

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made and entered into this ____ day of _____, 1993, by and between , AMALIA ARCHULETA, MARY ARCHULETA, FRANK N. ARCHULETA, MARY ALICE CARBAJAL and SALLY DURAN hereinafter referred to as the Grantors, and the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as the Grantee.

WITNESSETH:

That, for and in consideration of the sum One Dollar (\$1.00) and the keeping and performance of the covenants and agreements hereinafter expressed, Grantors grant to Grantee a Tree Planting Easement upon the east 10 feet of the following described property located in Section 23, Township 1 South, Range 1 West of the Ute Meridian in the County of Mesa, State of Colorado, to wit:

The South 75 feet of Lot 2, Block 9, Benton Canon's First Subdivision,
commonly known as 1135 South 7th Street, Grand Junction, CO.

TO HAVE AND TO HOLD, forever, for the purpose of planting trees and providing other services associated therewith as more specifically set forth herein.

GRANTORS AND GRANTEE MUTUALLY, EXPRESSLY COVENANT AND AGREE:

1. Grantee's use of this easement is for the purpose of planting, cutting, trimming, pruning, spraying and removing trees within the Easement area; provided, however, that the proper watering for such trees shall be the responsibility of the Grantors, their heirs, successors and assigns.
2. The Grantee provides no guarantee or assurance whatsoever regarding the growth or survival of any trees to be planted within the Easement area.
3. The Grantors hereby agree to save and hold the City of Grand Junction, its officers, employees, and agents harmless from, and indemnify the City of Grand Junction, its officers, employees, and agents, any claim or cause of action however stated arising out of the placement or existence of any trees within the easement areas.
4. The Grantors agree to comply with the rules, regulations and policies promulgated in Sections 20-80, 20-81, 20-82, 20-83, 20-84, 20-85 and 20-86 of the Code of Ordinances of the City of Grand Junction, which are attached hereto as Exhibit A and incorporated herein by reference, as may be amended.

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

GRANTORS:

Amalia Archuleta
AMALIA ARCHULETA

MARY ARCHULETA

FRANK N. ARCHULETA

MARY ALICE CARBAJAL

SALLY DURAN

GRANTEE:

Attest:

Stephanie Nye
City Clerk

The City of Grand Junction
By Ted L. Novack
Director of Parks and Recreation

STATE OF COLORADO)
)ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 5 day of May, 1993, by Ted L. Novack and Stephanie Nye.

Witness my hand and official seal.
My commission expires June 13, 1995

Theresa J. Martinez
Notary Public

STATE OF COLORADO)
)ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this ____ day of _____, 1993, by _____ as the Director of Parks and Recreation and _____ as City Clerk of the City of Grand Junction, Colorado.

Witness my hand and official seal.
My commission expires _____

Notary Public

EXHIBIT A

The following provisions of Chapter 20, Article IV of the Code of Ordinances of the City of Grand Junction, and any future amendments thereto, are to become a part of and attached to the foregoing Easement Agreement:

Sec. 20-80. Trees in right-of-way.

The department of parks and recreation is hereby authorized to furnish the necessary personnel and services for the planting of trees or replacing damaged trees in the right-of-way of the city.

- (a) As a part of the service in planting of the trees as aforesaid, the department shall give advice and counsel regarding the tree varieties to be selected, the physical soil conditions involved, fertilizers needed, protective devices suggested and other information concerning the selection of the tree sizes and varieties and the planting of the same. Such advice and information regarding the selection and care of trees shall be available to any person in the city so requesting the same.
- (b) The planting and other services rendered by the department shall be upon the specific condition that all watering and care, except for spraying and trimming of the trees after the planting, shall be the responsibility of the person or persons requesting the planting and the services of the department personnel will only be for the purposes of planting the trees. No guarantee or assurance whatsoever shall be made or assumed regarding the growth or survival of the trees so planted.
- (c) The planting of trees and services by the department for such planting shall be available only during the usual spring months of each year, provided, however, that subject to the availability of personnel, plantings may be had at other times of the year upon request therefor. (Ord.No. 1986, 8-5-81)

Sec. 20-81. Trees on public ways or property.

(a) It shall be unlawful for any person to plant, prune, spray, remove, destroy, cut, deface or in any way injure any tree or shrub upon a public way of the city without the approval of the director or designated representative. Such approval shall not be unreasonably withheld.

(b) Trees, shrubs, vines and evergreens planted in public ways or parking shall be in conformity with an official list approved by the parks and recreation department forestry board. The parks and recreation forestry board shall consider in preparing an official list the growth habits, mature size, disease resistance or other factors which minimize costs and nuisances and conform with other provisions of the ordinances of the city. Plantings not in conformity with the approved list shall be removed by the owner or agent at the request of the director or designated representative. (Ord.No. 1986-8-5-81)

EXHIBIT A (cont.)

Sec. 20-82. Planting requirements.

The distance between trees to be planted on public ways or parkings shall be determined by the director so as to provide for and conform with the mature growth of the species involved. Special consideration shall be given to possible interference with utility lines above or below such planting. (Ord.No. 1986, 8-5-81)

Sec. 20-83. Trees on public ways or property.

(a) The director or designated representative is hereby authorized to inspect trees, shrubs, plants, vines, logs or branches and every other type of plant material on all private and public property to ascertain the condition of such plantings in relation to disease and insects detrimental to the growth, health and life of such plantings, to discover incidence of disease, and take appropriate action to preserve and restore the growth, health and life of the plantings by spraying, removing, pruning or other remedial action. Further, the director or designated representative is hereby authorized to inspect trees, shrubs and plantings on private property for the abovementioned conditions. If such conditions are found to exist and, in the professional judgment of the director such conditions are or will become injurious to other private or public plantings, the owner of the property shall be given written notice to spray, remove, prune or take any other necessary remedial action in regard to the infested plantings within a specified period of time.

(b) The sale or distribution of trees, vines, shrubs, scions, cuttings or grass within the corporate limits shall be in accordance with the rules, regulations, inspections and licenses of the state department of agriculture. (Ord.No. 1986, 8-5-81)

Sec. 20-84. Planting of approved species.

It shall be the responsibility of the director or his designated representative to prepare or cause to be prepared a list of approved trees for planting public ways and parkings along the streets and highways, and the director or his designated representative shall be available for consultation with property owners regarding such plantings. (Ord.No. 1986, 8-5-81)

Sec. 20-85. Duty to replace trees.

In the event that a tree is removed by contractors pursuant to any work done in a city right-of-way, such tree shall be replaced by the contractor responsible for such removal. The ratio of replacement shall be as follows: For every six (6) inches of trunk diameter removed measured four (4) feet aboveground, one two and one-half (2½) inch, balled and burlapped or equivalent method, tree shall be used in replacement up to a maximum of five (5) inches in diameter, the species of which shall be determined by the director or his designated representative. (Ord.No. 1985, 8-5-81)

EXHIBIT A (cont.)

Sec. 20-86. Duty to trim trees.

The owner of any house, building or premises shall not permit the branches of any shade, ornamental or other tree to project over any street, avenue or sidewalk in front of or alongside of such building or premises, lower than eight (8) feet from the surface of the sidewalk and fourteen (14) feet over the surface of the alley or street. In estimating such heights, personnel of the department of parks and recreation shall take into consideration the variation of height due to normal rain, snow, sleet and foliage conditions (Ord.No. 1986, 8-5-81)