FARM LEASE AGREEMENT

THIS FARM LEASE AGREEMENT is entered into as of the _22nd__ day of January 2021, by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Arthur W. Fisher, hereinafter referred to as "Lessee", whose address for the purpose of this Agreement is 948 26 Road, Grand Junction, Colorado 81506.

RECITALS

A. The City is the owner of that certain real property in the City of Grand Junction, County of Mesa, State of Colorado, described as Lot 4 of the Replat of Lot 2 of Saccomanno Minor Subdivision, situated at the southwest corner of the intersection of 26½ Road and H Road and hereinafter referred to as "the Property". The City acquired the property for park purposes and intends to develop the Property as a community park; however, timing for development and use of the Property as a community park is uncertain. Until the Property is developed as a community park, the City believes it is in the best interest of the community that the Property continue to be maintained as a productive farm subject to the terms and rights and conditions of this Lease Agreement, that the water rights and ditch rights appurtenant to the Property be used to their full and maximum extent, that all aspects of the Property be maintained to the highest practicable standard, and that expenses be kept to a minimum without waste.

B. Lessee desires to lease the farming rights associated with the Property in accordance with the desires and express intent of the City. Lessee has represented to the City that Lessee possesses the knowledge, experience, equipment, personnel and financial resources to maintain the Property to the highest practicable standard and to use the water and water rights and ditches and ditch rights to their full and maximum extent, all in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, In consideration of the payment of rent and the performance of the promises, covenants, conditions, restrictions, duties and obligations set forth herein, the parties agree as follows:

1. Grant and Acceptance of Lease. The City hereby leases the farming rights associated with the Property to Lessee, and Lessee hereby accepts and leases the farming rights associated with the Property from the City, for the term stated in paragraph 2 below and for the specific purposes and duties of maintaining all aspects of the Property, including water and water rights and ditches and ditch rights, all in accordance with the terms and conditions of this Agreement.

2. Term.

2.1 The term of this Lease shall commence on February 1, 2021, and continue through January 31, 2024, at which time this Lease shall expire; provided, however, that in the event Lessee shall fully and completely fulfill each and every covenant, condition, duty and obligation of Lessee as hereinafter set forth and in the event Lessor determines, at Lessor's sole discretion, to again lease the farming rights associated with the Property in accordance with the provisions of this Lease, Lessee shall have the first right of refusal to

lease the Property for two (2) additional one (1) year terms commencing on February 1, 2024, and expiring on January 31, 2026 ("third term") as more fully set forth in paragraph 12 below.

The City may, in its sole discretion, allow Lessee to continue to occupy a designated portion of the Property for a reasonable period of time for the sole purpose of storing crops which have been harvested from the Property pending the sale and/or delivery of said crops to market.

2.2. City's right to terminate during the term. This Lease may be terminated by the City prior to the end of the term if funding becomes available for development of park facilities on the Property. Therefore the parties intend and understand that no action or investment shall be undertaken by the Lessee in any subsequent calendar year of the Lease term, or any renewal term, that would create an expectation of use for farming activities or harvest without first notifying the City and obtaining the City's express written acknowledgment.

3. Rental. Rental for the farming rights hereby leased during the term hereinabove specified shall be $1,000.00 per year, which shall be due and payable, without demand by the City, on or before February 15, 2021. In the event payment of rent is not received by the City on or before March 1, 2021, Lessee agrees to pay to the City a late charge of $100.00, which amount shall be added to the amount of rent(s) due. In the event payment of rent and any late charge is not received by the City on or before March 31, 2021, this Lease shall automatically terminate and neither party shall have any further rights, duties or obligations under this Agreement. Lessee shall pay any and all taxes, including but not limited to real estate and/or possessory interest taxes that arise out of or under this lease.

4. Reservations from Lease. The City withholds from this Lease and hereby retains and reserves unto itself:

(a) all oil, gas, coal and other minerals and mineral rights underlying and/or appurtenant to the Property;
(b) all water and water rights, ditches and ditch rights appurtenant to and/or connected with the Property, including, but not limited to, any water and/or water rights which may have been previously used on or in connection with the Property, for whatever purpose;
(c) all rights to grant, sell, bargain and convey ownership interest(s) in and to the Property, or any division thereof, to any other party, including the conveyance of easements, so long as such action will not interfere with Lessee's use and quiet enjoyment of the Property for the purposes set forth in this Agreement; and
(d) the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, in whole or in part, even if such taking is made by and/or for the purposes of the City, or for any conveyance in lieu of condemnation. Lessee hereby assigns and transfers to the City any claim Lessee may assert to compensation, including claims for damages, as a result of any condemnation;
(e) the right to lease a portion of the Property, the location and area of which will be determined by and in the sole discretion of the City, to a third party for a telecommunications tower and associated ground equipment.

5. Use and Condition of the Property.

5.1 Lessee agrees that Lessee's use of the Property is strictly limited to the growing and cultivating of the type(s) of crop(s) which are mutually agreed upon between the City and Lessee and for no other purposes. In connection therewith, Lessee agrees to thoroughly plow, irrigate, cultivate, fertilize and farm all farmable lands upon the Property in a responsible and prudent farm-like manner. This Lease does not authorize Lessee to permit stock of any kind to run in any field on the Property.

5.2 Lessee agrees that Lessee's use and occupancy of the Property shall be subject to all applicable laws, rules, rulings, codes, regulations and ordinances of any governmental authority, either now in effect or hereafter enacted, having jurisdiction over the Property and Lessee's use, occupancy and operations thereon. Lessee agrees that Lessee shall not use nor permit the Property to be used for any other purpose or in any other fashion or manner contrary to this Lease or the laws, ordinances, codes or regulations of any governmental unit or agency exercising jurisdiction over the Property or any use thereon.

5.3 Lessee agrees to maintain, clean and repair all aspects of the Property at Lessee's sole cost and expense, including, but not limited to driveways, fences, gates, ditches, headgates, piping and other irrigation facilities located upon the Property, and to not allow irrigation water to overrun any furrows or otherwise cause damage to the Property or to the real or personal property of any other party. Lessee agrees that the City shall not be obligated nor required to repair damages to any portion or aspect of the Property.

5.4 Lessee agrees to make a reasonable effort to keep the Property free from noxious weeds. Lessee further agrees that Lessee shall not commit nor permit waste, damage or injury to the Property.

5.5 Lessee has inspected the Property, the rights and privileges appurtenant thereto, and the rules, regulations, codes and ordinances governing Lessee's use, occupancy and operations thereon. Lessee agrees that the condition of the Property and such rights, privileges, rules, regulations, codes and ordinances are sufficient for the purposes of Lessee. The City makes no warranties, promises or representations, express or implied, that the Property is sufficient for the purposes of Lessee. If the Property is damaged due to fire, flood or other casualty, or if the Property or any aspect thereto is damaged or deteriorates to the extent where it is no longer functional for the purposes of Lessee, the City shall have no obligation to repair the Property nor to otherwise make the Property usable or occupiable; damages shall be at Lessee's own risk.

5.6 Lessee agrees the property is subject to a City lease option and lease with a third party for telecommunication tower(s) and supporting equipment of tower(s). Telecommunications lessee shall have reasonable ingress and egress to and from the premises to conduct surveys, inspections, structural soil tests, excavation, tower construction, maintenance, repair and/or upgrade, installation, maintenance, improvement/upgrade of ground equipment, and other related activities during any lease period at any time of any day or night. The City in its sole discretion may determine the location and area of the tower and equipment lease.

6. Irrigation of the Property. Irrigation of the Property is an essential duty and obligation to be undertaken by Lessee on behalf of the City. Irrigation of the Property shall be undertaken in accordance with the following provisions:

6.1 The City agrees to pay the base water assessments, when the same become due and payable, which are levied by authorities having jurisdiction and control over the irrigation water appropriated to the Property.

6.2 Lessee agrees to pay for all costs and fees, when the same become due and payable, which are charged for water usage in excess of the base amounts set forth in subparagraph 6.1 above.

6.3 Lessee shall apply the base water and such additional water as is necessary to the Property to irrigate crops during the historical irrigating season. Any failure by Lessee to irrigate the Property as set forth above, or any of the following acts or omissions on the part of Lessee with respect to the water rights appurtenant to the Property, shall be grounds for immediate termination of this Lease:

a. failure or refusal to cultivate the Property and/or make use of available water upon the Property without the prior written consent of the City; or

b. failure to maintain and preserve the irrigation structures, ditches, pipes and other irrigation facilities and appurtenances on the Property in such a manner as to allow the full application of water rights to the Property.

7. Fees and Charges. Lessee shall hold the City harmless from and indemnify the City against any and all fees, charges, costs and expenses associated with the Property, excepting the base water assessment which the City shall pay as set forth in paragraph 6.1. If Lessee fails to pay any of the foregoing when the same become due and payable, the City may, without obligation to do so, pay such amount(s) and, in such event, the amount(s) paid by the City, plus interest at the rate of fifteen percent (15%) per annum from the date of such payment by the City, shall be due and payable from Lessee to the City.

8. Nonliability of the City for Damage.

8.1 The City shall not be liable for liability or damage claims for injury to persons or property, including property of Lessee, from any cause relating to the occupancy and use of the Property by Lessee, including those arising out of damages or losses occurring on areas adjacent to the Property or easements used for the benefit of the Property during the term of this Lease or any extension thereof, nor for any injury or damage to any property of Lessee or any other party, from any cause. Lessee shall indemnify the City, its officers, employees and agents, and hold the City, its officers, employees and agents, harmless from all liability, loss or other damage claims or obligations resulting from any injuries, including death, or losses of any nature.

8.2 The City shall not be liable to Lessee for any damages or any loss of profits or loss of opportunities claimed by Lessee or for interruption of Lessee's business or operations resulting from fire, the elements, casualty of any kind or the closure of any public highway providing access to and from the Property.

8.3 The City shall not be liable to Lessee for any damages or loss of profits or loss of opportunities claimed by Lessee or for interruption of Lessee's business or operations resulting from the use of the Property by the third-party telecommunications tower lessee.

8.4 The City shall not be liable to Lessee for any damages or loss of profits or loss of opportunities claimed by Lessee or for interruption of Lessee's business or operations resulting from the City's termination of this Lease pursuant to and in accordance with Section 2.2 of this Lease Agreement.

9. Hazardous Substances.

9.1 The term "Hazardous Substances", as used in this Agreement, shall mean any substance which is: defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law enacted by any federal, state and local governmental agency or other governmental authority; a petroleum hydrocarbon, including, but not limited to, crude oil or any fraction thereof; hazardous, toxic or reproductive toxicant; regulated pursuant to any law; any pesticide or herbicide regulated under state or federal law. The term "Environmental Law", as used in this Lease Agreement, shall mean each and every federal, state and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal state and local governmental agency or other governmental authority, pertaining to the protection of human health and safety of the environment, either now in force or hereafter enacted.

9.2 Lessee shall not cause or permit to occur by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees or employees:

a. any violation of any Environmental Law on, under or about the Property or arising from Lessee's use and occupancy of the Property, including, but not limited to, air, soil and groundwater conditions; or

b. the use, generation, accidental or uncontrolled release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance in violation of any federal state or local law, ordinance or regulation either now in force or hereafter enacted.

10. Environmental Clean-Up.

10.1 The following provisions shall be applicable to Lessee and to Lessee's agents, guests, invitees, contractors, licensees and employees:

a. Lessee shall, at Lessee's sole cost and expense, comply with all Environmental Laws and laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances;

b. Lessee shall, at Lessee's sole cost and expense, make all submissions to provide all information required by and/or to comply with all requirements of all

governmental authorities ("the Authorities") under Environmental Laws and other applicable laws.

c. Should any Authority or the City demand that a clean-up plan be prepared and that a clean-up plan be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances on, under or about the Property, Lessee shall, at Lessee's sole cost and expense, prepare and submit the required plan(s) and all related bonds and other financial assurances, and Lessee shall carry out all such clean-up plan(s) in compliance with the Authorities and all Environmental Laws and other applicable laws.

d. Lessee shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances requested by any Authority. If Lessee fails to fulfill any duty imposed hereunder within a reasonable time, the City may do so on Lessee's behalf and, in such case, Lessee shall cooperate with the City in the preparation of all documents the City or any Authority deems necessary or appropriate to determine the applicability of Environmental Laws to the Property and Lessee's use thereof, and for compliance therewith, and Lessee shall execute all documents promptly upon the City's request. No such action by the City and no attempt made by the City to mitigate damages under any Environmental Law or other applicable law shall constitute a waiver of any of Lessee's obligations hereunder.

e. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

10.2 Lessee shall indemnify, defend and hold the City, its officers, employees and agents harmless from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Substances and the violation of any Environmental Law and other applicable law by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees and employees that occur during the term of this Lease or any extension thereof, or from Lessee's failure to provide all information, make all submissions, and take all actions required by all Authorities under the Environmental Laws and other applicable laws. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

11. Default, Sublet, Termination, Assignment.

11.1 Should Lessee:

(a) default in the performance of its agreements or obligations herein and any such default continue for a period of thirty (30) days after written notice thereof is given by the City to Lessee; or
(b) abandon or vacate the Property; or
(c) be declared bankrupt, insolvent, make an assignment for the benefit of creditors, or if a receiver is appointed; the City, at the City's option, may cancel and annul this Lease at once and enter and take possession of the Property immediately without any previous notice of intention to reenter, and such reentry shall not operate as a waiver or satisfaction

in whole or in part of any claim or demand arising out of or connected with any breach or violation by Lessee of any covenant or agreement to be performed by Lessee. Upon reentry, the City may remove the property and personnel of Lessee and store Lessee's property in a warehouse or at a place selected by the City, at the expense of Lessee and without liability to the City. Any such reentry shall not work a forfeiture of nor shall it terminate the rent(s) to be paid or the covenants and agreements to be performed by Lessee for the full term of this Lease; and, upon such reentry, the City may thereafter lease or sublease the Property for such rent as the City may reasonably obtain, crediting Lessee with the rent so obtained after deducting the cost reasonably incurred in such reentry, leasing or subleasing, including the costs of necessary repairs, alterations and modifications to the Property. Nothing herein shall prejudice or be to the exclusion of any other rights or remedies which the City may have against Lessee, including, but not limited to, the right of the City to obtain injunctive relief based on the irreparable harm caused to the City's reversionary rights.

11.2 Except as otherwise provided for (automatic and immediate termination), if Lessee is in default in the performance of any term or condition of this Lease Agreement, the City may, at its option, terminate this Lease upon giving thirty (30) days written notice. If Lessee fails within any such thirty (30) day period to remedy each and every default specified in the City's notice, this Lease shall terminate. If Lessee remedies such default, Lessee shall not thereafter have the right of thirty (30) days (to remedy) with respect to a similar subsequent default, but rather, Lessee's rights shall, with respect to a subsequent similar default, terminate upon the giving of notice by the City.

11.3 Lessee shall not assign or sublease the Property, or any right or privilege connected therewith, or allow any other person, except officers, employees, agents and clientele of Lessee, to occupy the Property or any part thereof without first obtaining the written consent of the City, which consent must be approved and ratified by the City Council of the City. Any attempt to sublet, assign or transfer without the prior written consent of the City shall be void *ab initio*. In the event an assignment of this Lease or a sublease is authorized by the City, Lessee shall not be released from Lessee's obligations and duties under this Lease and this Lease shall remain in full force and effect. Any consent by the City shall not be a consent to a subsequent assignment, sublease or occupation by any other party. Any unauthorized assignment, sublease or permission to occupy by Lessee shall be void and shall, at the option of the City, provide reasonable cause for the City to terminate this Lease. The interest of Lessee in this Lease is not to be assignable by operation of law without the formal approval and ratification by the City Council of the City.

11.4 This Lease is not intended to and shall in no way preclude the City from actively marketing the Property for sale or exchange, whether through the efforts of the City, a real estate broker or any other person, nor shall this Lease prevent the City from selling, exchanging or conveying the Property to any other party; provided, however, that in the event any such sale, exchange or conveyance is made during the term of this Lease, such sale, exchange or conveyance shall be made subject to Lessee's leasehold interest in the Property. In the event of the voluntary or involuntary transfer of the City's interest in the Property, Lessee will attorn to the transferee of, or successor to, the City's interest in the Property, and recognize such transferee or successor as Lessor under this Lease.

11.5 Lessee shall not engage or allow any contractor, materialman or supplier to perform any work or supply any materials or other goods or services on any portion of the Property which could be the subject of a mechanic's lien.

12. Option to Extend Lease. If Lessee performs Lessee's duties and obligations pursuant to this Agreement to the satisfaction of Lessor and if Lessor chooses, at its sole option and discretion, to again lease the farming rights associated with the Property, at the expiration of the term as set forth in paragraph 2, Lessor hereby grants to Lessee an option to extend this Farm Lease for two (2) additional one (1) year terms, upon the same terms and conditions of this Agreement or upon other terms and conditions which may hereafter be negotiated between the parties. In order to exercise Lessee's option for a second term, Lessee shall, on or before February 1, 2020, give written notice to Lessor of Lessee's desire and intention to lease the Property for a second term.

13. Fees or Commissions. The parties to this Lease Agreement warrant that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. The City and Lessee agree to defend, indemnify and hold the other harmless from any claim for real estate brokerage commissions or finder's fees asserted by any other party claiming to be entitled to brokerage commissions or finder's fees arising out of this Lease.

14. Notices. All notices to be given with respect to this Lease shall be in writing delivered either by United States mail or Express mail, postage prepaid, or by facsimile transmission, personally by hand or courier service, as follows:

To Lessor:
City of Grand Junction, Attention Ken Sherbenou
1340 Gunnison Avenue
Grand Junction, CO 81501

To Lessee(s):
Arthur W. Fisher
948 26 Road
Grand Junction, CO 81506

All notices shall be deemed given:

(a) if sent by mail, when deposited in the mail;
(b) if delivered by hand or courier service, when delivered; or
(c) if transmitted by facsimile, when transmitted.

The parties may, by notice as provided above, designate a different address to which notice shall be given.

15. Not a Partnership.

15.1 The City, by entering into this Lease Agreement, does not part with its entire possession of the Property, but only so far as it is necessary to enable Lessee to farm the Property and carry out the terms and provisions of this Lease. It is expressly agreed

between the parties that this Agreement is one of lease and not of partnership and that the City shall not be or become responsible for any debts contracted or incurred by Lessee. Lessee shall save, indemnify and hold the City, its officers, employees and agents harmless against all liability and loss, and against all claims or actions based upon or arising out of any claim, lien, damage or injury (including death), to persons or property caused by Lessee or sustained in connection with Lessee's performance of the terms and conditions of this Agreement or the conditions created thereby, or based upon any violation of any statute, ordinance, code or regulation, either now in force or hereinafter enacted, and the defense of any such claims or actions, including the costs and fees of attorneys, consultants and experts. Lessee shall also save, indemnify and hold the City, its officers, employees and agents harmless from and against all liability and loss in connection with, and shall assume full responsibility for the payment of, all federal, state and local taxes, fees or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to employees engaged by Lessee.

15.2 The City hereby reserves the right to at all times have its officers, employees and agents enter into and upon the demised premises and every part thereof and to do such acts and things as may be deemed necessary for protection of the City's interests therein.

16. Enforcement, Partial Invalidity, Governing Law.

16.1 If the City uses the services of a city attorney, or engages another attorney or attorneys to enforce its rights hereunder, or to terminate this Agreement, or to defend a claim by Lessee or any person claiming through Lessee, and/or to remove Lessee or Lessee's personal property from the Property, Lessee agrees to pay the reasonable attorney's fees of the City in such regard, plus the costs or fees of any experts, incurred in such action.

16.2 The invalidity of any portion of this Lease Agreement shall not affect the validity of any other provision contained herein. In the event any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provisions.

16.3 This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce any covenant or agreement contained in this Agreement shall be in Mesa County, Colorado.

17. Surrender, Holding Over. Lessee shall, upon the expiration or termination of this Lease, surrender the Property to the City in good order, condition and state of repair, reasonable wear and use excepted. In the event Lessee fails, for whatever reason, to vacate and surrender the Property upon the expiration or termination of this Lease and the parties have not reached an agreement which would allow Lessee to continue to occupy any portion of the Property, Lessee agrees that Lessee shall pay to the City the sum of $25.00 per day for each and every day thereafter until Lessee has effectively vacated and surrendered the Property. The parties agree that it would be difficult to establish the actual damages to the City in the event Lessee fails to vacate and surrender the Property upon the expiration or termination of this Lease, and that said $25.00 daily fee is an appropriate liquidated damages amount.

18. Total Agreement; Applicable to Successors. This Lease contains the entire agreement between the parties and, except for automatic expiration or termination, cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. This Lease and the terms and conditions hereof apply to and are binding upon the successors and authorized assigns of both parties.

The parties hereto have each executed and entered into this Lease Agreement as of the day and year first above written.

The City of Grand Junction

Ken Sherbenou
Parks & Recreation Director

Lessee(s):

Arthur W. Fisher