

ORDINANCE 2019-20

AN ORDINANCE AUTHORIZING THE FIVE-YEAR LEASE OF REAL PROPERTY LOCATED AT THE NORTHEAST CORNER OF 16 AND L ROAD IN THE COUNTY OF MESA AND STATE OF COLORADO

WHEREAS, the City of Fruita and Mesa County School District #51 are owners of a 40-acre tract of farm/crop land located at the northeast corner of 16 and L Road in Mesa County and further described as:

Northwest ¼ of the Northwest ¼ of Section 7, Township 1 North, Range 2 West in the County of Mesa and State of Colorado consisting of 40 acres.

WHEREAS, the land was acquired jointly by the City of Fruita and Mesa County School District #51 with the intent that said property would eventually be subdivided and be used for construction of a park and/or open space by the City of Fruita and construction of school facilities by the Mesa County School District, and

WHEREAS, the Intergovernmental Agreement between the City of Fruita and Mesa County School District #51 dated September 26, 2008 states that the City is responsible for maintaining the property until a subdivision process is completed and that it is the City's intent to enter into a farm/crop lease as the primary means of maintaining the property, and

WHEREAS, the property has been leased on a year to year basis to the former owners of the property who now desire to enter into a five-year lease, and

WHEREAS, pursuant to Section 2.11 of the Fruita City Charter, the Fruita City Council must, by ordinance, authorize the long-term lease or conveyance of real property of the City; and

WHEREAS, it is the intent of this ordinance to authorize the City Manager to execute the necessary documents to enter into a five year farm/crop lease of the 40 acre parcel owned by the City of Fruita and Mesa County School District #51 with a six month termination clause in the event the City of Fruita or Mesa County School District decide to pursue construction of facilities on the property.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, AS FOLLOWS:

Section 1: The City Manager is hereby authorized to execute the five-year farm/crop lease agreement attached hereto as Exhibit A.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
ON THE 17th DAY OF SEPTEMBER, 2019**

City of Fruita

Joel Kincaid, Mayor

ATTEST:

City Clerk

ORDINANCE 2019-20

EXHIBIT A

FARM/CROP LEASE

This lease is entered into on _____ between the City of Fruita (“Lessor”), whose mailing address is 325 E. Aspen Ave., Ste. 155, Fruita, CO 81521, acting on and behalf of itself and Mesa County School District #51 pursuant to that certain Intergovernmental Agreement dated September 26, 2008, and Lessee(s) Michael D. Etchart and Joseph B. Etchart, whose mailing address is 1276 – 16 Road, Fruita, CO 81521.

The parties to this lease agree to the following provisions:

Section 1. Description of Rented Land, Length of Tenure & Rental

A. Description of Land. Lessor rents and leases to the Lessee, to occupy and to use for agricultural and livestock grazing purposes only, the following real estate located in the County of Mesa and the State of Colorado, and described as follows:

Legal Description: Northwest ¼ of the Northwest ¼ of Section 7, Township 1 North, Range 2 West in the County of Mesa and State of Colorado consisting of 40 acres.

B. Length of Tenure. The term of this lease shall be for five years from September 26, 2019 to September 25, 2024 and the Lessee shall surrender possession at the end of this term or at the end of any extension thereof. Extensions must be in writing and attached to this lease, and both parties agree that failure to execute an extension at least one (1) month(s) before the end of the current term shall be constructive notice of intent to allow the lease to expire. This lease may be terminated with six (6) month’s notice during the five-year term if 1) the Mesa County School District #51 or Lessor decides to construct facilities on the Property and 2) as provided in Section 4 herein.

C. Rental. Lessee will pay Lessor \$2,025 annually for this farm/crop lease. The lease rate is based off of the part of the field that is productive, approximately 25 acres, at a rate of \$81.00 per acre. Lessees shall provide functioning surface piping to irrigate the 25 acres in exchange for use of the remaining 15 acres, which is non-productive land. Failure to provide such piping and irrigation shall constitute an Event of Default subject to the provisions of Section 4 herein.

Section 2. Lessee’s Duties.

A. Activities required.

1. To cultivate the farm faithfully and in a timely, thorough, and businesslike manner.
2. Comply with all applicable laws and regulations concerning the maintenance and use of the Property.

ORDINANCE 2019-20

EXHIBIT A

3. Lessee shall at all time, and at its sole cost and expense, keep and maintain the Property in a good state of repair and keep it relatively free of weeds. This shall include tree removal as necessary to provide for good farming and livestock grazing practices.
4. To preserve established watercourses or ditches and to refrain from any operation that will injure them.
5. To keep the fences, open ditches, tile drains, tile outlets, grass waterways, and other improvements in as good repair and condition as they are when the Tenant takes possession or in as good repair and condition as they may be put by the Lessor during the term of the lease – ordinary wear, loss by fire, or unavoidable destruction excepted.
6. To prevent all unnecessary waste, or loss, or damage to the Property of the Lessor.
7. To use prudence and care in transporting, storing, handling, and applying all fertilizers, pesticides, herbicides, and other chemicals and similar substances; to read and follow instructions on the labels for the use of such materials in order to avoid injury or damages to persons or property or both on the leased premises and adjoining areas; and to comply with state pesticide training, licensing, storing and usage.
8. To use generally accepted livestock and agricultural management practices that protects the environment and livestock and complies with all applicable rules and regulations.

B. Activities Restricted. The Lessee further agrees, unless the prior written consent of the Lessor has been obtained:

1. Not to assign this lease to any person or persons or sublet any part of the premises herein leased.
2. Not to erect or permit to be erected any structure or building or to incur any expense to the Lessor for such purposes.
3. Not to permit, encourage, or invite other persons to use any or all of the Property for any purpose or activity not directly related to Lessee's use of the Property for agricultural production, except as specifically noted here: Hunting subject to compliance with all applicable rules and regulations.

Section 3. Insurance

The Lessor and Lessee agree that they will observe the following provisions:

For the term of the lease, Lessee and Lessor shall maintain their own liability insurance. Lessee shall maintain commercial general liability coverage providing primary bodily injury and primary property damage coverage with a combined single limit of at least \$1,000,000 and a deductible of not more than \$1,000. Such insurance shall provide that it may not be cancelled without thirty (30) days prior written notice to Lessor. Lessee shall cause Lessor to be named as an additional insured and shall provide Lessor with evidence, acceptable to Lessor that the required insurance is in full

ORDINANCE 2019-20

EXHIBIT A

force and effect. Nothing in this Lease shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Lessor, its officials, employees, contractors, or agents, or any other person acting on behalf of the Lessor and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

Section 4. Default, Possession, Liability, Heirs & Personal Property

The Lessor and Lessee agree to the following provisions:

- A. Termination Upon Default.** If either party fails to carry out substantially the terms of this lease in due and proper time, the lease may be terminated by the other party by serving a written notice citing the instance(s) of default and specifying a termination date of 15 days from the date of such notice.
- B. Yielding Possession.** The Lessee agrees at the expiration or termination of this lease to yield possession of the premises to the Lessor without further demand or notice, in as good order and condition as when they were entered upon by the Lessee, loss by fire, flood, tornado and ordinary wear excepted. Lessee shall have up to 45 days following the expiration of this lease to remove all personal property
- C. Liability.** The Lessee takes possession of the leased premises subject to the hazards of operating a farm, and assumes all risk of accidents personally as well as for family, employees, or agents in pursuance of farming operations, or in performing repairs on buildings, fences, tile, and other improvements. To the fullest extent permitted by law, Lessee shall indemnify, defend and hold harmless Lessor, officials, employees, contractors, or agents, or any other person acting on behalf of the Lessor from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of this Agreement or related to the activities permitted in this Lease.
- D. NonBinding on Heirs, etc.** In the event the Lessee's (singularly or combined) are unable to farm or maintain the Property as required under this lease agreement due to accident, illness, or injury, this lease may be terminated by Lessee in the same manner as a Termination Upon Default described in Section 4 A above. If Lease is not terminated, the terms of this lease shall be binding on the heirs, executors, administrators, and assigns of the Lessee in like manner as upon the original parties.
- E. Personal Property.** The following personal property is noted to be the Lessee's: Any and all livestock, livestock watering troughs, lambing sheds, gates, panels, backstops, above ground irrigation piping, miscellaneous automobiles, tractors & trailers, any & all farming equipment & miscellaneous personal property.
- F. Governing Law.** This Lease shall be governed by the laws of the State of Colorado and venue for any action arising under this agreement shall be in the appropriate court for Mesa County, Colorado.

ORDINANCE 2019-20
EXHIBIT A

Signatures of Parties to the Lease:

_____	_____
City of Fruita (Landowner/Lessor) By Mike Bennett, -City Manager	Date

_____	_____
Michael D. Etchart (Lessee)	Date

_____	_____
Joseph B. Etchart (Lessee)	Date