

ORDINANCE NO. 2459

AN ORDINANCE AUTHORIZING THE PURCHASE BY THE CITY OF GRAND JUNCTION, COLORADO (THE "CITY") OF CERTAIN PROPERTY, INCLUDING WATER RIGHTS, FOR PURPOSES OF SUPPLYING WATER TO THE CITY; RATIFYING ACTIONS HERETOFORE TAKEN IN CONNECTION THEREWITH; AUTHORIZING THE ISSUANCE BY THE CITY OF A GENERAL OBLIGATION WATER NOTE IN PAYMENT OF A PORTION OF THE PURCHASE PRICE THEREFOR AND PROVIDING FOR THE PAYMENT OF SAID NOTE; AUTHORIZING THE EXECUTION AND DELIVERY OF A DEED OF TRUST IN CONNECTION WITH SAID NOTE AND PROVIDING FOR PERFORMANCE OF THE CITY'S OBLIGATIONS THEREUNDER; AND PROVIDING OTHER DETAILS IN CONNECTION WITH SAID PURCHASE AND SAID NOTE.

WHEREAS, the City of Grand Junction (the "City") presently owns and operates a municipal water system; and

WHEREAS, the City Council (the "Council") of the City has determined that it is necessary and desirable that the City acquire water, water rights, ditches, ditch rights, wells, well permits, well rights, reservoirs, reservoir rights, water and ditch company stock, or portions or combinations thereof (herein generally referred to as "water rights"), for purposes of supplying water to the City; and

WHEREAS, the City has entered into a contract (the "Purchase Contract") with Midwest Resources, Inc., a Delaware corporation ("Midwest") for the sale by Midwest and purchase by the City of certain property known as The Somerville Ranch, including various appurtenances thereto, and particularly including water rights used in connection therewith or connected thereon (said land, appurtenances and water rights, collectively, being referred to herein as the "Property"); and

WHEREAS, the Council deems it necessary and proper that the City purchase the lands with which said water rights are connected, all for purposes of supplying water to the City; and

WHEREAS, the City has determined to authorize and issue its general obligation water note (the "Note") to pay a portion of the purchase price for the Property, and to execute and deliver its Deed of Trust (the "Deed of Trust") in connection therewith; and

WHEREAS, forms of the Note and the Deed of Trust have been presented to the Council concurrently with this ordinance.

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

Section 1. The City hereby authorizes the purchase of the Property by the City from Midwest. All actions heretofore taken by the officers, employees and agents of the City relating to the purchase of the Property, the issuance of the Note, or the execution or delivery of the Deed of Trust, and which are

consistent with the provisions of this ordinance, are hereby ratified, approved and confirmed. Without limiting the generality of the foregoing, the execution and delivery of the Purchase Contract are hereby ratified, approved and confirmed, provided that the City and Midwest have agreed to the following modifications relating thereto: (a) the form of the Note shall be as presented to the Council concurrently with this ordinance (subject to the provisions of Section 2 hereof as to modifications of such Note form not inconsistent herewith); and (b) the date of closing shall be February 7th, 1990, or by mutual agreement at an earlier date.

Section 2. The City hereby authorizes the issuance of the Note, which shall constitute a general obligation water note of the City. The full faith and credit of the City are hereby pledged to the punctual payment of the principal of and interest on the Note according to the terms thereof. The Council hereby specifically finds and determines that the issuance of the Note and the acquisition of the Property for which the Note is being issued are being entered into by the City for purposes of supplying water to the City. The Council also hereby specifically finds and determines, pursuant to Section 31-35-101(a)(e), Colorado Revised Statutes, that it is necessary and proper for the City to purchase the lands constituting a part of the Property to which the water rights constituting a part of the Property are connected. The Property shall be held and used, and the Property and the Note shall be accounted for and administered, under the auspices of the City's department of water and sewers pursuant to Section 93 of the Charter of the City. The Note shall be payable to the order of Midwest; shall be in the principal amount of \$1,100,000; shall be dated the day of its delivery; shall mature on December 31, 1990; and shall bear interest at the rate of 10% per annum, payable at maturity (subject to the provisions contained in the Note with respect to interest on attorneys' fees and expenses, interest on amounts not timely paid, and other late charges). The principal of the Note may be prepaid in whole or in part, at any time and from time to time, without premium or penalty, as therein provided. The City hereby authorizes the execution and delivery of the Deed of Trust. The forms, terms and provisions of the Note and the Deed of Trust are hereby approved, and the President of the City Council is hereby authorized and directed to execute the Note and the Deed of Trust in substantially the respective forms presented to the Council concurrently with this ordinance, with such changes therein as are not inconsistent herewith; and the City Clerk is hereby authorized and directed to affix the City seal to and to countersign and attest the Note and the Deed of Trust. The President of the City Council is hereby authorized and directed to cause the Note and the Deed of Trust to be delivered to Midwest upon closing of the purchase of the Property as provided in the Purchase Contract (subject to the provisions of Section 1 hereof modifying certain provisions of the Purchase Contract).

Section 3. The City hereby represents, warrants and certifies for the benefit of Midwest that the City's appropriation ordinance for

the 1990 fiscal year includes an appropriation of sufficient moneys, from the Water Fund to make all payments required under the Note, including without limitation all principal thereof and interest thereon, and to fulfill the City's obligations under the Deed of Trust; and that, except to the extent that other legally available funds are to be applied therefor, there have been levied on all of the taxable property in the City, for collection in the 1990 fiscal year, ad valorem taxes sufficient to promptly make all payments required under the Note, including without limitation all principal thereof and interest thereon, and to promptly fulfill the City's obligations under the Deed of Trust. Such ad valorem taxes are in addition to all other taxes levied to effect the purposes of the City, and when collected shall be applied solely for payments required under the note and to fulfill the City's obligations under the Deed of Trust, until all such payments and obligations have been fully satisfied and discharged; provided, however, that nothing herein contained shall be construed so as to prevent the City from applying any other funds that may be legally available for that purpose to such payments and obligations, and upon the application of any such funds, the mill levy or levies herein provided for may thereupon, to that extent, be diminished.

The appropriation for the 1990 fiscal year of all amounts necessary to make all payments required under the Note, including without limitation the principal thereof and interest thereon, and to fulfill the City's obligations under the Deed of Trust, is hereby ratified and confirmed for such purposes, and such amounts as may be necessary for such purposes in any future fiscal year shall also be included in the annual budget and appropriation measures to be adopted and passed by the Council in each year, respectively, until all such payments and obligations have been fully satisfied and discharged. It shall be the duty of the Council annually, at the time and in the manner provided by law for levying other City taxes, if and to the extent that such action shall be necessary to effectuate the provisions of this ordinance, to levy on all of the taxable property in the City and to collect ad valorem taxes, in addition to all other taxes levied to effect the purposes of the City, to make all payments required under the Note and to fulfill the City's obligations under the Deed of Trust; and the Council shall levy, certify, and collect such taxes in the manner provided by law for the purpose of making such payments and fulfilling such obligations, and such taxes, when collected, shall be kept for and applied only to such payments and obligations. Such taxes shall be levied, assessed, collected, and enforced at the time and in the manner and with like interest and penalties as other general taxes in the State of Colorado.

In the event that any of said current or future levies, together with charges that may be made by the City, shall fail to produce an amount sufficient to make all payments required under the note, including without limitation all principal thereof and interest thereon, and to fulfill all obligations of the City under the Deed of Trust, then the deficit shall be made up in the next levy, and

taxes shall continue to be levied until all such payments and obligations have been fully satisfied and discharged. The Council shall take all necessary and proper steps promptly to enforce the payment of taxes levied pursuant to this ordinance.

The foregoing provisions of this ordinance are hereby declared to be the certificate of the Council to the Board of County Commissioners of Mesa County, Colorado, showing the aggregate amount of taxes to be levied for the purpose aforesaid by the Board of County Commissioners from time to time, as required by law, for the purpose of promptly satisfying such payments and obligations.

Section 4. The officers, employees and agents of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance, including without limitation the execution and delivery of such certificates and opinions as may be necessary or desirable.

Section 5. If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining portions of this ordinance.

Section 6. All orders, resolutions, bylaws, ordinances or regulations of the City, or parts thereof, which are inconsistent with this ordinance, are hereby repealed only to the extent of such inconsistency.

Section 7. After the Note is issued and delivered, this ordinance shall constitute a contract between the City and Midwest and its successors, and shall not be repealed or amended without the consent of Midwest or its successors until the Note has been fully paid, satisfied and discharged. No provisions of any constitution, statute, charter, ordinance, resolution or other measure enacted after the issuance of the Note shall in any manner be construed as impairing the obligations of the City under or pursuant to this ordinance.

Section 8. Pursuant to Article XX of the Colorado Constitution and the Charter of the City, all statutes of the State of Colorado which are inconsistent with this ordinance and which might otherwise apply in connection with the purchase of the Property or in connection with the Note or the Deed of Trust, are hereby superseded.

Section 9. This ordinance, immediately on its final passage and adoption, shall be numbered and recorded in the official records of the City kept for that purpose, shall be authenticated by the signatures of the President of the City Council and the City Clerk, and shall be published in full in The Daily Sentinel, a newspaper published and of general circulation in the City. This ordinance shall become effective upon expiration of the thirty-day

