

ORDINANCE NO. 1616

AN ORDINANCE OF THE CITY OF GRAND JUNCTION, COLORADO, PROVIDING FOR FURTHER OFF-STREET PARKING FACILITIES BY MEANS OF THE LEASING OF SUCH OFF-STREET PARKING FACILITIES BY THE CITY OF GRAND JUNCTION FROM THE GRAND JUNCTION, COLORADO, PARKING AUTHORITY, A COLORADO NON-PROFIT CORPORATION; APPROVING THE FORM OF LEASEHOLD AGREEMENT WITH OPTION TO PURCHASE BETWEEN THE CITY AND SAID AUTHORITY FOR SAID PURPOSE, AND PROVIDING OTHER MATTERS RELATING THERETO.

WHEREAS, the City Council of the City of Grand Junction, Colorado, has heretofore determined that it is in the interest of the citizens and inhabitants of the City of Grand Junction that public off-street parking facilities be provided in order to regulate vehicular traffic, protect pedestrians and assure the public peace, health and safety within the City; and

WHEREAS, the City Council has heretofore carefully considered and studied the various means of providing such off-street parking facilities and as a result of such consideration and study has determined that it is necessary and advisable for the City of Grand Junction to provide further off-street parking facilities to partially satisfy the present and future off-street parking requirements of the City; and

WHEREAS, the City Council has determined to continue providing said off-street parking facilities by means of leasing the same from the Grand Junction, Colorado, Parking Authority, a Colorado non-profit corporation, pursuant to a proposed Leasehold Agreement with Option to Purchase with that company;

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

1. In order to continue the providing of necessary land and facilities for public off-street parking within the City of Grand Junction, Colorado, the officials of the City of Grand Junction, Colorado, on behalf of the City, are authorized to enter into that certain Leasehold Agreement with Option to Purchase with Grand Junction, Colorado, Parking Authority, a Colorado non-profit corporation, the form of which agreement is attached hereto and incorporated herein by this reference.
2. The form and contents of said Leasehold Agreement with Option to Purchase are hereby approved for the purposes provided therein.
3. The officials of the City of Grand Junction are hereby authorized to take all action necessary or appropriate to effectuate the provisions of this ordinance and to comply with the requirements of law.
4. If any paragraph, clause or provision of this ordinance is judicially adjudged invalid or unenforceable, such judgment shall

not affect, impair or invalidate the remaining paragraphs, clauses or provisions hereof, the intention being that the various paragraphs, clauses or provisions hereof are severable.

PASSED and ADOPTED this 17 day of March, 1976.

Lawrence L. Kozisek

President of the Council

ATTEST:

Neva B. Lockhart

City Clerk

LEASEHOLD AGREEMENT

WITH OPTION TO PURCHASE

THIS LEASE ("Lease") WITH OPTION TO PURCHASE AGREEMENT ("Option Agreement") made this 1st day of March, 1976, between GRAND JUNCTION, COLORADO, PARKING AUTHORITY, a Colorado non-profit corporation (the "Authority"), and the \*????

RECITALS

A. The Authority is the owner of or has the right of possession to the real property located within the City of Grand Junction, Colorado, and described on Exhibit "A" attached hereto and made a part hereof (the "Property" or the "demised Property").

B. The Property was acquired by the Authority for the main purpose of assisting the City in providing and acquiring off-street parking facilities at a lesser cost than the City is presently paying or would otherwise be paying for such facilities.

C. The Authority will issue its Note dated March 2, 1976, in the aggregate principal amount of \$99,000.00, (the "Note") and use the proceeds thereof to purchase or acquire the Property. The "Note" (the term "Note" as used herein shall include any refunding or renewal note of the Authority issued to redeem all or a portion of said Notes) is secured in part by a security interest on the Property as will be provided in a deed of trust (the "Trust Deed") by and between the Authority and the United States Bank of Grand Junction, Colorado as Beneficiary.

D. The parties desire that the City have the right and option to purchase or acquire the Property free and clear of the Trust Deed during the term of this Lease and Option Agreement.

E. The City deems it to be in the best interest of the City and its citizens and inhabitants in furtherance of its municipal purposes to lease the Property for its municipal purposes, and

particularly to provide off-street parking facilities on the Property, with the option to acquire the Property, in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the parties agree as follows:

#### LEASE OF PROPERTY

1. The Authority hereby leases and demises unto the City, and the City hereby takes and holds, the Property with all of its improvements and appurtenances from the date first above written to and including December 31, 1976. The City agrees to pay the Rental (defined in paragraph 6 hereof) to the Authority for the demised Property, as provided herein.

2. The "term" of this Lease as used herein, shall include the period during which this Lease, including any and all extensions thereof, is in full force and effect; provided, however, that in any event this Leasehold Agreement with Option to Purchase shall expire on December 31, 1987, which date is the maximum term of both the Lease and the Option hereof.

#### USE OF PROPERTY

3. The City shall possess and operate the Property primarily for off-street parking purposes.

#### LEASE EXTENSION

4. The Authority also hereby grants the City the right to extend this Lease from December 31, 1976, for successive periods of one year each, up to and until December 31, 1987, which shall be the maximum period of this Lease. Any and all such extensions of this Lease are to be subject to all the terms and conditions herein set forth.

5. On each December 1st during the term of this Lease, the City will be deemed to exercise its right and option to extend the Lease for the succeeding calendar year without any additional action by the City unless prior to such December 1st the City shall give written notice to the Authority, or its designated agent, that it does not elect to exercise this right. This Lease shall be automatically extended for the succeeding calendar year, unless the Authority, or its designated agent, receives such notice.

#### LEASE RENTAL

6. The "Rental" payable by the City to the Authority for the demised Property, during the term of the Lease, shall consist of a basic monthly rental and additional rental as herein set forth:

a) The basic rental during the term of the Lease shall be

\$1,201.16 per month (or such lesser amount as may be agreed to, from time to time, by the parties hereto), payable in advance on the first day of each and every month during the term of the Lease beginning with the date of this Lease.

b) The additional rental shall be an amount equal to the necessary expenses (other than provision for Note principal and interest with respect to the Note referred to in Recital C above) of the Authority to keep itself in good standing; to administer this Lease Agreement, including all necessary governmental reports; to pay required administration, expenses and fees of the Authority relating to the Property; and to pay all taxes and assessments as provided in paragraph 9 hereof. The maximum additional rental, exclusive of the said Taxes and Assessments, shall not exceed \$1,000.00 per year, provided, that such maximum as to any future one year extension period may be changed on three months prior written notice to the City. The additional rental shall be payable upon presentation by the Authority to the City of the evidence that such expenses have been incurred.

#### OPTION TO PURCHASE

7. Notwithstanding that the Lease may have terminated at an earlier date, the Authority grants to the City the exclusive option to purchase or acquire title to the Property or obtain cancellation of any leasehold interest of the Authority as leasee thereof, on payment of the option price to the Authority, or its designated agent at any time prior to December 31, 1987. Notice of intention to exercise such option shall be given on or before the 1st day of December of any year during the term of this Option Agreement (during which term the parties agree the Property has a useful life); provided, the option will be terminated and cancelled if the Trust Deed is foreclosed.

The closing for payment of the option price and transfer of title to or acquisition of the Property shall be at a mutually agreeable time not later than one year after the December 1 date on which the City exercises its option as above provided.

The option price is the amount necessary at closing to pay all of the remaining principal and interest due on the Note, and release the Trust Deed, plus an amount equal to all unpaid costs, obligations and expenses of the Authority relating to the Property and its costs of conveying the same to the City, as well as any and all other closing costs. Upon closing pursuant to the exercise of the option to purchase, as herein provided, the Authority will immediately transfer and convey to the City all of its right, title and interest in and to the Property which is then subject to the Option Agreement, warranting title to such Property against all persons claiming by, through or under the Authority.

8. This "Leasehold Agreement With Option to Purchase", including the Lease and Option Agreement provided herein, is subject to and subordinate to the Trust Deed.

## TAXES

9. It is the position and belief of the parties hereto that the Authority and the Property shall be exempt from taxation so long as the Property is used by the City for municipal off-street parking purposes or other municipal purposes pursuant to this Lease. However, in the event any taxes, assessments, duties or governmental impositions of any kind, extraordinary as well as ordinary, are levied or assessed against the Authority or the Property (the "taxes and assessments"), then in such event the City agrees that it will pay during the term of this Lease, as part of the Rental provided for in paragraph 6 hereof, such taxes and assessments, whether levied by federal, state or local authorities.

## SOURCE OF RENTAL PAYMENTS

10. The City shall collect all charges for the use of the demised Property, including receipts from parking meters and parking lot operations thereon. It is contemplated that the City will hold such receipts in a special fund, separate from other City funds, to be applied to the payment of the rentals under this Lease. The City agrees to impose sufficient rates for parking meters, parking lot operations and other usage of the Property by others, so that such revenue, together with any other legally available municipal income, shall be sufficient to pay the rental as it becomes due and payable during the term of this Lease.

11. Nothing herein contained shall be construed as binding the City for the payment of the rentals beyond any one year term of this Lease as it may be or have been extended from time to time. The rental and any other payments due the Authority and any agreements made or obligations assumed by the City pursuant to this Lease or Option Agreement shall never constitute an indebtedness or a general obligation of the City within the meaning of any state constitutional or statutory or City Charter provision or limitation, and the City shall never be required to provide funds for the performance or payment of any agreement or obligation hereunder, except insofar as funds are provided by the parking meter and parking lot operations from the demised Property and from any other legally available municipal income.

## MAINTENANCE OF PREMISES

12. The City will preserve and maintain the Property and all improvements thereon in usable condition, for municipal purposes, during the term of the Lease. While the Property is being operated for off-street parking, the City further agrees to do so in a fashion consistent with accepted good business practices as carried on by private corporations operating a facility of the same or similar type. All maintenance and operation expenses and costs for the demised Property shall be at the City's own expense and shall include, but need not be limited to, the provision for:

- a) Payment of all utility services consumed or used at or upon the demised Property;
- b) Operation and maintenance of the Property in accordance with the requirements of law; and
- c) While the demised property is being used for public off-street parking:
  - 1) Blacktopping on the demised Property;
  - 2) Wheel stops, signs, space and traffic markings, parking meters, and other related work and facilities necessary for said parking facilities;
  - 3) Curb cuts and other provisions for ingress and egress for the efficient use of the Property for parking; and
  - 4) Traffic regulations in connection with the proper use of said Property.

#### INSURANCE

13. The City will obtain and carry public liability insurance, and, if the Property is improved with valuable structures, builder's risk and fire insurance, protecting the Authority's interests and liability as landlord, in such amounts and to such extent as it normally carried by private corporations operating parking facilities of the same or similar type, and will promptly pay all premiums on each such policy. The City will make each said policy payable to the Authority, or cause each said policy to be endorsed in an appropriate manner so that in the event of loss the proceeds thereof will be payable to the holder of the Trust Deed and the Authority as their interests appear and each such policy shall have a "loss payable" clause in favor of the United States Bank. Each said policy shall be delivered to the United States Bank and a duplicate to the Authority.

#### LIABILITY OF AUTHORITY

14. The Authority, its directors, officers, agents and employees, shall not be liable to the City, or to any other party whomsoever, for any death, injury or damage which may result to any person or property by or from any cause whatsoever, in on or about the demised Property, or any part thereof.

#### LIENS

15. The City will keep the demised Property, and all additions thereto, free from liens for labor done or work performed upon the same on behalf of the City, or from materials furnished to it for the development or operation thereof.

#### ALTERATIONS AND IMPROVEMENTS

16. Except as authorized in paragraph 12 above with respect to maintenance of the premises, the City shall make no alterations in or additions or improvements to the demised Property without first obtaining the written consent of the United States Bank and the Authority, and except as may be provided in the instruments granting the Authority its title to or possession of the demised Property, all additions and improvements made by the City (other than parking meters) shall be deemed a part of the real estate and a permanent structure thereon, and shall remain upon and be surrendered with said Property as a part thereof at the end of the term of this Lease.

#### SUBLETTING AND ASSIGNMENT

17. The City will not sublet the demised Property, or any part thereof, nor assign its rights under this Lease and Option Agreement, or any interest therein, without the prior written consent of the Authority.

The City agrees that during the term of this Lease not more than one-fourth of the subject parking facilities shall be leased, during the period of any month, to any one business user.

#### FAILURE TO PAY RENTAL OR BREACH OF LEASE

18. Should the City fail to pay any of the Rentals due the Authority under this Lease at any of the times herein provided, the Authority shall give written notice of such default to the City, and upon proper payment of all such rent and showing of good cause within 15 days of delivery of such notice, the Authority may waive such default. If not corrected within 15 days, the Authority may, at its option, terminate this Lease. The Authority shall give the City notice of such termination. Upon such termination, all rights of the City under this Lease (except the Option Agreement herein granted to the City) shall be terminated and forfeited to the Authority; and the Authority shall then be entitled to immediate possession of the Property without giving any demand or notice.

19. In the event of any default or breach in the performance of any terms, conditions or covenants by the City under this Lease (other than the payment of Rental), the Authority shall give the City written notice of default, and the City shall then have the privilege of correcting the default within 980 days of delivery of such notice. If not so corrected, the Authority, at its option, may terminate this Lease by giving written notice to the City. Upon said termination of this Lease, the City agrees to immediately quit and surrender up said demised Property to the Authority.

#### NON-RENEWAL OF TERM

20. If the City does not extend this Lease to its maximum term, it shall surrender possession to the Authority. The Authority may then lease the property subject to the City's rights under this Agreement; provided that no lease shall be executed without the Authority first having received a written opinion from counsel for the United States Bank or the then holder of the Note and Trust Deed that such lease does not destroy the tax exempt nature of the Note.

#### SUCCESSORS AND ASSIGNS

21. This Lease and Option Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

#### APPLICABLE LAW

22. This Lease and Option Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of Colorado. This Lease and Option Agreement expresses the full understanding of the parties hereto, and neither party hereto has made, nor shall be bound by, any agreement or representation to the other party which is not expressly recited in this instrument.

#### CONVEYANCE TO THE CITY

23. Except for and to the extent of the completion of any foreclosure proceedings by the holder of the Trust Deed, upon expiration of the maximum term of this lease on December 31, 1987, the Authority shall transfer all the demised Property herein to the City and shall cancel any leasehold interest of the Authority as lessor of the Property, free and clear of any lien or other encumbrance, and without additional consideration being paid to the Authority, provided the City shall pay a further sum to the Authority equal to all unpaid costs, obligations and expenses of the Authority relating to the Property and its cost of conveying the same to the City, as well as all other closing costs;

Upon the dissolution of the Authority, no part of its property shall be distributed to any Director or other individual or entity except the City, and any property of the Authority not required to pay corporate debts and corporate expenses shall be distributed only to the City or its governmental successor in interest, and without consideration of any kind or nature.

#### SEVERABILITY CLAUSE

24. If any term, clause or provision of this Lease and Option Agreement, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other terms, clauses or provisions or applications of this Lease and Option Agreement which can be given effect without the invalid term, clause or provision, or its application, and to this end this Lease and Option Agreement is severable.

IN WITNESS WHEREOF, the Authority and the City have caused their respective corporate names to be signed hereto by the respective officers thereto duly authorized, and in accordance with the requirements of governing law, all as of the day and year first above written.

GRAND JUNCTION, COLORADO,  
PARKING AUTHORITY, a Colorado non-profit corporation,

By Stanley R. Anderson /s/  
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ATTEST:

Neva B. Lockhart /s/  
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Secretary

CITY OF GRAND JUNCTION, COLORADO, a Colorado home rule municipal corporation,

By Harvey M. Rose /s/  
\_\_\_\_\_

ATTEST:

Theresa F. Martinez /s/  
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Deputy City Clerk

STATE OF COLORADO)		
) ss.		
COUNTY OF)		

The foregoing instrument was acknowledged before me this 2nd day of March, 1976, by Stanley R. Anderson as President, and Neva B. Lockhart as Secretary, of GRAND JUNCTION, COLORADO, PARKING AUTHORITY, a Colorado non-profit corporation, on behalf of the

corporation.

My Commission expires: June 28, 1979

Witness my hand and official seal.

Eileen Mc Dermoth /s/

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Notary Public

STATE OF COLORADO)		
) ss.		
COUNTY OF)		

The foregoing instrument was acknowledged before me this 2nd day of March, 1976, by Harvey M. Rose as Manager, and Theresa F. Martinez as Deputy City Clerk, of CITY OF GRAND JUNCTION, COLORADO, a Colorado home rule municipal corporation, on behalf of the corporation.

My Commission expires: June 28, 1979

Witness my hand and official seal.

Eileen Mc Dermoth /s/

\_\_\_\_\_  
Notary Public

EXHIBIT A

Attached to and made a part of the Leasehold Agreement with Option to Purchase between the City of Grand Junction and Grand Junction, Colorado, Parking Authority.

The Property

Lots 3, 4, 5 and 6 in Block 102 of the City of Grand Junction, Colorado

Together with all improvement-s and appurtenances located upon or used in connection with the real estate described above

I HEREBY CERTIFY that the foregoing ordinance, being Ordinance No. 1616, was introduced, read, and ordered published by the City Council of the City of Grand Junction, Colorado, at a regular meeting of said body held on the 3rd day of March, 1976, and that the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, at least ten days before its final passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 18th day of March, 1976.

Neva B. Lockhart

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Neva B. Lockhart  
City Clerk

Published: February 29, 1976

Published: March 24, 1976

Effective: April 24, 1976