

RESOLUTION NO. 43-99

AUTHORIZING A FARM LEASE OF THE "SACCOMANNO PROPERTY"  
TO ROBERT H. MURPHY

WHEREAS, the City of Grand Junction is the owner of that certain real property described as Lot 4 of the Replat of Lot 2 of Saccomanno Minor Subdivision, situated at the southwest corner of 26½ Road and H Road in Grand Junction; and

WHEREAS, Robert H. Murphy desires to lease the farming rights to the Property during a term which commences on April 8, 1999, and expires on December 31, 2000.

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

That the City Manager be authorized, on behalf of the City and as the act of the City, to execute the attached Farm Lease Agreement with Robert H. Murphy for the lease of the above described Property for a term which commences on April 8, 1999, and expires on December 31, 2000, subject to each and every term and condition of the attached Farm Lease Agreement.

PASSED and ADOPTED this 7th day of April, 1999.

Attest:

/s/ Janet L. Terry  
President of the City Council

/s/ Stephanie Nye  
City Clerk

## FARM LEASE AGREEMENT

THIS FARM LEASE AGREEMENT is made and entered into as of the 8th day of April, 1999, between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Robert H. Murphy, hereinafter referred to as "Lessee", whose address for the purpose of this Farm Lease Agreement is 2679 Paradise Way, Grand Junction, Colorado 81506.

### RECITALS

A. The City is the owner of that certain real property described as Lot 4 of the Replat of Lot 2 of Saccomanno Minor Subdivision, situated at the southwest corner of 26½ Road and H Road in Grand Junction, Colorado, and hereinafter referred to as "the Property".

B. Lessee desires to lease the farming rights associated with the Property for a term commencing on April 8, 1999, and expiring on December 31, 2000.

C. The City has agreed to lease the farming rights associated with the Property to Lessee pursuant to the terms and conditions of this Farm Lease Agreement.

NOW, THEREFORE, In consideration of the terms, covenants, conditions and performance of the promises set forth herein, the City does hereby lease the farming rights associated with the Property to the Lessee.

1. Subject to the provisions for partial or early termination as set forth in paragraph 2, the term of this Lease shall commence on April 8, 1999, and expire on December 31, 2000.

2. Each party reserves the right to, at such party's sole discretion and without liability, including, but not limited to, liabilities for loss profits or loss opportunities, terminate this Lease by giving the other party no less than ninety (90) days prior written notice of intent to terminate.

3. Lessee agrees to pay, as rental for the Property, the actual annual cost of the water fees and assessments which are levied against the Property during the Lessee's use and occupancy of the Property.

4. Lessee agrees to:

(a) Thoroughly plow, irrigate, plant, cultivate, harvest and farm all farmable lands upon the Property in a responsible and prudent farm-like manner, and to limit all plantings and crops to alfalfa only.

(b) Maintain, clean out and keep in good repair all ditches and headgates located upon the Property and not allow irrigation water to overrun any furrows or otherwise cause damage to the Property or the property of any third person;

(c) At the expiration or termination of this Lease, surrender the Property and all improvements thereon to the City in as good a condition as when Lessee entered the Property, reasonable use, wear, loss by fire or inevitable accident excepted.

(d) 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 indemnify the City, its officers, employees and agents, and to 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 of the Property.

(e) Use the Property for no purpose prohibited by the applicable laws of the United States, the State of Colorado, the County of Mesa, the City of Grand Junction or any other governmental authority; to comply with all police, fire and sanitary regulations imposed by any municipal, state or federal authority either now in force or hereinafter enacted, and to use the premises for no improper or questionable purposes whatsoever.

(f) Not permit stock of any kind to run in any field on the Property.

(g) Not violate nor permit to be violated any code, rule, regulation or order pertaining to the use, application, transportation and storage of any hazardous, toxic or regulated substances or materials, including, but not limited to, herbicides, pesticides and petroleum products. Lessee agrees that any spill, excessive accumulation or violation of any code, rule, regulation or order pertaining to the use, application, transportation and storage of any such substances shall be reported immediately to the City. Lessee further agrees that all costs and responsibilities for cleaning, removing and abating any violation pursuant to this paragraph shall be borne solely by Lessee.

5. (a) Lessee has inspected the Property, has received the demised premises in good order and condition, and agrees that the condition of the demised premises is sufficient for the purposes of Lessee. The City makes no warranties nor promises, express or implied, that the Property is sufficient for the purposes of Lessee.

(b) In the event the demised premises are damaged due to fire, flood or any other casualty, or if the canals, ditches or ditch laterals which provide irrigation to the Property are damaged to the extent where they are no longer functional for the purposes of Lessee, the City shall have no obligation to repair the Property and improvements nor to otherwise make the premises usable or occupiable; damages shall be at Lessee's sole and absolute risk. If the City, in its sole discretion, determines not to perform repairs or to otherwise make the premises usable or occupiable, Lessee may terminate this Lease by giving appropriate notice to the City that this Lease is to be terminated.

6. The City, by entering into this Lease Agreement, does not part with its entire possession of the demised premises, but only so far as is necessary to enable Lessee to farm said premises and carry out the terms and provisions of this Lease. The City hereby reserves the right to at all times have its officers, employees and agents enter into and upon the demised premises and every part thereof and to do such acts and things as may be deemed necessary for protection of the City's interests therein.

7. (a) This Lease shall automatically terminate in the event Lessee: becomes insolvent; is subject to a bankruptcy filing whether voluntary or involuntary; is subject to an assignment for the benefit of creditors or if a receiver is appointed; if Lessee should suffer death; if Lessee fails in any manner to comply

with any of the terms, covenants, or conditions of this Lease to be kept and performed by the Lessee; or should Lessee, by any act of negligence or carelessness, or through any act of commission or omission permit, or suffer to be permitted, damage to the Property or the demised premises in any substantial manner. In such event, the City may immediately retake possession.

(b) If this Lease is terminated by the City, except termination due to expiration of the lease term, Lessee shall have reasonable access to the Property for a reasonable time, not to exceed ninety (90) days, to remove Lessee's personal property. If Lessee fails to remove the Lessee's personal property 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 borne solely by Lessee. Lessee hereby agrees that items not timely removed may be sold by the City to cover expenses, with net proceeds after expenses, if any, paid to Lessee. The City may also set off amounts owed under this Lease Agreement against proceeds of said sale.

8. Upon termination of this Lease, whether as above provided or whether terminated any other way, Lessee agrees to peaceably surrender and deliver up the premises together with all keys thereunto to the City immediately upon termination.

9. If Lessee is in default in the performance of any term or condition of this Lease Agreement, the City may, at its sole option, terminate this Lease upon giving thirty (30) days written notice. If Lessee fails within any such 30 day period to remedy each and every default specified in the City's notice, this Lease shall automatically terminate. If Lessee remedies Lessee's default, Lessee shall not thereafter have the right of 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 notice by the City. All notices sent pursuant to this Lease Agreement shall be delivered by United States certified mail, return receipt requested, and shall be considered served upon the receiving party as of the date of mailing indicated on the postal receipt. All notices to the Lessee shall be sent to 2679 Paradise Way, Grand Junction, Colorado 81506. All notices to the City shall be sent to: City Real Estate Manager, 250 North 5th Street, Grand Junction, Colorado 81501.

10. Should Lessee fail, for whatever reason, to vacate the premises at the end of this Lease or when this Lease is terminated, Lessee agrees to pay to the City, in addition to all other sums due hereunder, daily rental in the amount of \$100.00 per day for each and every day or portion thereafter. The parties agree that it would be difficult to establish the actual damages to the City in such event and that said \$100.00 daily rental is an appropriate liquidated damages amount.

11. Lessee shall not sublet, assign or transfer any of Lessee's interests in this Lease, or enter into any contract or agreement affecting Lessee's interest in this Lease, without obtaining the prior written consent of the City, which consent may be withheld for any reason.

12. (a) It is expressly agreed that this Lease is one of lease and not of partnership. The City shall not be or become responsible for loss profits, loss opportunities or any debts contracted by Lessee. Lessee shall keep the Property and demised premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Lessee.

(b) 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 from and claim, lien, damage, injury, or death, to persons or property caused by Lessee or sustained in connection with the performance of this Lease or by conditions created thereby, or based upon any violation of statute, ordinance, code or regulation, and the defense of any such claims or actions, including attorney's fees.

13. In the event the City uses its City Attorney or engages an attorney to enforce the City's rights hereunder, Lessee agrees to pay any and all attorney(s) fees, plus costs, including, but not limited to, the costs of any experts. This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of Colorado. Venue shall be in Mesa County, Colorado.

14. The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties, unless included herein, are null and void and of no effect. No alterations, amendments, changes or modifications to this Lease Agreement shall be valid unless they are contained in an instrument which is executed by all parties with the same formality as this Lease Agreement.

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

IN WITNESS WHEREOF, each party to this Farm Lease Agreement has caused it to be executed as of the day and year first above written.

Attest:

For the City of Grand Junction, Colorado

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager

Lessee:

\_\_\_\_\_  
Robert H. Murphy