

AGRICULTURAL LEASE AGREEMENT

THIS AGRICULTURAL LEASE AGREEMENT is made and executed on this 29th day of April, 2016, by and between THE CITY OF GUNNISON, a Colorado home rule municipality, hereinafter referred to as "LESSOR," and WILLIAM M. PARKER, d/b/a Parker Pastures, of the County of Gunnison, State of Colorado, hereinafter referred to as "LESSEE."

The parties agree as follows:

1. DEMISE, DESCRIPTION, AND USE OF PREMISES. LESSOR demises and lets unto LESSEE, to occupy and use for agricultural purposes, and for no other purposes, the real property located in the County of Gunnison, State of Colorado, more particularly described in attached Exhibit A, commonly referred to as a portion of the "Van Tuyl Ranch," together with all fence and ditch improvements in and on the demised premises. Further excepted from the demised premises are the municipal well and well house located in the southeast corner of the property described in Exhibit A and the residence, barns, sheds, and corrals. While the sheds and corrals are not subject to this lease, LESSOR may allow LESSEE the use thereof, but LESSOR is not obligated to do so. Further, the LESSOR reserves unto itself the right to use the unproductive high ground in the southeast corner of the property for city purposes.

2. TERM. The term of this lease agreement shall be for a period of four years from May 1, 2016, to April 30, 2020. Provided, however, that either LESSOR or LESSEE may cancel the remaining term of this lease as of May 1 of each year of the term by giving written notice of such cancellation to the other party no less than one year prior to May 1 of the year in which cancellation occurs. Ranch operations versus public use operations will be evaluated by the LESSOR and discussed between the LESSEE and LESSOR a minimum of once per year.

3. CONSIDERATION. As consideration for this lease agreement, LESSEE agrees that during the term of this lease, LESSEE shall pay to LESSOR annual rental in the amount of Fifteen Thousand and no/100 Dollars (\$15,000.00,) to be paid in two equal installments of Seven Thousand Five Hundred and no/100 Dollars (\$7,500.00) each due on May 1 and November 1 of each lease year, without notice or demand. In addition, the LESSEE shall timely and adequately perform all of the covenants and agreements undertaken by LESSEE for the benefit of the LESSOR, as hereinafter described. The failure or inability of LESSEE to perform the covenants and obligations undertaken by LESSEE as spelled out herein shall entitle LESSOR to terminate this lease agreement as hereinafter set forth.

4. LAND USE. LESSEE shall use the real property described herein solely for the purpose of raising hay and grazing cattle and associated or necessary horses used in LESSEE'S operation. No other types of livestock shall be kept on the premises by LESSEE without the express written consent of LESSOR. If permitted, the LESSEE shall, at his expense, keep livestock such as pigs and chickens, a minimum of 75' from public trails and shall be rotated as often as necessary so as not to cause harm to land or water ways. LESSEE shall not utilize animal carcasses of any type as feed. Animal waste from chickens, pigs, and dairy cattle shall not be discharged into water ways. LESSEE dogs shall be on a leash or penned at all times other than while being utilized to herd or guard livestock. LESSEE shall follow best management practices as defined in the most recent copy of the Natural Resources Conservation Service (NRCS) document. LESSEE may also store equipment used to irrigate, raise, and harvest hay upon the premises. No other use of the property shall be permitted without the express written consent of the LESSOR.

5. IRRIGATION OF PROPERTY. The irrigation of the property described herein is an essential element of the consideration to be undertaken by LESSEE on behalf of LESSOR.

Irrigation of the property shall be undertaken in accordance with the following provisions:

a. Water Rights. The water rights appurtenant to the real property described herein held by the County of Gunnison shall be applied to the property in accordance with their historical use for so long as the County of Gunnison, the current owner of said water rights, permits the use of said water rights upon the property. Upon notice by the County of Gunnison to LESSEE and LESSOR that the County of Gunnison intends to apply to a court of competent jurisdiction for a change in point of diversion of the water rights historically appurtenant to the real property described in this lease, or for a change in use of such water rights, the LESSOR shall make prompt application to a court of competent jurisdiction for a change in point of diversion and change in use of those water rights owned by LESSOR which, in LESSOR'S sole judgment, are appropriate for use upon the subject matter real property for agricultural purposes and other uses of LESSOR. Any water rights transferred by LESSOR shall be subject to the legal and physical availability of such rights, and LESSOR makes no express or implied warranties regarding the quantity or quality of water delivered under such rights. In the event that the

transfer of LESSOR'S water rights to the subject property requires construction of diversion structures, ditches to convey such water to the subject property, or other improvements of like kind, LESSOR shall undertake construction of such improvements at its sole cost and expense.

b. Irrigation Practices. LESSOR and LESSEE agree that it is an essential element of the consideration to be paid by LESSEE to LESSOR that the real property described herein be irrigated to the fullest extent possible. LESSEE agrees that he shall apply to the land such water as is necessary to irrigate a hay crop during the historical irrigation season, which is approximately May 15 to November 1 of each year, depending upon the weather conditions at the beginning and end of each irrigation season. While LESSEE will be permitted to remove the water from the land for purposes of harvesting the hay crop, at all other times during the historical irrigation season, LESSEE shall apply to the real property adequate water to maximize the raising of hay on the subject property, subject only to the legal and physical availability of such water.

c. Ditch maintenance. LESSEE agrees that he shall be solely responsible for maintenance of all diversion structures, head gates, ditches, flumes, and other structures

which are located within the property described in Exhibit A, at his sole cost and expense, and in a manner adequate to allow or permit the full application of the necessary water to the subject property to maximize hay production. LESSOR agrees that it shall maintain the diversion structures, head gates, ditches, flumes, and other structures necessary to irrigate the property that are located off of the property described in Exhibit A, at its sole cost and expense. Such maintenance and any improvements thereto shall take place at such times as LESSOR deems most appropriate. Maintenance shall be required solely to maintain the historic flows to the property. Any improvements beyond required maintenance shall be done at the sole discretion of LESSOR.

d. Forfeiture for Failure to Irrigate. Any failure of the LESSEE to irrigate the lands 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 leased property, shall be grounds for forfeiture of the lease by LESSOR: Failure or refusal to cultivate the land and make use of available water under such water rights; diversion of the water to other lands without the express permission of the LESSOR; or failure to maintain the irrigation structures in such a manner

as to allow the full application of water rights to the subject property.

e. Water Rights Appurtenant to Land. The claim, assertion, or establishment of any water right in connection with the use of the leased property by LESSEE shall attach to and become appurtenant to the land, and no claim thereto shall be made by the LESSEE, individually, except for the right of use thereof during the term of this lease.

6. CONSTRUCTION, MAINTENANCE, AND REMOVAL OF FENCES. LESSEE shall not remove or relocate any fences that are on the leased premises at the commencement of this lease without the prior, express, and written consent of LESSOR. LESSEE shall, at his own expense, build neat, stock-proof, and lawful fences and gates, other than trails fences, upon the leased premises as LESSEE shall deem necessary for his operation of the premises. All fences, whether currently on the property or constructed thereon in the future, shall be kept in good repair to the satisfaction of LESSOR. LESSOR may build such gates in the existing perimeter fences as are necessary to gain access to the areas reserved for use by LESSOR in paragraph 1 of this lease.

7. IMPROVEMENTS. LESSEE shall not build structures or other improvements, including fences, ditches, headgates, and

other agricultural type improvements on the leased premises without the prior, express, and written consent of LESSOR. Upon such consent being given, LESSEE shall fully pay for all materials joined or affixed to the premises pursuant to this lease, and pay, in full, all persons who perform labor on the premises, and will not permit or suffer any mechanic's lien or material supplier's lien of any kind or nature to be enforced against the premises for any work done or materials furnished on the premises, at LESSEE'S insistence or request. At the time of termination of this lease agreement, all such improvements or structures, except those which may be expressly agreed by LESSOR and LESSEE to be trade fixtures, and then only if they can be removed without injury to the real property, shall immediately become a part of the real property, and the property of the LESSOR.

8. USE OF CHEMICALS ON PROPERTY. LESSEE shall apply no chemicals, be they fertilizers, herbicides, or pesticides, at any place upon the property without the prior written and express consent of the LESSOR. While LESSOR'S consent shall not be unreasonably withheld, LESSOR'S interest herein is to protect the water supply of the LESSOR, and LESSOR may deny consent for

application of any persistent chemicals which may affect the LESSOR'S water supply.

9. HAZARDOUS SUBSTANCES. The term "hazardous substances", as used in this lease, shall include, without limitation, flammable, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority.

a. LESSEE'S Restrictions. LESSEE shall not cause or permit to occur:

i. Any violation of any federal, state, or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions on, under, or about the property or arising from LESSEE'S use or occupancy of the property, including but not limited to soil and ground water conditions; or

ii. The use, generation, 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.

b. Environmental Clean-Up.

i. LESSEE shall, at LESSEE'S own expense, comply with all laws regulating the use, generation, storage, transportation, or disposal of hazardous substances ("laws").

ii. LESSEE shall, at LESSEE'S own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities (the "authorities") under the laws.

iii. Should any authority or any third party demand that a clean-up plan be prepared and that a clean-up be undertaken because of any deposit, spill, discharge, or other release of hazardous substances that occurs during the term of this lease, at or from the property, or which arises at any time from LESSEE'S use or occupancy of the property, then LESSEE shall, at LESSEE'S own expense, prepare and submit the required plans and all related bonds and other financial assurances, and LESSEE shall carry out all such clean-up plans.

iv. LESSEE shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of hazardous substances that is

requested by LESSOR. If LESSEE fails to fulfill any duty imposed under this paragraph b within a reasonable time, LESSOR may do so; and in such case, LESSEE shall cooperate with LESSOR in order to prepare all documents LESSOR deems necessary or appropriate to determine the applicability of the laws of the property and LESSEE'S use thereof, and for compliance therewith, and LESSEE shall execute all documents promptly upon LESSOR'S request. No such action by LESSOR and no attempt made by LESSOR to mitigate damages under any law shall constitute a waiver of any of LESSEE'S obligations under this paragraph b.

v. LESSEE'S obligations and liabilities under this paragraph b shall survive the expiration of this lease.

c. LESSEE'S Indemnity.

i. LESSEE shall indemnify, defend, and hold harmless LESSOR and its respective officers, council members, agents, and employees, from all fines, suits, procedures, claims, and actions of every kind, and all costs associated therewith (including attorneys' and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge, or other release of hazardous substances that occurs during the term of this lease at or from the property, or

from LESSEE'S failure to provide all information, make all submissions, and take all steps required by all authorities under the laws and all other environmental laws.

ii. LESSEE'S obligations and liabilities under this paragraph c shall survive the expiration of this lease.

10. GRAZING OF PROPERTY. All grazing of livestock upon the property shall be conducted in accordance with sound agricultural practices, so as not to overgraze the property. Stubble height shall not be grazed or reduced to less than a 3" height average per pasture.

11. ASSIGNMENT OR SUBLEASE. This lease agreement is personal to the LESSEE, and LESSEE shall neither assign nor sublease any portion of the subject property during the term hereof. LESSEE may, by agreement with others, graze livestock of others for consideration, and may sell any hay crops raised on the subject property, and keep the proceeds thereof for himself.

12. LABOR AND MATERIALS. LESSEE shall be solely responsible to acquire and pay for all labor and materials necessary to operate the subject property for agricultural purposes.

13. TAXES. LESSEE shall be solely responsible to pay all ad valorem taxes assessed against any personal property belonging to LESSEE and used in the operation of the real property for agricultural purposes. In addition, in the event any ad valorem taxes are assessed against the leasehold interest of the LESSEE, LESSEE shall be solely responsible to pay the ad valorem taxes assessed against his leasehold interest, and shall not permit the same to be deemed in default.

14. INSURANCE. LESSEE shall be solely responsible for acquisition of casualty loss and extended coverage insurance on all his personal property located upon the real estate, as well as such casualty insurance as he shall deem necessary to protect his interest in the improvements, if any, located upon the real property described herein. LESSOR undertakes no responsibility for casualty or extended coverage insurance or loss to any improvements located upon the subject real property.

In addition, LESSEE will obtain and deliver to LESSOR a certificate of public liability and property damage insurance, naming LESSOR as an additional insured, under LESSEE'S insurance policy in the event a claim is made resulting from any action taken by LESSEE pursuant to this lease agreement. Such insurance shall be in the amount of at least that required by

the "Colorado Governmental Immunity Act", C.R.S. 24-10-101, et. seq., or any successor legislation, as the same may be amended from time to time. Such certificate of insurance shall provide that LESSOR shall be given prior notice of at least ten days prior to cancellation or termination of such insurance coverage. LESSEE shall provide such certificate of insurance to LESSOR annually, or upon such other periodic term as is required by such insurance policy. In addition, LESSEE shall maintain such workman's compensation insurance as may be necessary or required to cover his employees hired for the purpose of operating the real property pursuant to this lease agreement.

15. ASSUMPTION OF RISK AND INDEMNITY. LESSEE agrees to assume the risk or all injuries, including death, resulting directly or indirectly, wholly or in part, from the performance or omission of any work or obligations undertaken or required by this lease agreement, or the occupation and possession of the real property, and to indemnify and save harmless the LESSOR from and against any and all liability arising therefrom, including liability arising in whole or in part from negligence or breach of duty, statutory or otherwise, on the part of LESSOR, its agents, servants, and employees, and including all

expense, legal or otherwise, incurred by LESSOR in the investigation and defense of any claim or suit.

16. RIGHT OF ENTRY. LESSOR shall have free access to the above-described real property, including any building or structure that may, at any time, be on such property at all reasonable times for the purpose of examining or inspecting the condition of such property or in order to exercise any right, power, or obligation reserved to LESSOR under this lease agreement. Further, LESSOR shall have access to the property for the purpose of conducting surveys of the property, the preparation of maps of the property, conducting hydrological studies or tests, and have access through the property for purposes of flood control or riverbank restoration.

17. DEFAULT. If LESSEE shall fail to substantially carry out the provisions of this lease agreement, except the obligation to pay the rent set forth herein, within thirty days after service by LESSOR of written notice to LESSEE of LESSEE'S failure to fulfill the obligations, or in the event the default identified in LESSOR'S notice is one that cannot be rectified within such thirty-day period, within a reasonable time thereafter, LESSOR, at its sole option, may elect to terminate this lease agreement, and to enter upon the leased premises and

retake possession thereof. If LESSEE fails to pay any installment of rent due hereunder within three days of service by LESSOR upon LESSEE of a written demand therefor, LESSOR shall have the right to terminate this lease and recover judgment for such unpaid rental installment.

18. SURRENDER OF PREMISES UPON TERMINATION. Upon termination of this lease agreement, whether by cancellation by LESSOR or LESSEE, as a result of default hereunder by LESSEE, or by expiration of the full term hereof, LESSEE shall vacate the leased premises, leaving them in the same condition they were in at the time of execution hereof, except for reasonable use and wear, acts of God, or damage by causes beyond the control of LESSEE, and return possession thereof to LESSOR. Unless otherwise agreed by the parties, upon termination of this lease agreement, LESSOR shall have the right to own and possess, at LESSOR'S election, all crops remaining unharvested at the time of termination. It shall be LESSEE'S responsibility to remove all personal property, including harvested crops, from the property at the termination of this lease agreement.

19. RESERVATION OF RIGHT TO GRANT EASEMENTS. LESSOR reserves the right to grant easements and rights-of-way across or upon the leased property for public highways, railroads,

tramways, telephone and telegraph transmission lines, utility lines, irrigation canals, and similar purposes, provided, however, that such shall not unreasonably interfere with the use of the property for agricultural purposes. In the event of the grant of such easement, whether voluntarily by LESSOR or by acquisition pursuant to eminent domain, LESSEE shall have no right whatsoever to participate in any consideration paid for such easement or eminent domain award, all of which will be the property of LESSOR.

20. RESERVATION OF RIGHT TO CREATE AND USE A PUBLIC TRAIL. LESSOR reserves the right to create a public trail across the leased premises and to allow the public to use the trail. LESSEE may cross the trail as necessary for the allowable uses under this lease, but shall not obstruct such trail or interfere with the public's use of the trails. Prior to establishing the trails, LESSOR shall review their alignment with LESSEE. LESSEE shall not use public trails for his ranch operations, other than to directly cross, in order to relocate livestock or motorized ranch equipment.

21. NO WAIVER. Failure of either party to this agreement to insist upon performance of any of the terms and conditions of this agreement, or the waiver of any breach of any

of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such waiver or forbearance had occurred.

22. ATTORNEY'S FEES. In the event either LESSOR or LESSEE shall bring suit to compel performance of or recover for breach of any covenant, agreement, or condition contained in this lease agreement, the prevailing party shall be entitled to recover from the other party costs and reasonable attorney's fees.

23. GOVERNING LAW. It is agreed that this agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Colorado.

24. EFFECT OF PARTIAL INVALIDITY. The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. In the event any provision of this agreement is held to be invalid, the parties agree that 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.

25. ENTIRE AGREEMENT. This agreement shall constitute the entire agreement between the parties, and any

prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party, except to the extent incorporated in this agreement.

26. MODIFICATION OF AGREEMENT. Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if placed in writing and signed by each party, or an authorized representative of each party.

27. NOTICES. All notices and communications required herein shall be in writing and shall be sent by registered or certified mail at the following addresses:

LESSOR City of Gunnison
 Attention Public Works Director
 P. O. Box 239
 Gunnison, Colorado 81230

LESSEE William M. Parker, d/b/a
 Parker Pastures
 57564 East Highway 50
 Gunnison, Colorado 81230

Notice shall be deemed given properly when mailed to the above addresses. Any party may change its address of record by giving written notice of the change to the other party.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

THE CITY OF GUNNISON, a Colorado
Home rule municipality

By _____
Richard Hagan
Mayor

ATTEST:

Gail Davidson
City Clerk

William M. Parker

**EXHIBIT A to
VAN TUYL RANCH AGRICULTURAL LEASE AGREEMENT**

Township 50 North, Range 1 West, N.M.P.M.

Section 26: NE1/4NE1/4, W1/2SE1/4NE1/4, W1/2NE1/4, SE1/4NW1/4, SE1/4, E1/2SW1/4

TOGETHER WITH the parcel described in Bargain and Sale Deed from Elma L. Harris to Raymond P. Van Tuyl recorded in Book 714 at page 776.

EXCEPTING from the above described property the following described parcels:

A triangular track of land located in the NE1/4NE1/4 of said Section 26 as described in Deed from B.F. Anderson to Fred McDonald recorded in Book 274 at page 39;

A tract of land described in a Deed to H.L. Funk and D.R. Logan recorded in Book 249 at page 501;

A tract of land in the NW1/4NE1/4 of Section 36 as described in Warranty Deed from Elizabeth Harvey to J.D. Miller and Louise Miller recorded in Book 154 at page 495;

All railroad, highway and road rights of way;

That property conveyed to Hazel M. Calkins in Quit Claim Deed recorded in Book 640 at page 041.

That property conveyed from Raymond P. Van Tuyl to Elma L. Harris in Bargain and Sale Deed recorded in Book 714 at page 775.

As MODIFIED by the Fence Line Agreement between Raymond P. Van Tuyl and Elma L. Harris recorded in Book 714 at page 777.

AND AS FURTHER MODIFIED by the Fence Line Agreement between The Trust for Public Land, a California non-profit public benefit corporation, and Rebecca Jo Barkman recorded in Book 714 at page 796.

Section 35: NW1/4NE1/4, NE1/4NW1/4

EXCEPTING from the above described property the following described parcels:

That property conveyed to Lowell R. Wilson and Charlotte L. Wilson in Warranty Deed recorded in Book 288 at page 522;

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That property conveyed to the City of Gunnison in Quit Claim Deed recorded in Book 413 at page 323;

That property conveyed to Albert M. Starika and Ruth E. Starika in Warranty Deed recorded in Book 347 at page 347;

That portion of the SE1/4SW1/4 of said Section 26 and the NE1/4NW1/4 of said Section 35 lying and situate westerly of the westerly high water line of the Gunnison River as conveyed to the Palisade Retreat Club in Warranty Deed recorded June 4, 1973, in Book 453 at page 498.

FURTHER EXCEPTING THEREFROM a tract of land within the NW1/4NE1/4 of Section 35, said township and range, being more particularly described as follows:

Commencing at the northeast corner of said Section 35 (as marked by a brass cap monument set in concrete at the northeast corner of the Palisade Addition); thence South 45°04'11" West 1876.21 feet to a point on the intersection of the westerly boundary of the Palisade Addition to the City of Gunnison with the south boundary of said NW1/4NE1/4 of Section 35, this being the POINT OF BEGINNING for the herein described tract; thence the following courses around said tract:

North 00°36'00" West 780.92 feet along the westerly boundary of said Palisade Addition; North 89°32'00" West 190.10 feet; South 14°42'26" West 807.80 feet to a point on the southerly boundary of said NW1/4NE1/4; South 89°50'41" East 403.36 feet along said southerly boundary to the POINT OF BEGINNING of the herein described tract.

EXCEPTING those parcels in said Section 26 and in said Section 35 conveyed to the Bureau of Reclamation, an agency of the United States Government, in Warranty Deed recorded in Book 714 at Page 803, and Book 714 at Page 793.

County of Gunnison
State of Colorado