

RESOLUTION NO. 13-95

AUTHORIZING AN EXCHANGE OF VACANT LAND ON PURDY MESA
WITH ESTHER L. MASH

WHEREAS, Esther L. Mash, as surviving Trustee of the Lawrence D. Mash and Esther L. Mash Trust, is the owner of that certain real property situated in and being a part of Lot 5 of the Resurvey of Section 32, Township 12 South, Range 97 West of the Sixth Principal Meridian, County of Mesa, State of Colorado, which property is bisected by the Highline and Juniata Canals that transport water to the City's Juniata Reservoir; and

WHEREAS, the City of Grand Junction and the said Esther L. Mash have negotiated an agreement whereby Esther L. Mash will convey approximately 18 acres of the above described property to the City in exchange for an equivalent size parcel of City owned property situated in and being a part of Lot 4, Tract 42 of the Resurvey of Section 32, Township 12 South, Range 97 West of the Sixth Principal Meridian, County of Mesa, State of Colorado; and

WHEREAS, the exchange of said real property will provide protection for the Juniata Canal and Highline Canal, which facilities are an instrumental aspect of the City's domestic water supply system; and

WHEREAS, pursuant a Resolution passed and adopted by the Grand Junction City Council on July 21, 1976, it is the policy of the City to dispose of City owned real estate in exchange for real estate that better suits the City's needs whenever possible; and

WHEREAS, the City property to be exchanged is not held or used for park or governmental purposes.

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

That the City Manager is hereby authorized take all actions and execute all documents necessary or appropriate to effectuate an exchange of real estate with Esther L. Mash, as surviving Trustee of the Lawrence D. Mash and Esther L. Mash Trust, in accordance with the terms and conditions of the attached Contract to Exchange Real Estate.

PASSED and ADOPTED this 1st day of February, 1995.

Attest:

/s/ Stephanie Nye
City Clerk

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

February 2, 1995

CONTRACT TO EXCHANGE REAL ESTATE

THIS AGREEMENT is entered into this _____ day of _____, 1995, by and between the City of Grand Junction, a Colorado home rule municipality (hereinafter "the City"), and Esther L. Mash as surviving Trustee of the Lawrence D. Mash and Esther L. Mash Trust (hereinafter "Mash").

1. Subject to the provisions herein, the City agrees to convey to Mash a tract of land consisting of approximately 18 acres situated in and being a part of Lot 4, Tract 42 of the Resurvey of Section 32, Township 12 South, Range 97 West of the Sixth Principal Meridian, County of Mesa, State of Colorado, hereinafter referred to as "the City Tract". The approximate boundaries of the City Tract are shown on Exhibit "A" attached hereto and incorporated herein by reference. The definite boundaries of the City Tract shall be determined by field survey as described in paragraph 4. For the purposes of this Agreement, the fair market value of the City Tract is \$20,000.00.

2. Subject to the provisions herein, Mash agrees to convey to the City a tract of land consisting of approximately 18 acres situated in and being a part of Lot 5 of the Resurvey of Section 32, Township 12 South, Range 97 West of the Sixth Principal Meridian, County of Mesa, State of Colorado, hereinafter referred to as "the Mash Tract". The approximate boundaries of the Mash Tract are shown on Exhibit "A" attached hereto and incorporated herein by reference. The definite boundaries of the Mash Tract shall be determined by field survey as described in paragraph 4 below. For the purposes of this Agreement, the fair market value of the Mash Tract is \$20,000.

3. Each Tract includes all improvements thereon and appurtenant thereto, and any and all other rights appurtenant to each Tract, free and clear of all taxes, special assessments, liens and encumbrances; provided, however, that each Tract shall exclude any and all water or water rights used on or appurtenant to the respective Tracts (i.e., no water or water rights are involved in this proposed exchange).

4. In accordance with the Zoning and Development Code of the County of Mesa, the proposed exchange will require a field survey and preparation of a boundary survey plat. The parties agree to jointly contract with a Colorado Licensed Surveyor for such services and to evenly share in the costs and expenses for said services. In the event the parties are unable to agree on the definite boundaries, then this contract shall terminate and both parties shall be released from all obligations hereunder.

5. Each party agrees that all costs and expenses incidental to completing the transaction herein contemplated, including, but not limited to, field surveys, plat preparation, application fees and certificates for taxes due, shall be split equally between the parties.

6. Each party agrees, at their own expense, to furnish to the other party, on or before February 6, 1995, a current commitment for title insurance policy covering the property to be

conveyed by such party, together with copies of instruments listed in the schedule of exceptions in the title insurance commitment (hereafter "the Title Documents"). Each party agrees to deliver the title insurance policy, in the amount of the valuation as stated in paragraphs 1 and 2, to the other party at closing and pay the premium thereon.

7. The date of closing shall be the date for delivery of deed as provided in paragraph 8. The hour and place of closing shall be designated by mutual agreement between the parties hereto. Changes in time, place and date may be made with the consent of both parties.

8. Title shall be merchantable in the respective parties hereto, except as stated in paragraph 9. Each party shall execute and deliver a good and sufficient warranty deed to the other party within thirty (30) days upon obtaining approval of a Boundary Line Adjustment in accordance with the Zoning and Development Code of the County of Mesa, but by no later than April 1, 1995 __, or by mutual agreement, at an earlier date. Each Tract shall be conveyed 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 first above written, whether assessed or not; all liens and encumbrances.

9. Except as stated in this paragraph 8, if title is not merchantable and written notice of defect(s) is given by either party to the other party within the time herein provided for delivery of deed, the party receiving such notice shall use reasonable effort to correct said defect(s) prior to the date of closing. If the party receiving such notice is unable to correct said defect(s) on or before the date of closing, the party giving such notice shall have the option of extending the date of closing for a period not to exceed thirty (30) days for the purpose of correcting said defect(s). If title is not rendered merchantable as provided in this paragraph 9, this contract shall be void and of no effect and each party hereto shall be released from all obligations hereunder.

10. With respect to the Mash Tract, real property taxes for the year of closing shall be apportioned to the date of delivery of deeds based on the most recent mill levy and the most recent assessment; such apportionment shall be considered final settlement. The City Tract is currently exempt from ad valorem taxation, therefore, no apportionment is required, although Mash will be responsible for all taxes levied against the City Tract from and after the date of closing.

11. Possession of the respective Tracts shall be delivered without exceptions, leases or tenancies, on the date of closing. If either party fails to deliver possession on the date herein specified, then said party shall be subject to eviction and shall be liable for a daily rental of \$25.00 until possession is delivered.

12. Time is of the essence hereof. If any obligation hereunder is not performed as herein provided, there shall be the following remedies:

(a) If either party is in default, the other party may elect to (1) treat this contract as terminated and recover such damages as may be proper, or (2) treat this contract as being in full force and effect together with the right to an action for specific performance or damages, or both;

(b) 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 expenses, including attorney's fees.

13. The parties hereto represent to each other that the exchange of the Tracts 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 exchange of the Tracts. 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.

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

15. 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 Mash: Esther L. Mash
 5881 Purdy Mesa Road
 Whitewater, CO 81527-9646

16. 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.

17. In the event this instrument is accepted by both parties in writing on or before February 6, 1995, this document shall become a contract between the parties hereto.

18. Each party has obtained the advice of their own legal and tax counsel.

The City of Grand Junction, a
Colorado home rule municipality

Mark K. Achen, City Manager

Date: _____

Esther L. Mash, surviving Trustee of
The Lawrence D. Mash and Esther L. Mash
Trust

Date: _____