

RESOLUTION NO. 113-94

AUTHORIZING A LEASE OF THE CITY PROPERTY AT 1140 SOUTH 5TH STREET  
TO HIGH COUNTRY GAS AND SUPPLY

WHEREAS, the City of Grand Junction is owner of the real property described as Lot 1 and 2 of Block 2, South Fifth Street Subdivision, also known as 1140 South 5th Street; and

WHEREAS, High Country Gas and Supply, a Colorado General Partnership, desires to lease the Property for the purpose of conducting a welding supply and fabrication business.

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

That the City Manager be authorized, on behalf of the City and as the act of the City, to execute the attached Lease Agreement with High Country Gas and Supply, a Colorado General Partnership, for the lease of said Property for a term of six months, commencing on December 15, 1994, and expiring on June 14, 1995, and for a rental fee of \$325.00 per month, subject to each and every term and condition of the attached Lease Agreement.

PASSED and ADOPTED this 7th day of December, 1994.

Attest:

/s/ Reford C. Theobold  
President of the City Council Pro Tem

/s/ Stephanie Nye  
City Clerk

## LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into as of the 15th day of December, 1994, between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and High Country Gas and Supply, a Colorado General Partnership, hereinafter referred to as "the Lessee", whose address for the purpose of this Lease Agreement is 1140 South 5th Street, Grand Junction, Colorado 81501.

### RECITALS

A. The City is the owner of the following described real property and improvements situate in the City of Grand Junction, Mesa County, Colorado:

Lot 1 and 2 of Block 2, South Fifth Street Subdivision,  
also known as 1140 South 5th Street and hereinafter referred to as "the Property".

B. The Lessee desires to lease the Property for the purpose of conducting business as a welding supply and fabrication business.

C. The City has agreed to lease the Property to the Lessee under the terms and conditions of this Lease Agreement.

NOW, THEREFORE, In consideration of the payment of rent and the performance of the promises set forth herein, the City does hereby lease to the Lessee the above described Property.

1. The term of this Lease shall be for a period of six (6) months, commencing on December 15, 1994, and expiring on June 14, 1995. Should the City, at its sole discretion, allow the Lessee holdover and continue in possession of the Property after expiration of the term of this Lease, the Lessee's continued occupancy of the Property shall be considered a month-to-month tenancy subject to all of the terms and conditions of this Lease Agreement.

2. Lessee agrees to pay to the City as rental for the Property the amount of \$325.00 per month, in advance, due and payable without demand by the City on or before the 15th day of each month during the term of this Lease, beginning with the month of December, 1994. In the event payment of the rent is not received by the City on or before the 15th day of each month, the Lessee agrees to pay to the City a late charge of \$50.00, which amount shall be added to the amount of rent(s) due.

3. The Lessee agrees to:

(a) Timely pay any and all general property taxes which might be levied against the Property and attributable to the occupancy of the Property by the Lessee during the term of this Lease; and to promptly pay for all utilities charges including, but not limited to, natural gas, electricity, water, sewer and trash removal imposed with respect to the Property.

(b) Maintain and keep the building and all improvements and fixtures in and upon the Property, including, but not limited to, sewer connections, roofing, plumbing, heating and ventilation systems, wiring and glass, in good repair, all at the Lessee's sole cost and expense, and at the expiration of this Lease, surrender the Property and improvements thereon to the City in as good a condition as when the Lessee entered the Property, reasonable use and wear excepted.

(c) Keep the Property free from all litter, dirt, debris and obstructions, and to keep all sidewalks free from snow and ice.

(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 that may be lost, injured, destroyed or devalued as a result of the act, or failure to act, of the Lessee or any third person; 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, costs and expenses of every kind in any manner arising out of, or resulting from the Lessee's use of the Property.

(e) Use the Property for no purpose prohibited by the applicable laws of the United States, the State of Colorado, the County of Mesa or the City of Grand Junction; to comply with all police, fire and sanitary regulations imposed by any municipal, state or federal authority either now in force or hereinafter enacted, and to use the premises for no improper or questionable purposes whatsoever.

(f) Purchase and maintain in effect suitable comprehensive general liability insurance which will protect 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 City and shall be written for at least Five Hundred Thousand Dollars (\$500,000.00), combined single limit. A certificate of insurance evidencing such coverage must be filed 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 Worker's Compensation laws and, when applicable, provide Worker's Compensation insurance which shall cover obligations imposed by applicable laws for any employee engaged in the performance of work on the Property.

4. If the Lessee fails to timely pay any and all amounts required pursuant to this Lease Agreement, the City may pay such amounts and in such event, the amount(s) paid by the City plus interest thereon at the rate of fifteen percent (15%) per annum shall be added to the amount(s) of the rent(s) due and payable by the Lessee.

5. (a) The Lessee has inspected the Property and improvements and accepts the Property and improvements in their present condition. The Lessee agrees that the condition of the Property and improvements is sufficient for the purposes of the Lessee. The City makes no warranties nor promises, express or implied, that the improvements nor the Property are sufficient for

the purposes of the Lessee.

(b) In the event the premises are damaged due to fire or any other casualty, or if the improvements or fixtures deteriorate to the extent where they are no longer functional for the purposes of the Lessee, the City shall have no obligation to repair the improvements nor to otherwise make the premises usable or occupiable; damages shall be at the Lessee's sole and absolute risk. If the City determines not to perform repairs or to otherwise make the premises usable or occupiable, the Lessee may terminate this Lease by giving appropriate notice to the City that this Lease is to be terminated.

6. During the term of this Lease, the Lessee shall have the exclusive right-of-way for ingress and egress to and from the Property; provided, however, that the City, its officers, employees and agents shall have the right to be on the Property during emergencies and may inspect the Property at any time.

7. (a) This Lease shall automatically terminate in the event the Lessee's High Country Gas and Supply business: 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; if the Lessee fails in any manner to comply with any of the terms, covenants, or conditions of this Lease to be kept and performed by the Lessee; or should the Lessee, by any act of negligence or carelessness, or thorough any act of commission or omission permit, or suffer to be permitted, damage to the Property or the demised premises in any substantial manner. In such event, the City may immediately retake possession.

(b) If this Lease is terminated by the City, except termination due to expiration of the lease term, the Lessee shall have reasonable access to the Property for a reasonable time, not to exceed thirty (30) days, to remove the Lessee's personal property. If the Lessee fails to remove the Lessee's personal property within the time prescribed, the City shall not be responsible for the care and safekeeping thereof and may remove the same and store the same in a reasonable manner, the cost, expense and risk of which shall be borne solely by the Lessee. The Lessee hereby agrees that items not timely removed may be sold by the City to cover expenses, with net proceeds after expenses, if any, paid to the Lessee. The City may also set off amounts owed under this Lease Agreement against proceeds of said sale.

8. Upon termination of this Lease, whether as above provided or whether terminated any other way, the Lessee agrees to peaceably surrender and deliver up the premises together with all keys thereunto to the City immediately upon termination.

9. If the Lessee is in default in the performance of any term or condition of this Lease Agreement, the City may, at its sole option, terminate this Lease upon giving thirty (30) days written notice. If the Lessee fails within any such 30 day period to remedy each and every default specified in the City's notice, this Lease shall automatically terminate. If the Lessee remedies its default, the Lessee shall not thereafter have the right of 30 days (to remedy) with respect to the same default, but rather, the Lessee's rights shall, with respect to a subsequent similar default, terminate upon the giving notice

by the City. All notices sent pursuant to this Lease Agreement shall be delivered by United States certified mail, return receipt requested, and shall be considered served upon the receiving party as of the date of mailing indicated on the postal receipt. All notices to the Lessee shall be sent to 1140 South 5th Street, Grand Junction, Colorado 81501. All notices to the City shall be sent to: Property Agent, 250 North 5th Street, Grand Junction, Colorado 81501.

10. Should the Lessee fail, for whatever reason, to vacate the premises at the end of this Lease or when this Lease is terminated, the Lessee agrees to pay to the City, in addition to all other sums due hereunder, daily rental in the amount of \$100.00 per day for each and every day or portion thereafter. The parties agree that it would be difficult to establish the actual damages to the City in such event and that said \$100.00 daily rental is an appropriate liquidated damages amount.

11. The Lessee shall not sublet, assign or transfer any of the Lessee's 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. Further, the Lessee shall make no structural changes without the prior written consent of the City, which consent shall not be unreasonably withheld.

12. (a) It is expressly agreed that this Lease is one of lease and not of partnership and the City shall not be or become responsible for any debts contracted by the Lessee. The Lessee shall keep the Property and demised premises free from any liens arising out of any work performed, materials furnished or obligations incurred by the Lessee.

(b) 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 and claim, lien, damage, injury, or death, to persons or property caused by the Lessee or sustained in connection with the performance of this Lease or by conditions created thereby, or based upon any violation of statute, ordinance, code or regulation, and the defense of any such claims or actions, including attorney's fees.

(c) The Lessee shall pay and indemnify the City, its officers, employees and agents against all liability and loss in connection with, and shall assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to employees engaged in performance of this Lease.

13. In the event the City uses its City Attorney or engages an attorney to enforce the City's rights hereunder, the Lessee agrees to pay any and all attorney fees, plus costs, including, but not limited to, the costs of any experts. This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of Colorado. Venue shall be in Mesa County, Colorado.

14. The City acknowledges receipt of a deposit in the amount of \$500.00 to be held by the City as a guarantee for the payment of general property taxes which might be levied against the Property and attributable to the occupancy of the Property by the Lessee during the term of this Lease as provided in paragraph 3(a) above. The City may apply said deposit to the payment of said property

taxes in the event the Lessee fails to pay the same on or before the date said taxes are due and payable and shall account to the Lessee for any balance which exceeds \$500.00. The Lessee may not apply the deposit hereunder to the payment of rent or the performance of the obligations provided herein. Upon full payment by the Lessee of the general property taxes as herein provided, the City shall, within fifteen (15) days of such payment by the Lessee, return said \$500.00 deposit to the Lessee.

15. The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties, unless included herein, are null and void and of no effect. No alterations, amendments, changes or modifications to this Lease Agreement shall be valid unless they are contained in an instrument which is executed by all parties with the same formality as this Lease Agreement.

16. The provisions of this Lease Agreement shall not inure to the benefit of the heirs, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, each party to the Lease Agreement has caused it to be executed as of the day and year first above written.

Attest:

For the City of Grand Junction, Colorado

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager

Lessee:

\_\_\_\_\_  
Robert M. Distel

\_\_\_\_\_  
Gary D. Galloway