

RESOLUTION NO. 38-93

LEASING THE 1993 BIG GAME HUNTING RIGHTS
ON THE UPPER PORTION OF THE SOMERVILLE RANCH PROPERTY

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

That the City Manager, on behalf of the City and as the act of the City, is hereby authorized and directed to execute the attached Lease Agreement with Golden Elk Outfitters for the lease of 1993 big game hunting rights, as defined by the Colorado Division of Wildlife, on approximately 4,700 acres of City property known as the Somerville Ranch.

PASSED and ADOPTED this 16th day of June, 1993.

Attest:

President of the Council

City Clerk

HUNTING LEASE AGREEMENT

THIS HUNTING LEASE AGREEMENT is made by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Golden Elk Outfitters, hereinafter referred to as "the Lessee".

RECITALS:

A. The City is the owner of that certain real property situated in the County of Mesa, State of Colorado, as shown on Exhibit A which is attached hereto and incorporated herein by reference, hereinafter referred to as "the Property".

B. The Lessee desires to lease the exclusive hunting rights on the Property during the 1993 big game hunting season, as defined by the Colorado Division of Wildlife ("the DOW"), under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the terms, promises, covenants and conditions herein specified, the parties hereto mutually agree as follows:

1. The City hereby leases to the Lessee the exclusive hunting rights on the Property during the 1993 big game hunting season as defined by the DOW.

2. The Lessee agrees to pay to the City as rental for this Lease the total amount of \$16,000.00, due and payable as follows: 1) \$8,000.00 shall be paid to the City upon the execution of this Agreement by the Lessee; 2) \$8,000.00 shall be paid to the City on or before the first day of the 1993 big game archery season as defined by the DOW. In the event the Lessee is unable, for any reason, to fulfill the registration requirements of the Colorado Office of Outfitters Registration Board on or before the first day of the 1993 big game archery season, then this Lease shall automatically terminate and the \$8,000.00 paid by the Lessee upon the execution of this Agreement shall be forfeited by the Lessee and retained by the City.

3. The Lessee agrees to:

a. Secure and maintain in effect during the term of this Lease all licensing and registration requirements of the Colorado Office of Outfitters Registration.

b. Use reasonable care in the use of the Property and to keep the Property free from all litter, debris, human waste and animal waste, and to provide sanitary human waste facilities at locations agreed upon by the City and maintain said facilities in a manner that will not allow human waste to remain upon the surface of the ground or to enter into any water course or water way, including, but not limited to, streams, creeks, ponds, springs, ditches and reservoirs.

c. Within fourteen (14) days upon the expiration of the 1993 big game hunting season,

surrender and deliver the Property to the City in as good a condition as when the Lessee entered the Property, or better.

d. Waive and forego any claim, cause of action or demand the Lessee may have against the City, its officers, employees and agents, for injury to or destruction of any property of the Lessee or any third party which may be lost, injured, damaged, destroyed or devalued as a result of the act, or failure to act, of the Lessee or any third party; and to indemnify the City, its officers, employees and agents, and to hold the City, its officers, employees and agents, harmless from any and all claims, damages, actions, personal injury (including death), costs and expenses of every kind in any manner arising out of or resulting from the Lessee's use of the Property.

e. Not use the Property for any purpose which is prohibited by the laws of the United States of America, the State of Colorado, the County of Mesa or any other governmental agency having control, jurisdiction or authority over the Property and the Lessee's use thereof. The Lessee agrees to comply with all police, fire and sanitary regulations imposed by any governmental agency either now in force or hereinafter enacted, and to not use the Property for any improper or questionable purposes whatsoever.

f. At the Lessee's expense and during the term of this Lease, purchase and maintain in effect suitable Comprehensive General Liability Insurance which will protect the Lessee and the City, its officers, employees and agents from liability in the event of loss of life, personal injury, or property damage suffered by any person or persons on, about or using the Property. Such insurance shall not be cancelable without thirty (30) days prior written notice to the Risk Manager of the City and shall be written for at least a minimum of \$500,000.00, combined single limit. The certificate of insurance must be deposited with the Risk Manager of the City and must designate the City of Grand Junction, its officers, employees and agents as additional insureds.

g. Comply with all Workers Compensation laws and, if required by such Workers Compensation laws, provide proof of Workers Compensation insurance to the City's Risk Manager. Said Workers Compensation insurance shall cover obligations imposed by applicable laws for any employee engaged by Lessee in the performance of work on the Property.

h. Limit the number of hunters on the Property as follows: The number of hunters during any archery season shall not exceed four (4); The number of hunters during any rifle season shall not exceed ten (10). The Lessee agrees to coordinate its activities with the Colorado Division of Wildlife to ensure that the harvest of animals will not exceed the harvest objectives of the DOW.

i. Restrict open campfires to locations which are acceptable to the City.

j. Within ten (10) days of each season, provide the City with an accurate accounting of the amount and type of animal(s) harvested during each season.

4. The Lessee represents that it is familiar with the Property and its boundaries and accepts the same in its present condition; The Lessee agrees that the condition of the Property is sufficient for the purposes of the Lessee. The City makes no warranties, representations or promises that the Property is sufficient for the purposes of the Lessee. The Lessee agrees that its use of the Property shall be at the Lessee's own risk; the City shall not be responsible or liable for the success of Lessee's operation or the loss of profits or opportunities.

5. The Lessee acknowledges and understands that the ranching and grazing rights on the Property are leased to a third party ("the Ranch Lessee"). With respect to the Ranch Lessee, the Lessee agrees as follows:

a. The Ranch Lessee shall have the right to access the property to the extent that such access will not unreasonably affect the Lessee's rights under this Agreement.

b. The Lessee shall pay for any costs for damages or harm to livestock which are caused by or result from the acts of the Lessee or the Lessee's employees and clientele.

c. Gates which are closed at the time of the Lessee's arrival shall be closed by Lessee immediately after passing through said closed gates. Gates which are found to be open at the time of arrival by Lessee may remain open unless the Lessee is directed to do otherwise by the Ranch Lessee.

d. Prior to the beginning of the 1993 big game hunting season, the Lessee will meet with the Ranch Lessee and coordinate its activities with the ranching and grazing operation. Items to be agreed upon between said parties shall include, but not be limited to, the usage of water, supervision of hunters, control of gates, and ingress and egress to and from the Property. Said agreement shall be evidenced by the Ranch Lessee's consent as herein provided.

6. Lessee shall endeavor to cause all of its employees and clientele to at all times conduct themselves in a proper and responsible manner.

7. The Lessee shall, during the term of this Lease, have the exclusive right to remove trespassers from the Property; provided, however, that the Lessee acknowledges that its exercise of said right shall be at the Lessee's own risk; provided, further, that the Lessee acknowledges that the City, its officers, employees and agents, shall have the right to be on the Property during the term of this Lease and may inspect the Property and the Lessee's occupancy thereof at anytime.

8. Notwithstanding anything herein to the contrary, if the Lessee is in default in the performance of any term or condition of this Lease, the City may, at its option, terminate this Lease upon giving three (3) days advanced written notice. If Lessee fails within any such three (3) day period to remedy each and every default specified in the City's notice, this Lease shall automatically terminate. If the Lessee remedies such default(s), the Lessee shall not thereafter

have the right to cure or remedy with three (3) days with respect to the same default(s), but rather, the Lessee's rights under this Agreement shall, with respect to subsequent similar default(s), automatically terminate upon the giving of written notice by the City.

This Lease shall automatically terminate in the event the Lessee: becomes insolvent; is subject to a bankruptcy filing whether voluntary or involuntary; is subject to an assignment for the benefit of creditors or if a receiver is appointed; should suffer death or become disabled to the extent that would preclude the Lessee from fulfilling each and every term and condition under this Agreement; fails in any manner to comply with any of the term, covenants or conditions of this Lease (to be kept and performed by the Lessee); or should the Lessee, its employees or agents, by any act of negligence or carelessness, or through any act of commission or omission permit, or suffer to be permitted, damage(s) to the Property in any substantial manner. In such event, the City may immediately retake possession of the Property and the Lessee agrees that prior monies received by the City shall be retained by the City. The Lessee further agrees that the City shall have the right to sue for the balance of payments not received, to lease the hunting rights on the Property to a third party, and any other lawful remedy.

If this Lease is terminated by the City, except termination due to the expiration of the Lease term, the Lessee shall have reasonable access to and from the Property for a reasonable time, but not to exceed ten (10) days, to remove the Lessee's personal property. If the Lessee fails to remove the Lessee's personal property within said ten (10) day period, the City shall not be responsible for the care and safekeeping thereof and may, at its option, remove and store the same in a safe and reasonable manner, the cost, expense and risk of which shall be borne by the Lessee. The Lessee agrees that items not timely recovered by the Lessee may be sold by the City to cover expenses, with net proceeds after expenses paid to the Lessee. The City may, at its option, set off amounts owed under this Lease against the proceeds of said sale.

9. The Lessee shall not sublet, assign or transfer any of its interests in this Lease, or enter into any contract or agreement affecting the Lessee's interest in this Lease without obtaining the prior written approval of the City.

10. The Lessee acknowledges that the Property is bordered in part by private and federally owned lands. Any liabilities arising from the Lessee, its employees and clientele, entering, trespassing, or in any way damaging properties of any other party shall be the responsibility of the Lessee.

11. It is expressly agreed that this Agreement is one of lease and not of partnership. The City shall not be or become responsible for the success or failure, profit or loss of profits, loss of opportunities, or any debts contracted by the Lessee. The Lessee shall save, indemnify and hold the City, its officers, employees and agents, harmless against all liability or loss, and against all claims or actions based upon or arising from any claim, lien, damage or injury (including death), to persons or property caused by the Lessee or sustained in connection with the Lessee's performance under this Lease, the violation of any statute, ordinance, code or

