RESOLUTION NO. 40-96

AUTHORIZING A THREE YEAR LEASE BY THE CITY OF OFFICE SPACE LOCATED ON THE THIRD FLOOR OF THE MESA NATIONAL BANK BUILDING AT 131 NORTH 6TH STREET

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

- 1. That the City Manager is hereby authorized and directed to execute the attached Lease dated May 15, 1996, for the lease of office space from Mesa National Bank.
- 2. As provided in said Lease, the essential terms are as follows:
- (a) The term of the Lease shall be for a period of three years, commencing at 12:01 a.m. on May 15, 1996, and expiring at 12:01 a.m. on May 16, 1999;
 - (b) It is the express intent of the Lease that the Demised Premises, so long as it is used by the City, be exempt from ad valorem taxation pursuant to C.R.S. 31-15-802;
- (c) Annual rent for the Demised Premises shall be as follows:
- the sum of \$13,387.50 shall be paid on or before May 15, 1996;
- the sum of \$14,057.00 shall be paid on or before May 15.
- the sum of \$14,760.00 shall be paid on or before May 15, 1998;

PASSED and ADOPTED this 17th day of April, 1996.

Attest:

/s/ Ron Maupin
/s/ Stephanie Nye President of the Council
City Clerk

LEASE

THIS LEASE is made as of the 15th day of May, 1996, between Mesa National Bank, hereinafter referred to as "Lessor", whose address is 131 North 6th Street, Grand Junction, CO 81501, and The City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", whose address is 250 North 5th Street, Grand Junction, CO 81501.

NOW, THEREFORE, in consideration of the payment of the rent and the performance of the covenants and agreements by both parties as set forth below, the Lessor does hereby lease to the City the office space located on the third floor in the Mesa National Bank building ("the Building"), the address of which is 131 North 6th Street in the City of Grand Junction, said spaces being numbered 1, 2, 3, 4, 5, 6 and 7 as shown on **Exhibit "A"** attached hereto and incorporated herein by reference, hereinafter referred to as the "Demised Premises".

1. $\underline{\text{Term.}}$

- 1.1 The term of this Lease shall be for a period of three (3) years, commencing 12:01 a.m. on May 15, 1996 and expiring 12:01 a.m. on May 16, 1999.
- 1.2 Should the City holdover and continue in possession of the Demised Premises after expiration of this Lease and continue to pay rent without a written agreement as to such possession, then such tenancy shall be regarded as a month-to month tenancy at a monthly rental as set forth in paragraph 3.2, subject to all of the other terms and conditions of this Lease.

2. <u>Rent</u>.

2.1 The City agrees to pay to Lessor, at the office address of Lessor as set forth above or at such other address as Lessor may from time to time designate in writing, an annual rent for the use of the Demised Premises, payable in advance, as follows:

the sum of \$13,387.50 shall be paid on or before May 15, 1996;

the sum of \$14,057.00 shall be paid on or before May 15, 1997:

the sum of \$14,760.00 shall be paid on or before May 15, 1998.

2.2 Should the City holdover and continue in possession of the Demised Premises upon expiration of this Lease as set forth in paragraph 1.2, the City agrees that it will pay Lessor the amount of \$1,292.00, in advance, for each month of said month-to-month tenancy.

3. <u>Lease Term Extension Option</u>.

- 3.1 If the City performs as required pursuant to this Lease and as part of the consideration for the payment of all rentals provided for herein, Lessor hereby gives and grants to City a right of first refusal to:
- (a) lease additional space on the third floor of the Building by either 1) meeting any bona fide offer which is acceptable to the Lessor, or 2) by negotiations between the parties hereto;
- (b) again lease the Demised Premises for one (1) successive three (3) year term upon the same terms and conditions as herein set forth. In order to exercise its right of first refusal, the City shall give written notice to Lessor of its desire to exercise its right of first refusal no later than February 15, 1999. Should this Lease be extended for one (1) additional three (3) year term, the City agrees to pay to Lessor, at the address of Lessor set forth above or at such other address as Lessor may from time to time designate in writing, an annual rent for the use of the Demised Premises, payable in advance, as follows:

the sum of \$15,498.00 shall be paid on or before May 15, 1999; the sum of \$16,237.00 shall be paid on or before May 15, 2000; the sum of \$17,086.00 shall be paid on or before May 15, 2001.

4. Representations of the City.

- 4.1 The City will not assign, sublease or otherwise transfer or permit a transfer of the City's rights or obligations under any provision of this Lease, either in whole or in part, without prior written approval from Lessor, which approval will not be unreasonably withheld.
- 4.2 The City will comply with all applicable laws relative to the City's use of, activities upon and occupancy of the Demised Premises.
- 4.3 The City will peaceably surrender possession of the Demised Premises immediately upon termination of this Lease in as good or better condition as existed when the City entered the Demised Premises, ordinary wear and use excepted.
- 4.4 The City will permit Lessor and Lessor's representatives to enter the Demised Premises upon reasonable prior notice during normal business hours of the City for the purposes of: (a) inspecting the

condition of the Demised Premises or verifying the City's compliance with the provisions of this Lease; (b) performing any obligation, exercising any right or protecting any interest of Lessor under any provision of this Lease; (c) for any other reasonable purpose.

- 4.5 The City shall not commit nor permit waste, damage or injury to the Demised Premises.
- 4.6 Notwithstanding anything herein to the contrary, the City shall maintain the cleanliness and appearance of the Demised Premises in good order and appearance.
- 4.7 The City shall not make any structural alterations to the Demised Premises or any part thereof without the prior written approval of the Lessor, which approval shall not be unreasonably withheld.
- 4.8 All alterations to the Demised Premises, except moveable furniture, moveable trade fixtures and communications equipment brought onto the demised premises by the City, shall become part of the realty and shall become and remain the property of the Lessor.
 - 5. Warranties and Representations of the Lessor.
- 5.1 Lessor warrants that Lessor has authority to enter into this Lease with the City.
- 5.2 Upon the City paying the required rentals and performing all of the other terms and conditions of this Lease to be performed by the City, the City may quietly and peacefully occupy, utilize and enjoy the Demised Premises during the term of this Lease or any extension thereof.
- 5.3 Lessor, at no cost to the City, shall maintain in good condition and repair all structural parts of the Demised Premises and all electrical connections, natural gas connections, telephone connections, sewer connections, fire sprinkler systems, domestic water connections, roofing, plumbing, heating systems, ventilation systems, air-conditioning systems, wiring and glass; and all entrances, hallways and common areas, such as elevators, stairs and restrooms.
- 5.4 Lessor shall allow the City to install, operate and maintain, at no cost to the Lessor, communications facilities including, but not limited to, cables, lines, hardware, equipment and antennae in, on, under and through the Building for the purpose of connecting telephone and computer apparatus from the City Hall building located at 250 North 5th Street in Grand Junction to the Mesa National Bank Building.
 - 5.5 Lessor represents that it is aware of, having exercised due

diligence in this regard, no hazardous, toxic or regulated materials or substances on, under or about the Property. Lessor states that Lessor has not deposited or caused to be deposited on, under or about the Building during the time that Lessor has owned the Building any hazardous, toxic or regulated materials or substances. If at any time during this Lease hazardous, toxic or regulated materials or substances (as then defined by applicable federal or state law ("Materials")), are discovered on, under or about the Building, Lessor shall immediately notify the City of such fact(s) and shall inform the City of the actions required by applicable regulations or as well as actions proposed by Lessor to eliminate any hazards or risks to the City, its employees, invitees and guests. If Lessor determines to clear the Building of the Materials, Lessor shall give written notice to the City of Lessor's intent to so remove the Materials and so long as Lessor diligently undertakes to accomplish the proper removal of the Materials and so long as no injury or risk to the City, its employees, guests and invitees is present, this Lease shall remain in full force and effect. If Lessor determines not to remove the Materials or if the materials constitute a risk to the City, its employees, quests and invitees, the City may, at its option, give Lessor a written notice declaring this Lease to be terminated, which termination shall be effective twenty (20) days following the date of the notice of termination.

5.6 During the term of this Lease or any extension thereof, the Lessor agrees to arrange and pay for janitorial services to all common areas and for all services and utilities which are attributable to the City's occupancy of the demised premises, including, but not limited to, water, sewer, trash service, electricity and natural gas, excepting therefrom costs for telephone and other communications facilities used by the City, the costs for which shall be paid by the City.

6. <u>Default, Remedies and Security Interest</u>.

- 6.1 Lessor, at Lessor's option, shall have the right to terminate this Lease upon the occurrence of any of the following:
- (a) Failure by the City to pay any of the rentals required by the provisions of this Lease within fifteen (15) days after notice that such payment is delinquent; or
- (b) Failure by the City to perform any of the other terms, covenants or conditions of this Lease to be performed by the City if such failure shall not be remedied within thirty (30) days after written notice to the City of such condition; provided, however, that if such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such period of thirty (30) days, the City shall have such longer period as shall be necessary to cure the same if the City commences such cure within the thirty (30)

day period, prosecutes the cure to completion with due diligence, and advises Lessor from time to time, upon Lessor's request, of the actions which the City is taking and the progress being made.

- 6.2 At any time while any default exists, and after proper notice has been served to the City by Lessor, Lessor may terminate this Lease by giving written notice of termination to the City. If the City shall fail to correct such default before notice of termination is received, this Lease shall be fully and finally terminated without further action by, or notice to, either party.
- 6.3 Without prejudice as to any other default, either party may waive any default of the other party and enforce this Lease according to its terms, covenants and conditions.
- 6.4 Lessor's rights and remedies under the provisions of this Section 6 are cumulative with all other rights and remedies of Lessor under applicable law.
- 6.5 If Lessor in any respect fails to perform any covenant required to be performed by Lessor under the terms of this Lease for more than thirty (30) days after notice is given by the City to Lessor, the City may cure such default. Any amount(s) so paid by the City to cure such default may be deducted from subsequent rental payments to be paid by the City under the terms of this Lease.

7. <u>Destruction of the Demised Premises</u>.

7.1 In the event the Demised Premises, the improvements or any portion of the Building necessary to the full enjoyment of the demised premises thereon become destroyed or substantially injured by any means, the Lessor shall either promptly rebuild and restore the improvements or such portion as may have been injured or destroyed, or clear the damaged or destroyed improvements from the Demised Premises. Rent shall either abate, be refunded to the City or credit shall be given to the City during the period that the damaged or destroyed improvements affect the City's full enjoyment of the Demised Premises. If the Demised Premises become damaged to the extent where they are no longer functional for the purposes of the City and the Lessor determines not to repair the improvements nor otherwise make the demised premises usable or occupiable, the City may terminate this Lease by giving its notice to Lessor that this Lease is terminated.

8. <u>Waivers</u>.

8.1 The failure of the City or Lessor, as the case may be, to insist on a strict performance of any of the terms and conditions hereof shall be deemed a waiver of the rights or remedies that Lessor or the City, as the case may be, may have regarding that specific instance only and shall not be deemed a waiver of any subsequent

breach or default in any term and condition.

9. <u>Notices</u>.

9.1 All notices to be given with respect to this Agreement shall be in writing. Each notice shall be sent by United States certified mail, return receipt requested, postage prepaid and properly addressed to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing, as follows:

To Lessor: Mesa National Bank

Attn: Mr. W.T. Sisson, President

131 North 6th Street Grand Junction, CO 81501

To the City: City of Grand Junction

Attn: Property Agent 250 North 5th Street

Grand Junction, CO 81501

9.2 Every notice shall be deemed to have been given forty-eight (48) hours after the time it is deposited in the United States mail in the manner prescribed herein. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

10. Total Agreement; Applicable to Successors.

10.1 This 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. This Agreement and the terms and conditions hereof apply to and are binding upon the successors and authorized assigns of both parties.

11. Applicable Law.

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

12. <u>Conditions</u>.

12.1 The City's obligations under this Lease are subject to and contingent upon: (1) the consent and approval of this Lease by the City Council of the City of Grand Junction. In the event the City Council fails to consent to and approve of this Lease on or before April 17, 1996, then this Agreement shall automatically become void and of no effect and neither party shall have any further rights under

this lease; (2) for each lease year, the City Council of the City of Grand Junction annually appropriating such sums as are necessary to authorize the payment of the rental amounts as herein provided. In the event the City's appropriation ordinance for any lease year is not effective because of a citizen referendum or otherwise, this Lease may thereafter be terminated by either party by giving the other party written notice providing that the termination of this Lease shall be effective thirty (30) days after the notice. Possession of the Demised Premises and any and all improvements thereon shall be returned to the Lessor on and after the effective date of said termination.

13. Ad Valorem Taxation.

13.1 It is the express intent of the parties that the demised premises, during the term of this Lease or any extension thereof, be exempt from ad valorem taxation pursuant to C.R.S. 31-15-802. Any monetary savings to Lessor as a result of this paragraph 13.1 shall be 1) determined by a written statement from the office of the Mesa County Assessor providing a proration of value and taxes between the entire Building and the Demised Premises, and 2) credited to the lease payment due from the City for the lease year which immediately follows the taxing year for which any savings to the Lessor have been certified by the Mesa County Assessor.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first above written.

LESSOR:		
Attest:	Mesa National Bank	
Senior Vice President/Cashier	W.T. Sisson, President	
LESSEE: Attest:	The City of Grand Junction, a Colorado home rule municipality	ì
City Clerk Ma	rk K. Achen, City Manager	