

ORDINANCE 2011-05

AN ORDINANCE ANNEXING TO THE CITY OF FRUITA APPROXIMATELY 130 ACRES OF PROPERTY LOCATED ON BOTH SIDES OF 16 ROAD SOUTH OF HIGHWAY 6 & 50 (Project # 2008-39, IIG and Mesa Grand Annexation)

WHEREAS, the Fruita City Council finds that it is necessary to annex certain real property contiguous to the City of Fruita in order to:

1. Promote the public health, safety, and welfare of the community; and,
2. Insure efficient provision of municipal services and fair and equitable distribution of cost amongst those who use services provided by the community; and,
3. Provide for orderly growth of the community; and,

WHEREAS, the City Council adopted Resolution 2009-19 finding that the real property described on Exhibit A and shown on Exhibit B is eligible for annexation pursuant to C.R.S. 31-12-104 and 105, stating their intent to annex same and initiating the annexation procedures.

THE CITY OF FRUITA HEREBY ORDAINS:

Section 1: The Fruita City Council, having reviewed a properly constituted petition of all the owners of real property in the area proposed for annexation, hereby annexes the property as described and shown in Exhibit A, and the Fruita City limits are hereby modified to reflect said annexation.

Section 2: Conditions of said annexation include:

1. The annexation of the property described on Exhibit A and shown on Exhibit B, shall be subject to annexation agreements attached hereto as Exhibits C and D which are voluntarily made by and between the City of Fruita and 100% of the landowners of the property hereby annexed. Pursuant to Section 31-12-112, C.R.S., no election is required for the approval of the terms and conditions contained in such agreement.
2. Zoning of said property shall be established by future public hearing which will be held within ninety days (90) of the effective day of this ordinance.

PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL, THIS 19TH DAY OF APRIL, 2011.

ATTEST:

City of Fruita


Margaret Steelman, City Clerk


H. Kenneth Henry, Mayor

EXHIBIT A

Ordinance 2011-05

LEGAL DESCRIPTION

A tract of land situated in the Northeast Quarter of Section 13, and the Southeast Quarter of Section 12, Township 1 North, Range 3 West, and the Southwest Quarter of Section 7 and the Northwest Quarter of Section, Township 1 North Range 3 West all of the Ute Meridian, Mesa County, Colorado and being more particularly described as follows:

Commencing at the Southwest corner (MCSM No. 1277) of said Section 7 from whence the West one-quarter corner (MCSM No. 419-1) bears North $00^{\circ}04'43''$ East, 2645.30 feet with all bearings herein being referenced thereto. thence $S56^{\circ}49'20''W$, a distance of 35.88 feet to the West right of way for 16 Road and the South right of way for Cipolla Road to the start of a curve to the left; thence 55.59 feet along said curve to the left with a radius of 35.50 feet whose chord bears $N44^{\circ}46'42''W$ a distance of 50.08 feet; thence $N89^{\circ}38'07''W$ along the South right of way of Cipolla Road, a distance of 364.00 feet to the Northwest corner of Lot 15 Pabco Industrial Park Filing No. 2; thence $S0^{\circ}04'43''W$, a distance of 706.98 feet to the Southwest corner of Lot 21 Pabco Industrial Park Filing No. 2; thence $S61^{\circ}44'17''E$, a distance of 41.36 feet; thence $S53^{\circ}09'17''E$, a distance of 260.00 feet; thence $S45^{\circ}05'17''E$, a distance of 155.00 feet; thence $S84^{\circ}28'17''E$ a distance of 44.86 feet to a point on the West right of way line for 16 Road; thence $S0^{\circ}04'43''W$ along said right of way a distance of 408.60 feet to a point on the Northerly right of way for Interstate 70; thence the following 4 courses along said right of way; $N73^{\circ}16'11''W$, a distance of 61.42 feet; thence $N76^{\circ}01'12''W$, a distance of 411.0 feet; thence 1134.86 feet along a non-tangent curve to the left with a radius of 11459.20 feet whose chord bears $N76^{\circ}19'02''W$ a distance of 1134.40 feet; $N79^{\circ}03'10''W$, a distance of 1085.31 feet; thence leaving said right of way $N00^{\circ}01'44''E$, a distance of 812.64 feet; thence $N00^{\circ}02'25''E$, a distance of 631.04 feet to the South right of way for River Road; thence 157.08 feet along a non-tangent curve to the left with a radius of 50.00 feet whose chord bears $S89^{\circ}38'07''E$ a distance of 100.00 feet; thence $S89^{\circ}38'07''E$ along the South right of way of River Road, a distance of 1230.20 feet; thence $S89^{\circ}37'17''E$ along said right of way, a distance of 978.04 feet to the Northwest corner of Lot 1 Pabco Industrial Park Filing No. 2; thence $S0^{\circ}04'43''W$, a distance of 277.80 feet to the Southwest corner of said Lot 1; thence $S89^{\circ}38'08''E$, a distance of 319.14 feet to the Southeast corner of said Lot 1 and the West right of way for 16 Road; thence $S0^{\circ}04'43''W$, a distance of 373.36 feet to the POINT OF BEGINNING.

EXCEPT: Commencing at the Southwest corner of said Section 7; thence $S83^{\circ}10'55''W$ a distance of 1976.21 feet to the POINT OF BEGINNING; thence $S0^{\circ}04'43''W$ a distance of 172.04; thence $S58^{\circ}38'43''W$ a distance of 117.20 feet; thence $N0^{\circ}04'43''E$ a distance of 233.16 feet; thence $S89^{\circ}55'17''E$ a distance of 100.00 to the POINT OF BEGINNING.

Said tract of land contains 92.9 acres as described.

EXHIBIT A
(continued)
Ordinance 2011-05

LEGAL DESCRIPTION

A parcel of land being part of the SW¼ of Section 7 and the NW¼ of Section 18, both in Township 1 North, Range 2 West, of the Ute Meridian, Mesa County, Colorado.
Said parcel being more particularly described as follows:

Commencing at the Southwest corner (MCSM No. 1277) of said Section 7 from whence the West one-quarter corner (MCSM No. 419-1) bears North 00°04'43" East, 2645.30 feet with all bearings herein being referenced thereto.
Thence North 89°31' East, 30.00 feet to 16 Road easterly right-of-way line.
Thence following said easterly right-of-way line South 00°04'43" West, 1403.57 feet to a point of intersection with I-70 Northerly right-of-way line.
Thence along said right of way South 73°27'17" East, 797.37 feet;
Thence North 00°04'43" East, 1636.04 feet to the South line of said Section 7 from whence the said Southwest corner thereof bears South 89°37'15" West, 794.69 feet;
Thence North 00°04'43" East, 346.46 feet to the Southerly right-of-way line as described in Book 2038 at Page 897 of the Mesa County Clerk and recorder's Office;
Thence following said Southerly right-of-way line North 56°32'17" West, 312.01 feet;
Thence 369.54 feet along a 640 foot radius curve to the left with a central angle of 33°05'00", the chord of which bears North 73°04'47" West 364.43 feet;
Thence North 89°37'20" West, 155.34 feet to the easterly right-of-way line for 16 Road;
Thence South 00°04'43" West, 630.98 feet along said easterly right-of-way line to the POINT OF BEGINNING.

The above parcel, as described, contains 36.3 acres, more or less.

EXHIBIT B
Ordinance 2011-05

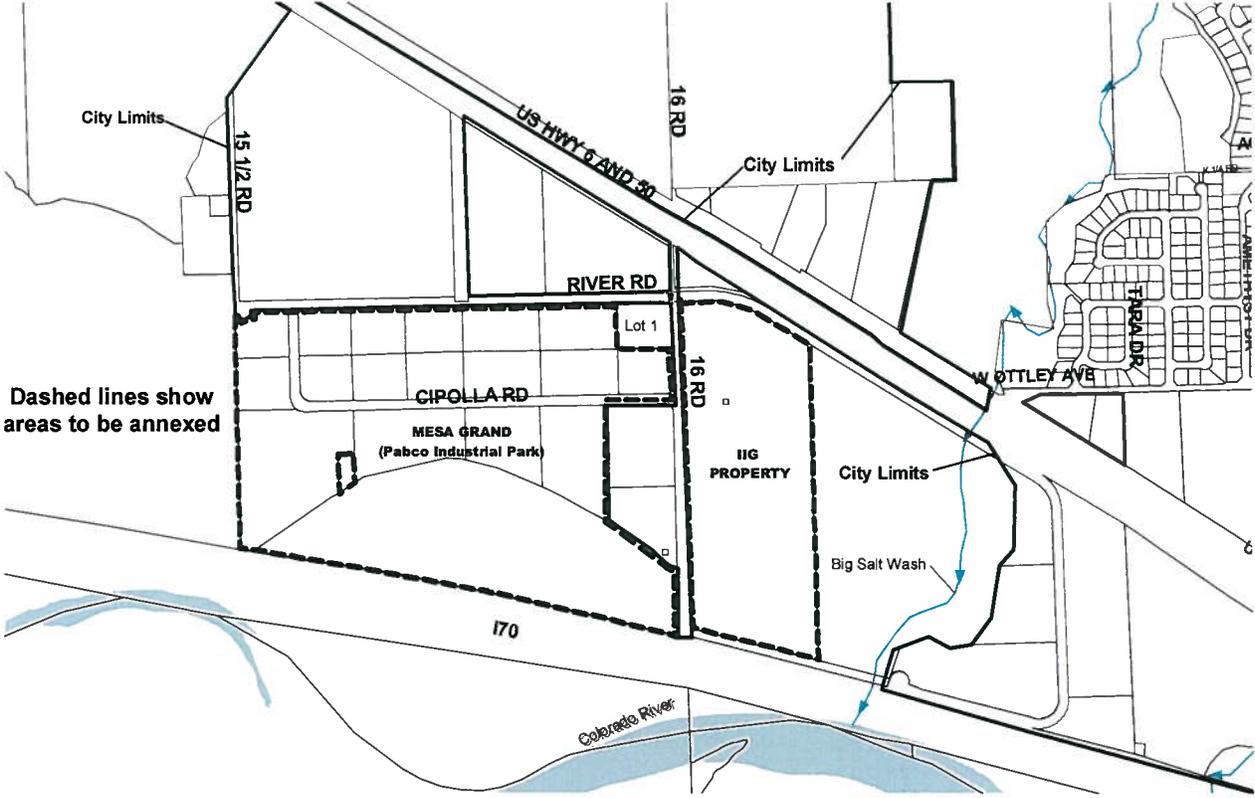


EXHIBIT C
Ordinance 2011-05
(15 pages)

ANNEXATION AGREEMENT

MESA GRAND, LLC

THIS ANNEXATION AGREEMENT ("Agreement") is entered into this 19th of April, 2011, by and between the CITY OF FRUITA, COLORADO, a Colorado municipal corporation, whose address is 325 E. Aspen Ave, Fruita, Colorado, 81521, (the "City") and MESA GRAND, LLC, a Colorado limited liability company ("Mesa Grand"), 1110 16 Road, Fruita, CO 81521.

RECITALS

A. Mesa Grand, LLC owns the real property described in Exhibit A, attached hereto and incorporated herein (the "Property").

B. Mesa Grand submitted, jointly with Industrial Insulation Group, LLC, a Delaware limited liability company ("IIG") which owns adjoining property, a Petition for Annexation of the Property to the City Clerk of the City of Fruita, Colorado. This Agreement, when fully executed, shall constitute the Petition for Annexation, providing for the annexation of the Property as described in Exhibit A. Attached as Exhibit B and made a part hereof is the Annexation Map ("Map") showing the Property.

C. If, following annexation, the Property is not zoned as set forth in paragraph 1.5.2.1, the provisions of paragraph 2.3 shall apply. Thereafter, following Final Approval, the City will have the authority to govern further development and use of the Property in accordance with applicable state law, the Municipal Code and this Agreement.

D. The City desires to annex the Property, agreeing to do so and to zone the Property in accordance with the terms of this Agreement, in order to provide for orderly growth in and around the City.

E. The City and Mesa Grand agree that the terms of this Agreement are reasonable conditions and requirements to be imposed by the City upon Mesa Grand and its successors in connection with the annexation pursuant to the Petition for Annexation, the City recognizing and agreeing that the matters set forth in this Agreement are necessary to protect, promote and enhance the public welfare.

F. The parties agree that it is desirable, under the terms and conditions of this Agreement, for Mesa Grand to annex the Property to the City.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

SECTION 1
DEFINITIONS AND GENERAL PROVISIONS

1.1 Definitions.

1.1.1 Agreement. This Annexation Agreement between Mesa Grand, LLC and the City.

1.1.2 Annexation Petition. As defined in Recital B above.

1.1.3 City. The City of Fruita, Colorado, a home rule municipal corporation, a party to this Agreement.

1.1.4 City Council. The City Council of the City of Fruita Colorado.

1.1.5 Effective Date. The date of Final Approval which is conditioned upon the signing of this Agreement by all parties.

1.1.6 Final Approval. As defined in subsection 2.2 below.

1.1.7 Mesa Grand. Mesa Grand, LLC, a Colorado limited liability company, a party to this Agreement.

1.1.8 Municipal Code. The City's codification of its ordinances as in effect from time to time.

1.1.9 Property. The real property described in Exhibit A attached to this Agreement.

1.1.10 Uniform, Non-Discriminatory Regulations. Collectively, the Municipal Code, rules, regulations, policies and standards applicable in the same manner to all developments within the City.

1.2 Covenants. The provisions of this Agreement, upon Final Approval and recording in the Mesa County, Colorado real estate records, shall constitute covenants or servitudes which shall touch, attach to and run with the land comprising the Property, and the burdens and benefits of this Agreement shall bind and inure to the benefit of the parties to this Agreement, all estates and interests in the Property and all successors in interest to the parties to this Agreement, except as otherwise provided in the Agreement.

1.3 Amendment of Agreement. Except as otherwise set forth in this Agreement, this Agreement may be amended only by mutual consent of the City and Mesa Grand in writing.

1.4 Cooperation in Defending Legal Challenges. If any legal or equitable action or other proceeding is commenced by a third party challenging the validity of any provision of this Agreement, Mesa Grand and the City agree to cooperate in defending such action or proceeding and to bear their own expenses in connection therewith. Unless the City and Mesa Grand otherwise agree, each party shall select and pay its own legal counsel to represent it in connection with such

action or proceeding. If any part of this Agreement is held to be invalid or of no effect by a court of competent jurisdiction, such judicial determination shall not affect any other part of this Agreement which will continue in full force and effect, subject to subsection 6.11. If any part of this Agreement is determined by a court of competent jurisdiction to be in excess of the City's power and authority, such part shall be unenforceable by either party to this Agreement. If any challenge to this Agreement results in disconnection of any portion of the Property from the City, this Agreement shall be null and void at the option of either party. Each party represents to the other that it is unaware of any pending or threatened actions or circumstances which would void this Agreement or make any provision of it illegal or impossible to perform.

1.5 Scope of this Agreement.

1.5.1 This Agreement is intended to set forth the parties' understanding and agreements as to (i) the annexation of the Property pursuant to the Municipal Annexation Act of 1965, as amended; (ii) the subdivision and zoning of the Property; (iii) procedures, limitations, and standards applicable to the construction of future improvements that may be installed to serve the Property; (iv) the responsibilities of the parties for various costs, fees and charges relating to the Property and off-site improvements; and (v) to such other matters the parties believe can be adequately addressed at this time.

1.5.2 Except as otherwise provided in this Agreement, this Agreement is not intended to address those matters which are more appropriately considered at the time Mesa Grand may submit to the City for its review and approval future applications, if any, for other or additional development of the Property.

1.5.2.1 Subject to paragraphs 2.2 and 2.3 below, the Property shall be zoned Limited Industrial and Research and Development (LIRD).

1.5.2.2 The Property is subdivided and recorded in Mesa County real estate records as PABCO Industrial Park, Filing No. 2 ("PIP Subdivision"). The City, upon and after final approval of the annexation, accepts the PIP Subdivision as in compliance with the Municipal Code and agrees that Mesa Grand shall have the right to market and sell lots within the PIP Subdivision as Mesa Grand determines is appropriate, subject to the restrictions contained in this Agreement, without the need for further consent or approvals from the City pursuant to any statutory vested rights and common law vested rights Mesa Grand or its predecessor in title may have obtained. Infrastructure improvements are complete on Cippola Road and are accepted by the City subject to the warranty agreement between Mesa Grand and Mesa County. Remaining Infrastructure Improvements are addressed in Section 4.2 of this Agreement.

1.5.2.3 The City reserves all rights to review, approve or deny any future zoning application or future subdivision or any future land use applications on any portion of the Property in accordance with State law and the Municipal Code in effect at that time.

1.5.3. It is not the intention of the parties to agree to abrogate the City's legislative, judicial, quasi-judicial or other non-delegable discretionary powers. Rather, the parties agree that

the terms of this Agreement constitute a proper exercise of the City's police powers. Except as otherwise provided in this Agreement, it is not the intention of the parties to impose on the City any duty, beyond its ordinances and regulations as they may from time to time exist, nor to impose any special obligation on the City to approve or accept any items submitted by Mesa Grand or Mesa Grand's successors and assigns including, but not limited to, future plans, drawings, reports, security documents, improvements, and conveyances. It is anticipated by all parties that following the Final Approval, the remainder of this Agreement shall be fully performed by all parties and the fulfillment of all the terms and conditions of this Agreement by all parties is a condition, both precedent and subsequent, to the validity and effectiveness of this Agreement.

SECTION 2 ANNEXATION

2.1 Annexation. Annexation of the Property shall be in accordance with this Agreement and the Colorado Municipal Annexation Act of 1965, as amended (section 31-12-101, *et seq.*, C.R.S.).

2.2 Conditions Precedent. As used in this Agreement, "Final Approval" shall mean the thirtieth (30th) day following the adoption date of the latest of the ordinances or resolutions by which the City Council approves (i) this Agreement, (ii) annexation of the Property to the City and (iii) the zoning of the Property as LIRD. Final Approval shall be deemed not to have occurred if on or before such 30th day either (1) any third party commences any legal proceeding challenging any of such approvals, or (2) any third party submits a petition for a referendum seeking to reverse or nullify any of such approvals.

2.3 Failure of Conditions. Until all of the conditions set forth in subsection 2.2 above have been satisfied, this document shall constitute an offer by Mesa Grand and the City to enter into this Agreement (notwithstanding the parties' mutual execution and delivery of this document) and the annexation and zoning of the Property to the City shall not be effective. Consequently, until Final Approval as defined in subsection 2.2 above, Mesa Grand may withdraw the Petition for Annexation for any reason and in its absolute and sole discretion and Mesa Grand or the City may, for any reason and in their absolute and sole discretion, withdraw their offer to enter into this Agreement. If Mesa Grand withdraws the Petition for Annexation, either party withdraws its offer to enter into this Agreement, or if Final Approval does not otherwise occur for any reason, then this Agreement shall be deemed void and of no force or effect, and the Property shall be deemed NOT annexed to the City. The provisions of this subsection 2.3 are in addition to the provisions of subsection 1.5.2 above.

SECTION 3 DEVELOPMENT

3.1 General Description. Reference Exhibit 'A'.

3.2 Compliance with Current Regulations. Except as provided in this Agreement, Mesa Grand shall meet all then current Uniform Non-Discriminatory Regulations of the City (including but not limited to building, fire, plumbing, electrical and mechanical codes, public improvements design

standards in the Municipal Code and other rules and regulations) unless varied pursuant to and as a part of the City's approval process; submit all required plans, specifications and other information; and pay all applicable review fees. Mesa Grand has reviewed all applicable zoning, subdivision, building and other development regulations and ordinances of the City currently in effect. Except as varied or as otherwise provided in this Agreement, Mesa Grand agrees as a matter of contract and as a condition of the City's annexation of the Property to abide by the requirements in such regulations as they exist on the Effective Date and as they may be amended from time to time. Provided, however, Mesa Grand shall be permitted to continue to maintain legal non-conforming structures, lots or uses on the Property. The parties state and agree that all structures, lots, or uses that were approved by Mesa County or otherwise lawful under Mesa County Land Use Regulations at the time of annexation of the Property, but do not conform to the City's current Land Use Regulations, shall be deemed legal non-conforming structures, lots or uses.

3.3 Conditioned upon Final Approval and the zoning of the Property as set forth in Subsection 1.5.2, Mesa Grand agrees to work with the City toward the development of a public recreational opportunity utilizing all or a portion of Lot 22 of PIP Subdivision. Currently, Mesa Grand has leased Lot 22 for gravel production. Once the lease of Lot 22 has ended, the opportunity for gravel production on Lot 22 has ended and Lot 22 has been properly rehabilitated and the bond released, Mesa Grand and the City agree, without any obligation on the part of either, to work together toward the possibility of transferring all or a portion of Lot 22 to the City for recreational and community purposes. In any such event, Mesa Grand would likely require the reservation of easements for the benefit of the lot owners adjoining Lot 22 for access to Lot 22. A further delineation of the transfer could be that portion of Lot 22 from the water's edge on the north side south to the property line of Lot 22, allowing the development of the trail along the south side of Lot 22. An easement for the purposes of construction and maintaining a 60 foot wide recreation trail will be granted to the City upon annexation. This easement will be along the southern boundary of the Property and is further delineated in Exhibit "C".

SECTION 4 OFFSITE IMPROVEMENTS FEES AND COSTS; CONSTRUCTION

4.1 Waiver of Right to Challenge Fees and Costs. Mesa Grand, in consideration of the provisions of this Agreement but subject to the terms of this Agreement, specifically acknowledges that the off-site improvements and agreements described in this Section 4 are reasonable and necessary to mitigate the offsite impacts generated from development or subdivision of the Property. Such acknowledgment by Mesa Grand shall be binding on any subsequent owner of the Property. Mesa Grand hereby waives and releases any right it may have to challenge or contest such fees or the other obligations set forth herein in any court of competent jurisdiction on the basis that such off-site improvements are not reasonably related in the impacts of development or subdivision of the Property. Mesa Grand states that such release and waiver is knowing, voluntary and made with the advice of legal counsel. Similarly, the City agrees that the terms of this Agreement properly account for any impact fees as of the date of this Agreement.

4.1.1 This Agreement acknowledges and does not change the existing recapture affecting the subject properties for the City's costs to extend sanitary sewer service to the areas. The reimbursement is not required until development takes place on each individual lot.

4.2 Mesa Grand's Obligation. Following Final Approval;

4.2.1 Mesa Grand shall be responsible for constructing, at its sole cost and expense, one half street improvements for River Road along and adjacent to the Property. Remaining River Road improvements not designed nor constructed include: an 18 foot wide asphalt half street; curb and gutter; and a 5 foot wide concrete sidewalk.

4.2.2 Mesa Grand shall be responsible for constructing, at its sole cost and expense, the uncompleted full width street improvements for Cipolla Road along and adjacent to the Property. Remaining Cipolla Road improvements not designed nor constructed include: the remaining 60 feet of Cipolla Road to connect to the River Road intersection; curb and gutter; and a 5 foot wide concrete sidewalk on each side.

4.2.3 Mesa Grand shall be responsible for constructing, at its sole cost and expense, one half street improvements for 16 Road along and adjacent to the Property including the piping of an irrigation ditch along the west side of 16 Road through Lot 14.

4.2.4 The City will process the review and acceptance of the design and construction of the remaining improvements in accordance with the Municipal Code in effect at the time of the improvements.

4.2.5 All improvements described herein shall be completed by Mesa Grand and accepted by the City within seven (7) years from Final Approval.

4.2.6 Restriction on Conveyances. Mesa Grand shall not convey any of the Lots adjacent to River Road to any third party until the River Road improvements described herein are completed by Mesa Grand and accepted by the City Council. Said restriction shall be evidenced by a separate deed restriction instrument recorded in the records of the Mesa County Clerk and Recorder.

4.3 City's Obligation. The City agrees that following Final Approval it shall maintain in good order, weed and rubbish free, the rail spur extension which rail spur was obtained by the City by way of a donation from Mesa Grand, valued at \$300,000 as provided for in the Stipulation For Entry of Judgment approved by Mesa Grand on October 1, 2007, which Stipulation provided for certain rights to the use of the rail spur property by Mesa Grand, all of which rights continue to be recognized by the City.

4.4 Credit against Off-Site Improvements. The cost of all roadway improvements constructed by Mesa Grand, under this Section 4.4.1 shall qualify for credit against the Transportation Impact Fees.

4.4.1 Mesa Grand shall be responsible for one half street improvements costs for 16 Road and River Road, Adjacent Lot 1. In exchange for this constructed infrastructure, a Transportation Impact Fee (TIF) will be reimbursable to Mesa Grand in the amount of \$42,900.00. This TIF reimbursement may be collected for any of the lots owned by Mesa Grand. The City will be

responsible for collecting the TIF fees as the parcels are developed. The City shall annually reimburse the collected TIFs to Mesa Grand up to the amount established in this section 4.1.1.

4.5 Warranty by Mesa Grand. Mesa grand shall warrant any and all required improvements constructed by Mesa Grand pursuant to this Agreement (unless a warranty for certain improvements has previously been provided to Mesa County) for a period of twelve (12) months from the City certifies that the same conform with the approved plans and specifications. The warranty period begins on the date improvements have been inspected and approved by the City Council. In addition, but not by way of limitation, Mesa Grand shall warrant the following:

4.5.1 Mesa Grand shall warrant that title to the improvements conveyed shall be good and is transfer rightful; and

4.5.2 Mesa Grand shall warrant that any and all facilities so conveyed shall be free from any security interest or other lien or encumbrance; and

4.5.3 Mesa Grand shall warrant that any and all facilities so conveyed shall be free from any and all defects in material or workmanship.

4.6 Conveyance of Public Improvements. All public improvements constructed in accordance with this Agreement, including but not limited to, all public street improvements including required pavement, curbs, and gutters shall be dedicated or conveyed to the City. Upon completion of construction in conformity with the approved plans and specifications and any properly approved changes, Mesa Grand shall convey to the City, by bill of sale, all physical facilities. Acceptance of said conveyance shall be made by the City by majority vote of the City Council. Following such dedication or conveyance, the City shall be solely responsible for the maintenance of such improvements, except for any correction work required during the warranty period set forth in subsection 4.5 above.

SECTION 5 DEFAULT; REMEDIES; TERMINATION

5.1 Default by the City. A “breach” or “default” by the City under this Agreement shall be defined as the City’s failure to fulfill or perform any material obligation of the City contained in this Agreement.

5.2 Default by Developer. A “breach” or “default” by Mesa Grand shall be defined as Mesa Grand’s failure to fulfill or perform any material obligation of Mesa Grand contained in this Agreement.

5.3 Notices of Default. In the event of a default by either party under this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of such default, at the address specified in subsection 6.7 below, and the defaulting party shall have thirty (30) days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such thirty (30) day period and the defaulting party gives written notice to the non-defaulting party within such thirty (30) day period that it is actively and diligently pursuing such cure, the

defaulting party shall have a reasonable period of time given the nature of the default following the end of such thirty (30) day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure.

5.4 Remedies. If any default under this Agreement is not cured as described above, the non-defaulting party shall have the right to enforce the defaulting party's obligations hereunder by an action in equity for any equitable remedy, including injunction and/or specific performance. Only in the event that the remedy of specific performance is not available, either party may seek an equitable monetary award in accordance with applicable law and as limited by the Agreement in lieu of such specific performance remedy.

SECTION 6 MISCELLANEOUS PROVISIONS

6.1 Voluntary Agreement. Mesa Grand and City agree that the provisions and requirements of this Agreement are entered into with full knowledge, free will and without duress.

6.2 Recordation of Agreement. This Agreement shall be recorded in the records of the Mesa County Clerk and Recorder, and upon recording shall be deemed a covenant running with all the real property described in Exhibit A, for the benefit of the City and any real property owned by the City, Mesa Grand and the successors and assigns.

6.3 Enabling Ordinances Required. To the extent required by law and by the terms of this Agreement, the obligations and covenants of the City are conditional upon the adoption by the City of appropriate enabling ordinances.

6.4 Attorneys Fees. In the event that any action or proceeding is filed or maintained by either party in relation to this Agreement, the prevailing party shall be entitled to its costs and reasonable attorney fees, including legal assistant's fees. All rights concerning remedies or attorneys fees, including legal assistants' fees shall survive termination of this Agreement.

6.5 Complete Agreement. This Agreement contains all of the understandings, conditions, and agreements between the parties relating to annexation and development at this time, and no other prior or current representations, oral or written, shall be effective or binding upon the parties, except for representations made by Mesa Grand, or its agents, or the City Council and City staff members at public hearings concerning annexation of the Property and development of the Property, not in conflict with express provisions of this Agreement.

6.6 Authorization. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

6.7 Notices. All notices required or given by the terms of this Agreement shall be made by certified first class mail, postage prepaid, return receipt requested, to the parties at their address

listed below. All notices shall be effective upon mailing. These addresses shall remain valid until notice of a change of address is given in accordance herewith.

If to the City: City of Fruita, Colorado
City Manager
325 E. Aspen Ave. #155
Fruita, Colorado 81521
Attention: Community Development Director

with a copy to: Garfield & Hecht
450 West Avenue, Suite 204
Rifle, Colorado 81650
Attention: Edward P. Sands, Esq.

If to Mesa Grand: Mesa Grand, LLC
1110 16 Road
Fruita, CO 81521
Attention: Robert King

with a copy to: Williams, Turner & Holmes, P.C.
P. O. Box 338
Grand Junction, CO 81502
Attention: J. D. Snodgrass, Esq.

6.8 No additional Annexation Conditions Imposed. The City and Mesa Grand acknowledge and affirm that this Agreement does not impose additional terms and conditions within the meaning of Section 31-12-107 (1) (g), C.R.S. To the extent that Section 31-12-107(1) (g), C.R.S., might be construed as being ambiguous as to what might be considered additional terms and conditions, Mesa Grand, as owner of 100% of the Property, hereby declares that it has voluntarily entered into this Agreement and states that if an election were held, Mesa Grand would approve the terms and conditions of this Agreement at such election.

6.9 Waiver of Defects. In executing this Agreement, Mesa Grand waives all rights it may have concerning defects, if any, of the form or substance of the Agreement and the formalities whereby it is executed; concerning the power of the City to impose conditions on Mesa Grand as set forth herein; and concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement. Similarly, the City waives all rights it may have concerning defects, if any, of the form or substance of this Agreement, and the formalities whereby it is executed as well as defects, if any concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

6.10 Colorado Law Applicable. This Agreement is made and delivered within the State of Colorado, and the laws of the State of Colorado shall govern its interpretation validity, and enforceability.

6.11 Provisions Deemed Severable. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision hereof unless a manifest injustice or inequity would result from applying or enforcing any such remaining provisions.

6.12 Binding on Successors, Assignees. This Agreement shall be binding upon and shall inure to the benefit of the successors in interest or the legal representatives of the parties hereto.

6.13 Execution of Other Documents. The parties agree to execute any additional documents and to take any additional actions necessary to carry out this Agreement.

LIST OF EXHIBITS

Mesa Grand, LLC

- Exhibit A: Legal Description
- Exhibit B: Annexation Map
- Exhibit C: Trail Easement Legal Description

EXHIBIT "A"

LEGAL DESCRIPTION

A tract of land situated in the Northeast Quarter of Section 13, and the Southeast Quarter of Section 12, Township 1 North, Range 3 West, and the Southwest Quarter of Section 7 and the Northwest Quarter of Section, Township 1 North Range 3 West all of the Ute Meridian, Mesa County, Colorado and being more particularly described as follows:

Commencing at the Southwest corner (MCSM No. 1277) of said Section 7 from whence the West one-quarter corner (MCSM No. 419-1) bears North $00^{\circ}04'43''$ East, 2645.30 feet with all bearings herein being referenced thereto. thence $S56^{\circ}49'20''W$, a distance of 35.88 feet to the West right of way for 16 Road and the South right of way for Cipolla Road to the start of a curve to the left; thence 55.59 feet along said curve to the left with a radius of 35.50 feet whose chord bears $N44^{\circ}46'42''W$ a distance of 50.08 feet; thence $N89^{\circ}38'07''W$ along the South right of way of Cipolla Road, a distance of 364.00 feet to the Northwest corner of Lot 15 Pabco Industrial Park Filing No. 2; thence $S0^{\circ}04'43''W$, a distance of 706.98 feet to the Southwest corner of Lot 21 Pabco Industrial Park Filing No. 2; thence $S61^{\circ}44'17''E$, a distance of 41.36 feet; thence $S53^{\circ}09'17''E$, a distance of 260.00 feet; thence $S45^{\circ}05'17''E$, a distance of 155.00 feet; thence $S84^{\circ}28'17''E$ a distance of 44.86 feet to a point on the West right of way line for 16 Road; thence $S0^{\circ}04'43''W$ along said right of way a distance of 408.60 feet to a point on the Northerly right of way for Interstate 70; thence the following 4 courses along said right of way; $N73^{\circ}16'11''W$, a distance of 61.42 feet; thence $N76^{\circ}01'12''W$, a distance of 411.0 feet; thence 1134.86 feet along a non-tangent curve to the left with a radius of 11459.20 feet whose chord bears $N76^{\circ}19'02''W$ a distance of 1134.40 feet; $N79^{\circ}03'10''W$, a distance of 1085.31 feet; thence leaving said right of way $N00^{\circ}01'44''E$, a distance of 812.64 feet; thence $N00^{\circ}02'25''E$, a distance of 631.04 feet to the South right of way for River Road; thence 157.08 feet along a non-tangent curve to the left with a radius of 50.00 feet whose chord bears $S89^{\circ}38'07''E$ a distance of 100.00 feet; thence $S89^{\circ}38'07''E$ along the South right of way of River Road, a distance of 1230.20 feet; thence $S89^{\circ}37'17''E$ along said right of way, a distance of 978.04 feet to the Northwest corner of Lot 1 Pabco Industrial Park Filing No. 2; thence $S0^{\circ}04'43''W$, a distance of 277.80 feet to the Southwest corner of said Lot 1; thence $S89^{\circ}38'08''E$, a distance of 319.14 feet to the Southeast corner of said Lot 1 and the West right of way for 16 Road; thence $S0^{\circ}04'43''W$, a distance of 373.36 feet to the POINT OF BEGINNING.

EXCEPT: Commencing at the Southwest corner of said Section 7; thence $S83^{\circ}10'55''W$ a distance of 1976.21 feet to the POINT OF BEGINNING; thence $S0^{\circ}04'43''W$ a distance of 172.04; thence $S58^{\circ}38'43''W$ a distance of 117.20 feet; thence $N0^{\circ}04'43''E$ a distance of 233.16 feet; thence $S89^{\circ}55'17''E$ a distance of 100.00 to the POINT OF BEGINNING.

Said tract of land contains 92.9 acres as described.

Above legal description written by:
Patrick W. Click
Colorado registered Professional Surveyor No. 37904
3194 Mesa Avenue
Unit B
Grand Junction, Colorado 81504

REVISED MARCH 2, 2011

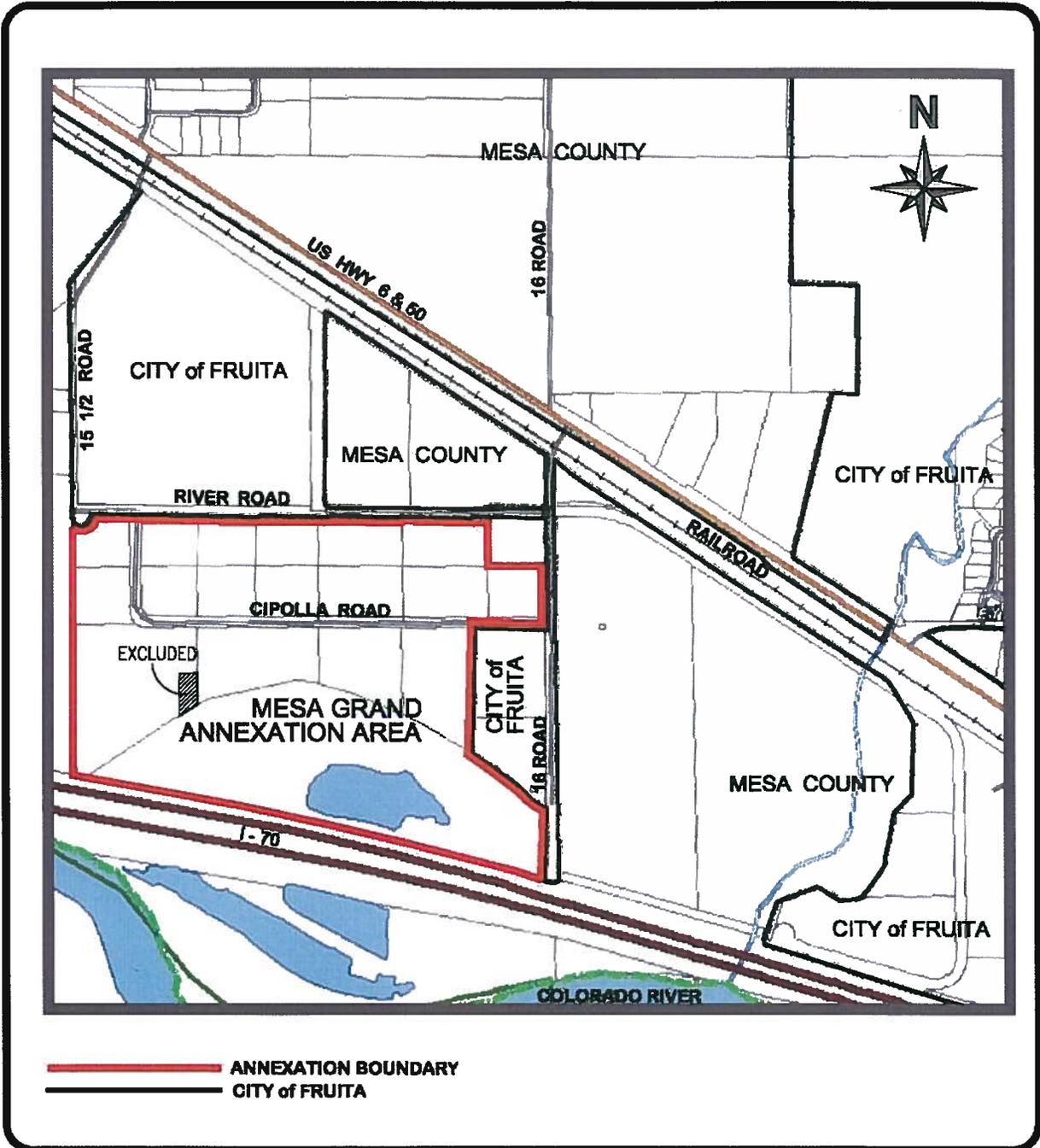


EXHIBIT B
Mesa Grand Annexation Map
1110 16 Road
Mesa County, Colorado

PROJECT NO: F09-053 DATE: 08/09/11 DRAWN BY: Les CHECKED BY: RWJII

Prepared By
VORTEX
 ENGINEERING & ARCHITECTURE, INC.
 2394 Patterson Rd., Ste. 201
 Grand Junction, CO 81505
 (970) 245-9051

- CIVIL & CONSULTING ENGINEERING/ARCHITECTURE
- CONSTRUCTION MANAGEMENT & SITE PLANNING
- FEASIBILITY STUDIES PERMIT EXPEDITING
- ENVIRONMENTAL ASSESSMENTS
- PROJECT MANAGEMENT
- HYDROLOGIC STUDIES

EXHIBIT "C"

60 FOOT TRAIL

LEGAL DESCRIPTION

A tract of land situated in the Northeast Quarter of Section 13, Township 1 North, Range 3 West, of the Ute Meridian, Mesa County, Colorado and being more particularly described as follows:

The Southerly 60' of Lot 22
Pabco Industrial Park Filing No. 2
Mesa County, Colorado

Said tract of land contains 3.6 acres.

Above legal description written by:
Patrick W. Click
Colorado registered Professional Surveyor No. 37904
3194 Mesa Avenue
Unit B
Grand Junction, Colorado 81504

REVISED FEBRUARY 4, 2011

EXHIBIT D
Ordinance 2011-05
(15 pages)

ANNEXATION AGREEMENT

INDUSTRIAL INSULATION GROUP, LLC

THIS ANNEXATION AGREEMENT ("Agreement") is entered into this 19th of April, 2011, by and between the CITY OF FRUITA, COLORADO, a Colorado municipal corporation, whose address is 325 E. Aspen Ave, Fruita, Colorado, 81521, (the "City") and INDUSTRIAL INSULATION GROUP, LLC ("IIG"), a Delaware limited liability company, 1110 16 Road, Fruita, CO 81521.

RECITALS

A. IIG owns the real property described in Exhibit A, attached hereto and incorporated herein (the "Property").

B. IIG submitted, jointly with Mesa Grand, LLC, a Colorado limited liability company ("Mesa Grand") which owns adjoining property, a Petition for Annexation of the Property to the City Clerk of the City of Fruita, Colorado. This Agreement, when fully executed, shall constitute the Petition for Annexation, providing for the annexation of the Property as described in Exhibit A. Attached as Exhibit B and made a part hereof is the Annexation Map ("Map") showing the Property.

C. If, following annexation, the Property is not zoned as set forth in paragraph 1.5.2.1, the provisions of paragraph 2.3 shall apply. Thereafter, following Final Approval, the City will have the authority to govern further development and use of the Property in accordance with applicable state law, the Municipal Code and this Agreement.

D. The City desires to annex the Property, agreeing to do so and to zone the Property in accordance with the terms of this Agreement, in order to provide for orderly growth in and around the City.

E. The City and IIG agree that the terms of this Agreement are reasonable conditions and requirements to be imposed by the City upon IIG and its successors in connection with the annexation pursuant to the Petition for Annexation, the City recognizing and agreeing that the matters set forth in this Agreement are necessary to protect, promote, and enhance the public welfare.

F. The parties agree that it is desirable, under the terms and conditions of this Agreement, for IIG to annex the Property to the City.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

SECTION 1
DEFINITIONS AND GENERAL PROVISIONS

1.1 Definitions.

1.1.1 Agreement. This Annexation Agreement between IIG and the City.

1.1.2 Annexation Petition. As defined in Recital B above.

1.1.3 City. The City of Fruita, Colorado, a home rule municipal corporation, a party to this Agreement.

1.1.4 City Council. The City Council of the City of Fruita Colorado.

1.1.5 Effective Date. The date of Final Approval which is conditioned upon the signing of this Agreement by all parties.

1.1.6 Final Approval. As defined in subsection 2.2 below.

1.1.7 IIG. Industrial Insulation Group, LLC, a Delaware limited liability company, a party to this Agreement.

1.1.8 Municipal Code. The City's codification of its ordinances as in effect from time to time.

1.1.9 Property. The real property described in Exhibit A attached to this Agreement.

1.1.10 Uniform, Non-Discriminatory Regulations. Collectively, the Municipal Code, rules, regulations, policies and standards applicable in the same manner to all developments within the City.

1.2 Covenants. The provisions of this Agreement, upon Final Approval and recording in the Mesa County, Colorado real estate records, shall constitute covenants which shall touch, attach to and run with the land comprising the Property, and the burdens and benefits of this Agreement shall bind and inure to the benefit of the parties to this Agreement, all estates and interests in the Property and all successors in interest to the parties to this Agreement, except as otherwise provided in the Agreement.

1.3 Amendment of Agreement. Except as otherwise set forth in this Agreement, this Agreement may be amended only by mutual consent of the City and IIG, in writing.

1.4 Cooperation in Defending Legal Challenges. If any legal or equitable action or other proceeding is commenced by a third party challenging the validity of any provision of this Agreement, IIG and the City agree to cooperate in defending such action or proceeding and to bear their own expenses in connection therewith. Unless the City and

IIG otherwise agree, each party shall select and pay its own legal counsel to represent it in connection with such action or proceeding. If any part of this Agreement is held to be invalid or of no effect by a court of competent jurisdiction, such judicial determination shall not affect any other part of this Agreement which will continue in full force and effect, subject to subsection 6.11. If any part of this Agreement is determined by a court of competent jurisdiction to be in excess of the City's power and authority, such part shall be unenforceable by either party to this Agreement. If any challenge to this Agreement results in disconnection of any portion of the Property from the City, this Agreement shall be null and void at the option of either party. Each party represents to the other that it is unaware of any pending or threatened actions or circumstances which would void this Agreement or make any provision of it illegal or impossible to perform.

1.5 Scope of this Agreement.

1.5.1 This Agreement is intended to set forth the parties' understanding and agreements as to (i) the annexation of the Property pursuant to the Municipal Annexation Act of 1965, as amended; (ii) the subdivision and zoning of the Property; (iii) procedures, limitations, and standards applicable to the construction of future improvements that may be installed to serve the Property; (iv) the responsibilities of the parties for various costs, fees and charges relating to the Property and off site improvements; and (v) to such other matters the parties believe can be adequately addressed at this time.

1.5.2 Except as otherwise provided in this Agreement, this Agreement is not intended to address those matters which are more appropriately considered at the time IIG submits to the City for its review and approval future applications, if any, for other or additional development of the Property.

1.5.2.1 Subject to paragraphs 2.2 and 2.3 below, the Property shall be zoned Limited Industrial and Research and Development (LIRD).

1.5.2.2 The City reserves all rights to review, approve or deny any future zoning application, future subdivision application, or any other land use applications, on any portion of the Property in accordance with State law and the Municipal Code.

1.5.3 It is not the intention of the parties to agree to abrogate the City's legislative, judicial, quasi-judicial or other non-delegable discretionary powers. Rather, the parties agree that the terms of this Agreement constitute a proper exercise of the City's police powers. Except as otherwise provided in this Agreement, it is not the intention of the parties to impose on the City any duty, beyond its ordinances and regulations as they may from time to time exist, nor to impose any special obligation on the City to approve or accept any items submitted by IIG or IIG's successors and assigns including, but not limited to, future plans, drawings, reports, security documents, improvements, and conveyances. It is anticipated by all parties that following the Final Approval, the remainder of this Agreement shall be fully performed by all parties and the

fulfillment of all the terms and conditions of this Agreement by all parties is a condition, both precedent and subsequent, to the validity and effectiveness of this Agreement.

SECTION 2 **ANNEXATION**

2.1 Annexation. Annexation of the Property shall be in accordance with this Agreement and the Colorado Municipal Annexation Act of 1965, as amended (section 31-12-101, *et seq.*, C.R.S.).

2.2 Conditions Precedent. As used in this Agreement, "Final Approval" shall mean the thirtieth (30th) day following the adoption date of the latest of the ordinances or resolutions by which the City Council approves (i) this Agreement, (ii) annexation of the Property to the City and (iii) the zoning of the Property as LIRD. Final Approval shall be deemed not to have occurred if on or before such 30th day either (1) any third party commences any legal proceeding challenging any of such approvals, or (2) any third party submits a petition for a referendum seeking to reverse or nullify any of such approvals.

2.3 Failure of Conditions. Until all of the conditions set forth in subsection 2.2 above have been satisfied, this document shall constitute an offer by IIG and the City to enter into this Agreement (notwithstanding the parties' mutual execution and delivery of this document) and the annexation and zoning of the Property to the City shall not be effective. Consequently, until Final Approval as defined in subsection 2.2 above, IIG may withdraw the Petition for Annexation for any reason and in its absolute and sole discretion and IIG or the City may, for any reason and in their absolute and sole discretion, withdraw their offer to enter into this Agreement. If IIG withdraws the Petition for Annexation, either party withdraws its offer to enter into this Agreement, or if Final Approval does not otherwise occur for any reason, then this Agreement shall be deemed void and of no force or effect, and the Property shall be deemed NOT annexed to the City. The provisions of this subsection 2.3 are in addition to the provisions of subsection 1.5.2 above.

SECTION 3 **DEVELOPMENT**

3.1 General Description. The Property is comprised of the Property as illustrated and denoted on Exhibit B, consisting of a total of approximately 35 acres. A large manufacturing facility is currently located and operating on the Property.

3.2 Compliance with Current Regulations. Except as provided in this Agreement, IIG shall meet all then current Uniform Non-Discriminatory Regulations of the City (including but not limited to building, fire, plumbing, electrical and mechanical codes, public improvements design standards in the Municipal Code and other rules and regulations) unless varied pursuant to and as a part of the City's approval process; submit all required plans, specifications and other information; and pay all applicable review

fees. IIG has reviewed all applicable zoning, subdivision, building and other development regulations and ordinances of the City currently in effect. Except as varied or as otherwise provided in this Agreement, IIG agrees as a matter of contract and as a condition of the City's annexation of the Property to abide by the requirements in such regulations as they exist on the Effective Date and as they may be amended from time to time. Provided, however, IIG shall be permitted to continue to maintain legal non-conforming structures, lots or uses on the Property. The parties state and agree that all structures, lots, or uses that were approved by Mesa County or otherwise lawful under Mesa County Land Use Regulations at the time of annexation of the Property, but do not conform to the City's current Land Use Regulations, shall be deemed legal non-conforming structures, lots or uses.

3.3 Construction of Public Improvements within the Property. It is agreed that no public improvements of any kind or nature are required within the existing IIG Parcel, that the current use is an allowed and approved use under the LIRD zoning.

3.4 No Obligation to Develop. IIG shall have no obligation under this Agreement to develop any part of this property.

SECTION 4 **OFFSITE IMPROVEMENTS FEES AND COSTS; CONSTRUCTION**

4.1 Waiver of Right to Challenge Fees and Costs. IIG, in consideration of the provisions of this Agreement but subject to the terms of this Agreement, specifically acknowledges that the off-site improvements and agreements described in this Section 4 are reasonable and necessary to mitigate the offsite impacts generated from development or subdivision of the Property. Such acknowledgment by IIG shall be binding on any subsequent owner of the Property. IIG hereby waives and releases any right it may have to challenge or contest such fees or the other obligations set forth herein in any court of competent jurisdiction on the basis that such off-site improvements are not reasonably related in the impacts of development or subdivision of the Property. IIG states that such release and waiver is knowing, voluntary and made with the advice of legal counsel. Similarly, the City agrees that the terms of this Agreement properly account for the offsite impacts generated from the development and subdivision of the Property and are consistent and fair when considering the benefit to the City and its residents of the positive influence generated by the annexation, subdivision and development of the Property.

4.2 IIG's Obligation. IIG agrees that following Final Approval, it shall:

Pay to the City in return for both domestic and industrial sewer service to and for the benefit of the Property, the total sum of \$130,000.00 as and for the plant investment fee and tap charge for the Property. The total sum of \$130,000.00 shall be paid to the City by IIG within thirty days of the date of Final Approval and at the time of payment, IIG shall hook up to the City's sewer system, without further charge, for the current facility,

except for monthly service fees, for the purpose of discharge of IIG's domestic and industrial sewer waste into the City's sewer system.

4.2.1 It is further understood that IIG has previously, at its sole cost of approximately \$167,000 and in connection with a prior understanding with the City, constructed a sewer lift station on or immediately adjacent to the property on the west side. This sewer lift station, upon its completion, and acceptance from the Colorado Department of Public Health and Environment along with an easement which the sewer lift station is located as described in Exhibit C attached, together with an access easement to such sewer lift station, shall be conveyed to the City as part of this Agreement and the sewer lift station and the sewer lift station easement shall thereafter be the sole property of the City and the City shall be solely responsible for the operation, maintenance and costs associated therewith of the sewer lift station. IIG shall be responsible for any monthly charge associated with its use of the City sewer in effect from time to time.

4.2.2 IIG shall be responsible for constructing, at its sole cost and expense, road widening improvements for 16 Road along and adjacent to the Property

4.2.3 All improvements described herein shall be completed by IIG and accepted by the City within seven (7) years from Final Approval.

4.3 City's Obligation. The City agrees that following Final Approval it shall provide sewer service to the Property as set forth in subsection 4.2 above, without further cost or expense to IIG except for the monthly service fees.

4.4 Transportation Impact Fees (TIF) There shall be no TIF's assessed with this Annexation Agreement.

4.5 Warranty by IIG. IIG shall warrant any and all required improvements constructed by IIG pursuant to this Agreement (unless a warranty for certain improvements has previously been provided to Mesa County) for a period of twelve (12) months from the date the City certifies that the same conform with the approved plans and specifications. The warranty period begins on the date improvements have been inspected and approved by the City Council. In addition, but not by way of limitation, IIG shall warrant the following:

4.5.1 IIG shall warrant that title to the improvements conveyed shall be good and is transfer rightful; and

4.5.2 IIG shall warrant that any and all facilities so conveyed shall be free from any security interest or other lien or encumbrance; and

4.5.3 IIG shall warrant that any and all facilities so conveyed shall be free from any and all defects in material or workmanship.

4.6 Conveyance of Public Improvements. All public improvements constructed in accordance with this Agreement, including but not limited to, all public street improvements including required pavements, curbs, and gutters shall be dedicated or conveyed to the City. Upon completion of construction, in conformity with the approved plans and specifications and any properly approved changes, IIG shall convey to the City, by bill of sale, all physical facilities. Acceptance of said conveyance shall be made by the City by majority vote of the City Council. Following such dedication or conveyance, the City shall be solely responsible for the maintenance of such improvements, except for any correction work required during the warranty period set forth in subsection 4.5 above.

SECTION 5 **DEFAULT; REMEDIES; TERMINATION**

5.1 Default by the City. A “breach” or “default” by the City under this Agreement shall be defined as the City’s failure to fulfill or perform any material obligation of the City contained in this Agreement.

5.2 Default by Developer. A “breach” or “default” by IIG shall be defined as IIG’s failure to fulfill or perform any material obligation of IIG contained in this Agreement.

5.3 Notices of Default. In the event of a default by either party under this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of such default, at the address specified in subsection 6.7 below, and the defaulting party shall have thirty (30) days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such thirty (30) day period and the defaulting party gives written notice to the non-defaulting party within such thirty (30) day period that it is actively and diligently pursuing such cure, the defaulting party shall have a reasonable period of time given the nature of the default following the end of such thirty (30) day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure.

5.4 Remedies. If any default under this Agreement is not cured as described above, the non-defaulting party shall have the right to enforce the defaulting party’s obligations hereunder by an action in equity for any equitable remedy, including injunction and/or specific performance. Only in the event that the remedy of specific performance is not available, either party may seek an equitable monetary award in accordance with applicable law and as limited by the Agreement in lieu of such specific performance remedy.

SECTION 6 **MISCELLANEOUS PROVISIONS**

6.1 Voluntary Agreement. IIG and City agree that the provisions and requirements of this Agreement are entered into with full knowledge, free will and without duress.

If to IIG

Industrial Insulation Group, LLC
1110 16 Road
Fruita, CO 81521
Attention: Robert King

with a copy to:

Williams, Turner & Holmes, P.C.
P. O. Box 338
Grand Junction, CO 81502
Attention: J. D. Snodgrass, Esq.

6.8 No additional Annexation Conditions Imposed. The City and IIG acknowledge and affirm that this Agreement does not impose additional terms and conditions within the meaning of Section 31-12-107 (1)(g), C.R.S. To the extent that Section 31-12-107(1) (g), C.R.S., might be construed as being ambiguous as to what might be considered additional terms and conditions, IIG, as owner of 100% of the Property, hereby declares that it has voluntarily entered into this Agreement and states that if an election were held, IIG would approve the terms and conditions of this Agreement at such election.

6.9 Waiver of Defects. In executing this Agreement, IIG waives all rights it may have concerning defects, if any, of the form or substance of the Agreement and the formalities whereby it is executed; concerning the power of the City to impose conditions on IIG as set forth herein; and concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement. Similarly, the City waives all rights it may have concerning defects, if any, of the form or substance of this Agreement, and the formalities whereby it is executed as well as defects, if any concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

6.10 Colorado Law Applicable. This Agreement is made and delivered within the State of Colorado, and the laws of the State of Colorado shall govern its interpretation validity, and enforceability.

6.11 Provisions Deemed Severable. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision hereof unless a manifest injustice or inequity would result from applying or enforcing any such remaining provisions.

6.12 Binding on Successors, Assignees. This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, assignees and transferees of the parties hereto. IIG shall have the right to assign or transfer all or any portion of its interest, rights or obligations under this Agreement to third parties acquiring an interest or estate in the Property, including but not limited to, purchasers or long term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Property. The express assumption of any of IIG's obligations under this Agreement by its assignee or transferee shall, upon approval by the City, relieve IIG of any further obligations under this Agreement with respect to the matter so assumed.

6.13 Execution of Other Documents. The parties agree to execute any additional documents and to take any additional actions necessary to carry out this Agreement.

LIST OF EXHIBITS
Industrial Insulation Group (IIG)

- Exhibit A: Legal Description
- Exhibit B: Annexation Map
- Exhibit C: Sewer Lift Station Easement Legal Description

EXHIBIT "A"

LEGAL DESCRIPTION

A parcel of land being part of the SW¼ of Section 7 and the NW¼ of Section 18, both in Township 1 North, Range 2 West, of the Ute Meridian, Mesa County, Colorado.
Said parcel being more particularly described as follows:

Commencing at the Southwest corner (MCSM No. 1277) of said Section 7 from whence the West one-quarter corner (MCSM No. 419-1) bears North 00°04'43" East, 2645.30 feet with all bearings herein being referenced thereto.
Thence North 89°31' East, 30.00 feet to 16 Road easterly right-of-way line.
Thence following said easterly right-of-way line South 00°04'43" West, 1403.57 feet to a point of intersection with I-70 Northerly right-of-way line.
Thence along said right of way South 73°27'17" East, 797.37 feet;
Thence North 00°04'43" East, 1636.04 feet to the South line of said Section 7 from whence the said Southwest corner thereof bears South 89°37'15" West, 794.69 feet;
Thence North 00°04'43" East, 346.46 feet to the Southerly right-of-way line as described in Book 2038 at Page 897 of the Mesa County Clerk and recorder's Office;
Thence following said Southerly right-of-way line North 56°32'17" West, 312.01 feet;
Thence 369.54 feet along a 640 foot radius curve to the left with a central angle of 33°05'00", the chord of which bears North 73°04'47" West 364.43 feet;
Thence North 89°37'20" West, 155.34 feet to the easterly right-of-way line for 16 Road;
Thence South 00°04'43" West, 630.98 feet along said easterly right-of-way line to the POINT OF BEGINNING.

The above parcel, as described, contains 36.3 acres, more or less.

Above legal description written by:
Patrick W. Click
Colorado registered Professional Surveyor No. 37904
3194 Mesa Avenue
Unit B
Grand Junction, Colorado 81504

REVISED FEBRUARY 4, 2011

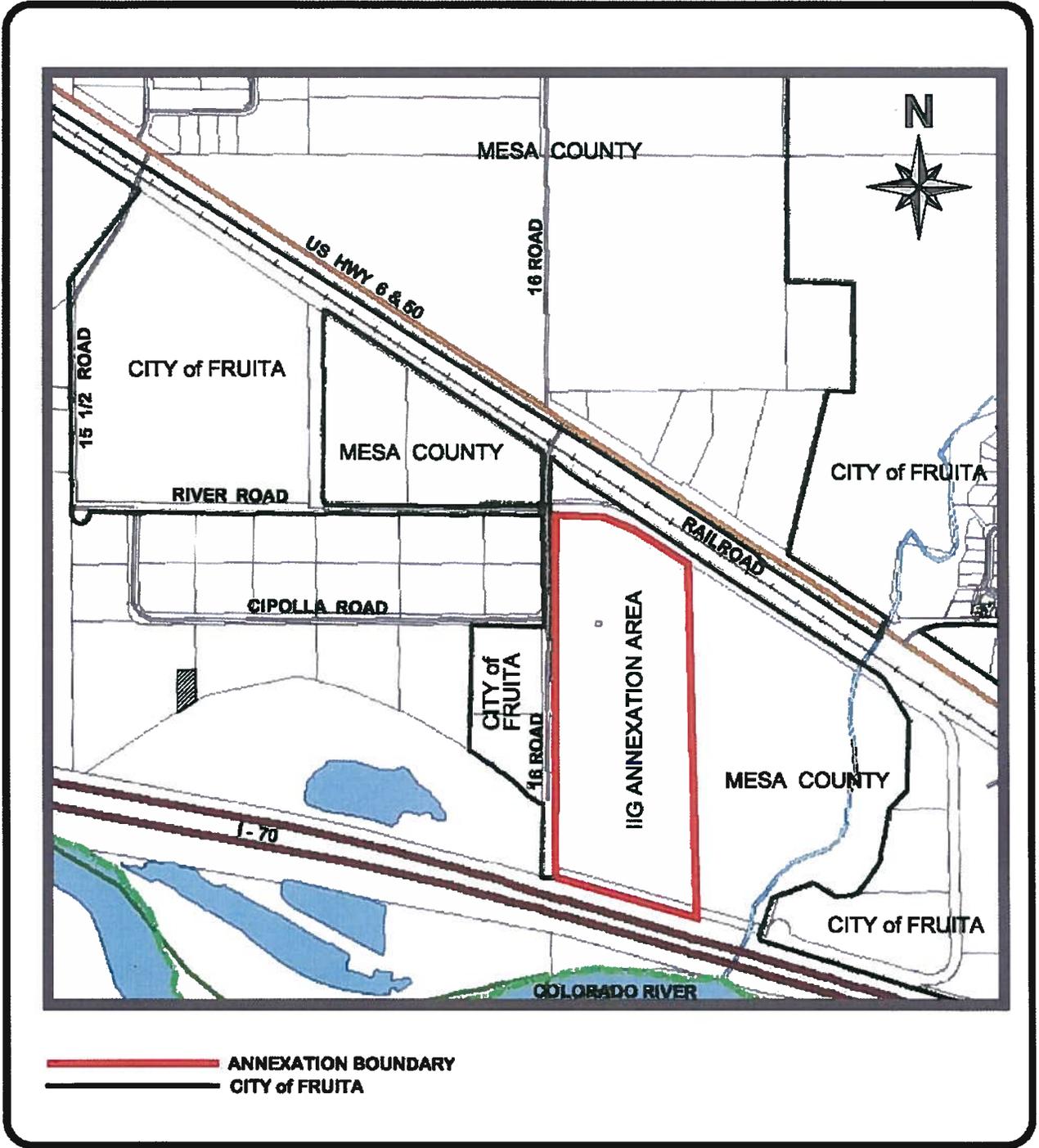


EXHIBIT B
IIG Annexation Map
1110 16 Road
Mesa County, Colorado

PROJECT NO:
F09-053

DATE:
08/03/11

DRAWN BY:
Les

CHECKED BY:
RWJII

- CIVIL & CONSULTING ENGINEERING/ARCHITECTURE
- CONSTRUCTION MANAGEMENT & SITE PLANNING
- FEASIBILITY STUDIES PERMIT EXPEDITING
- ENVIRONMENTAL ASSESSMENTS
- PROJECT MANAGEMENT
- HYDROLOGIC STUDIES

Prepared By
VORTEX
 ENGINEERING & ARCHITECTURE, INC.
 2394 Patterson Rd., Ste. 201
 Grand Junction, CO 81505
 (970) 245-9051

EXHIBIT "C"

LIFT STATION EASEMENT

LEGAL DESCRIPTION

A tract of land situated in the Northwest Quarter of Section 18, Township 1 North, Range 2 West, of the Ute Meridian, Mesa County, Colorado and being more particularly described as follows:

Commencing at the Northwest corner of said Section 18 from whence the West Quarter corner of Section 7, Township 1 North, Range 2 West of the Ute Meridian bears $N0^{\circ}04'43''E$ a distance of 2645.30 feet; thence $N89^{\circ}35'43''E$ a distance of 30.00 feet to the West property line of that property as described in Book 3880 at Page 803 of the Mesa County Clerk and Recorder; thence $S0^{\circ}04'43''W$ along said West line a distance of 922.14 feet to the Point of Beginning; thence $S89^{\circ}55'17''E$ a distance of 65.00 feet; thence $S0^{\circ}04'43''W$ a distance of 52.00 feet; thence $N89^{\circ}55'17''W$ a distance of 65.00 feet; thence $N0^{\circ}04'43''E$ a distance of 52.00 feet to the Point of Beginning.

Said tract of land contains 3380 square feet as described.

Above legal description written by:
Patrick W. Click
Colorado registered Professional Surveyor No. 37904
3194 Mesa Avenue
Unit B
Grand Junction, Colorado 81504

REVISED FEBRUARY 4, 2011