

RESOLUTION NO. 55-99

AUTHORIZING A FIVE YEAR LEASE OF CITY PROPERTY,
COMMONLY KNOWN AS THE DIKE ROAD POND,
TO THE UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF RECLAMATION

WHEREAS, the City is the owner of that certain real property described as the North ½ of the North ½ of the Southeast ¼ of the Northeast ¼ of Section 16, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, commonly known as the Dike Road Pond; and

WHEREAS, The United States Department of Interior, Bureau of Reclamation, desires to lease the above described property to supplement hatchery operations for endangered fish.

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 Lease Agreement with the United States of America for the lease of said property for a term of five (5) years and for a total rental fee of \$9,300.00, subject to each and every term, covenant, condition and restriction contained in the attached Lease Agreement.

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

Attest:

/s/ Stephanie Nye
City Clerk

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

Contract No. _____

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

ENDANGERED SPECIES ACT
COLORADO RIVER ENDANGERED FISH
HATCHERY PROGRAM

LEASE AGREEMENT

THIS LEASE AGREEMENT (agreement) is entered into this _____ day of _____, 19____, in pursuance of the Act of June 17, 1902 (32 Stat.388), and the Endangered Species Act (Act of December 28, 1973, Public Law 93-205, 87 Stat.884; Act of December 28, 1979, 93 Stat. 1225; Act of October 13, 1982, 96 Stat. 1426; 16 U.S.C.§1531), or supplementary thereto, by and between THE UNITED STATES OF AMERICA, hereinafter styled the United States, acting through such officer as is authorized therefor by the Secretary of the Interior, and THE CITY OF GRAND JUNCTION, a Colorado home rule municipality, hereinafter styled the City.

WITNESSETH, THAT:

WHEREAS, the Endangered Species Act, 16 U.S.C. 1534 (a) (2) and the Fish and Wildlife Coordination Act of 1956, 16 U.S.C. 742a – 742j, authorize the Secretary of the Interior to conserve and protect fish or wildlife which are listed as endangered or threatened species and to acquire by purchase, donation, or otherwise, lands waters, or interest herein.

WHEREAS, The United States desires to supplement hatchery operations by leasing ponds for endangered fish. This will enable the fish to be of a more competitive size when released into the rivers and this will help the fish survive in the wild.

WHEREAS, the following described real property contains a pond which the United States believes may be suitable for habitation by the Colorado River endangered fish:

The North ½ of the North ½ of the Southeast ¼ of the Northeast ¼ of Section 16,
Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of
Colorado.

WHEREAS, the United States has tested the pond situate upon the above described property and has approved the pond for water quality and contamination prior to entering into this Lease Agreement.

NOW THEREFORE, for and in consideration of the mutual agreements herein contained, the parties hereto do covenant and agree as follows:

1. The City believes that the City is the owner of the real property described above.
2. The City authorizes the United States to maintain not less than Ten (10) feet of water in the pond at the deepest point; provided, however, that the rights herein conveyed do not include any rights to use water or water rights owned by the City; provided, further, that the City shall not be or become

responsible for the United States' ability or inability to secure or obtain the right to maintain a legal appropriation or adjudication of water and water rights which may be required to maintain a certain level of water in the pond.

3. The City authorizes the United States to take all actions which are reasonable, necessary and appropriate to prevent any person or party from fishing or stocking of fish, by any parties other than the United States without written consent from the United States.

4. The City agrees that during the period covered by this lease agreement, the United States, its agents or assigns, shall have, at all proper times, the unrestricted right and privilege to enter upon said lands to access the pond with vehicles for all proper and lawful purposes, including examination of said ponds and to perform water quality tests, fish stocking, fish monitoring, fish capture, and water management. The United States will make a reasonable attempt to contact the City or its designated representative before entering the property. No rights herein are granted to the general public for access to or entry upon the land subject to this lease agreement for any purpose.

5. The United States shall have exclusive use of the pond for fish habitat and operations, which may include eradicating or removing the fish population by shocking the pond with electricity and/or applying chemical treatment.

6. The United States and the City mutually agree that the lease agreement will be for a period of five years from the Effective Date (as hereinafter defined), and that upon the conclusion of said five years, this lease agreement shall automatically expire.

7. The United States may install screens on the water intake structures.

8. The United States shall pay to the City a rental fee of Nine Thousand Three Hundred and 00/100 Dollars (\$9,300.00) for the five year period, commencing on the first day after the date of acceptance of the lease agreement by the United States or its authorized representative.

9. The parties hereto represent to each other that this lease agreement was brought about without the efforts of any real estate brokers or any other party which might assert a commission, percentage, brokerage, contingent or finder's fee. Each party agrees to defend, indemnify and hold the other harmless from any claim for real estate brokerage commissions, contingent fees or finder's fees asserted by any party as a result of dealings claimed to have been conducted in connection with this lease agreement.

10. No member or delegate to Congress or a resident commissioner shall be admitted to any share or part of the lease agreement, or to any benefit that may arise therefrom, but this restriction shall not be construed to extend to this lease agreement if made with a corporation or company for its general benefit.

11. The City makes no representations or warranties regarding the physical fitness of the pond or the property for any use or purpose; the use of the pond and the property by the United States shall be at the sole and exclusive risk of the United States. By executing this lease agreement, the United States shall be deemed to have accepted the physical condition of the pond and the property as is, where is, in their present condition and location. The City shall not be or become responsible or liable for any losses, including, but not limited to, the loss of profits or opportunities of the United States, or for any detrimental environmental condition located on, along, over, under, through or across the pond or the property.

12. The United States agrees that the United States shall, at the sole cost and expense of the United States, maintain all aspects of the property and the pond in a condition which will not violate any

law, code, rule, regulation or ordinance of any governmental authority having jurisdiction over the pond and the property.

13. The City shall not be liable for liability or damage claims for injury to any person or property from any cause relating to the use and occupancy of the pond and the property by the United States, nor for any injury or damage to any property of the United States from any cause.

14. Unless otherwise agreed by the parties, all improvements placed on or attached to the pond and the property by the United States shall be and become part of the realty and shall be the sole and separate property of the City as of the expiration of this lease agreement.

15. In the event the pond, the property or any improvements thereon shall become destroyed or substantially injured or rendered useless by the United States by any means, the United States shall either promptly restore the pond, the property or any improvements or such portion as may have been injured or destroyed, or clear the damaged or destroyed improvements from the property. If the pond or the property or any improvements thereon become damaged to the extent where they are no longer functional for the purposes of the United States, the City shall have no obligation to repair the same nor to otherwise make the premises useable or occupiable; damages shall be at the sole risk of the United States.

16. This lease agreement is not intended to and shall in no way preclude the City from selling, granting, donating, exchanging or otherwise conveying the property to any other party; provided, however, that any such sale, grant, donation, exchange or conveyance of the property, so long as such action occurs during the term of this lease, shall be subject to this lease agreement.

17. The United States shall not take any action which would cause the property to become encumbered by any lien or encumbrance. In the event any mechanic's or other lien is filed against the property or any part thereof by reason of the act or omission of the United States, or because of a claim against the United States, the United States shall make every reasonable effort to have the same cancelled and discharged of record by bond or otherwise.

18. If the whole or any part of the property shall be acquired or taken by eminent domain or condemnation proceedings, the United States shall not be entitled to and expressly waives all claims to any eminent domain or condemnation award paid to the City for any taking, whether whole or partial and whether for diminution in value of the leasehold or to the fee; provided, however, that the United States shall have the right to claim from the condemnor such compensation as may be recoverable by the United States in its own right for damages to the United States, and to collect such payments as the condemnor shall have paid to the City to the extent that such payments represent compensation for the value of property interests of the United States. If the whole of the property shall be acquired or taken by eminent domain or condemnation proceedings, then this lease agreement shall cease and terminate as of the date of title vesting in such proceeding.

19. At the expiration of this lease agreement, the United States shall surrender the property in as good condition as existed upon the Effective Date of this lease agreement, reasonable wear and use excepted, and shall deliver all keys to the City.

20. The Effective Date of this lease agreement shall be the date both parties have executed this lease agreement.

