

RESOLUTION NO. 119-94

AUTHORIZING A ONE YEAR DRY GRAZING LEASE
OF CITY PROPERTY TO WILLIAM ARTHUR MERTZ

WHEREAS, the City of Grand Junction is the owner of the following described real property situated in the County of Mesa, State of Colorado, to wit:

The SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 25, Township 2 South, Range 1 East of the Ute Meridian; and also

Lots 2 and 4 in Section 30, Township 2 South, Range 2 East of the Ute Meridian, Subject to a 25-foot wide nonexclusive easement for ingress and egress purposes across Lot 2 in said Section 30, the center line of said easement being more particularly described as follows: Beginning at a point on the South Line of said Lot 2 from whence the Southeast Corner of said Lot 2 bears East a distance of 180.0 feet; thence running Northeasterly to a point on the East Line of said Lot 2 from whence the Southeast Corner of said Lot 2 bears South a distance of 260.0 feet, said point being the Point of Terminus of said easement, and Excepting therefrom right-of-way for U.S. Highway No. 50; and

WHEREAS, William Arthur Mertz has leased the dry grazing rights associated with said property from the City since 1989 and is desirous of securing an additional one year dry grazing lease;

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

That the City Manager be authorized, on behalf of the City and as the act of the City, to execute the attached Dry Grazing Lease with William Arthur Mertz for the lease of the dry grazing rights associated with said property for a term of one year, commencing on January 1, 1995, and expiring on December 31, 1995, and for a total rental fee of \$350.00, subject to each and every term and condition of the attached Dry Grazing Lease.

PASSED and ADOPTED this 21st day of December, 1994.

Attest:

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

\s\ Stephanie Nye
City Clerk

DRY GRAZING LEASE

THIS DRY GRAZING LEASE is entered into as of the 1st day of January, 1995 between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and William Arthur Mertz, hereinafter referred to as "the Lessee", whose address for the purpose of this Lease is P.O. Box 204, Clifton, Colorado 81520.

A. The City is the owner of the real property described in the attached Exhibit "A", which is incorporated herein by reference and hereinafter referred to as "the Property".

B. The Lessee desires to lease the dry grazing rights associated with the Property under the terms and conditions of this Lease Agreement.

C. The City has agreed to lease the dry grazing rights associated with the Property to the Lessee under the terms and conditions of this Dry Grazing Lease.

NOW, THEREFORE, in consideration of the payment of rent and the performance of the terms, covenants, conditions and promises set forth herein, the City hereby leases to Lessee the dry grazing rights associated with the Property.

1. The term of this Lease shall be for one year, commencing on January 1, 1995, and expiring on December 31, 1995.

2. Lessees agree to pay City, as rental for said dry grazing rights, the total sum of \$350.00, due and payable, without demand by the City, on or before January 4, 1995. Lessee agrees to pay a late charge of \$5.00 for each and every day following the specified due date, which late charge shall be added to the amount of rent due. This Lease, at the option of City, shall automatically terminate, and the City may immediately retake possession of the Property, if the rental payment is not received on or before January 15, 1995.

3. The City specifically reserves and retains from this Lease any and all water and water rights owned by the City which may have previously been used on or connected with the Property.

4. The Lessee agrees to:

(a) Timely pay any and all real property taxes which may be levied against the Property, and any taxes or assessments levied against the livestock and other personal property of Lessee which may be levied as a result of the Lessee's use and occupancy of the Property;

(b) Use the Property for no purpose prohibited by the applicable laws of the United States, the State of Colorado, the County of Mesa, the City of Grand Junction or any other governmental authority either now in effect or hereinafter enacted; 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;

(c) Use the Property for dry gazing purposes only and in a manner that will not

overgraze, cause deterioration of or destruction to the Property; and limit the amount of livestock grazed on the Property to twelve (12) animal units per month, not to exceed one animal unit per month for every 15 acres of land herein leased.

(d) Not violate nor permit to be violated any code, rule, regulation or order pertaining to the use, application, transportation and storage of any hazardous, toxic or regulated substances or materials, including, but not limited to, herbicides, pesticides and petroleum products. The Lessee agrees that any spill, excessive accumulation or violation of any code, rule, regulation or order pertaining to the use, application, transportation and storage of any such substances shall be reported immediately to the City. The Lessee further agrees that all costs and responsibilities for cleaning, removing and abating any violation pursuant to this paragraph shall be borne solely by the Lessee.

(e) At the expiration of this Lease, surrender the Property to the City in as good a condition as when the Lessee entered the Property, reasonable use, wear, loss by fire or inevitable accident excepted;

(f) 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.

5. (a) The Lessee has inspected the Property, has received the demised premises in good order and condition, and agrees that the condition of the demised premises is sufficient for the purposes of the Lessee. The City makes no warranties nor promises, express or implied, that the Property is sufficient for the purposes of the Lessee.

(b) In the event the demised premises are damaged due to fire, flood or any other casualty, to the extent that the Property is no longer functional for the purposes of the Lessee, the City shall have no obligation to repair the Property nor to otherwise make the premises usable or occupiable; damages shall be at the Lessee's sole and absolute risk. If the City, in its sole discretion, 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. The City, by entering into this Lease Agreement, does not part with its entire possession of the demised premises, but only so far as it is necessary to enable the Lessee to carry out the terms and provisions of this Lease. 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.

7. (a) 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; if the Lessee should suffer death; 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 P.O. Box 204, Clifton, Colorado 81520. 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 \$50.00 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 \$50.00 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 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. The City

shall not be or become responsible for loss profits, loss opportunities or 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.

13. (a) During the term of this Lease, the Lessee shall be entitled to a first right of refusal to purchase the Property under the same terms and conditions contained in any bona fide offer to purchase which is acceptable to the City. The City shall notify the Lessee in writing of the terms and conditions of any such bona fide offer, and the Lessee shall have five (5) days from the City's mailing of such notice to exercise the Lessee's first right of refusal by the Lessee's unconditional acceptance of all terms and conditions of the offer.

(b) The Lessee's first right of refusal to purchase the Property is not intended to, and shall in no way, preclude the City from actively marketing the Property for sale; nor shall such provision and first right of refusal prevent the City from selling the Property to another party in the event the Lessee determines not to exercise the first right of refusal as herein provided.

14. 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.

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, a
Colorado home rule municipality

City Clerk

City Manager

Lessee:

William Arthur Mertz

Exhibit "A"

The SE¹/₄ of the NE¹/₄ and the NE¹/₄ of the SE¹/₄ of Section 25, Township 2 South, Range 1 East of the Ute Meridian;

and also

Lots 2 and 4 in Section 30, Township 2 South, Range 2 East of the Ute Meridian, Subject to a 25-foot wide nonexclusive easement for ingress and egress purposes across Lot 2 in said Section 30, the center line of said easement being more particularly described as follows: Beginning at a point on the South Line of said Lot 2 from whence the Southeast Corner of said Lot 2 bears East a distance of 180.0 feet; thence running Northeasterly to a point on the East Line of said Lot 2 from whence the Southeast Corner of said Lot 2 bears South a distance of 260.0 feet, said point being the Point of Terminus of said easement, and Excepting therefrom right-of-way for U.S. Highway No. 50.