

RESOLUTION NO. 70-05

**A RESOLUTION RE-AUTHORIZING THE EXCHANGE OF REAL ESTATE
WITH THE WESTERN COLORADO BOTANICAL SOCIETY**

WHEREAS, the City and the Western Colorado Botanical have cooperated for years to create a viable and attractive Botanical Gardens along the banks of the Colorado River; and

WHEREAS, with the prior consent of the City, the Botanical Society has constructed an office and Children's Library which are situated partially on City property and partially on property owned by the Botanical Society; and

WHEREAS, the Botanical Society has requested the exchange of an equal amount of real estate to place the Society's office and Children's Library on property which will be owned entirely by the Botanical Society; and

WHEREAS, the City Council has determined that the exchange of real estate as requested by the Botanical Society will help further the goals and objectives of both entities.

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

That the City Manager is hereby authorized to take all actions and execute all documents necessary or appropriate to effectuate the exchange of real estate with the Western Colorado Botanical Society.

PASSED and ADOPTED this 20th day of April, 2005.

Attest: /s/: Bruce Hill
President of the Council

/s/: Stephanie Tuin
City Clerk

AGREEMENT TO EXCHANGE REAL ESTATE

THIS AGREEMENT is made and entered into this _____ day of _____, 2005, between the City of Grand Junction, a Colorado home rule municipality ("City"), and the Western Colorado Botanical Society, a Colorado nonprofit corporation ("Society").

1. Subject to the provisions herein, the City agrees to convey to the Society, by Quit Claim Deed, that certain real property described in **Exhibit "A"** attached hereto and incorporated herein by reference, hereinafter referred to as the "City Property". For the purposes of this Agreement, the fair market value of the City Property is \$20,000.00.

2. Subject to the provisions herein, the Society agrees to convey to the City, by Quit Claim Deed, that certain real property described in **Exhibit "B"** attached hereto and incorporated herein by reference, hereinafter referred to as the "Society Property". For the purposes of this Agreement, the fair market value of the Society Property is \$20,000.00.

3. The exchange and conveyance of the City Property and the Society Property shall each include all improvements thereon and appurtenant thereto, and any and all other rights appurtenant to each said property, free and clear of all taxes, special assessments, liens, mortgages and encumbrances; provided, however, that there shall be no conveyance or transfer of any water or water rights, ditches or ditch rights, which may have been used on or attributed to the respective properties.

4. Because the City Property and the Society Property are each part of and attached to larger tracts of land, this Agreement and the exchange of real property hereby contemplated is contingent upon the City of Grand Junction giving its approval to a Simple Subdivision of the larger tracts in accordance with the requirements of the Grand Junction Zoning and Development Code. The parties agree that the Society shall be responsible for all actions and all costs which are necessary and appropriate to effectuate the subdivision process. In the event the City of Grand Junction fails or refuses, within a reasonable time as agreed by the parties, to give its approval to the Simple Subdivision, for whatever reason, this Agreement shall terminate and both parties shall be released from all obligations hereunder.

5. The date of closing shall be the date for delivery of deeds as provided in paragraph 6 below. The hour and place of closing shall be designated by mutual agreement between the parties hereto, in Grand Junction, Mesa County, Colorado. Changes in time, place and date may be made with the consent of both parties. Each party shall pay its respective closing costs at closing, except as otherwise provided herein. Each party shall sign and complete all customary or required documents at or before closing. Fees for real estate closing and settlement services shall be paid at closing by the parties equally.

6. Subject to full and complete compliance by both parties with the terms and provisions hereof, closing and possession shall occur on July 1, 2005, or, by mutual agreement, at an earlier date.

7. At closing:

(a) the City shall execute and deliver a Quit Claim Deed to the Society and shall deliver possession of the City Property to the Society free from all taxes, all liens, all tenancies and/or leasehold estates; and

(b) the Society shall execute and deliver a Quit Claim Deed to the City and shall deliver possession of the Society Property to the City, free and clear of all taxes, all liens, all tenancies and/or leasehold estates.

8. Time is of the essence hereof. If any obligation hereunder is not performed as herein provided, the non-defaulting party shall only have the following specified remedies, except as otherwise provided in this Agreement: (a) to treat this Agreement as terminated, but no damages may be recoverable. Each party specifically waives the right of specific performance.

9. All notices or other communications between the parties pertaining to this Agreement shall be in writing delivered by United States mail or Express mail, postage prepaid, or by facsimile transmission, or personally by hand or courier service, as follows:

To the City:

City of Grand Junction
Attn: Real Estate Manager
250 North 5th Street
Grand Junction, CO 81501-2668
Fax: (970) 256-4002

With Copy to:

City of Grand Junction
Attn: City Attorney
250 North 5th Street
Grand Junction, CO 81501-2668
Fax: (970) 244-1456

To the Society:

Western Colorado Botanical Society
Attn: Executive Director
641 Struthers Avenue
Grand Junction, CO 81501
Fax: (970) 245-9001

The parties may, by notice as provided above, designate a different address to which notice shall be given.

10. This Agreement 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. No spoken or oral promises or changes to this

Agreement will apply or be enforced. This Agreement and the terms and conditions hereof apply to and are binding upon the successors and assigns of both parties.

11. If a party engages or pays for an attorney to pursue any remedy hereunder, such party shall pay for its own attorney's fees and charges.

12. The parties represent to each other that the exchange of these Properties was brought about without the efforts of any brokers or agents and that neither party has dealt with any brokers or agents in connection with the exchange of the Properties. 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 third party as a result of the sale or exchange pursuant to this Agreement.

13. This Agreement shall be governed and construed by the laws of the State of Colorado. Venue for any action shall be in Mesa County, Colorado.

14. Because each party has obtained or has had the opportunity to obtain the advice of its own legal and tax counsel, or has knowingly declined to do so, the rule of construing ambiguities against the drafter shall have no application to this Agreement.

15. The promises, agreements to pay money, liabilities and other agreements herein that must be performed after the closing shall remain enforceable despite the transfer of title. The doctrine of merger shall not apply.

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

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

/s/: Stephanie Tuin
City Clerk

/s/: Kelly Arnold
City Manager

Attest: For the Western Colorado Botanical
Society, a Colorado nonprofit corporation

Secretary

President

Exhibit "A"

Legal Description of that portion of the "City Property" to be Quit Claimed to the Society as it presently exists:

Commencing at the Center $\frac{1}{4}$ Corner of Section 23, Township 1 South, Range 1 West of the Ute Meridian, and considering the North line of the Southwest $\frac{1}{4}$ ("SW $\frac{1}{4}$ ") of said Section 23 to bear N 89°35'57" W with all bearings contained herein being relative thereto; thence

N 89°35'57" W along the North line of the SW $\frac{1}{4}$ of said Section 23 a distance of 72.0 feet to the Northwest Corner of that certain tract of land owned by the Society as described by Warranty Deed recorded in Book 2337 at Page 791 in the office of the

Mesa County Clerk and Recorder, said point being the True Point of Beginning; thence S 00°24'03" W along the West boundary line of said tract of land owned by the Society a distance of 69.57 feet;

thence leaving said West boundary line, N 89°40'49" W a distance of 200.09 feet;

thence N 00°24'03" E a distance of 59.85 feet to a point of curvature;

thence 15.71 feet along the arc of a curve to the right having a radius of 10.00 feet, a central angle of 90°00'00", and a long chord bearing N 45°24'03" E a distance of 14.14 feet to a point on the North line of the SW $\frac{1}{4}$ of said Section 23;

thence S 89°35'57" E along the North line of the SW $\frac{1}{4}$ of said Section 23 a distance of 190.09 feet to the Point of Beginning, hereinafter referred to as the "City Property".

Legal Description of that portion of the "City Property" to be Quit Claimed to the Society following recordation of a Simple Subdivision Plat:

Lot Two of Western Colorado Botanical Society Subdivision, situate in the Southwest $\frac{1}{4}$ of Section 23, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, as recorded by Reception No. _____ and in Plat Book _____ at Page _____ in the office of the Mesa County Clerk and Recorder.

Exhibit "B"

Legal Description of that portion of the "Society Property" to be Quit Claimed to the City as it presently exists:

Commencing at the Center $\frac{1}{4}$ Corner of Section 23, Township 1 South, Range 1 West of the Ute Meridian, and considering the North line of the Southwest $\frac{1}{4}$ ("SW $\frac{1}{4}$ ") of said Section 23 to bear N 89°35'57" W with all bearings contained herein being relative thereto; thence

S 00°24'03" W along the East boundary line of that certain tract of land owned by the Society as described by Warranty Deed recorded in Book 2337 at Page 791 in the office of the Mesa County Clerk and Recorder a distance of 69.57 feet to the True Point of Beginning;

thence S 00°24'03" W along the East boundary line of said tract of land owned by the Society a distance of 120.43 feet to the Southeast Corner of said tract of land;

thence N 89°35'57" W along the South boundary line of said tract of land owned by the Society a distance of 72.0 feet to the Southwest Corner of said tract of land;

thence N 00°24'03" E along the West boundary line of said tract of land a distance of 120.33 feet;

thence leaving the West boundary line of said tract of land, S 89°40'49" E a distance of 72.0 feet to the Point of Beginning.

Legal Description of the "Society Property" to be Quit Claimed to the City following recordation of a Simple Subdivision Plat:

Lot One of Western Colorado Botanical Society Subdivision, situate in the Southwest $\frac{1}{4}$ of Section 23, Township 1 South, Range 1 West of the Ute Meridian, County of Mesa, State of Colorado, as recorded by Reception No. _____ and in Plat Book _____ at Page _____ in the office of the Mesa County Clerk and Recorder.