

RESOLUTION NO. 90-96

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 Fred & Clorie Cunningham for the sale by the Cunninghams and the purchase by the City of that certain real property described as Lot 5, Block 2 of South 5th Street Addition to the City of Grand Junction in the County of Mesa, State of Colorado, also known as 1236 South 5th Street; 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 \$45,000.00. 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 \$45,000.00 for the purchase of the Property, to be paid at closing on November 8, 1996, 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 performance of environmental audits, boundary surveys, and the execution and delivery of such certificates and documents as may be necessary or desirable.

PASSED and ADOPTED this 2nd day of October, 1996.

Attest:

/s/ Stephanie Nye  
City Clerk

/s/ Linda Afman  
President of the City Council

September 19, 1996

**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 Fred Cunningham and Clorie Cunningham, hereinafter referred to as "the Sellers".

1. The Sellers hereby acknowledge having received from the City the sum of \$500.00, in the form of a check, to be held by Western Colorado Title Company, Closing Agent for the City and the Sellers, in said Closing Agent's escrow or trustee account, as earnest money and part payment for the following described real property:

Lot 5, Block 2, South Fifth Street Addition to City of Grand Junction, County of Mesa, State of Colorado, also known as 1236 South 5th Street and hereinafter referred to as "the Property".

Said \$500.00 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 \$45,000.00, payable as follows: \$500.00 in earnest money as set forth above; the sum of \$44,500.00 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 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, at the Seller's expense, shall be furnished to the City on or before October 11, 1996. The Sellers shall cause the title insurance policy to be delivered to the City after closing and shall pay the premium thereon.

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 both parties with the other terms and provisions hereof, the Sellers shall execute and deliver a good and sufficient general warranty deed to the City on November 8, 1996, or, by mutual agreement, at an earlier date, conveying the Property free and clear of: all taxes, including, but not limited to, the

estimated general property taxes which have accrued as of the date of closing; all liens and encumbrances, including, but not limited to, liens for special improvements installed as of the date of the City's signature hereon, whether assessed or not.

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, 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 lien and/or encumbrance required to be paid shall be paid by the Sellers 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 and/or encumbrances 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 ten (10) days of acceptance of this contract by the Sellers, furnish to the City true copies of all information and documents in possession of the Sellers regarding lease agreements and/or rental agreements, boundary surveys, geological surveys and studies, engineering studies and environmental surveys and studies, notices of violations from any governmental agency and any other information regarding the condition of the Property.

(b) The Sellers and the City agree that the City, its officers, employees, agents, contractors and licensees, will be permitted for a period commencing on the date of acceptance of this contract by the City Council of the City as provided in paragraph 15 and ending on the date which is thirty (30) days after said date of acceptance ("Inspection Period"), to have access to and make inspections of the Property for the purposes of conducting boundary surveys, asbestos surveys and sampling, soils sampling and surveys, engineering studies, geological surveys and studies, and environmental surveys and studies.

(c) If the City, during the Inspection Period, 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, unstable soils or geology, 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 Sellers shall then have fifteen (15) days after receipt of said notice to either reasonably correct said defect(s) or to terminate this Contract. If this Contract 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 City may be required to close.

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 at closing without exception, lease or any tenancy. If the Sellers fail to deliver possession at closing, the Sellers shall be subject to eviction and shall be liable for a daily rental of \$100.00 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, each party shall pay such party's own costs and 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.

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 October 2, 1996, 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 this Contract and 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 engaged or dealt with any brokers or agents in connection with this Contract. 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. 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: Mr. Tim Woodmansee, City Property Agent  
250 North 5th Street  
Grand Junction, Colorado 81501-2668  
Tel: (970) 244-1565

To the Sellers: Fred & Clorie Cunningham  
2366 H Road  
Grand Junction, Colorado 81505  
Tel: (970) 243-2361

To the Closing Agent: Western Colorado Title Company  
c/o Mr. Don Paris  
521 Rood Avenue  
Grand Junction, Colorado 81501  
Tel: (970) 243-3070

18. 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 4:00 o'clock p.m., Grand Junction Time on September 23, 1996, 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.

19. 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.

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

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

The City of Grand Junction, Colorado  
Purchaser

\_\_\_\_\_  
Mark K. Achen, City Manager

Dated: \_\_\_\_\_

Acceptance By Sellers:

\_\_\_\_\_  
Fred Cunningham

Dated: \_\_\_\_\_

\_\_\_\_\_  
Clorie Cunningham

Dated: \_\_\_\_\_

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

Western Colorado Title Company

By: \_\_\_\_\_

Dated: \_\_\_\_\_