

RESOLUTION NO. 117-96

**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 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, 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 Agreement 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, 1997, and expiring on December 31, 1997, and for a total rental fee of \$400.00, subject to each and every term and condition of the attached Dry Grazing Lease Agreement.

PASSED and ADOPTED this 18th day of December, 1996.

Attest:

/s/ Linda Afman
President of the Council

/s/ Stephanie Nye
City Clerk

DRY GRAZING LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into as of the 1st day of January, 1997, by and 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 "Lessee", whose address for the purpose of this Lease is P.O. Box 204, Clifton, Colorado 81520-0204.

RECITALS

- A. The City is the owner of certain real property in the County of Mesa, State of Colorado, as described on **Exhibit "A"** attached hereto and incorporated herein by reference, hereinafter referred to as "the Property".
- B. Lessee desires to lease from the City the dry grazing rights associated with the Property under the terms and conditions of this Dry Grazing Lease Agreement.
- C. The City has agreed to lease the dry grazing rights associated with the Property to Lessee under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the recitals above and the mutual terms, covenants and conditions contained herein, the parties hereto agree as follows:

1. Grant of Lease. The City hereby leases the dry grazing rights associated with the Property to Lessee, and Lessee hereby accepts and leases the dry grazing rights associated with the Property from the City, for the term stated in Section 3 and subject to each and every other term and condition stated in this Agreement.
2. Reservations From Lease.
 - 2.1 The City retains and reserves unto itself:
 - (a) all oil, gas, coal and other minerals and mineral rights underlying or appurtenant to the Property;
 - (b) all hunting rights concerning the Property;
 - (c) all water and water rights, ditches and ditch rights appurtenant to or connected with the Property, including, but not limited to, any water and/or water rights which may have been previously used on or in connection with the Property, for whatever purpose.
3. Term. The term of this Lease shall be for a period of One (1) year, commencing on January 1, 1997, and continuing through December 31, 1997, on which date this Lease shall expire.

4. Rental.

4.1 Lessee agrees to pay to the City, at the address of the City as set forth in Section 16 or at such other address as the City may from time to time designate in writing, an annual rent for the use of the Property in the amount of \$400.00

4.2 The rental payment specified in Section 4.1 shall be due and payable on or before January 3, 1997. In the event the payment of rent is not received by the City on or before the specified due date, Lessee agrees to pay a late charge of \$50.00 for each and every day following the specified due date, which late charge shall be added to the amount of rent(s) due. This Lease, at the option of the City, shall automatically terminate, and the City may immediately retake possession of the Property, if the specified rental payment is not received by the City on or before January 30, 1997.

5. Representations and Covenants of the City.

5.1 The City represents that it has the authority to enter into this Lease Agreement.

5.2 Upon Lessee paying the required rental fee(s) and performing each and every term and condition of this Agreement to be performed by Lessee, Lessee may quietly and peacefully occupy, utilize and enjoy the Property during the term of this Lease.

6. Representations and Covenants of Lessee.

6.1 Lessee agrees to pay to the City the rental payment specified in Section 4 and all other amounts required to be paid by Lessee.

6.2 Lessee agree to timely pay any and all real estate taxes and improvement assessments which may be levied upon and against the Property, and any taxes or assessments levied against the livestock and other personal property of Lessee or any other leasehold interest acquired by Lessee under this Lease. Lessee further agrees to pay any and all charges and expenses incurred in connection with Lessee's use, occupancy and operation of the Property. Lessee agrees to pay any such charges on or before the date the same become due.

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

6.4 Lessee agrees to forever waive and forego any claim, cause of action or demand Lessee may have against the City, its officers, employees and agents for injury to or destruction of any property of Lessee or any third person that may be lost, injured, destroyed or devalued as a result of the act, or failure to act, of Lessee or any third person; and to forever indemnify the City, its officers, employees and agents and to forever 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 Lessee's use and occupancy of the Property.

6.5 Lessee shall not pledge or attempt to pledge or grant or attempt to grant, as collateral or security, Lessee's interest in any portion of the Property; Lessee agrees that Lessee shall keep the Property and the demised premises free and clear from any and all liens for labor performed and for materials furnished to the Property and the demised premises.

6.6 Lessee has inspected the Property and accepts the lease of the grazing rights associated with the Property in its present location and condition. Lessee agrees that the condition of the Property is sufficient for the purposes of Lessee. Lessee understands and agrees that the City makes no warranties, promises or representations that the Property is sufficient for the purposes of Lessee.

6.7 Lessee agrees that Lessee shall, at Lessee's sole cost and expense:

(a) install, maintain and repair all fences and gates in a manner that will contain livestock. Lessee may install locks on all gates, provided, however, that Lessee shall provide the City with lock combinations and/or copies of keys to all locks installed by Lessee.

(b) maintain the Property and keep the Property in a clean, safe and healthy condition and in compliance with all applicable codes, ordinances, regulations, rules and orders.

7. Livestock Management.

7.1 Lessee contemplates owning up to eighteen (18) pair of cattle during the term of this Lease, (hereinafter "Lessee's Livestock"), and that Lessee intends to raise and care for Lessee's Livestock on the Property. Lessee agrees that Lessee's operations and conduct relating to raising and caring for Lessee's Livestock shall be carried out in the highest standard of care and in a manner that will not over graze the Property or otherwise cause deterioration to or destruction of the Property. Lessee further agrees to comply with the regulations of the United States Department of Agriculture, livestock laws and regulations of the State of Colorado, and any and all federal, state, county and municipal laws, ordinances and regulations which are applicable to the area in which the Property is located.

7.2 Lessee represents that Lessee's Livestock carry the _____ brand ("Lessee's Brand"). Lessee agrees that livestock not carrying Lessee's Brand shall not be permitted on the Property without the prior written approval of the City.

8. Use of Chemicals on the Property. Lessee shall apply no chemicals, including, but not limited to, fertilizers, herbicides and pesticides at any place upon the Property without the prior written consent of the City. Lessee shall at all times keep the City advised of chemicals used and/or stored on the Property, and shall further comply with all applicable rules, laws, regulations and orders, either now in force or hereafter enacted, regulating the storage, use, application, transportation and disposal of any such chemicals.

9. Hazardous Substances. The term “Hazardous Substances”, as used in this Lease Agreement, shall mean any substance which is: defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law enacted by any federal, state and local governmental agency or other governmental authority; a petroleum hydrocarbon, including, but not limited to, crude oil or any fraction thereof; hazardous, toxic or reproductive toxicant; regulated pursuant to any law; any pesticide or herbicide regulated under state or federal law. The term “Environmental Law”, as used in this Lease Agreement, shall mean each and every federal, state and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal, state and local governmental agency or other governmental authority, pertaining to the protection of human health and safety of the environment, either now in force or hereafter enacted.

9.1 Lessee shall not cause or permit to occur by Lessee and/or Lessee’s agents, guests, invitees, contractors, licensees or employees:

(a) any violation of any Environmental Law on, under or about the Property or arising from Lessee’s use and occupancy of the Property, including, but not limited to, air, soil and groundwater conditions; or

(b) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance in violation of any federal state or local law, ordinance or regulation either now in force or hereafter enacted.

10. Environmental Clean-Up.

10.1 The following provisions shall be applicable to Lessee and to Lessee’s agents, guests, invitees, contractors, licensees and employees:

(a) Lessee shall, at Lessee’s sole cost and expense, comply with all Environmental Laws and laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances;

(b) Lessee shall, at Lessee’s sole cost and expense, make all submissions to provide all information required by and/or to comply with all requirements of all governmental authorities (“the Authorities”) under Environmental Laws and other applicable laws.

(c) Should any Authority or the City demand that a clean-up plan be prepared and that a clean-up plan be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances on, under or about the Property, Lessee shall, at Lessee’s sole cost and expense, prepare and submit the required plan(s) and all related bonds and other financial assurances, and Lessee shall carry out all such clean-up plan(s) in compliance with the Authorities and all Environmental Laws and other applicable laws.

(d) Lessee shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances requested by the Authorities. If Lessee fails to fulfill any duty imposed hereunder within a reasonable time, the City may do so on Lessee's behalf and, in such case, Lessee shall cooperate with the City in the preparation of all documents the City or the Authorities deem necessary or appropriate to determine the applicability of Environmental Laws to the Property and Lessee's use thereof, and for compliance therewith, and Lessee shall execute all documents promptly upon the City's request. No such action by the City and no attempt made by the City to mitigate damages under any Environmental Law or other applicable law shall constitute a waiver of any of Lessee's obligations hereunder.

(e) Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

10.2 Lessee shall indemnify, defend and hold the City, its officers, employees and agents harmless from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts), arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Substances and the violation of any Environmental Law and other applicable law by Lessee and or Lessee's agents, guests, invitees, contractors, licensees and employees that occur during the term of this Lease or any extension thereof, or from Lessee's failure to provide all information, make all submissions, and take all actions required by all Authorities under the Environmental Laws and other applicable laws. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

11. Damage(s) to or Deterioration of the Property. If the Property is damaged by flood or other casualty, or if the Property is damaged or deteriorates to the extent where it is no longer functional for the Purposes of Lessee, the City shall have no obligation to repair the Property nor to otherwise make the Property usable or occupiable; damages shall be at Lessee's own risk, provided, however, that in the event the Property is damaged or deteriorates to the extent where it is no longer functional for the purposes of Lessee, Lessee may, at Lessee's option, terminate this Lease by giving notice to the City that this Lease is to be terminated. Termination shall be effective thirty (30) days following the date of Lessee's notice of termination.

12. Default - Termination - Sublet - Assignment.

12.1 Should Lessee (1) default in Lessee's performance of Lessee's agreements or obligations hereunder and any such violation continue for a period of fifteen (15) days after written notice thereof is given to Lessee by the City; (2) abandon or vacate the Property for a period of thirty (30) consecutive days; (3) be declared bankrupt, insolvent, make an assignment for the benefit of creditors, or if a receiver is appointed; or (4) suffer death or personal injury which would prevent Lessee from carrying out Lessee's obligations under this Agreement, the City may, at the City's option, cancel and annul this Lease at once and enter and take possession of the Property immediately without any previous notice of intention to reenter, and such reentry

shall not operate as a waiver or satisfaction in whole or in part of any claim or demand arising out of or connected with any breach or violation by Lessee of any covenant or agreement to be performed by Lessee. Upon reentry, the City may remove the property of Lessee and store the property in a warehouse or at a place selected by the City, at the expense of Lessee and without liability to the City. Upon termination of this Lease, Lessee shall remove all personal property and Lessee's Livestock from the property and demised premises fifteen (15) days from the date of termination. If Lessee fails to remove Lessee's personal property and Lessee's Livestock 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 Lessee's. Lessee hereby agrees that items not timely removed may be sold by the City to cover expenses with net proceeds after expenses paid to Lessee. The City may also set off amounts owed under this Lease against proceeds of said sale. Any such reentry by the City shall not work a forfeiture of nor shall it terminate the rent to be paid or the covenants and agreements to be performed by Lessee for the full term of this Lease. Upon such reentry, the City may thereafter lease or sublease the Property for such rent as the City may reasonably obtain, crediting Lessee with the rent so obtained after deducting the costs(s) reasonably incurred in such reentry, leasing or subleasing, including the costs of necessary repairs, alterations and modifications to the Property. Nothing herein shall prejudice or be to the exclusion of any other rights or remedies which the City may have against Lessee, including, but not limited to, the right of the City to obtain injunctive relief based on the irreparable harm caused to the City's reversionary rights.

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

12.3 Lessee shall not assign or sublease the Property, or any right or privilege connected therewith, or allow any other person, except officers, employees and agents of the City, to occupy the Property or any part thereof without first obtaining the prior written consent of the City. In the event of an assignment of this Lease or a sublease, Lessee shall not be released from Lessee's obligations and duties under this Agreement and this Lease between the City and Lessee shall remain in full force and effect. Any consent by the City to an assignment of this Lease or a sublease shall not be a consent to a subsequent assignment, sublease or occupation of the Property by any other party. Any unauthorized assignment, sublease or permission to occupy the Property by Lessee shall be void and shall, at the option of the City, provide grounds for the City to terminate this Lease.

12.4 This Lease is not intended to and shall in no way preclude the City from actively marketing the Property for sale or exchange, whether through the efforts of the City, a real estate broker or any other person; nor shall this Lease prevent the City from selling, exchanging or conveying the Property to any other party. In the event of any voluntary or involuntary transfer of

the City's interest(s) in the Property, or any part thereof, Lessee will attorn to any transferee of or successor to the City's interest(s) in the Property, and recognize such transferee or successor as Lessor under this Agreement.

13. Improvements. Unless otherwise agreed to by the parties in writing, all improvements placed upon, under or about the Property or attached to the Property by Lessee shall be and become part of the Property and shall be the sole and separate property of the City upon the expiration or termination of this Lease.

14. Not a Partnership. It is expressly agreed between the parties hereto that this Agreement is one of lease and not of partnership and that the City shall not be or become responsible for any debts contracted or incurred by Lessee. 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 out of any claim, lien, damage or injury (including death), to persons or property caused by Lessee or sustained in connection with Lessee's performance of the terms and conditions of this Agreement or the conditions created thereby, or based upon any violation of any statute, ordinance, code or regulation, and the defense of any such claims or actions, including the cost(s) and fee(s) of attorneys, consultants and experts. Lessee shall also save, indemnify and hold the City, its officers, employees and agents harmless from and against all liability and loss in connection with, and shall assume full responsibility for the 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 by Lessee.

15. Right of Entry. During the term of this Lease, Lessee shall have the exclusive right of entry for ingress and egress to and from the Property; provided, however, the City retains the right for its officers, employees and agents to enter upon the Property at any time and for any purpose that is not inconsistent with Lessee's rights hereunder.

16. Notices.

16.1 All rental payments paid by Lessee to the City shall be delivered, either by mail or by personal deliver to:

City of Grand Junction Finance Department
Accounts Receivable
250 North 5th Street
Grand Junction, Colorado 81501-2668

All rental payments deposited by Lessee shall be clearly marked "Hallenbeck Dry Grazing Lease Payment".

16.2 All other notices and communications required hereunder shall be in writing and shall be delivered to the parties hereto, either by facsimile transmission, personally by hand, courier service, United States mail or Express mail, or by first class mail, postage prepaid, as follows:

To the City: Tim Woodmansee, Property Agent
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501-2668
Tel: (970) 244-1565
Fax: (970) 244-1599

To Lessee: William Arthur Mertz
P.O. Box 204
Clifton, CO 81520-0204
Tel: (970) 241-3334
Fax:

All notices shall be deemed given: (a) if sent by mail, when deposited in the mail; (b) if delivered by hand or courier service, when delivered; or (c) if transmitted by facsimile, when transmitted. The parties may, by notice as provided above, designate a different address to which notice shall be given.

17. Enforcement - Partial Invalidity - Governing Law.

17.1 In the event the City uses its City Attorney or engages an attorney to enforce the City's rights hereunder, Lessee agrees to pay for the value or cost(s) of such attorney fees, plus the cost(s) or fee(s) of any expert(s). In the event a court of competent jurisdiction deems such previous sentence to be unenforceable, then the parties agree that each party shall pay for such party's own attorney fees.

17.2 The invalidity of any portion of this Lease Agreement shall not and shall not be deemed to affect the validity of any other provision. In the event any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provisions.

17.3 This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce any covenant or agreement contained in this Agreement shall be in Mesa County, Colorado.

18. Surrender - Holding Over. Lessee shall, after the expiration or termination of this Lease, surrender to the City the Property in good order, condition and state of repair, reasonable wear and use excepted. Should Lessee fail, for whatever reason, to vacate the Property at the end or when this lease is terminated, Lessee agrees to pay to the City the sum of One Hundred Dollars (\$100.00) per day for each and every day thereafter until Lessee has effectively vacated the Property. The parties agree that it would be difficult to establish the actual damages to the City in such event and that said \$100.00 is an appropriate liquidated damages amount.

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

20. Paragraph Headings. The titles to the paragraphs and sections of this Lease Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify or aid in the interpretation of the provisions of this Agreement.

21. Fees or Commissions. The parties to this Lease Agreement warrant that no person or selling agency has been employed or retained to solicit or secure this Lease upon any agreement or understanding for a commission, percentage, brokerage or contingent fee. The City and Lessee each agree 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 claiming to be entitled to brokerage commissions or finder's fees arising out of this Lease Agreement.

22. Entire Agreement. This Dry Grazing Lease Agreement contains the entire agreement between the parties and cannot be changed, modified or terminated except by a written instrument subsequently executed by the parties hereto.

The parties hereto have hereunto executed this Lease Agreement as of the day and year first above written.

Attest:

The City of Grand Junction, a
Colorado home rule municipality

City Clerk

City Manager

Lessee:

William Arthur Mertz

Exhibit "A"

Description of "the Property"

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, excepting therefrom right-of-way for U.S. Highway No. 50

All in the County of Mesa, State of Colorado.