses, have been considered for rezoning on a case-by-case basis, with the most recent approval at 602 N. 7th Street (RZN-2011-483) from R-4 to R-O. The subject property is located adjacent to a parking lot, which has existed since 2000, for St. Mary's Hospital.

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

Response: There are public utilities already connected to the existing residence. Public utilities, including potable water provided by the City of Grand Junction, are adjacent to the subject parcel that can be utilized and have the capacity to facilitate new construction under the proposed form based zoning.

Community facilities, including retail, service, restaurant and other neighborhood uses, along with St. Mary's Hospital, are within walking distance of the subject parcel. Grand Valley Transit also provides bus service along Patterson / F Road, with a stop adjacent to this property.

(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: This is only the second property to be considered for a Mixed Use Form Based zoning district. Areas within a Mixed Use Opportunity Corridor that are currently zoned for residential purposes may be rezoned for more intense use (including nonresidential uses), provided that Form Districts are utilized and the depth of the lot is at least 150 feet (Grand Junction Municipal Code Section 21.02.140.c.2).

Parcels along Patterson / F Road, particularly in proximity to existing commercial uses, have been considered for rezoning on a case-by-case basis, with the most recent approval at 602 N. 7th Street (RZN-2011-483) from R-4 to R-O. The subject property is located adjacent to a parking lot, which has existed since 2000, for St. Mary's Hospital.

While there may be other commercial properties available for sale or lease within the community, there are no other properties along the corridor within ½ mile of the subject property for small scale office or service businesses that are not already devoted to that use.

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

Response: The proposed zoning will implement several goals of the Comprehensive Plan:

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

Policy A: To create large and small "centers" throughout the community that provide services and commercial areas.

The intersection of 12th Street and Patterson / F Road is designated as a Neighborhood Center and is located approximately ¼ mile from the subject property.

Goal 6: Land use decisions will encourage preservation of existing buildings and their appropriate reuse.

The applicant is interested in converting the existing residence to an office use.

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

The subject property is within an identified Mixed Use Opportunity Corridor.

In addition to the rezone criteria of Section 21.02.140(a), Section 21.02.140(c)(2) states that during consideration of the application of a Form District, the City Council shall consider the following:

- i) The extent to which the rezoning furthers the goals and policies of the Comprehensive Plan; and

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

Policy A: To create large and small “centers” throughout the community that provide services and commercial areas.

The intersection of 12th Street and Patterson / F Road is designated as a Neighborhood Center and is located approximately ¼ mile from the subject property.

Goal 6: Land use decisions will encourage preservation of existing buildings and their appropriate reuse.

The applicant is interested in converting the existing residence to an office use.

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

The subject property is within an identified Mixed Use Opportunity Corridor.

- ii) The extent to which the proposed rezoning would enhance the surrounding neighborhood by providing walkable commercial, entertainment and employment opportunities, as well as alternative housing choices.

Response: There are several apartments along Northern Way, which is less than a quarter-mile (1/4 mi) walk from the subject property. While the MXG-3 would permit a variety of uses, including offices, that may not be in demand by the adjacent residents, the potential is still present. In addition, the potential for the property is complemented by the proximity to St. Mary's Hospital and other commercial uses at the intersection of 7th Street and 12th Street with Patterson / F Road, along with a bus stop located adjacent to the property.

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

- 1) R-O (Residential Office)
- 2) MXG-5 (Mixed Use General Form District – 5 stories).
- 3) MXG-8 (Mixed Use General Form District – 8 stories).

The Planning Commission recommends the MXG-3 (Mixed Use General Form District – 3 stories) zone designation and does not recommend any of the above alternatives. If the City Council chooses to approve one of the alternative zone designations, specific alternative findings must be made as to why the City Council is approving an alternative zone designation.

Site Location Map

2674 F Road



Aerial Photo Map

2674 F Road



Comprehensive Plan Map

2674 F Road



Existing City Zoning Map

2674 F Road



Memorandum

TO: Planning Commission
FROM: Brian Rusche, Senior Planner
DATE: February 25, 2011
SUBJECT: Objection to Hyre Heights Rezone

I spoke with Robert Alstatt, who resides at 2670 Patterson Road, adjacent to the proposed Hyre Heights Rezone.

Mr. Alstatt expressed his opposition to the request.

I informed him that I would convey his opposition in the event he is unable to attend the public hearing(s).

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO.

AN ORDINANCE REZONING THE HYRE HEIGHTS REZONE PROPERTY

LOCATED AT 2674 F ROAD

**FROM
R-4 (RESIDENTIAL – 4 DWELLING UNITS PER ACRE)
TO
MXG-3 (MIXED USE GENERAL FORM DISTRICT – 3 STORIES)**

Recitals.

After public notice and public hearing as required by the Grand Junction Municipal Code, the Grand Junction Planning Commission recommended approval of rezoning the property at 2674 F Road from R-4 (Residential – 4 dwelling units per acre) to the MXG-3 (Mixed Use General Form District – 3 stories) zone district for the following reasons:

The zone district is consistent with the designation of the property as a Mixed Use Opportunity Corridor 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.

After the public notice and a public hearing before the Grand Junction City Council, the City Council hereby finds that the MXG-3 zone district should be established.

The Planning Commission and City Council find that the MXG-3 zone district is in conformance with the stated criteria of Title 21, Section 02.140 of the Grand Junction Municipal Code.

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

The following property shall be rezoned to MXG-3 (MIXED USE GENERAL FORM DISTRICT – 3 STORIES):

A parcel of land situate in the southeast 1/4 of Section 2, Township 1 South, Range 1 West of the Ute Meridian, City of Grand Junction, Mesa County, Colorado, being more particularly described as follows:

Commencing at the south 1/4 corner of said Section 2, being a found Mesa County Survey Marker, the basis of bearing being N90°00'00"E to the east 1/16th corner on the south line of said Section 2, also being a found Mesa County Survey Marker; thence N90°00'00"E a distance of 1080.40 feet to the Point of Beginning;

thence N00°00'00"E a distance of 316.70 feet;
thence N90°00'00"E a distance of 100.00 feet;
thence S00°00'00"E a distance of 316.70 feet;
thence N90°00'00"W a distance of 100.00 feet to the Point of Beginning,
EXCEPT for that portion conveyed to The City of Grand Junction a Municipal Corporation
by Warranty Deed recorded July 18, 1985 in Book 1547 at Page 232 of the Mesa County
records.

Said parcel contains 0.64 acres more or less.

ALSO KNOWN AS TAX PARCEL NUMBER 2945-024-00-019

INTRODUCED on first reading the 18th day of April, 2011 and ordered published in
pamphlet form.

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

ATTEST:

City Clerk

Mayor



Date: April 4, 2012
 Author: Jamie B. Beard
 Title/ Phone Ext: Asst. City Atty.
4032
 Proposed Schedule: April 18,
2011
 2nd Reading
 (if applicable): May 2, 2011

CITY COUNCIL AGENDA ITEM

**Attach 13
 Public Hearing—Amendments to the Code,
 Concerning Barking Dogs**

Subject: Amendments to the Grand Junction Municipal Code, Chapter 6.12, Dogs and Cats, Concerning Barking Dogs
File # (if applicable):
Presenters Name & Title: John Shaver, City Attorney

Executive Summary:

The Grand Junction Municipal Code (“Code”) had a comprehensive review as part of a contract with Code Publishing Company. A misunderstanding developed during that review and, mistakenly, a change was made to section 6.12.060, Barking Dogs, due to that misunderstanding. The amendment concerning this section 6.12.060 will remedy that mistake.

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

There is no direct or indirect relationship between this matter and the goals and policies of the Comprehensive Plan.

Action Requested/Recommendation:

Hold a Public Hearing and Consider Final Passage and Final Publication in Pamphlet Form of Proposed Ordinance.

Board or Committee Recommendation:

Not Applicable

Background, Analysis and Options:

During the comprehensive review of the Code of Ordinances, there were a few inconsistencies noted by the contractor, Code Publishing. Some of the inconsistencies were non-substantive editorial corrections and some were substantive.

A substantive change was made to Section 6.12.060. The substantive change was a mistake. Only a non-substantive scrivener’ error needed to be corrected in the section. The proposed ordinance includes the appropriate language that is in conformance with

the intent of City Council when the barking dog ordinance was amended and approved in 2003.

Financial Impact/Budget:

None

Legal issues:

The City Attorney has reviewed and approved the change.

Other issues:

Animal Control is aware of the amendment and is in agreement with the change.

Previously presented or discussed:

Not applicable

Attachments:

Attached is a copy of the present section proposed to be amended. Words to be deleted are shown with strikethroughs and new language added is underlined.

A proposed Ordinance is attached.

6.12.060 Barking dogs.

(a) Prohibition. No owner of a dog shall fail to prevent it from disturbing the peace and quiet of any other person by loud and persistent barking, baying, howling, yipping, crying, yelping, or whining, whether the dog is on or off the owner's premises.

(b) Provocation Defense. Provocation of a dog whose noise is complained of is an affirmative defense to any charge for violation of subsection (a) of this section.

(c) Complainant's Rights and Responsibilities.

(1) All complainants must clearly identify themselves by stating their name, address and telephone number. The complainant shall further state the description of the offense, the date, time, place and duration of the offense, and if known, the name of the dog's owner, the owner's address and telephone number, and a description of the dog. The identity of a complainant shall be kept confidential until a violation of this section is charged.

(2) If a violation of this section is charged, the complainant shall sign an affidavit on the citation attesting to the violation, or shall verify in writing the allegations of a complaint prior to its service upon the owner.

(3) No person or owner shall be convicted at trial for violation of this section unless oral testimony or other means of reliable evidence is presented proving the elements of subsection (a) of this section. Other reliable evidence includes, but is not limited to, videotape and digital video recordings.

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 6.12.060 OF CHAPTER 6 OF THE GRAND JUNCTION MUNICIPAL CODE CONCERNING BARKING DOGS

RECITALS:

The City Code of Ordinances (“Code”) had a comprehensive review as part of a contract with Code Publishing Company. During that review some inconsistencies in the Code were found.

Section 6.12.06 was amended to correct an inconsistency. The amendment itself was incorrect. It included more information than intended which caused confusion for enforcement.

This ordinance proposed sets forth the elements for the prosecution of an owner/keeper of a dog who has failed to prevent the dog from disturbing the peace of another.

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

Section 6.12.060 of the Grand Junction Municipal Code is amended to read as follows:

6.12.060 Barking dogs.

(a) Prohibition. No owner of a dog shall fail to prevent it from disturbing the peace and quiet of any other person by loud and persistent barking, baying, howling, yipping, crying, yelping, or whining, whether the dog is on or off the owner’s premises.

(b) Provocation Defense. Provocation of a dog whose noise is complained of is an affirmative defense to any charge for violation of subsection (a) of this section.

(c) Complainant’s Rights and Responsibilities.

(1) All complainants must clearly identify themselves by stating their name, address and telephone number. The complainant shall further state the description of the offense, the date, time, place and duration of the offense, and if known, the name of the dog’s owner, the owner’s address and telephone number, and a description of the dog. The identity of a complainant shall be kept confidential until a violation of this section is charged.

(2) If a violation of this section is charged, the complainant shall sign an affidavit on the citation attesting to the violation, or shall verify in writing the allegations of a complaint prior to its service upon the owner.

(3) No person or owner shall be convicted at trial for violation of this section unless oral testimony or other means of reliable evidence is presented proving the

elements of subsection (a) of this section. Other reliable evidence includes, but is not limited to, videotape and digital video recordings.

Introduced on first reading the 18th day of April, 2011.

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

President of the City Council

ATTEST:

City Clerk