

RESOLUTION NO. 03-04

**A RESOLUTION AUTHORIZING A DRY GRAZING LEASE
OF CITY PROPERTY TO WILLIAM ARTHUR MERTZ**

Recitals.

The City of Grand Junction is the owner of the following described real property situated in the County of Mesa, State of Colorado, to wit:

The SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 25, Township 2 South, Range 1 East of the Ute Meridian, AND ALSO Lots 2 and 4 in Section 30, Township 2 South, Range 2 East of the Ute Meridian, subject to a 25-foot wide nonexclusive easement for ingress and egress purposes across Lot 2 in said Section 30, the center line of said easement being more particular described as follows: Beginning at a point on the South line of said Lot 2 from whence the Southeast corner of said Lot 2 bears East a distance of 180.0 feet; thence running Northeasterly to a point on the East line of said Lot 2 from whence the Southeast corner of said Lot 2 bears South a distance of 260.0 feet, said point being the Point of Terminus of said Easement, excepting therefrom right-of-way for U.S. Highway No. 50.

The City Council deems it appropriate to lease the dry grazing rights associated with the above described property to William Arthur Mertz for a period of one (1) year, commencing on January 1, 2004, and expiring on December 31, 2004.

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 Dry Grazing Lease Agreement with William Arthur Mertz for a term of one-year, commencing on January 1, 2004 and expiring on December 31, 2004; provided, however, that in the event Mr. Mertz performs all of the required duties and obligations pursuant to the attached Agreement to the satisfaction of the City and if the City chooses, at its sole option and discretion, to again lease the dry grazing rights associated with the Property at the expiration of said one-year term, the City may extend the term of the lease with Mr. Mertz for one (1) additional one-year period, subject to each and every term contained in the attached Dry Grazing Lease Agreement.

PASSED and ADOPTED this 7th day of January, 2004.

Attest: /s/ Jim Spehar
President of the Council

/s/ Stephanie Tuin
City Clerk

DRY GRAZING LEASE AGREEMENT

This Dry Grazing Lease Agreement is made and entered into as of the 1st day of January, 2004, by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and William Arthur Mertz, hereinafter referred to as "Lessee".

Recitals.

- A. The City is the owner of certain real property in the County of Mesa, State of Colorado, as described on **Exhibit "A"** attached hereto and incorporated herein by reference, hereinafter referred to as "the Property".
- B. Lessee desires to lease from the City the dry grazing rights associated with the Property under the terms and conditions of this Dry Grazing Lease Agreement.
- C. The City has agreed to lease the dry grazing rights associated with the Property to Lessee under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the recitals above and the terms, covenants and conditions contained herein, the parties hereto agree as follows:

1. Grant and Acceptance of Lease. The City hereby leases the dry grazing rights associated with the Property to Lessee, and Lessee hereby accepts and leases the dry grazing rights associated with the Property from the City, for the term stated in paragraph 2 below and for the specific purposes and duties of maintaining all aspects of the Property in accordance with the terms and conditions of this Agreement.
2. Term. The term of this Lease shall commence on January 1, 2004, and shall continue through December 31, 2004, at which time this Lease shall expire; provided, however, that in the event Lessee shall fully and complete fulfill each and every covenant, condition, duty and obligation of Lessee as hereinafter set forth and in the event the City determines, at the City's sole discretion, to again lease the Property in accordance with the provisions of this Lease, Lessee shall have the first right of refusal to lease the dry grazing rights to the Property for the term commencing on January 1, 2005, and expiring on December 31, 2005, as more fully set forth in paragraph 12 below.
3. Reservations from Lease. The City reserves from this Lease and retains unto itself:
 - a. all oil, gas coal and other minerals and mineral rights underlying and/or appurtenant to the Property;

- b. all hunting rights concerning the Property;
- c. all rights to grant, sell, bargain, convey and dedicate any ownership interest(s) in and to the Property, or any division thereof, to any other party, including the conveyance of easements, so long as such action will not interfere with Lessee's use and quiet enjoyment of the Property for the purposes set forth in this Agreement;
- d. the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, in whole or in part, even if such taking is made by and/or for the purposes of the City, or for the conveyance in lieu of condemnation. Lessee hereby assigns and transfers to the City any claim Lessee may have to compensation, including claims for damages, as a result of any condemnation; and
- e. all water and water rights, ditches and ditch rights which are or may have been appurtenant to and/or connected with the Property.

4. Rent.

4.1 Lessee agrees to pay to the City as annual rent for the dry grazing rights associated with the Property, in addition to any and all other sums and expenses which Lessee shall be required to pay to fulfill Lessee's duties and obligations hereunder, the sum of \$475.00. All rental payments paid by Lessee to the City shall be delivered either by mail or personal deliver to:

City of Grand Junction Finance Department
Accounts Receivable
250 North 5th Street
Grand Junction, CO 81501-2668

All rental payments deposited by Lessee shall be clearly marked "City Property Dry Grazing Lease Payment".

4.2 In the event Lessee fails to pay the specified rental payment on or before January 15, 2004, the lease of the dry grazing rights associated with the Property to Lessee shall automatically terminate and Lessee shall not have any further rights under this Agreement.

5. Lessee's Use and Occupancy of the Property. Lessee's use and occupancy of the Property shall be specifically limited to livestock dry grazing purposes and for no other purposes whatsoever. The amount(s) of livestock allowed on the Property shall not at any time exceed eighteen (18) Animal Units per Month ("AUM"). For the purposes of this Agreement, an AUM is one cow with

calf over a one month period. Lessee shall not use or occupy the Property nor allow any other person to use or occupy the Property for any purpose prohibited by this Agreement or by the applicable laws of the United States of America, the State of Colorado, the County of Mesa or any other governmental authority or any jurisdiction having authority over uses and activities conducted upon the Property.

6. Specific Duties and Obligations of Lessee. As consideration for the lease of the dry grazing rights associated with the Property, Lessee shall, at no cost or expense to the City:

6.1 Install, maintain and repair all fences and gates in a manner that will contain livestock. Lessee may install locks on all gates, provided, however, that Lessee shall provide the City with lock combinations and/or copies of keys to all locks installed by Lessee;

6.2 Maintain all aspects of the Property and keep the Property in a clean, safe and healthy condition and in compliance with all applicable codes, ordinances, regulations, rules and orders.

6.3 Timely pay any and all real estate, use and possessory taxes which may be levied upon and against the Property and any taxes or assessments levied against the livestock and other personal property of Lessee or any other leasehold interest acquired by Lessee under this Agreement.

6.4 Forever waive and forego any claim, cause of action or demand Lessee may have against the City, its officers, employees, agents and assets for injury to or destruction of any property of Lessee or any other party that may be lost, injured, destroyed or devalued as a result of the act, or failure to act, of Lessee or any other person; and to indemnify, defend and hold the City and the City's officers, employees, agents and assets harmless from any and all fines, suits, procedures, claims, damages, actions, costs and expenses of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) in any manner arising out of or resulting from Lessee's use, occupancy, maintenance and improvement of the Property.

6.5 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 substance or material, 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 material or substance 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.

6.6 Purchase and at all times during the term of this lease maintain in effect suitable comprehensive general liability and hazard insurance which will protect the City and the City's officers, employees, agents and assets from liability in the event of loss of life, personal injury or property damage suffered by any person or persons on, about or using the Property, including Lessee. Such insurance policy(ies) shall have terms and amounts approved by the City's Risk Manager. Such insurance shall not be cancelable without thirty (30) days prior written notice to the City and shall be written for at least a minimum of Five Hundred Thousand Dollars (\$500,000.00), combined single limit. The certificate of insurance must be deposited with the City and must designate "The City of Grand Junction, its officers, employees, agents and assets" as additional insureds. If a policy approved by the City's Risk Manager is not at all times in full force and effect during the term of this Lease, this Lease shall automatically terminate.

6.7 Care for Lessee's livestock in the highest standard of care and in a manner that will not over-graze the Property or otherwise cause deterioration of or destruction to the Property. Lessee shall comply with all applicable regulations of the United States Department of Agriculture, Livestock laws and regulations of the State of Colorado, and any and all federal, state and county laws, ordinances and regulations which are applicable to the area in which the Property is located.

7. Use of Chemicals on the Property. Lessee shall not apply any chemicals on the Property, including, but not limited to, fertilizers, herbicides and pesticides, without the prior written consent of the City. Lessee shall at all times keep the City advised of chemicals used and/or stored on the Property, and shall further comply with all applicable rules, laws, regulations and orders, either now in force or hereinafter enacted, regulating the storage, use, application, transportation and disposal of any such chemicals.

8. Hazardous Substances.

8.1 The term "Hazardous Substances", as used in this Agreement, shall mean any substance which is: defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law enacted by any federal, state and local governmental agency or other governmental authority; a petroleum hydrocarbon, including, but not limited to, crude oil or any fraction thereof; hazardous, toxic or reproductive toxicant; regulated pursuant to any law; any pesticide or herbicide regulated under state or federal law. The term "Environmental Law", as used in this Lease Agreement, shall mean each and every federal, state and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal state and local governmental agency or other governmental authority, pertaining to the protection of human health and safety of the environment, either now in force or hereafter enacted.

8.2 Lessee shall not cause or permit to occur by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees or employees:

a. any violation of any Environmental Law on, under or about the Property or arising from Lessee's use and occupancy of the Property, including, but not limited to, air, soil and groundwater conditions; or

b. the use, generation, accidental or uncontrolled release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance in violation of any federal state or local law, ordinance or regulation either now in force or hereafter enacted.

9. Environmental Clean-Up.

9.1 The following provisions shall be applicable to Lessee and to Lessee's agents, guests, invitees, contractors, licensees and employees:

a. Lessee shall, at Lessee's sole cost and expense, comply with all Environmental Laws and laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances;

b. Lessee shall, at Lessee's sole cost and expense, make all submissions to provide all information required by and/or to comply with all requirements of all governmental authorities ("the Authorities") under Environmental Laws and other applicable laws.

c. Should any Authority or the City demand that a clean-up plan be prepared and that a clean-up plan be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances on, under or about the Property, Lessee shall, at Lessee's sole cost and expense, prepare and submit the required plan(s) and all related bonds and other financial assurances, and Lessee shall carry out all such clean-up plan(s) in compliance with the Authorities and all Environmental Laws and other applicable laws.

d. Lessee shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances requested by any Authority. If Lessee fails to fulfill any duty imposed hereunder within a reasonable time, the City may do so on Lessee's behalf and, in such case, Lessee shall cooperate with the City in the preparation of all documents the City or any Authority deems necessary or appropriate to determine the applicability of Environmental Laws to the Property and Lessee's use thereof, and for compliance therewith, and

Lessee shall execute all documents promptly upon the City's request. No such action by the City and no attempt made by the City to mitigate damages under any Environmental Law or other applicable law shall constitute a waiver of any of Lessee's obligations hereunder.

e. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

9.2 Lessee shall indemnify, defend and hold the City, its officers, employees, agents and assets harmless from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Substances and the violation of any Environmental Law and other applicable law by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees and employees that occur during the term of this Lease or any extension thereof, or from Lessee's failure to provide all information, make all submissions, and take all actions required by all Authorities under the Environmental Laws and other applicable laws. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

10. Condition of the Property.

10.1 Lessee affirms that Lessee has inspected the Property and has received the Property in good order and condition. Lessee further affirms that the condition of the Property is sufficient for the purposes of Lessee. The City makes no warranties nor promises, either express or implied, that the Property is sufficient for the purposes of Lessee.

10.2 In the event the Property is damaged due fire, flood or any other act of nature or casualty, or if the Property is damaged to the extent that it is no longer functional for the purposes of Lessee, the City shall have no obligation to repair the Property nor to otherwise make the Property usable or occupiable; damages shall be at Lessee's sole and absolute risk.

11. Default, Sublet, Termination.

11.1 Should Lessee: (a) default in the performance of Lessee's agreements, duties or obligations set forth under this Agreement and any such default continue for a period of thirty (30) days after written notice thereof is given by the City to Lessee, or (b) abandon or vacate the Property, or (c) suffer death, or (d) be declared bankrupt, insolvent, make an assignment for the benefit of creditors, or if a receiver is appointed, the City may, at the City's option, cancel and annul this Lease at once and enter and take possession of the Property immediately without any previous notice of intention to reenter, and such reentry shall not operate as a waiver or satisfaction, in whole or in part, of any claim or

demand arising out of or connected with any breach or violation by Lessee of any covenant or agreement to be performed by Lessee. Upon reentry, the City may remove the property and personnel of Lessee and store Lessee's property in a warehouse or at a place selected by the City, at the expense of Lessee and without liability to the City. Any such reentry shall not work a forfeiture of nor shall it terminate the rent(s), fees, assessments or the covenants and agreements to be performed by Lessee for the full term of this Lease; and upon such reentry, the City may thereafter lease or sublease the Property for such rent as the City may reasonably obtain, crediting Lessee with the rent so obtained after deducting the cost reasonably incurred in such reentry, leasing or subleasing, including the costs of necessary repairs, alterations and modifications to the Property. Nothing herein shall prejudice or be to the exclusion of any other rights of the City to obtain injunctive relief based on the irreparable harm caused to the City's reversionary rights.

11.2 Except as otherwise provided for (automatic and immediate termination), if Lessee is in default in the performance of any term, condition, duty or obligation of this Agreement, the City may, at its option, terminate this Lease upon giving thirty (30) days written notice. If Lessee fails within any such thirty (30) day period to remedy each and every default specified in the City's notice, this Lease shall terminate. If Lessee remedies such default, Lessee shall not thereafter have the right of thirty (30) days to remedy with respect to a subsequent similar default, but rather, Lessee's rights shall, with respect to a subsequent similar default terminate upon the giving of notice by the City.

11.3 Lessee shall not assign or sublease this Lease or any right or privilege connected therewith, or allow any other person, except as provided herein and except the employees of Lessee, to occupy the Property or any part thereof. Any attempted assignment, sublease or permission to occupy the Property conveyed by Lessee shall be void and shall, at the option of the City, provide reasonable cause for the City to terminate this Lease. The interest of Lessee in this Lease is not to be assignable by operation of law without the formal approval of the City.

12. Option to Extend Lease. If Lessee performs Lessee's duties and obligations pursuant to this Agreement to the satisfaction of the City, and if the City chooses, at its sole option and discretion, to again lease the dry grazing rights to the Property at the expiration of the term as set forth in paragraph 2, the City hereby grants to Lessee an option to extend this Lease for one (1) additional one (1) year period, commencing on January 1, 2005, and expiring on December 31, 2005 ("second term"), upon the same terms and conditions of this Agreement or upon such other terms and conditions which may hereafter be negotiated between the parties. In order to exercise Lessee's option for a second term, Lessee shall, on or before November 15, 2004, give written notice to the City of Lessee's desire and intention to lease the dry grazing rights associated with the Property for a second term.

13. Miscellaneous Provisions.

13.1 The City, by entering into this Dry Grazing Lease Agreement, does not part with its entire possession of the Property, but only so far as is necessary to enable Lessee to use and occupy the Property and to carry out the duties, obligations, terms and provisions of this Agreement. The City reserves the right to at reasonable times have its officers, employees and agents enter into and upon the Property and every part thereof and to do such acts and things as may be deemed necessary for the protection of the City's interests therein.

13.2 It is expressly agreed that this Lease is one of lease and not of partnership. The City shall not be or become responsible for lost profits, lost opportunities or any debts contracted by Lessee. Lessee shall keep the Property free from any and all liens whatsoever, including, but not limited to, liens arising out of any work performed, materials furnished or obligations incurred by Lessee. Lessee shall save, indemnify and hold the City and the City's officers, employees, agents and assets harmless against all liability and loss, and against all claims or actions based upon or arising out of any claim, lien, damage or injury (including death), to persons or property caused by Lessee or sustained in connection with Lessee's performance of the duties, obligations, terms and conditions of this Agreement or the conditions created thereby, or based upon any violation of any statute, ordinance, code, rule or regulation, either now in force or hereinafter enacted, and the defense of any such claims or actions, including the costs and fees of attorneys, consultants and experts. Lessee shall also save, indemnify and hold the City and the City's officers, employees, agents and assets harmless from and against all liability and loss in connection with, and shall assume full responsibility for the payment of, all federal, state and local taxes, fees or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to employees engaged by Lessee.

13.3 The parties to this Lease Agreement warrant that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. Lessee agrees to defend, indemnify and hold the City harmless from any claim for real estate brokerage commissions or finder's fees asserted by any other party claiming to be entitled to brokerage commissions or finder's fees arising out of or in connection with this Lease.

13.4 Lessee shall not pledge or attempt to pledge or grant or attempt to grant as collateral or security any of Lessee's interest in any portion of the Property.

13.5 Unless otherwise agreed to by the parties in writing, all improvements placed upon, under or about the Property or attached to the

Property by Lessee shall be and become part of the Property and shall be the sole and separate property of the City upon the expiration or termination of this Lease.

14. Surrender, Holding Over. Lessee shall, upon the expiration or termination of this Lease, peaceably surrender the Property to City in good order, condition and state of repair. In the event Lessee fails, for whatever reason, to vacate and peaceably surrender the Property upon the expiration or termination of this Lease, Lessee agrees that Lessee shall pay to the City the sum of \$100.00 per day for each and every day thereafter until Lessee has effectively vacated and surrendered the Property. The parties agree that it would be difficult to establish the actual damages to the City in the event Lessee fails to vacate and surrender the Property upon the expiration or termination of this Lease, and that said \$100.00 daily fee is an appropriate liquidated damages amount.

15. Enforcement, Partial Invalidity, Governing Law.

15.1 In the event the City uses its Attorney or engages an attorney to enforce the City's rights hereunder, Lessee agrees to pay any and all attorney fees, plus costs, including the costs of any experts.

15.2 The invalidity of any portion of this Dry Grazing Lease Agreement shall not affect the validity of any other provision contained herein. In the event any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision(s).

15.3 This Lease Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce any covenant or agreement contained herein shall be in Mesa County, Colorado.

16. Notices. All notices to be given with respect to this Agreement shall be in writing delivered either by United States mail or Express mail, postage prepaid, or by facsimile transmission, personally by hand or by courier service, as follows:

To the City:
City of Grand Junction
Attn: Real Estate Manager
250 North 5th Street
Grand Junction, CO 81501-2668

With Copy to:
City of Grand Junction
Attn: City Attorney
250 North 5th Street
Grand Junction, CO 81501-2668

To Lessee:
Mr. William Arthur Mertz
P.O. Box 204
Clifton, CO 81520-0204

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

17. Legal Counsel / Ambiguities. The City and Lessee have each obtained the advice of its/their own legal and tax counsel regarding this Agreement or has knowingly declined to do so. Therefore, the parties agree that the rule of construing ambiguities against the drafter shall have no application to this Agreement.

18. Total Agreement; Applicable to Successors. This Dry Grazing Lease Agreement contains the entire agreement between the parties. All representations made by any officer, agent or employee of either party, unless included herein, are null and void and of no effect. Except for automatic expiration or termination, this Agreement may not be changed, altered or modified except by a written instrument subsequently executed by both parties. This Dry Grazing Lease Agreement and the duties, obligations, terms and conditions hereof apply to and shall be binding upon the respective heirs, successors and authorized assigns of both parties.

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

Attest:

The City of Grand Junction,
a Colorado home rule municipality

City Clerk

City Manager

Lessee:

William Arthur Mertz

EXHIBIT "A"

DESCRIPTION OF "THE PROPERTY"

The SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 25, Township 2 South, Range 1 East of the Ute Meridian,

AND ALSO

Lots 2 and 4 in Section 30, Township 2 South, Range 2 East of the Ute Meridian, subject to a 25-foot wide nonexclusive easement for ingress and egress purposes across Lot 2 in said Section 30, the center line of said easement being more particular described as follows: Beginning at a point on the South line of said Lot 2 from whence the Southeast corner of said Lot 2 bears East a distance of 180.0 feet; thence running Northeasterly to a point on the East line of said Lot 2 from whence the Southeast corner of said Lot 2 bears South a distance of 260.0 feet, said point being the Point of Terminus of said Easement, excepting therefrom right-of-way for U.S. Highway No. 50.

All in the County of Mesa, State of Colorado.