

**GRAND JUNCTION CITY COUNCIL
ADDITIONAL WORKSHOP AGENDA
JANUARY 30, 2006, 11:30 A.M.
ADMINISTRATION CONFERENCE ROOM
2ND FLOOR, CITY HALL
250 N. 5TH STREET**

11:30 am **Western Colorado Botanical Gardens:** A discussion with the Board of Directors of the Western Colorado Botanical Society as a follow-up to better understand the Botanical Gardens issues and to hear the business plan being proposed by the Botanical Gardens for a successful future.

[Attach 1](#)

1:00 pm **ADJOURN**

Attach 1
Botanical Gardens Discussion
CITY OF GRAND JUNCTION

CITY COUNCIL AGENDA						
Subject		Botanical Gardens Workshop Meeting				
Meeting Date		January 30, 2006 (11:30 AM)				
Date Prepared		January 25, 2006			File #	
Author		Ron Lappi and Others		Administrative Services Director		
Presenter Name		Kelly Arnold Botanical Gardens Board		City Manager		
Report results back to Council		X	No	Yes	When	
Citizen Presentation		X	Yes	No	Name	Botanical Gardens Board
X	Workshop		Formal Agenda		Consent	Individual Consideration

Summary: This is a workshop luncheon meeting with the City Council and the Board of Directors of the Western Colorado Botanical Society. It is a follow-up requested by the City Council to better understand the Botanical Gardens issues and to hear the business plan being proposed by the Botanical Gardens for a successful future.

Budget: There is no budget impact of this informational meeting; however the City has provided a great deal of financial support to the efforts of the Botanical Gardens over the years as follows:

- From 1989 through 1994 purchased lands leased for \$1 a year to the Botanical Gardens totaling 14.81 acres of the approximate 38 acres, with a proportionate cost of \$426,000.
- GOCO Grant for the Native Garden Education Center for \$52,622
- Water Fund contribution for Water Conservation Implementation totaling \$50,000.
- Parking lot resurfacing \$10,000.
- Public Restrooms construction \$23,521.
- Other cash contributions since 1997 equal \$33,323.
- Recent utility bill payment from general fund contingency of \$2,980

Total Financial Support since June of 1994 \$598,446 (including the original cost off the land, but not its current value)

Action Requested/Recommendation: Hear the plans, recommendations and requests of the Botanical Gardens Board.

Attachments:

- City Council 1994 Resolution and original lease agreement.

- Report from our Utilities Engineer, Bret Guillory, on current water solutions and recommending an approach.

Background Information:

Between 1988 and 1994 the City of Grand Junction purchased three different parcels in the area of the current Botanical Gardens, which were eventually leased for \$1 a year to the Botanical Gardens. Almost exactly half of the 38 acres are now under lease to the gardens for their various projects including the Butterfly House, Native Gardens and Kids Castle.

The Botanical Gardens has operated successfully over the years with an active board of directors and a large group of interested volunteers. Currently they have 3 part-time staff working at the gardens. It is truly a labor of love for all of those involved.

Their struggles financially (presented to the City Council at a recent workshop) have more to do with their day to day operating costs of the gardens than their capital needs for on-going improvements and additions. Capital campaigns have been successful over the years and they have accomplished a great deal from their humble beginnings.

The board's previous presentation to the City Council resulted in approval of the payment of delinquent City utility bills, investigation of possible water solutions, but no on going financial commitment for either operations or capital. The Public Works staff strongly believes that a viable water solution does exist at a cost of approximately \$11,000 with an on going maintenance cost of \$1,800 annually; which appears to be good news to all concerned.

The purpose of this additional workshop with the City Council is to hear back from the Botanical Gardens board on the current status of various issues and to hear their business plan on how they are going to continue to survive and flourish going forward. The board is expected to first make a presentation to the City Council, but is also prepared to answer any questions and may have requests of the City Council.

RESOLUTION NO. 53-94

**AUTHORIZING A LEASE OF CITY PROPERTY
TO THE WESTERN COLORADO BOTANICAL SOCIETY**

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

(Exhibit "A" attached)

and

WHEREAS, the Western Colorado Botanical Society, hereinafter "Society", has requested to lease the aforescribed property for the purpose of providing cultural and educational enhancement and environmental preservation to the City and Western Colorado through its gardens by serving all who come to learn, observe and participate.

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

That the Mayor be authorized, on behalf of the City and as the act of the City, to execute the attached Lease Agreement with the Western Colorado Botanical Society, for the lease of the aforescribed property for a term of twenty (20) years, commencing on June 16, 1994, and expiring on July 1, 2014, subject to each and every term and condition contained in the attached Lease Agreement. The "Society" may renew for four (4) additional periods of twenty (20) years each so long as the approval of the City Council obtained by Resolution.

PASSED and ADOPTED this 15th day of June, 1994.

/s/ R.T. Mantlo
President of the Council

ATTEST:

/s/ Stephanie Nye
City Clerk

EXHIBIT "A"

That property south of Struthers Avenue, north and south of the Colorado River Trail as hereafter constructed, between approximately 8th Street on the east and 5th Street on the west, in the City of Grand Junction, County of Mesa, State of Colorado, consisting of 12.6 acres, more or less, described with particularity as follows:

Commencing at the S 1/4 corner of Section 23, Township 1 South, Range 1 West, Ute Meridian, thence South 89° 37' 00" East 270.00 feet;
thence South 00° 23' 00" West 170.00 feet;
thence North 89° 37' 00" East 68.00 feet;
thence North 00° 23' 00" East 170.00;
thence South 89° 37' 00" East 87.00 feet;
thence South 02° 11' 00" East 317.00 feet;
thence South 02° 32' 00" East 186.60 feet;
thence South 15° 17' 21" East 102.12 feet;
thence North 88° 51' 04" West 85.13 feet;
thence North 79° 32' 00" West 213.74 feet;
thence North 67° 47' 04" West 194.68 feet;
thence South 89° 40' 42" West 150.01 feet;
thence North 79° 44' 01" West 176.23 feet;
thence North 77° 12' 33" West 102.39 feet;
thence North 71° 52' 17" West 105.00 feet;
thence North 73° 00' 00" West 290.24 feet;
thence South 89° 37' 00" East 88.12 feet;
thence North 00° 23' 00" East 325.00 feet;
thence South 89° 37' 00" East 563.62 feet;
thence South 89° 37' 00" East 78.00 feet;
thence South 00° 23' 00" West 190.00 feet;
thence South 89° 37' 00" East 72.00 feet;
thence North 00° 23' 00" East 190.00 feet to the point of beginning, Mesa County, Colorado;

together with such additional property as the City might acquire from the west boundary of the described Property to the east right-of-way of 5th Street and the 5th Street bridge.

The Property is subject to the construction of a levee and Riverfront Trail thereon by the US Corps of Engineers and the Riverfront Commission, the use of the Property being limited during the construction thereon, and the sides of the levee being limited to such uses as permitted by the Corps of Engineers;

AGREEMENT

This Agreement is made and entered into this day of June, 1994, by and between The City of Grand Junction, Colorado, a Colorado home rule city, hereinafter referred to as "Lessor" or "City," and The Western Colorado Botanical Society, a Colorado Nonprofit Corporation, hereinafter called "Lessee" or "Society."

Recitals.

A. The City purchased various properties along the Colorado River as a part of a community-wide effort to redevelop and beautify the River corridor. The City has obtained various grants and other funding sources, some of which have on-going restrictions and limitations and obligations attached to the use of portions of the various properties. The Society has proposed to use portions of this area which the Council finds is in the public interest because the Society's uses and efforts can, among other things, educate the public in botanical, conservation, environmental and related matters, improve the appearance of the area and promote the cultural and aesthetic values of the City. The City further finds that because tax dollars were used, in part, to acquire the property, and certain restrictions, obligations and promises have been made with regard to all or a part of some of the properties, on-going City involvement, or at least the ability to be involved, must be retained by the City, throughout the term of this agreement. The City has invested substantial sums in acquiring the several properties; this Agreement provides a reasonable mechanism to protect this investment while promoting a positive and benefitting use.

B. In determining the intent of the parties and interpreting this lease, and in construing any ambiguities which may exist, the parties agree that the following principles shall apply: (a) the City shall retain the power to decide ownership and control of and the uses on the Property; (b) Society shall use the Property and shall direct its efforts and operations in a way that is consistent and coordinated with the City's other uses and properties in the area and subject to the ongoing approval of the City, as owner of the Property; (c) in the event of a dispute or when judgment or discretion must be exercised in interpreting this agreement, the Society shall refer such question to the City Manager or City Council whose decision shall be final; (d) the City intends to participate less in matters of control and approval (other than its customary regulatory role) as the Society demonstrates its ability to operate the premises in a business-like manner which is not harmful to the interests of the City.

C. In consideration of the foregoing, and the mutual promises, covenants and agreements contained herein, the City is willing to lease to Society the following described real property owned by the City, hereinafter referred to as the "Property", which Property is generally located west of 8th Street and south of Struthers Avenue, Grand Junction, Colorado, and is more-particularly described as set forth on Exhibit A attached hereto.

D. Notwithstanding any provision to the contrary, the City shall retain its rights and privileges to cause to be constructed a levee, and other public or other improvements as the City deems proper from time to time, on portions of the Property. Society shall cooperate, without charge, in each such construction or maintenance effort. The City shall retain the right of access over and throughout the Property for levee, trails, parking and such purposes as the City deems appropriate. The City Council may, at the request of Society and upon review of such plans as the Council deems necessary, limit such rights of the City for a period or periods established by the Council. The City may amend the legal description of the Property, from time to time, in order that the legal description, as amended, of the Property consists of only those portions of the Property which the City deems necessary for the purposes of Society and so that, as determined by the City Council, only that amount of Property which is actively being used, or proposed for use, is subject to this Agreement.

E. Society represents that it is, and shall continuously maintain its status as, a tax exempt corporation under 501 (c)(3) of the IRC of 1986, and it desires to develop botanic gardens on the demised premises. A Master Plan (the "plan") has been prepared by the Society which contemplates the development of the property in phases, an initial phase commencing now (subject to receipt of adequate funds therefor), with ground breaking activities on certain buildings expected to occur in a progressive manner commencing about 1996. A copy of such plan is attached. The failure of the Society to commence such construction by June 16, 1999, shall be deemed a default of this Agreement. City may require that such plan be modified in whole or in part to meet the needs of City and Society, as determined by City. Society shall modify its articles of incorporation to require that, during the term hereof, one-third of the board of directors of the Society be residents of the City of Grand Junction. Any grant funds received by the Society shall be subject to the terms of this lease.

F. No development of botanic gardens can be carried out without first securing a suitable location where the gardens can be established and cultivated over a long time period. The necessary volunteers and additional financial support from the community are expected to follow the identification of the whereabouts for the gardens.

G. The purpose and mission of the Society is to provide cultural and educational enhancement and environmental preservation to the City and Western Colorado through its gardens by serving all who come to learn, observe and participate. The City wholeheartedly supports such purpose and mission.

H. Such botanic gardens will be a cultural amenity for this community and will enhance the construction and development of the Colorado River Trail ("Trail") in the City of Grand Junction. The property is proximate to the Trail. It will attract visitors from the Trail and will bring other visitors to the Trail and to the community.

I. City desires to see the areas in the City along the Colorado River developed to enhance the quality of life on the Western Slope, educationally, culturally and commercially. This development provides a means to meet such goals.

J. The City desires to give Society the opportunity to clear the land and construct suitable gardens, landscaping, trails and an education/visitor center as generally outlined in the plan, subject to the on-going approval of City during the term of this Agreement.

K. The recitals, and the foregoing provisions and policy statements, are substantive portions of this Agreement; in the event of inconsistency with any particular provision set forth below, the guiding principles set forth herein shall control.

L. Society shall, on or before October 31st of each year, submit to the City Manager: a financial statement and a detailed report of the Society's activities involving the Property, including usage (paid and unpaid), revenues, expenditures, detailed financial projections for the successive three years which shall demonstrate the Society's ability to complete its plans. An independent audit shall be provided at least every 5 years.

M. As to all matters of management and business judgment herein requiring City approval or consent, if Society has provided sufficient information, then City agrees to provide timely review and approval/nonapproval where appropriate and to advise the Society of what additional requirements, if any, it must meet to secure such approval.

Now, therefore, in consideration of the recitals, premises and in accordance with the mutual promises, policies, covenants and agreements herein set forth, Society accepts said lease in accordance with said recitals, principles, agreements and covenants as follows:

1. TERM

The term of this Lease shall be for twenty (20) years, and shall commence at 12:01 AM on June 16, 1994, and shall end at 12:01 AM on July 1, 2014; Society may renew for four (4) additional periods of twenty (20) years each so long as the approval of the City Council is obtained by Resolution.

2. RENTAL

Society shall pay to City at the office of City or at such other place as City, in writing, from time to time designates, as follows:

(a) Base Rent. Until such time as the gross annual receipts of Society exceed Two Hundred Fifty Thousand dollars (\$250,000.00), a yearly guaranteed rental in the amount of one dollar (\$1.00), in advance, beginning on the first day of July, 1994, and thereafter on the first day of each calendar year during the term of this lease. For any partial calendar year, a full dollar shall be paid.

(b) At such time as the gross annual receipts of Society exceed Two Hundred Fifty Thousand dollars (\$250,000.00), rent shall be paid, in arrears on the first day of February following the measuring year, equal to two percent (2%) of that amount of gross annual receipts which exceed Two Hundred Fifty Thousand Dollars (\$250,000.00).

(c) At such time as the gross annual receipts of Society exceed Five Hundred Thousand dollars (\$500,000.00), rent shall be paid, in arrears on the first day of February following the measuring year, equal to five percent (5%) of that amount of gross annual receipts which exceed Five Hundred Thousand Dollars (\$500,000.00).

(d) Gross annual receipts includes all transactions on the Property, excluding donations, gifts, memorials and grants, for which sales or use taxes are payable to the City under its ordinances and shall include income from all rentals, admissions, fees, charges and rents.

3. RELATIONSHIP

The City shall in no event be held to be a partner or an associate of the Society in the conduct of the Society's business; the City and Society shall remain as landlord and tenant, subject to the other, overriding provisions and principles hereof.

4. USE

(a). Society agrees that the Property shall be used only for the purposes of a garden, insect conservatory and related educational, recreational and fund-raising activities; that access and use shall be for the general public and for the City's primary and the region's benefit; and that such uses be consistent with any applicable zoning, health, building and related laws. In order to avoid conflicts with existing businesses which compete for gross annual receipts, Society shall solicit, and deliver to the Council, letters or other evidence of support for the society activities from businesses who provide competing services or goods such as weddings, flowers and bulb sales. The Council may waive all or a portion of the requirements of the preceding sentence upon request of Society.

(b). Society shall restrict its use for such purposes and shall not use or permit the use of the Property for any other purpose without the written consent of the City.

(c). Society agrees that the Property shall be used only for those events approved by the City. Society shall apply for, and comply with, the applicable regulations and permits of the City; Society shall pay such fees and charges as such regulations and laws require. Society shall meet the regulatory requirements which apply to the types of uses Society shall propose, such as but not limited to parking, street and traffic improvements, and infrastructure.

(d). Upon the execution hereof and subject to the requirements of the US Corps of Engineers which is to construct a levee on the Property, Society shall construct a composting complex on the Property for stockpiling soil amendments and giving public demonstrations. No offensive odors may be emitted beyond the property line, and the

composting and other activities shall be conducted in accordance with existing laws and ordinances.

(e) Society shall provide twelve days each calendar year (at least one day monthly), as determined by the Society for free admissions to the uses and activities of the Society.

(f) No development nor improvement nor construction of any structure shall occur without the prior written approval of the City, in its capacity as owner of the Property, having been obtained. In such regard, the City may require that Society perform such studies and analyses as the City reasonably deems appropriate to the uses of the property. Society shall deliver to the City for its review a proposed site plan and a land use plan, both of which comply with the requirements of the City Zoning and Development Code, and applicable regulations, on or before March 31, 1995.

(g) Society shall propose plans for and shall, upon receipt of City approval of such plans, thereafter construct a public parking lot(s) sufficient to meet the needs of the Society. Upon the completion of the construction to the specifications and standards of the City, the City shall thereafter operate and maintain such parking lot(s) and facilities.

(h) City agrees to pay one-half the construction cost of public restrooms built on the Property, provided that there is outdoor public access to such restrooms.

5. MAINTENANCE, UTILITIES, INSURANCE AND TAXES

Society accepts the Property in its "as is" condition. Society waives its rights, and the rights of any person claiming under or through Society, to make any claims against the City, its officers and employees, with regard to the condition of the Property including claims which relate to or are in any way based upon radioactive or other contamination contained on or under the soils of the Property. Society has inspected the Property but has conducted no testing of any kind thereon, although the City has afforded it the opportunity to do so. The City has disclosed that there are residual radioactive tailings buried at least two feet below the existing surface of the ground, based upon information supplied to the City by the U.S. Department of Energy. The Society is not expecting any particular quality of soil and may in its discretion supplement the soils with nutrients, loam, compost, topsoil and other materials to enhance its viability. Society represents and acknowledges that it has had ample opportunity to investigate the Property and to perform such analyses as it deems necessary and reasonable to assure itself that the Property meets its needs. Society acknowledges that City makes no representations, express or implied, concerning the usability or condition of the soils or of the Property.

Society makes additional covenants, as follows:

(a) Maintenance. Society shall, at its own cost and expense, put, keep and maintain the entire demised Property in good order and repair. The property is to be cleared and all debris removed and the gardens constructed. Once constructed, the Society will be responsible for maintaining the same in good order and repair. All equipment storage shall be screened from public view, all rights-of-way and public trails. Junk, rubbish and weeds (as defined by Municipal Code 14-24) shall not be accumulated on the Property. In carrying out its maintenance obligations, Society agrees to conform to all

requirements of law, the regulations of applicable public authorities, including those of the City, and any requirement of its insurance carriers.

(b) Utilities. Society further covenants and agrees to pay for all water, gas, power, electric current, and all other utilities served to the demised Property during the term of this Lease or any extension thereof, and City shall, at Society's request, grant to any utility company so requiring it such easements and rights-of-way as may be required but only if City determines that to do so would not injure other property of City, at City's sole discretion. Each party agrees to pay one-half of the cost of extending the public sewer line in the right-of-way from 7th Street to the appropriate sites on the Property boundary. Society will pay the customary plant investment fee, estimated at \$750.00. In the event other parties access the sewer service line installed in accordance with this lease within five years of the date of this lease, Society may apply to City for reimbursement of a prorata share of costs incurred in construction of the line. Society will pay the whole cost of installing the sewer service line from the public sewer line to improvements on the property.

(e) Taxes. Because of the public nature of this project, City/Society agrees to pay real estate taxes and special assessments imposed upon the Property when said taxes are due and payable.

(d) Sales Tax. Society shall collect and remit to the City the City sales tax and use tax from snack bar and gift shop any taxable transaction or activity under the control of Society, including but not limited to snack bar(s) and gift shop(s).

(e) Insurance. (i) The Society agrees to take out and continuously maintain such forms, amounts, and coverage of insurance as City shall, from time to time, require. Initially Society shall take out public liability insurance covering the demised Property. Said policy or policies shall be for an amount of at least One Million Dollars (\$1,000,000) for each occurrence, plus at least One Hundred Thousand Dollars (\$100,000) for property damage, which said policy or policies of insurance shall name the City as additional insured thereunder, and Society agrees to maintain the same at Society's sole cost and expense in full force and effect during the entire term of this Lease including any extension thereof. Society shall furnish the City with a copy of such insurance coverage or with a certificate of the company issuing insurance, certifying that the same is in full force and effect.

(ii) Society further agrees that it will, at Society's own cost and expense, carry and maintain fire insurance with extended coverage endorsement for the benefit of City and Society on the improvements located thereon in an amount equal to the full insurable value thereof, excluding foundation and excavating cost. As often as any such policy or policies shall expire or terminate, renewal or additional policies shall be procured by Society in like manner and to like extent. Proceeds of any such policies, in the event of fire or other casualty, shall be payable to Society and City, as their respective interest may appear, and in all cases shall be applied to the repair of the buildings and the Property. Any proceeds in excess of those used to repair damages shall be paid to Society. Society may, at its option, bring its obligations to insure under this article within the coverage of any so-called blanket policy or policies of insurance which it may now or hereafter carry, by appropriate amendment, rider, endorsement or otherwise; provided,

however, that the interest of City shall thereby be as fully protected as they would be otherwise if this option to Society to use blanket policies were not permitted.

(f) Hold Harmless. Society further agrees to defend, indemnify and save City, in its capacity as a landowner and as a government, and its officers and employees harmless (except for the sole and exclusive negligence of the City, its employees and agents) against and from any and all claims made by or on behalf of any persons, firms or corporations for loss, damage or injury to property or person resulting or arising by reason of the use and occupancy of the Property by Society, and in case any action or proceeding may be brought against City, its officers and/or employees by reason of any such claim for which Society is claimed to be liable, Society, upon notice from City, covenants to resist and defend such action or proceeding through legal counsel reasonably satisfactory to City. Indemnification by Society hereunder shall not extend to any matter against which, and to the extent which City has been indemnified and/or insured by any insurance carried by Society.

6. WASTE AND PERMANENT ALTERATIONS

Society will not commit waste, nor suffer waste to be committed, upon the said Property. Society intends to erect on said Property a few buildings or structures of the type outlined in the plan. Subject to applicable law and having first obtained the approval of the City, Society shall be entitled to make any alterations or additions in or to such buildings and structures, to clear from the area certain plants, such as Chinese elm, among others, so as to give space for other plants.

7. COVENANTS AGAINST LIENS

Society expressly covenants and agrees that it will, during the term hereof, promptly remove or release, by posting of a bond or otherwise, as required or permitted by law, any lien attached to or upon said Property or any portion thereof by reason of any act or omission on the part of Society or any third party resulting from the uses or activities of Society (but excluding therefrom the exclusive acts or omissions of City), and hereby expressly agrees to save and hold harmless the City from or against any such lien or claim of lien. In the event any such lien does attach, or any claim of lien is made against said demised Property, which may be occasioned by any act or omission upon the part of Society or any third party resulting from the uses or activities of Society, and shall not be thus released within sixty (60) days after notice thereof, City, in its sole discretion (but nothing herein contained shall be construed as requiring it so to do) may pay and discharge the said lien and relieve the said demised Property from any such lien, and Society agrees to pay and reimburse City upon demand for or on account of any expense which may be incurred by City in discharging such lien or claim, which sum shall include interest at the rate of ten percent (10%) per annum from the date such lien is paid by City until the date City is reimbursed by Society; provided, however, that if Society has reasonable cause to contest the validity of correctness of any such lien, and City concurs that such reasonable cause exists, it may do so and in such event no breach of this Lease shall result.

8. BANKRUPTCY OR INSOLVENCY

If at any time during the term hereof proceedings in bankruptcy shall be instituted by or against the Society, or if the Society shall file, or any creditor of the Society shall file, or any other person or persons shall file any petition under the Bankruptcy Act of the United States of America, as the same is now in force or may hereafter be amended, or if a receiver of the business or assets of Society be appointed, or the Society makes an assignment for the benefit of creditors, or any sheriff, marshal constable, or keeper take possession thereof by virtue of any attachment or execution proceedings, then City may, at its option, in either of any such events, immediately take possession of the demised Property and terminate this Lease. Upon such termination, all installments of rent earned to the date of termination and unpaid shall at once become due and payable, and in addition thereto City shall have all rights provided by the bankruptcy laws relative to the proof of claims of an anticipatory breach of an executory contract. Any such termination shall not operate to terminate or limit Society's obligation(s) to defend, hold harmless or indemnify.

9. REMEDIES ON DEFAULT

Except as otherwise provided for herein, in the event of any breach of this Lease by Society which shall not have been cured within ten (10) days after Society shall have received written notice from City of such breach (or if such breach is not for payment of money), if within such period Society shall not have commenced to cure said breach and continue its efforts with due diligence to cure said breach, the City, besides other rights or remedies it may have at law or in equity, shall have the immediate right of re-entry. Should City elect to reenter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it shall terminate this Lease, provided however, that Society's duties to pay rents pursuant hereto and to defend, indemnify and hold harmless shall survive such termination.

10. ASSIGNMENT AND SUBLETTING

Except as herein provided, Society shall not assign this Lease, nor any interest therein, nor shall Society grant any rights to the use of any portion of the Property to any person without first obtaining the written consent of City.

11. ACCESS TO PROPERTY BY CITY

City, as Landlord, shall have the right at all reasonable times, during normal business hours, to go upon and inspect the Property and every part thereof, provided, however, that any such inspection shall be made in a manner to minimize any interference with the use by the Society. City shall have its customary rights under its police power and general welfare purposes to go upon the property as necessary.

12. ESTOPPEL CERTIFICATES

At any time and from time to time, each party, upon request of the other, agrees to execute, acknowledge and deliver to such party, any mortgagee, financial institution or other party having or acquiring an interest in the Property a statement in writing certifying to all or any part of the following information:

- (a) That this Agreement constitutes the entire agreement between City and Society and is unmodified and in full force and effect (or setting forth any such modifications);
- (b) The date to which rents have been paid;
- (c) That no default has occurred (or specifying any such default);
- (d) That the lease term has commenced, that the Society is occupying the Property, and setting forth the effective date of the Lease. Such estoppel certificate will be executed and delivered within fifteen (15) days after request for the same.

13. DESTRUCTION OF BUILDING

In the event of any damage to any building or any part thereof, which damage is caused by fire, wind, water, earthquake or similar casualty, and which damage is covered and insured against by the extended fire insurance coverage maintained by Society during the term, this Lease shall remain in full force and effect, and Society shall pay its annual rental for all of the demised Property as provided in Paragraph 2(a), above. City shall have no obligation or liability whatsoever to Society (unless the destruction was caused by the sole negligence or other wrongful act exclusively the City's, or deliberate failure to act, of City) and Society shall not be entitled to nor recover any damages whatsoever against City for any loss occasioned by the said injury or damage. Society, after the occurrence of the event causing said damage, may with reasonable diligence cause any such building or structure to be repaired and restored to the same general condition to which it existed at the time of the occurrence of said event no later than one hundred twenty (120) days thereafter, or in its sole discretion, determine not to reconstruct such property.

14. CONDEMNATION

If at any time during the term or renewal term of this Lease, the Property or any part thereof shall be taken by eminent domain or condemnation by any public or quasi public authority (or in the event a voluntary conveyance is made by City to such public or quasi public authority by reason of or by threat or imminence of the exercise of said power of eminent domain or condemnation by said authority), the following terms and condition shall apply:

(a) in the event of a total taking, Society's right of possession shall terminate as of the date of taking and rent and other charges provided for in this Lease shall be adjusted as of said date. The entire damage award of the condemnation proceedings shall be paid to City but City shall, and hereby does, assign to Society out of any award paid to City the following amounts: (i) if Society shall have made improvements or alterations in or to the Property after the effective date of this Lease, a sum equal to the then fair market value of any such improvements; and (ii) a sum equal to any cost of loss to which Society may be put in removing from the Property Society's furniture and equipment, provided, and upon express condition that the condemning authority makes an award for such cost or loss, otherwise no sum shall be due Society therefor.

(b) in the event of a partial taking of the Property which renders the Property substantially unusable by Society for the operation of the gardens, then Society may, by

written notice to City within thirty (30) days after the taking by the condemning authority, terminate this Lease; provided, however, there shall be no abatement or adjustment to the rent due under this Lease if the Lease is not so terminated. It is hereby expressly acknowledged and agreed by Society that any condemnation award shall not be deemed to entitle Society to any part of the award therefor (which shall belong solely to City), except that Society may apply to the condemning authority to recover its damages.

(c) Notwithstanding any provision to the contrary stated or implied herein, in the event the City Council determines that the City requires any portion of the Property, no compensation nor condemnation award shall be payable to the Society nor to any person claiming on behalf of or through the Society. Instead, the City shall modify the legal description of the Property to exclude herefrom the tract or portion of the Property required by the City.

15. PERSONAL PROPERTY

It is contemplated that certain furniture, fixtures and equipment to be installed by Society in the demised Property are or may be either leased by Society or purchased by Society from some other party or a conditional seller, or otherwise hypothecated to a "Third Party." In this connection, it is agreed that all of such furniture, fixtures and equipment installed by Society in the demised Property shall at all times be and remain personal property, regardless of the method in which the property of Society and/or such "Third Party" is attached or affixed to the demised Property. City agrees that its rights in such furniture, fixtures and equipment shall at all times be subject to and subordinate to the rights of any such "Third Party" but only if City has consented thereto in writing. City agrees to execute upon request any documents City deems reasonably required by any such "Third Party" in order to effectuate the purposes of this paragraph, it being specifically agreed by City herein that any such "Third Party" shall have the right to remove the furniture, fixtures equipment from the demised Property in the event of the default of Society in complying with its agreement relating to such furniture, fixtures and equipment, provided Society has fully performed all of the terms and conditions of this Lease. Society agrees to repair, at its expense, any damage caused by any such removal. City shall execute any waivers, consents, or other documents City deems are reasonably required by Society or any such "Third Party" to effectuate the terms of this Article.

16. HOLDOVER

If Society remains in possession of the Property leased herein after expiration of this Lease, without the execution of a new Lease, except for duly approved extensions of the lease, Society shall be deemed to be occupying said Property as tenant from month to month.

17. RENEWAL

Subject to any rights of referendum or initiative and subject to the Charter of City and periodic adjustments in the Base Rent and additional rent as approved by City, the Society shall have the option to extend all the provisions of this lease agreement for four successive periods of twenty (20) years each. Society shall have the option to extend

the term of the lease by delivering written notice to the City at least twelve months prior to the end of the original term of the lease, and if Society elects to exercise subsequent options, at least twelve months prior to the end of the term prior to the renewal term being exercised.

18. TERMINATION

The Society may terminate this Agreement upon sixty (60) days written notice to the City, and shall thereafter have a reasonable time, not to exceed ninety (90) days, to remove its improvements, provided such removal shall not damage the Property. The Society will restore the Property to useable condition.

19. NOTICE AND DEMANDS

Any notices or demands required or permitted by law, or any provisions of this Lease, shall be in writing, and if the same is to be served upon City, may be personally delivered to the City Manager of City, or may be deposited in the United States mail, registered or certified, with return receipt required, postage prepaid, and addressed to the City Manager of City at the City Hall, Grand Junction, Colorado 81501, or at such other place as City may from time to time designate in writing.

Any such notice or demand to be served upon Society shall be in writing and shall be served personally or by deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to the Society at its business address as set forth at the end of this Lease, or at such other place as Society may from time to time designate in writing.

20. ATTORNEYS FEES

If the City is required to incur any costs, including reasonable attorney fees, in order to enforce the provisions of this Lease, even though upon receipt of notice Society corrects said deficiencies within the time as herein provided, Society shall bear the cost thereof and, upon receipt of a copy showing such costs, Society will immediately pay same.

21. MISCELLANEOUS

No waiver of any breach of this Lease by City shall be considered to be a waiver of any other or subsequent breach.

All of the covenants, agreements, provision, and conditions of this Lease shall inure to the benefit of and be binding upon the parties hereto, their successors and duly authorized assigns.

Each party agrees to execute upon request a short form of Lease for purpose of recordation.

Each party agrees to re-execute this Lease at any time upon the request of the other.

This Lease contains the entire agreement, express or implied or the parties hereto, and the parties agree that no promises or representations have been made by either of them to the other as to any matter, term, or condition of any kind whatsoever not set forth in this Lease.

22. INVALIDITY OF PROVISIONS

If any term or provision of this Lease or the application thereof to any person or circumstances is found, to any extent, to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons whose circumstances are other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

23. AUTHORITY

All individuals executing this document hereby represent and certify that they are the duly authorized representatives of the City and Society, and are authorized to execute this lease by the authority of their respective counsel and boards of directors, as applicable.

IN WITNESS WHEREOF, the parties have executed this Lease this ____ day of June, 1994.

City

THE CITY OF GRAND JUNCTION, COLORADO,
a Colorado Municipal Corporation

By: _____
Its Mayor

Society
THE WESTERN COLORADO BOTANICAL SOCIETY,
a Colorado Nonprofit Corporation

By: _____
Its Agent duly authorized

ATTEST:

Its Secretary

Business Address of Society:
c/o Ms Elizabeth B Harris
407 Dressel Drive
Grand Junction, CO 81503

EXHIBIT A TO LEASE

That property south of Struthers Avenue, north and south of the Colorado River Trail as hereafter constructed, between approximately 8th Street on the east and 5th Street on the west, in the City of Grand Junction, County of Mesa, State of Colorado, consisting of 12.6 acres, more or less, described with particularity as follows:

Commencing at the S 1/4 corner of Section 23, Township 1 South, Range 1 West, Ute Meridian, thence South 89° 37' 00" East 270.00 feet;
thence South 00° 23' 00" West 170.00 feet;
thence North 89° 37' 00" East 68.00 feet;
thence North 00° 23' 00" East 170.00;
thence South 89° 37' 00" East 87.00 feet;
thence South 02° 11' 00" East 317.00 feet;
thence South 02° 32' 00" East 186.60 feet;
thence South 15° 17' 21" East 102.12 feet;
thence North 88° 51' 04" West 85.13 feet;
thence North 79° 32' 00" West 213.74 feet;
thence North 67° 47' 04" West 194.68 feet;
thence South 89° 40' 42" West 150.01 feet;
thence North 79° 44' 01" West 176.23 feet;
thence North 77° 12' 33" West 102.39 feet;
thence North 71° 52' 17" West 105.00 feet;
thence North 73° 00' 00" West 290.24 feet;
thence South 89° 37' 00" East 88.12 feet;
thence North 00° 23' 00" East 325.00 feet;
thence South 89° 37' 00" East 563.62 feet;
thence South 89° 37' 00" East 78.00 feet;
thence South 00° 23' 00" West 190.00 feet;
thence South 89° 37' 00" East 72.00 feet;
thence North 00° 23' 00" East 190.00 feet to the point of beginning, Mesa County, Colorado;

together with such additional property as the City might acquire from the west boundary of the described Property to the east right-of-way of 5th Street and the 5th Street bridge.

The Property is subject to the construction of a levee and Riverfront Trail thereon by the US Corps of Engineers and the Riverfront Commission, the use of the Property being limited during the construction thereon, and the sides of the levee being limited to such uses as permitted by the Corps of Engineers;



TO: Mark Relph
FROM: Bret Guillory
DATE: January 25, 2006
SUBJECT: **Irrigation Source Alternatives for Botanical Gardens**

City Staff have evaluated several options to provide a reliable irrigation water source for the Botanical Gardens site located west of Highway 50, along Struthers Avenue north of the Colorado River. We have considered three options that would provide irrigation water utilizing the Cities water right of ten second feet from the Colorado River.

Reliability of supply, quality of water, and cost to implement the improvements were considered when completing this evaluation.

Option 1:

This option includes improving the existing irrigation intake that is located south of the existing irrigation pond on the slue that runs along the north side of the main river channel. There is an existing manhole located just north of the slue which houses an irrigation pump (see attached aerial photo and system layout). This manhole has been perforated with to allow collection of ground water as well as water from the adjacent river slue. The water is pumped from this manhole to a Vor-technics sediment trap. The Vor-technics unit was installed by the City as part of the CSEP project completed in 2004. The water then flows by gravity to the Botanical Gardens existing irrigation pond. The water is then pumped from the existing pond to the distribution system. There have been water quality problems associated with this configuration.

Staff contacted Dr. Curtis Swift of the Colorado State University Extension Service to get his input on the water quality issue. Dr. Swift indicated that he has been directly involved with this issue for quite some time and that the water quality problem arises from use of the ground water. If the ground water were taken out of the system, allowing use of only the water from the slue, the quality of the water produced would increase to acceptable limits.

The governing limits for water quality related to irrigation of plants are salinity and conductivity. Salinity directly related to the conductivity of water. As an example, roses tolerate irrigation water having a conductivity of less than 2.5 m mho; grasses, shrubs, trees, are tolerant to 8.0 m mhos. The quality of water from the Colorado River is typically 1.0 m mho. Dr. Swift indicates that water from the slue should work well for irrigation purposes at the Botanical Gardens. Mixing the water from the slue with ground water from the area will not work for irrigation purposes. Staff will be collecting water from the slue and main river channel on a monthly basis over the next six months to document water quality. The first sample was collected on December 23, 2005. Results from that sampling effort show that conductivity is virtually the same in the main channel and in the slue, both having conductivity of less than 1.0 m mho.

From a water quality standpoint, option 1 is acceptable.

Reliability of the source is also important. The slue carried water during the summer of 2002 which was one of the worst drought years the State had seen in recent history. Based on this information, staff is confident that source reliability is acceptable.

Cost to make modifications to the existing irrigation system that includes replacement of the existing pump manhole, and modification to the intake, is estimated at \$10,800. The cost information is detailed in the attached spreadsheet.

Option 2:

Option 2 involves modification to the existing system by means of an alternate Colorado River water intake location. Water from the Colorado River would be collected at the main channel instead of from the slue. This would be accomplished by installing a new pump discharge line and relocating the pump/intake manhole near the edge of the main river channel. There has been concern on the part of past Botanical Garden board members that the slue does not produce the quality of water that could be collected from the main channel of the river. Staff discussed this concern with Dr. Swift who indicated that water quality should be the same regardless of where the intake is located. As previously discussed, Staff will collect water samples from both over the next six months to document comparative water quality.

Cost for Option 2 is higher than option one due to the need to accomplish work impacting the main river channel, impact to endangered species, greater coordination with the US Army Corp of Engineers, and installation/relocation of infrastructure. Estimated cost to accomplish relocation of the intake and installation of discharge piping is \$47,250.

Option 3:

This option involves construction of a new irrigation collection point, pumping station, and pond on the Las Colonias Park site. This proposed system would utilize water from the main river channel, so water quality should not be a question. Reliability of the water source is also not a concern.

The irrigation system is proposed to be sized to accommodate future needs for the park site. Cost of this option is a concern. Development of the park is not in the City's ten year financial plan. Estimated cost for installation of an irrigation holding pond, pumping system, and associated infrastructure, is \$605,000. Of this cost the proportionate contribution from the Botanical Gardens would be \$84,700. This system could act as a supply system feeding the existing pond at the Botanical Gardens, or could be operated as an online system that would eliminate the pond on the Botanical Gardens site.

**Special Purpose Water Quality Testing
Botanical Gardens
December 2005 – July 2006**

Collected: 12/23/05 MB/JH

Analyzed: 12/23/05 City of Grand Junction Wastewater Laboratory

Sample ID	Temp °C	pH S.U.	Cond Umhos/cm	TDS Calc mg/L	Salinity
BG Channel Influent	1.8	8.40	985	640	0.49
BG Colorado River	2.4	8.30	950	618	0.47

1,000 Umhos is equivalent to 1 m mho, 985 Umhos = 0.985 m mhos.

Botanical Gardens Irrigation Pump Station Alternatives
 Subject: Irrigation water source alternatives
 Project: Botanical Gardens

12/2/2005

Item #	Item	Quantity	Unit	Unit \$	Extended \$
Option #1 Improve existing pump/pond system					
1	Replace Existing Pump MH	1	LS	\$ 5,000	\$ 5,000
2	Improve intake - create better backwater pool for river 'sump'	1	LS	\$ 3,000	\$ 3,000
Subtotal					\$ 8,000
3	Engineering and Admin			15% of subtotal	\$ 1,200
4	Contingency			20% of subtotal	\$ 1,600
Total Capital					\$ 10,800
5	Annual O&M (estimated)	1	LS	\$	1,780
Total					\$ 12,580

Option #2 Create new river water source via Main Chanel Intake

1	Install new intake pipe to main channel of Colorado River	50	LF	\$ 30	\$ 1,500
2	Relocate existing Pump, MH & Intake Structure	1	LS	\$ 20,000	\$ 20,000
3	Install new discharge piping to levee	450	LF	\$ 30	\$ 13,500
Subtotal					\$ 35,000
4	Engineering and Admin			15% of subtotal	\$ 5,250
5	Contingency			20% of subtotal	\$ 7,000
Total					\$ 47,250
Annual O&M (estimated)					\$ 3,080
Total					\$ 50,330

Option #3 Create new Irrigation system at Las Colonias Park

1	Pipe from River to Sedimentation Basin 10" PVC	450	LF	\$ 40	\$ 18,000
2	Pump Station on Colorado River (1,000 gpm)-incl VFD 5hp Irrigation Pressure Zone Pump Station (1400 gpm) - incl	1	EA	\$ 25,000	\$ 25,000
3	VFD 120hp	1	EA	\$ 80,000	\$ 80,000
4	Filter House/backwash system incl mechanical	1	EA	\$ 40,000	\$ 40,000
5	Pipe from Pump Station 12" Main Sedimentation Basin Excavation - 2.5 ac-ft - roughly 250 ft x	6864	LF	\$ 30	\$ 205,920
6	1.5 ft deep	4,500	CY	\$6.50	\$ 29,250
7	Sedimentation Basin Armor & Lining	1	LS	\$ 50,000	\$ 50,000
Subtotal					\$ 448,170

O&M

Item	Quantity	Unit	Unit \$	Extended \$
Factor for sediment at low water	10	Hr	170	\$ 1,700
Pump electrical costs	1	LS	80	\$ 80
Total O&M				\$ 1,780

Clean and repair intake (Winter Months Only)	1	LS	3000	\$ 3,000
Pump electrical costs	1	LS	80	\$ 80
Total O&M				\$ 3,080

O & M see RP Irrigation tab 2b-corridore Colonias costs

8	Engineering and Admin	15% of subtotal	\$	87,226
9	Contingency	20% of subtotal	\$	89,634
<hr/>				
Total Cost of Raw water irrigation system for Las Colonias Park and Botanical Gardens (Back Bone Only)				\$ 605,030
Total - Botanical Gardens Share of this cost based on estimated use of 200 gpm or 14% of the total system use.				\$ 84,704
Total Botanical Gardens share of maintenance 14% of \$69,722 for electric only				1 LS \$ 69,722 \$ 9,761
Total				\$ 94,465

	Pros	Cons
Option 1	<ol style="list-style-type: none"> 1. Less suction pipe to maintain 2. Easier to access the intake and clean river 'sump' located in north slue 3. Less possibility of damage to intake during higher runoff years. 4. Use existing pipe through Levee and suction pipe from slue 	<ol style="list-style-type: none"> 1. Possibility of limited flows in side channel during drought year.
Option 2	<ol style="list-style-type: none"> 1. More reliable water source during drought This would require intake structure that is located farther into the main channel. 	<ol style="list-style-type: none"> 1. Greater potential for damage to intake during runoff
Option 3	<ol style="list-style-type: none"> 1. Parks Department responsible for maintenance to the supply system 	<ol style="list-style-type: none"> 1. Much higher up front cost. 2. Not likely that Parks Department will want to install irrigation system ahead of park planning. 3. Much higher annual costs.