

ORDINANCE NO. 2911

AN ORDINANCE AUTHORIZING THE CITY OF GRAND JUNCTION TO ENTER INTO A LEASE PURCHASE AGREEMENT TO ACQUIRE CERTAIN REAL PROPERTY KNOWN AS THE MATCHETT FARM, AND IN CONNECTION THEREWITH TO ENTER INTO A MANAGEMENT CONTRACT WITH THE MATCHETT FAMILY DOING BUSINESS AS MATCHETT FARM WHEREBY THE MATCHETT FAMILY WILL MANAGE THE PROPERTY ON BEHALF OF THE CITY WHILE THE CITY COMPLETES ITS PLANNING AND DEVELOPMENT OF THE PROPERTY AS A REGIONAL PARK; RATIFYING ACTIONS HERETOFORE TAKEN RELATING THERETO; APPROVING VARIOUS RELATED DOCUMENTS; AND PROVIDING OTHER DETAILS IN CONNECTION WITH THE TRANSACTION.

WHEREAS, the City of Grand Junction, Colorado (the "City") is authorized, pursuant to its home rule charter (the "Charter") and Ordinance No. 1054, passed and adopted on November 5, 1958 to lease, purchase, acquire, hold and dispose of real or personal property for recreational purposes; and

WHEREAS, the Parks, Recreation and Open Space Master Plan adopted by the City Council on December 16, 1992, recommends that the City acquire property in a north-central location of the community for the purpose of developing a regional park; and

WHEREAS, the Parks and Recreation Advisory Board of the City unanimously recommended to the City Council that the City acquire certain real property, commonly referred to as the "Matchett Farm" (the "Property") as a regional park site and as a site for a recreation center; and

WHEREAS, the City has entered into a contract to buy the Land (the "Land Purchase Contract") with the Trust for Public Land ("TPL"), which Land Purchase Contract is expressly conditioned upon the City or the City's nominee obtaining funds sufficient to buy the Property; and

WHEREAS, at the request of the City, the City of Grand Junction Public Finance Corporation (the "Corporation") will acquire the Property (as assignee of the City) pursuant to the Land Purchase Contract in order to lease it to the City and to permit the City, if it continues to lease the Property through the term, to acquire the Property; and

WHEREAS, the City has determined and hereby determines to enter into a lease-purchase agreement (the "Lease") with the Corporation, pursuant to which the City will lease the Property from the Corporation; and

WHEREAS, the City is permitted by the Charter and Article X, Section 20 of the Colorado Constitution ("TABOR") to enter into a long-term lease purchase agreement to the extent of funds pledged

irrevocably for future payments; without funds irrevocably pledged for future payments, TABOR permits lease-purchase agreements which are annually subject to non-appropriation by the City Council; and

WHEREAS, the City has identified certain funds in its Parks and Open Space Fund which it desires to pledge to make the Lease payments during the first three years of the Lease; thereafter the Lease will be annually subject to nonappropriation by the City;

WHEREAS, the City desires to enter into the Lease now in order to take advantage of favorable terms available to buy the Property, to permit public use of the Property for passive recreation purposes, and to permit the City to engage in an orderly process to plan and develop the Property to its best use for park purposes; and

WHEREAS, the Property is currently being used by the Matchett family, doing business as Matchett Farm (the "Matchetts") as a farm and for equestrian activities, and the City believes that having the Matchetts continue to farm the Property and continue the equestrian activities during the City's planning and development of the regional park on the Property will best preserve and manage the Property (including the water rights associated therewith), allowing the Property to be put to productive use, to be irrigated and to be preserved in its current state for eventual development as a regional park; and

WHEREAS, the City therefore desires to enter into a five-year management contract (the "Management Contract") with the Matchetts, which contract will be terminable by the City at the end of three years, pursuant to which the Matchetts will manage the farm on the Property for and on behalf of the City and also organize certain equestrian and other recreational activities on the Property, all in order to put the Property to good use until the City has had time to plan and develop its regional park on the Property; and

WHEREAS, there has been presented to the City Council at this meeting the forms of the Lease and the Management Contract.

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

Section 1. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or the officers of the City, directed toward acquiring the Property and otherwise effectuating the transactions herein described, are hereby ratified, approved and confirmed.

Section 2. The City Council hereby find and determines, pursuant to the Charter, the Constitution and the laws of the

State, that (i) financing the Property as described above, and (ii) leasing the Property from the Corporation under the terms set forth in the Lease, are necessary, convenient, and in furtherance of the governmental purposes of the City and are in the best interests of the City and its citizens and inhabitants; and the City Council hereby authorizes such financing and leasing under the terms of the Lease. The City Council hereby finds and determines that the City needs the Property and that entering into the Management Contract is in the best interests of the City and its inhabitants because it will ensure that the Property is managed and preserved during the time it will take the City to plan and develop the regional park contemplated for the Property.

Section 3. The Lease and the Management Contract, in substantially the forms presented to this meeting, with such changes and with such final terms as are approved by the City Manager, are in all respects approved, authorized and confirmed, and the Mayor is authorized and directed to affix his signature to the Lease and the Management Contract in substantially the forms and with substantially the same content as presented to this meeting of the City Council (with such changes and with such final terms as are approved by the City Manager) for and on behalf of the City, provided that the following conditions must all be met before the Mayor shall be authorized to sign such documents:

- (i) the Lease shall have a maximum term of ten years;
- (ii) the City's payments under the Lease shall be substantially level each year; and the total principal components of the payments under the Lease shall aggregate no more than \$2,500,000;
- (iii) the maximum net effective interest rate on the Lease shall be 6.50%
- (iv) the Lease shall have an initial term of three years, and thereafter shall be annually subject to nonappropriation by the City Council;
- (v) the City shall irrevocably pledge up to \$775,000 (the final amount to be whatever amount is necessary in order to fully secure the payments on the Lease through and including June 1, 1999) to the payments under the Lease during the initial three year term; and
- (vi) the Management Contract shall have a five year term, but shall be subject to termination by the City at any time after three years upon no more three months notice, shall require the City to pay a management fee of no more than \$10,000 a year for each year of the contract and otherwise permit the interest paid under the Lease to be tax-exempt

Section 4. The City hereby acknowledges that, in connection with the Lease, the Corporation will be entering into a Mortgage and Indenture of Trust (the "Indenture") with a trustee (the "Trustee"), pursuant to which the Corporation will assign to the Trustee all of its rights, title and interest in the Lease (with

certain exceptions therein stated), and certificates of participation (the "Certificates") representing undivided proportionate interests in the payments under the Lease will be issued. The City Council hereby consents to the assignment by the Corporation to the Trustee, pursuant to the Indenture, of all right, title and interest of the Corporation in, to and under the Lease (with certain exceptions as therein specified). The City Council hereby acknowledges and consents to the issuance of the Certificates pursuant to the Indenture. The City Clerk is hereby authorized and directed to affix her signature and the City seal, or facsimiles thereof, to authenticate the Certificates, as provided in the Indenture. If requested by Bigelow & Company, the purchaser of the Certificates (the "Purchaser"), the Mayor is hereby authorized and permitted to execute a Certificate Purchase Agreement (a "Purchase Agreement") pursuant to which the City and the Corporation agree to the Purchaser's purchase of the Certificates; provided, however, the Mayor shall only be authorized to execute the Purchase Agreement if the conditions specified in Section 3 have been met.

Section 5. The City hereby also specifically approves the preparation of a Preliminary Official Statement and a final Official Statement to be used in marketing the Certificates. The Mayor is hereby authorized and directed to affix his signature to the Official Statement, for and on behalf of the City, provided that the content of the Preliminary and final Official Statements shall have been approved by the City Attorney and the Finance Director. The distribution of the Preliminary Official Statement by the Purchaser is hereby authorized, and the Finance Director is hereby authorized to deem such document "final" for purposes of SEC Rule 15c2-12.

Section 6. The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this Ordinance, and to place the seal of the City on any document authorized and approved by this Ordinance. The Mayor, City Clerk, and other officials of the City are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance.

Section 7. No provision of this Ordinance, the Lease, the Indenture, the Certificates, the Purchase Agreement, the Preliminary Official Statement or the Official Statement, shall be construed as creating or constituting a general obligation or other indebtedness of the City nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the current fiscal year, except that the Lease shall have an initial term of three years, payable from funds irrevocably pledged under

the Lease for such payments. The City shall have no obligation to make any payment with respect to the Lease or the Certificates except in connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments may be terminated by the City in accordance with the provisions of the Lease.

Section 8. The Board hereby determines and declares that the Base Rentals do not exceed a reasonable amount so as to place the City under an economic compulsion to renew the Lease or to exercise its option to purchase the Property pursuant to the Lease. The City Council hereby determines and declares that the period during which the City has an option to purchase the Property (i.e., during the entire maximum term of the Lease) does not exceed the useful life of the Property.

Section 9. The City Council hereby determines that the persons initially and currently designated as the City Representatives, as defined and as further provided in the Lease, shall be Dan Wilson, Ron Lappi and Mark Achen, and each is authorized to act on the City's behalf with respect to matters concerning the Lease and the Management Contract. Replacement or additional City Representatives may be named by resolution adopted by the City Council.

Section 10. If any section, paragraph, clause or provision of this Ordinance or the documents hereby authorized and approved (other than provisions as to the payment of Base Rentals by the City during the term of the Lease, provisions for the quiet enjoyment of the Property by the City during the term of the Lease, and provisions for the conveyance of the Property to the City under the conditions provided in the Lease) 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 provisions of this Ordinance or such documents.

Section 11. All bylaws, orders, ordinances and resolutions, or parts thereof, inconsistent with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, ordinance or resolution or part thereof.

Section 12. This Ordinance shall be effective thirty days following publication in full after its final adoption, in accordance with Sections 51 and 136 of the Charter.

PASSED ON FIRST READING April 3, 1996 and published in full.
PASSED, ADOPTED AND APPROVED April 17, 1996 and published in full.

/s/ Ron Maupin
Mayor

(SEAL)

Attest:

/s/ Stephanie Nye
City Clerk