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**CITY COUNCIL AGENDA
CITY HALL AUDITORIUM, 250 NORTH 5TH STREET**

MONDAY, APRIL 19, 2010, 7:00 P.M.

Call to Order

Pledge of Allegiance

Invocation – Pastor Joe Gross, Redlands Community Church

[The invocation is offered for the use and benefit of the City Council. The invocation is intended to solemnize the occasion of the meeting, express confidence in the future and encourage recognition of what is worthy of appreciation in our society. During the invocation you may choose to sit, stand or leave the room.]

Proclamations/Recognitions

Proclaiming April 18 – 24, 2010 as “Wastewater Worker Recognition Week” in the City of Grand Junction

Proclaiming April 24, 2010 as “Arbor Day” in the City of Grand Junction

Proclaiming April 2010 as “Colorado Architecture Month” in the City of Grand Junction

Proclaiming May 1, 2010 as “Silver Star Banner Day” in the City of Grand Junction

Certificates of Appointments

To the Horizon Drive Business Improvement District

To the Commission on Arts and Culture

To the Forestry Board

*** Indicates Changed Item*

**** Indicates New Item*

® Requires Roll Call Vote

Council Comments

Citizen Comments

City Manager's Report

***** CONSENT CALENDAR ***®**

1. **Minutes of Previous Meeting** [Attach 1](#)

Action: Approve the Minutes of the April 5, 2010 Regular Meeting

2. **City Market Utility Easement Vacation, Located at 630 24 Road** [File #CUP-2007-331] [Attach 2](#)

Request to vacate a utility easement which was dedicated on Lot 2A, the Replat of Mesa Village Subdivision plat. The vacation of the easement is to help facilitate the construction of the new City Market store.

Resolution No. 19-10—A Resolution Vacating a Utility Easement on Lot 2, Replat of Mesa Village Subdivision, Located at 630 24 Road (City Market)

®Action: Adopt Resolution No. 19-10

Staff presentation: Lori V. Bowers, Senior Planner

3. **Setting a Hearing on American Furniture Warehouse Maldonado Street Right-of-Way and Easement Vacations** [File #VR-2010-019] [Attach 3](#)

Request to vacate 29,400 square feet of the north end of Maldonado Street and 18,356 square feet of an unnamed right-of-way extending east of Highway 6 and 50, along with eight other adjoining and nearby easements. These vacations are the first step in assembling several different parcels and “clear the slate” for the new construction of American Furniture Warehouse. New right-of-way and easements will be provided on the future plat.

Proposed Ordinance Vacating Right-of-Way for Maldonado Street and an Un-Named Right-of-Way, East of Maldonado Street, Located East of Base Rock Street (American Furniture Warehouse)

Action: *Introduction of a Proposed Ordinance and Set a Public Hearing for May 3, 2010*

Staff presentation: Lori V. Bowers, Senior Planner

4. **Setting a Hearing on Amendments to the Code of Ordinances to Address Inconsistencies** [Attach 4](#)

The City Code of Ordinances (“Code”) has recently had a comprehensive review as part of a contract with Code Publishing Company. During that review a small number of inconsistencies in the Code were brought forward. The proposed ordinance will address those inconsistencies.

Proposed Ordinance Making Certain Amendments to the City’s Code of Ordinances to Address Inconsistencies within the Code

Action: *Introduction of Proposed Ordinance and Set a Hearing for May 3, 2010*

Staff presentation: John Shaver, City Attorney
Stephanie Tuin, City Clerk

5. **Leases for Two Dry Grazing Areas of City Property to Sally Marie Smith** [Attach 5](#)

Sally Marie Smith and the City wish to renew Dry Grazing Leases for the next five years on properties located south of Whitewater.

Resolution No. 20-10—A Resolution Authorizing a Dry Grazing Lease of City Property (240 acres) to Sally Marie Smith

Resolution No. 21-10—A Resolution Authorizing a Dry Grazing Lease of City Property (191 acres) to Sally Marie Smith

®Action: *Adopt Resolution Nos. 20-10 and 21-10*

Staff presentation: John Shaver, City Attorney

6. **Five Year Lease of the Click Ranch Property to Dennis and Lora Wynn** [Attach 6](#)

This is a proposed five-year ranching and grazing lease of the Click Ranch in the Kannah Creek area to Dennis and Lora Wynn.

Resolution No. 22-10—A Resolution Authorizing a Five-Year Lease of the City's Click Ranch Property in the Kannah Creek area to Dennis and Lora Wynn

®Action: *Adopt Resolution No. 22-10*

Staff presentation: John Shaver, City Attorney

7. **Five Year Lease of the Hallenbeck Ranch Property to Clint Miller** [Attach 7](#)

A proposed five-year ranching and grazing lease of the 300-acre Hallenbeck Ranch on Purdy Mesa to Clint Miller.

Resolution No. 23-10—A Resolution Authorizing a Five-Year Lease of the City's Hallenbeck Ranch Property on Purdy Mesa to Clint Miller

®Action: *Adopt Resolution No. 23-10*

Staff presentation: John Shaver, City Attorney

***** END OF CONSENT CALENDAR *****

***** ITEMS NEEDING INDIVIDUAL CONSIDERATION *****

8. **Construction Contract for the 2010 Waterline Replacement Project – Phase 3** [Attach 8](#)

This project is Phase 3 of a three phase waterline project aimed at replacing aging waterlines in the City's water distribution system. The City of Grand Junction received a \$3.8 million low interest loan through the Colorado Water Resources and Power Development Authority (CWRPDA) to fund these waterline replacement projects. These waterline projects were included with the City's unsuccessful application for American Recovery and Reinvestment Act (ARRA) Funds earlier this year. The City has continued to move forward with the projects utilizing the CWRPDA loan in an effort to provide stimulus to the construction community.

Action: *Authorize the City Purchasing Division to Enter into a Construction Contract with Schmidt Earth Builders, Inc. of Windsor, Colorado for the 2010 Waterline Replacement Project – Phase 3 in the Amount of \$1,499,803.00*

Staff presentation: Tim Moore, Public Works and Planning Director
Jay Valentine, Assistant Financial Operations Manager

9. **Public Hearing—Extension Request for the Mesa State Outline Development Plan, Located at 29 Road and Riverside Parkway** [File #ODP-2008-154] [Attach 9](#)

This is a request for a two-year extension of the approved Mesa State Outline Development Plan. This request would extend the date that the Developer has to apply for a Preliminary Development Plan from December 15, 2010 to December 15, 2012.

Ordinance No. 4421—An Ordinance Amending Ordinance No. 4314 Zoning the Mesa State Development to PD (Planned Development) Located at 2899 D ½ Road

®Action: Hold a Public Hearing and Consider Final Passage and Final Publication of Ordinance No. 4421

Staff presentation: Greg Moberg, Planning Services Supervisor

10. **Non-Scheduled Citizens & Visitors**
11. **Other Business**
12. **Adjournment**

**Attach 1
Minutes of Previous Meeting**

**GRAND JUNCTION CITY COUNCIL
MINUTES OF THE REGULAR MEETING**

April 5, 2010

The City Council of the City of Grand Junction convened into regular session on the 5th day of April 2010 at 7:00 p.m. in the City Auditorium. Those present were Councilmembers Bonnie Beckstein, Teresa Coons, Tom Kenyon, Gregg Palmer, Bill Pitts, Sam Susuras and Council President Bruce Hill. Also present were City Manager Laurie Kadrich, City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Hill called the meeting to order. The Thunder Mountain Composite Squadron of Cadet Civil Air Patrol posted the colors and then led in the Pledge of Allegiance. That was followed by a moment of silence.

Council President Hill announced the recent State Championship won by the squadron and asked the squadron to come forward and introduce themselves. The squadron was recognized with a round of applause.

Proclamations/Recognitions

Proclaiming April 11 through April 18, 2010 as “Days of Remembrance” in the City of Grand Junction

Proclaiming April 16, 2010 as “National Health Care Decision Day” in the City of Grand Junction

Proclaiming April 2010 as “Child Abuse Prevention Month” in the City of Grand Junction

Proclaiming April 2010 as “Month of the Young Child” in the City of Grand Junction

Proclaiming April 2010 as “Month of the Military Child” in the City of Grand Junction

Introduction of New Police Chief John Camper/Oath of Office

City Manager Laurie Kadrich introduced Police Chief John Camper. Chief Camper spoke to the City Council providing a little background and expressed appreciation for the trust placed in him in his position. City Clerk Stephanie Tuin administered the Oath of Office to Chief Camper.

Presentation

Colorado Association Chiefs of Police Accreditation Presentation

Chief Camper introduced Keith Ikeda, Chief of Police for Basalt, CO and the Secretary/Treasurer for CACP, who presented the Chiefs of Police Accreditation to Grand Junction Police Chief John Camper. Chief Ikeda advised that only about thirty agencies in the State of Colorado are accredited. The Police Department was audited by their CACP assessors and was found to have met or exceeded the 180 standards of the accreditation. He presented Chief Camper with a plaque of certification.

Appointments

To the Horizon Drive Association Business Improvement District

Councilmember Beckstein moved to reappoint Dale Reece and appoint Lynne Sorlye and Brenda Brock to the Horizon Drive Business Improvement District for four year terms to expire April 2014. Councilmember Coons seconded the motion. Motion carried by roll call vote.

To the Commission on Arts and Culture

Councilmember Coons moved to appoint Joy Potter, Felicia Renee Sabarinelli, and Gary Smith for three year terms expiring February 2013, and appoint Randall Cupp for a one year term to expire February 2011, all to the Commission on Arts and Culture. Councilmember Beckstein seconded the motion. Motion carried by roll call vote.

To the Forestry Board

Councilmember Kenyon moved to appoint Richard "Ike" Ellison, Robert Johnston, and Cliff Sprinkle to the Forestry Board for three year terms to expire November 2012. Councilmember Susuras seconded the motion. Motion carried by roll call vote.

Council Comments

There were none.

Citizen Comments

Bill Merkel, 2345 Yellow Cat Court, addressed the City Council on street lighting and his desire to enjoy the dark. There are three major street lights within fifty feet of his house. It really pollutes his house with light. He made several calls to try to determine how this happened. He described quite an ordeal trying to get an answer. He asked for more contemporary lights, not as tall and with the lighting more controlled. He

suggested lights similar to the lights along Riverside Parkway. He asked the City Council to direct him in the right direction. Council President Hill directed Dr. Merkel to City Staff.

CONSENT CALENDAR

Councilmember Kenyon read the Consent Calendar and then moved to approve items #1 through #10. Councilmember Palmer seconded the motion. Council President Hill noted that a letter will be part of the record that Councilmember Beckstein has a client that was mentioned in the Consent Agenda.

Motion carried by roll call vote.

1. **Minutes of Previous Meeting**

Action: Approve the Minutes of the March 15, 2010 Regular Meeting

2. **Outdoor Dining Lease for 314 Main, LLC, DBA Dream Cafe, Located at 314 Main Street**

The owners of the Dream Cafe are requesting an Outdoor Dining Lease for the property located at 314 Main Street. They have been conditionally approved for a Sidewalk Cafe Permit to serve food outside in an area measuring 25ft. by 15ft. across the sidewalk from the front of the property. The Outdoor Dining Lease would permit the business to have a revocable license from the City of Grand Junction to expand their licensed premise and allow alcohol sales in this area.

Resolution No. 15-10—A Resolution Authorizing the Lease of Sidewalk Right-of-Way to the Dream Cafe

Action: Adopt Resolution No. 15-10

3. **Setting a Hearing on the Pepper Ridge Right-of-Way Vacation, Located at the South End of W. Indian Creek Drive** [File # FP-2008-136]

Applicant is requesting to vacate a portion of an existing, improved right-of-way in order to facilitate a residential development.

Proposed Ordinance Vacating Excess Right-of-Way for West Indian Creek Drive Located Within Pepper Tree Filing No. 3

Action: Introduction of Proposed Ordinance and Set a Public Hearing for May 3, 2010

4. **Setting a Hearing on the Extension Request for the Mesa State Outline Development Plan, Located at 29 Road and Riverside Parkway** [File # ODP-2008-154]

This is a request for a two-year extension of the approved Mesa State Outline Development Plan. This request would extend the date that the Developer has to apply for a Preliminary Development Plan from December 15, 2010 to December 15, 2012.

Proposed Ordinance Amending Ordinance No. 4314 Zoning the Mesa State Development to PD (Planned Development) Located at 2899 D ½ Road

Action: Introduction of Proposed Ordinance and Set a Public Hearing for April 19, 2010

5. **Drake Subdivision Vacation of Easement, Located at 488 23 Road** [File # VE-2009-153]

A request to vacate and relocate a 15-foot irrigation easement across Lot One, Lamplite Subdivision located at 488 23 Road.

Resolution No. 16-10—A Resolution Vacating a Portion of an Irrigation Easement Located on Lot One, and Relocating it on the Northern End of Lot One, Lamplite Subdivision, 488 23 Road

Action: Adopt Resolution No. 16-10

6. **Construction Contract for the Easter Hill Sewer Improvement District**

Upon completion of the Easter Hill Sewer Improvement District, seven properties will be able to connect to the Persigo Waste Water Treatment Plant and abandon their existing septic systems. The property owners and Persigo will share in the cost of providing the sewer service. Infrastructure will also be in place so that, at a future date, an additional 27 properties may be served by the Persigo System.

Action: Authorize the City Purchasing Division to Enter into a Construction Contract for the Easter Hill Sewer Improvement District with Sorter Construction Company, Inc. in the Amount of \$106,585. Award is to be Contingent on Formation of the District by the Mesa County Board of County Commissioners

7. **Contract for Hot Mix Asphalt for Streets Division 2010**

This request is for the purchase of approximately 2,000 tons of hot mix asphalt for the Streets Division to be used for road work and repairs for 2010. This material will be used to pave, re-pave, and repair numerous streets and roads throughout the City.

Action: Authorize the Purchasing Division to Purchase Approximately 2,000 Tons of Hot Mix Asphalt, on behalf of the Streets Division, from Elam Construction for an Estimated Amount of \$121,980

8. **Contracts for Aggregate and Road Material for Streets and Water Divisions 2010**

This request is for a contract award for the purchase of various sizes of aggregate and road materials for the City's Streets and Water Divisions for 2010. The Streets Division will use the aggregate and road materials for chip sealing as well as providing a stronger longer lasting base on which to apply the chip seal process. The Water Division also uses aggregate materials for installation and repair of water lines.

Action: Authorize the Purchasing Division to Enter into a Contract with Whitewater Building Materials and Grand Junction Concrete Pipe Co. to Provide Aggregate and Road Materials for the Streets Division, as well as a Contract with Gary Rinderle Construction to Provide Aggregate for the Water Division, for a Combined Estimated Amount of \$147,300

9. **Schuckman Boundary Line Agreement**

The City Council Property Committee has recommended that the Schuckman's (829 West Main Street) and the City (803 West Colorado Avenue) determine and fix a common boundary line between the properties.

Action: Authorize the City Manager to Sign the Proposed Boundary Line Agreement

10. **Saccomanno Property Farm Lease**

The Saccomanno property (H and 26 ½ Roads) has been leased and farmed by Frank Fisher for a number of years. Mr. Fisher and the City wish to renew the lease for the next two years.

Resolution No. 17-10—A Resolution Authorizing a One-Year Farm Lease of the "Saccomanno Park Property" to Frank M. Fisher

Action: Adopt Resolution No. 17-10

ITEMS NEEDING INDIVIDUAL CONSIDERATION

Public Hearing—KD Annexation and Zoning, Located at 823 22 Road [File # ANX-2010-006]

Request to annex and zone 10.12 acres, located at 823 22 Road, to I-1 (Light Industrial). The KD Annexation consists of one (1) parcel and is a two part serial annexation.

The public hearing was opened at 7:46 p.m.

Brian Rusche, Senior Planner, presented this item. He described the site, the location, and the request. He asked that the Staff Report and attachments be entered into the record. The annexation meets the criteria for annexation. The Planning Commission recommended approval at their March 9, 2010 meeting. The representative does not need to do a presentation unless the City Council has questions. Mr. Rusche noted the applicant is not present.

There were no public comments.

The public hearing was closed at 7:47 p.m.

a. Accepting Petition

Resolution No. 18-10—A Resolution Accepting a Petition for Annexation, Making Certain Findings, Determining that Property Known as the KD Annexation, Located at 823 22 Road is Eligible for Annexation

b. Annexation Ordinance

Ordinance No. 4417—An Ordinance Annexing Territory to the City of Grand Junction, Colorado, KD Annexation, Approximately 10.12 Acres, Located at 823 22 Road

c. Zoning Ordinance

Ordinance No. 4418—An Ordinance Zoning the KD Annexation to I-1 (Light Industrial), Located at 823 22 Road

Councilmember Coons moved to adopt Resolution No. 18-10 and Ordinance Nos. 4417 and 4418 and ordered them published. Councilmember Susuras seconded the motion. Motion carried by roll call vote.

Memorandum of Understanding with CDOT for Highway 6 (North Avenue) Swap and Riverside Parkway/US Highway 50 Interchange

This Memorandum of Understanding (MOU) is a clarification of the Intergovernmental Agreement (IGA) 05HA300062 that was signed with the Colorado Department of Transportation (CDOT) on October 31, 2005 as part of CDOT's approval of the Highway 50/Riverside Parkway interchange. The IGA called for CDOT to maintain the three Riverside Parkway structures constructed by the City at Highway 50 interchange in exchange for the City taking over the Highway 6 (North Ave) from Bozarth's on the west to I-70B on the east. The main points of the MOU are to clarify the legal limits of the North Avenue swap as well as the limits of the structures, walls, and ramps to be maintained by CDOT.

Tim Moore, Public Works and Planning Director, presented this item. This subject came forward during the approvals of the Riverside Parkway. The Colorado Department of Transportation was trying to reduce the number of lane miles that they had responsibility for. The original agreement was entered into in 2005. The City's responsibility on North Avenue would run from the bridge near Lilac Park on the west to the intersection with I-70 Business Loop on the east. In exchange, CDOT will be responsible for the three bridge structures on the Riverside Parkway. The City will still be responsible for landscaping, the nonstructural landscape retaining walls, the ramps, graffiti cleanup, lighting, signing and traffic signals. The City will no longer receive the revenues paid by CDOT in the past for the maintenance of North Avenue of about \$90,000 and will be paying for the lighting at a cost of \$7,000 but the City will not have to maintain and ultimately replace the three big bridge structures.

Councilmember Palmer asked about the statement that the signs will fall under the Brooks Law. Mr. Moore deferred to the City Attorney.

City Attorney John Shaver said it will depend on the particular type of sign. There are on-premise outdoor advertising signs and off-premise outdoor advertising signs. The Federal Statutes, including the Highway Beautification Act and the Brooks Law, refer specifically to off-premise advertising which is prohibited. The on-premise signs, specifically the electronic signs, are addressed to ensure the signs do not flash and distract drivers.

Council President Hill asked if the Brooks Law is a Federal Law that the State Law has to apply. City Attorney Shaver confirmed that to be correct.

Councilmember Palmer asked if the current electronic signs on North Avenue will have to be removed. City Attorney Shaver said they can stay.

Councilmember Beckstein asked about the accrual costs identified in the agreement for the replacement of the bridge structures. Public Works and Planning Director Moore

said that is how the City would accrue to replace those structures. It is uncertain how CDOT will provide those replacement costs.

Councilmember Coons asked why CDOT still has jurisdiction over the signs when the street is transferred. She expressed concern on the bridge replacement costs, and asked how the City can be assured that CDOT will have the money when the bridges need to be replaced.

Mr. Moore said the federal government would be concerned if the bridge structures were deficient over their highway system. The Federal Highway Administration watches that very closely.

Councilmember Susuras had similar concerns; the City will lose the revenue and there is concern whether the State will have the money to replace the bridges when needed.

Councilmember Kenyon was concerned that the contract is coming from a low level in CDOT and asked if the Transportation Director Russ George has approved the agreement. Mr. Moore said the Transportation Commission had to approve the original agreement.

Councilmember Palmer asked Mr. Moore to outlay the benefits to the City with this agreement. Mr. Moore said it gives the City ownership, the ability to partner with developers to make improvements to the roadway and the ability to make the decisions on access plans.

Council President Hill expressed that the Brooks Law being applied to North Avenue when the City has jurisdiction is overreaching. Mr. Moore agreed it was not in the original agreement. Council President Hill said he is not opposed to helping the businesses from knowing the State Law but he is opposed to the City taking responsibility for enforcement.

City Attorney Shaver explained the connection and a prior agreement between the State and the Federal government that brings this law forward and, according to the State, the City takes on that responsibility when it takes over a State Highway.

Councilmember Kenyon expressed that the City is trying to gain some control over North Avenue where CDOT being involved makes it more difficult, yet they can throw in this string attached.

City Attorney Shaver advised that, although they recommend the agreement, the City Council does not have to accept the agreement.

Council President Hill asked about any examples where things have not gone forward due to CDOT's involvement. Mr. Moore said access issues can be a concern. He did not have a specific example.

Councilmember Pitts said he has not had a problem with CDOT declining access in his experience with properties along State Highways.

Councilmember Coons asked what the City loses if the agreement is not accepted. Mr. Moore said CDOT will continue to monitor the sign code. The deficiencies on North Avenue affect pedestrians and bus improvements. CDOT will not likely participate in those improvements.

Councilmember Beckstein asked Mr. Moore why his department is bringing this forward. She asked if keeping CDOT involved is adding an extra layer of bureaucracy in the development of the North Avenue Corridor Plan. Mr. Moore concurred, especially taking a long range view, the City would like to control the destiny of North Avenue and does not want the responsibility of replacing the three bridges on the Riverside Parkway.

Councilmember Coons asked what the likelihood is of CDOT to challenge that provision in the agreement. City Attorney Shaver said he is not sure, the City instead made adjustments to the Sign Code Amendments. CDOT did make it clear that it is their belief that the City must accept the responsibility.

Councilmember Beckstein asked how onerous is it to step into CDOT's shoes regarding enforcement. City Attorney Shaver said it would not be, the body of law is there and the mechanism to enforce it is there.

Councilmember Susuras asked if there is a deadline on making a decision on the MOU. Council President Hill said there is not.

Resolution No. 19-10—A Resolution Authorizing a Memorandum of Understanding Between the City of Grand Junction and the Colorado Department of Transportation (CDOT) Regarding the Transfer of Highway 6 (North Avenue) in Exchange for CDOT Maintenance and Eventual Replacement of the Three Bridge Structures Associated with the Riverside Parkway/State Highway 50 Interchange

Councilmember Beckstein moved to adopt Resolution No. 19-20. Councilmember Palmer seconded the motion.

Councilmember Pitts said the agreement has been in the mill for quite some time and this agreement will eliminate a layer of government. There is a North Avenue Plan, it will be easier if they won't have to continue to check with CDOT on rolling out that plan.

Councilmember Kenyon said he has concerns that neither CDOT nor the City has the money to do this work. He has little confidence that CDOT will have the ability to perform. He would like to agree with Councilmember Pitts but CDOT kept the Sign Code so they kept control. That keeps him from supporting the agreement.

Councilmember Palmer has issue with Brooks Law and the loss of revenue. He doesn't think the City is gaining with the loss of revenue and the looming obligation. He therefore does not support the agreement.

Councilmember Susuras said if CDOT retains control, they control all the signage that can be seen from the road and that is a detriment. He would like to see it continued or else he will have to vote no. Council President Hill said saying no doesn't mean it won't come back.

Councilmember Coons said she doesn't like the current form of the agreement but she sees some benefits and agrees with Councilmember Pitts on developing North Avenue. She is therefore torn. She is concerned about the structure of the MOU as written. She would have to vote no and hope it comes back in a different form.

Council President Hill said it made sense in 2005 but this current agreement does not make sense. The Sign Code stays either way, so the City does not gain and actually loses, and the City will have to enforce it. There is no net gain. CDOT does not have sufficient funding to take on the bridge replacements. The reality is the North Avenue Plan is a good one and he does not believe CDOT will be a barrier to that development.

Motion failed by roll call vote with Council President Hill and Councilmembers Susuras, Coons, Kenyon and Palmer voting NO.

Council President Hill called a recess at 8:37 p.m.

The meeting reconvened at 8:43 p.m.

Public Hearing—Adoption of the Zoning and Development Code [File # TAC-2010-020]

Proposed ordinance to repeal the 2000 Zoning and Development Code, certain sections of the Transportation Engineering Design Standards Manual, and adoption of the 2010 Zoning and Development Code.

The public hearing was opened at 8:43 p.m.

Tim Moore, Public Works and Planning Director, introduced this item. Mr. Moore stated this process has taken sixteen months and this comes forward with a recommendation of

approval from the Planning Commission. He then introduced Lisa Cox, Planning Manager, to review the changes.

Lisa Cox, Planning Manager, stated the purpose of the changes to the Zoning and Development Code was to be able to implement the Comprehensive Plan. The Planning Division worked with a consultant and the key stakeholders in the community. They first developed five key objectives to shape or frame the updating of the Code:

- Implement the Vision and Goals of the Comprehensive Plan
- Remove barriers to development and redevelopment
- Reduce the burden of nonconformities
- Streamline the development review process
- Reorganize and reformat the Code to make it more user friendly

In order to become one of the most livable communities in the Rockies, one of the key focuses of the plan is to grow inward and upward. There are six guiding principles developed to help the shape the future growth of the community. Some of the major changes designed to implement the Vision and Goals of the new Plan are:

- Encourage special consideration for Centers, Downtown and Mixed Use Opportunity Corridors (amendment process, form based districts, Alternative Parking Plan, etc.)
- Eliminated or reduced minimum lot size for most residential zone districts
- Old Code combined nonconforming use, sites and structures...new format separates each into its own section to be more user-friendly
- Staff administered review and approval of subdivisions, condominium plats and lease holdings
- Made changes in Code organization/reformatting, consolidate similar topics (ie: fence provisions, group homes)

The sole purpose was to make it consistent with the Comprehensive Plan.

Ms. Cox then reviewed the process for the development of the changed Code. The Planning Commission reviewed the proposed Code on March 9, 2010. There are three slight changes since then. They are:

- To ensure that minimum density can be achieved in the R-4 zone district, Staff proposes that the minimum lot size be reduced from 8,000 square feet to 7,000 square feet and that the minimum lot width be reduced from 75 feet to 70 feet. The proposed change is found in Section 21.03.040(e).
- Because the market may not be ready for the density/intensity that the Comprehensive Plan anticipates (particularly in new Village and Neighborhood Centers) Staff proposes that an interim land use (temporary) be allowed as a Special Permit. As an example, allowing an interim use would permit a property owner to gain use and value from their property until the market is ready for the growth anticipated by the Comprehensive Plan. The proposed change is found in Section 21.02.120.

- If a trail(s) has been constructed in addition to the construction of required sidewalks, the owner may request an offset or credit for the cost of construction of the trail(s) against the Open Space Fee. The proposed change is found in Section 21.06.020(c).

The Planning Commission did recommend approval of the Zoning and Development Code. There was a discussion to eliminate a bar/nightclub use in an I-1 zone district but Staff recommends that they still be allowed.

Council President Hill suggested that the Code be considered as originally presented and the four amendments can be considered separately.

Council President Hill asked for public comments.

Mark Abbott, 399 West Valley Circle, and also a Planning Commissioner, said he is for adoption of the Code and, as a private citizen, does not believe alcohol and bars should be in any industrial zone. There are hazards in an industrial zone and workers should not be able to walk to a bar and go back to work. Also after work they have further to drive home and are close to the interstate, thus creating more risk.

Ted Ciavonne, 474 North Sherwood Drive, said the process has gone on longer than sixteen months as it started in 2006. Band-aid changes were made then and he is pleased to see the document finally come forward. He supported adoption.

There were no other public comments.

The public hearing was closed at 9:01 p.m.

Councilmember Susuras felt that Mr. Abbott's comment conflicts with the first goal of the Comprehensive Plan. Council President Hill asked Councilmember Susuras to hold that thought.

Councilmember Beckstein lauded the Staff for their work and their ability to listen to the Council comments during the process. She supports the changes made.

Councilmember Coons thanked the Staff as well as the committee including Ted Ciavonne. She appreciated their attention to detail.

Councilmember Pitts said he thinks there are pro's and con's in the new Code. Some things he does not like are the matrix, the zoning areas, it is not strict enough, he does not like density credits or the clustering for undevelopable ground, liquor should not be in industrial zoning, and there is no definition of neighborhood compatibility. Things he does like are the reduced number of pages, the latitude given to the Planners, the requirement

for neighborhood meetings and the requirement that the Planner be there, and the attention that will be given to the citizen concerns. He is in favor of adoption.

Council President Hill said this change coupled with the new software will be a significant change. It is too bad there is not more development at this time but that will return. Adjustments will need to be made, Mr. Moore, the Director of Public Works and Planning, has been given authority to make decisions but he shouldn't feel like he has to always make the same decision, as things change. As things come up and adjustments are needed, adjust and move back as needed. If something in the Code is noticed that is not working, bring it forward to Council.

Ordinance No. 4419—An Ordinance Repealing the 2000 Zoning and Development Code, Repealing Certain Sections of the Transportation Engineering Design Standards Manual, and Adopting the 2010 Zoning and Development Code

Councilmember Kenyon moved to adopt Ordinance No. 4419 and ordered it published in pamphlet form. Councilmember Beckstein seconded the motion. Motion carried by roll call vote.

Council President Hill asked for comments on the proposed amendments.

Councilmember Susuras questioned eliminating bars in I-1 as it is inconsistent to keep it only out of I-1 and leave in the other industrial zones.

Councilmember Beckstein agreed with Councilmember Susuras but added that bars do not fit in I-1 or I-2 zoning areas. Bars are not a good fit for valuable and limited industrial areas.

Councilmember Pitts agreed with Councilmember Beckstein.

Councilmember Kenyon said it will be brought forward on a case by case basis and evaluated when brought forward.

Councilmember Coons agreed; it is up to the landowner to determine whether the land is reserved for industrial use and it is up to them to decide the highest and best use. City Council will review them on a case by case basis.

Council President Hill called for motion.

Councilmember Beckstein moved to amend the Code so that bars and nightclubs are not allowed in IO, I-1, or I-2 zone districts. Councilmember Pitts seconded. Discussion ensued.

Councilmember Kenyon said he would want the property owner to decide the best use for the land and Council will review any applications, so he will not support the amendment.

Councilmember Susuras agreed with Councilmember Kenyon.

Council President Hill cautioned Council about disallowing the use to the point where it would not be allowed anywhere.

Motion failed with Council President Hill, and Councilmembers Kenyon, Palmer, Susuras, and Coons voting NO.

Council President Hill suggested that the other three amendments be taken back through the process as the Planning Commission had not reviewed them.

Councilmember Palmer moved to refer the other items proposed for change to the Zoning and Development Code back to the Planning Commission. Councilmember Kenyon seconded. Motion carried by roll call vote.

Public Hearing—Sign Code Amendment [File # TAC-2009-251] **(Continued from March 1, 2010)**

Proposed amendment to repeal and reenact Section 21.06.070(b)(6) and amend Section 21.06.070(g)(4) of the Zoning and Development Code regarding lighted, moving and changeable copy on and off premise signs.

The public hearing was opened at 9:22 p.m.

Lisa Cox, Planning Manager, presented this item. This is the first amendment to the newly adopted Zoning and Development Code. She explained that it pertains to signs that are electronic and have motion and also to off-premise signs. The sign code is outdated and does not recognize the new technologies. The current code only allows electronic signs to make changes once every 24 hours. This affects business owners and the City at its facilities. The proposal references State Law for the guiding regulations. The amendment will be more permissive for the community, but if on a State or Federal highway, it will be subject to State enforcement. Staff recommends adoption.

Councilmember Pitts asked if this changes the City's appearance likened to Las Vegas. Ms. Cox said she did not think so.

Councilmember Coons asked about the other remaining restrictions and does this only affect how digital signs change. Ms. Cox said the tri-vision signs will also be affected. The other regulations such as height, size, etc. stay intact.

Council President Hill asked for public comments.

Bud Preuss, 978 24 Road, owner of Bud's Signs, thanked the City Planners for keeping the Sign Code the way it is. He thought the change to the electronic signs is a good thing. He favored it as a citizen and a business owner.

There were no other comments.

The public hearing was closed at 9:30 p.m.

Councilmember Kenyon said it is an improvement and eliminates provisions that inhibit the use of signs. He is in favor.

There were no other Council comments.

Ordinance No. 4420—An Ordinance Regarding Lighted, Moving and Changeable Copy On and Off Premise Signs

Councilmember Palmer moved to adopt Ordinance No. 4420 and ordered it published. Councilmember Susuras seconded the motion. Motion carried by roll call vote.

Non-Scheduled Citizens & Visitors

There were none.

Other Business

There was none.

Adjournment

The meeting adjourned at 9:32 p.m.

Stephanie Tuin, MMC
City Clerk



Date: Thursday, April 8, 2010

Author: Lori V. Bowers

Title/ Phone Ext: Senior Planner,
Ext 4033

Proposed Schedule:

Monday April 19, 2010

CITY COUNCIL AGENDA ITEM

Attach 2 City Market Utility Easement Vacation

Subject: City Market Utility Easement Vacation – Located at 630 24 Road
File #: CUP-2007-331
Presenters Name & Title: Lori V. Bowers, Senior Planner

Executive Summary:

Request to vacate a utility easement which was dedicated on Lot 2A, the Replat of Mesa Village Subdivision plat. The vacation of the easement is to help facilitate the construction of the new City Market store.

How this item relates to the Comprehensive Plan Goals and Policies:

Goal 1: To implement the Comprehensive Plan in a consistent manner between the City, Mesa County, and other service providers.

The easement was dedicated to the public for the use of public utilities. The vacation of public utilities requires that a Resolution be adopted by the City Council, being consistent with all service providers.

Action Requested/Recommendation:

Adopt the Resolution Vacating the Utility Easement.

Board or Committee Recommendation:

This item was considered non-controversial and was placed on the Consent Agenda for the Planning Commission meeting of April 13, 2010. A recommendation of approval is forwarded to the City Council.

Background, Analysis and Options:

Please see the attached Staff report.

Financial Impact/Budget:

N/A

Legal issues:

Once the subject easement is vacated, a new easement will be recorded by separate document. The new easement will serve the purpose of the vacated easement.

Other issues:

N/A

Previously presented or discussed:

This matter has not been previously presented or discussed.

Attachments:

Site Location Map/Aerial Photo Map
Future Land Use Map/Existing City and County Zoning Map
Resolution

BACKGROUND INFORMATION					
Location:		630 24 Road			
Applicants:		John Atwood, for Dillon Real Estate Company, d.b.a. City Market			
Existing Land Use:		Vacant land			
Proposed Land Use:		Grocery store with drive-up pharmacy			
Surrounding Land Use:	North	Vacant land			
	South	Boston's Restaurant / vacant land			
	East	Kohl's Department Store			
	West	Commercial uses			
Existing Zoning:		C-1 (Light Commercial)			
Proposed Zoning:		C-1 (Light Commercial)			
Surrounding Zoning:	North	C-1 (Light Commercial)			
	South	C-1 (Light Commercial)			
	East	C-1 (Light Commercial)			
	West	C-1 (Light Commercial)			
Future Land Use Designation:		Commercial			
Zoning within density range?		X	Yes		No

ANALYSIS

1. Background

A 65-foot Ingress/Egress and Utility Easement was dedicated on the final plat for Replat of Mesa Village Subdivision. It runs east/west across Lot 2A, the site of the newly approved City Market grocery store on 24 Road. In order for the site to function as planned, the ingress/egress portion of the easement is for the benefit of all lots within the subdivision and was not dedicated to the public; however the utility portion was dedicated to the City for the use of public utilities. The ingress/egress portion must be released by the Owners through consent of all other lot owners, and public utilities portion must be vacated by a Resolution of the City Council, through a recommendation of the Planning Commission.

To facilitate the design of the building, the 65-foot wide easement is being vacated and a new easement, 30 feet wide, is being rededicated. This is the only public easement being vacated. The new easement will also be an Ingress/Egress and Multi-purpose Easement. The new easement will be aligned with the drive aisle in front of the store, which will allow access to 24 Road on the west and Market Street to the east.

2. Section 2.11.C of the Zoning and Development Code

The vacation of the utility easement shall conform to the following:

- a. The Comprehensive Plan, Grand Valley Circulation Plan, and other adopted plans and policies of the City.

The request is in conformance with the Comprehensive Plan by meeting Goal 1: "To implement the Comprehensive Plan in a consistent manner between the City, Mesa County, and other service providers."

The Circulation plan is met by providing a right-in/right-out turn lane from 24 Road utilizing the new easement as the access point. It is the policy of the City to vacate public utility easements through the public process by adopting a resolution.

- b. No parcel shall be landlocked as a result of the vacation.

No parcel will be landlocked as a result of this vacation. A new easement is being dedicated for the same purpose, only smaller in size. A City Engineer has determined that the smaller size still meets all applicable City standards.

- c. Access to any parcel shall not be restricted to the point where access is unreasonable, economically prohibitive or reduces or devalues any property affected by the proposed vacation.

Access will not be restricted. The reduction in size from 65-feet to 30-feet is not unreasonable and still serves the original purpose therefore not devaluing any of the properties affected by the vacation.

- d. There shall be no adverse impacts on the health, safety, and/or welfare of the general community and the quality of public facilities and services provided to any parcel of land shall not be reduced (e.g. police/fire protection and utility services).

There will be no adverse impacts on the health, safety or welfare of the community. The quality of public utilities and services will not be reduced by the reduction in size of the easement.

- e. The provision of adequate public facilities and services shall not be inhibited to any property as required in Chapter Six of the Zoning and Development Code.

Public facilities and services will not be inhibited.

- f. The proposal shall provide benefits to the City such as reduced maintenance requirements, improved traffic circulation, etc.

The vacation will benefit the City with improved and safer traffic circulation as the 65-foot easement would create an excessively wide drive aisle at the store front which is not necessary and could be unsafe.

FINDINGS OF FACT/CONCLUSIONS/CONDITION

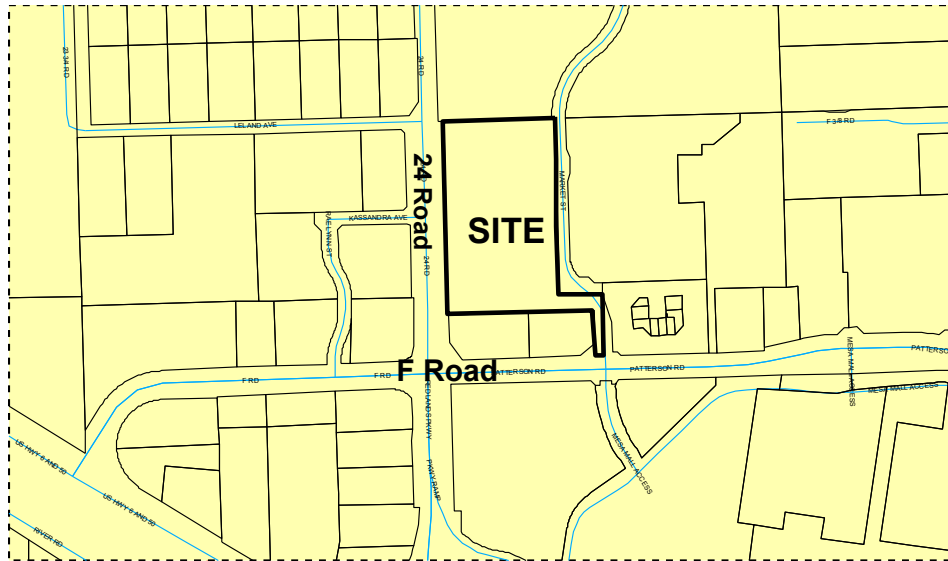
After reviewing the City Market application, file number CUP-2007-331 for the vacation of a public utility easement, I make the following findings of fact, conclusions and condition:

1. The requested easement vacation is consistent with the Comprehensive Plan.
2. The review criteria in Section 2.11.C of the Zoning and Development Code have all been met.
3. A new easement will be provided.

Site Location Map

City Limits

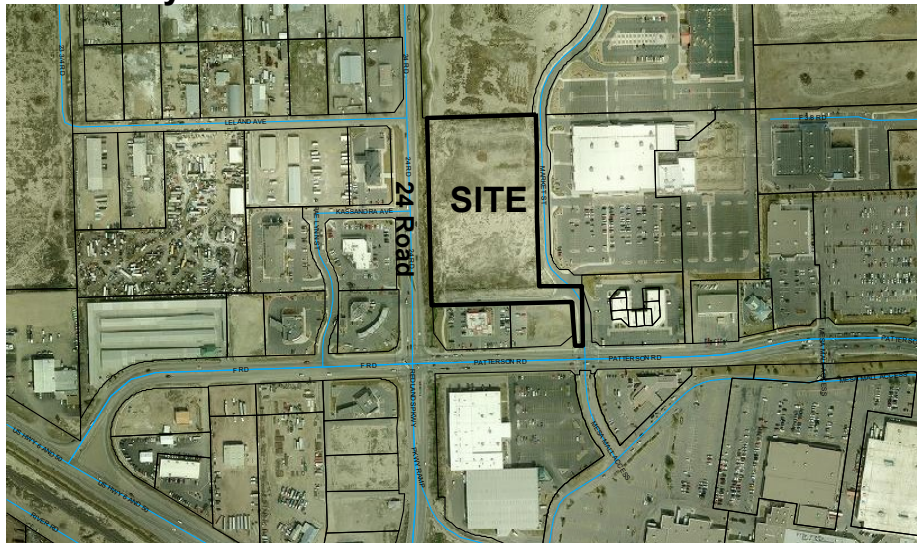
Figure 1



Aerial Photo Map

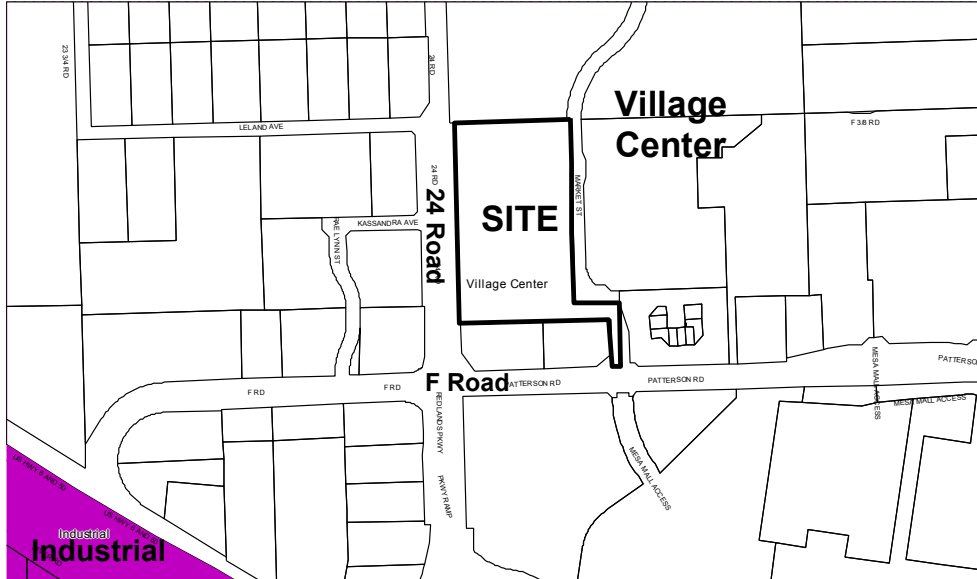
City Limits

Figure 2



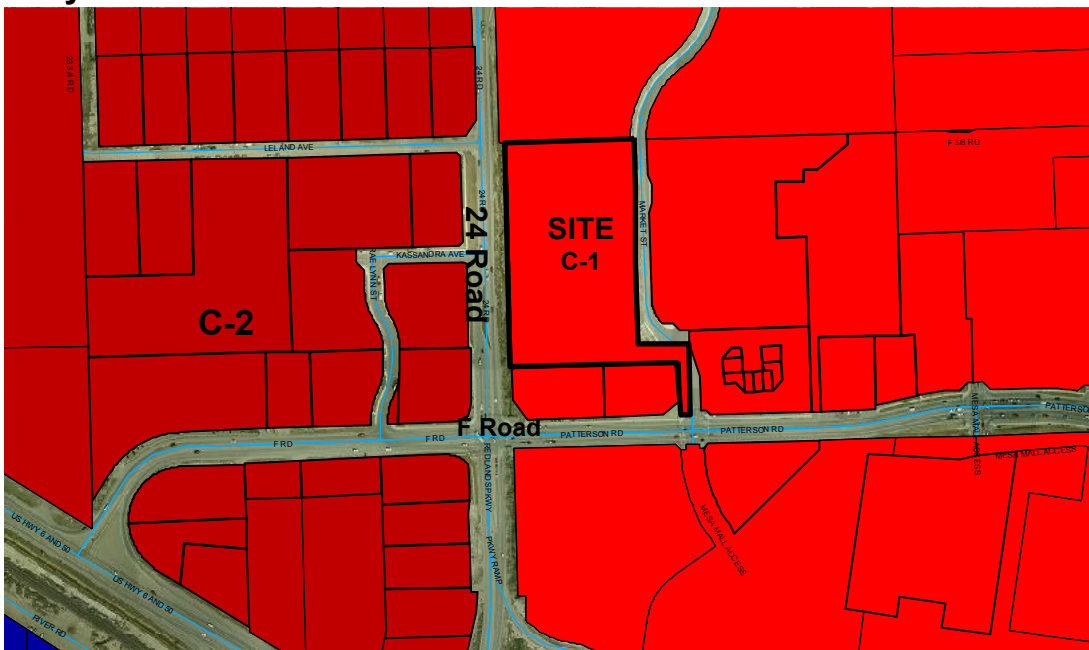
Comprehensive Plan Map

City Limits Figure 3



Existing City Zoning Map

City Limits Figure 4



CITY OF GRAND JUNCTION, COLORADO

RESOLUTION NO.

**A RESOLUTION VACATING A UTILITY EASEMENT ON LOT 2,
REPLAT OF MESA VILLAGE SUBDIVISION (CITY MARKET)**

LOCATED AT 630 24 ROAD

Recitals:

A request for the vacation of a 65-foot wide utility easement has been submitted in accordance with the Zoning and Development Code. The applicant has requested that the utility portion of the 65-foot wide easement, across Lot 2A, be vacated. The easement is shown and dedicated on the plat of Replat of Mesa Village Subdivision, as recorded in Book 15 at Pages 37, 38 and 39, with the Mesa County Clerk and Recorder.

In a public hearing, the Planning Commission reviewed the request for the vacation request and determined that it satisfied the criteria as set forth and established in Section 2.11.C of the Zoning and Development Code. The proposed vacation is also consistent with the purpose and intent of the Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT THE AREA DESCRIBED BELOW AND SHOWN ON EXHIBIT A ATTACHED IS HEREBY VACATED AND IS FURTHER CONDITIONED UPON A NEW EASEMENT BEING RECORDED.

65' UTILITY EASEMENT VACATION

DESCRIPTION:

THE UTILITY EASEMENT PORTION ONLY OF THE 65' INGRESS-EGRESS & UTILITY EASEMENT SITUATED IN THE SW ¼ OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 1 WEST, UTE MERIDIAN, BEING A PART OF LOT 2A, REPLAT OF MESA VILLAGE SUBDIVISION AS RECORDED FEBRUARY 16, 1996 AT RECEPTION NO. 1746811, CITY OF GRAND JUNCTION, COUNTY OF MESA, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SW CORNER OF SAID LOT 2A, WHENCE THE SW CORNER OF THE NW ¼ OF THE SW ¼ OF SAID SECTION 4 BEARS N36°17'02"W A DISTANCE OF 84.33 FEET, SAID POINT LYING ON THE EASTERLY R.O.W. LINE OF 24 ROAD; THENCE N00°04'47"E ALONG THE WEST LINE OF SAID LOT 2A AND SAID EASTERLY R.O.W. LINE A DISTANCE OF 67.90 FEET; THENCE N00°06'21"E CONTINUING ALONG SAID WESTERLY LINE AND SAID EASTERLY R.O.W. LINE A DISTANCE OF 295.09 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N00°06'21"E ALONG SAID WESTERLY LINE AND SAID EASTERLY R.O.W. LINE A DISTANCE OF 65.00 FEET; THENCE S89°59'06"E A DISTANCE OF 420.23 FEET TO A POINT LYING ON THE EASTERLY LINE OF SAID LOT 2A AND THE WESTERLY R.O.W. LINE OF MARKET STREET; THENCE S00°06'21"W ALONG SAID EASTERLY LINE AND SAID WESTERLY R.O.W. LINE A

DISTANCE OF 65.00 FEET; THENCE N89°59'06"W A DISTANCE OF 380.23 FEET TO THE POINT OF BEGINNING. LESS HOWEVER, THE EAST 10.00 FEET AND THE WEST 30.00 FEET THEREOF.

PARCEL CONTAINS (24,715 SQUARE FEET) 0.5674 ACRES.

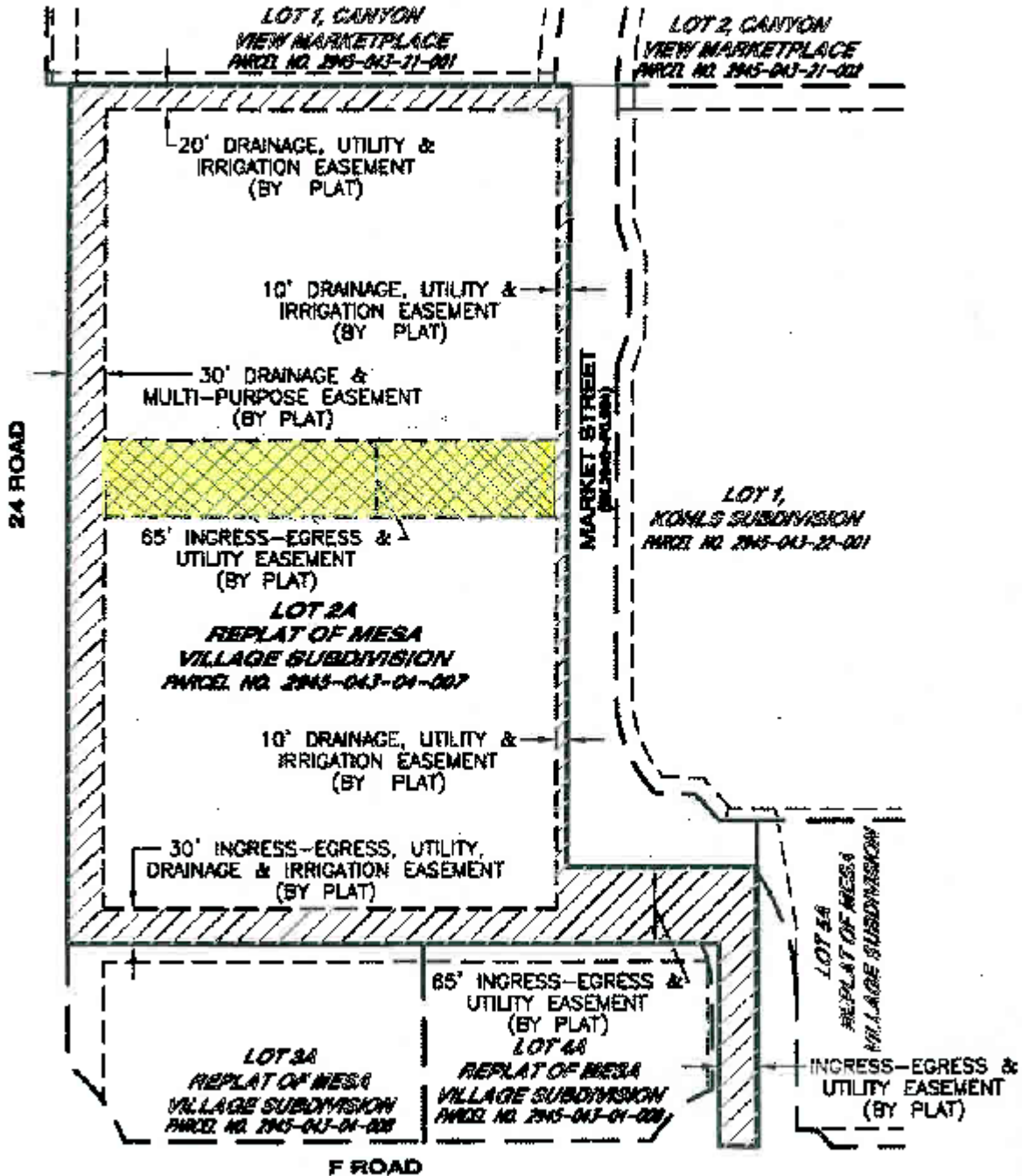
PASSED on this _____ day of _____, 2010.

ATTEST:

City Clerk

President of Council

Exhibit A



Area of Utility Easement to be vacated is shown above.



Date: Thursday, April 8, 2010

Author: Lori V. Bowers

Title/ Phone Ext: Senior Planner,
ext. 4033

Proposed Schedule: 1st
reading, Monday, April 19,2010

2nd Reading

CITY COUNCIL AGENDA ITEM

Attach 3 Setting a Hearing on American Furniture Warehouse Maldonado Street Right-of-Way and Easement Vacations

Subject: American Furniture Warehouse Maldonado Street Right-of-Way and Easement Vacations
File # : VR-2010-019
Presenters Name & Title: Lori V. Bowers, Senior Planner

Executive Summary:

Request to vacate 29,400 square feet of the north end of Maldonado Street and 18,356 square feet of an unnamed right-of-way extending east of Highway 6 and 50, along with eight other adjoining and nearby easements. These vacations are the first step in assembling several different parcels and “clear the slate” for the new construction of American Furniture Warehouse. New right-of-way and easements will be provided on the future plat.

How this item relates to the Comprehensive Plan Goals and Policies:

Goal 3: The Comprehensive Plan will create ordered and balanced growth and spread future growth throughout the community.

Goal 6: Land use decisions will encourage preservation and appropriate reuse.

By vacating the easements and rights-of-way, it clears the properties for redevelopment and allows growth to continue in the community. The relocation of the existing businesses within the City limits keeps growth balanced.

Action Requested/Recommendation:

Introduce the Proposed Ordinance and Set a Public Hearing for Monday, May 3, 2010.

Board or Committee Recommendation:

This item was considered non-controversial and was placed on the Consent Agenda for the Planning Commission meeting of April 13, 2010. A recommendation of approval is forwarded to the City Council.

Background, Analysis and Options:

Please see the attached Staff Report.

Financial Impact/Budget:

N/A

Legal issues:

The Ordinance will be conditioned upon relocation of existing utilities and recording of the Final Plat, which will dedicate new right-of-way and new easements.

Other issues:

No other issues.

Previously presented or discussed:

Has not been presented or discussed previously.

Attachments:

Site Location Map / Aerial Photo Map
Comprehensive Plan Map / City Zoning Map
Ordinance

BACKGROUND INFORMATION				
Location:		East of Base Rock Street		
Applicants:		American Furniture Warehouse owner and developer, c/o Kevin Michalek. Representative, Tom Logue.		
Existing Land Use:		Vacant land and commercial uses (that have or will be relocated)		
Proposed Land Use:		(Retail sales) American Furniture Warehouse		
Surrounding Land Use:	North	Highway 6 and 50; Game Fish and Parks Dept.		
	South	Commercial uses		
	East	Gold's Gym and Highway 6 and 50		
	West	Wal-Mart and vacant land		
Existing Zoning:		C-1 (Light Commercial)		
Proposed Zoning:		No change		
Surrounding Zoning:	North	C-1 (Light Commercial)		
	South	C-1 (Light Commercial)		
	East	C-1 (Light Commercial)		
	West	C-1 (Light Commercial)		
Future Land Use Designation:		Commercial		
Zoning within density range?		X	Yes	No

ANALYSIS

1. Background

Approximately seven parcels of land will be combined by American Furniture Warehouse to build a new 150,000 square foot showroom and warehouse near Gold's Gym and Wal-Mart, southwest of Highway 6 and 50. By the time of final design, there may be some additional out-lots or pad sites included with the project. Some of this land is vacant and some has had uses such as Gibson RV, Mike's Auto and Abbey Carpet. These businesses have either relocated or will be re-locating in the future.

In order to assemble the properties, for purposes, applicant seeks vacation of Maldonado Street, a vacation of an un-named street east of the highway, and the vacation of eight separate multi-purpose easements, temporary turnaround easements and sewer easements. Applicant proposes to relocate the right-of-way and easements. Vacation of the dedicated right-of-way, and the easements, shall be contingent upon their relocation and the dedication of new easements to be shown on a new Final Plat for this project.

The vacation of the right-of-way and easements will permit re-development as planned on the land that adjoins the proposed vacations. All of the affected land owners have agreed to the proposed vacations. There is approximately 490 feet of the north end of the 60-foot wide Maldonado Street right-of-way and approximately 353 feet of an unnamed 52-foot wide right-of-way extending east to the Highway. The road right-of-way totals 42,165 square feet. There is 12,025 square feet of sanitary sewer easements; 5,924 square feet of waterline easement; 16,596 square feet of multi-purpose easements and 1,655 square feet of turn-around easements proposed for vacation. These easements and right-of-way are depicted on the maps contained in this staff report.

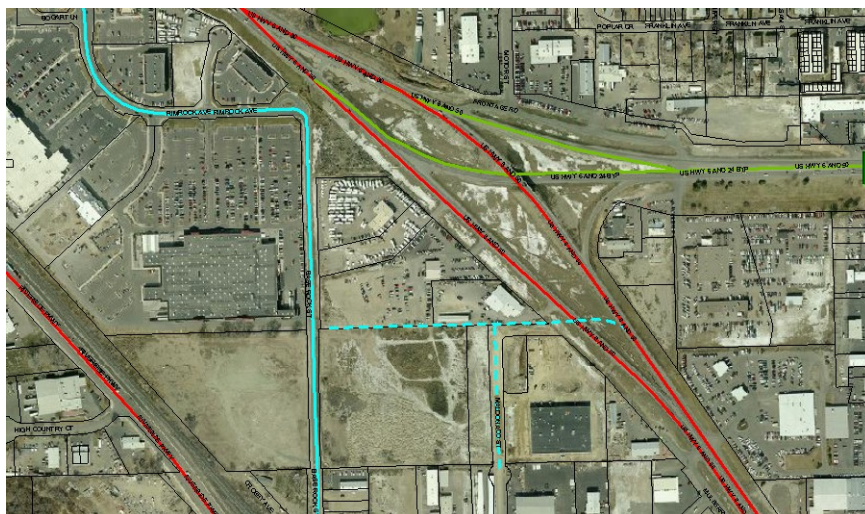
2. Section 2.11.C of the Zoning and Development Code

The vacation of the right-of-way and easements shall conform to the following:

- g. The Comprehensive Plan, Grand Valley Circulation Plan, and other adopted plans and policies of the City.

Two goals of the Comprehensive Plan are met with the requested vacations: Goal 3: The Comprehensive Plan will create ordered and balanced growth and spread future growth throughout the community; and Goal 6: Land use decisions will encourage preservation and appropriate reuse. By vacating the easements and rights-of-way, it clears the properties for redevelopment and allows growth to continue in the community. The relocation of the existing businesses within the City limits keeps growth balanced.

The Grand Valley Circulation Plan identifies Maldonado Street as a future minor collector. With the vacation and future relocation of Maldonado, connecting to Highway 6 and 50, and the addition of another connection to Base Rock Street, the needed connectivity for circulation in this area will be in conformance with the plan, as it is shown on the Street Classification Map.



The blue colored lines show proposed and existing Minor Collectors. Red is Principal Arterial, and green is Minor Arterial.

The requested vacations will not be a detriment to other adopted plans or policies.

- h. No parcel shall be landlocked as a result of the vacation.

No parcel will be landlocked as a result of the requested vacations once the land is replatted. Parcels on either side of Maldonado will continue to have street access.

- i. Access to any parcel shall not be restricted to the point where access is unreasonable, economically prohibitive or reduces or devalues any property affected by the proposed vacation.

All properties affected by the proposed vacations are partners in this application. Access will be improved in this area with the dedication of new right-of-way that will better serve all properties involved thus improving the property values.

- j. There shall be no adverse impacts on the health, safety, and/or welfare of the general community and the quality of public facilities and services provided to any parcel of land shall not be reduced (e.g. police/fire protection and utility services).

With new infrastructure, right-of-way and access points being provided, the health, safety and welfare of the general community will be improved. During construction, the current accesses and facilities will remain unchanged creating no adverse impacts.

- k. The provision of adequate public facilities and services shall not be inhibited to any property as required in Chapter Six of the Zoning and Development Code.

All necessary public facilities will be relocated once the vacation of the right-of-way and easements has occurred. New street right-of-way and easements will be dedicated improving facilities, services and access.

- l. The proposal shall provide benefits to the City such as reduced maintenance requirements, improved traffic circulation, etc.

The main benefit will come from improved traffic circulation in the area by implementing the recommendations contained in the Grand Valley Circulation Plan. Since relocation of existing utilities will occur, they will be upgraded to new construction standards and therefore extend the life of those utilities. New domestic water lines will help in increased fire protection.

FINDINGS OF FACT/CONCLUSIONS/CONDITION

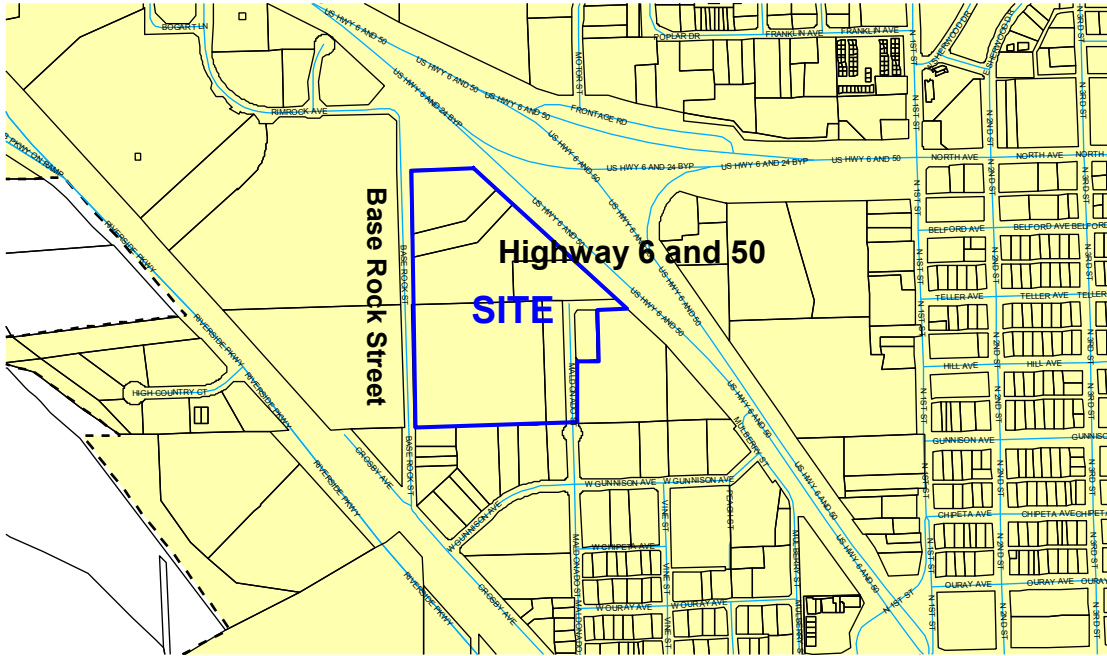
After reviewing the American Furniture Warehouse application, file number VR-2010-019 for the vacation of a public right-of-way and various easements, I make the following findings of fact, conclusions and condition:

3. The requested right-of-way and easement vacations are consistent with the Comprehensive Plan.
4. The review criteria in Section 2.11.C of the Zoning and Development Code have all been met.
5. The vacations are contingent upon relocation of existing utilities and recording of the Final Plat, which will dedicate new right-of-way and new easements.

Site Location Map

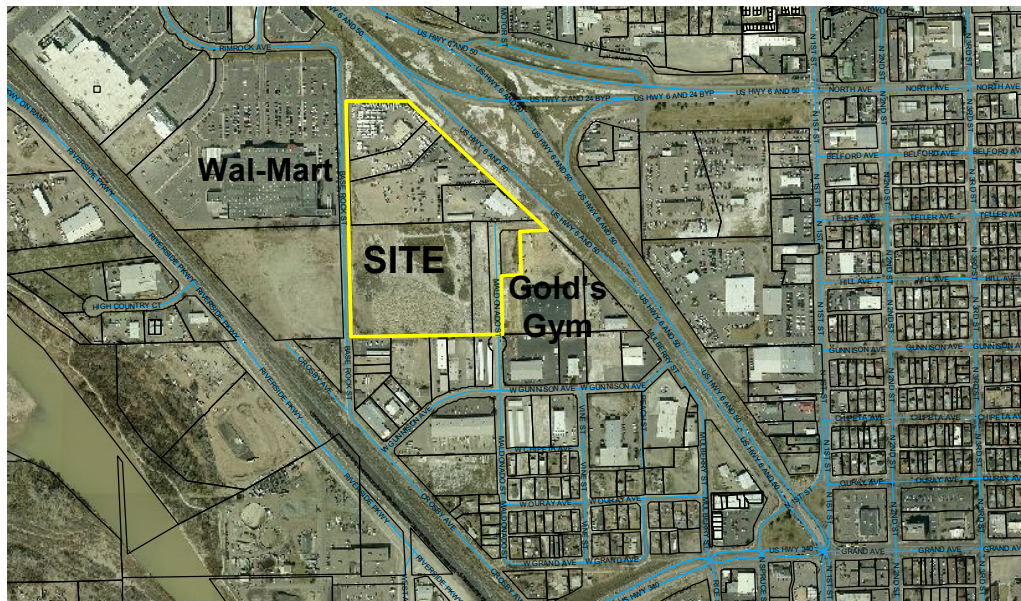
City Limits shown in yellow

Figure 1



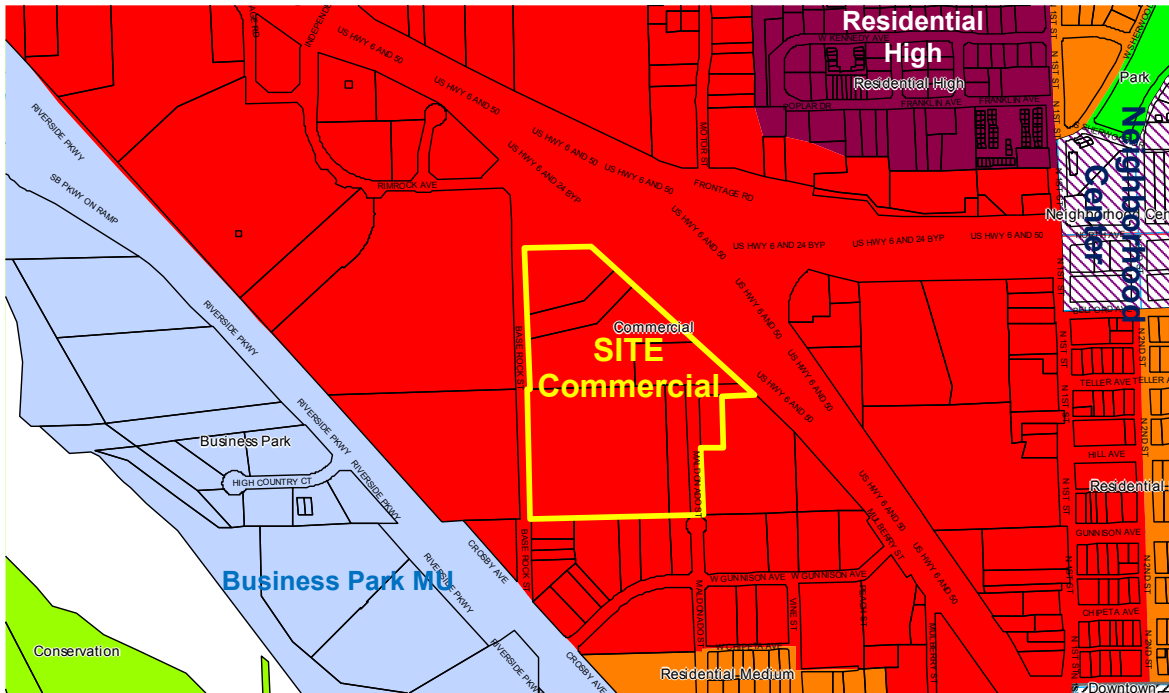
Aerial Photo Map

Figure 2



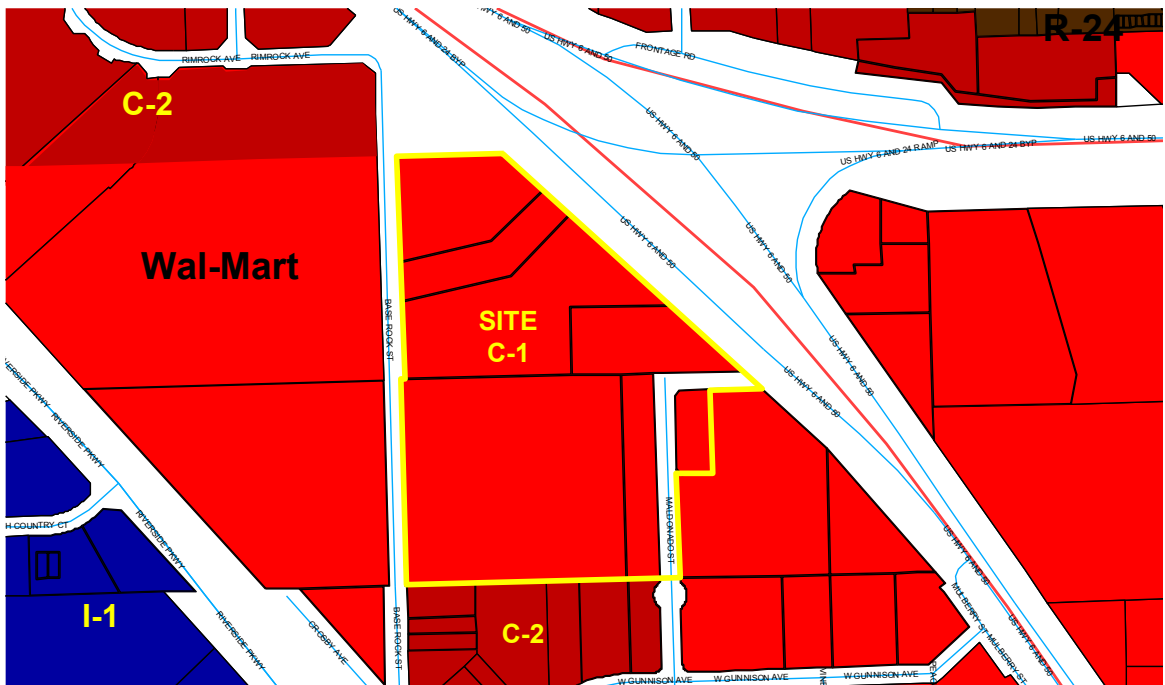
Comprehensive Plan Map

Figure 3



Existing City Zoning Map

Figure 4



CITY OF GRAND JUNCTION

ORDINANCE NO.

**AN ORDINANCE VACATING RIGHT-OF-WAY FOR MALDONADO STREET AND AN
UN-NAMED RIGHT-OF-WAY, EAST OF MALDONADO STREET
LOCATED EAST OF BASE ROCK STREET
(AMERICAN FURNITURE WAREHOUSE)**

RECITALS:

A vacation of the dedicated right-of-way for has been requested by the adjoining property owners.

The City Council finds that the request is consistent with the Comprehensive Plan, the Grand Valley Circulation Plan and Section 2.11 of the Zoning and Development Code.

The Planning Commission, having heard and considered the request, found the criteria of the Code to have been met, and recommends that the vacation be approved.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:

The following described dedicated right-of-way for is hereby vacated subject to the listed conditions:

1. Applicants shall pay all recording/documentary fees for the Vacation Ordinance, any easement documents and dedication documents.
2. Vacations are conditioned upon the Final Plat being recorded and new right-of-way dedicated thereon.

The following rights-of-way are shown on "Exhibit A" as part of this vacation of description.

Dedicated right-of-way to be vacated:

A road right of way 30.00 feet in width and recorded in Book 2612 at Page 949 of the Mesa County Clerk and Recorder, being situate in the Northwest Quarter of the Northeast Quarter of Section 15, Township 1 South, Range 1 West of the Ute Meridian, Mesa County, Colorado being more particularly described as follows:

Commencing at a point on the South line of the NW 1/4 NE 1/4 of said Section 15 from whence the Southeast corner of the NW 1/4 NE 1/4 of said Section 15 bears S89°57'41"E a distance of 522.81 feet; thence N0°07'20"W along the West line of that right of way as described in Book 2612 at Page 849 of the Mesa County Clerk and Recorder a distance of 142.33 feet to the Southeast corner of Lot 1 AFW Subdivision and the Point of beginning; thence N0°07'20"W a distance of 490.34 feet; thence S89°47'12"E along the North line of said right of way a distance of 30.00 feet; thence S0°07'20"E along the East line of said right of way a distance of 490.16; thence S89°52'40"W a distance of 30.00 feet to the Point of Beginning.

Parcel of land contains 0.338 acres as described.

AND

A road right of way 30.00 feet in width and recorded in Book 2612 at Page 984 of the Mesa County Clerk and Recorder, being situate in the Northwest Quarter of the Northeast Quarter of Section 15, Township 1 South, Range 1 West of the Ute Meridian, Mesa County, Colorado being more particularly described as follows:

Commencing at a point on the South line of the NW 1/4 NE 1/4 of said Section 15 from whence the Southeast corner of the NW 1/4 NE 1/4 of said Section 15 bears S89°57'41"E a distance of 492.81 feet; thence N0°07'20"W along the West line of that right of way as described in Book 2612 at Page 853 of the Mesa County Clerk and Recorder a distance of 142.33 feet to the Point of beginning; thence N0°07'20"W a distance of 490.16 feet; thence N89°47'12"W along the North line of said right of way a distance of 30.00 feet; thence S0°07'20"E along the East line of said right of way a distance of 489.99; thence S89°52'40"W a distance of 30.00 feet to the Point of Beginning.

Parcel of land contains 0.338 acres as described.

AND

A road right of way 52.00 feet in width and recorded in Book 4519 at Page 984 of the Mesa County Clerk and Recorder, being situate in the Northwest Quarter of the Northeast Quarter of Section 15, Township 1 South, Range 1 West of the Ute Meridian, Mesa County, Colorado being more particularly described as follows:

Beginning at the Northwest corner of that road right of way as described in Book 4519 at Page 984 of the Mesa County Clerk and Recorder, said point bears N89°57'42"W a distance of 462.81 feet and N0°07'20"W a distance of 632.41 feet from the NE 1/16 corner of said Section 15 and considering the South line of the NW 1/4 NE 1/4 of said Section 15 to bear N89°57'42"W, with all other bearings herein relative thereto: thence S89°47'12"E along the North line of said right of way a distance of 214.96 feet to the Westerly right of way line for Highway 6&50 as described in Book 686 at Page 235; thence S45°55'08"E along said right of way a distance of 75.03 feet to the Northeasterly corner of Lot 1 Gold's Gym Subdivision; thence N89°47'12"W along the North line of said Lot 1 a distance of 268.75 feet to the East line of that road right of way for Maldonado Street as described in Book 2612 at Page 853; thence N0°07'20"W along said right of way a distance of 52.00 feet to the Point of Beginning.

Parcel of land contains 0.289 acres as described.

AND

A road right of way as dedicated on the plat of Gold's Gym recorded in Book 4621 at Page 478 of the Mesa County Clerk and Recorder, being situate in the Northwest Quarter of the Northeast Quarter of Section 15, Township 1 South, Range 1 West of the Ute Meridian, Mesa County, Colorado being more particularly described as follows:

Commencing at a point on the South line of the NW 1/4 NE 1/4 of said Section 15 from whence the Southeast corner of the NW 1/4 NE 1/4 of said Section 15 bears S89°57'41"E a distance of 462.81 feet; thence N0°07'20"W along the West line of Gold's Gym as recorded in Book 4621 at Page 478 of the Mesa County Clerk and

Recorder a distance of 564.26 feet to the Point of beginning; thence N0°07'20"W a distance of 16.15 feet; thence S89°57'12"E a distance of 16.15 feet; thence S45°02'42"E a distance of

22.77 to the Point of Beginning.

Parcel of land contains 130 square feet as described.

Introduced for first reading on this _____ day of _____, 2010

PASSED and ADOPTED this _____ day of _____, 2010.

ATTEST:

President of City Council

City Clerk

Exhibit A



Date: October 2008
Scale: 1" = 100'

PREPARED BY
THOMAS A. LOGUE
LAND DEVELOPMENT CONSULTANT
10715 W. 100th Street, Suite 100, Colorado Springs, CO 80902

PREPARED FOR
AMERICAN FURNITURE WAREHOUSE
8150 AMERICAN WAY
ENGLEWOOD, CO 80112

MALDONADO STREET VACATION
GRAND JUNCTION, COLORADO

LAND USE MAP
(2008 Air Photo)
SHEET 1 OF 1



Date: April 5, 2010
 Author: Stephanie Tuin
 Title/ Phone Ext: City Clerk, x1511
 Proposed Schedule: 1st
reading April 19, 2010
 2nd Reading
 (if applicable): May 3, 2010

CITY COUNCIL AGENDA ITEM

**Attach 4
 Setting a Hearing on Amendments to the Code of Ordinances to Address Inconsistencies**

Subject: Amendments to the Code of Ordinances to Address Inconsistencies
File # (if applicable): NA
Presenters Name & Title: John Shaver, City Attorney Stephanie Tuin, City Clerk

Executive Summary:

The City Code of Ordinances (“Code”) has recently had a comprehensive review as part of a contract with Code Publishing Company. During that review a small number of inconsistencies in the Code were brought forward. The proposed ordinance will address those inconsistencies.

How this item relates to the Comprehensive Plan Goals and Policies:

Goal 12: Being a regional provider of goods and services the City and County will sustain, develop and enhance a healthy, diverse economy.

These amendments are part of the Code project which meets the City Council goal of providing services to the diverse population by allowing 24/7 searchable access to the City’s legislative documents on the internet.

Action Requested/Recommendation:

Introduction of Proposed Ordinance and Set a Public Hearing for May 3, 2010

Board or Committee Recommendation:

Not applicable.

Background, Analysis and Options:

During the comprehensive review of the Code of Ordinances, there were a few inconsistencies noted by the contractor, Code Publishing. Some of the inconsistencies

were non-substantive editorial corrections and some are substantive. The substantive changes must occur via an ordinance.

Financial Impact/Budget:

None.

Legal issues:

The City Attorney has reviewed the proposed ordinance and recommends approval.

Other issues:

None.

Previously presented or discussed:

This has not been previously presented.

Attachments:

Proposed ordinance

ORDINANCE NO.

AN ORDINANCE MAKING CERTAIN AMENDMENTS TO THE CITY'S CODE OF ORDINANCES TO ADDRESS INCONSISTENCIES WITHIN THE CODE

RECITALS:

The City Code of Ordinances ("Code") has recently had a comprehensive review as part of a contract with Code Publishing Company. During that review a small number of inconsistencies in the Code were found. In order to address those inconsistencies, the following amendments are being proposed.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT the following amendments are made to the following sections of the Code. Additions/corrections are shown with strikethrough and underlining.

1) In 2004, Mesa County adopted Resolution No. 2004-220-2 which provided for the regulation of ambulances and created procedures for the licensing of ambulance service providers. Subsequently a selection process took place and the City of Grand Junction Fire Department was selected as the ambulance service provided for the Grand Junction Ambulance Service Area (see City Council Resolution No. 14-06).

As a result of those actions, Section 2.24.010 is hereby amended to read as follows:

(Chapter 2.24 FIRE DEPARTMENT)

2.24.010 Fire Department transportation charges.

abide by the terms of Mesa County Resolution 2004-220-2 and as subsequently amended when determining emergency transportation fees, rates and charges.

2) In 1983, the Grand Junction City Council created the Parks and Recreation Board by Ordinance No. 2162. In 1986, bylaws for the Grand Junction Parks and Recreation Board were adopted naming the board the Grand Junction Parks and Recreation Advisory Board. To be consistent all references in the Code and particularly in Chapter 2.32, to the Parks and Recreation Board are hereby changed to Parks and Recreation Advisory Board.

3) The general penalty section of the Code is codified as 1.04.090. There are several other sections in the Code that refer to penalties that are inconsistent with the general penalty. In order for the penalty to be consistent throughout the Code (other than those exceptions specifically identified in Chapter 1.12) the following sections are hereby amended:

(Chapter 3.08 LODGING TAX)

3.08.150 Penalty.

It shall be unlawful for any person to violate, omit or refuse or fail to comply with the several provisions of this chapter, or to commit any act or omission declared to be a violation of this chapter. A violation of this chapter shall be punished by a fine or imprisonment or both pursuant to the limits established in GJMC [1.04.090](#). Each day or portion thereof that any violation of any provision of this chapter exists shall constitute a separate offense.

(Chapter 5.16 CONTRACTORS)

5.16.150 Violation of chapter – Penalties.

In addition to suspension or revocation of licenses by the Board as provided by this chapter, any person violating any of the provisions of this chapter or any lawful rule or regulation of the Building Board of Appeals, or any lawful order of the Building Inspector, shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this chapter are committed, continued or permitted.

A violation of this chapter shall be punished by a fine or imprisonment or both pursuant to the limits established in GJMC [1.04.090](#). Each day or portion thereof that any violation of any provision of this chapter exists shall constitute a separate offense.

(Chapter 12.08 RIVERFRONT TRAILS)

12.08.130 Violation – Penalty.

The adopted regulations shall have the force and effect of law with respect to all users of, or visitors to, the riverfront trails. A violation of this chapter shall be punished by a fine or imprisonment or both pursuant to the limits established in GJMC [1.04.090](#).

(Chapter 13.04 WASTEWATER SYSTEM)

13.04.320 Service charges – Charge for reconnecting after disconnection for sewer service charge delinquency – Penalty for unauthorized reconnections.

(a) If the sewer service is disconnected by shutting off the water supply, reconnection shall be made only upon the payment of all delinquencies plus a reconnecting charge as established by resolution of the City Council.

(b) It shall be unlawful, after sewer service has been disconnected by shutting off the water supply or in any other manner, for any person to reconnect such water supply

without the consent of the City, and any person violating this provision shall be deemed guilty of a misdemeanor.

(c) A violation of this chapter shall be punished by a fine or imprisonment or both pursuant to the limits established in GJMC [1.04.090](#). Each day or portion thereof that any violation of any provision of this chapter exists shall constitute a separate offense.

(Chapter 13.28 STORMWATER MANAGEMENT)

13.28.040 Enforcement.

(m) The violation of any provision of this chapter or with any orders, rules, regulations, permits and permit conditions shall be deemed a municipal offense. Any person violating this chapter shall, upon an adjudication of guilt or a plea of guilty or no contest, be punished by a fine or imprisonment or both pursuant to the limits established in GJMC [1.04.090](#). Each day or portion thereof that any violation of any provision of this chapter exists shall constitute a separate offense. (1) If any person violates any order of the City Manager, a Hearing Board or Officer or the Council, or otherwise fails to comply with any provisions of this chapter or the orders, rules, regulations and permits issued hereunder, or discharges into the storm drain system or into State waters contrary to the provisions of this chapter, federal or State requirements, or contrary to any order of the City, the City may commence an action in a court of record for appropriate legal and equitable relief. In such action, the City may recover from the defendant reasonable attorney fees, court costs, deposition and discovery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation, if the City prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of this chapter shall become liable to the City for any expense, loss, or damage to the City or to the storm drain system occasioned by such violation. The City Attorney may seek a preliminary or permanent injunction or both which restrains or compels the activities on the part of the discharger.

(2) Any person who knowingly makes, authorizes, solicits, aids, or attempts to make any false statement, representation or certification in any hearing, or in any permit application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any monitoring device, testing method, or testing samples required under this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine or imprisonment or both pursuant to the limits established in GJMC [1.04.090](#). (3) The remedies provided for in this chapter, including recovery of costs, administrative fines and treble damages, shall be cumulative and in addition to any other penalties, sanctions, fines and remedies that may be imposed. Each day in which any such violation occurs, whether civil and/or criminal, shall be deemed a separate and distinct offense.

(Chapter 13.32 WATERSHED AND WATER SUPPLY STANDARDS)

13.32.090 Violations – Penalties.

(a) It is unlawful to engage in any activity not in compliance with these regulations or any amendment thereto and/or the permit requirements hereof. Any person,

corporation or other legal entity, either as owner, lessee, permittee, occupant or otherwise, who violates any provision of these regulations and/or who engages in any activity not in compliance with these regulations shall be charged with a misdemeanor.

(b) Any person, corporation or other legal entity, upon conviction of a violation of these regulations, shall be punished by a fine or imprisonment or both pursuant to the limits established in GJMC [1.04.090](#).

(c) Any person, corporation or other legal entity shall be guilty of a separate offense for each and every day during any portion of which any violation of these regulations is committed, continued or permitted.

(d) Nothing herein shall limit the City from seeking any other remedies available by law or in equity, including but not limited to injunctive relief, the recovery of damages and the payment of costs and reasonable attorneys' fees. All remedies shall be cumulative.

(Chapter 15.08 BUILDING CODES – ADMINISTRATION)

15.08.050 Violation and penalty.

The penalties imposed for violation of the codes and of the statutory sections authorizing their adoption are as follows:

Any person, firm or corporation violating this chapter or any provision of any adopted code herein is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or imprisonment or both pursuant to the limits established in GJMC [1.04.090](#). Each day during which such illegal erection, construction, reconstruction, alteration, maintenance or use continues shall be deemed a separate offense. In case any building or structure is or is proposed to be erected, constructed, remodeled, used or maintained in violation of this part or of any provision of this chapter, the City Attorney may institute an appropriate action injunction, mandamus or abatement to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, remodeling, maintenance or use. The City Attorney may use or enforce any remedies provided by law or in equity. Jurisdiction for any action brought under this title shall be in the Municipal Court of the City and such action shall be heard and decided in accordance with the rules of that Court.

4) In 2003, Ordinance No. 3589 repealed and re-enacted Code Section 6-61 Barking Dogs (now Section 6.12.060). The reenactment of paragraphs (d), (e) and (f) was not clear so it is the City's desire to clearly re-enact those sections. Therefore Section 6.12.060 is hereby amended to read:

(Chapter 6 DOGS AND CATS)

6.12.060 Barking dogs.

(a) Prohibition. No owner of a dog shall fail to prevent it from disturbing the peace and quiet of any other person by loud and persistent barking, baying, howling, yipping, crying, yelping, or whining, whether the dog is on or off the owner's premises.

(b) Provocation Defense. Provocation of a dog whose noise is complained of is an affirmative defense to any charge for violation of subsection (a) of this section.

(c) Complainant's Rights and Responsibilities.

(1) All complainants must clearly identify themselves by stating their name, address and telephone number. The complainant shall further state the description of the offense, the date, time, place and duration of the offense, and if known, the name of the dog's owner, the owner's address and telephone number, and a description of the dog. The identity of a complainant shall be kept confidential until a violation of this section is charged.

(2) If a violation of this section is charged, the complainant shall sign an affidavit on the citation attesting to the violation, or shall verify in writing the allegations of a complaint prior to its service upon the owner.

(3) No person or owner shall be convicted at trial for violation of this section unless oral testimony or other means of reliable evidence is presented proving the elements of subsection (a) of this section. Other reliable evidence includes, but is not limited to, videotape and digital video recordings.

(d) Warning process. The warning process to be employed prior to a charge being instituted for notification of violation of subsection 6.12.060(a) shall be substantially as follows:

(1) The warning must relate to a barking incident separate from the charged violation.

(2) The animal control officer may issue a warning after receiving two complaints from two different persons who do not reside in the same household.

(3) All complainants must clearly identify themselves by stating their name, address and telephone number. The complainant shall further state, if known, the name of the dog's owner, the owner's address and telephone number, a description of the dog, description of the offense, the date, time, place and duration of the offense.

(4) A record or incident report shall be kept of any such complaint and investigation.

(5) A warning to a dog owner shall fully cite section 6.12.060(a) and advise the owner of penalty for the violation of section 6.12.060(a). The warning shall also state that a complaint has been received, recite the date of the alleged offense, and conclude that the owner's dog may have disturbed the peace of another individual. The warning must be identified as being issued by any animal regulation officer empowered by the city council to enforce the provisions of this article.

(e) Notice and evidence of warnings. An owner shall be deemed to have been issued and received a warning under subsection (d) of this section if the warning is personally served upon the owner or keeper, posted on the owner's or keeper's premises, or placed in the U.S. mail, postage prepaid and addressed to the owner of the dog according to the last address given by the owner or keeper at the time such owner obtained a license certificate or license tag.

(f) Complainant's rights and responsibilities.

(1) The identity of a complainant shall be kept confidential until a violation of this section is charged.

(2) If a violation of this section is charged, the complainant shall sign an affidavit on the citation attesting to the violation, or shall verify in writing the allegations of a complaint prior to its service upon the owner.

(3) No person or owner shall be convicted at trial for violation of this section unless testimony is presented by at least two complaining witnesses or by one complaining witness when there is only one occupied residence within three blocks or one-quarter mile in any direction.

5) In 1997, the City established a wood stove replacement fund of \$25,000. That fund has been depleted thus leaving the provisions in the Code relative to the Wood Stove Replacement Grant Program obsolete. Therefore, these provisions should be repealed.

(Chapter 8.20 AIR POLLUTION)

8.20.150 and 8.20.160 Repealed.

6) In Section 8.32.020, a list of approved trees is established by the Forestry Board. In Section 8.32.080, the list is referred to but says as established by the Parks and Recreation Department. For consistency, Section 8.32.080 is amended to read as follows:

(Chapter 8.32 TREES)

8.32.080 Maintenance of planting strip.

(a) "Planting strip" shall refer to that area between the back of any curb of any street and the edge of the sidewalk closest to the street or if there is no curb then from edge of asphalt of any street to the edge of the sidewalk.

(b) Duty of Owner to Maintain. It shall be the duty and obligation of every person in the City to keep and care for in the manner provided in this section the planting strip fronting or adjoining the premises owned by such person. Such planting strip shall be maintained in an aesthetically pleasing manner in either drought tolerant plant material, grass or other plantings, stone aggregate, decorative rocks, bark mulch, or like materials or combinations thereof, with or without plantings. Vegetation shall be watered and fertilized to provide optimum growing conditions.

(c) Trees. Any trees planted shall be on the approved list of trees as provided in Section 8.32.020. The City shall provide maintenance (spraying, trimming and removal) of trees only. Prior to any maintenance, the City shall attempt to notify any contiguous property owner but the City shall not be held liable for failure to give notice.

(d) Hard Surfacing. In unusual situations where drainage or traffic problems exist, or in commercial zones or premises where public buildings or uses are involved, hard surfacing such as concrete, terrazzo, brick, flagstone, asphalt or other impervious substances may be authorized by written permit at the discretion of the City Manager. If hard-surfacing materials are authorized in conjunction with tree plantings, proper tree wells as determined by the City Manager shall be constructed by the owner.

(e) Minimum Open Area Around Trees. No person shall deposit or maintain, upon the parking strip in any street, stone, cement, debris or other substance which impedes the free entrance of water and air to the roots of any tree in such public highway or other public place without leaving an open space or ground outside the trunk of such tree, in area not less than six square feet for a tree three inches in diameter and for every two inches of increase of such diameter there must be an increase of at least two square feet of open ground.

(f) Compliance with Other Provisions. Any shrubs or other plantings and the use of other materials shall comply with regulations concerning traffic safety and other provisions of this code.

(g) Appeal. Any person aggrieved by the decision of the City Manager may appeal such decision to the Forestry Board, and such Board may affirm, reverse or modify the decision of the City Manager.

7) The most current map for riverfront trails is referred to in the Riverfront Trails regulations and it states that it is on file in the Office of the City Clerk. The City's GIS contains the most up-to-date map and referring to that location is more efficient.

(Chapter 12.08 RIVERFRONT TRAILS)

12.08.010 Definition – Incorporation of riverfront map.

“Riverfront,” “riverfront trails” or “trails” means those areas, facilities, lands and waters as identified on the map entitled “Riverfront Map,” which map is incorporated in this article by this reference. The City Manager or his designee shall provide to the Parks and Recreation Advisory Board updated and revised maps of the riverfront as additional trails, lands, lakes or facilities are acquired, placed or constructed. The most current map shall be on file on the City’s Geographical Information System (GIS) and incorporated by reference into this chapter and shall constitute the riverfront map. The substitution of maps and incorporation thereof by reference shall not necessitate readoption of this chapter.

PASSED for first reading and ordered published by the City Council of the City of Grand Junction, Colorado the ____ day of _____, 2010

PASSED AND ADOPTED on second reading by the City Council of the City of Grand Junction, Colorado this _____ day of _____, 2010.

President of the Council

Attest:

City Clerk



Date: April 13, 2010
 Author: Belinda White
 Title/ Phone Ext: 1508
 Proposed Schedule: _____ April
19, 2010
 2nd Reading
 (if applicable): N/A

CITY COUNCIL AGENDA ITEM

**Attach 5
 Dry Grazing Leases of City Properties**

Subject: Dry Grazing Leases of City Properties to Sally Marie Smith
File # (if applicable):
Presenters Name & Title: John Shaver, City Attorney

Executive Summary:

Sally Marie Smith and the City wish to renew Dry Grazing Leases for the next five years on properties located south of Whitewater.

How this item relates to the Comprehensive Plan Goals and Policies:

Goal 6: Land use decisions will encourage preservation and appropriate reuse.
 The properties initially were purchased for all water rights. All water rights were promptly converted to allow for dual use for either agricultural or municipal purposes. Leasing the properties to Sally Marie Smith for dry grazing is an appropriate reuse of the land.

Action Requested/Recommendation:

Approval of the Leases by Adoption of Proposed Resolutions.

Board or Committee Recommendation:

N/A

Background, Analysis and Options:

The City owns 471 acres south of Whitewater and west of Highway 50. The City purchased the property in 1954 from C.V. Hallenbeck for the appurtenant water rights. The Hallenbeck purchase included several hundred acres ranging from semi-arid properties near Whitewater to irrigated sub-alpine lands in the Kannah Creek, Purdy Mesa and Grand Mesa areas. All water rights acquired from Hallenbeck were promptly converted to allow dual use for either agricultural or municipal purposes.

The City presently leases 431 acres for dry grazing purposes to Sally Smith. The remaining 40 acres are leased to KNZZ Radio through December 31, 2017.

Former City Council's have chosen to retain ownership of these lands to allow the City to participate in future actions which may affect their use and value. When last specifically reviewed in 1997 the decision was to continue to retain ownership and maintain the properties as a buffer of open space with the adjoining BLM lands.

Part of the standards and guidelines for the dry grazing leases are drawn from BLM guidelines and regulations for livestock grazing administration. The adopted standards describe conditions needed to sustain public land health and are applied on a landscape scale relating to the potential of ecosystems which are unique to each area.

The City's properties are in much better condition than the adjoining public and private lands, due to the lessee having employed best management practices to maintain and improve the health of these lands under the prior leases:

- All fences are intact and stock proof;
- Noxious weeds are virtually non-existent;
- Native plants are abundant and signs of natural re-vegetation are evident.

The proposed dry grazing leases will be for a period of five-years with options to extend the leases for an additional one-year term. Rental fees are based on the carrying capacity of the properties for livestock dry grazing purposes.

In addition to paying rent, the lessee is required to pay the general property taxes, all operational expenses and liability insurance.

Financial Impact/Budget:

Annual lease \$400.00 to the City for five years. (\$2000.00)

Annual lease \$500.00 to the City for five years. (\$2500.00)

Legal issues:

The City Attorney has reviewed and approved the form of the leases.

Other issues:

None

Previously presented or discussed:

N/A

Attachments:

Resolutions
Dry Grazing Leases with
Exhibit A's and
Vicinity Maps attached

RESOLUTION NO. __-10

**A RESOLUTION AUTHORIZING A DRY GRAZING LEASE
OF CITY PROPERTY (240 ACRES) TO SALLY MARIE SMITH**

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 ¼ of the NE ¼ and the NE ¼ of the SE ¼ 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 Sally Marie Smith for a period of one (5) year period, commencing on May 1, 2010 and expiring on April 30, 2015.

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 Sally Marie Smith for a term of five years, commencing on May 1, 2010 and expiring on April 30, 2015; provided, however, that in the event Ms. Smith 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 five year term, the City may extend the term of the lease with Ms. Smith for one (1) additional five year period, subject to each and every term contained in the attached Dry Grazing Lease Agreement.

PASSED and ADOPTED this _____ day of _____ 2010.

Attest:

City Clerk

President of the Council

DRY GRAZING LEASE AGREEMENT

This Dry Grazing Lease Agreement is made and entered into as of the 1st day of May, 2010, by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Sally Marie Smith, 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 May 1, 2010, and shall continue through April 30, 2015, 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 May 1, 2015, and expiring on April 30, 2020, 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, which includes antiquities, artifacts and game;

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 Lessees agree to pay City, as rental for the Property, improvements and appurtenances, the sum of \$2,000. Payable as follows:

Lease Year	Total Due	May 1st Payment	December 1st Payment
2010	\$ 400	\$ 200	\$ 200
2011	\$ 400	\$ 200	\$ 200
2012	\$ 400	\$ 200	\$ 200
2013	\$ 400	\$ 200	\$ 200
2014	\$ 400	\$ 200	\$ 200

Lessees may utilize one of the following options for making rental payments:

- a) Lessees may pay the amount due for each lease year in full on or before the payment due date for each lease year, or
- b) Lessees may make bi-annual payments which shall be computed by dividing the amount of the total rent due for each lease year by 2. In the event Lessees choose to make payments on a bi-annual basis, said payments shall be due and payable, in advance and without demand, on or before the 10th day of May and December during the term of this Ranch Lease.
- c) 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 rental payments are not received on or before the specified due dates, subject to the provisions of Section 13, this Lease shall terminate without notice and the City may immediately retake possession of the Property.

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 five (5) year period, commencing on May 1, 2015, and expiring on April 30, 2020 ("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 October 15, 2014, 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: Water Services 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:
Sally Marie Smith
33129 Mill Tailing Road
Whitewater, CO 81527-9409

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:

Sally Marie Smith

EXHIBIT "A"

DESCRIPTION OF "THE PROPERTY"

Dry-Grazing Lease B

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.



RESOLUTION NO. __-10

**A RESOLUTION AUTHORIZING A DRY GRAZING LEASE
OF CITY PROPERTY (191 ACRES) TO SALLY MARIE SMITH**

Recitals.

The City of Grand Junction is the owner of the following described real property situated in Township 2 South, Range 1 East of the Ute Meridian, County of Mesa, State of Colorado, to wit:

In Section 23: The SE $\frac{1}{4}$ of the SE $\frac{1}{4}$, AND ALSO, commencing at a point which is 90.0 feet South of the Northwest corner of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 23; thence North to the Northwest corner of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 23; thence East a distance of 1320.0 feet to the Northeast corner of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 23; thence South a distance of 630.0 feet to a point on the East line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 23; thence Northwesterly in a straight line to the Point of Beginning, AND ALSO

In Section 24: The SE $\frac{1}{4}$ of the NW $\frac{1}{4}$, the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$, the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$, the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$, and the East 25.0 feet of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$, AND ALSO, a nonexclusive easement for ingress and egress purposes which is more particularly described as follows: The South 35.0 feet of Lots 30 through 36 of Meserve Fruit Tracts lying South and West of U.S. Highway No. 50, AND ALSO, a strip of land 50.0 feet in width lying South and West and adjacent to the Southwesterly right-of-way line for U.S. Highway No. 50, said strip of land being across Lots 35 and 36 of Meserve Fruit Tracts, excepting therefrom the North 25.0 feet of the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 24.

The City Council deems it appropriate to lease the dry grazing rights associated with the above described property to Sally Marie Smith for a period of one (5) year period, commencing on May 1, 2010, and expiring on April 30, 2015.

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 Sally Marie Smith for a term of five years, commencing on May 1, 2010 and expiring on April 30, 2015; provided, however, that in the event Ms. Smith 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 five year term, the City may extend the term of the lease with Ms. Smith for one (1) additional five year period, subject to each and every term contained in the attached Dry Grazing Lease Agreement.

PASSED and ADOPTED this _____ day of _____ 2010

Attest:

President of the Council

City Clerk

DRY GRAZING LEASE AGREEMENT

This Dry Grazing Lease Agreement is made and entered into as of the 1st day of May, 2010, by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Sally Marie Smith, 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 May 1, 2010, and shall continue through April 30, 2015, 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 May 1, 2015, and expiring on April 30, 2020, 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, which includes antiquities, artifacts and game;

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 Lessees agree to pay City, as rental for the Property, improvements and appurtenances, the sum of \$2,500. Payable as follows:

Lease Year	Total Due	May 1st Payment	December 1st Payment
2010	\$ 500	\$ 250	\$ 250
2011	\$ 500	\$ 250	\$ 250
2012	\$ 500	\$ 250	\$ 250
2013	\$ 500	\$ 250	\$ 250
2014	\$ 500	\$ 250	\$ 250

Lessees may utilize one of the following options for making rental payments:

- d) Lessees may pay the amount due for each lease year in full on or before the payment due date for each lease year, or
- e) Lessees may make bi-annual payments which shall be computed by dividing the amount of the total rent due for each lease year by 2. In the event Lessees choose to make payments on a bi-annual basis, said payments shall be due and payable, in advance and without demand, on or before the 10th day of May and December during the term of this Ranch Lease.
- f) 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 rental payments are not received on or before the specified due dates, subject to the provisions of Section 13, this Lease shall terminate without notice and the City may immediately retake possession of the Property.

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 fifteen (15) 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 five (5) year period, commencing on May 1, 2015, and expiring on April 30, 2020 ("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 October 15, 2014, 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: Water Services 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:

Sally Marie Smith
33129 Mill Tailing Road
Whitewater, CO 81527-9409

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:

Sally Marie Smith

EXHIBIT "A"

DESCRIPTION OF "THE PROPERTY"

Dry-Grazing Lease A

Township 2 South, Range 1 East of the Ute Meridian:

In Section 23: The SE $\frac{1}{4}$ of the SE $\frac{1}{4}$, AND ALSO, commencing at a point which is 90.0 feet South of the Northwest corner of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 23; thence North to the Northwest corner of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 23; thence East a distance of 1320.0 feet to the Northeast corner of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 23; thence South a distance of 630.0 feet to a point on the East line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 23; thence Northwesterly in a straight line to the Point of Beginning,

AND ALSO

In Section 24: The SE $\frac{1}{4}$ of the NW $\frac{1}{4}$, the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$, the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$, the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$, and the East 25.0 feet of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$,

AND ALSO,

A nonexclusive easement for ingress and egress purposes which is more particularly described as follows: The South 35.0 feet of Lots 30 through 36 of Meserve Fruit Tracts lying South and West of U.S. Highway No. 50,

AND ALSO,

A strip of land 50.0 feet in width lying South and West and adjacent to the Southwesterly right-of-way line for U.S. Highway No. 50, said strip of land being across Lots 35 and 36 of Meserve Fruit Tracts, excepting therefrom the North 25.0 feet of the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 24.

All in the County of Mesa, State of Colorado



191 Acre Whitewater Dry-Grazing Lease A



Date: April 13, 2010
 Author: Belinda White
 Title/ Phone Ext: 1508
 Proposed Schedule: _____ April
19/21, 2010 _____
 2nd Reading
 (if applicable): N/A

CITY COUNCIL AGENDA ITEM

**Attach 6
 Five Year Lease of the Click Ranch Property**

Subject: Five Year Lease of the Click Ranch Property to Dennis and Lora Wynn
File # (if applicable):
Presenters Name & Title: John Shaver, City Attorney

Executive Summary:

This is a proposed five-year ranching and grazing lease of the Click Ranch in the Kannah Creek area to Dennis and Lora Wynn.

How this item relates to the Comprehensive Plan Goals and Policies:

Goal 6: Land use decisions will encourage preservation and appropriate reuse.
 Property initially was purchased for all water rights. All water rights were promptly converted to allow for dual use for either agricultural or municipal purposes. Leasing the property to Dennis and Lora Wynn for ranching and grazing is an appropriate reuse of the land.

Action Requested/Recommendation:

Approval of the Lease by Adoption of Proposed Resolution.

Board or Committee Recommendation:

N/A

Background, Analysis and Options:

The City is the owner of certain real property commonly known as the Click Ranch, located on Purdy Mesa in the County of Mesa, State of Colorado, as more particularly described in the lease. The City acquired the Property for its water and water rights and ditches and ditch rights. The City owns the property for the primary purposes of protecting the City’s water rights; the decrees allow multiple uses of the water including municipal, agricultural and livestock watering. During most irrigating seasons, portions of the City’s water rights are not necessary for municipal use. The City therefore retains ownership of the Property so that water not necessary for municipal purposes may be

beneficially used and applied upon the Property for agricultural and livestock watering purposes. Through the leasing of the property it will remain as productive as is practicable for farming and ranching purposes. That way the City's water rights may be used to their full and maximum extent and the Property may continue to be productive.

Financial Impact/Budget:

2010 annual lease \$6240.00 to the City for one year
2011 annual lease \$6427.00 to the City for one year
2012 annual lease \$6620.00 to the City for one year
2013 annual lease \$6819.00 to the City for one year
2014 annual lease \$7023.00 to the City for one year
(Five year sum total of \$33,129.00)

Legal issues:

Legal has reviewed and approved the form of the lease

Other issues:

None

Previously presented or discussed:

N/A

Attachments:

Resolution
Lease Agreement
Exhibit A
Vicinity Map

RESOLUTION NO. __-10

**A RESOLUTION AUTHORIZING A FIVE-YEAR LEASE OF
THE CITY'S CLICK RANCH PROPERTY IN THE KANNAH CREEK AREA
TO DENNIS AND LORA WYNN**

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

PARCEL NO. 1:

Lots 6, 9 and 15 in Section 32, Township 12 South, Range 97 West of the 6th Principal Meridian, County of Mesa, State of Colorado, and Lot 2 of Section 5, Township 13 South, Range 97 West of the 6th Principal Meridian, County of Mesa, State of Colorado.

PARCEL NO. 2:

Beginning at a point on the West line of Tract 46 in Section 32, Township 12 South, Range 97 West of the 6th Principal Meridian, which is South 1052.40 feet from the Northwest Corner (Corner No. 2) of said Tract 46; thence along the centerline of the County Road (Purdy Mesa Road) S 81°16'30" E a distance of 132.74 feet; thence continuing along the centerline of said County Road, S 58°09'47" E a distance of 22.12 feet; thence South a distance of 1454.20 feet; thence S 89°51'55" W a distance of 150.00 feet; thence North a distance of 1486.36 feet along the West line of said Tract 46 to the Point of Beginning,

EXCEPT a parcel of land situated in Lots 9 and 15 of said Section 32 described as follows:

Beginning at the Southwest Corner of said Lot 15 (said point also being the North 1/4 Corner of Section 5, Township 13 South, Range 97 West), being S 89°45'26" E a distance of 66.00 feet from a 1908 witness corner brass cap in place; thence S 00°00'00" E a distance of 666.00 feet along the West line of Lot 2 in Section 5; thence S 89°45'26" E a distance of 659.26 feet; thence N 00°00'00" E a distance of 866.00 feet; thence N 73°20'46" E a distance of 688.13 feet to the East line of said Lot 15; thence S 64°51'00" W along a fence line a distance of 1101.69 feet; thence S 62°21'00" W along a fence line a distance of 362.43 feet to the West line of said Lot 15; thence S 00°01'00" W along the West line of said Lot 15 a distance of 766.30 feet to the Point of Beginning of said Exception,

AND INCLUDING a parcel of land situated in Lot 15 of said Section 32 described as follows:

Beginning at the Southeast Corner of said Lot 15; thence S 00°00'00" E a distance of 666.00 feet; thence N 89°45'26" W a distance of 659.26 feet; thence N 00°00'00" E a distance of 866.00 feet; thence N 73°20'46" E a distance of 688.13 feet to the East line of said Lot 15; thence S 00°00'00" E a distance of 400.00 feet along the East line of said Lot 15 to the Point of Beginning of said Inclusion.

The City Council deems it appropriate to lease the Click Ranch Property to Dennis and Lora Wynn for a period of one (5) year period, commencing on May 1, 2010, and expiring on April 30, 2015.

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 Click Ranch Property lease with Mr. and Mrs. Wynn for a term of five years, commencing on May 1, 2010 and expiring on April 30, 2015; provided, however, that in the event Mr. and Mrs. Wynn 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 five year term, the City may extend the term of the lease with Mr. and Mrs. Wynn for one (1) additional five year period, subject to each and every term contained in the attached Click Ranch Property lease.

PASSED and ADOPTED this ____ day of _____, 2010.

Attest:

President of the Council

City Clerk

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made and entered into to be effective as of the 1st day of May, 2010, by and between The City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Dennis and Lora Wynn, hereinafter referred to as "Lessee".

Recitals

A. The City is the owner of certain real property commonly known as the Click Ranch, located on Purdy Mesa in the County of Mesa, State of Colorado, as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference, hereinafter referred to as "the Property". The City acquired the Property for its water and water rights and ditches and ditch rights ("water rights"). The City owns the Property for the primary purposes of protecting the City's water rights, the decrees for which allow multiple purposes to include municipal, agricultural and livestock watering. During most irrigating seasons, portions of the City's water rights are not necessary for municipal use. The City therefore retains ownership of the Property so that water not necessary for municipal purposes may be beneficially used and applied upon the Property for agricultural and livestock watering purposes. It is the express intent and desire of the City that the Property remain as productive as is practicable for farming and ranching purposes so that the City's water rights may be used to their full and maximum extent, that all aspects of the Property may be maintained to the highest practicable standard, and that expenses be kept to a minimum without waste.

B. Lessee has submitted to the City a proposal wherein Lessee has expressed Lessee's intent and desire to lease, use, occupy, maintain and improve the Property and to judiciously use and apply the City's water rights thereon in accordance with the desires and express intent of the City, all at no cost or expense to the City.

C. The City has agreed to lease the Property to Lessee based on Lessee's verbal and written representations that Lessee possesses the knowledge, experience, equipment, personnel and financial resources to maintain the Property to the highest practicable standard and to use and apply the City's water rights upon the Property to their full and maximum extent, all in accordance with the desires and express intent of City.

NOW, THEREFORE, for and in consideration of the recitals above and the mutual promises, terms, covenants, conditions, duties and obligations to be kept by the City and Lessee as more fully hereafter set forth, the parties hereto agree as follows:

1. Grant and Acceptance of Lease. The City hereby leases the Property to Lessee, and Lessee hereby accepts and leases the Property from the City, for the term set forth in paragraph 2 below and for the specific purposes and duties of maintaining all aspects of the Property and the water and water rights, ditches and ditch rights appurtenant thereto, all in accordance with the provisions of this Agreement.

2. Term. The basic term of this Lease shall commence on May 1, 2010, and, subject to the review of the Lessee's annual property management report, shall continue through May 1, 2015, at which time this Lease shall expire.

For the purposes of this Ranch Lease, a "lease year" shall mean the period commencing on May 1 of each year during the term of this Lease and terminating on April 30 of the succeeding year.

If Lessee performs as required pursuant to this agreement, and if the City chooses, at its sole option and discretion, to again lease the Property at the expiration of the basic term, the City hereby gives and grants to Lessee an option to extend this Lease for one (1) additional five (5) year period ("second term"). If this Lease is so extended for additional terms, the lease terms shall be upon the same terms and conditions of this Agreement or upon other terms and conditions which may hereafter be negotiated between the parties. In order to exercise Lessee's option for an additional term, Lessee shall give written notice to the City of Lessee's desire and intention to exercise Lessee's option to extend not less than 365 days prior to the expiration of the basic term.

3. Reservations from Lease. The City retains and reserves from this Lease and 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, which includes antiquities, artifacts and game;

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 appurtenant to and/or connected with the Property, except those which the City makes available and authorizes Lessee to use and apply to the Property pursuant to this Lease.

4. Rent.

4.1 Lessees agree to pay City, as rental for the Property, improvements and appurtenances, the sum of \$33,129. Payable as follows:

Lease Year	Total Due	May 1st Payment	December 1st Payment
2010	\$ 6,240	\$ 3,120	\$ 3,120
2011	\$ 6,427	\$ 3,214	\$ 3,213
2012	\$ 6,620	\$ 3,310	\$ 3,310
2013	\$ 6,819	\$ 3,410	\$ 3,409
2014	\$ 7,023	\$ 3,512	\$ 3,511

4.2 In the event Lessee fails to pay the specified rental payments on or before specified due dates, this Agreement and the lease of the Property to Lessee shall automatically terminate and neither party shall have any further rights, duties or obligations under this Agreement.

4.3 Lessees agree to timely pay any and all real estate taxes and improvement assessments which may be levied against Property, and any taxes or assessments levied against the crops, livestock and other personal property of the Lessees or any other leasehold interest acquired by Lessees under this Lease.

4.3 All rental payments paid by Lessee to the City shall be delivered either by mail or by personal delivery 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 "Click Ranch Lease Payment".

5. Specific Duties and Obligations of Lessee. As consideration for the lease of the Property, Lessee shall, at no cost or expense to the City:

5.1 Thoroughly plow, irrigate, cultivate, fertilize and farm all farmable lands upon the Property in a responsible and prudent husband-like manner; to plant, grow and harvest upon and from the Property crops of hay, grass and/or alfalfa and no other plants or crops without the prior written consent of the City.

5.2 Use the Property for farming, ranching and livestock grazing purposes only and for no other purpose whatsoever; Lessee agrees that Lessee will not use the Property nor allow any other person to use 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.

5.3 Maintain, clean out and keep in good order and repair, free from litter and debris and, as is practicable, free from weeds, all aspects of the Property, including, but

not limited to, roads, perimeter boundaries, ditches, diversion structures, flumes, head-gates and other structures necessary to fully irrigate the Property and to not allow any water running through, used and applied upon the Property to overrun any furrows or otherwise cause damage to the Property or the property of any other person or entity.

5.4 Waive and forego any claim, cause of action or demand Lessee may have against the City, its officers, employees and agents, 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 third person; and to indemnify and hold the City and the City's officers, employees and agents, harmless from any and all claims, damages, actions, costs and expenses of every kind in any manner arising out of or resulting from Lessee's use, occupancy, maintenance and improvement of the Property.

5.5 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.

5.6 At all times maintain all fences and gates presently located upon the Property in good working order and repair in a manner sufficient to securely confine all 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.

5.7 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 officer, 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 \$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. Irrigation of the Property.

6.1 The irrigation of the Property is an essential duty and obligation to be undertaken by Lessee on behalf of the City. The City intends to permit Lessee to use water and water rights owned by the City, without additional remuneration by Lessee, for purposes specifically limited to irrigating the Property and as stock water for livestock kept and maintained on the Property. Water and water rights the City may

make available to Lessee, if the City in its sole and absolute discretion determines that such water is to be made available to Lessee, may include up to:

- a. approximately 300 acre feet of water from the Highline Ditch. This water is usually available from May 1 through June 28 of each year. Available flow rate ranges between 0.1 cubic feet per second (“cfs”) and 5.0 cfs, and/or
- b. approximately 100 acre feet of reservoir water from the City’s Reservoirs. This water is usually available from July 1 through October 15 of each year.

6.2 The City may provide written or verbal notice to Lessee at any time during term of this Lease stating the amount(s) of water, if any, expressed in terms of cfs or acre feet, which may be available for Lessee’s use and application upon the Property. Notwithstanding the foregoing, the City retains the right, without any liability to Lessee, to possess, control, sell, exchange, divert and convert water and water rights owned by the City for any purpose which the City deems, in its sole and absolute discretion, to be appropriate, even if such action by the City is adverse to the needs and uses of Lessee. In the event the City exercises its rights as hereinbefore described, the parties may renegotiate the rental paid or to be paid by Lessee; no other terms or conditions of this Lease may be renegotiated.

6.3 Lessee shall utilize all water made available pursuant to this Agreement in a prudent and careful manner to obtain the most efficient use of said water for purposes strictly limited to irrigating the Property and as stock water for livestock kept and maintained on the Property. Lessee shall comply with all rules, regulations and valid administrative orders applicable to any and all water and water rights which may be provided to Lessee under this Agreement.

6.4 Lessee shall represent the City’s water and water rights interests by actively participating in meetings with all appropriate ditch and reservoir companies. All statements and representations of Lessee under the capacity of representing the City shall serve to promote the interests of the City with the utmost good faith, loyalty and fidelity.

6.5 Lessee shall be solely responsible for diverting and transporting any water made available to Lessee from its point of release to its point of use. Lessee shall exercise proper diligence to ensure that any and all water made available to Lessee is properly diverted and utilized to its fullest extent on and solely for the benefit of the Property and Lessee’s operations thereon. Lessee shall be responsible for ensuring that any and all water made available to Lessee is transported through clean irrigation ditches of adequate size and capacity from the point of release to the point of use.

6.6 Lessee shall document the dates of irrigation, the amount(s) of water diverted and applied to the Property and the number of acres on which the water is applied with the understanding that such documentation will be used by the City to provide for the development of historic consumptive use records. Lessee shall be

responsible for measuring and recording water flow information at all weirs, flumes and other measuring devices, either now in place or installed in the future, and the amount of water being delivered to and applied upon the Property. Lessee shall further be responsible for measuring, estimating and documenting the return flow from irrigated fields.

6.7 Any failure by Lessee to irrigate the Property as set forth above, or any of the following acts or omissions on the part of Lessee with respect to the water rights appurtenant to the Property, shall be grounds for immediate termination of this Lease:

- a. failure or refusal to make appropriate use of available water to the Property without the prior written consent of the City; or
- b. failure to maintain and preserve the irrigation structures, ditches, pipes and other irrigation facilities and appurtenances on the Property in such a manner as to allow the full application of available water to the Property.

7. Cultivation. Lessee agrees that Lessee shall, at no cost or expense to the City, provide the labor, capital, machinery, seed and fertilizer necessary to improve crop production on the Property through the rehabilitation of existing fields and the cultivation of additional fields to bring the Property up to its historic level of cultivation, or better. Lessee's cultivation practices shall be carried out in a good and husband like manner in accordance with the best methods of cultivation practiced in Mesa County, Colorado. Lessee further agrees to cooperate, comply with and participate in all farm crop programs promulgated by the United States Department of Agriculture, the National Resource Conservation Service and the State of Colorado Farm Bureau. Lessee shall be entitled to and responsible for all proceeds, debts and losses incurred and associated with crops grown on the Property.

8. Livestock Management.

8.1 Lessee has represented to the City that Lessee intends to raise and care for Lessee's cattle ("Livestock") on the Property. Prior to letting livestock upon the Property, Lessee shall, at Lessee's sole cost and expense, implement whatever measures are necessary to ensure that all fences around the perimeter of the fields to be grazed are sufficient to confine Lessee's Livestock to the Property. The use of electric fences is permitted, provided that (a) electric power shall be provided from batteries and/or photovoltaic systems and not public electric services, and (b) Lessee installs conspicuous signs sufficient to warn the general public against touching such electric fences.

8.2 Lessee agrees that Lessee's operations and conduct relating to raising and caring for Lessee's Livestock shall be carried out 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 further agrees to comply with the 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.

8.3 Lessee represents that Lessee's Livestock carry the _____ brand ("Lessee's Brand"). Lessee agrees that livestock not carrying Lessee's Brand shall not be permitted on the Property without the prior written approval of the City.

8.4 Lessee agrees that Lessee shall indemnify the City, its officers, employees, agents and assets and hold the City, its officers, employees, agents and assets harmless from liability in the event of loss of life, personal injury or property damage suffered by any person or persons which may be caused by Lessee's Livestock escaping the Property.

9. 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.

10. Hazardous Substances.

10.1 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.

10.2 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.

11. Environmental Clean-Up.

11.1 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.

11.2 Lessee shall indemnify, defend and hold the City, its officers, employees and agents 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.

12. Condition of the Property.

12.1 Lessee affirms that Lessee has inspected the Property and has received the Property Premises in reasonably 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.

12.2 In the event the Property is damaged due fire, flood or any other act of nature or casualty, or if the canals, ditches or ditch laterals which provide irrigation water to the Property are damaged to the extent where they are 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.

13. Default, Sublet, Termination.

13.1 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.

13.2 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.

13.3 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.

14. Miscellaneous Provisions.

14.1 The City, by entering into this Lease Agreement, does not part with its entire possession of the Property, but only so far as is necessary to enable Lessee to use, occupy and irrigate 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.

14.2 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.

14.3 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.

14.4 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.

14.5 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.

15. 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.

16. Enforcement, Partial Invalidity, Governing Law.

16.1 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.

16.2 The invalidity of any portion of this 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).

16.3 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.

17. 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: Water Services Manager
250 North 5th Street
Grand Junction, CO 81501-2668
Fax: (970) 256-4022

With Copy to:

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

To Lessee:

Mr. Dennis and Lora Wynn
5881 Purdy Mesa Road
Whitewater, CO 81527
Fax: (970) 254-2994

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

19. 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.

20. Total Agreement; Applicable to Successors. This 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 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:

Lora Wynn

Dennis Wynn

EXHIBIT "A"

LEGAL DESCRIPTION OF THE CLICK RANCH LEASE

PARCEL NO. 1:

Lots 6, 9 and 15 in Section 32, Township 12 South, Range 97 West of the 6th Principal Meridian, County of Mesa, State of Colorado, and Lot 2 of Section 5, Township 13 South, Range 97 West of the 6th Principal Meridian, County of Mesa, State of Colorado.

PARCEL NO. 2:

Beginning at a point on the West line of Tract 46 in Section 32, Township 12 South, Range 97 West of the 6th Principal Meridian, which is South 1052.40 feet from the Northwest Corner (Corner No. 2) of said Tract 46; thence along the centerline of the County Road (Purdy Mesa Road) S 81°16'30" E a distance of 132.74 feet; thence continuing along the centerline of said County Road, S 58°09'47" E a distance of 22.12 feet; thence South a distance of 1454.20 feet; thence S 89°51'55" W a distance of 150.00 feet; thence North a distance of 1486.36 feet along the West line of said Tract 46 to the Point of Beginning,

EXCEPT a parcel of land situated in Lots 9 and 15 of said Section 32 described as follows:

Beginning at the Southwest Corner of said Lot 15 (said point also being the North 1/4 Corner of Section 5, Township 13 South, Range 97 West), being S 89°45'26" E a distance of 66.00 feet from a 1908 witness corner brass cap in place; thence S 00°00'00" E a distance of 666.00 feet along the West line of Lot 2 in Section 5; thence S 89°45'26" E a distance of 659.26 feet; thence N 00°00'00" E a distance of 866.00 feet; thence N 73°20'46" E a distance of 688.13 feet to the East line of said Lot 15; thence S 64°51'00" W along a fence line a distance of 1101.69 feet; thence S 62°21'00" W along a fence line a distance of 362.43 feet to the West line of said Lot 15; thence S 00°01'00" W along the West line of said Lot 15 a distance of 766.30 feet to the Point of Beginning of said Exception,

AND INCLUDING a parcel of land situated in Lot 15 of said Section 32 described as follows:

Beginning at the Southeast Corner of said Lot 15; thence S 00°00'00" E a distance of 666.00 feet; thence N 89°45'26" W a distance of 659.26 feet; thence N 00°00'00" E a distance of 866.00 feet; thence N 73°20'46" E a distance of 688.13 feet to the East line of said Lot 15; thence S 00°00'00" E a distance of 400.00 feet along the East line of said Lot 15 to the Point of Beginning of said Inclusion.

Click Ranch Lease





Date: April 13, 2010
 Author: Belinda White
 Title/ Phone Ext: 1508
 Proposed Schedule: _____ April
19, 2010
 2nd Reading
 (if applicable): N/A

CITY COUNCIL AGENDA ITEM

**Attach 7
 Five Year Lease of the Hallenbeck Ranch
 Property**

Subject: Five Year Lease of the Hallenbeck Ranch Property on Purdy Mesa to Clint Miller
File # (if applicable):
Presenters Name & Title: John Shaver, City Attorney

Executive Summary:

A proposed five-year ranching and grazing lease of the 300-acre Hallenbeck Ranch on Purdy Mesa to Clint Miller.

How this item relates to the Comprehensive Plan Goals and Policies:

Goal 6: Land use decisions will encourage preservation and appropriate reuse.
 Property initially was purchased for all water rights. All water rights were promptly converted to allow for dual use for either agricultural or municipal purposes. Leasing the property to Clint Miller for ranching and grazing is an appropriate reuse of the land.

Action Requested/Recommendation:

Approval of the Lease by Adoption of Proposed Resolution.

Board or Committee Recommendation:

N/A

Background, Analysis and Options:

The 300-acre Hallenbeck Ranch, which consists of Parcels 1 and 2, is part of a larger 1954 land and water purchase from C.V. Hallenbeck. The Hallenbeck purchase included several hundred acres ranging from semi-arid properties near Whitewater to irrigated sub-alpine lands in the Kannah Creek, Purdy Mesa and Grand Mesa areas. All water rights acquired from Hallenbeck were promptly converted to allow dual use for either agricultural or municipal purposes.

The City continues to own the property so that surplus water may be used for agricultural purposes, thus satisfying the beneficial use doctrine to protect the City's valuable water rights from abandonment or downstream claims. Other objectives and benefits of the City owning the property include revenue to the City's water fund, protection of the City's water supply systems and enhancements to water quality and yield.

The property has been leased since 1954 to various ranchers who reside in the Kannah Creek/Purdy Mesa area. Mr. Miller is the most recent lessee. Mr. Miller has been diligent in the care of this property and staff recommends that this five year lease be extended to Clint Miller.

The proposed lease will require Mr. Miller to:

- Represent the City's water and water rights interests by participating in the activities of the appropriate ditch and reservoir companies and to promote the City's interests with the utmost good faith, loyalty and fidelity;
- Maximize water usage and provide for the development of historic water consumption records;
- Rehabilitate existing fields and cultivate additional fields to bring the property up to its historic level of cultivation, and
- Improve the overall condition of the property, remove/spray for noxious weeds and trees, clean ditches and maintain fences.

In addition to rent, Mr. Miller will be required to pay the property taxes, all operational expenses and liability insurance.

Financial Impact/Budget:

Annual lease \$4000.00 to the City for five years (\$20,000.00)

Legal issues:

The City Attorney has reviewed and approved the form of the lease.

Other issues:

None

Previously presented or discussed:

N/A

Attachments:

Resolution
Lease Agreement
Exhibit A
Vicinity Map

RESOLUTION NO. __-10

**A RESOLUTION AUTHORIZING A FIVE-YEAR LEASE OF
THE CITY'S HALLENBECK RANCH PROPERTY ON PURDY MESA
TO CLINT MILLER**

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

Township 2 South, Range 2 East of the Ute Meridian:

Section 25: The SE1/4 of the SW1/4,
 The NW1/4 of the SE1/4,
 All that part of the N1/2 of the SW1/4, the SE1/4 of the NW1/4, the
 S1/2 of the NE1/4, and the NE1/4 of the NE1/4 lying Southerly and
 Easterly of Lands End Road.

Township 12 South, Range 98 West, 6th Principal Meridian:

Commencing at the SW Corner of Section 36, thence East along the South line of said Section 36 a distance of 660.00 feet to the True Point of Beginning, said point being the Southwest corner of that tract of land conveyed by instrument recorded in Book 1145, Page 824 in the office of the Mesa County Clerk and Recorder; thence S 89°55'31" E a distance of 3314.31 feet, more or less; thence N 00°59'04" E along a strand barbwire fence a distance of 529.82 feet, more or less, to an existing fence corner; thence N 84°34'44" W along said fence line a distance of 906.87 feet; thence continuing along said fence line, S 01°51'29" E a distance of 80.46 feet, more or less, to an existing fence corner; thence S 88°57'38" W along said fence line a distance of 412.29 feet; thence continuing along said fence line, S 89°28'22" W a distance of 916.30 feet, more or less, to an existing fence corner; thence N 50°54'21" W along said fence line a distance of 850.80 feet, more or less, to an existing fence corner; thence S 00°04'01" W along said fence line a distance of 1009.63 feet, more or less, to the True Point of Beginning; and

The City Council deems it appropriate to lease the Hallenbeck Ranch Property to Clint Miller for a period of 5 years commencing on May 22, 2010 and expiring on May 21, 2015.

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 Hallenbeck Ranch Property with Clint Miller for a term of five years, commencing on May 22, 2010 and expiring on May 21, 2015; provided, however, that in the event Mr. Miller 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 five year term, the City may extend the term of the lease with Mr. Miller for one (1) additional five year period, subject to each and every term contained in the attached Hallenbeck Ranch Property.

PASSED and ADOPTED this ____ day of _____ 2010.

Attest:

President of the Council

City Clerk

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made and entered into to be effective as of the 22nd day of May, 2010, by and between The City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Clint Miller, hereinafter referred to as "Lessee".

Recitals

A. The City is the owner of certain real property commonly known as the Hallenbeck Ranch, located on Purdy Mesa in the County of Mesa, State of Colorado, as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference, hereinafter referred to as "the Property". The City acquired the Property for its water and water rights and ditches and ditch rights ("water rights"). The City owns the Property for the primary purposes of protecting the City's water rights, the decrees for which allow multiple purposes to include municipal, agricultural and livestock watering. During most irrigating seasons, portions of the City's water rights are not necessary for municipal use. The City therefore retains ownership of the Property so that water not necessary for municipal purposes may be beneficially used and applied upon the Property for agricultural and livestock watering purposes. It is the express intent and desire of the City that the Property remain as productive as is practicable for farming and ranching purposes so that the City's water rights may be used to their full and maximum extent, that all aspects of the Property may be maintained to the highest practicable standard, and that expenses be kept to a minimum without waste.

B. Lessee has submitted to the City a proposal wherein Lessee has expressed Lessee's intent and desire to lease, use, occupy, maintain and improve the Property and to judiciously use and apply the City's water rights thereon in accordance with the desires and express intent of the City, all at no cost or expense to the City.

C. The City has agreed to lease the Property to Lessee based on Lessee's verbal and written representations that Lessee possesses the knowledge, experience, equipment, personnel and financial resources to maintain the Property to the highest practicable standard and to use and apply the City's water rights upon the Property to their full and maximum extent, all in accordance with the desires and express intent of City.

NOW, THEREFORE, for and in consideration of the recitals above and the mutual promises, terms, covenants, conditions, duties and obligations to be kept by the City and Lessee as more fully hereafter set forth, the parties hereto agree as follows:

1. Grant and Acceptance of Lease. The City hereby leases the Property to Lessee, and Lessee hereby accepts and leases the Property from the City, for the term set forth in paragraph 2 below and for the specific purposes and duties of maintaining all aspects of the Property and the water and water rights, ditches and ditch rights appurtenant thereto, all in accordance with the provisions of this Agreement.

2. Term. The basic term of this Lease shall commence on May 22, 2010, and, subject to the review of the Lessee's annual property management report, shall continue through May 21, 2015, at which time this Lease shall expire.

For the purposes of this Ranch Lease, a "lease year" shall mean the period commencing on May 22 of each year during the term of this Lease and terminating on May 21 of the succeeding year.

If Lessee performs as required pursuant to this agreement, and if the City chooses, at its sole option and discretion, to again lease the Property at the expiration of the basic term, the City hereby gives and grants to Lessee an option to extend this Lease for one (1) additional five (5) year period ("second term"). If this Lease is so extended for additional terms, the lease terms shall be upon the same terms and conditions of this Agreement or upon other terms and conditions which may hereafter be negotiated between the parties. In order to exercise Lessee's option for an additional term, Lessee shall give written notice to the City of Lessee's desire and intention to exercise Lessee's option to extend not less than 365 days prior to the expiration of the basic term.

3. Reservations from Lease. The City retains and reserves from this Lease and 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, which includes antiquities, artifacts and game;
- 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 appurtenant to and/or connected with the Property, except those which the City makes available and authorizes Lessee to use and apply to the Property pursuant to this Lease.

4. Rent.

4.1 Lessees agree to pay City, as rental for the Property, improvements and appurtenances, the sum of \$20,000. Payable as follows:

Lease Year	Total Due	May 1st Payment	December 1st Payment
2010	\$ 4,000	\$ 2,000	\$ 2,000
2011	\$ 4,000	\$ 2,000	\$ 2,000
2012	\$ 4,000	\$ 2,000	\$ 2,000
2013	\$ 4,000	\$ 2,000	\$ 2,000
2014	\$ 4,000	\$ 2,000	\$ 2,000

4.2 In the event Lessee fails to pay the specified rental payments on or before specified due dates, this Agreement and the lease of the Property to Lessee shall automatically terminate and neither party shall have any further rights, duties or obligations under this Agreement.

4.3 Lessees agree to timely pay any and all real estate taxes and improvement assessments which may be levied against Property, and any taxes or assessments levied against the crops, livestock and other personal property of the Lessees or any other leasehold interest acquired by Lessees under this Lease.

4.4 All rental payments paid by Lessee to the City shall be delivered either by mail or by personal delivery 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 "Hallenbeck Ranch Lease Payment".

5. Specific Duties and Obligations of Lessee. As consideration for the lease of the Property, Lessee shall, at no cost or expense to the City:

5.1 Thoroughly plow, irrigate, cultivate, fertilize and farm all farmable lands upon the Property in a responsible and prudent husband-like manner; to plant, grow and harvest upon and from the Property crops of hay, grass and/or alfalfa and no other plants or crops without the prior written consent of the City.

5.2 Use the Property for farming, ranching and livestock grazing purposes only and for no other purpose whatsoever; Lessee agrees that Lessee will not use the Property nor allow any other person to use 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.

5.3 Maintain, clean out and keep in good order and repair, free from litter and debris and, as is practicable, free from weeds, all aspects of the Property, including, but not limited to, roads, perimeter boundaries, ditches, diversion structures, flumes, headgates and other structures necessary to fully irrigate the Property and to not allow any water running through, used and applied upon the Property to overrun any furrows or otherwise cause damage to the Property or the property of any other person or entity.

5.4 Waive and forego any claim, cause of action or demand Lessee may have against the City, its officers, employees and agents, 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 third person; and to indemnify and hold the City and the City's officers, employees and agents, harmless from any and all claims, damages, actions, costs and expenses of every kind in any manner arising out of or resulting from Lessee's use, occupancy, maintenance and improvement of the Property.

5.5 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.

5.6 At all times maintain all fences and gates presently located upon the Property in good working order and repair in a manner sufficient to securely confine all 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.

5.7 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 officer, 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 \$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. Irrigation of the Property.

6.1 The irrigation of the Property is an essential duty and obligation to be undertaken by Lessee on behalf of the City. The City intends to permit Lessee to use water and water rights owned by the City, without additional remuneration by Lessee, for purposes specifically limited to irrigating the Property and as stock water for livestock kept and maintained on the Property. Water and water rights the City may make available to Lessee, if the City in its sole and absolute discretion determines that such water is to be made available to Lessee, may include up to:

- a. approximately 400 acre feet of water from the Highline Ditch. This water is usually available from May 1 through June 28 of each year. Available flow rate ranges between 0.1 cubic feet per second (“cfs”) and 7.0 cfs, and/or
- b. approximately 1,200 acre feet of water from the Juniata Enlarged Ditch. This water is usually available from May 1 through June 15 of each year. Available flow rate ranges between 0.1 cfs to 26.0 cfs, and/or
- c. approximately 200 acre feet of reservoir water from the City’s Reservoirs. This water is usually available from July 1 through October 15 of each year.

6.2 The City may provide written or verbal notice to Lessee at any time during term of this Lease stating the amount(s) of water, if any, expressed in terms of cfs or acre feet, which may be available for Lessee’s use and application upon the Property. Notwithstanding the foregoing, the City retains the right, without any liability to Lessee, to possess, control, sell, exchange, divert and convert water and water rights owned by the City for any purpose which the City deems, in its sole and absolute discretion, to be appropriate, even if such action by the City is adverse to the needs and uses of Lessee. In the event the City exercises its rights as hereinbefore described, the parties may renegotiate the rental paid or to be paid by Lessee; no other terms or conditions of this Lease may be renegotiated.

6.3 Lessee shall utilize all water made available pursuant to this Agreement in a prudent and careful manner to obtain the most efficient use of said water for purposes strictly limited to irrigating the Property and as stock water for livestock kept and maintained on the Property. Lessee shall comply with all rules, regulations and valid administrative orders applicable to any and all water and water rights which may be provided to Lessee under this Agreement.

6.4 Lessee shall represent the City’s water and water rights interests by actively participating in meetings with all appropriate ditch and reservoir companies. All statements and representations of Lessee under the capacity of representing the City shall serve to promote the interests of the City with the utmost good faith, loyalty and fidelity.

6.5 Lessee shall be solely responsible for diverting and transporting any water made available to Lessee from its point of release to its point of use. Lessee shall

exercise proper diligence to ensure that any and all water made available to Lessee is properly diverted and utilized to its fullest extent on and solely for the benefit of the Property and Lessee's operations thereon. Lessee shall be responsible for ensuring that any and all water made available to Lessee is transported through clean irrigation ditches of adequate size and capacity from the point of release to the point of use.

6.6 Lessee shall document the dates of irrigation, the amount(s) of water diverted and applied to the Property and the number of acres on which the water is applied with the understanding that such documentation will be used by the City to provide for the development of historic consumptive use records. Lessee shall be responsible for measuring and recording water flow information at all weirs, flumes and other measuring devices, either now in place or installed in the future, and the amount of water being delivered to and applied upon the Property. Lessee shall further be responsible for measuring, estimating and documenting the return flow from irrigated fields.

6.7 Any failure by Lessee to irrigate the Property as set forth above, or any of the following acts or omissions on the part of Lessee with respect to the water rights appurtenant to the Property, shall be grounds for immediate termination of this Lease:

- a. failure or refusal to make appropriate use of available water to the Property without the prior written consent of the City; or
- b. failure to maintain and preserve the irrigation structures, ditches, pipes and other irrigation facilities and appurtenances on the Property in such a manner as to allow the full application of available water to the Property.

7. Cultivation. Lessee agrees that Lessee shall, at no cost or expense to the City, provide the labor, capital, machinery, seed and fertilizer necessary to improve crop production on the Property through the rehabilitation of existing fields and the cultivation of additional fields to bring the Property up to its historic level of cultivation, or better. Lessee's cultivation practices shall be carried out in a good and husband like manner in accordance with the best methods of cultivation practiced in Mesa County, Colorado. Lessee further agrees to cooperate, comply with and participate in all farm crop programs promulgated by the United States Department of Agriculture, the National Resource Conservation Service and the State of Colorado Farm Bureau. Lessee shall be entitled to and responsible for all proceeds, debts and losses incurred and associated with crops grown on the Property.

8. Livestock Management.

8.1 Lessee has represented to the City that Lessee intends to raise and care for Lessee's cattle ("Livestock") on the Property. Prior to letting livestock upon the Property, Lessee shall, at Lessee's sole cost and expense, implement whatever measures are necessary to ensure that all fences around the perimeter of the fields to be grazed are sufficient to confine Lessee's Livestock to the Property. The use of electric fences is permitted, provided that (a) electric power shall be provided from batteries and/or photovoltaic systems and not public electric services, and (b) Lessee

installs conspicuous signs sufficient to warn the general public against touching such electric fences. Lessee will not exceed sixty (60) cow/calf pairs at any one time.

8.2 Lessee agrees that Lessee's operations and conduct relating to raising and caring for Lessee's Livestock shall be carried out in the highest standard of care and in a manner that will not over graze the Property or otherwise cause deterioration or destruction to the Property. Lessee further agrees to comply with the 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.

8.3 Lessee represents that Lessee's Livestock carry the _____ brand ("Lessee's Brand"). Lessee agrees that livestock not carrying Lessee's Brand shall not be permitted on the Property without the prior written approval of the City.

8.4 Lessee agrees that Lessee shall indemnify the City, its officers, employees, agents and assets and hold the City, its officers, employees, agents and assets harmless from liability in the event of loss of life, personal injury or property damage suffered by any person or persons which may be caused by Lessee's Livestock escaping the Property.

9. 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.

10. Hazardous Substances.

10.1 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.

10.2 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.

11. Environmental Clean-Up.

11.1 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.

11.2 Lessee shall indemnify, defend and hold the City, its officers, employees and agents 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.

12. Condition of the Property.

12.1 Lessee affirms that Lessee has inspected the Property and has received the Property Premises in reasonably 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.

12.2 In the event the Property is damaged due fire, flood or any other act of nature or casualty, or if the canals, ditches or ditch laterals which provide irrigation water to the Property are damaged to the extent where they are 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 occupable; damages shall be at Lessee's sole and absolute risk.

13. Default, Sublet, Termination.

13.1 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.

13.2 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.

13.3 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.

14. Miscellaneous Provisions.

14.1 The City, by entering into this Lease Agreement, does not part with its entire possession of the Property, but only so far as is necessary to enable Lessee to use, occupy and irrigate 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.

14.2 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.

14.3 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.

14.4 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.

14.5 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.

15. 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.

16. Enforcement, Partial Invalidity, Governing Law.

16.1 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.

16.2 The invalidity of any portion of this 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).

16.3 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.

17. 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: Water Services Manager
250 North 5th Street
Grand Junction, CO 81501-2668
Fax: (970) 256-4022

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

To Lessee:
Clint Miller
6555 Purdy Mesa Road
Whitewater, CO 81527
Fax: (970) 241-4718

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

19. 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.

20. Total Agreement; Applicable to Successors. This 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 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:

Clint Miller

EXHIBIT "A"

LEGAL DESCRIPTION OF THE HALLENBECK RANCH LEASE

Parcel No. 1, situate in Township 2 South, Range 2 East of the Ute Meridian:

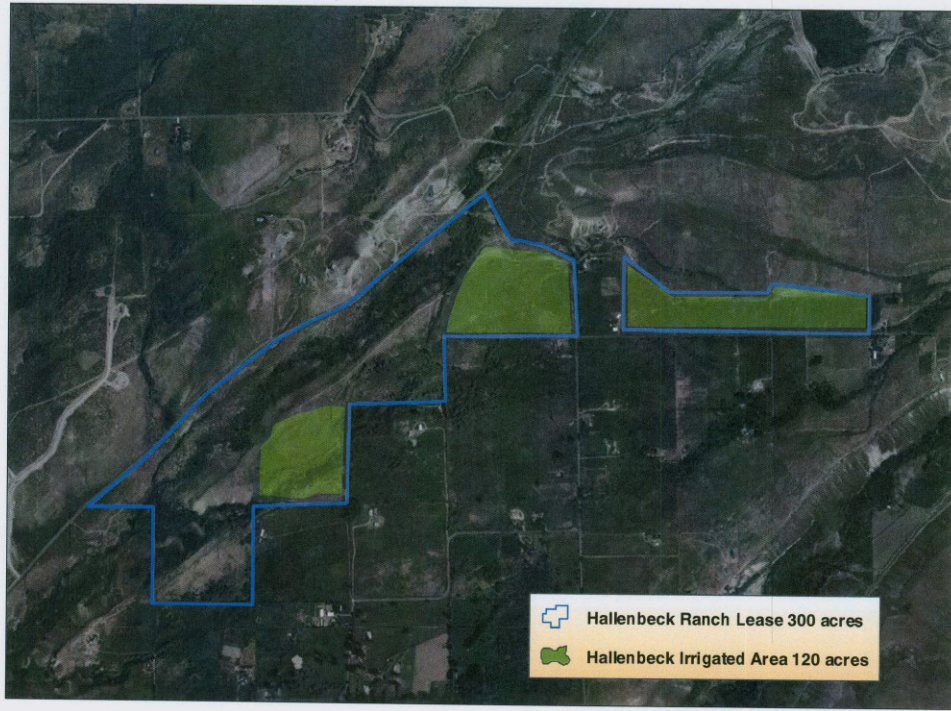
Section 25: The SE1/4 of the SW1/4,
 The NW1/4 of the SE1/4,
 All that part of the N1/2 of the SW1/4, the SE1/4 of the NW1/4, the
 S1/2 of the NE1/4, and the NE1/4 of the NE1/4 lying Southerly and
 Easterly of Lands End Road.

Parcel No. 2, situate in Township 12 South, Range 98 West, 6th Principal Meridian:

Commencing at the SW Corner of Section 36, thence East along the South line of said Section 36 a distance of 660.00 feet to the True Point of Beginning, said point being the Southwest corner of that tract of land conveyed by instrument recorded in Book 1145, Page 824 in the office of the Mesa County Clerk and Recorder;
thence S 89°55'31" E a distance of 3314.31 feet, more or less;
thence N 00°59'04" E along a strand barbwire fence a distance of 529.82 feet, more or less, to an existing fence corner;
thence N 84°34'44" W along said fence line a distance of 906.87 feet;
thence continuing along said fence line, S 01°51'29" E a distance of 80.46 feet, more or less, to an existing fence corner;
thence S 88°57'38" W along said fence line a distance of 412.29 feet;
thence continuing along said fence line, S 89°28'22" W a distance of 916.30 feet, more or less, to an existing fence corner;
thence N 50°54'21" W along said fence line a distance of 850.80 feet, more or less, to an existing fence corner;
thence S 00°04'01" W along said fence line a distance of 1009.63 feet, more or less, to the True Point of Beginning.

All in the County of Mesa, State of Colorado.

Hallenbeck Ranch Lease





Date: April 8, 2010
 Author: Lee Cooper
 Title/ Phone Ext: Project Engineer, (256-4155)
 Proposed Schedule: April 19, 2010
 2nd Reading
 (if applicable): _____ n/a

CITY COUNCIL AGENDA ITEM

**Attach 8
 Construction Contract for the 2010 Waterline Replacement Project – Phase 3**

Subject: Construction Contract for the 2010 Waterline Replacement Project – Phase 3
File # (if applicable): N/A
Presenters Name & Title: Tim Moore, Public Works and Planning Director Jay Valentine, Assistant Financial Operations Manager

Executive Summary:

This project is Phase 3 of a three phase waterline project aimed at replacing aging waterlines in the City’s water distribution system. The City of Grand Junction received a \$3.8 million low interest loan through the Colorado Water Resources and Power Development Authority (CWRPDA) to fund these waterline replacement projects.

These waterline projects were included with the City’s unsuccessful application for American Recovery and Reinvestment Act (ARRA) Funds earlier this year. The City has continued to move forward with the projects utilizing the CWRPDA loan in an effort to provide stimulus to the construction community.

How this item relates to the Comprehensive Plan Goals and Policies:

The 2010 Waterline Replacement Project – Phase 3 supports the following Goal from the Comprehensive Plan:

Goal 12: Being a regional provider of goods and services the City and County will sustain, develop and enhance a healthy, diverse economy.

The City of Grand Junction has the responsibility of providing safe and reliable domestic water service to the citizens and businesses of Grand Junction. As a result of yearly replacements of old City waterlines that are prone to corrosion and breaks with new PVC waterline pipe; the City will have a waterline infrastructure that is reliable delivering safe and clean water for many years to come.

Action Requested/Recommendation:

Authorize the City Purchasing Division to Enter into a Construction Contract with Schmidt Earth Builders, Inc. of Windsor, Colorado for the 2010 Waterline Replacement Project – Phase 3 in the Amount of \$1,499,803.00.

Board or Committee Recommendation:

None

Financial Impact/Budget:

The City of Grand Junction Water Department is utilizing the State Revolving Fund (SRF) loan program to fund the three phase Waterline Replacement project. The total budget for all three phases is \$3,800,000 with a Phase 3 project cost estimate of \$1,467,724. After all bids were received for the Phase 3 construction contract, the total project costs for all three phases came in at \$3,874,767, as summarized below. The budget deficit of \$74,767 will be made up from the standard 2010 Water Line Replacement budget of which \$250,000 remains.

Total expenditures for the 2010 State Revolving Fund Loan Waterline Projects:

Phase 1	\$1,337,831	M.A. Concrete
Phase 2	\$ 926,133	Schmidt Earth Builders
Phase 3	<u>\$1,610,803</u>	Schmidt Earth Builders
Total	\$3,874,767	

Phase 3 Project Costs:

Total Construction Contract Amount -	\$1,499,803.00
Design Costs -	\$ 67,000.00
City Construction Inspection and Contract Admin. -	<u>\$ 44,000.00</u>
Total Phase 3 Project Cost -	\$ 1,610,803.00

Legal issues:

None

Other issues:

None

Previously presented or discussed:

N/A

Background, Analysis and Options:

A formal solicitation was advertised in the Daily Sentinel and sent to a source list of local contractors including the Western Colorado Contractors Association (WCCA). Four bids for the 2010 Waterline Replacement Project – Phase 3 were received on Thursday, April 15, 2010. Schmidt Earth Builders, Inc. of Windsor, Colorado was the apparent low bidder with a bid of \$1,499,803.00.

The following bids were received on April 15, 2010:

FIRM	LOCATION	AMOUNT	% DIFFERNCE
<i>Schmidt Earth Builders, Inc.</i>	<i>Windsor, CO</i>	<i>\$1,499,803.00</i>	-
Sorter Construction	Grand Junction, CO	\$1,545,950.00	3.08
Scott Contracting	Henderson, CO	\$1,560,126.50	4.02
M.A. Concrete	Grand Junction, CO	\$1,563,557.70	4.25

This is the third phase of the 2010 Water Line Replacements. The overall 2010 Waterline Replacement Project entails replacing approximately six miles of existing steel and cast-iron waterlines of varies sizes with new PVC (plastic) water pipe. The following list shows the waterline replacement locations with approximate pipe quantities that are part of the 2010 Waterline Replacement Project – Phase 3:

- **North Avenue** – 28 Road to 29 Road (Approx. 4,800 LF of PVC Pipe)
- **28½ Road** – North Avenue to Elm Avenue (Approx. 1,500 LF of PVC Pipe)
- **Kennedy Avenue** – 25th Street to 28 Road (Approx. 700 LF of PVC Pipe)
- **18th Street** – North Avenue to Bunting Avenue (Approx. 450 LF of PVC Pipe)
- **27½ Road** – Sunshine Lane to UnawEEP Ave. (Approx. 1,300 LF of PVC Pipe)
- **College Place** – North Avenue to Texas Avenue (Approx. 1,225 LF of PVC Pipe)
- **Texas Avenue** – College Place to 12th Street (Approx. 800 LF of PVC Pipe)
- **Elm Avenue** – College Place to Cannell Avenue (Approx. 520 LF of PVC Pipe)
- **Houston Avenue** – North Avenue to Elm Ave. (Approx. 1,100 LF of PVC Pipe)

The waterline replacement project is scheduled to begin on May 3, 2010 with an expected final completion date of October 19, 2010.

Work along North Avenue will take place in the evening and early morning hours. There will be lane closures on North Avenue where the contractor is working during the allowable working hours. During the non-working hours, North Avenue will have all four lanes opened for traffic to use.

Waterline installation work on the other Phase 3 streets will take place during the daylight hours, with a moving road closure of about one block long allowing access for local residents only. Detours will be provided to non-local motorists to use in order to bypass the road closure area.

Attachments:

None



Date: March 24, 2010

Author: Greg Moberg

Title/ Phone Ext: Planning Services Supervisor, ext 4023

Proposed Schedule:

April 5, 2010

CITY COUNCIL AGENDA ITEM

Attach 9 **Public Hearing—Extension Request for the Mesa State Outline Development Plan**

Subject: Extension Request for the Mesa State Outline Development Plan - Located at 29 Road and Riverside Parkway
File #: ODP-2008-154
Presenters Name & Title: Greg Moberg, Planning Services Supervisor

Executive Summary:

This is a request for a two-year extension of the approved Mesa State Outline Development Plan. This request would extend the date that the Developer has to apply for a Preliminary Development Plan from December 15, 2010 to December 15, 2012.

How this item relates to the Comprehensive Plan Goals and Policies:

Goal 3: The Comprehensive Plan will create ordered and balanced growth and spread future growth throughout the community.

Policy A: To create large and small “centers” throughout the community that provides services and commercial areas.

Policy B: Create opportunities to reduce the amount of trips generated for shopping and commuting and decrease vehicle miles traveled thus increasing air quality.

This Development will create a village center providing services and commercial opportunities to the surrounding neighborhoods and will reduce the amount of vehicle trips and vehicle miles traveled per day.

Goal 5: To provide a broader mix of housing types in the community to meet the needs of a variety of incomes, family types and life stages.

Policy B: Encourage mixed-use development and identifications of locations for increased density.

This development is a mixed use development that will add high density residential units to the market for those seeking housing with a greater quality and quantity of public and/or private open space and easy access to commercial and employment based sites.

Goal 12: Being a regional provider of goods and services the City and County will sustain develop and enhance a healthy, diverse economy.

The Development will encourage commercial and industrial uses to locate to the City of Grand Junction by creating more commercially and industrial zoned properties.

Action Requested/Recommendation:

Hold a Public Hearing and Consider Final Passage and Publication of the Proposed Ordinance.

Board or Committee Recommendation:

Planning Commission recommended approval for the requested extension on January 26, 2010.

Background, Analysis and Options:

See attached Staff Report/Background Information

Financial Impact/Budget: None

Legal issues: None

Other issues: None

Previously presented or discussed:

City Council approved the Outline Development Plan on December 15, 2008.

Attachments:

1. Staff report/Background information
2. Site Location Map / Aerial Photo Map
3. Comprehensive Plan Map/ Existing City and County Zoning Map
4. Zoning Ordinance

BACKGROUND INFORMATION					
Location:		2899 D ½ Road			
Applicants:		Owner: Mesa State College Real Estate Foundation Applicant: University of Colorado Real Estate Center Representative: Ciavonne, Roberts and Associates			
Existing Land Use:		Agriculture/Vacant/CSU Facility/Lineman School			
Proposed Land Use:		Mixed Use: Residential/Commercial/Industrial			
Surrounding Land Use:	North	Industrial			
	South	Single Family Residential			
	East	Single Family Residential			
	West	State Offices/Cemetery			
Existing Zoning:		County PUD			
Proposed Zoning:		PD (Planned Development)			
Surrounding Zoning:	North	I-1 (Light Industrial)			
	South	County RSF-R, County RSF-2, County PUD, R-4 (Residential 4 du/ac), PD (Planned Development)			
	East	County RSF-R			
	West	County PUD			
Growth Plan Designation:		Mixed Use			
Zoning within density range?		X	Yes		No

ANALYSIS

1. Background

The property was annexed into the City on June 6, 2007 but was not zoned pending a decision on the requested Growth Plan Amendment. On March 5, 2008 the City Council amended the Growth Plan – Future Land Use Map from Public to a Mixed Use designation. On December 15, 2008, the City Council approved the Outline Development Plan (ODP).

Uses and Development Character

The proposal was to allow multifamily residential, commercial and industrial uses within four pods. Pod A would be developed as industrial. Pods B and C would be developed principally as commercial with the ability to include multifamily residential. Pod D would be developed principally as residential allowing limited commercial development. Pods B, C, and D would allow a mix of uses both residential and commercial with commercial

uses being the principle uses of Pods B and C and residential use being the principle use of Pod D.

Pod A only allows commercial and industrial uses and does not allow residential uses. Also Pod A has no limitation in the amount of square footage at buildout. The limitation will be subject to parking and bulk standards. Pods B and C will contain a maximum of 450,000 square feet and 115,000 square feet of commercial respectively. The maximum building size for any commercial structure will be 250,000 square feet. It should be noted that a Traffic Impact Study (TIS) has not been completed for the proposed development. A TIS will determine if additional commercial development (square footage) can occur on the site relative to the capacity of the road system.

Unified development of the site is proposed with similar architectural styles and themes across the four pods including common landscape features and streetscape character. The Applicant is also proposing that detached trails will be located along 29 Road and the Riverside Parkway.

Density

The overall proposed residential density of the development is 1,124 dwelling units. These multifamily units can be located within Pods B, C, and D. Pod B allows a maximum 371 dwelling units and Pod D allows a maximum 754 dwelling units. A maximum density for Pod C has not been established therefore any units located in Pod C would be subject to the maximum overall density and would have to be subtracted from the total 1,124 units. The maximum density of Pods B, C and D is 10.90 dwelling units per acre which is consistent with the density allowed in the M-U zone.

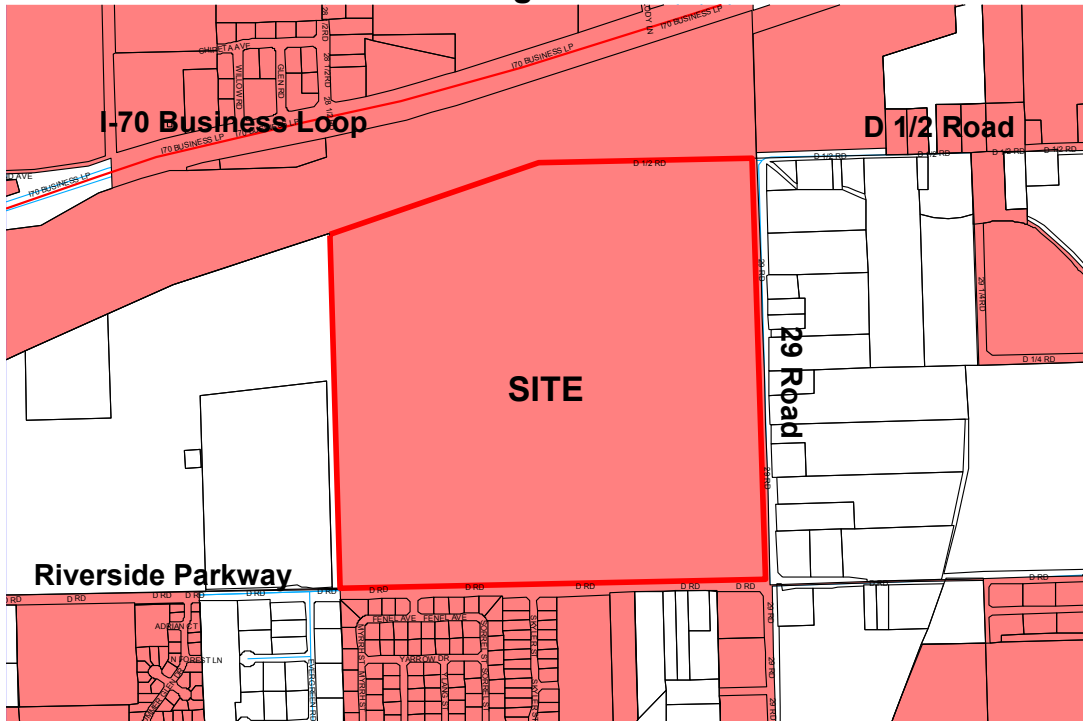
Phasing Schedule

The Preliminary Development Plan was to be submitted within 2 years after approval of the ODP or by December 15, 2010. If approved Preliminary Development Plan would need to be submitted on or before December 15, 2012.

PLANNING COMMISSION RECOMMENDATION: The Planning Commission recommended approval of the requested extension on January 26, 2010.

Site Location Map

Figure 1



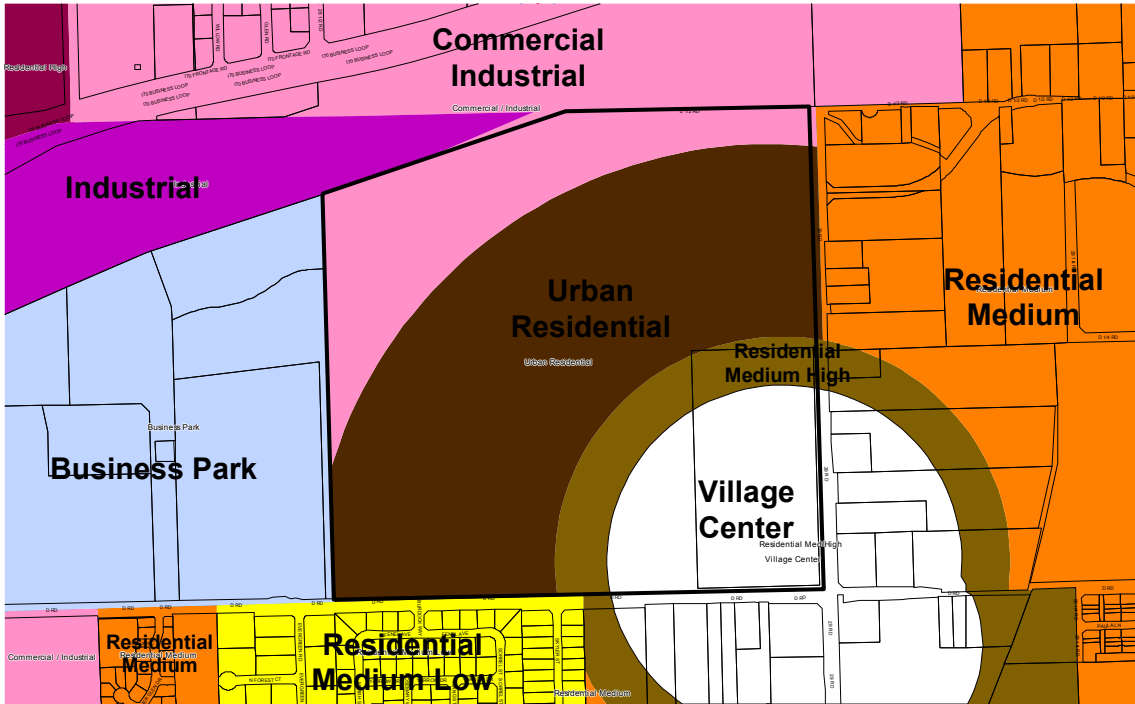
Aerial Photo Map

Figure 2



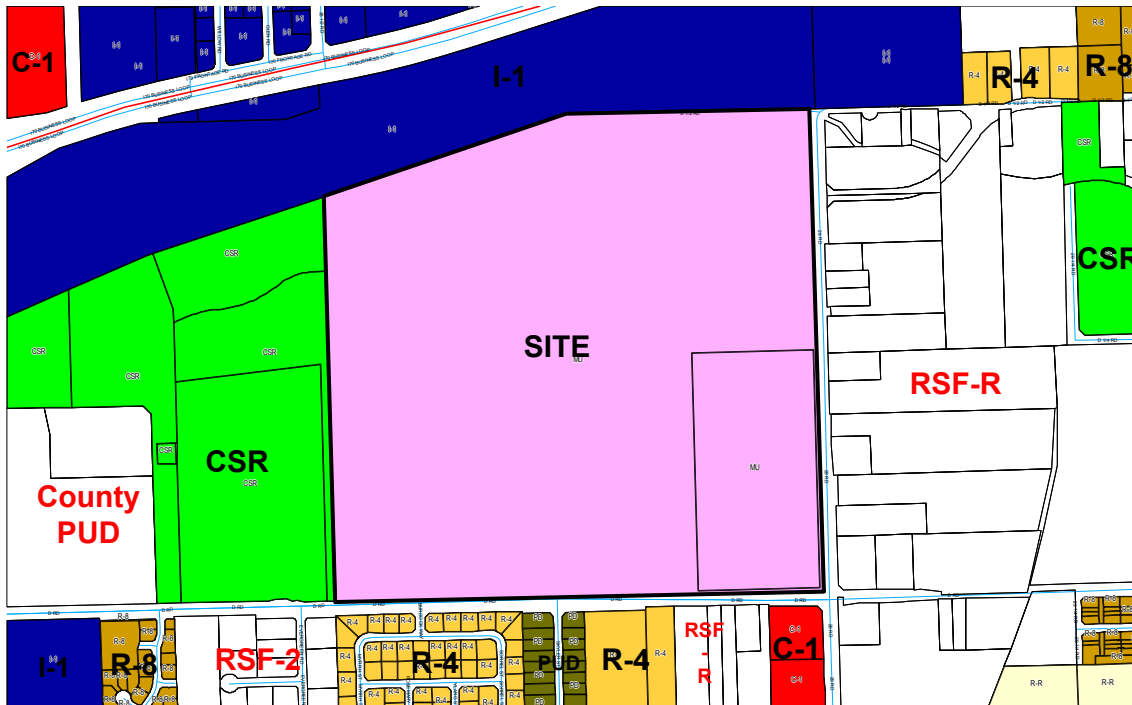
Comprehensive Plan Map

Figure 3



Existing City and County Zoning Map

Figure 4



CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO. ____

**AN ORDINANCE AMENDING ORDINANCE NO. 4314 ZONING THE MESA STATE
DEVELOPMENT TO PD (PLANNED DEVELOPMENT)**

LOCATED AT 2899 D 1/2 ROAD

Recitals:

On December 15, 2008 the City Council approved Ordinance No. 4314 zoning 154.05 acres to PD (Planned Development) with an Outline Development Plan (Plan) and a default M-U (Mixed Use) zone.

Ordinance No. 4314 referred to and incorporated by reference the "Findings of Fact and Conclusions listed in the Staff Reports dated November 10, 2008 and November 17, 2008 including attachments and Exhibits." One of the Findings of Fact and Conclusions in the Staff Report was a phasing/development schedule for the project.

Due to the change in the economy and the Applicant's desire to delay the project, the phasing/development schedule for the project needs to be amended.

Planning Staff has reviewed the Applicant's request to extend the phasing/development schedule for an additional to two years, to wit, to and through December 15, 2012, and supports the request.

All other approvals made by and in accordance with Ordinance No. 4314 shall remain the same.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
GRAND JUNCTION THAT:**

The phasing/development schedule approved by reference in Ordinance No. 4314 is amended to provide for and allow an additional two (2) years (to December 15, 2012) for the development of the project/land described in said Ordinance.

All other approvals made by and in accordance with Ordinance No. 4314 shall remain the same.

INTRODUCED on first reading on the 5th day of April, 2010 and ordered published.

ADOPTED on second reading the _____ day of _____, 2010.

ATTEST:

President of the Council

City Clerk