

RESOLUTION NO. 71-94

AUTHORIZING THE PURCHASE BY THE CITY OF GRAND JUNCTION,
COLORADO, OF CERTAIN REAL PROPERTY;
RATIFYING ACTIONS HERETOFORE TAKEN IN CONNECTION THEREWITH

WHEREAS, the City of Grand Junction has entered into a contract with Jess Paul Haller and Georgia Lee Haller for the sale by the said Hallers and the purchase by the City of that certain real property described as follows:

Parcel No. 1:

Beginning at a point 874.7 feet East and South 04°00' East 323 feet from the Northwest Corner of the SE¼ of Section 23, Township 1 South, Range 1 West of the Ute Meridian, City of Grand Junction, County of Mesa, State of Colorado; thence South 04°00' East 45 feet; thence East 165.3 feet; thence South 150 feet; thence West 300 feet; thence North 57 feet; thence South 77°24'50" West 102.58 feet; thence North 04°00' West to a point West of the point of beginning; thence East 243.7 feet to the point of beginning;

Parcel No. 2:

Beginning at the Northeast Corner of the NW¼ of the SE¼ of Section 23, Township 1 South, Range 1 West of the Ute Meridian, City of Grand Junction, County of Mesa, State of Colorado, from whence the Northwest Corner of said NW¼ SE¼ bears S 90°00'00" W 1319.41 feet and all bearings contained herein to be relative thereto; thence S 00°43'57" E along the East line of said NW¼ SE¼ 364.11 feet to the true point of beginning; thence continuing S 00°43'57" E 252.87 feet; thence S 87°04'01" W 264.35 feet; thence N 00°27'27" E 113.72 feet; thence N 90°00'00" E 2.34 feet; thence N 00°00'00" E 152.16 feet; thence N 90°00'00" E 257.52 feet to the true point of beginning; and

WHEREAS, the City Council deems it necessary and proper that the City purchase said Property together with all improvements thereon and appurtenant thereto.

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

1. That the City Council hereby authorizes the purchase of the Property by the City for a purchase price of \$30,500.00. All actions heretofore taken by the officers, employees and agents of the City relating to the purchase of the Property which are consistent with the provisions of the attached Contract to Buy and Sell Real Estate and this Resolution are hereby ratified, approved and confirmed.

2. That the City Council hereby authorizes the expenditure of \$30,500.00 for the purchase of the Property, to be paid at closing on August 31, 1994, or by mutual agreement at an earlier date.

3. That the officers, employees and agents of the City are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Resolution and the attached Contract to Buy and Sell Real Estate, including, without limitation, the execution and delivery of such certificates and documents as may be necessary or desirable.

PASSED and ADOPTED this 17th day of August 1994.

Attest:

/s/ Stephanie Nye
City Clerk

/s/ R. T. Mantlo
President of the City Council

CONTRACT TO BUY AND SELL REAL ESTATE
(Seller's Remedy Limited to Liquidated Damages)

THIS CONTRACT TO BUY AND SELL REAL ESTATE is entered into by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Jess Paul Haller and Georgia Lee Haller, hereinafter referred to as "the Sellers".

1. The Sellers hereby acknowledge having received from the City the sum of \$1,000.00, in the form of a check, to be held by Abstract & Title Company of Mesa County, Inc., Closing Agent for the Seller and the City, in said Closing Agent's escrow or trustee account, as earnest money and part payment for the real property described on Exhibit "A" which is attached hereto and incorporated herein by reference, hereinafter referred to as "the Property".

Said \$1,000.00 is non-refundable, except as otherwise provided herein, unless the Sellers are unable to deliver merchantable title as set forth herein.

2. Subject to the provisions set forth herein, the City hereby agrees to purchase the Property, and the Sellers agree to sell the Property upon the terms and conditions stated herein.

3. The purchase price for the Property shall be \$30,500.00, payable as follows: \$1,000.00 in earnest money as set forth above; The balance of \$29,500.00 in the form of "good funds" shall be paid at closing. The City and the Sellers each agree to pay their own closing costs according to local custom.

4. The purchase price shall include the Property, all improvements thereon or appurtenant thereto, and any and all other rights appurtenant to the Property, free and clear of all taxes, special assessments, liens and encumbrances.

5. A current commitment for title insurance policy in an amount equal to the purchase price shall be obtained by the City at the City's expense on or before August 22, 1994. The City shall pay the premium for said title insurance policy at closing.

6. The date of closing shall be the date for delivery of deed as provided in paragraph 7. The hour and place of closing shall be as designated by the Closing Agent. Changes in time, place and date may be made with the consent of both the Sellers and the City.

7. Title shall be merchantable in the Sellers, except as stated in this paragraph and in paragraphs 8 and 9. Subject to payment or tender as above provided and compliance by the City with the other terms and provisions hereof, the Sellers shall execute and deliver a good and sufficient general warranty deed to the City on August 31, 1994, or, by mutual agreement, at an earlier date, conveying the Property free and clear of: all taxes, except the general property taxes for the year of closing; all liens for special improvements installed as of the date of the City's signature hereon, whether assessed or not; all liens and encumbrances.

8. Except as stated in paragraphs 7 and 9, if title is not merchantable and written notice of defect(s) is given by the City to the Sellers on or before date of closing, the Sellers shall

use reasonable effort to correct said defect(s) prior to date of closing. If the Sellers are unable to correct said defect(s) on or before date of closing, at the Seller's option and upon written notice to the City on or before date of closing, the date of closing shall be extended for a period not to exceed thirty (30) days for the purpose of correcting said defect(s). Except as stated in paragraph 9, if title is not rendered merchantable as provided in this paragraph 8, at the City's option, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received hereunder shall be returned to the City.

9. Any encumbrance required to be paid shall be paid at or before the time of settlement from the proceeds of this transaction or any other source. Provided, however, at the option of either party, if the total indebtedness secured by liens on the Property exceeds the purchase price, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder and all payments and things of value received hereunder shall be returned to the City.

10. (a) The Sellers shall, without additional cost the City and within five (5) days of acceptance of this contract by the Sellers, furnish to the City true copies of all information and documents in possession of the Seller regarding lease agreements and/or rental agreements, boundary surveys, geological surveys and studies, engineering studies, environmental surveys and studies including, but not limited to, studies, reports and remediation certificates and closure reports pertaining to the Department of Energy Uranium Mill Tailings Remedial Action Project.

(b) If the City determines that the condition of the Property is unsuitable for use by the City for reasons including, but not limited to, leaking underground storage tanks or the existence of any toxic, hazardous and/or regulated substances and materials which are located on or under the Property, the City shall notify the Sellers of such defect(s) in writing. The Seller shall then have fifteen (15) days after receipt of said notice to either reasonably correct said defect(s) or to terminate this Agreement. If this Agreement is so terminated, neither party shall have any further rights under this Contract and all payments and things of value received hereunder shall be returned to the City. If written notice of any unsatisfactory condition(s) is not mailed to the Sellers as set forth above, the physical condition of the Property shall be deemed to be satisfactory.

11. Real and personal property taxes for the year of closing, based on the most recent levy and assessment, pre-paid rents, water rents and water assessments, sewer rents, FHA mortgage insurance premiums and interest on encumbrances, if any, shall be apportioned to date of delivery of deed; such apportionment shall be considered final settlement. The Sellers shall be responsible for any sales, use or other taxes that may accrue because of this transaction.

12. Possession of the Property shall be delivered to the City without exceptions, leases or tenancies, on date of deed delivery. If the Sellers fail to deliver possession on the date herein specified, the Seller shall be subject to eviction and shall be liable for a daily rental of \$50.00 until possession is delivered.

13. Time is of the essence hereof. If any note or check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed as herein provided, there shall be the following

remedies:

(a) IF THE CITY IS IN DEFAULT, then all payments and things of value received hereunder shall be forfeited by the City and retained on behalf of the Sellers and both parties shall thereafter be released from all obligations hereunder. It is agreed that such payments and things of value are LIQUIDATED DAMAGES, and (except as provided in subparagraph (c)) are the Seller's SOLE AND ONLY REMEDY for the City's failure to perform the obligations of this contract. The Sellers expressly waive the remedies of specific performance and additional damages;

(b) IF THE SELLERS ARE IN DEFAULT, the City may elect to treat this contract as (1) terminated, in which case all payments and things of value received hereunder shall be returned to the City and the City may recover such damages as may be proper, or (2) being in full force and effect and the City shall have the right to an action for specific performance or damages, or both.

(c) Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this contract, the court may award to the prevailing party all reasonable costs and expense, including attorneys' fees.

14. Notwithstanding any termination of this Contract, the City and the Sellers agree that, in the event of any controversy regarding the earnest money and things of value held by the Closing Agent, unless mutual written instructions are received by said Closing Agent, said Closing Agent shall not be required to take any action but may await any proceeding, or at said Closing Agent's option and discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney fees, not to exceed \$500.00.

15. This entire contract and the City's obligation to proceed under its terms is expressly conditioned upon the consent and approval of the City Council of the City of Grand Junction. If such consent and approval is not obtained on or before August 17, 1994, then this contract shall automatically become void and of no effect, in which case all payments and things of value received hereunder shall be returned to the City.

16. The parties hereto represent to each other that the sale and purchase of the Property hereby contemplated was brought about without the efforts of any brokers or agents and that neither party has dealt with any brokers or agents in connection with the sale and purchase of the Property. Each party agrees 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 as a result of dealings claimed to have been conducted with the respective party.

17. This Agreement shall be governed and construed by the laws of the State of Colorado. Venue shall be in Mesa County, Colorado.

18. The rights of the City under this Agreement may not be assigned in whole or in part without the prior written consent of the Seller, which consent will not be unreasonably withheld.

19. All notices or other communications between the parties hereto shall be delivered by

United States Certified Mail, return receipt requested, and shall be deemed served upon the receiving party as of the date of mailing indicated on the postal receipt, addressed as follows:

To the City: c/o City Property Agent
250 North 5th Street
Grand Junction, CO 81501-2668

To the Sellers: Edward A. Brown, Attorney at Law
105 Bridge Street
Brighton, CO 80601

20. This contract embodies the complete agreement between the parties hereto and cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. This contract and the terms and conditions hereof apply to and are binding upon the heirs, successors and authorized assigns of both parties.

21. Subject to paragraph 15, if this proposal is accepted by the Sellers in writing and the City receives notice of such acceptance on or before August 5, 1994, this instrument shall become a contract between the Sellers and the City and shall inure to the benefit of the heirs, successors and assigns of such parties.

22. The Sellers and the City have each obtained the advice of their own legal and tax counsel.

The City of Grand Junction, Colorado
Purchaser

/s/ Mark K. Achen
Mark K. Achen, City Manager

Dated: _____

Acceptance By Sellers:

Jess Paul Haller

Dated: _____

Georgia Lee Haller

Dated: _____

The undersigned Closing Agent acknowledges receipt of the earnest money deposit specified in paragraph 1.

Abstract & Title Company of Mesa County,
Inc.

By: _____

Dated: _____

Closing Agent's Address & Telephone:

205 North 4th Street, P.O. Box 3738
Grand Junction, Colorado 81502
(303) 242-8234

EXHIBIT "A"

Parcel No. 1:

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