

RESOLUTION NO. 128-01

**AUTHORIZING THE LEASE AND PURCHASE BY THE CITY
OF CERTAIN REAL PROPERTY OWNED BY
BUCK S. ODA AND YO ODA**

WHEREAS, the City has negotiated an agreement to Lease and Purchase certain real property in the County of Mesa, State of Colorado, owned by Buck S. Oda and Yo Oda; and

WHEREAS, the City Council deems it necessary and appropriate that the City lease and 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. All actions heretofore taken by the officers, employees and agents of the City pertaining to the lease and purchase of the subject property which are consistent with the provisions of the attached Lease and Purchase Agreement are hereby ratified, approved and confirmed.
2. That the City Council hereby authorizes the expenditure of the sums of money as more fully set forth in the attached Lease and Purchase Agreement.
3. That the officers, employees and agents of the City are hereby authorized and directed to take all actions necessary and appropriate to effectuate the provisions of this Resolution and the attached Lease and Purchase Agreement.

PASSED and ADOPTED this 5th day of December, 2001

Attest:

/s/: Cindy Enos-Martinez
President of the Council

/s/: Stephanie Tuin
City Clerk

LEASE AND PURCHASE OPTION AGREEMENT

THIS LEASE AND PURCHASE OPTION AGREEMENT ("Agreement") is made and entered as of the 24th day of May, 2002, by and between Buck S. Oda and Yo Oda, husband and wife, hereinafter referred to as "Odas", and the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City."

RECITALS

A. The Odas represent that they are the owners, as joint tenants, of that certain real property in Mesa County, Colorado, as described and depicted in the attached **Exhibits "A"** and **"B"** attached hereto, together with all improvements thereon and all rights, privileges and appurtenances related thereto, including but not limited to, 35 shares of capital stock in the Grand Valley Irrigation Company, collectively hereinafter referred to as "the Property".

B. The Odas desire to lease and sell the Property to the City. The City desires to lease and purchase the Property from the Odas, pursuant to the terms and conditions of this Agreement.

C. For the purposes of this Agreement: (a) the southernmost 7.827 acres of the Property, as described in **Exhibit "C"** and depicted in **Exhibit "D"**, both of which are attached and incorporated herein by this reference, is referred to as "Parcel A"; (b) the rest of the Property, being the northernmost 7.474 acres of the Property, as described in **Exhibit "E"** and depicted in **Exhibit "F"**, both of which are attached and incorporated herein by this reference, is referred to as "Parcel B".

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained and based on the above Recitals, the parties agree as follows:

1. Lease. (a) The Odas hereby lease Parcel A to the City, and the City hereby leases Parcel A from the Odas.

(b) This Lease shall commence on the date this Agreement is signed by both parties.

(c) Unless earlier terminated pursuant to the terms hereof, this Lease shall continue through January 2, 2004, at which time:

- (i) Within thirty days thereof, the City may exercise its right and option to purchase Parcel A as provided below, by giving Odas written notice;
- (ii) If the City opts to purchase Parcel A, the City shall contemporaneously lease Parcel B pursuant to the terms hereto.

(d) Eighteen Thousand Dollars (\$18,000.00) per year is agreed by the parties to represent the lease payments hereunder, paid in advance, and all other amounts paid hereunder shall be deemed for all purposes to be option fees, which shall be credited in full against the purchase price for the Property, or any portion thereof, if any, purchased by the City hereunder.

2. Termination of Lease. If the City fails to pay the rentals when due under this Agreement and after Odas have given ten days written notice of such failure to pay, Odas may give notice that this Lease, including the options to purchase, is terminated.

3. Rental/Purchase Payments. Subject to the City Council having made appropriations therefor, the City agrees to pay to the Odas the following sums of money each payment of which the parties agree shall constitute a rental and a partial payment to be applied to the purchase of the Property:

<u>No.</u>	<u>Payment Date</u>	<u>Payment Amount</u>	<u>Accumulated Total</u>
1	May 24, 2002	\$ 100,000.00	\$ 100,000.00
2	January 4, 2003	\$ 50,000.00	\$ 150,000.00
3	January 3, 2004	\$ 50,000.00	\$ 200,000.00
4	January 2, 2005	\$ 50,000.00	\$ 250,000.00
5	January 3, 2006	\$ 317,226.40	\$ 567,226.40

4. Use of Parcels. (a) During the term of the Lease of Parcel A, the City shall have the full and exclusive right to fence, use, occupy and quietly enjoy Parcel A for any purpose, including, but not limited to, the installation, operation, maintenance, repair, restoration and removal of any type of above-ground and below-ground buildings and infrastructure, together with the right to alter the topography, grade or slope of Parcel A as the City may, in its sole discretion, determine to be necessary or appropriate. The Odas shall not be required to consent to or grant any dedication of right of way to the City for any public street on the Property during the term hereof, except for the agreement as to right of way for River Road expressly contemplated in Section 6 hereof.

(b) The City acknowledges that the Odas have previously farmed portions of the Property, including, but not limited to maintaining livestock thereon, and may continue to do so on Parcel B during the term of this Agreement.

5. Annexation Petition. Transfer of Water Shares. In exchange for the delivery of Payment No. 1 by the City to the Odas, the Odas shall:

(a) execute and deliver to the City a Petition, substantially in the form provided in **Exhibit "G"** attached hereto and incorporated herein by reference, requesting that the Property be annexed to the City; and

(b) assign and transfer to the City 25 shares of capital stock in the Grand Valley Irrigation Company, which stock shall be free and clear of liens and then current assessments and dues. In the event the City fails or refuses to timely exercise its option to purchase Parcel A in accordance with the terms and conditions of this Agreement, the City shall transfer the 25 shares, free and clear of liens and then current assessments and dues, back to the Odas within thirty (30) days from and after the expiration or termination of the option to purchase Parcel A.

6. River Road ROW. The City desires to widen and improve River Road near and adjacent to the Property. In the event the City requires additional right-of-way and/or easements from the Property to accommodate right-of-way, easements, related infrastructure, including utilities and related facilities related to adjacent right of way improvements during the term of this Agreement and any leases between these parties, the Odas shall execute all documents, grants, and conveyances which are necessary and appropriate to transfer, convey and/or dedicate additional right-of-way and/or easements to the City at no cost to the City (other than [a] the payments described above, and [b] the City shall pay to Odas the reasonable market value of the real property received from Odas for such widening or improvement of River Road at the time of the grant, provided the amount paid to Odas in connection with that transfer, conveyance and/or dedication shall be credited against the purchase price to be paid under Section 3 hereof in the event the City exercises its option to purchase the portion of the Property, Parcel A or Parcel B, of which the dedicated property was a part) and free and clear of liens, encumbrances and assessments not of record as of the date hereof; provided, however, that the City shall pay all closing costs and recording fees related and/or incidental to the conveyance of any such right-of-way and/or easements.

7. Ownership of Improvements. All improvements placed on or attached to the Property during the term of this Agreement or this Lease shall remain the property of the City. The City shall be permitted to remove any such improvement(s) in the event this Lease is terminated (other than by exercise of the option to purchase); provided such removal is completed within one hundred eighty (180) days from and after the expiration or termination of the Lease. In the event this Lease is terminated and the City removes such improvements, the City shall restore Parcel A to a condition which is reasonably comparable to the condition which existed prior to the City taking possession of Parcel A.

8. Destruction. If, during the term of this Lease, the City determines Parcel A to be substantially damaged due to fire, flood, or other casualty, the Odas shall have no obligation to repair Parcel A nor to otherwise make Parcel A usable or occupiable. If the City determines that Parcel A is then no longer functional for the purposes of the City, the City may terminate this Lease by giving notice to the Odas which termination shall be effective sixty (60) days following the date of mailing of the notice of termination.

9. Grant of Option. (a) The Odas hereby grant and convey to the City the sole, exclusive and irrevocable right to purchase Parcel A, and Parcel B of the Property, in accordance with and subject to the terms and conditions of this Agreement.

(b) Concurrent with the delivery of Payment No. 3 as set forth above, the Odas shall execute and deliver to the City a good and sufficient General Warranty Deed, conveying Parcel A free and clear of all taxes, liens and encumbrances. The parties agree and understand that the accumulated sum of Payments 1, 2, and 3 (\$200,000.00) shall fully and completely compensate the Odas for the lease of, and conveyance of fee simple absolute title in and to, Parcel A.

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

14. Memorandum. Concurrent with the execution of this Agreement, the parties shall execute a memorandum substantially in the form provided in **Exhibit "H"** attached hereto and incorporated herein by reference, which memorandum shall be recorded in the office of the Mesa County Clerk and Recorder to provide notice of the existence of this Agreement.

15. Amendments. This Agreement contains the entire agreement between the parties and cannot be changed or modified except by a written instrument subsequently executed by the parties hereto.

16. Applicable to Successors This Agreement and the terms and conditions hereof apply to and are binding upon the successors, heirs and authorized assigns of both parties.

17. Subdivision/Land Use Approvals. The City agrees to obtain or to address any required land use approvals, including any costs and expenses associated with such approvals. The parties agree that Odas shall not be responsible for any such costs, expenses and processes. The City agrees to obtain any such required approvals in a time such that the payments described herein shall not be delayed.

18. Indulgences. Neither the failure nor any delay on the part of any party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

19. Number of Days. In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

20. Further Assurances. Each party hereto shall execute and deliver all other agreements, instruments and documents and take all other actions as any other party hereto may, from time to time, reasonably request in order to effectuate the transactions contemplated herein.

The parties hereto have each executed and entered into this Lease and Purchase Option Agreement as of the day and year first above written.

Attest:

For the City of Grand Junction,
a Colorado home rule municipality

City Clerk

City Manager

Buck S. Oda

Yo Oda

(SEAL)

STATE OF COLORADO)

COUNTY OF MESA) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2002, by _____, as _____ of the City of Grand Junction.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

(SEAL)

STATE OF COLORADO)

COUNTY OF MESA) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, 2002, by Buck S. Oda and Yo Oda.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

Exhibit "A"

Legal Description of "the Property"

Beginning at the SE Corner of Lot 2, being the fractional SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado; thence North along the East line of Lot 2 698.45 feet to the line of the right of way of the Denver and Rio Grande Western Railway, 50 feet at right angles from track center; thence North 40°44' West (variation 14°38' East) along said right of way 131 feet to a center sandstone with a cross cut in the top, 20x8x5 inches in dimension, which is the point of beginning; thence running South 61°33' West 9.44 chains to a limestone rock 18x4x3 inches in dimension with a cross cut on top, having been set 589.1 feet from place of beginning to verify and establish this line; thence North 79°51' West 7.48 chains; thence North 61° West 1.60 chains; thence North 37°50' West 1.15 chains; thence North 51° East 14.45 chains; thence South 40°44' East 10.02 chains to place of beginning,

AND ALSO

Beginning at the NW Corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado; thence East 737 feet, more or less, to the right of way of the Rio Grande Western Railroad 100 feet at right angles from the center of the main track; thence South 40°44' East along said right of way 80 feet, more or less, to the corner of the tract of land formerly owned by Henry Lotz; thence South 51°00' West 1020 feet, more or less, to the Grand River, thence Northwesterly, along the bank of the Grand River to its intersection with the West line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15; thence North along the West line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15 to beginning,

EXCEPTING FROM said Property that portion thereof conveyed to the City of Grand Junction by instrument recorded January 10, 1994, in Book 2040 at Page 522.

Also known by Mesa County Tax Schedule Number 2945-152-00-096

Exhibit "B"

NORTH



Depiction of "the Property"



Exhibit "C"

Legal Description of Parcel "A"

Commencing at the Northwest Corner of the Southwest ¼ of the Northwest ¼ (SW¼ NW¼) of Section 15, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, said point being a 3-inch Aluminum BLM disc set in concrete, and considering the North line of the SW¼ NW¼ of said Section 15 to bear S 89°58'20" E with all bearings contained herein being relative thereto; thence S 89°58'20" E along the North line of the SW¼ NW¼ of said Section 15, said line being common with the South line of High Country Business Park as recorded in Plat Book 13 at Page 271 in the office of the Mesa County Clerk and Recorder, a distance of 719.42 feet to a point on the westerly line of the open, used and historic right-of-way for River Road as laid out and now in use; thence S 32°38'09" E along said right-of-way line a distance of 97.74 feet to the Northerly point of that certain parcel of land described in that certain Order of Taking as described by instrument recorded in Book 41 at Page 66 in the office of the Mesa County Clerk and Recorder, said instrument having established and ordered right-of-way for River Road; thence S 34°46'34" E along the westerly right-of-way line for River Road as established by said Order of Taking a distance of 39.95 feet to the True Point of Beginning;

thence along the westerly right-of-way line for River Road as aforesaid the following two (2) courses:

1. S 34°46'34" E a distance of 330.65 feet;
2. S 41°05'34" E a distance of 266.35 feet to a point being a 5/8-inch iron rod with an illegible plastic cap, said point marking the Northeasterly Corner of that certain property surveyed and described by Armstrong Engineers dated November 13, 1979, and titled "Job Number 792602;

thence S 61°14'26" W along the Northerly line of said surveyed property a distance of 514.99 feet to a point which is the intersection of said Northerly line with the Easterly boundary line of that certain tract or parcel of land described by instrument recorded in Book 2040 at Page 522 in the office of the Mesa County Clerk and Recorder;

thence along the Easterly boundary line of said tract or parcel of land the following two (2) courses:

1. N 79°49'25" W a distance of 332.40 feet;
2. N 47°35'39" W a distance of 192.00 feet;

thence leaving said line, N 46°18'28" E a distance of 769.98 feet, more or less, to the Point of Beginning,

containing 340,947.97 square feet (7.827 acres), more or less, as described.

Exhibit "D"

NORTH



Depiction of Parcel "A"



Exhibit "E"

Legal Description of Parcel "B"

Beginning at the Northwest Corner of the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 15, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, said point being a 3-inch Aluminum BLM disc set in concrete, and considering the North line of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15 to bear S 89°58'20" E with all bearings contained herein being relative thereto;

thence S 89°58'20" E along the North line of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15, said line also being the South line of High Country Business Park as recorded in Plat Book 13 at Page 271 in the office of the Mesa County Clerk and Recorder, a distance of 719.42 feet to a point on the westerly line of the open, used historic right-of-way for River Road as laid out and now in use;

thence S 32°38'09" E along said right-of-way line a distance of 97.74 feet to the Northerly point of that certain parcel of land described in that certain Order of Taking as described by instrument recorded in Book 41 at Page 66 in the office of the Mesa County Clerk and Recorder, said instrument having established and ordered right-of-way for River Road;

thence S 34°46'34" E along the westerly right-of-way line for River Road as established by said Order of Taking a distance of 39.95 feet

thence leaving said right-of-way line, S 46°18'28" W a distance of 769.98 feet to a point on the Easterly boundary line of that certain tract or parcel of land described by instrument recorded in Book 2040 at Page 522 in the office of the Mesa County Clerk and Recorder;

thence along the Easterly boundary line of said tract or parcel of land the following three (3) courses:

1. N 47°35'39" W a distance of 119.22 feet;
2. N 33°47'25" W a distance of 265.31 feet;
3. N 00°01'35" E a distance of 342.22 feet, more or less, to the Point of Beginning,

containing 325,545.97 square feet (7.474 acres), more or less, as described.

Exhibit "F"

NORTH



Depiction of Parcel "B"



Exhibit "G"

Petition for Annexation

STATE OF COLORADO)
)SS
COUNTY OF MESA)

Buck S. Oda, of lawful age, being first duly sworn, upon oath, deposes and says:

That he is the circulator of the forgoing petition:

That each signature on the said petition is the signature of the person whose name it purports to be.

Buck S. Oda

Subscribed and sworn to before me this _____ day of _____, 2001.

Witness my hand and official seal.

Notary Public

Address

My commission expires: _____

Exhibit "G" continued on next page

Exhibit "G" continued

**ODA ANNEXATION
PETITION FOR ANNEXATION**

WE THE UNDERSIGNED do hereby petition the City Council of the City of Grand Junction, State of Colorado, to annex the following described parcel to the said City:

ADDRESS: 2561 River Road
Tax Parcel No: 2945-152-00-096

See Attached Exhibit A

This foregoing description describes the parcel; the perimeter boundary descriptions, for purposes of the Annexation Act, is shown on the attached "Perimeter Boundary Legal Description, Oda Annexation."

As grounds therefore, the petitioner respectfully state that annexation to the City of Grand Junction, Colorado is both necessary and desirable and that the said territory is eligible for annexation in that the provisions of the Municipal Annexation Act of 1965, Sections 31-12-104 and 31-12-105 CRS 1973 have been met.

This petition is accompanied by four copies of a map or plat of the said territory, showing its boundary and its relation to established city limit lines, and said map is prepared upon a material suitable for filing.

Your petitioners further state that they are the owners of more than fifty percent of the area of such territory to be annexed, exclusive of streets and alleys; that the mailing address of the signer and the date of signature are set forth hereafter opposite the name of the signer, and that the legal description of the property owned by the signer of said petition is attached hereto.

WHEREFORE, these petitioners pray that this petition be accepted and that the said annexation be approved and accepted by ordinance. These petitioners by his/her/their signature(s) acknowledge, understand and agree that if any development application concerning the property which is the subject hereof is denied, discontinued or disapproved, in whole or in part, that the annexation of the property to the City of Grand Junction shall proceed.

Buck S. Oda & Yo Oda
NAME

2561 River Road

ADDRESS

SIGNATURES

DATE

Exhibit "G" continued on next page

Exhibit "G" continued

Exhibit A (to Exhibit "G")

Beginning at the SE Corner of Lot 2, being the fractional SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado; thence North along the East line of Lot 2 698.45 feet to the line of the right of way of the Denver and Rio Grande Western Railway, 50 feet at right angles from track center; thence North 40°44' West (variation 14°38' East) along said right of way 131 feet to a center sandstone with a cross cut in the top, 20x8x5 inches in dimension, which is the point of beginning; thence running South 61°33' West 9.44 chains to a limestone rock 18x4x3 inches in dimension with a cross cut on top, having been set 589.1 feet from place of beginning to verify and establish this line; thence North 79°51' West 7.48 chains; thence North 61° West 1.60 chains; thence North 37°50' West 1.15 chains; thence North 51° East 14.45 chains; thence South 40°44' East 10.02 chains to place of beginning,

AND ALSO

Beginning at the NW Corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado; thence East 737 feet, more or less, to the right of way of the Rio Grande Western Railroad 100 feet at right angles from the center of the main track; thence South 40°44' East along said right of way 80 feet, more or less, to the corner of the tract of land formerly owned by Henry Lotz; thence South 51°00' West 1020 feet, more or less, to the Grand River, thence Northwesterly, along the bank of the Grand River to its intersection with the West line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15; thence North along the West line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15 to beginning,

EXCEPTING FROM said Property that portion thereof conveyed to the City of Grand Junction by instrument recorded January 10, 1994, in Book 2040 at Page 522.

End of Exhibit "G"

Exhibit "H"

Memorandum of Lease

This is the memorandum of that certain unrecorded Lease dated December 3, 2001, between Buck S. Oda and Yo Oda, Lessors, and the City of Grand Junction, a Colorado home rule municipality, Lessee, concerning the premises described in Exhibit A attached hereto and made a part hereof by this reference, being a part of Mesa County Assessor's Tax Parcel No. 2945-152-00-096. The premises consist of 7.827 acres of vacant land.

Lessors have leased to Lessee the full and exclusive right to use and occupy the premises for the term and under the provisions contained in the above-mentioned unrecorded lease.

The term of the lease commences December 3, 2001, and ends January 2, 2004. Lessee has an option to purchase the premises, together with an additional 7.474 acres being a part of Mesa County Assessor's Tax Parcel No. 2945-152-00-096.

This memorandum is not a complete summary of the lease. Provisions in this memorandum shall not be used in interpreting the lease provisions. In the event of conflict between this memorandum and the unrecorded lease, the unrecorded lease shall control.

In witness whereof, the parties to this memorandum and the unrecorded lease have caused it to be executed in Grand Junction, Colorado, as of the 3rd day of December, 2001.

Lessee:
CITY OF GRAND JUNCTION
250 North 5th Street
Grand Junction, CO 81501

Lessors:
BUCK S. ODA and YO ODA
2561 River Road
Grand Junction, CO 81505

Tim Woodmansee,
Real Estate Manager

Buck S. Oda

Yo Oda