

**MEMORANDUM OF AGREEMENT AND OFFER TO PURCHASE
CERTAIN REAL PROPERTY INTEREST**

This Memorandum of Agreement is made and entered into this 13 day of November, 2018, by and between **DPE, LLC, a Colorado Limited Liability Company, also known as DPE LLC** hereinafter referred to as "Owner", and the **City of Grand Junction, a Colorado home rule municipality**, hereinafter referred to as "City."

RECITALS:

A. Due to flooding along Weslo Avenue during large storm events, the City will install public improvements that are intended to reduce impacts to the lands in the immediate area by capturing and conveying stormwater runoff from the roadway to an existing retention facility near 25 Road. The improvements include two area inlets, one manhole, and 237 +/- linear feet of storm pipe (Project).

B. DPE, LLC is the owner of the parcel of land described as Lot 1 of D.P.E. Simple Subdivision, Mesa County, Colorado (Property) as evidenced in Book 3917, Page 126, recorded with Reception Number 2258447, Public Records of Mesa County, Colorado. The Project shall include the installation of some of the improvements on the Property.

C. The City has completed the design plans for the Project. Owner is aware of the Project and agrees to it.

D. To accommodate the installation of the Project improvements, the City is acquiring from Owner the following:

An easement for the use and benefit of the public, including but not limited to City approved public utilities, for the installation, operation, maintenance, repair and replacement of utilities and appurtenances which may include but are not limited to electric lines, cable TV lines, natural gas pipelines, sanitary sewer lines, storm sewers, water lines, telephone lines, equivalent other public utility providers and appurtenant facilities on, along, over, under, through and across Owner's Property more particularly described parcel as a certain parcel of land lying in the East Half of the West Half of the Northwest Quarter (E-1/2 W-1/2 NW 1/4) of Section 10, Township 1 South, Range 1 West of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

The North 15.0 feet of the West 13.65 feet of Lot 1, D.P.E. Simple Subdivision, as same is recorded in Book 4055, Page 545, Public Records of Mesa County, Colorado,

containing a total of 204.8 Square Feet or 0.005 Acres, more or less, (Utility Easement).

E. The Utility Easement is necessary for the Project. The parties desire to reach a settlement for the sale and purchase of the Utility Easement through good faith negotiations. In consideration of the foregoing, the City is offering to pay to the Owner \$500.00 for the easement.

The City pays fair market value but understands that, in some circumstances, it could be advantageous to the Owner to benefit from a tax donation, therefore, choose one of the following:

As Owner of that certain real property referenced above, wish to donate said property and to receive a receipt of said donation indicating fair market value:

Please check if choosing donation option.

- or -

As Owner of that certain real property as referenced above, wish to receive just compensation indicating fair market value:



Please check if choosing payment option.

NOW, THEREFORE, based on the recitals above and in consideration of their mutual promises and other valuable consideration, the receipt and adequacy of which are acknowledged, the parties hereto agree as follows:

1. Owner hereby accepts the City's offer for just compensation, and the City hereby agrees to pay the just compensation, subject to the promises, terms, covenants and conditions of this Agreement.

2. The just compensation hereinabove agreed upon shall be paid by the City to the Owner upon the execution and delivery by the Owner to the City as determined good and sufficient by the City: **(a)** one (1) fully executed original of this Memorandum of Agreement; **(b)** one (1) good and sufficient Grant of a Utility Easement; and **(c)** a completed and executed Federal form W-9 by Owner or a fully executed Real Property Donation form, if chosen; and if applicable, **(d)** a granting document that shall include, but is not limited to a document signed by Owner and any other party having an interest in Owner's Property through means of a deed of trust, lien, or otherwise, unless the other party having interest provides another document acceptable to the City. A good and sufficient granting document shall include, but is not limited to a document signed by Owner and any other party having an interest in Owner's Property through means of a deed of trust, lien, or otherwise, unless the other party having interest provides another document acceptable to the City.

3. Owner agrees that the just compensation agreed upon between Owner and the City shall fully compensate the Owner for its interests in the Easement area, either present or future, and the interests of all lienors and lessees of the Owner, and any and all interests, legal or equitable, which are or may be outstanding, including, but not limited to, obtaining the consent of and/or paying all or any portion of the above stated compensation for the following beneficiaries:

- that certain Construction Deed of Trust dated January 12, 2006 and recorded on 01/31/2006, in the office of the Mesa County Clerk and Recorder, Reception No. 2299129 for the benefit of Wells Fargo Bank, National Association, as Beneficiary.
- that certain Modification of Deed of Trust dated December 5, 2006 and recorded on 01/11/2007, in the office of the Mesa County Clerk and Recorder, Reception No. 2358398 for the benefit of Wells Fargo Bank, National Association, as Beneficiary.
- that certain Modification of Deed of Trust dated December 12, 2016 and recorded on 01/23/2017, in the office of the Mesa County Clerk and Recorder, Reception No. 2787924 for the benefit of Wells Fargo Bank, National Association, as Beneficiary.

This paragraph shall survive any merger or claim of merger of this Agreement with the granting of the Utility Easement.

4. The City agrees to, at the City's sole cost and expense, reasonably repair and restore those portions of Owner's Property affected or damaged by the City's construction activities and to return said affected areas to Owner in a condition reasonably approximate to that which existed prior to entry by the City.

5. The signing of this Agreement by the parties hereto hereby grants possession of the above-stated parcel to the City and shall serve as an irrevocable license to use said parcels for the purposes aforescribed until the Owner executes and delivers to the City the appropriate documents as stated in paragraph 2 above.

6. This Memorandum of Agreement and the Grant of Utility Easement embody the complete agreements between the parties hereto and cannot be changed or modified except by


a written instrument subsequently executed by both parties. This Agreement and the terms and conditions hereof apply to and are binding upon the successors and authorized assigns of both parties.

7. This Memorandum of Agreement shall be deemed a contract extending to and binding upon the parties hereto and upon their respective successors and assigns.

8. This is a legal instrument. The City recommends Owner seek the advice of its own legal and tax counsel before signing this Memorandum of Agreement. The parties agree that the construing of ambiguities against the drafter shall have no application to this Agreement.

Dated the day and year first above written.

Owner – DPE LLC:

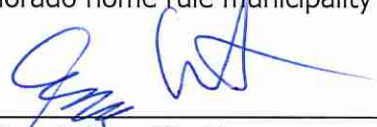


Dennis H. Eschliman
as Member of DPE LLC



Patricia A. Eschliman
as Member of DPE LLC

City of Grand Junction,
a Colorado home rule municipality

By: 

Greg Caton, City Manager