

**FRUITA CITY COUNCIL  
SEPTEMBER 20, 2016  
7:00 P.M.**

**1. INVOCATION AND PLEDGE OF ALLEGIANCE**

**2. CALL TO ORDER AND ROLL CALL**

**3. AGENDA - ADOPT/AMEND**

**4. PROCLAMATIONS AND PRESENTATIONS**

**5. PUBLIC PARTICIPATION**

This section is set aside for the City Council to LISTEN to comments by the public regarding items that do not otherwise appear on this agenda. Generally, the City Council will not discuss the issue and will not take an official action under this section of the agenda. **Please limit comments to a five-minute period.**

**6. CONSENT AGENDA**

These are Items where all conditions or requirements have been agreed to or met prior to the time they come before the Council for final action. A Single **Public Hearing** will be opened for all items on the Consent Agenda. These items will be approved by a single motion of the Council. The Mayor will ask if there is anyone present who has objection to such procedure as to certain items. Members of the Council may also ask that an item be removed from the consent section and fully discussed. All items not removed from the consent section will then be approved. A member of the Council may vote no on specific items without asking that they be removed from the consent section for full discussion. Any item that is removed from the consent agenda will be placed at the end of the regular agenda.

- A. MINUTES – A request to approve the minutes from the September 6, 2016 City Council meeting**
- B. COPIER CONTRACT – A request to approve a contract between the City of Fruita and Capital Business Systems, Inc. for a copier at the Fruita Police Department and authorize the City Manager to execute the contract**
- C. AUGUST 2016 FINANCIAL REPORTS – A request to approve the August 2016 Financial Reports**
- D. ORDINANCE 2016-13 – Second Reading – A request to approve an Ordinance to Quit Claim a 20-foot wide strip of land located on the south side of property addressed as 241 S. Sycamore Street to the current property owners in exchange for a Private Utility Easement Agreement**

## 7. PUBLIC HEARINGS

Public Hearings are the formal opportunity for the city council to LISTEN to the public regarding the Issue at hand. For land use hearings and liquor license hearings; the Council is required to act in a quasi-judicial capacity. When acting as a quasi-judicial body, the Council is acting in much the same capacity as a judge would act in a court of law. Under these circumstances, the judicial or quasi-judicial body must limit its consideration to matters which are placed into evidence and are part of the public record. The council must base their decision on the law and evidence presented at the hearing.

- 1) **Applicant Presentation (15 minutes max)** The petitioner is asked to present the proposal. Presentations should be brief and to the point and cover all of the main points of the project.
- 2) **Staff presentation (15 minutes max)** Staff will present the comments and reports received from review agencies, and offer a recommendation.
- 3) **Public Input (limit of 5 minutes per person. If two people in the audience are willing to cede their time to the speaker, that speaker may receive a total of 10 minutes, referred to as banking time).** People speaking should step up to the microphone and state their name and address. Speakers should be to the point and try not to repeat the points others have made.
- 4) **Applicant Rebuttal (limited to 5 minutes)** The Mayor will ask for the applicant's rebuttal. During this brief time, the applicant should answer the questions raised by the public.
- 5) **The hearing is then closed to public comments.**
- 6) **Questions from the Council.** After a Council member is recognized by the Mayor, they may ask questions of the staff, the applicant, or the public.
- 7) **Make a motion.** A member of the City Council will make a motion on the issue.
- 8) **Discussion on the motion.** The City Council may discuss the motion.
- 9) **Vote.** The City Council will then vote on the motion.

- A. **ROBINSON RENTAL CONDITIONAL USE PERMIT – A request to approve a Conditional Use Permit for a VRBO located at 1424 Niblick Way (continued from the September 6, 2016 City Council meeting)**

## 8. ADMINISTRATIVE AGENDA

## 9. COUNCIL REPORTS AND ACTIONS

- A. Council Reports and Actions

- B. **EXECUTIVE SESSION – Discussion and possible action to consider a motion to convene in Executive Session to determine a position relative to a matter that may be subject to negotiation under C.R.S. Section 24-6-402(4)(E)**

## 10. ADJOURN

**FRUITA CITY COUNCIL  
REGULAR MEETING  
SEPTEMBER 6, 2016**

**1. INVOCATION AND PLEDGE OF ALLEGIANCE**

The Invocation was given and the Pledge of Allegiance was recited.

**2. CALL TO ORDER AND ROLL CALL**

Council members present were Bruce Bonar, Dave Karisny, Kyle Harvey, Ken Kreie, Joel Kincaid and Louis Brackett. Mayor Buck called the meeting to order at 7:00 p.m.

**3. AGENDA – ADOPT/AMEND**

Mayor Buck asked if there were any corrections or additions to the agenda. There were none.

- **COUNCILOR BONAR MOVED TO APPROVE THE AGENDA AS PRESENTED. COUNCILOR KARISNY SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

**4. PROCLAMATIONS AND PRESENTATIONS**

**A. PRESENTATION BY JENNIFER STOLL, EXECUTIVE DIRECTOR OF THE GREATER GRAND JUNCTION SPORTS COMMISSION**

Executive Director of the Greater Grand Junction Sports Commission (GGJSC) Jennifer Stoll gave the Council on update with a PowerPoint presentation on what the Commission has been doing and where they are headed in the future.

Ms. Stoll recalled that the GGJSC was established in 2014 to capitalize on the Grand Valley's approach to targeting sporting events and sport tourism. At this time, a comprehensive Facility and Venue Audit was completed to determine what assets are available and how and when they may be used for sporting events. The audit encompassed Mesa County in its entirety.

The GGJSC has filed their Articles of Incorporation and has a Board of Advisors in place, who adopted by-laws earlier this year. The Board then went right to work on developing a Strategic Plan.

Ms. Stoll showed the Council a quick snapshot of the Board of Advisors, which is representative of all of the funding partners which include Colorado Mesa University, the City of Grand Junction, the City of Fruita, the Town of Palisade, Mesa County and Kristi Pollard from the Grand Junction Economic Partnership (GJEP), who is the Chair of the GGJSC Board.

The Strategic Plan of the GGJSC is comprised of five key objectives:

1. Enhancing existing events
2. Recruit new events
3. Own/Operate Events
4. Message expansion
5. Establishing key relationships

Ms. Stoll touched on each of the objectives briefly.

In regards to recruiting new regional and national events, the GGJSC placed 7 bids in 2015 and was awarded (or renewed) 3 events: the Rocky Mountain Collegiate Cycling Conference Regionals (Maverik Classic Event), Special Olympics Colorado (who extended their agreement to three more years) and the 2017/2018 USA Cycling Collegiate National Championships (to held for the first time in the spring of 2017).

In 2016, the GGJSC has placed 11 bids (some still in process), which include 6 sports and 20 different NCAA Championships; everything from cross-country, air rifle, swimming, diving, soccer, and tennis. The NCAA packages their bids for a multi-year award for the next 4 years. So far, the GGJSC has received one award: the Colorado Masters State Swim Championships in March. The other bids that are out are either due in September or October and bid awards won't be announced until December.

Ms. Stoll continued that the objective of owning and operating the GGJSC's own events was examined for a number of reasons including specifically targeting community venues and assets that the Grand Valley already has. Other reasons are to fill gaps in community calendars and to build sustainability in the actual organization to provide some diverse revenue streams.

Ms. Stoll stated that a good example of an event that the GGJSC owns and operates is the Rim Rock Marathon. In 2013, the first marathon was in transition because the Striders (a local running club) acquired it from a private promoter, but no one really took ownership of it until the GGJSC stepped in and said they would be happy to operate the marathon and it was a great fit. In 2014, GGJSC increased the registration of the Rim Rock Marathon up to almost 200 runners (a 20% increase) and in 2015, registration was up 30% to 244 participants. This number included runners from 20 states and six countries and 70% of them were non-local participants.

Ms. Stoll said that the GGJSC also took the first step toward branding the Rim Rock Marathon as a Fruita event by moving the finish line from the State Park on the other side of the highway to Circle Park, which worked out really well. The 2016 Rim Rock Marathon will move forward with this same plan. Currently, 175 people have registered for the 2016 marathon, but there are two months left before the event and Ms. Stoll said she was confident that the total participants will eclipse the number from last year and the event will continue to grow. A downhill half-marathon has also been added and has been rebranded as a Fruita event.

Ms. Stoll played a promotional video for this year's Rim Rock Marathon that was done by 14K Media that is being pushed out through all platforms and sponsors including US Bank and Family Health West.

Ms. Stoll stated that the revenue from the Rim Rock Marathon is split between the Sports Commission and CMU's Track & Field and Cross-Country Program, who provides volunteers. The Sports Commission has also partnered with the Fruita Parks and Recreation Department on the Fruita 0.038 Marathon, which is a one-mile family-friendly run addition to the Rim Rock Marathon.

Objective number 4 on the GGJSC's Strategic Plan (Expand messaging) is to be the community clearinghouse for sporting events, to increase non-local brand awareness and to increase local brand awareness to get the message out about who GGJSC is and what they do.

The GGJSC has worked with a subcommittee of their Advisory Board to write a proposal so that when events come to the community, whether their entry point is the City of Fruita or Mesa County or Grand Junction, they would be directed to the Sports Commission to vet the sporting event and to allocate resources as approved by the Board. The Board would then report on how those resources were allocated and what the end result was in terms of economic impact and visitor-ship perspective.

Ms. Stoll said that the goal with the Event Grant Program is to create a central place with whom event owners work regardless of request origination. She said hopefully it relieves some of the burden off of elected officials because nobody wants to be asked for resources out of budget cycle.

Ms. Stoll said that the GGJSC has made a much more concerted effort in getting their message out on both the local and national levels. Leading sport tourism publications have featured them in articles a number of times this year.

Ms. Stoll said the last objective of the GGJSC is to establish key relationships and to continue to build the awareness of who the GGJSC is with private sector partners, civic leaders, event directors (both locally and non-locally), and youth sport organizers. She said the collaborative effort has really been the catalyst for the GGJSC from the onset and is extremely vital.

Ms. Stoll stated that the GGJSC is in the process of filing for their 501-C-3 status, they have submitted an application for an Enterprise Zone designation, they will have a private sector fundraising campaign and will be implementing the Event Grant Program.

Moving forward into FY 2017, the GGJSC will request a contribution from the City of Fruita for \$1,500 (\$1,220 was requested and contributed last year). They will also be applying for a Colorado Tourism Office Marketing Matching Grant, which will double public investment up to \$25,000 for marketing efforts. The grant application is due mid-October and Ms. Stoll said she would earmark the contributions in their budget that have already been given by public partners and have that matched rather than asking for more public partners for additional resources.

Ms. Stoll stated that it has been amazing to watch the progression of the Sports Commission over the last few years and although big strides have been made, there is still much to do. She commended Fruita's City Manager and Parks and Recreation Director, saying it has been nothing but a pleasure to work with them and she is looking forward to what the future holds.

Ms. Stoll added that she really thinks the Rim Rock Marathon with 300 to 350 runners may not be a huge event, but that's not what the community wants here and what we do have is a beautiful, serene, customer service-driven event that can continue on the trajectory of growth and become a marquee event for the community.

## **5. PUBLIC PARTICIPATION**

Mr. Richard Sander, 129 S. Maple Street, stated that he had to voice one more comment on the issue of the Sacred Heart Church; he still can't figure out why the church doesn't want to sell the house property. Mr. Sander said he spoke to Community Development Director Dahna Raugh and asked if there was anything that would legally prevent the church from selling the house as a residence and Mrs. Raugh said that there were no laws against that.

Mr. Sander continued that he wasn't trying to be negative, but he thinks that if the church markets the house property commercially with the church building, then it would make sense for a commercial enterprise to knock the house down to provide parking spots. He said he believes this is why the church has made no effort to sell the house.

Hearing no further comments from the public, Mayor Buck closed the public participation section of the agenda.

## **6. CONSENT AGENDA**

- A. MINUTES – A REQUEST TO APPROVE THE MINUTES FROM THE AUGUST 16, 2016 CITY COUNCIL MEETING**
- B. SPECIAL EVENT LIQUOR PERMIT APPLICATION – FRUITA FALL FESTIVAL – A REQUEST TO APPROVE A SPECIAL EVENT LIQUOR PERMIT APPLICATION FOR THE ROTARY CLUB TO SELL BEER AT THE FRUITA FALL FESTIVAL ON FRIDAY, SEPTEMBER 23, 2016 FROM 3:00 PM TO 10:00 PM AND ON SATURDAY, SEPTEMBER 24, 2016 FROM 11:00 AM TO 10:00 PM AT CIRCLE PARK AND CIVIC CENTER MEMORIAL PARK (TWO BEER GARDENS)**
- C. RESOLUTION 2016-32 – A REQUEST TO APPROVE A RESOLUTION FOR SUPPLEMENTAL BUDGET AND APPROPRIATION FOR OVERLAYS AND PUBLIC SAFETY TRAINING**
- D. RESOLUTION 2016-33 – A REQUEST TO APPROVE A RESOLUTION TRANSFERRING BUDGETED AND APPROPRIATED FUNDS FROM THE CAPITAL PROJECTS FUND TO THE GENERAL FUND FOR ECONOMIC DEVELOPMENT EXPENSES (FOREIGN TRADE ZONE)**
- E. RESOLUTION 2016-34 – A REQUEST TO APPROVE A RESOLUTION APPROVING AND GRANTING A LICENSE AGREEMENT TO BLACK ROCK GJ, LLC FOR THE USE OF THE OLD FRUITA WATER PIPELINE AND**

**EASEMENT AS RECORDED IN BOOK 995, PAGE 21 OF THE MESA COUNTY CLERK AND RECORDER'S OFFICE FOR IRRIGATION PURPOSES AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT**

- F. ROBINSON VACATION RENTAL CONDITIONAL USE PERMIT REQUEST – A REQUEST TO CONTINUE THE APPROVAL OF A CONDITIONAL USE PERMIT FOR A VRBO TO THE SEPTEMBER 20, 2016 CITY COUNCIL MEETING**
- G. ORCHARD HOUSE VACATION RENTAL CONDITIONAL USE PERMIT REQUEST – A REQUEST TO APPROVE A CONDITIONAL USE PERMIT FOR A VACATION RENTAL ON APPROXIMATELY .45 ACRES OF LAND ZONED COMMUNITY RESIDENTIAL AND LOCATED AT 164 N. ORCHARD AVENUE**

Mayor Buck opened the public hearing on the Consent Agenda. Hearing no comments from the public, she referred back to the City Council.

- **COUNCILOR KINCAID MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. COUNCILOR BRACKETT SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

## **7. PUBLIC HEARINGS**

There were no public hearing items on the agenda.

## **8. ADMINISTRATIVE AGENDA**

There were no administrative items on the agenda.

## **9. COUNCIL REPORTS AND ACTIONS**

### COUNCILOR BONAR

Councilor Bonar stated that there was no Historic Preservation Board meeting on the first Monday of the month due to the Labor Day holiday.

Councilor Bonar said that the mural that is being painted on the west side of In the Middle Liquors is really nice; it's a western theme with downtown Fruita. He recommended that everyone drive by to look at it. Councilor Bonar said the artist(s) are doing a really nice job and should be applauded for doing so.

### COUNCILOR KARISNY

Councilor Karisny reported that he attended the Grand Valley Regional Transportation Committee (GVRTC) meeting the previous month and had sent the Council members the new memorandum on the contracted service provider and there were a couple of pages that describe the process of choosing a particular company. He continued that City Engineer Sam Atkins was on the five-person panel that put in a lot of time reading hundreds of pages of applications as well as interviewing applicants. Councilor Karisny said that the GVRTC Board is made up of elected officials including Phyllis Norris, Penny Prinster, Scott McInnis and himself. These Board members approved the recommendation of the panel for the contracted service provider by a vote of 3 to 1. Phyllis Norris chose to deny it, but only after a lengthy discussion about Grand Junction not wanting to continue funding Grand Valley Transit (GVT).

Councilor Karisny went on to say that there is a history on the issue and that Ms. Norris had stated that it was her understanding when the GVT was established in 2007, there was a White Paper that said that in five years, the GVT would be self-funding.

Kathy Hall (now the director of Region 3) was part of the initial establishment of the GVT and she was also at the meeting and said that there was no such description in the White Paper.

Councilor Karisny said this has been an ongoing issue with the City of Grand Junction and that it is kind of baffling for the Board members because Grand Junction benefits from GVT the most and everybody has always said that, so it seems logical that they (Grand Junction) would understand that.

Councilor Karisny said that in a couple of months, another Intergovernmental Agreement (IGA) will be developed for approval by the Town of Palisade, the City of Fruita, the City of Grand Junction, and Mesa County. He noted that the last IGA was a two-year agreement and was about \$100,000 less than what the GVRTC was asking for, but it was kind of a compromise because Grand Junction wanted to reduce the amount of their contribution.

Councilor Karisny continued that Ms. Norris was more interested in funding the reduced service model and there was a pretty good discussion between Scott McInnis and Ms. Norris about that. He added that all the municipalities will be able to budget for the next year at the same rate that they have paid in the past. This will give the municipalities some time to negotiate what they might do as far as possibly reducing services or increasing funding of the GVT.

Councilor Karisny said that Scott McInnis agreed with Todd Hollenbeck that the funding of the GVT should be at the 64,000 hours and not the reduced service level. He said that the issue that the City of Fruita might have is if a reduced service level is approved. The initial dialogue included possibly eliminating some of the more expensive routes. Fruita's Route 8 is the most expensive route the GVT has at about \$350,000, even though a little less than half of the route is in Grand Junction.

Councilor Karisny said he believes the group will continue to discuss the possibility of reduced services. Todd Hollenbeck and the GVRTC staff are going to go through a process of looking at efficiencies using some new software that will provide specifics about how and when routes are

running and other information. They might be making some recommendations after that. They will also be evaluating the bus passes for CMU and St. Mary's Hospital.

Councilor Karisny stated that the bottom line is that there will be the ongoing discussion about the City of Grand Junction reducing their contribution to the GVT system.

Councilor Karisny said he thought it would be helpful for the City of Fruita to try to ensure that Route 8 is being used to the maximum by providing the information about route schedules to as many people as possible. He suggested putting something in the City Link about the route and also putting a link to the information on the homepage of the City's website. He said Fruita needs to show that Route 8 is being used.

Councilor Karisny pointed out that ridership on all the other GVT routes are down about 8% while Fruita's Route 8 ridership is just a little bit up from last year (currently around 3,000 rides per month).

Councilor Karisny said there will be a discussion among City Managers about the IGA and their recommendations will go to the GVRTC Board. The GVRTC Board will then make a recommendation to the governing bodies of the local municipalities and the county, who ultimately will approve or deny the IGA. The IGA will come up in October and it may be for one year or multiple years.

#### COUNCILOR HARVEY

Councilor Harvey noted that his Boards and Commissions meeting were forthcoming so he didn't have anything to report until afterwards.

#### COUNCILOR KREIE

Councilor Kreie reported that he attended the Associated Governments of Northwestern Colorado (AGNC) the day after the last Council meeting. The Board talked about the Dinosaur Welcome Center, which has had a 10% increase in visitors in 2016. There was a report by the Area Agency on Aging who serves about 10% of Fruita's seniors currently.

Councilor Kreie explained that AGNC do a lot of lobbying; they keep up on what bills are forthcoming and make statements and claims about what those bills will do to their constituents. He added that there has been a request for a draft bill for a new or revised Irrigation Act. This will affect water users under the 1921 Irrigation Act. Councilor Kreie said if more information was needed about this, the AGNC's government relations person was the one to contact.

Councilor Kreie continued that another thing discussed at the AGNC meeting was how several of the Councils of governments around Colorado have designated themselves as Economic Development Districts and they had someone give a presentation about it. Councilor Kreie said the AGNC may try to do this in some form or another.

Councilor Kreie noted that the Downtown Advisory Board meeting was forthcoming.

COUNCILOR KINCAID

Councilor Kincaid reported that he, Human Resources Director Odette Brach and City Manager Mike Bennett met with the Visitors Convention Bureau (VCB) and they are putting in for a grant opportunity through the CTO for outdoor recreation. The grant application is due in October and the goal is to reach up to a \$25,000 match. There are some funds earmarked in the Fruita Tourism budget for next year, so this would be an opportunity to expand those dollars a little bit farther.

Councilor Kincaid noted that the Governor's Conference will be held the following week (September 14 – 16) and Mrs. Brach will be going for all three days, but he will be there for two days. They will share a booth with the Grand Junction VCB and Palisade.

Councilor Kincaid stated that local partners in the Grand Valley were awarded the Governor's Conference next year in Grand Junction. The conference is for the people that are involved in tourism throughout the state such as tourism boards and other government officials who are trying to get more tourism into Colorado.

Councilor Kincaid stated that the Tourism Advisory Board had their planning meeting, but said he had to recuse himself due to a conflict of interest. He asked the City Manager to get the information about that meeting to the other Council members.

COUNCILOR BRACKETT

Councilor Brackett stated that the Police Commission meeting would be coming up in September and he would be attending.

Councilor Brackett reported that the Parks and Recreation Advisory Board met the previous Thursday. They had a rather lengthy agenda and Councilor Brackett said staff did a very good job of detailed reporting of the accomplishments have been so far with the grants being awarded and those grants currently in process. He asked if Parks and Recreation Director Ture Nycum (present in the audience) wanted to include the information about the timelines for grant award notifications.

Mr. Nycum noted that in regards to the grant application for the Kokopelli section of the Riverfront Trail, the City received word that the Department of Local Affairs (DOLA) awarded a \$1 million grant for the project and staff is waiting to hear back from Great Outdoors Colorado (GOCO) for another \$2 million grant application as well as a CDOT TAP grant application for \$1.2 million. The award notices for these should be coming up at the end of September or first of October.

Councilor Brackett stated that the Parks and Recreation Advisory Board also had some discussion concerning adopting accreditation standards for city employees in the Parks and Recreation/Parks Departments. There will be a cost involved, but if funding is not approved in the budget, the Department will look at the accreditation standards anyway because they have a professional approach that they want to take to improve on the services provided to Fruita's citizens.

Councilor Brackett continued that there was also some discussion on the lagoon property redevelopment project. He said that the survey that was sent out to the community resulted in some

decent responses, however, there were about 12 to 15 different areas where recommendations were made to the City about potential recreational activities such as zip lines, kayaking, canoeing and some beach areas. Councilor Brackett said he thought that the process will be refined in the future and there will be some good priorities established.

Councilor Brackett said there was also some talk about the budget and the request for changes in the hours of operation at the Fruita Community Center. Suggestions (with input from the community) include opening the FCC one half hour earlier. The Board also looked at reducing some staffing costs on some evenings when there is not a lot of heavy use at the FCC. Staff compiled some surveys from other Parks and Recreation Departments across the state before they will have a final recommendation. Councilor Brackett noted that there may also be some slight increases in the fee structure for the FCC. He said that overall, the revenue that is being generated by the FCC is far surpassing expectations.

Mr. Nycum added that the Parks and Recreation Advisory Board analyzed some alternatives regarding reducing some hours at the FCC on Friday and Saturday evenings and other options.

#### MAYOR BUCK

Mayor Buck stated that she had already received a phone call about the crosswalk on Coulson Street from Independence Village to the Fruita Community Center and asked if it was being kept open during construction. Mr. Nycum responded there is a way for the residents of Independence Village to get to the FCC.

Mayor Buck said she attended the Feast of Skulls the day before she and the City Manager left for Eurobike. She said it was a good event, but she wondered why the Museum of Western Colorado (MWC) is still promoting three campuses, which is not financially sustainable.

Councilor Kincaid responded that the challenge currently is that the MWC is trying to get a feasibility study completed, which is about \$40,000. He added that the MWC will be submitting a letter to the City of Fruita for additional support for that.

Councilor Brackett noted that he forgot to mention that the FCC would be conducting their annual Maintenance Week and will be closed from September 12 through the 19<sup>th</sup>.

Mayor Buck stated that the trip to Germany for Eurobike had its high points and low points; the low point being based around lack of sleep and the high point being that the media coverage was exceptional. She noted that the City Manager received an e-mail two days later regarding someone who wants to talk to the City of Fruita at the Interbike Show in Las Vegas the week of September 19<sup>th</sup>.

Mayor Buck continued that the media event was okay and working with MRP was great. She said she wasn't sure if she and the City Manager did a whole lot of good with cold contacts at Eurobike, but on the day that they left, they were two hours away from the show and some person recognized them from the show, which meant that they did stand out.

## 10. CITY MANAGER'S REPORT

City Manager Mike Bennett reported that Big Agnes (the company that was looking at locating in Fruita) had made the decision not to expand in the Grand Valley.

Mr. Bennett noted that on the agenda for the upcoming workshop session would be a discussion about the Grand Valley Transit Agreement, although the majority of the meeting would be about the presentation of the draft budget for 2017. Budget discussions will continue at subsequent Council meetings. Mr. Bennett pointed out that Finance Director/City Clerk Margaret Sell has done the budget for the City of Fruita for over 30 years and she had said the other day that the 2017 Budget will be the toughest one yet.

Mr. Bennett said that banners featuring the new logo had been installed everywhere in town where a light post with brackets is located.

Mr. Bennett stated that in regards to the Museum of Western Colorado, the MWC was at a City Council workshop session and staff asked the Executive Director (Peter Booth) to fill out a request for Outside Agency Funding from the City. He continued that it seemed like the MWC wanted the City of Fruita to pay for a full grant match for the feasibility study. Mr. Bennett said staff will be evaluating all of the Outside Agency Funding Requests received and will be bringing those to the City Council during the budget discussions.

Mr. Bennett said that Eurobike was great in a lot of ways and it was also tough in a lot of ways, but overall, the media coverage was great; *Bicycle Retailer* is a very big publication in the biking industry and they covered the City of Fruita very well. He continued that he also had interviews with them on the phone before attending Eurobike, and there will be a feature in the October publication, which will be released at Interbike.

Mr. Bennett said that the biggest thing about going to these trade shows is getting the attention and showing that Fruita is serious about recruiting businesses.

Mr. Bennett said that he would be meeting with the head of one company in October in Fruita and that there are actually two companies that seem to be serious about their interest in Fruita, which is exciting.

Mr. Bennett noted that he and the Mayor would be heading to Interbike in two weeks with Steve Jozefczyk from GJEP, so they would not be in attendance at the September 20<sup>th</sup> Council meeting. He noted that he was already starting to line up some great meetings at the show.

## 11. ADJOURN

With no further business before the Council, the meeting was adjourned at 7:50 p.m.

Respectfully submitted,

Debra Woods  
Deputy City Clerk  
City of Fruita



**AGENDA ITEM COVER SHEET**

**TO: FRUITA CITY COUNCIL AND MAYOR**  
**FROM: CHIEF MACY**  
**DATE: SEPTEMBER 20, 2016**  
**RE: A REQUEST TO APPROVE A COPIER LEASE AGREEMENT FOR THE FRUITA POLICE DEPARTMENT AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT**

**BACKGROUND**

The Fruita Police Department has received a proposal from Capitol Business Systems for the lease of two copiers. The lease term is for a 60 month period with a minimum monthly payment of \$310.00, which includes 3,600 black/white copies, 800 color copies, all maintenance and consumable supplies such as toner.

**FISCAL IMPACT**

This lease will replace an expired 3 year lease, at a lesser cost for the minimum lease payment and a larger allowance for the number of copies per month. The lease will also allow for the same two copiers rather than two different models, as is the current configuration. The net fiscal impact is expected to be a savings of approximately \$800 - \$1,000 per year.

**APPLICABILITY TO CITY GOALS AND OBJECTIVES**

Not applicable.

**OPTIONS AVAILABLE TO THE COUNCIL**

Authorize the City Manager to enter into a lease for the use of the two copiers.

Authorize the City Manager to negotiate the terms of the lease agreement and bring it back to the Council for action.

**RECOMMENDATION**

It is the recommendation of Fruita City Staff that the City Council, by motion:

**AUTHORIZE THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH CAPITOL BUSINESS SYSTEMS FOR TWO COPIERS FOR THE FRUITA POLICE DEPARTMENT FOR A 5 YEAR TERM**



# Sales Order Agreement

23897

Order ID #

CO48

eAuto Account #

Customer Bill To				Customer Ship To			
Name City of Fruita Police Department				Name City of Fruita Police Department			
Address 157 South Mesa				Address 157 South Mesa			
City, State, Zip Fruita, CO 81521				City, State, Zip Fruita, CO 81521			
Telephone # (970) 858-3008		Contact Name		Telephone # (970) 858-3008		Contact Name	
Customer P.O Number		Date 09/07/2016		Terms		Requested Delivery Date	
QTY	Description	Item #	Unit Price	Total Amount			
1	Canon ImageRUNNER ADVANCE C3330i	8477B004AA					
1	Canon Cassette Feeding Unit-AL1	8786B002AA					
1	Canon Inner Finisher-G1	8472B001AA					
1	Canon Super G3 FAX Board-AR1	8480B002AA					
1	Canon imageRUNNER ADVANCE C3330i	8477B004AA					
1	Canon Cabinet Type-J	0988C001AA					
1	Canon Super G3 FAX Board-AR1	8480B002AA					
1	Capital Level II NETWORK INTEGRATION & SUPPORT	Level II					

Surge Protector Installed? YES  NO  ID No. \_\_\_\_\_

Trade-In Manufacturer	S/N or ID #	Model	Meter	Manuals/CDs
Trade-In Accessories	Supplies	Surge Protector		

SERVICE CONTRACT: YES  NO  INTEGRATION & SUPPORT AGREEMENT: YES  NO  IN-STOCK ITEM: YES  NO

Special Instructions/Terms	Sub Total
LEASE TERMS: 60 months LEASE PAYMENT: \$310.00	CBS BO/Upgrade
THIS CLOSES OUT LEASE ON THE 2 EXISTING UNITS. LEASE INCLUDES PARTS, LABOR AND TONER FOR UP TO 3,600 B/W COPIES/PRINTS AND FOR UP TO 800 COLOR COPIES/PRINTS PER MONTH. OVERAGES BILLED QUARTERLY IN ARREARS AT \$0.008 PER B/W AND \$0.07 PER COLOR. MAINTENANCE INCLUDES PARTS, LABOR AND TONER. EXCLUDES PAPER AND STAPLES.	Comp B/O - Upgrade ( )
	Delivery and Installation
	Ntwrk Intgrtn - Hrs ( )
	Final Sales Price (Amt Financed)
	Sales Tax
	Total
	Cash Paid
	Balance Owed

TERMS		CUSTOMER ACCEPTANCE	
All equipment, accessories and/or supplies indicated above are purchased under Capital Business Systems, Inc. standard terms on reverse		Signature X	Title
Agreement Approved By:	Date: / / Capital Business Systems Executive Officer	Print Name	Date Signed
		Sales Representative <i>Geoff Lambert</i>	Location

THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS PRINTED ON THE REVERSE SIDE WHICH BY THIS REFERENCE ARE MADE A PART HEREOF

Corporate Offices: 7052 Commerce Circle, Cheyenne, WY 82007

Phone: 800-221-0604 Fax: 307-634-1200

Solutions for Better Document Management

## GENERAL TERMS AND CONDITIONS

**PARTIES AND AGREEMENTS.** This Agreement is between Capital Business Systems, Inc. ("Company") and the Customer identified on the front of this Agreement ("Customer"). This Agreement consists of the terms on the face hereon and the general terms and conditions on the back. Title to said equipment shall remain with Company until the purchase price therefore is paid in full in cash. Upon full performance and observance by the Customer of all the terms and conditions hereof, at the times specified therefore, the title to said goods shall, without any further action on the part of the Company, be transferred to and vested in the Customer.

**1. ASSIGNMENT.** This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, legal representatives, successors and assigns. Company reserves the right to sell, assign, transfer, or sublease the product or equipment on this Agreement. This Agreement may not be assigned or transferred by Customer without prior written approval from Company.

**2. WRITTEN MODIFICATION.** No variation or modification of this Agreement, whether by Customer's purchase order or otherwise, and no waiver of any of the provisions or conditions shall be binding unless in writing and signed by authorized agents of Company and Customer.

**3. ACCESS AND COOPERATION.** Customer shall grant to Company full and free access to the equipment to provide maintenance service and engineering changes as required.

**4. WAIVER.** The waiver of any breach or default under this Agreement by either party shall constitute a waiver only as to such particular breach or default and shall not constitute a waiver of any other breach or default. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of a claim or right unless the waiver or renunciation is in writing and signed by an authorized agent of the aggrieved party.

**5. FORCE MAJEURE.** Company shall not be responsible for failure to render service due to causes beyond its reasonable control.

**6. ENTIRE AGREEMENT.** This Agreement supersedes and terminates any and all prior agreements, if any, whether written or oral, and all communications between the parties with respect to the product, which is the subject matter of this Agreement. Customer agrees that it has not relied on any representation, warranty or provision not explicitly stated in this Agreement, that no oral statement has been made to it that in any way tends to waive any of the terms or conditions of this Agreement, that this Agreement constitutes the final written expression of all terms of the Agreement, and it is a complete and exclusive statement of those terms. These terms and conditions shall prevail notwithstanding any additional or different terms and conditions of any purchase order or other document submitted by Customer in respect to the products and services to be provided hereunder.

**7. PRODUCT WARRANTY AND LIMITATION OF REMEDIES.** EXCEPT AS HEREINAFTER PROVIDED, COMPANY WARRANTS THAT ITS PRODUCTS WILL BE FREE OF DEFECTS IN MATERIAL AND WORKMANSHIP FOR A PERIOD ENDING 30 DAYS AFTER THE DATE OF ORIGINAL DELIVERY/INSTALLATION. IF ANY PRODUCT IS FOUND TO BE DEFECTIVE, CUSTOMER'S EXCLUSIVE REMEDY SHALL BE REPAIR OR REPLACEMENT OF ANY DEFECTIVE PRODUCT. THE WARRANTY HEREIN SHALL BE VOID AND OF NO EFFECT (i) IF THE PRODUCT IS NOT MAINTAINED AND OPERATED UNDER NORMAL CONDITIONS; OR (ii) IF THE PRODUCT INCORPORATES SPARE, REPLACEMENT OR SERVICE PARTS OTHER THAN THOSE SUPPLIED BY THE COMPANY, TO THE EXTENT THAT THE DEFECT OR DAMAGE COMPLAINED OF RESULTS FROM OR IS RELATED TO THE USE OF SUCH PARTS, OR (iii) IF THE DEFECT HAS NOT BEEN REPORTED TO COMPANY DURING THE WARRANTY PERIOD. THE WARRANTY MADE BY COMPANY HEREIN IS EXCLUSIVE AND IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTY (EXCEPT OF TITLE) ARISING OUT OF A COURSE OF DEALING, CUSTOM OR USAGE OR TRADE. COMPANY SHALL HAVE NO LIABILITY OR RESPONSIBILITY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY WITH RESPECT TO ANY LIABILITY, LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY PRODUCT SUPPLIED BY COMPANY, INCLUDING, BUT NOT LIMITED TO, ANY INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OR OPERATION OF THE PRODUCT. IN NO EVENT SHALL COMPANY BE LIABLE FOR LOSS OF PROFITS, OR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY BREACH OF THIS AGREEMENT OR IN ANY MANNER ARISING OUT OF OR CONNECTED WITH RELEASE, USE OR ANTICIPATED USE OF THE PRODUCT.

**8. APPROVAL.** This order shall not be binding on Company until approved by an officer of Company.

**9. LATE CHARGES, COLLECTION, AND POSSESSION.** If any payments are not made when due, Customer agrees to pay a late charge of 1.5 percent per month on any unpaid amounts. In the event of breach of this Agreement, Company may, at its option, declare all sums due, or to become due under this Agreement for the unexpired term of the contract immediately due and payable and be discharged from any further obligations under this contract. All costs of enforcing this Agreement, including attorney's fees, shall be borne by Customer. In addition, if the Customer fails to make the aforesaid payment or payments in cash, or if the Customer shall petition for reorganization under the bankruptcy act or be adjudicated a bankruptcy, or if a receiver shall be appointed for the Customer's business, or if the Customer shall make an assignment for benefit of creditors, or if the Customer shall remove the equipment from his present premises without the written consent of the Company or should the Customer violate any of the other covenants hereof, by him to be kept or performed, then the Company either (1) may declare the entire sum remaining unpaid hereunder, including interest at 1.5 percent per month from date of invoice, to be immediately due and payable and elect to sue therefore, or (2) it may enter, with or without legal process and using such force as may be necessary, into or upon the premises where said goods, or any part thereof, may be, or is or are believed to be, and take possession thereof, and thereafter hold the same absolutely free from all claims of the Customer, and retain all payments made by the Customer hereunder as and for the reasonable rental of said goods and for the use, wear and tear thereof, or as much thereof as may be permitted by law; and the Customer for himself and his successors in interest hereby waives all claims and rights of action for trespass or damages by reason of such entry, taking of possession and removal of said product, and also waives so far as is consistent with public policy, the benefits of any statutes of the State that may conflict with the conditions of this order or with any causes of action hereby given. Where action shall be taken hereunder by the Company through an attorney the Customer agrees to pay all attorney and associated legal fees.

**10. BINDING CONTRACT.** This shall become a binding contract when (but not before) either (a) it has been accepted by the Company and signed by an officer at its executive office, or (b) the equipment has been delivered, or has left the Company's place of business for delivery by the Company to the Customer, with or without acceptance in writing hereon by a local representative of the Company. Notice of acceptance by the Company is hereby waived by the Customer. The Customer hereby acknowledges receipt of a true and complete copy of this instrument.

**11. LIMITATION OF LIABILITY.** Without limiting any of the provisions of this Agreement, the company shall not be liable to the customer, for any actual, incidental, consequential or other damage or loss of profit arising from or related to any defect in any product, failure to promptly ship or deliver products, or for any claim, loss, damage or liability, cost or expense arising from or in connection with or relating to any of the foregoing. Company's liability for breach of or default under any provision of this Agreement shall not exceed the purchase price paid or payable by customer to company for the products involved. Customer shall indemnify and hold harmless Company against any and all claims, demands, liabilities, losses, damages, and expenses including, without limitation, attorneys' fees incurred by Company, arising out of or in connection with the acts and omissions of Customer.

**12. RETURN/CANCELLATION.** Return or cancellation of sales Agreement, for any reason, will be assessed a 25% restocking fee.



## Maintenance & Supply Agreement

<b>S H I P T O</b>	<b>Customer Name</b> City of Fruita Police Department	<b>B I L L T O</b>	<b>Customer Name</b> City of Fruita Police Department
	<b>Address</b> 157 South Mesa		<b>Address</b> 157 South Mesa
	<b>City, State, Zip</b> Fruita, CO 81521		<b>City, State, Zip</b> Fruita, CO 81521
	<b>Telephone #</b> (970) 858-3008		<b>Telephone #</b> (970) 858-3008
	<b>Attention</b>		<b>Attention</b>
	<b>Email</b>		<b>Email</b>
	<b>Fax #</b>		<b>Fax #</b>

POOL BILLING: Yes  No

Make/Model	ID #	Serial #	Annual Base Rate
CANON imageRUNNER ADVANCE C3330i			
CANON imageRUNNER ADVANCE C3330i			

Contract Term: 60 months.

Start: \_\_\_\_\_  
Month/Day/Year

End: \_\_\_\_\_  
Month/Day/Year

Beginning Meter Reading:

Color: \_\_\_\_\_  
Black: \_\_\_\_\_

Other Meter: \_\_\_\_\_

### Terms of Agreement:

1. Maintenance Agreement covers all parts, labor, and supplies. Supplies will be shipped at the request of the customer. Paper, staples, and masters for duplicators are excluded and must be purchased separately by the customer.

2. Annual Base Rate: \_\_\_\_\_ (Billed monthly in lease at \$ \_\_\_\_\_)

3. Color copies/prints included: 800 per  month  quarter  year.

Additional color copies billed at \$0.07 billed  month  quarter  year.

4. Black copies/prints included: 3,600 per  month  quarter  year.

Additional black copies billed at \$0.008 billed  month  quarter  year.

5. Approximate toner and ink yields \_\_\_\_\_ color copies per  carton  cartridge  bottle

\_\_\_\_\_ black copies per  carton  cartridge  bottle

6. For duplicators, all masters will be billed at \_\_\_\_\_ ¢ per master. Billing will be completed on a quarterly basis.

*Capital Business Systems, Inc. reserves the right to increase the cost of contract annually during the contract period.*

This is a non-cancelable contract - customer acknowledges to have read the terms above and on the reverse side, and agrees to all of these terms & conditions.

Special Provisions: \_\_\_\_\_

<b>X</b>	_____	_____	_____
	Customer Acceptance	Title	Date
	<i>Geoff Lambert</i>		
	Capital Business Systems	Title	Date

**CAPITAL BUSINESS SYSTEMS**  
**Maintenance & Supply Agreement**

1. This agreement shall become binding when it has been accepted by a Capital Business Systems manager or his/her designee, provided however, that if there are modifications to this agreement, or pricing not standard with the authorized published price schedule, this Agreement will not be valid until it has been accepted in writing by the signature of an authorized representative at the Corporate Facility. In such case, this is the sole and exclusive manner of acceptance. Any other promise or act, including a promise to perform service or the performance of service shall not constitute acceptance of this Agreement.
2. Maintenance Agreement Base Rate charges may be payable in advance. Copy charges, if any, will be invoiced in arrears depending on billing cycle. We reserve the right to increase cost of contract on an annual basis.
3. This agreement does not cover software and driver support. Service calls required due to issues related to software, computers or connectivity are at standard service rates then in effect.
4. Stated yields in #5 are based on manufacturer suggested yields for letter size copies/prints. Toner shipment and usage are monitored against billed prints
5. All service calls under this Agreement will be made by Capital Business Systems during normal business hours on the equipment described on the face hereof. If service at time other than during Capital Business Systems normal business hours is furnished upon customer's request, customer will be charged at established rate for labor and travel then in effect.
6. The transfer of equipment covered by this Agreement to a location outside our normal servicing area will exclude it from this Agreement. Under these conditions, the contract will automatically be cancelled and no refunds given to the customer. The charges on machines transferred to a different zone with the normal servicing area during the term of this Agreement will be adjusted to the applicable rate for the new zone.
7. This Agreement shall not apply to service repairs or parts replacement made necessary by accident, misuse (including failure to follow the manufacturer's published operating manual), abuse (including operating product in a dirty, dusty or such environment that creates premature parts failure), neglect, theft, riot, vandalism, lightning, electrical power failure, fire, water or other casualty, or repairs made necessary as a result of either service by personnel other than Capital Business Systems personnel or the use of supplies other than supplies provided by Capital Business Systems. Separate charges for repairs or parts replacements due to the foregoing shall be borne by the customer, at Capital Business Systems established rates for parts and labor then in effect.
8. This Agreement may not be assigned or transferred by the customer to any party.
9. This Agreement does not include applicable taxes. All taxes levied or imposed, now or hereafter, by any governmental authority, shall be paid by the customer in accordance with law.
10. This Agreement supersedes any and all prior oral or written maintenance agreements between the parties, and constitutes the entire Agreement between the customer and Capital Business Systems with respect to the service to be provided hereunder.
11. This Agreement shall remain in full force and effect for the coverage period noted on the face hereof. Customer's obligation to pay all charges which have accrued shall survive any termination of this Agreement.
12. At the expiration of the original or any renewal term, this Agreement, with all of its terms, covenants and conditions, including the paragraph, shall be deemed to have automatically renewed annually, except for the base rate charges, and copy/master charges, which will be set at established rates then in effect, unless either party has given a thirty (30) days prior written notice to the other of its intention to terminate this Agreement as of the end of such term. No refunds will be made if this contract is cancelled prior to the original term or any renewal term thereafter.
13. Upon termination of this contract, the customer agrees to return unused supplies such as toner, toner bags, ink, and masters, which were provided at no charge. If for any reason the customer does not return these items, customer agrees to pay based on pricing yields indicated on the reverse side.
14. We have the right to deny performing service and/or supplying any products under the terms of this Agreement if customer does not keep their account current according to standard terms. On all past due accounts, a service charge of 1½% per month will be charged to the customer's account until paid in full.
15. Under this Agreement, our liability with respect to any property damage or injury (including death) to persons arising out of or connected with services performed under this Agreement is strictly limited to that imposed by law and there is no contract imposing any greater degree of liability.
16. Title to all supplies furnished hereunder including toner, toner, bags, ink, and masters remain with Capital Business Systems until said supplies are consumed by the consumer to the extent they may not be further utilized.
17. Customer shall pay all costs in the collection of any amount due hereunder in the recovery of any property pursuant hereto or in the enforcement of its rights against customer, including reasonable attorney fees whether or not suit be brought.
18. Capital Business Systems agrees to furnish all supplies as indicated on the reverse side of this contract in quantities as usage history dictates. Customer is responsible for requesting additional supplies as needed.
19. Should the customer elect to trade in the equipment listed on the face of this Agreement for a new product sold by Capital Business Systems, the unused portion of this contract will be transferred to and credited against a similar maintenance agreement on the new product purchased.
20. The customer agrees to use the supplies provided at "no charge" on the appropriate machine(s) as indicated on the reverse side of this contract. The customer agrees not to take designated supplies from one machine to be used in another where supplies are not included as part of the maintenance agreement. Should any operator remove supplies from one machine to be used in another, the customer agrees to purchase additional supplies from Capital Business Systems, as outlined in this Agreement.
21. The customer agrees to replace any supply type items as a result of carelessness on the part of the operator, accidents, fire, theft, abuse, lost or misplaced supplies. Any replacement of supplies as a result of the foregoing must be purchased by the customer as outlined in this Agreement.
22. When the service department's opinion, shop reconditioning or work beyond the scope of this Agreement is required; a cost estimate will be submitted for such work. If such work is authorized by the customer, a separate invoice will be rendered therefore.
23. If parts, supplies or training are discontinued by the manufacture of this product or no longer available this contract will be cancelled and the remaining time left on the contract will be prorated to the customer and refunded and the contract terminated at that time. Capital Business Systems has no further obligation at that time.

---

Name

Title

Date Approved



## Install & Integration Agreement

### Customer Information

Name	City of Fruita Police Department
Street Address	157 South Mesa
City, State, Zip	Fruita, CO 81521
Telephone #	(970) 858-3008
Attention	

### Install Pricing

Function	Number of Users	Cost
<input checked="" type="checkbox"/> Print <input checked="" type="checkbox"/> Email <input type="checkbox"/> Folder	10	

This includes all labor on above-listed product/software. This agreement in no way covers computer components, replacement of software, or cost of software upgrades. This agreement also does not cover service for other office equipment at the location such as copiers, fax machines, or computer printers. These items will be billed separately unless covered by a manufacturer's warranty or an equipment service agreement. This is a non-cancelable contract, customer acknowledges to have read the terms and conditions above and on the reverse side and agrees to all of these terms and conditions.

### Special Provisions:

Customer

Title

Date

*Geoff Lambert*

Capital Business Systems, Inc.

Title

Date

I. PARTIES

This support agreement is between Capital Business Systems, Inc., hereinafter known as "Capital," and client, hereinafter known as "Customer," established in accordance with the terms and conditions contained in the following paragraphs.

II. CONDITIONS

A. Customer shall notify Capital of service requirements and provide full and free access to all components of the system, as well as adequate working space, electrical power and outlets, and appropriate environmental conditions in which to work.

B. Customer shall ensure that all of its computer system files and data be adequately duplicated and that such backup be available during service visits.

Capital will not be responsible for Customer's failure to do so, or for the cost of reconstruction of files and data lost during the performance of maintenance services.

C. Customer must make available, on site, the original copy of all operating system diskettes and backup for systems.

III. LIMITATIONS

A. Hardware maintenance other than those items listed on this or another support agreement;

B. Backup or restores necessitated by Customer's failure to adequately backup files and data;

C. Liability for delay or failure to furnish services if such delay is caused by an act of God, strike, government action, or any cause beyond reasonable control of Capital Business Systems, Inc.

IV. DISCLAIMER OF LIABILITY AND WARRANTY

A. Except as specifically provided herein; there are no other warranties expressed or implied, including, but not limited to, warranties of merchantability and fitness for a particular purpose.

B. In no event shall Capital Business Systems, Inc. be liable for any damages resulting from loss of data, loss of profits, loss of use of products or equipment, or for any incidental or consequential damages, even if advised of the possibility of such damages. Customer's right to recover damages caused by Capital's fault or negligence shall be limited to moneys actually paid by Customer for the services involved. This limitation of liability shall apply regardless of the form of action, whether in contract or tort including negligence. Any action brought against

Capital Business Systems, Inc. must be brought within three (3) months of the alleged act or omission in giving rise to damages.

VII. COMPLIANCE OF LAWS

Capital Business Systems, Inc. shall comply with all applicable federal, state, county, and local laws, ordinances, regulations, and codes, including procurement of required permits or certificates in Capital Business Systems, Inc. performance hereunder, irrespective of whether a specification is furnished.

VIII. GENERAL

A. The terms and conditions of this agreement prevail over the terms and conditions of any order submitted by the Customer's for services under this agreement.

B. Capital Business Systems, Inc. and Customer may not assign their respective rights hereunder without prior written consent of the other party.

C. The terms and provisions of this agreement shall not be amended or modified without specific provisions to do so. By signing this agreement, Capital Business Systems, Inc. and Customer acknowledge they have read, understand, and agree to be bound by its terms and conditions. Further which, the parties agree that it is their complete statement of the agreement between them, superseding all others, oral or written, relating to the subject matter of this agreement.

D. Notices and other communications shall be transmitted in writing and addressed to the parties as follows:

Capital Business Systems, Inc.  
7052 Commerce Circle, Suite 120  
Cheyenne, WY 82007

Customer:  
City of Fruita Police Department  
157 South Mesa  
Fruita, CO 81521



APPLICATION NO.

CONTRACT NO.

**DocuManagement**

This document is written in "Plain English". The words you and your refer to the customer.  
The words, Owner, we, us and our refer to Capital Business Systems, Inc.

**1. CUSTOMER.**

LEGAL NAME OF BUSINESS City of Fruita Police Department		ADDRESS 157 South Mesa	
CITY Fruita	STATE CO	ZIP 81521	PHONE (970) 858-3008
TYPE OF BUSINESS <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship		NUMBER OF YEARS IN BUSINESS	FEDERAL TAX I.D. # 84-6000669

**2. SPECIFY EQUIPMENT/LEASE TERM.**

Make/Model/Accessories	Serial #	Term	Monthly Payment*	Copies Included	Additional Copies to be billed @*	Starting Meter
1. ImageRUNNER ADVANCE C3330I		60month	\$310.00	3,600 - Black	\$0.008 each	
2. ImageRUNNER ADVANCE C3330I				800 - Color	\$0.07 each	
3.						
4.						
5.						

Security Deposit \$ 0 (plus applicable taxes) Check One:  Consolidated with Detail  Consolidated  Itemized Schedule A \*plus applicable taxes

You will have the following options at the end of the original term, provided the Lease has not terminated early and no event of default under the Lease has occurred and is continuing:  
1. Purchase the Equipment for the FMV. (If no purchase option is entered, the Fair Market Value will be your end of lease option) 2. Renew the Lease per paragraph 1. 3. Return Equipment as provided in Paragraph 6.

**3. PROVIDE US WITH SOME BASIC INFORMATION.**

NAME OF PRINCIPAL	SOCIAL SECURITY #	PERCENTAGE OWNERSHIP OF BUSINESS		
HOME ADDRESS	CITY	STATE	ZIP	PHONE
PRESENT BANK	ACCOUNT #	BANK CONTACT		PHONE
TRADE REFERENCE 1	CITY/STATE		PHONE	
TRADE REFERENCE 2	CITY/STATE		PHONE	

**4. SIGN THE LEASE ACCEPTANCE.**

**THIS IS A NON-CANCELABLE / IRREVOCABLE LEASE. THIS LEASE CANNOT BE CANCELED OR TERMINATED.**

By signing below, you acknowledge and accept all terms and conditions on the back of this agreement and hereby authorize your banks, trade references, credit bureaus, and financial institutions to release personal and business credit information via fax or over the phone to Capital Business Systems, Inc. for purposes of reviewing this application for business credit.

City of Fruita Police Department	<b>X</b>		
COMPANY NAME	SIGNATURE	TITLE	DATE

**5. SIGN THE DELIVERY AND ACCEPTANCE.**

You certify that all the equipment listed above has been furnished, that delivery and installation has been fully completed and satisfactory. Further, all conditions and terms of this Agreement have been reviewed and acknowledged. Upon your signing below, your promises herein will be irrevocable and unconditional in all respects.

	<b>X</b>	
DATE OF DELIVERY	SIGNATURE	TITLE

**6. SIGN THE GUARANTY. (Please do not include title)**

As additional inducement for us to enter into the Agreement, the undersigned ("you") Unconditionally, jointly and severally, personally guarantees that the customer will make all the payments and meet all obligations required under this Agreement and any supplements fully and promptly. You agree that we may make other arrangements including compromise or settlement with the customer and you waive all defenses and notice of those changes and will remain responsible for the payments and obligations of this agreement. We do not have to notify you if the customer is in default. If the customer defaults, you will immediately pay in accordance with the default provision of the agreement all sums due under the terms of the Agreement and will perform all the obligations of the Agreement. If it is Necessary for us to proceed legally to enforce this guarantee, you expressly consent to the jurisdiction of the court set out in paragraph 15 and agree to pay all costs, including attorneys fees incurred in enforcement of this guaranty. It is not necessary for us to proceed first against the customer before enforcing this guaranty. By signing this guaranty, you authorize us to obtain credit bureau reports for credit and collection purposes. **EACH OF THE UNDERSIGNED WAIVES ANY RIGHT TO A TRIAL BY JURY.**

	<b>X</b>	
PRINT NAME OF GUARANTOR	SIGNATURE	DATE

Capital Business Systems, Inc. (for internal use only)

OWNER: Capital Business Systems, Inc. TITLE: DATE:

1. LEASE AGREEMENT: You agree to lease from us the personal property described under "MAKE/MODEL/ACCESSORIES" and as modified by supplements to this Master Agreement from time to time signed by you and us (such property and any upgrades, replacements, repairs and additions referred to as "Equipment") for business purposes only. You agree to all of the terms and conditions contained in this Agreement and any supplement, which together are a complete statement of our Agreement regarding the listed equipment ("Agreement") and supersedes any purchase order or outstanding invoice. This Agreement may be modified only by written agreement and not by course of performance. You authorize us to insert in this Agreement serial numbers and other identification about the Equipment, as well as other omitted factual matters. This Agreement becomes valid upon execution by us and will begin on the rent commencement date shown and will continue from the first day of the following month for the number of consecutive months shown. The term will be extended automatically for successive 12 month terms unless you send us written notice you do not want it renewed at least thirty (30) days before the end of any term. Leases with \$1.00 purchase options will not be renewed. THE BASE RENTAL PAYMENT SHALL BE ADJUSTED PROPORTIONATELY UPWARD OR DOWNWARD, IF THE ACTUAL COST OF THE EQUIPMENT EXCEEDS OR IS LESS THAN THE ESTIMATE PROVIDED TO LESSEE. If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others. You authorize us to insert or correct missing information on this lease including your proper legal name, serial numbers and any other numbers describing the Equipment. The original of this Agreement shall be that copy which bears a facsimile or original of your signature and which bears our original signature.

2. RENT: Rent will be payable in installments, each in the amount of the basic rental payment shown plus any applicable sales, use or property tax. If we pay any tax on your behalf, you agree to reimburse us promptly along with a processing fee. You will pay the security deposit on the date you sign this Agreement. Subsequent installments will be payable on the first day of each rental payment period shown beginning after the first rental payment period or as otherwise agreed. We will have the right to apply all sums received from you to any amounts due and owed to us under the terms of this Agreement.

3. MAINTENANCE AND SUPPLIES: The charges established by this Agreement include payment for the use of the designated Equipment and accessories, maintenance (during normal business hours); inspection, adjustment, parts replacement, drums and cleaning material required for the proper operation, as well as toner and developer. Paper and staples must be separately purchased by you. If necessary, the service and supply portion of this Agreement may be assigned.

4. OWNERSHIP OF EQUIPMENT: We are the owner of the equipment and have sole title to the equipment (excluding software). You agree to keep the equipment free and clear of all liens and claims.

5. WARRANTY DISCLAIMER: WE MAKE NO WARRANTY THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABLE, EXCEPT THOSE SPECIFIED IN THE MANUFACTURERS GUIDELINES. YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US.

6. LOCATION OF EQUIPMENT: You will keep and use the equipment only at your address shown above and you agree not to move it unless we agree to it. At the end of the Agreement's term, you will return the Equipment to a location we specify at your expense, in retail resaleable condition, full working order, and in complete repair.

7. LOSS OR DAMAGE: You are responsible for the risk of loss or for any destruction of or damage to the equipment. No such loss or damage relieves you from the payment obligations under this Agreement. You agree to promptly notify us in writing of any loss or damage and you will then pay to us the present value of the total of all unpaid lease payments for the full lease term plus the estimated fair market value of the Equipment at the end of the originally scheduled term, all discounted at six percent (6%) per year. Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage.

8. INSURANCE/COLLATERAL PROTECTION. You agree (a) to keep the Equipment fully insured through a carrier acceptable to us against loss at its replacement cost, with us named as loss payee; (b) to maintain comprehensive public liability insurance acceptable to us; (c) to provide proof of insurance satisfactory to us no later than thirty (30) days following the commencement of this Agreement (or at commencement if we so elect), and thereafter upon our written request; (d) if you fail to obtain and maintain property loss insurance satisfactory to us and/or you fail to provide proof of such insurance to us within thirty (30) days of the commencement of the Agreement (or at commencement if we so elect), we have the option, but not the obligation, to do as provided in either (A) or (B) as follows, of the following paragraphs as determined in our discretion: (A) We may secure property loss insurance on the Equipment from a carrier of our choosing in such forms and amounts as we deem reasonable to protect our interests. If we place insurance on the Equipment, we will not name you as an insured and your interests may not be fully protected. If we secure insurance on the Equipment, you will pay us an amount for the premium which may be higher than the premium that you would pay if you placed the insurance independently and may result in a profit to us through an investment in reinsurance. Any insurance proceeds received will be applied, at our option, (i) to repair, restore or replace the Equipment, or (ii) to pay us the remaining balance of the Agreement plus our estimated residual value, both discounted at 6% per year, provided we elect to apply this Subsection A. (B) We may bill you and you shall pay us a property damage surcharge of up to .0035 of the total stream of payments as a result of our administrative costs, credit risk or other costs. We may make a profit on this program. Provided you are current in paying the property damage surcharge and all other obligations under this Agreement at the time of a loss (intentional acts are not included), the remaining balance owed on this Agreement will be forgiven, provided we elected to apply this subparagraph B. You must be current in all your obligations to benefit from this program. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF YOUR OBLIGATION TO MAINTAIN LIABILITY INSURANCE COVERING THE EQUIPMENT.

9. INDEMNITY: We are not responsible for any loss or injuries caused by the installation or use of the equipment. You agree to hold us harmless and reimburse us for loss and to defend us against any claim for losses or injury caused by the Equipment.

10. TAXES AND FEES: You agree to pay when invoiced all taxes (including personal property tax, fines and penalties) and fees relating to this Agreement or the Equipment. You agree to (a) reimburse us annually for all personal property taxes which we are required to pay as Owner of the Equipment or to remit to us each month our estimate of the monthly equivalent of the annual property taxes to be assessed. We will file all personal property, use or other tax return and you agree to pay us a processing fee for making such filings. In addition you agree to pay us any filing fees prescribed by the Uniform Commercial Code (UCC) or other law and reimburse us for all costs and expenses involved in documenting and servicing this transaction. You further agree to pay us \$69.50 on the date the first lease payment is due as an origination fee. We reserve the right to charge a fee upon termination of this agreement, either by Trade-up, Buy-out or Default.

11. ASSIGNMENT: YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT. We may sell, assign, or transfer this Agreement without notice. You agree that if we sell, assign, or transfer this Agreement, the new owner will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the rights of the new owner will not be subject to any claims, defenses, or set offs that you may have against us.

12. DEFAULT AND REMEDIES: If you do not pay any lease payment or other sum due to us or other party when due or if you break any of your promises in the Agreement or any other agreement with us, you will be in default. If any part of a payment is late, you agree to pay a late charge of 15% of the payment which is late or if less, the maximum charge allowed by law. If you are ever in default, we may retain your security deposit and at our option, we can terminate or cancel this Agreement and require that you pay (1) the unpaid balance of this Agreement (discounted at 6%); (2) the amount of any purchase option and if none is specified, 20% of the original equipment cost which represents our anticipated residual value in the equipment; (3) and return the equipment to us to a location designated by us. We may recover interest on any unpaid balance at the rate of 8% per annum. We may also use any of the remedies available to us under Article 2A of the Uniform Commercial Code as enacted in the State of Owner or any other law. If we refer this Agreement to an attorney for collection, you agree to pay our reasonable attorney's fees and actual court costs. If we have to take possession of the equipment, you agree to pay the cost of repossession. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR ANY DEFAULT BY US UNDER THIS AGREEMENT. You agree that any delay or failure to enforce our rights under this Agreement does not prevent us from enforcing any rights at a later time. It is further agreed that your rights and remedies are governed exclusively by this Agreement and you waive lessee's rights under Article 2A (508-522) of the UCC.

13. UCC FILINGS: You grant us a security interest in the equipment if this agreement is deemed a secured transaction and you authorize us to record a UCC-1 financing statement or similar instrument, and appoint us your attorney-in-fact to execute and deliver such instrument, in order to show our interest in the equipment.

14. SECURITY DEPOSIT: The security deposit is non interest bearing and is to secure your performance under this Agreement. Any security deposit made may be applied by us to satisfy any amount owed by you, in which event you will promptly restore the security deposit to its full amount as set forth above. If all conditions herein are fully complied with and provided you have not ever been in default of this Agreement per paragraph 12, the security deposit will be refunded to you after the return of the equipment in accordance with paragraph 6.

15. GOVERNING LAW, CONSENT TO JURISDICTION AND VENUE OF LITIGATION: This Agreement and each Schedule shall be governed by the Internal laws for the state in which Owner's or, if assigned, the assignee's principal corporate offices are located. IF THIS AGREEMENT IS ASSIGNED, YOU AGREE THAT ANY DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT WILL BE ADJUDICATED IN THE FEDERAL OR STATE COURT WHERE THE ASSIGNEE'S CORPORATE HEADQUARTERS IS LOCATED AND WILL BE GOVERNED BY THE LAWS OF THAT STATE. YOU HEREBY CONSENT TO PERSONAL JURISDICTION AND VENUE IN THAT COURT AND WAIVE ANY RIGHT TO TRANSFER VENUE. EACH PARTY WAIVES ANY RIGHT TO A TRIAL BY JURY.

16. OVERAGES AND COST ADJUSTMENTS: You agree to comply with any billing procedures designated by us, including notifying us of the meter reading at the end of each month. At the end of the first year of this Agreement and once each successive twelve month period, we may increase the base usage payment and the overage charge by a maximum of 15% of the existing charge.

17. TRANSITION BILLING: In order to facilitate an orderly transition, including installation and training, and to provide a uniform billing cycle, the "Effective Date" of this Agreement will be the fifteenth (15th) day of the month following installation. Customer agrees to pay a prorated amount for the period between the installation date and the Effective Date. This payment for the transition period will be based on the base minimum usage payment prorated on a 30 day calendar month and will be added to the Customer's first invoice.

**FOR MUNICIPALITIES ONLY**

18-A. CUSTOMER COVENANTS: The Customer covenants and warrants that (1) it has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the payments scheduled to come due and to meet its other obligations under the Agreement and such funds have not been expended for other purposes; and (2) that there is no action, suit, proceeding or investigation pending, or threatened in any court or other tribunal or competent jurisdiction, state or federal or before any public board or body, which in any way would (a) restrain or enjoin the delivery of the Agreement or the ability of the Customer to make its Base Payments (as set out above); (b) contest or effect the authority for the execution or delivery of, or the validity of, the Agreement; or (c) contest the existence and powers of the Customer; nor is there any basis for any such action, suit, proceeding or investigation; and (3) That the equipment will be operated and controlled by the Customer and will be used for essential government purposes and will be essential for the term of the Agreement.

(4) Customer has not previously terminated a lease for non-appropriation, except as specifically described in a letter appended hereto.

18-B. SIGNATURES: Each signor (two if monthly payment exceeds \$1,200) warrants that he/she is fully conversant with the governing relevant legal and regulatory provisions and has full power and authorization to bind Customer. Signor(s) for Customer further warrant(s) its governing body has taken the necessary steps; including any legal bid requirements, under applicable law to arrange for acquisition of the Equipment; the approval and execution has been in accordance with all applicable open meeting laws; and that a resolution of the governing body of Customer authorizing execution of the Agreement has been duly adopted and remains in full force and effect.

18-C. NON APPROPRIATION: In the event Customer is in default under the Agreement because:

1. Funds are not appropriated for a fiscal period subsequent to the one in which the Agreement was entered into which are sufficient to satisfy all of Customer's obligations under the Agreement during said fiscal period;

2. Such non-appropriation did not result from any act or failure to act of customer;

3. Customer has exhausted all funds legally available for all payment due under the Agreement; and

4. There is no other legal procedure by which payment can be made to Owner.

Then, provided that (a) Customer has given Owner written notice of the occurrence of paragraph 1 above thirty (30) days prior to such occurrence; (b) Owner has received a written opinion from Customer's counsel verifying the same within ten (10) days thereafter; and (c) the Customer does not directly or indirectly purchase, lease or in any way acquire any services or equipment supplied or provided for hereunder; upon receipt of the equipment delivered to a location designated by Owner, at Customer's expense, Owner's remedies for such default shall be to terminate the Lease at the end of the fiscal period during which notice is given; retain the advance payments, if any; and/or sell, dispose of, hold, use or rent the equipment as Owner in its sole discretion may desire, without any duty to account to Customer.

City of Fruita Police Department



DATED CUSTOMER SIGNATURE TITLE



City of Fruita  
325 E. Aspen,  
Fruita, CO 81521  
(970) 858-3663  
www.fruita.ora

## AGENDA ITEM COVER SHEET

**TO: FRUITA CITY COUNCIL AND MAYOR**  
**FROM: MARGARET SELL, FINANCE DIRECTOR**  
**DATE: SEPTEMBER 20, 2016**  
**RE: AUGUST 2016 FINANCIAL REPORTS**

### **BACKGROUND**

Attached are copies of the August 2016 Financial Reports for the City of Fruita.

**Sales and Use Tax Revenues.** The following chart shows the percentage change in the most recent months collections of sales and use tax revenue compared to the same month last year, and the year to date collections compared to the same time frame for the prior year. City sales and use tax revenues are up year to date from the prior year by \$90,252. This is offset by a year to date decrease of \$42,120 in County sales tax revenue for a net increase of \$48,152 in sales and use tax revenues from the prior year.

However, while City sales tax revenues are up 0.51% from last year, they are falling short of budgeted revenues which included a 4% increase and County sales tax revenues (down 3.72%) are falling short of the budgeted 3% increase. With the better than budgeted revenues from use taxes on motor vehicles and building materials we are tracking closely to the total budgeted sales and use tax revenues.

<b>Sales and Use Tax Revenues</b>			
<b>Type</b>	<b>Month</b>	<b>% change Month</b>	<b>% change Y-T-D</b>
City	Jul-16	-7.53%	0.51%
County	Jul-16	-10.67%	-3.72%
Use tax on Motor Vehicles	Aug-16	-29.42%	3.92%
Use tax on Building Materials	Aug-16	14.08%	122.01%

**Franchise Fees – August 2016.** Revenues from franchise fees for gas, electricity and cable television services are down 6% from the prior year and we are projecting a shortfall of approximately \$25,000 from budgeted amounts.

**Community Center Fund – August 2016.** The combination of city sales and use tax revenues for the month reflect a 2% decrease from 2015 revenues and are up 9% for the year which compares favorably to budgeted amounts which were projected to remain flat.

**Marketing and Promotion Fund – August 2016.** Lodging tax revenues are up 10% for the month and up 2% year to date. The 2016 budgeted amount reflects a decrease of 4.9% from 2015.

**Severance and Mineral Lease Revenues**

The City received the annual distribution of severance tax and mineral lease revenues in September. These revenues were budgeted at \$150,000 and came in at \$136,861.

**General Fund Revenues – August 2016.** The General Fund Revenue report is a detailed budget to actual revenue report. Revenues are slightly below budgeted amounts at 64% of the budgeted amount for the year (8/12 = 67%).

**Revenue vs Expense by Account Type – August 2016.** This report presents summary information on revenues and expenses and budget comparisons for all funds. The report includes revenues and expenses by category or type of revenue/expense and also by department. The following is a summary of the report by fund showing actual revenues and expenses as a percentage of budget.

Revenues and Expenses as Percentage of Budget - August 2016		
	Revenues as a % Budget	Expenses as a % of Budget
General Fund	64%	63%
Conservation Trust Fund	65%	84%
Marketing	70%	66%
Community Center	72%	65%
Capital Projects	63%	67%
Debt Service	50%	47%
Irrigation Water	75%	75%
Sewer	66%	63%
Trash	59%	50%
Fleet Maintenance Fund	100%	65%
Total	65%	63%

**FISCAL IMPACT**

None.

**APPLICABILITY TO CITY GOALS AND OBJECTIVES**

These reports provide financial information to the Council to monitor the City's financial position and may be used as a tool to hold staff accountable for accomplishing goals and objectives set forth in the Budget.



City of Fruita  
325 E. Aspen,  
Fruita, CO 81521  
(970) 858-3663  
[www.fruita.org](http://www.fruita.org)

**OPTIONS AVAILABLE TO THE COUNCIL**

Approval of Financial Reports

Approval of Financial Reports with clarification on specific items

**RECOMMENDATION**

It is the recommendation of Fruita City staff that the City Council, by motion:

**ACCEPT THE AUGUST 2016 FINANCIAL REPORTS AS PRESENTED.**

**GENERAL FUND 2% CITY SALES TAX REVENUES -SEPTEMBER 8, 2016**

	2010	2011	2012	2013	2014	2015	2016	\$ Variance	% Variance
Jan	98,322.29	89,314.15	101,419.74	110,204.24	107,894.03	108,459.92	102,654.47	-5,805.45	-5.35%
Feb	84,525.46	95,295.86	110,489.69	96,957.80	117,630.56	107,188.89	109,027.57	1,838.68	1.72%
Mar	100,841.31	99,780.60	107,316.93	116,327.45	151,397.66	122,437.25	122,491.87	54.62	0.04%
Apr	102,872.82	120,678.35	142,421.79	131,340.78	130,473.13	119,605.83	130,968.87	11,363.04	9.50%
May	110,519.20	110,761.47	96,366.93	139,145.24	146,354.29	141,096.11	146,283.09	5,186.98	3.68%
Jun	113,710.31	121,036.54	153,521.01	134,614.06	145,170.75	142,137.11	143,707.98	1,570.87	1.11%
Jul	106,381.35	111,666.79	117,642.13	119,997.86	128,914.77	129,557.37	119,795.39	-9,761.98	-7.53%
Aug	106,951.08	108,226.15	117,891.22	132,205.95	139,363.95	116,732.34			
Sep	109,072.31	127,962.44	136,662.04	119,797.21	137,994.97	141,331.25			
Oct	100,306.58	105,477.56	118,473.48	131,267.83	123,354.93	116,359.62			
Nov	92,589.67	102,290.50	89,760.11	118,140.73	116,620.45	107,336.71			
Dec	108,661.53	110,977.83	111,679.39	123,646.37	123,855.91	111,500.58			
<b>TOTAL</b>	<b>1,234,753.91</b>	<b>1,303,468.24</b>	<b>1,403,644.46</b>	<b>1,473,645.52</b>	<b>1,569,025.40</b>	<b>1,463,742.98</b>	<b>874,929.24</b>	<b>4,446.76</b>	<b>0.51%</b>
<b>%</b>	<b>3.14%</b>	<b>5.57%</b>	<b>7.69%</b>	<b>4.99%</b>	<b>6.47%</b>	<b>-6.71%</b>			

2016 Budget= \$1,525,000, 4% Increase from 2015 Actual Revenues

870,482.48 874,929.24 4,446.76 0.51%

**COUNTY SALES TAX REVENUES- SEPTEMBER 12, 2016**

	2010	2011	2012	2013	2014	2015		\$ Variance	% Variance
Jan	113,058.19	120,360.46	139,025.37	134,836.51	130,571.18	143,816.00	143,233.57	-582.43	-0.40%
Feb	118,275.57	128,907.44	141,496.92	132,354.45	136,453.63	139,681.16	140,142.92	461.76	0.33%
Mar	139,649.23	147,913.58	160,249.88	152,973.96	156,998.09	166,560.39	155,984.45	-10,575.94	-6.35%
Apr	133,088.63	143,042.21	160,533.08	151,855.18	154,276.05	159,563.89	159,418.10	-145.79	-0.09%
May	147,139.03	153,133.55	154,553.36	160,201.04	162,075.43	176,074.56	162,276.46	-13,798.10	-7.84%
Jun	119,282.18	162,878.08	161,305.05	163,671.23	165,562.44	176,818.44	177,343.44	525.00	0.30%
Jul	143,771.76	152,964.04	147,950.00	155,143.98	166,412.21	168,785.26	150,780.84	-18,004.42	-10.67%
Aug	151,631.97	166,457.23	162,644.66	160,891.70	167,517.03	169,601.48			
Sep	148,068.43	155,015.91	151,264.37	158,830.58	169,036.62	175,746.65			
Oct	145,127.53	134,741.13	147,651.90	156,348.63	156,686.58	151,764.08			
Nov	144,375.13	153,895.13	141,634.37	149,817.01	153,873.00	166,473.69			
Dec	170,647.84	181,793.63	173,798.76	177,187.35	194,349.22	184,665.83			
<b>TOTAL</b>	<b>1,674,115.49</b>	<b>1,801,102.39</b>	<b>1,842,107.72</b>	<b>1,854,111.62</b>	<b>1,913,811.48</b>	<b>1,979,551.43</b>	<b>1,089,179.78</b>	<b>-42,119.92</b>	<b>-3.72%</b>
<b>%</b>	<b>-4.18%</b>	<b>7.59%</b>	<b>2.28%</b>	<b>0.65%</b>	<b>3.22%</b>	<b>3.44%</b>			

2016 Budget=\$2,040,000, 3% Increase from 2015 actual revenue

1,131,299.70 1,089,179.78 (42,119.92) -3.72%

Use Tax on Vehicles - 2% General Fund

	2009	2010	2011	2012	2013	2014	2015	2016	Variance	% Change
JAN	20,721.07	21,010.53	28,474.28	30,152.69	27,942.83	56,070.39	34,956.67	28,122.91	-6,833.76	-19.55%
FEB	22,901.63	23,512.06	32,236.80	25,415.92	38,537.86	36,000.06	50,225.73	36,471.71	-13,754.02	-27.38%
MAR	34,251.57	31,711.06	33,956.87	36,496.12	43,071.73	38,156.08	26,009.96	40,528.67	14,518.71	55.82%
APR	32,178.98	25,064.54	24,077.10	40,616.59	36,939.81	52,092.34	32,776.89	47,068.73	14,291.84	43.60%
MAY	28,991.09	27,124.89	41,212.91	45,918.39	41,984.05	42,159.85	42,823.62	43,755.86	932.24	2.18%
JUN	31,756.88	26,232.32	38,459.02	41,628.76	44,597.09	42,893.54	41,419.11	63,513.86	22,094.75	53.34%
JUL	27,302.19	31,988.69	39,392.08	40,487.84	38,899.29	46,697.95	52,885.65	54,218.60	1,332.95	2.52%
AUG	26,662.40	32,405.36	39,759.24	47,323.03	48,828.89	52,311.48	64,714.85	45,673.29	-19,041.56	-29.42%
SEP	31,920.89	39,773.57	35,811.70	30,358.71	45,580.49	37,084.71	58,410.57			
OCT	27,699.09	25,993.80	30,785.97	47,064.75	43,843.87	60,005.46	53,854.48			
NOV	17,431.56	26,057.48	28,049.93	25,419.72	41,660.04	29,508.89	46,492.91			
DEC	25,156.62	22,964.99	37,661.47	37,047.69	50,357.95	50,261.97	48,616.81			
YTD	326,973.97	333,839.29	409,877.37	447,930.21	502,243.90	543,242.72	553,187.25	359,353.63	13,541.15	3.92%
%	-41.02%	2.10%	22.78%	9.28%	12.13%	8.16%	1.83%			
							345,812.48	359,353.63	13,541.15	3.92%

2016 Budget = \$520,000 - 5.4% decrease from 2015 actual revenues

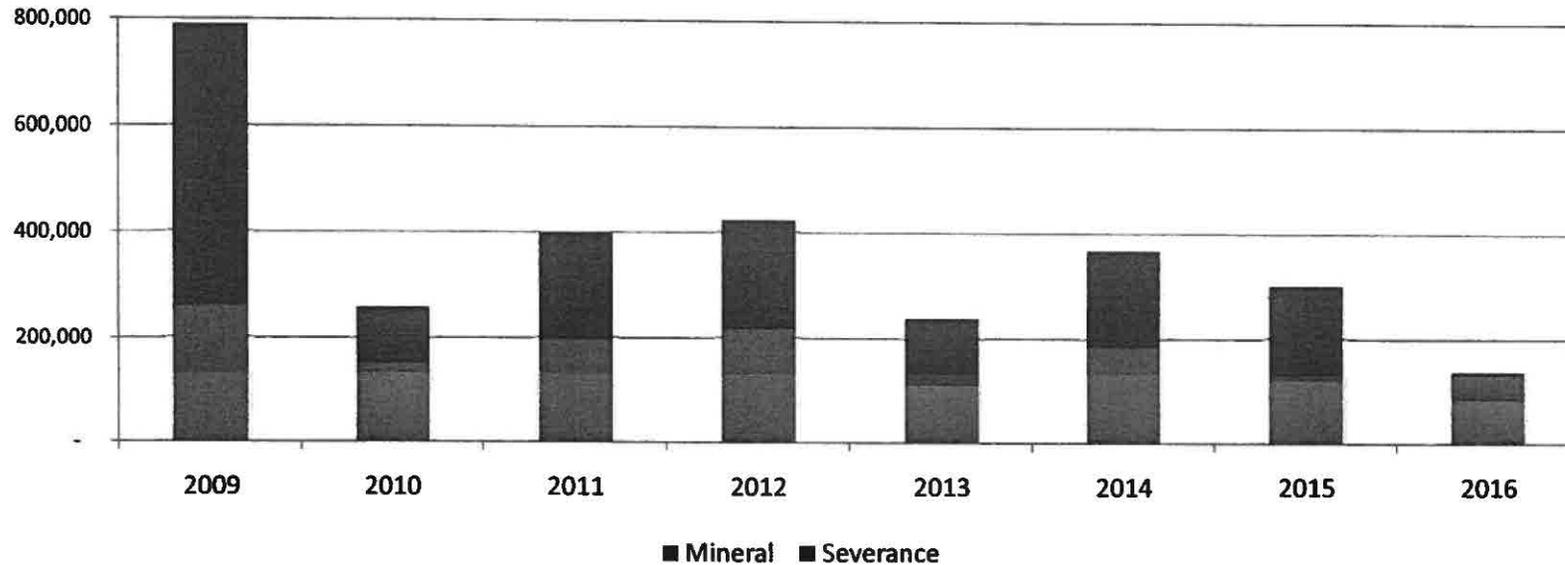
Use Tax on Building Materials - 2% General Fund

	2009	2010	2011	2012	2013	2014	2015	2016	Variance	% Change
JAN	3,558.19	18,147.60	5,439.12	26,313.85	20,923.45	13,167.04	14,735.14	3,256.46	-11,478.68	-77.90%
FEB	4,047.25	8,504.62	16,282.90	16,100.01	14,788.93	11,632.38	2,458.97	14,608.11	12,149.14	494.07%
MAR	6,919.27	6,162.62	30,509.68	25,506.73	10,552.31	7,307.73	8,211.61	14,726.17	6,514.56	79.33%
APR	8,919.35	35,306.94	9,839.22	14,732.71	26,597.25	14,357.92	7,344.73	34,284.04	26,939.31	366.78%
MAY	9,562.65	16,486.49	7,073.59	12,539.25	13,725.38	12,874.85	3,720.34	29,705.49	25,985.15	698.46%
JUN	13,956.59	11,810.90	3,208.84	21,515.83	11,902.04	13,891.13	6,139.39	12,846.67	6,707.28	109.25%
JUL	17,372.54	16,884.69	7,956.54	18,255.65	15,093.09	24,526.19	9,501.34	13,947.52	4,446.18	46.80%
AUG	25,575.83	9,649.66	7,344.90	16,064.36	27,974.64	12,311.44	7,115.25	8,116.85	1,001.60	14.08%
SEP	11,542.90	4,380.71	13,268.39	24,727.66	13,947.63	21,844.73	7,596.69			
OCT	14,667.33	11,302.35	17,526.21	17,943.01	23,497.04	9,547.81	8,877.79			
NOV	6,436.47	14,520.62	8,709.93	5,819.74	10,256.27	9,042.11	9,442.56			
DEC	11,833.53	3,754.79	2,630.75	14,482.99	4,810.32	13,018.26	19,628.19			
YTD	134,391.90	156,911.99	129,790.07	214,001.79	194,068.35	163,521.59	104,772.00	131,491.31	72,264.54	122.01%
%	-53.64%	16.76%	-17.28%	64.88%	-9.31%	-15.74%	-35.93%			
							59,226.77	131,491.31	72,264.54	122.01%

2016 Budget - \$75,000 - 28% reduction from 2015 actual revenues

Column1	2009	2010	2011	2012	2013	2014	2015	2016	\$ Chg	% Chg
Mineral	259,370	151,851	195,381	217,314	112,004	186,960	119,915	85,298	(34,617)	-29%
Severance	530,363	107,185	202,526	206,464	128,924	182,689	180,996	51,563	(129,434)	-72%
Total	789,733	259,036	397,907	423,778	240,929	369,649	300,912	136,861	(164,051)	-55%

**Severance Tax and Mineral Lease Revenues**



**2016 COMMUNITY CENTER FUND TAX REVENUES**  
**1% Sales and Use Tax Revenues - September 5, 2016**

	2009 Total	2010 Total	2011 Total	2012 Total	2013 Total	2014 Total	2015 Total	City Sales Tax	Use Tax on Motor Vehicles	Use Tax on Building Materials	2016 Total	\$ Change	% Chg
Jan	56,593.55	68,740.22	61,514.93	78,943.15	79,535.26	88,565.74	79,075.86	51,327.24	14,061.46	1,628.23	67,016.93	-12,058.93	-15.25%
Feb	58,002.09	58,148.39	71,825.86	76,002.81	75,142.30	82,631.50	79,936.78	54,513.78	18,235.85	7,304.05	80,053.68	116.90	0.15%
Mar	67,748.11	69,072.06	81,884.01	84,659.89	84,975.73	98,430.74	78,329.40	61,245.94	20,264.33	7,363.09	88,873.36	10,543.96	13.46%
Apr	75,033.32	81,620.90	77,165.81	98,885.55	97,438.92	98,461.69	79,863.73	65,484.43	23,534.36	17,142.02	106,160.81	26,297.08	32.93%
May	73,839.15	77,162.18	79,523.99	77,412.30	97,427.34	100,694.49	93,820.03	73,141.55	21,877.93	14,852.75	109,872.23	16,052.20	17.11%
Jun	73,538.22	75,828.93	81,352.21	108,332.79	95,556.60	100,977.70	94,847.80	71,853.99	31,756.93	6,423.34	110,034.26	15,186.46	16.01%
Jul	67,544.66	77,627.37	79,507.70	88,192.80	86,995.11	100,069.45	95,972.19	59,897.70	27,109.30	6,973.76	93,980.76	-1,991.43	-2.08%
Aug	74,268.70	74,500.07	77,665.14	90,639.31	104,504.75	101,993.43	94,281.22		22,836.64	4,058.43	26,895.07		
Sep	80,243.54	76,613.29	87,316.31	95,874.21	89,662.68	98,462.20	103,669.26				0.00		
Oct	68,996.64	68,780.04	76,894.86	91,740.61	99,304.36	96,454.10	89,545.94				0.00		
Nov	53,157.55	66,475.61	69,525.19	60,499.78	85,028.51	77,585.72	81,636.09				0.00		
Dec	70,957.51	67,542.34	75,635.02	81,605.04	89,407.32	93,568.08	89,872.79				0.00		
<b>TOTAL</b>	<b>819,923.04</b>	<b>862,111.40</b>	<b>919,811.03</b>	<b>1,032,788.24</b>	<b>1,084,978.88</b>	<b>1,137,894.84</b>	<b>1,060,851.09</b>	<b>437,464.63</b>	<b>179,676.80</b>	<b>65,745.67</b>	<b>682,887.10</b>	<b>54,146.24</b>	<b>9.00%</b>
% +/-		5%	6.69%	12.28%	5.05%	4.88%	-6.77%						
<b>2016 Budget</b>								<b>762,500.00</b>	<b>260,000.00</b>	<b>37,500.00</b>	<b>1,060,000.00</b>		
<b>% of Budget</b>								<b>57.37%</b>	<b>69.11%</b>	<b>175.32%</b>	<b>64.42%</b>		

601,845.79

655992.03

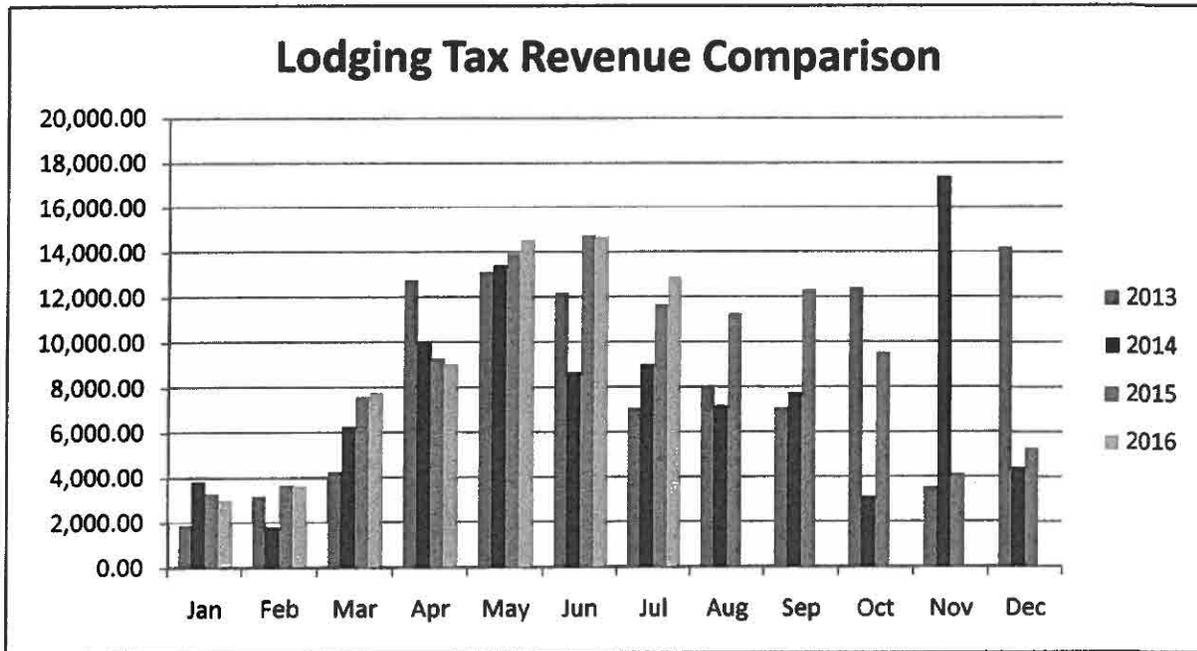
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9.00%

**MARKETING AND PROMOTION FUND**  
**3% Lodging Tax Revenues - September 12, 2016**

	2011	2012	2013	2014	2015	2016	Difference	%
Jan	3,338.63	2,076.12	1,865.42	3,835.87	3,295.72	3,009.89	-285.83	-8.67%
Feb	3,706.38	5,076.82	3,188.23	1,782.08	3,688.48	3,649.96	-38.52	-1.04%
Mar	5,794.48	7,102.70	4,233.87	6,250.18	7,582.11	7,755.49	173.38	2.29%
Apr	8,841.90	8,604.24	12,736.42	9,984.25	9,261.50	9,030.79	-230.71	-2.49%
May	11,733.32	11,886.54	13,101.84	13,393.62	13,948.38	14,533.96	585.58	4.20%
Jun	11,893.86	12,811.34	12,179.20	8,646.09	14,742.08	14,671.78	-70.30	-0.48%
Jul	9,621.68	10,697.76	7,045.91	8,991.16	11,676.25	12,857.52	1,181.27	10.12%
Aug	10,462.73	11,478.01	8,063.40	7,171.28	11,237.25			
Sep	10,956.22	11,061.65	7,074.25	7,753.38	12,311.19			
Oct	8,141.23	8,189.25	12,413.50	3,106.86	9,543.11			
Nov	5,119.32	2,957.31	3,536.66	17,384.48	4,118.50			
Dec	3,902.25	5,164.09	14,224.16	4,401.91	5,290.61			
<b>TOTAL</b>	<b>93,512.00</b>	<b>97,105.83</b>	<b>99,662.86</b>	<b>92,701.16</b>	<b>106,695.18</b>	<b>65,509.39</b>	<b>1,314.87</b>	<b>2.05%</b>
	-5.58%	3.84%	2.63%	-6.99%	15.10%			
					64,194.52	65,509.39	1,314.87	2.05%

2016 Budget - \$101,500 - 4.87% decrease from 2015 actual revenues



General Ledger  
General Fund Revenues



# FRUITA

## COLORADO

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Printed: 09/13/16 11:23:27  
Period 08 - 08  
Fiscal Year 2016

Account Number	Description	Current Month	End Bal	Budget	% Received
110-000-00-3110	Property Tax	-42,675.04	-1,075,632.50	-1,097,500.00	98.01
110-000-00-3120	Specific Ownership Tax	-12,782.72	-91,532.90	-142,600.00	64.19
110-000-00-3130	County Sales Tax	-162,276.46	-1,263,959.10	-2,040,000.00	61.96
110-000-00-3131	City Sales Tax	71,853.99	-758,409.17	-1,525,000.00	49.73
110-000-00-3132	Use Tax on Vehicles	27,109.30	-280,969.25	-520,000.00	54.03
110-000-00-3133	Use Tax on Building Materials	-8,116.85	-131,491.31	-75,000.00	175.32
110-000-00-3142	Cigarette Tax	0.00	-5,818.04	-11,000.00	52.89
110-000-00-3182	Franchise Fees	-40,316.42	-238,999.59	-405,000.00	59.01
110-000-00-3190	Penalties and Interest Taxes	-300.95 -167,505.15	-473.85 -3,847,285.71	-3,000.00 -5,819,100.00	15.80 66.11
110-000-00-3210	Business Licenses	-562.50	-8,712.50	-18,500.00	47.09
110-000-00-3211	Liquor Licenses	-50.00	-7,700.00	-8,500.00	90.59
110-000-00-3220	Street Excavation Permits	-60.00	-630.00	-1,500.00	42.00
110-000-00-3221	Other Permits Licenses and permits	-125.00 -797.50	-1,800.00 -18,842.50	-1,500.00 -30,000.00	120.00 62.81
110-000-00-3312	Federal Police Grants	0.00	0.00	0.00	0.00
110-000-00-3314	Economic Dev. Grants	0.00	0.00	0.00	0.00
110-000-00-3330	Severance & Mineral Leasing Ta	0.00	0.00	-150,000.00	0.00
110-000-00-3341	GOCO Grants	0.00	0.00	0.00	0.00
110-000-00-3342	Energy Impact Grant	0.00	0.00	-11,250.00	0.00
110-000-00-3343	CDOT Police Grants	0.00	0.00	0.00	0.00
110-000-00-3344	Tourism Mini Grant	0.00	0.00	0.00	0.00
110-000-00-3351	Add. Motor Vehicle Reg Fees	-2,014.50	-13,017.00	-19,000.00	68.51
110-000-00-3352	State Highway Users Tax	0.00	-216,170.38	-372,000.00	58.11
110-000-00-3353	App. Motor Vehicle Reg Fees	-2,687.50	-18,582.50	-27,500.00	67.57
110-000-00-3370	Tree Grants	0.00	-400.00	0.00	0.00
110-000-00-3371	Mesa County Grants	-1,966.20	-2,585.20	-2,550.00	101.38
110-000-00-3373	Local Agency Police Grants	0.00	-12,837.40	-12,825.00	100.10
110-000-00-3375	AGNC Grant	0.00	0.00	-5,000.00	0.00
110-000-00-3380	Mesa County Road & Bridge Tax	-919.51	-23,023.06	-24,000.00	95.93
	Intergovernmental revenue	-7,587.71	-286,615.54	-624,125.00	45.92
110-000-00-3413	Planning Fees	-425.00	-22,007.25	-13,000.00	169.29
110-000-00-3415	Subdivision Inspection & Revie	0.00	0.00	0.00	0.00
110-000-00-3421	Vehicle Inspection Fees	-50.00	-944.00	-1,100.00	85.82
110-000-00-3455	Impound Fees	0.00	0.00	-100.00	0.00
110-000-00-3470	Recreation Registration Fees	-14,806.00	-63,985.70	-77,000.00	83.10
110-000-00-3472	Special Event Appl & Booth Fee	-700.00	-5,937.50	-5,500.00	107.95
110-000-00-3473	Retail Sales	-135.31	-8,811.04	-9,000.00	97.90
110-000-00-3475	Internet sales	0.00	-856.74	-1,000.00	85.67

Account Number	Description	Current Month	End Bal	Budget	% Received
110-000-00-3477	Park Rentals	-1,862.50	-15,590.00	-11,000.00	141.73
110-000-00-3478	Shipping and Handling Charges	0.00	0.00	-50.00	0.00
110-000-00-3479	Scholarship Program	-299.00	-12,061.00	-13,100.00	92.07
110-000-00-3480	Manpower and other charges	-2,115.50	-9,065.71	-7,775.00	116.60
110-000-00-3482	Mountain Water Charges	0.00	0.00	0.00	0.00
110-000-00-3483	Penalties	-2,138.10	-14,974.51	-19,000.00	78.81
110-000-00-3484	Developer Contribution - Parks Charges for services	0.00	0.00	0.00	0.00
		-22,531.41	-154,233.45	-157,625.00	97.85
110-000-00-3510	City and County Court	-678.63	-15,052.60	-26,000.00	57.89
110-000-00-3511	Penalty Assessments	-615.00	-7,365.00	-14,500.00	50.79
110-000-00-3512	Restitution to City	0.00	-50.69	0.00	0.00
110-000-00-3513	Misdemeanor Fee Fines and forfeitures	0.00	-1,615.00	-1,500.00	107.67
		-1,293.63	-24,083.29	-42,000.00	57.34
110-000-00-3610	Interest on deposits	-543.44	-16,959.60	-8,000.00	212.00
110-000-00-3611	Interest on assessments	0.00	0.00	0.00	0.00
110-000-00-3613	Gain (Loss) on investments	0.00	-26.46	0.00	0.00
	Interest	-543.44	-16,986.06	-8,000.00	212.33
110-000-00-3640	Senior Center Donations	0.00	-542.98	0.00	0.00
110-000-00-3641	Miscellaneous Donations	-1,500.00	-2,500.00	-1,000.00	250.00
110-000-00-3642	Recreation Donations	-185.00	-4,807.50	-4,600.00	104.51
110-000-00-3643	Police Donations	0.00	0.00	0.00	0.00
110-000-00-3644	Tree Donations	0.00	0.00	0.00	0.00
110-000-00-3645	Special Event Donations	0.00	-19,000.00	-19,000.00	100.00
	Donations	-1,685.00	-26,850.48	-24,600.00	109.15
110-000-00-3680	Miscellaneous	-240.81	-2,230.30	-3,000.00	74.34
110-000-00-3681	Cash Over (Short)	-0.05	29.34	0.00	0.00
110-000-00-3682	Refunds	0.00	-161.97	0.00	0.00
	Miscellaneous	-240.86	-2,362.93	-3,000.00	78.76
110-000-00-3911	Transfer from Sewer Fund	0.00	-80,000.00	-160,000.00	50.00
110-000-00-3912	Transfer from Trash Fund	0.00	-25,500.00	-51,000.00	50.00
110-000-00-3913	Transfer from Devils Canyon Fu	0.00	0.00	0.00	0.00
110-000-00-3914	Transfer from Marketing & Prom	0.00	0.00	0.00	0.00
110-000-00-3915	Transfer from Irrigation Fund	0.00	-5,000.00	-10,000.00	50.00
110-000-00-3917	Transfer from Retirement Fund	0.00	0.00	-60,000.00	0.00
	Transfers from other funds	0.00	-110,500.00	-281,000.00	39.32
110-000-00-3937	Capital Lease Proceeds	0.00	0.00	0.00	0.00
110-000-00-3950	Sale of Equipment	0.00	-180.00	0.00	0.00
110-000-00-3960	Insurance payments	0.00	-3,110.22	-2,675.00	116.27
	Other financing sources	0.00	-3,290.22	-2,675.00	123.00
110-000-00-3555	Development Impact Fees	0.00	0.00	0.00	0.00
	Development impact fees	0.00	0.00	0.00	0.00
110-000-00-3624	Rail Car Rentals	0.00	0.00	0.00	0.00
110-000-00-3625	Rent on Lands and Water	-2,399.01	-19,192.08	-29,000.00	66.18

<b>Account Number</b>	<b>Description</b>	<b>Current Month</b>	<b>End Bal</b>	<b>Budget</b>	<b>% Received</b>
110-000-00-3626	Facility Rentals	-20.00	-1,145.00	-1,800.00	63.61
	Rents	-2,419.01	-20,337.08	-30,800.00	66.03
Revenue Total		-204,603.71	-4,511,387.26	-7,022,925.00	-0.64

General Ledger  
Actual vs Budget Report



**FRUITA**  
COLORADO

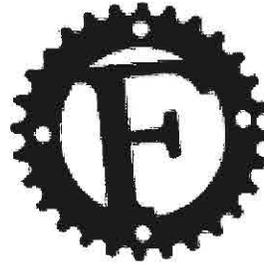
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Period 08 - 08  
Fiscal Year 2016

Sort Level	Description	Period Amt	End Bal	Budget	Variance	% ExpendCollect
<b>110</b>	<b>General Fund</b>					
000						
R01	Taxes	-167,505.15	-3,847,285.71	-5,819,100.00	-1,971,814.29	66.11
R02	Licenses and permits	-797.50	-18,842.50	-30,000.00	-11,157.50	62.81
R03	Intergovernmental revenue	-7,587.71	-286,615.54	-624,125.00	-337,509.46	45.92
R04	Charges for services	-22,531.41	-154,233.45	-157,625.00	-3,391.55	97.85
R05	Fines and forfeitures	-1,293.63	-24,083.29	-42,000.00	-17,916.71	57.34
R06	Interest	-543.44	-16,986.06	-8,000.00	8,986.06	212.33
R07	Donations	-1,685.00	-26,850.48	-24,600.00	2,250.48	109.15
R08	Miscellaneous	-240.86	-2,362.93	-3,000.00	-637.07	78.76
R09	Transfers from other funds	0.00	-110,500.00	-281,000.00	-170,500.00	39.32
R10	Other financing sources	0.00	-3,290.22	-2,675.00	615.22	123.00
R12	Rents	-2,419.01	-20,337.08	-30,800.00	-10,462.92	66.03
000		-204,603.71	-4,511,387.26	-7,022,925.00	-2,511,537.74	64.24
410	<i>General Government Department</i>					
E01	Personnel services, salaries	18,704.52	122,068.04	186,725.00	64,656.96	65.37
E02	Personnel services, benefits	3,957.50	30,591.02	43,600.00	13,008.98	70.16
E03	Purchased professional service	788.75	32,883.43	63,450.00	30,566.57	51.83
E04	Purchased property services	553.86	2,744.63	6,600.00	3,855.37	41.59
E05	Other purchased services	341.92	4,559.36	8,475.00	3,915.64	53.80
E06	Supplies	421.79	9,419.01	13,850.00	4,430.99	68.01
E07	Capital	0.00	2,220.00	2,225.00	5.00	99.78
E08	Special projects	1,702.36	36,942.10	75,700.00	38,757.90	48.80
410	<i>General Government Department</i>	26,470.70	241,427.59	400,625.00	159,197.41	60.26
415	<i>Administration Department</i>					
E01	Personnel services, salaries	32,312.26	196,000.22	285,600.00	89,599.78	68.63
E02	Personnel services, benefits	8,283.84	65,676.84	92,100.00	26,423.16	71.31
E03	Purchased professional service	2,564.62	57,082.58	80,675.00	23,592.42	70.76
E04	Purchased property services	5,340.00	63,763.77	90,000.00	26,236.23	70.85
E05	Other purchased services	4,279.30	16,236.12	30,750.00	14,513.88	52.80
E06	Supplies	5,945.64	36,899.76	54,875.00	17,975.24	67.24

Sort Level	Description	Period Amt	End Bal	Budget	Variance	% ExpendCollect
E07	Capital	5,175.00	13,521.15	29,700.00	16,178.85	45.53
E08	Special projects	0.00	0.00	15,000.00	15,000.00	0.00
415	<i>Administration Department</i>	63,900.66	449,180.44	678,700.00	229,519.56	66.18
418	<i>Engineering Department</i>					
E01	Personnel services, salaries	21,571.20	130,927.23	188,875.00	57,947.77	69.32
E02	Personnel services, benefits	6,816.30	55,951.67	76,175.00	20,223.33	73.45
E03	Purchased professional service	1,297.88	3,015.34	24,000.00	20,984.66	12.56
E04	Purchased property services	0.00	6,418.98	6,725.00	306.02	95.45
E05	Other purchased services	116.51	785.89	3,250.00	2,464.11	24.18
E06	Supplies	68.29	951.69	8,400.00	7,448.31	11.33
E07	Capital	0.00	6,788.19	7,000.00	211.81	96.97
418	<i>Engineering Department</i>	29,870.18	204,838.99	314,425.00	109,586.01	65.15
419	<i>Community Development Dpmt</i>					
E01	Personnel services, salaries	18,466.83	111,866.03	161,375.00	49,508.97	69.32
E02	Personnel services, benefits	6,687.95	54,373.01	75,750.00	21,376.99	71.78
E03	Purchased professional service	435.00	992.38	2,850.00	1,857.62	34.82
E04	Purchased property services	0.00	4,379.10	4,725.00	345.90	92.68
E05	Other purchased services	293.03	2,901.96	8,300.00	5,398.04	34.96
E06	Supplies	138.23	2,631.10	8,275.00	5,643.90	31.80
E08	Special projects	0.00	0.00	10,000.00	10,000.00	0.00
419	<i>Community Development Dpmt</i>	26,021.04	177,143.58	271,275.00	94,131.42	65.30
421	<i>Police Department</i>					
E01	Personnel services, salaries	134,853.11	828,326.97	1,238,825.00	410,498.03	66.86
E02	Personnel services, benefits	42,567.68	364,752.78	494,125.00	129,372.22	73.82
E03	Purchased professional service	1,787.32	19,533.09	28,575.00	9,041.91	68.36
E04	Purchased property services	539.62	72,910.54	85,725.00	12,814.46	85.05
E05	Other purchased services	25,435.51	192,799.25	303,525.00	110,725.75	63.52
E06	Supplies	3,552.72	23,590.29	72,400.00	48,809.71	32.58
E07	Capital	0.00	26,375.00	79,875.00	53,500.00	33.02
421	<i>Police Department</i>	208,735.96	1,528,287.92	2,303,050.00	774,762.08	66.36
431	<i>Public Works Department</i>					
E01	Personnel services, salaries	56,528.92	344,623.42	449,000.00	104,376.58	76.75
E02	Personnel services, benefits	15,892.96	150,271.36	185,900.00	35,628.64	80.83
E03	Purchased professional service	497.94	2,338.03	59,200.00	56,861.97	3.95
E04	Purchased property services	57,189.73	285,328.38	365,700.00	80,371.62	78.02
E05	Other purchased services	210.89	1,443.19	3,150.00	1,706.81	45.82
E06	Supplies	28,724.70	193,239.00	366,400.00	173,161.00	52.74
E07	Capital	204,848.26	398,080.09	497,025.00	98,944.91	80.09
431	<i>Public Works Department</i>	363,893.40	1,375,323.47	1,926,375.00	551,051.53	71.39

Sort Level	Description	Period Amt	End Bal	Budget	Variance	% ExpendCollect
451	<i>Parks and Recreation Dept</i>					
E01	Personnel services, salaries	52,203.73	348,843.38	513,425.00	164,581.62	67.94
E02	Personnel services, benefits	12,678.00	126,243.07	178,000.00	51,756.93	70.92
E03	Purchased professional service	656.38	24,077.09	28,325.00	4,247.91	85.00
E04	Purchased property services	2,855.22	66,068.00	87,575.00	21,507.00	75.44
E05	Other purchased services	132.27	5,387.64	16,950.00	11,562.36	31.79
E06	Supplies	9,427.87	107,716.19	147,825.00	40,108.81	72.87
E07	Capital	0.00	23,908.73	25,900.00	1,991.27	92.31
E08	Special projects	9,292.58	30,025.33	43,100.00	13,074.67	69.66
451	<i>Parks and Recreation Dept</i>	<i>87,246.05</i>	<i>732,269.43</i>	<i>1,041,100.00</i>	<i>308,830.57</i>	<i>70.34</i>
490	<i>Non-Departmental Expenses</i>					
E02	Personnel services, benefits	1,609.50	11,521.02	22,200.00	10,678.98	51.90
E03	Purchased professional service	2,637.54	30,393.55	35,400.00	5,006.45	85.86
E04	Purchased property services	130.88	17,854.82	22,000.00	4,145.18	81.16
E05	Other purchased services	7,600.02	140,972.13	164,000.00	23,027.87	85.96
E08	Special projects	9,747.25	31,741.75	42,000.00	10,258.25	75.58
E11	Contingency	0.00	0.00	165,000.00	165,000.00	0.00
E12	Transfers to other funds	48,170.47	217,349.00	830,800.00	613,451.00	26.16
490	<i>Non-Departmental Expenses</i>	<i>69,895.66</i>	<i>449,832.27</i>	<i>1,281,400.00</i>	<i>831,567.73</i>	<i>35.10</i>
<b>Revenue Total</b>		<b>-204,603.71</b>	<b>-4,511,387.26</b>	<b>-7,022,925.00</b>	<b>-2,511,537.74</b>	<b>-0.64</b>
<b>Expense Total</b>		<b>876,033.65</b>	<b>5,158,303.69</b>	<b>8,216,950.00</b>	<b>3,058,646.31</b>	<b>0.63</b>
<b>110</b>	<b>General Fund</b>	<b>671,429.94</b>	<b>646,916.43</b>	<b>1,194,025.00</b>	<b>547,108.57</b>	<b>54.18</b>

General Ledger  
Actual vs Budget Report



# FRUITA

## COLORADO

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Period 08 - 08  
Fiscal Year 2016

Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
<b>121</b>	<b>Conservation Trust Fund</b>					
<i>000</i>						
R03	Intergovernmental revenue	0.00	-77,876.51	-120,000.00	-42,123.49	64.90
<i>000</i>		<i>0.00</i>	<i>-77,876.51</i>	<i>-120,000.00</i>	<i>-42,123.49</i>	<i>64.90</i>
<i>880</i>	<i>Purchase of Dev Rights</i>					
E08	Special projects	0.00	0.00	26,000.00	26,000.00	0.00
E12	Transfers to other funds	121,924.92	175,891.38	184,100.00	8,208.62	95.54
<i>880</i>	<i>Purchase of Dev Rights</i>	<i>121,924.92</i>	<i>175,891.38</i>	<i>210,100.00</i>	<i>34,208.62</i>	<i>83.72</i>
<b>Revenue Total</b>		<b>0.00</b>	<b>-77,876.51</b>	<b>-120,000.00</b>	<b>-42,123.49</b>	<b>-0.65</b>
<b>Expense Total</b>		<b>121,924.92</b>	<b>175,891.38</b>	<b>210,100.00</b>	<b>34,208.62</b>	<b>0.84</b>
<b>121</b>	<b>Conservation Trust Fund</b>	<b>121,924.92</b>	<b>98,014.87</b>	<b>90,100.00</b>	<b>-7,914.87</b>	<b>108.78</b>

General Ledger  
Actual vs Budget Report



# FRUITA

## COLORADO

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
<b>125</b>	<b>Marketing and Promotion Fund</b>					
<i>000</i>						
R01	Taxes	-12,857.52	-70,800.00	-101,500.00	-30,700.00	69.75
R04	Charges for services	-52.00	-72.00	0.00	72.00	0.00
<i>000</i>		-12,909.52	-70,872.00	-101,500.00	-30,628.00	69.82
<i>465</i>	<i>Marketing Operations</i>					
E01	Personnel services, salaries	1,512.60	8,974.76	14,000.00	5,025.24	64.11
E02	Personnel services, benefits	402.57	3,088.68	4,600.00	1,511.32	67.15
E04	Purchased property services	13.25	99.24	300.00	200.76	33.08
E05	Other purchased services	3,978.60	34,613.74	62,225.00	27,611.26	55.63
E06	Supplies	1,706.52	2,501.52	3,500.00	998.48	71.47
E08	Special projects	0.00	21,500.00	22,500.00	1,000.00	95.56
<i>465</i>	<i>Marketing Operations</i>	<i>7,613.54</i>	<i>70,777.94</i>	<i>107,125.00</i>	<i>36,347.06</i>	<i>66.07</i>
<b>Revenue Total</b>		<b>-12,909.52</b>	<b>-70,872.00</b>	<b>-101,500.00</b>	<b>-30,628.00</b>	<b>-0.70</b>
<b>Expense Total</b>		<b>7,613.54</b>	<b>70,777.94</b>	<b>107,125.00</b>	<b>36,347.06</b>	<b>0.66</b>
<b>125</b>	<b>Marketing and Promotion Fund</b>	<b>-5,295.98</b>	<b>-94.06</b>	<b>5,625.00</b>	<b>5,719.06</b>	<b>-1.67</b>

General Ledger  
Actual vs Budget Report



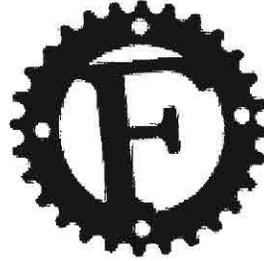
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## COLORADO

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Period 08 - 08  
Fiscal Year 2016

Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
127	<b>Community Center Fund</b>					
000						
R01	Taxes	-103,021.72	-733,879.81	-1,060,000.00	-326,120.19	69.23
R03	Intergovernmental revenue	0.00	-2,000.00	-2,000.00	0.00	100.00
R04	Charges for services	-84,581.85	-778,373.16	-1,029,500.00	-251,126.84	75.61
R06	Interest	0.00	-36.35	0.00	36.35	0.00
R07	Donations	-1,275.00	-1,800.00	-500.00	1,300.00	360.00
R08	Miscellaneous	-77.47	-1,167.34	0.00	1,167.34	0.00
R09	Transfers from other funds	0.00	-47,500.00	-95,000.00	-47,500.00	50.00
R10	Other financing sources	0.00	-24,839.36	-24,800.00	39.36	100.16
R12	Rents	-3,535.00	-34,310.00	-38,000.00	-3,690.00	90.29
000		-192,491.04	-1,623,906.02	-2,249,800.00	-625,893.98	72.18
451	<b>Parks and Recreation Dept</b>					
E01	Personnel services, salaries	119,128.69	650,455.51	879,525.00	229,069.49	73.96
E02	Personnel services, benefits	17,329.16	140,712.10	182,200.00	41,487.90	77.23
E03	Purchased professional service	4,965.10	29,527.91	41,650.00	12,122.09	70.90
E04	Purchased property services	12,033.86	66,534.14	97,475.00	30,940.86	68.26
E05	Other purchased services	4,210.95	26,914.22	40,050.00	13,135.78	67.20
E06	Supplies	25,377.89	203,897.58	313,425.00	109,527.42	65.05
E07	Capital	0.00	55,798.19	91,600.00	35,801.81	60.92
E12	Transfers to other funds	29,846.00	382,521.00	738,200.00	355,679.00	51.82
451	<b>Parks and Recreation Dept</b>	212,891.65	1,556,360.65	2,384,125.00	827,764.35	65.28
<b>Revenue Total</b>		-192,491.04	-1,623,906.02	-2,249,800.00	-625,893.98	-0.72
<b>Expense Total</b>		212,891.65	1,556,360.65	2,384,125.00	827,764.35	0.65
127	<b>Community Center Fund</b>	20,400.61	-67,545.37	134,325.00	201,870.37	-50.29

General Ledger  
Actual vs Budget Report



# FRUITA

## COLORADO

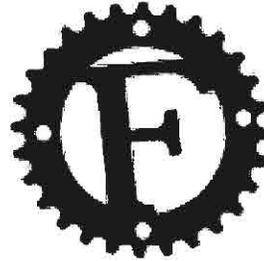
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Period 08 - 08  
Fiscal Year 2016

Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
<b>130</b>	<b>Capital Projects Fund</b>					
000						
R03	Intergovernmental revenue	0.00	-90,000.00	0.00	90,000.00	0.00
R05	Fines and forfeitures	0.00	0.00	0.00	0.00	0.00
R06	Interest	0.00	-3,219.10	0.00	3,219.10	0.00
000		0.00	-93,219.10	0.00	93,219.10	0.00
700	<i>Contingency</i>					
E11	Contingency	0.00	0.00	62,500.00	62,500.00	0.00
R09	Transfers from other funds	0.00	0.00	-62,500.00	-62,500.00	0.00
700	<i>Contingency</i>	0.00	0.00	0.00	0.00	0.00
708	<i>Downtown Improvements</i>					
E03	Purchased professional service	2,095.00	2,095.00	50,000.00	47,905.00	4.19
E07	Capital	2,764.00	12,592.00	20,000.00	7,408.00	62.96
R03	Intergovernmental revenue	0.00	0.00	-25,000.00	-25,000.00	0.00
R09	Transfers from other funds	-12,592.00	-12,592.00	-45,000.00	-32,408.00	27.98
708	<i>Downtown Improvements</i>	-7,733.00	2,095.00	0.00	-2,095.00	0.00
733	<i>Sidewalk Replacement</i>					
E07	Capital	4,085.10	31,453.08	40,000.00	8,546.92	78.63
R05	Fines and forfeitures	0.00	-5,237.06	0.00	5,237.06	0.00
R09	Transfers from other funds	-3,966.70	-26,216.02	-40,000.00	-13,783.98	65.54
733	<i>Sidewalk Replacement</i>	118.40	0.00	0.00	0.00	0.00
735	<i>Overlays</i>					
E07	Capital	0.00	371.50	498,750.00	498,378.50	0.07
R03	Intergovernmental revenue	0.00	0.00	-251,725.00	-251,725.00	0.00
R09	Transfers from other funds	0.00	0.00	-247,025.00	-247,025.00	0.00
735	<i>Overlays</i>	0.00	371.50	0.00	-371.50	0.00
742	<i>Hwy 340 and I-70 Improvements</i>					
E03	Purchased professional service	2,025.00	6,670.00	38,300.00	31,630.00	17.42
E07	Capital	0.00	0.00	30,000.00	30,000.00	0.00
R03	Intergovernmental revenue	0.00	0.00	-20,000.00	-20,000.00	0.00

Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
R09 742	Transfers from other funds <i>Hwy 340 and I-70 Improvements</i>	0.00 2,025.00	0.00 6,670.00	-48,300.00 0.00	-48,300.00 -6,670.00	0.00 0.00
745	<i>J.2 Road Improvements</i>					
E07	Capital	0.00	259,116.03	258,725.00	-391.03	100.15
R03	Intergovernmental revenue	0.00	-50,942.17	-50,575.00	367.17	100.73
R11	Development impact fees	-24.03	-208,173.86	-208,150.00	23.86	100.01
745	<i>J.2 Road Improvements</i>	-24.03	0.00	0.00	0.00	0.00
781	<i>Shop Improvements</i>					
E07	Capital	1,334.28	215,991.45	224,450.00	8,458.55	96.23
R03	Intergovernmental revenue	0.00	-115,000.01	-115,000.00	0.01	100.00
R09	Transfers from other funds	0.00	-99,429.21	-109,450.00	-10,020.79	90.84
781	<i>Shop Improvements</i>	1,334.28	1,562.23	0.00	-1,562.23	0.00
790	<i>Kokopelli Trail</i>					
E03	Purchased professional service	41,767.52	88,572.72	233,600.00	145,027.28	37.92
R03	Intergovernmental revenue	0.00	0.00	-160,000.00	-160,000.00	0.00
R09	Transfers from other funds	0.00	-27,443.23	-73,600.00	-46,156.77	37.29
790	<i>Kokopelli Trail</i>	41,767.52	61,129.49	0.00	-61,129.49	0.00
791	<i>Lower Little Salt Wash Trail</i>					
E07	Capital	63,823.66	1,190,581.27	1,260,000.00	69,418.73	94.49
R03	Intergovernmental revenue	-200,000.00	-784,140.00	-849,500.00	-65,360.00	92.31
R09	Transfers from other funds	-150,861.77	-150,861.77	-220,500.00	-69,638.23	68.42
791	<i>Lower Little Salt Wash Trail</i>	-287,038.11	255,579.50	190,000.00	-65,579.50	134.52
794	<i>Little Salt Wash Park</i>					
E07	Capital	0.00	11,214.48	11,250.00	35.52	99.68
R09	Transfers from other funds	-1,500.00	-11,214.48	-11,250.00	-35.52	99.68
794	<i>Little Salt Wash Park</i>	-1,500.00	0.00	0.00	0.00	0.00
798	<i>Community Recreation Center</i>					
E07	Capital	19,846.00	34,846.00	42,850.00	8,004.00	81.32
R09	Transfers from other funds	-29,846.00	-34,846.00	-42,850.00	-8,004.00	81.32
798	<i>Community Recreation Center</i>	-10,000.00	0.00	0.00	0.00	0.00
802	<i>Veterans Memorial Park</i>					
E07	Capital	0.00	17,983.67	20,000.00	2,016.33	89.92
R09	Transfers from other funds	-1,174.92	-17,983.67	-20,000.00	-2,016.33	89.92
802	<i>Veterans Memorial Park</i>	-1,174.92	0.00	0.00	0.00	0.00
803	<i>General Park Improvements</i>					
E07	Capital	0.00	8,225.00	8,500.00	275.00	96.76

Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
R07	Donations	0.00	-8,500.00	-8,500.00	0.00	100.00
803	General Park Improvements	0.00	-275.00	0.00	275.00	0.00
<b>Revenue Total</b>		<b>-399,965.42</b>	<b>-1,645,798.58</b>	<b>-2,608,925.00</b>	<b>-963,126.42</b>	<b>-0.63</b>
<b>Expense Total</b>		<b>137,740.56</b>	<b>1,879,712.20</b>	<b>2,798,925.00</b>	<b>919,212.80</b>	<b>0.67</b>
<b>130</b>	<b>Capital Projects Fund</b>	<b>-262,224.86</b>	<b>233,913.62</b>	<b>190,000.00</b>	<b>-43,913.62</b>	<b>123.11</b>

General Ledger  
Actual vs Budget Report



# FRUITA

## COLORADO

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
<b>140</b>	<b>Debt Service Fund</b>					
000						
R03	Intergovernmental revenue	0.00	-124,233.27	-248,450.00	-124,216.73	50.00
R06	Interest	0.00	-6,276.38	-4,350.00	1,926.38	144.28
R09	Transfers from other funds	0.00	-347,675.00	-695,350.00	-347,675.00	50.00
000		0.00	-478,184.65	-948,150.00	-469,965.35	50.43
470	<i>Debt Service</i>					
E09	Debt service principal	0.00	0.00	60,000.00	60,000.00	0.00
E10	Debt interest & bond issuance	0.00	444,318.75	888,150.00	443,831.25	50.03
470	<i>Debt Service</i>	0.00	444,318.75	948,150.00	503,831.25	46.86
<b>Revenue Total</b>		<b>0.00</b>	<b>-478,184.65</b>	<b>-948,150.00</b>	<b>-469,965.35</b>	<b>-0.50</b>
<b>Expense Total</b>		<b>0.00</b>	<b>444,318.75</b>	<b>948,150.00</b>	<b>503,831.25</b>	<b>0.47</b>
<b>140</b>	<b>Debt Service Fund</b>	<b>0.00</b>	<b>-33,865.90</b>	<b>0.00</b>	<b>33,865.90</b>	<b>0.00</b>

General Ledger  
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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
211	<b>Irrigation Water Fund</b>					
000						
R04	Charges for services	49.14	-78,013.28	-103,525.00	-25,511.72	75.36
000		49.14	-78,013.28	-103,525.00	-25,511.72	75.36
431	<i>Public Works Department</i>					
E01	Personnel services, salaries	10,893.66	41,125.01	48,800.00	7,674.99	84.27
E02	Personnel services, benefits	2,872.14	15,056.07	20,125.00	5,068.93	74.81
E04	Purchased property services	0.00	1,500.00	1,500.00	0.00	100.00
E05	Other purchased services	1,092.03	2,584.81	8,200.00	5,615.19	31.52
E06	Supplies	71.49	12,570.23	14,900.00	2,329.77	84.36
E12	Transfers to other funds	0.00	5,000.00	10,000.00	5,000.00	50.00
431	<i>Public Works Department</i>	14,929.32	77,836.12	103,525.00	25,688.88	75.19
	<b>Revenue Total</b>	49.14	-78,013.28	-103,525.00	-25,511.72	-0.75
	<b>Expense Total</b>	14,929.32	77,836.12	103,525.00	25,688.88	0.75
211	<b>Irrigation Water Fund</b>	14,978.46	-177.16	0.00	177.16	0.00

General Ledger  
Actual vs Budget Report



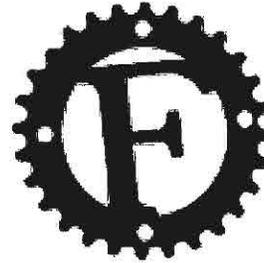
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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
<b>212</b>	<b>Sewer Fund</b>					
000						
R04	Charges for services	-14,424.92	-1,991,951.43	-3,038,000.00	-1,046,048.57	65.57
R06	Interest	0.00	-9,704.89	-4,300.00	5,404.89	225.70
R08	Miscellaneous	0.00	0.00	-100.00	-100.00	0.00
000		-14,424.92	-2,001,656.32	-3,042,400.00	-1,040,743.68	65.79
433	<i>Sewer</i>					
E01	Personnel services, salaries	46,589.17	278,953.11	481,475.00	202,521.89	57.94
E02	Personnel services, benefits	14,952.34	124,176.25	193,325.00	69,148.75	64.23
E03	Purchased professional service	1,308.03	43,057.25	64,000.00	20,942.75	67.28
E04	Purchased property services	906.69	75,436.99	81,250.00	5,813.01	92.85
E05	Other purchased services	14,360.42	80,448.91	120,450.00	40,001.09	66.79
E06	Supplies	51,193.00	192,528.41	365,325.00	172,796.59	52.70
E07	Capital	0.00	0.00	412,150.00	412,150.00	0.00
E08	Special projects	0.00	0.00	30,000.00	30,000.00	0.00
E09	Debt service principal	0.00	630,000.00	630,000.00	0.00	100.00
E10	Debt interest & bond issuance	0.00	562,843.70	562,850.00	6.30	100.00
E12	Transfers to other funds	0.00	80,000.00	169,450.00	89,450.00	47.21
433	<i>Sewer</i>	129,309.65	2,067,444.62	3,110,275.00	1,042,830.38	66.47
603	<i>Sewer Line Upgrades</i>					
E07	Capital	0.00	58,288.54	262,250.00	203,961.46	22.23
603	<i>Sewer Line Upgrades</i>	0.00	58,288.54	262,250.00	203,961.46	22.23
607	<i>Section 2</i>					
E04	Purchased property services	0.00	0.00	28,000.00	28,000.00	0.00
607	<i>Section 2</i>	0.00	0.00	28,000.00	28,000.00	0.00
<b>Revenue Total</b>		<b>-14,424.92</b>	<b>-2,001,656.32</b>	<b>-3,042,400.00</b>	<b>-1,040,743.68</b>	<b>-0.66</b>
<b>Expense Total</b>		<b>129,309.65</b>	<b>2,125,733.16</b>	<b>3,400,525.00</b>	<b>1,274,791.84</b>	<b>0.63</b>
<b>212</b>	<b>Sewer Fund</b>	<b>114,884.73</b>	<b>124,076.84</b>	<b>358,125.00</b>	<b>234,048.16</b>	<b>34.65</b>

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# FRUITA

## COLORADO

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
215	<b>Trash Fund</b>					
000						
R04	Charges for services	-340.01	-398,892.21	-671,000.00	-272,107.79	59.45
000		-340.01	-398,892.21	-671,000.00	-272,107.79	59.45
432	<i>Sanitation Department</i>					
E05	Other purchased services	51,952.40	310,380.22	620,000.00	309,619.78	50.06
E12	Transfers to other funds	0.00	25,500.00	51,000.00	25,500.00	50.00
432	<i>Sanitation Department</i>	51,952.40	335,880.22	671,000.00	335,119.78	50.06
<b>Revenue Total</b>		<b>-340.01</b>	<b>-398,892.21</b>	<b>-671,000.00</b>	<b>-272,107.79</b>	<b>-0.59</b>
<b>Expense Total</b>		<b>51,952.40</b>	<b>335,880.22</b>	<b>671,000.00</b>	<b>335,119.78</b>	<b>0.50</b>
215	<b>Trash Fund</b>	<b>51,612.39</b>	<b>-63,011.99</b>	<b>0.00</b>	<b>63,011.99</b>	<b>0.00</b>

General Ledger  
Actual vs Budget Report



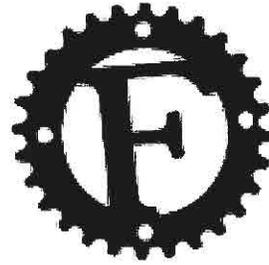
# FRUITA

## COLORADO

User: msteelman  
Printed: 09/13/16 11:07:21  
Period 08 - 08  
Fiscal Year 2016

Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
<b>220</b>	<b>Fleet Maintenance Fund</b>					
000						
R04	Charges for services	0.00	-290,375.00	-290,375.00	0.00	100.00
R10	Other financing sources	0.00	-794.33	0.00	794.33	0.00
000		0.00	-291,169.33	-290,375.00	794.33	100.27
<b>431</b>	<b>Public Works Department</b>					
E01	Personnel services, salaries	11,412.65	91,660.43	125,475.00	33,814.57	73.05
E02	Personnel services, benefits	3,016.93	30,453.31	43,900.00	13,446.69	69.37
E03	Purchased professional service	0.00	336.51	1,700.00	1,363.49	19.79
E04	Purchased property services	1,432.68	13,801.57	21,000.00	7,198.43	65.72
E06	Supplies	3,240.09	51,821.18	98,300.00	46,478.82	52.72
431	Public Works Department	19,102.35	188,073.00	290,375.00	102,302.00	64.77
<b>Revenue Total</b>		<b>0.00</b>	<b>-291,169.33</b>	<b>-290,375.00</b>	<b>794.33</b>	<b>-1.00</b>
<b>Expense Total</b>		<b>19,102.35</b>	<b>188,073.00</b>	<b>290,375.00</b>	<b>102,302.00</b>	<b>0.65</b>
<b>220</b>	<b>Fleet Maintenance Fund</b>	<b>19,102.35</b>	<b>-103,096.33</b>	<b>0.00</b>	<b>103,096.33</b>	<b>0.00</b>

General Ledger  
Actual vs Budget Report



**FRUITA**  
COLORADO

User: msteelman  
Printed: 09/13/16 11:07:21  
Period 08 - 08  
Fiscal Year 2016

Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
	<i>Revenue Total</i>	-824,685.48	-11,177,756.16	-17,158,600.00	-5,980,843.84	-0.65
	<i>Expense Total</i>	1,571,498.04	12,012,887.11	19,130,800.00	7,117,912.89	0.63



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<b>AGENDA ITEM COVER SHEET</b>
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**TO:** Fruita City Council and Mayor

**FROM:** Community Development Department

**DATE:** September 20, 2016

**RE:** Ordinance 2016 - 13, An Ordinance of the Fruita City Council to Quit Claim a 20-Foot Wide Strip of Land Located on the South Side of Property Addressed as 241 S. Sycamore Street to the Current Property Owners in Exchange for a Private Utility Easement Agreement

**BACKGROUND**

In 1996, a 20-foot wide strip of land on the south side of the property located at 241 S. Sycamore Street was given to the city of Fruita to accommodate a private sewer line. This area for the private sewer line should have been created as a private easement, not as a separate piece of land to be owned by the city. The property at 241 S. Sycamore Street is for sale and the potential buyers are concerned about the fact that 20 feet of the back yard actually belongs to the city and they would like the sewer line to be accommodated in an easement instead.

Staff is in full support of this request. The city has no *public* use for this land which is the rear 20 feet of someone's back yard, but there needs to be an easement to accommodate the *private* sewer line that runs through this area. It is a private sewer line because it serves only one house (the house to the west). The sewer line in the street that all houses in the area are connected to is a public sewer line.

Attached is a quit claim deed for the city to quit claim the 20-foot wide strip of land back to the current owners of 241 S. Sycamore Street and an easement agreement between the current owners of 241 S. Sycamore and the owner of the property to the west which uses the sewer line that is in the 20-foot strip.

## **FISCAL IMPACT**

There should be no fiscal impact to the city to resolve this issue as proposed.

## **APPLICABILITY TO CITY GOALS AND OBJECTIVES**

Staff believes that this change to land ownership on this lot best reflects protection of the general public health, safety and welfare which is the overarching goal of the city.

## **OPTIONS AVAILABLE TO COUNCIL**

1. Approval of Ordinance 2016 -13, An Ordinance of the Fruita City Council to Quit Claim a 20-Foot Wide Strip of Land Located on the South Side of Property Addressed as 241 S. Sycamore Street to the Current Property Owners in Exchange for a Private Utility Easement Agreement
2. Denial of the proposed Ordinance.

## **RECOMMENDATION**

Staff recommends that the City Council move to approve Ordinance 2016-13, An Ordinance of the Fruita City Council to Quit Claim a 20-Foot Wide Strip of Land Located on the South Side of Property Addressed as 241 S. Sycamore Street to the Current Property Owners in Exchange for a Private Utility Easement Agreement.

**Ordinance 2016 - 13**

**AN ORDINANCE OF THE FRUITA CITY COUNCIL QUIT CLAIMING A 20-FOOT WIDE STRIP OF LAND LOCATED ON THE SOUTH SIDE OF PROPERTY ADDRESSED AS 241 S. SYCAMORE STREET TO THE CURRENT PROPERTY OWNERS IN EXCHANGE FOR A PRIVATE UTILITY EASEMENT AGREEMENT**

**WHEREAS**, a 20-foot wide strip of land was quit claimed to the city of Fruita in 1996 to accommodate a private sewer line, and

**WHEREAS**, this should have been accomplished through a private easement agreement because there was/is no intended public use of the 20-foot strip of land, and

**WHEREAS**, the current property owners would like to exchange the quit claimed land for a private easement agreement to accommodate the sewer line, and

**WHEREAS**, the location of the 20-foot wide strip of land is shown and described on attached Exhibit A, and

**WHEREAS**, a quit claim deed to give the 20-foot wide strip of land back to the current property owner is attached as Exhibit B, and

**WHEREAS**, the easement agreement signed by the current property owners is attached as Exhibit C.

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

The 20-foot wide strip of land shown and described on attached Exhibit A is to be quit claimed to the current owners of property addressed as 241 S. Sycamore Street in exchange for an easement agreement to accommodate a private sewer line.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL, THIS  
20<sup>th</sup> DAY OF SEPTEMBER 2016.**

ATTEST:

City of Fruita

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Lori Buck, Mayor

**EXHIBIT A**  
(Ordinance 2016-13)

**Legal Description:**

The south 20 feet of the north half of Lots 14, 15, and 16 in Block 3 of the Cleveland Addition to the Town of Fruita

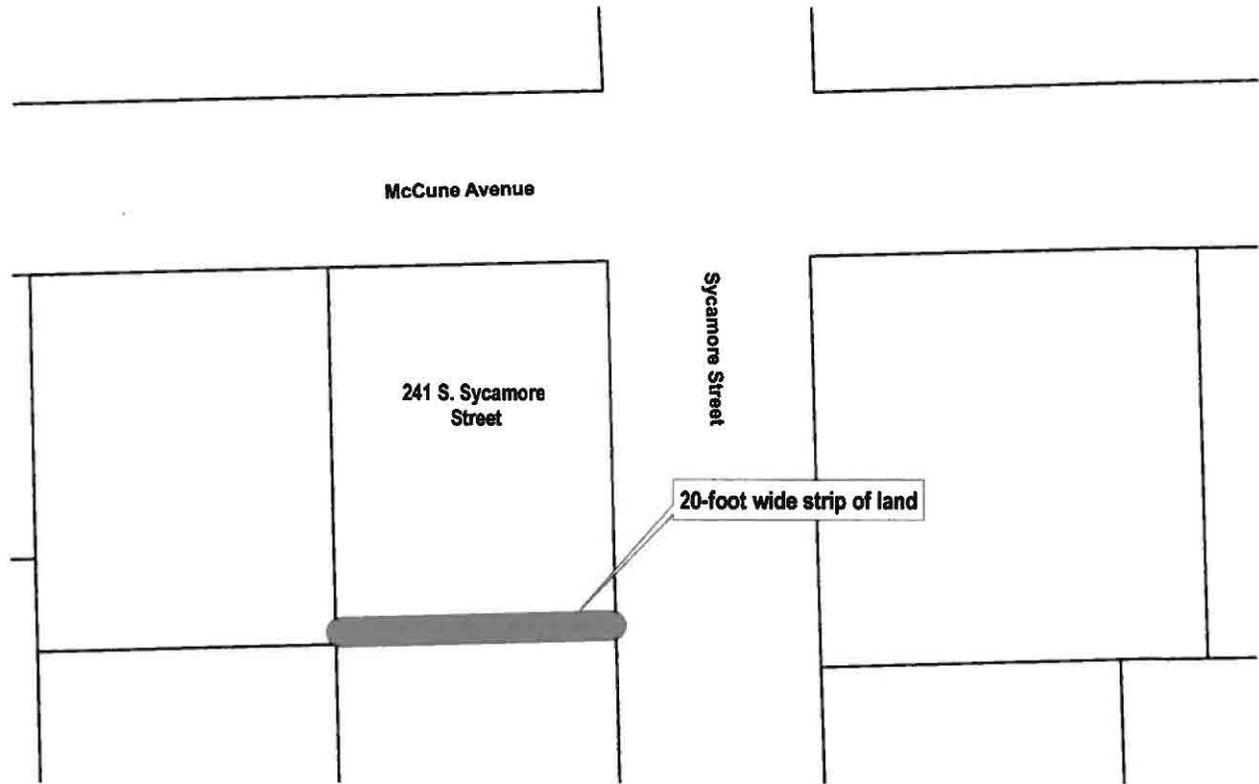
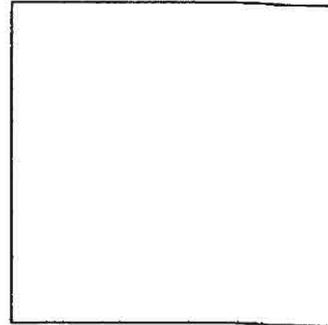


EXHIBIT B - Ordinance 2016-13

**QUITCLAIM DEED**

**THIS DEED**, dated this 28th day of July, 2016,  
between the **Town of Fruita**  
of the County of Mesa and State of Colorado, grantor(s), and  
**Thomas V. Johnson and Joan E. Johnson**, grantee(s)



whose legal address is 241 S. Sycamore Street, Fruita, CO 81521 of the County of Mesa and State of CO, grantee(s):

**WITNESS**, that the grantor(s), for and in consideration of the sum of Ten dollars and no/100 (\$10.00), the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and QUITCLAIMED, and by these presents does remise, release, sell and QUITCLAIM, unto the grantee(s), his heirs and assigns forever, AS JOINT TENANTS, all the right, title, interest, claim and demand which the grantor(s) has in and to the real property, together with improvements, if any, situate, lying and being in the County of Mesa and State of Colorado, described as follows:

**The South 20 feet of the North half of Lots 14, 15 and 16 in  
Block 3 of CLEVELAND ADDITION TO THE TOWN OF FRUITA as  
described in Deed recorded July 26, 1996 at Reception No. 1765570  
to the Town of Fruita**

also known by street and number as: **241 S. Sycamore Street, Fruita, CO 81521**

**TO HAVE AND TO HOLD** the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, all the estate, right, title, interest and claim whatsoever of the grantor(s), either in law or equity, to the only proper use, benefit and behoof of the grantee(s), his heirs and assigns forever.

The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

**IN WITNESS WHEREOF**, the grantor(s) has executed this deed on the date set forth above.

**Town of Fruita**

By: \_\_\_\_\_

STATE OF COLORADO

COUNTY OF \_\_\_\_\_

}  
} ss.  
}

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, by

as \_\_\_\_\_

of the **Town of Fruita**

My Commission expires:

Witness my hand and official seal.

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

EXHIBIT C  
Ordinance 2016-13

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT is made and entered into Aug 9, 16, 2016, by and between Thomas V. Johnson and Joan E. Johnson (collectively "Johnson") and Linda P. Monger ("Monger") (collectively the "parties").

RECITALS

A. Johnson owns the real property described in the attached Exhibit A (the "Johnson Property") which includes an area (the "Easement Area") over which a sewer line runs. The legal description of the Easement Area is attached as Exhibit B.

B. Monger is the owner of the property (the "Monger Property") described in the attached Exhibit C.

C. Monger desires to obtain an easement from Johnson and Johnson is willing to enter into this Easement Agreement defining the parties' rights, interests and obligations relating to the Easement Area.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Easement Grant. Johnson grants, conveys and confirms to Monger, her successors and assigns, a non-exclusive easement and right-of-way appurtenant to the Monger Property, over and across the Easement Area that is described in Exhibit B, for a non-exclusive easement and right-of-way for the construction, installation, operation, maintenance and repair of an underground sewer line, including the right to enter upon the Easement Area to inspect, maintain and repair such line.

2. Owner's Rights to Easement Area. Monger shall have a right and easement of enjoyment in and to the Easement Area which shall run with the Monger Property and shall be appurtenant to and shall pass with the title to the Monger Property, subject to the provisions of this agreement. Except as specifically provided herein, Johnson shall retain all rights pertaining to and enjoyment of the Easement Area.

3. No Right to Partition. Monger shall have no right to partition Monger's interest in the Easement.

4. Liability. Monger shall use the easement in a safe manner. Monger agrees, for herself and her successors and assigns as owner of the Monger Property, that she shall indemnify and

hold Johnson, their successors as owners of the Johnson Property and assigns, harmless from any and all claims, damages, causes of action or liability for damage to person or property, resulting from or incurred in connection with the use by the indemnifying party, its guests, invitees, licensees or permittees, of the Easement Area and the easement herein granted, including attorneys' fees incurred in defending such claims. As a condition to the continued use of the Easement granted herein, Monger agrees to prevent any liens from attaching to Johnson's Property. Monger also agrees for herself and her successors to maintain property and liability insurance covering risks ordinarily associated with use of the easement on the Easement Area and provide proof thereof upon request by the owner of the Johnson Property.

5. General Terms.

A. Should any of the parties breach any of its obligations hereunder, and should such breach continue for a period of ten (10) days after its receipt of written notice, the other party shall be entitled to cure such breach in addition to all remedies at law or in equity, provided that no notice is required should the breach create an emergency or prevent the use of the Easement Area. All expenses incurred by any non-defaulting party to cure the defaulting party's uncured breach pursuant to the preceding notice shall be reimbursed by the defaulting party within ten (10) days after receipt of written evidence confirming the payment of such expenses. Any sums remaining unpaid after that ten (10) day period shall bear interest at the rate of Wall Street Prime. In the event of litigation by reason of this agreement, the prevailing party in such litigation shall be entitled to recover reasonable attorneys' fees in addition to all other reasonable expenses incurred by such litigation. In addition to other remedies available at law, the parties shall also have the remedy of specific performance.

B. This agreement may be amended, terminated or rescinded only with the written approval of the parties.

C. This agreement shall not create an association, partnership, joint venture or a principal and agency relationship between the parties or their tenants, assignees or successors in interest.

D. No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

E. Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by the same.

F. This agreement shall be binding and inure to the benefit of the successors and assigns of the parties.

Thomas V. Johnson  
Thomas V. Johnson

Joan E. Johnson  
Joan E. Johnson

Linda P. Monger  
Linda P. Monger

STATE OF COLORADO )  
 )  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me on 8/9/2016, 2016, by Thomas V. Johnson and Joan E. Johnson.

Diane Hagen  
Notary Public

DIANE HAGEN  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID #20024024054  
My Commission Expires July 29, 2018

STATE OF COLORADO )  
 )  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me on 8/9/2016, 2016, by Linda P. Monger.

Diane Hagen  
Notary Public

DIANE HAGEN  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID #20024024054  
My Commission Expires July 29, 2018

EXHIBIT A  
*Easement Agreement*

The East 15 feet of the North half of Lot 14 and the North half of Lots 15 and 16 in Block 3 of Cleveland Addition to the Town of Fruita;  
Together with the West 10 feet of South Sycamore Street adjacent on the East as vacated by Ordinance No. 367, recorded September 19, 1977 at Reception No. 1142131;

Mesa County, Colorado

also known by street and number as: 241 South Sycamore Street, Fruita, Colorado 81521  
Mesa County Assessor's parcel number: 2697-174-03-021.

EXHIBIT C  
*Easement Agreement*

The North half of Lots 11, 12 and 13 and the West 10 feet of the North half of Lot 14 in Block 3 of the Cleveland Addition to the Town of Fruita;

Mesa County, Colorado

also known as street and number: 842 McCune Avenue, Fruita, Colorado 81521  
Mesa County Assessor's parcel number: 2697-174-03-022



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<b>AGENDA ITEM COVER SHEET</b>
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**TO: Fruita City Council and Mayor**

**FROM: Community Development Department**

**DATE: September 20, 2016**

**RE: Robinson Rental Conditional Use Permit**

**BACKGROUND**

This is a request for a CUP for a bed & breakfast use (also known as a vacation rental by owner, or VRBO) in a residential zone. The subject property contains 16,157 square feet and is located at 1424 Niblick Way in the Adobe Falls PUD Filing 1 Subdivision. The 400 square foot guest house attached to the 2,587 square foot main house on the property is intended to be used as a bed & breakfast. The Land Use Code requires a CUP for a bed & breakfast use in all residential zones.

No review agencies expressed a concern regarding this proposed use. The proposed CUP for this bed & breakfast use meets all approval criteria that must be considered for a bed & breakfast use **with one exception**. Supplemental zoning standard #7 of Section 17.07.070.A of the Land Use Code states that it is the responsibility of the applicant to demonstrate that any declarations, covenants, conditions or restrictions on the property allow for a bed & breakfast use.

The attorney for the homeowners association (HOA) for this subdivision has provided a letter stating that this use violates the covenants. All other property owners, including the developer of this subdivision who still owns a majority of the lots, also have provided written statements opposing this use and agreeing that the use violates the covenants.

Because the supplemental zoning standard requiring the applicant to demonstrate that the use is allowed by the covenants has not been met, staff recommends denial. Approval criteria that must be considered for CUPs requires that the application be consistent with the Land Use Code. Because the supplemental zoning standards for bed & breakfast uses has not been met, the application is not consistent with the Land Use Code.

This issue does not require staff (including the City Attorney) or the Council to make a determination as to which party has interpreted the covenants correctly because it is the applicant's responsibility to prove that there are no violations, and this has not been proven. If the applicant desires to take the issue to civil court, certainly then the city can abide by that order of the court regarding which party has interpreted the covenants correctly according to law.

At the August 9, 2016, Planning Commission public hearing, the HOA's attorney and several of the surrounding property owners spoke out against the proposed bed & breakfast use. Other than the applicants, no one spoke out in favor of this CUP request. The Planning Commission voted 5-1 to recommend denial of the proposed CUP. Commissioner Van Etten voted against the motion to deny the CUP because he believes that interpretations of ambiguous covenant language should allow the applicant greater freedoms in the use of their property.

### **FISCAL IMPACT**

Commercial development generally has a positive fiscal impact on the City.

### **APPLICABILITY TO CITY GOALS AND OBJECTIVES**

This CUP does not meet one of the supplemental zoning standards that must be met for bed & breakfast uses. The Land Use Code is one of the primary tools used to implement the city's goals and policies as identified in the city's Master Plan including the Fruita Community Plan. Because the CUP does not meet the requirements of the Land Use Code, the CUP does not further the city's goals and objectives.

### **OPTIONS AVAILABLE TO COUNCIL**

1. Deny the proposed Conditional Use Permit.
2. Approve the proposed Conditional Use Permit with or without conditions.

### **RECOMMENDATION**

Staff recommends that the City Council move to deny the Robinson Rental CUP application for a bed & breakfast in a residential zone because it does not meet all the approval criteria that must be considered for CUP applications.



**Community Development Department  
Staff Report  
August 3, 2016**

**Application #:** 2016-11  
**Project Name:** Robinson Rental  
Property Owner: Travis and Ellen Robinson  
Representative: Travis and Ellen Robinson  
Application Type: Conditional Use Permit  
Location: 1424 Niblick Way  
Zone: Adobe Falls PUD

**Request:** This is a request for approval of a Conditional Use Permit for a Vacation Rental by Owner (Bed And Breakfast). The Fruita Land Use Code requires a Conditional Use Permit to operate a Bed and Breakfast in residential zones.

**Project Description:**

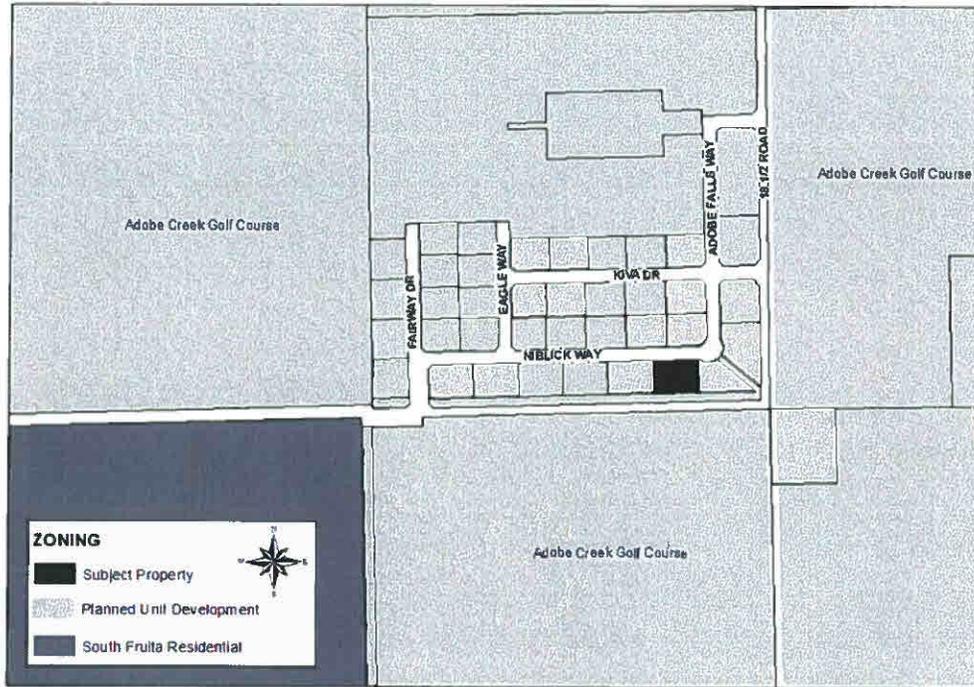
The subject property contains a 2,987 square foot detached single family house and a 400 square foot finished attached guest house on an approximately 16,120 square foot lot which is located on Niblick Way in the Adobe Falls subdivision. The 400 square foot attached guest house is attached by a roof; however the actual guest house is separate from the main house. The property owner has requested a Conditional Use Permit (CUP) to use the guest house for a vacation rental by owner.

The finished guest house is intended to be available for rent on a less than month-to-month basis. The Land Use Code defines this type of use as a Bed & Breakfast which requires a CUP in the Community Residential (CR) zone.

**Surrounding Land Uses and Zoning:**

The subject property is surrounded by PUD zoning, the majority of the land surrounding the property is vacant lots. Directly to the south is the Adobe View Golf Course. To the north, south, and west are residential lots and homes. The uses in these zones are primarily single family residential dwelling units.

## Zoning Map



## 2015 AERIAL PHOTOGRAPH



### **Review of Applicable Land Use Code Requirements:**

Table 17.07.060(F) of the Land Use Code requires a Conditional Use Permit (CUP) for Bed & Breakfast type of land use in the Community Residential zone. The Land Use Code defines a Bed & Breakfast as a facility of residential character that provides sleeping accommodations with or without meals for hire on a day-to-day basis with no more than four guest rooms. It is not required to be owner occupied.

Section 17.07.070, Supplemental Zoning Regulations and Standards, Section A, identifies conditions and standards that must be met for a Bed & Breakfast use:

- 1. Where the applicable zoning district allows bed and breakfast uses as a Conditional Use, the use must be a residential dwelling that contains no more than four (4) guest bedrooms where overnight lodging, with or without meals, is provided for compensation. Bed and Breakfast uses with more than four (4) guest bedrooms are considered hotels or motels;**

The building to be used as the vacation rental is the finished guest house which includes a bathroom and a bedroom area and a living room. The main house, which contains four bedrooms according to the Mesa County Assessor's Office, will not be used as part of this vacation rental business.

- 2. Kitchen and dining facilities in bed and breakfast dwellings may serve only residents and guests and shall not be operated or used for any commercial activity other than that necessary for bed and breakfast purposes;**

The project narrative says, "We will not be offering any sort of food or beverage services."

- 3. The bed and breakfast use shall not change the residential character of the dwelling if located in a residential zone or area;**

According to the project narrative, "the guest house will be set up as a residential home." Staff interprets this as not changing the residential character of the dwelling or neighborhood.

- 4. In residential zones (including residential developments in the CMU zone), there shall be no advertising display or other indication of the bed and breakfast use on the premises other than a sign that is in compliance with the provisions of Chapter 17.41;**

Chapter 17.41 of the Land Use Code permits an Address or Identification Sign, identifying the address and/or the occupants of a dwelling unit or of an establishment, with a maximum size of two square feet and a maximum height of four feet for a sign in this zone. No illumination of this sign is permitted. There are no signs on the subject property at this time. And based on the project narrative, "We will also not have any signage at the property."

5. **A minimum of one parking space per guest bedroom and resident bedroom shall be required. Screening may also be required;**

The parking for this vacation rental will be in the driveway as stated in the project narrative "We have dedicated off street parking in our driveway, so this will not add to cars in the street". There are a total of 6 off street car parking spaces available. No screening is recommended.

6. **The bed and breakfast facility shall comply with all Building Codes adopted by the city;**

The house was built in 2014 and has received a Certificate of Occupancy. Staff has no reason to believe the building doesn't continue to meet the building codes.

7. **It shall be the responsibility of the applicant to demonstrate that the relevant subdivision's declarations, covenants, conditions or restrictions allow for a bed and breakfast use and/or associated signing; and**

According to the project narrative, "The HOA does not specifically prohibit operating a Bed and Breakfast." All property owners within 350 feet of the subject property have been notified of this CUP application. At this time, staff has received written comments addressing this CUP in the form of a letter and a signed petition that is overwhelmingly against this CUP application. The letter and petition have been included in the Staff Report.

Staff has received a copy of a letter sent to Travis and Ellen Robinson from Richard Livingston of Livingston & Mumby, LLC, which states "The application for a Conditional Use Permit (CUP) for your property to operate a B & B will be in violation of the Declaration of Covenants, Conditions and Restrictions for Adobe Falls Subdivision. Article V of the Declaration restricts the use of lots to residential purposes only." It is unclear if Mr. Livingston represents the HOA or an individual property owner.

8. **Where a bed and breakfast use is subject to Conditional Use Permit approval, any existing or proposed uses in addition to that of a**

**dwelling unit (e.g. home occupation, accessory dwelling unit, etc.) are considered as part of the conditional use review.**

Staff is unaware of any other existing or intended use of this property other than as a dwelling unit and/or as a short term rental as proposed by this CUP request.

Based on this information, this CUP request for a Bed & Breakfast meets all but one of the supplemental zoning regulations and standards of the Land Use Code. Supplemental zoning standard #7 states that it is the responsibility of the applicant to demonstrate that there is no violation of the covenants. This has not been demonstrated.

Chapter 13 of the Land Use Code identifies the approval criteria that must be considered for Conditional Use Permit (CUP) requests. The Code defines a CUP as a use which, because of its unique or varying characteristics, cannot be properly classified as an allowed use in a particular zone district. After due consideration, as provided for in Section 17.13.040 of the Land Use Code, of the impact upon neighboring land and of the public need for the particular use at a particular location, such conditional use may or may not be approved.

**Section 17.13.040, Conditional Uses, of the Land Development Code requires that a conditional use be approved after considering the following:**

- 1. The proposed use is consistent with the provisions and purposes of this Title, with the purposes of the zone in which it is located, and with the city's Master Plan;**

Based on this review, the proposed conditional use can be consistent with the provisions and purposes of this Title, which is to promote the health, safety and welfare of the present and future inhabitants of the community, and with the purposes of this Planned Unit Development (PUD) zone, which is to allow for moderate density single-family neighborhoods. If the supplemental zoning regulations and standards (identified above) are met along with the approval criteria for CUPs, this criterion has not been met because supplemental standard #7 requires the representative to demonstrate that the proposed Bed and Breakfast (VRBO) would not be in violation of any of the subdivisions covenants. The Land Use Code is one of the main documents used to implement the goals and policies of the City's Master Plan.

- 2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, pursuant to the criteria in Section 17.07.080;**

Section 17.07.080 requires that a proposed development be compatible with adjacent properties, considering both existing and potential land uses on adjacent properties. For all land uses, "compatibility" is provided when a proposed land use can coexist with other existing uses in the vicinity without one use having a disproportionate or severe impact on the other use(s). The city decision-making body may consider other uses existing and approved, and may consider all potential impacts relative to what customarily occurs in the applicable zone and those which are foreseeable, given the range of land uses allowed in the zone. The review authority may require conditions of approval to promote compatibility between a proposed use and existing uses in the vicinity to ensure compatibility.

It appears that this proposed vacation rental will be able to coexist with other existing houses in the area without having a disproportionate or severe impact on the neighborhood. Due to the characteristics of the surrounding land uses it appears that this Bed & Breakfast will be compatible with the zoning that surrounds the subject property. Staff sees no negative impact to the neighborhood or the proposed use being disproportionate to the current land uses in the surrounding area. This criterion has been met.

**3. The proposed use will not materially endanger the public health or safety; and**

Use of the house for a vacation rental is not expected to endanger the public health or safety. This criterion can be met.

**4. Public services and facilities including, but not limited to, transportation systems, wastewater disposal and treatment, domestic water, fire protection, police protection, and storm drainage facilities are adequate to serve the proposed use.**

Public services and facilities have been available to this property and will continue to be available to this property while it is used as a vacation rental. The impacts are not expected to be any greater than those generated by a single family residence. This criterion has been met.

Based on this information, this requested Conditional Use Permit does not meet all approval criteria for Conditional Use Permits and all supplemental zoning standards. Because supplemental zoning standard #7 requires the representative to demonstrate that the proposed Bed & Breakfast (VRBO) would not be in violation of any of the subdivisions covenants, and what has been

demonstrated is that the issue is debatable, this supplemental zoning standard has not been met.

**Review Comments:**

All review comments received are included with this Staff Report. There are no concerns from review agencies regarding this Conditional Use Permit request.

**Public Comments:**

Public comments have been received and have been included with this Staff Report.

**Staff Recommendation:**

Staff recommends denial of this CUP because the representative has not demonstrated that the proposed Bed and Breakfast would not be in violation of the subdivisions covenants as required by the supplemental zoning standards of the Land Use Code.

**Fruita Planning Commission:** August 9, 2016

**Fruita City Council:** September 6, 2016

**LIVINGSTON & MUMBY, LLC**  
Attorneys at Law

J. Richard Livingston  
jrl@lmgjlaw.com

2764 Compass Drive, #200A  
Grand Junction, CO 81506  
(970) 242-7322 Fax (970) 242-0698

Keith G. Mumby  
(1931-2014)

June 27, 2016

Mr. and Mrs. Travis Robinson  
1424 Niblick Way  
Fruita, CO 81521

COPY

Re: Conditional Use Permit

Dear Mr. and Mrs. Robinson:

The application for a Conditional Use Permit (CUP) for your property to operate a B & B will be in violation of the Declaration of Covenants, Conditions and Restrictions for Adobe Falls Subdivision. Article V of the Declaration restricts the use of lots to residential purposes only.

Please be advised that the CUP application will be contested and, if approved, contested further in the Mesa County District Court. Reconsideration of your decision to pursue a business activity on your property will avoid such legal proceedings.

Should you or your attorney have any questions, please contact me.

Sincerely yours,

LIVINGSTON & MUMBY, LLC

  
J. Richard Livingston

JRL:jlc

cc: Client  
Fruita Planning Department

**LIVINGSTON & MUMBY, LLC**  
**ATTORNEYS AT LAW**

J. Richard Livingston  
[jrl@lmglaw.com](mailto:jrl@lmglaw.com)

2764 Compass Drive, #200A  
Grand Junction, CO 81506  
(970) 242-7322 Fax (970) 242-0698

Keith G. Mumby  
(1931-2014)

July 7, 2016

**Via Email & First Class Mail**

Dahna Raugh  
City of Fruita Planning Department  
325 E. Aspen Avenue  
Fruita, CO 81521

Re: Robinson Rental CUP  
2016-11

Dear Dahna:

Enclosed please find a Petition in Opposition to the above-referenced CUP Application scheduled for the July 12, 2016 Planning Commission meeting. The Petition has been signed by all the property owners in Adobe Falls Subdivision except the Applicant. Please enter the Petition in the file for this matter.

It is my intention to appear for any hearing on this matter. I would appreciate it if you would advise me as to any scheduling changes should they occur.

Thank you for your time and assistance.

Sincerely yours,

LIVINGSTON & MUMBY, LLC

  
J. Richard Livingston

JRL:jlc  
Enclosure  
cc: Adobe Falls, LLC





# LAND DEVELOPMENT APPLICATION

Project Name: Robinson Rental  
 Project Location: 1424 Niblick Way Frisco CO 81521  
 Current Zoning District: PUD Requested Zone: None  
 Tax Parcel Number(s): \_\_\_\_\_ Number of Acres: \_\_\_\_\_  
 Project Type: Conditional Use Permit

Property Owner: Travis & Ellen Robinson Developer: \_\_\_\_\_  
 Property Owner: \_\_\_\_\_ Contact: \_\_\_\_\_  
 Address: 1424 Niblick Way Address: \_\_\_\_\_  
 City/State/Zip: Frisco CO 81521 City/State/Zip: \_\_\_\_\_  
 Phone: 970-640-9641 Fax: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 E-mail: travis@robinson@gmail.com E-mail: \_\_\_\_\_

**Please designate a representative as the coordinator for this application. The representative should attend all conferences/hearings, will receive all correspondence, and communicate all information to the property owners.**

Owner Rep: \_\_\_\_\_ Engineer: \_\_\_\_\_  
 Contact: \_\_\_\_\_ Contact: \_\_\_\_\_  
 Address: \_\_\_\_\_ Address: \_\_\_\_\_  
 City/State/Zip: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 E-mail: \_\_\_\_\_ E-mail: \_\_\_\_\_

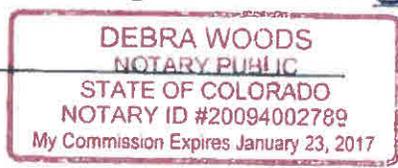
**This Notarized application authorizes the owner's representative, if designated, to act on behalf of the property owners regarding this application.**  
**The above information is correct and accurate to the best of my knowledge.**

Travis Lane Robinson \_\_\_\_\_ [Signature] \_\_\_\_\_ 4.21.16  
 Name of Legal Owner Signature Date  
 \_\_\_\_\_  
 Name of Legal Owner Signature Date  
 \_\_\_\_\_  
 Name of Legal Owner Signature Date

STATE OF COLORADO )  
 ) ss.  
 COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of May, 2016

My Commission expires: \_\_\_\_\_



[Signature]  
 Notary Public

# VESTED RIGHTS OPTION FORM

Chapter 17.47 of the Fruita Land Use Code requires a landowner to request vested rights in writing at the time a Land Development Application is submitted IF the landowner wishes the approval of the Land Development Application to create a vested property right pursuant to Sections 24-68-101, et. seq., C.R.S.

The purpose of this document is to clearly identify whether or not a property owner is requesting creation of a vested right.

I, Travis Robinson, understand the City's requirements regarding vested rights and the need to request vested rights at the time a Land Development Application for a Site Specific Development Plan is submitted IF I want a vested property right to be created with the approval of my Land Development Application.

Name of the Land Development Application: \_\_\_\_\_

Address of subject property: 1424 Niblick Way Fruita CO 81521

Tax Parcel Number(s): 2697-213-13-006

### Application Type:

Site Design Review       Conditional Use Permit       Minor Subdivision  
 Major Subdivision       Planned Unit Development       Other \_\_\_\_\_

Vested Rights ARE requested for this development. I understand and acknowledge that certain delays in my project's approval time may result in order to meet the hearing and notice requirements of state law for the creation of a vested property right.

Vested Rights ARE NOT requested for this development, and I choose to voluntarily waive this right. I have been advised by the City to consult an attorney prior to signing this waiver. Further, I understand that this waiver does not abridge any common law vested rights which I may acquire nor does it diminish any right which may exist under the City's land use regulations, except for Chapter 17.47 of the Fruita Land Use Code.

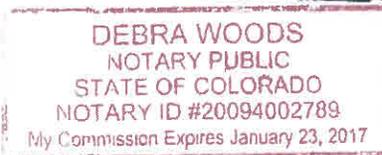
Property Owner Signature: [Signature]

Property Owner Signature: \_\_\_\_\_

STATE OF COLORADO )

COUNTY OF MESA )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of May, 20 16  
by TRAVIS ROBINSON (Property Owners name(s)).



WITNESS MY HAND AND OFFICIAL SEAL

My Commission Expires: \_\_\_\_\_ Notary Public: [Signature]

May 3<sup>rd</sup>, 2016

**My wife and I are looking to rent our property located at 1424 Niblick Way Fruita, CO 81521. We have a 400 sq ft guest house at our primary residence and would like to host overnight guests via peer to peer accommodations tools such as AirBnB.com. We typically share the property with our guests during the rental periods (average stay is two nights), and we have a number of tools to research and vet our guests before agree to rent to them. We check our guests in and out, handle the bookings and clean the property ourselves.**

**Having the property set up as a peer to peer accommodation / AirBnB will not materially affect the neighborhood. Our property currently backs up to a public golf course so we are in an area of mixed use with residential and commercial use. The HOA does not specifically prohibit operating a Bed and Breakfast. It will be strictly enforced that we will share our property with short term rental guests.**

**The guest house will be set up as a residential home. It will be fully furnished with a living room, bathroom, and one bedroom. We advertise the space to accommodate one to three guests at a time. We also expect that the bulk of the guest stays will be during the spring festival and mountain bike season. We plan to rarely have guests during the summer and winter.**

**We intend to list the property with AirBnB, an established vacation rental company to help control who rents the guest house. The renters agree to the contract provisions of AirBNB and must place a \$500 deposit. We will not be offering any sort of food and beverage services. We have dedicated off street parking in our driveway, so this will not add to cars in the street. We will also not have any signage at the property.**

**Thank you for your time in considering our conditional use permit.**

**Sincerely,**

**Travis and Ellen Robinson**

## Henry Hemphill

---

**From:** Travis Robinson [travisrobinson@gmail.com]  
**To:** Friday, July 22, 2016 1:48 PM  
Henry Hemphill  
**Subject:** Fwd: [Privileged] Short-Term Residential Use of Your Property Re: Robinson File - HOA Covenants and attorney letter  
**Attachments:** Mesa\_oshane\_ballounlaw\_Reception Number\_2433914\_7-5-2016.pdf; oshane\_ballounlaw\_4268728\_7-5-2016.pdf; oshane\_ballounlaw\_4543401\_7-5-2016.pdf

Hi Henry, here's the case and my attorney's analysis.

Have a great weekend. Travis

----- Forwarded message -----

**From:** O.Shane Balloun <o.shane@ballounlaw.com>  
**Date:** Tuesday, July 5, 2016  
**Subject:** [Privileged] Short-Term Residential Use of Your Property Re: Robinson File - HOA Covenants and attorney letter  
**To:** Travis Robinson <travisrobinson@gmail.com>

**Disclaimer: this is attorney-client privileged and confidential. It is not a guarantee of title or otherwise, it does not represent a formal title opinion. Rather, this missive is a discussion of your options with respect to litigating or making claims regarding the short-term residential rental use of your property.**

Travis:

*Houston 1997 1997 v. Wilson Mesa Ranch Homeowners Ass'n* (Colo. App. 2015)  
<http://caselaw.findlaw.com/co-court-of-appeals/1710512.html>

As I remembered, ambiguous covenant language is to be narrowly construed in Colorado, and candidly, this case is perfectly on point.

In *Houston 1997 1997*, the court distinguished between the covenants at issue, and the holding in *Jackson & Co. (USA), Inc. v. Town of Avon*, 166 P.3d 297, 298–300 (Colo. App. 2007). In *Jackson*, the earlier court held that the short term rental of a duplex with six individual bedroom-bathroom suites was impermissible under the relevant municipal ordinance and subdivision plat, which explicitly prohibited the use of the property within the residential subdivision as a lodge. But in *Houston 1997 1997*, the court here found no such prohibitory language or definition to "residential" in the HOA restrictive covenants and thus distinguished the facts. Even still, the previous *Jackson* court appeared to hold the vacation rentals impermissible not because of the HOA covenants but because of restrictions in the plat and/or the municipal land use ordinances.

As you read, the *Houston 1997 1997* court narrowly construed the restrictive covenants at issue, which prohibited commercial activity and allowed residential activity to include short term residential rentals, because it found no express restrictive language prohibiting short-term rentals in the HOA restrictions, the plat, or in the municipal land use ordinances.

I looked up the plat map for your subdivision and was unable to find any pertinent restrictions on the recorded plat. It is attached. As we talked about, the Adobe Falls restrictive covenants do not define "residential

purposes" in any way, which leads me to believe, like you, that the *Houston 1997 1997* view applies: short-term residential rentals are residential in nature vis-à-vis the restrictive covenants' use of the term.

bed and breakfast facility, as you likely already know, is defined as "[a] facility of residential character that provides sleeping accommodations with or without meals for hire on a day-to-day basis."

Thus, if you succeed in obtaining the CUP for bed and breakfast use, the FMC will only serve to disambiguate the HOA's restrictive covenants in your favor and strengthen your claims under *Houston 1997 1997*, because the covenants do not define "residential" in any interpretive clauses, but the Municipal Code will define your conditional use to be residential.

If/when the permit is granted, there appears to be no further legal impediment to you using your property to rent out via AirBNB, and at this point, there appears to be no case in Colorado that would support your opponent's position.

O.Shane

Balloun Law Professional Corporation  
355 Harris Avenue, Suite 201  
Bellingham, Washington 98225

(360) 318-7778 | (206) 501-3073 | (650) 899-2992 | (307) 200-7594  
(360) 318-7798 fax | (360) 483-5960 vfax

<http://www.ballounlaw.com>

On Fri, Jul 1, 2016 at 6:25 PM, Travis Robinson <[travisrobinson@gmail.com](mailto:travisrobinson@gmail.com)> wrote:  
Hi O.Shane,

The address is: 1424 Niblick Way Fruita, CO 81521

Attached are the CC&Rs and the letter from the HOA attorney.

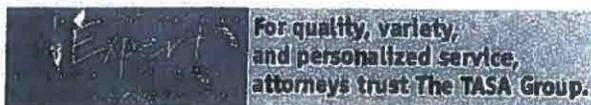
Thank you again for taking a look at this.

Best, Travis

 File\_000.jpeg

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HOUSTON 1997 1997 v. WILSON MESA RANCH HOMEOWNERS ASSOCIATION INC

## HOUSTON 1997 1997 v. WILSON MESA RANCH HOMEOWNERS ASSOCIATION INC

Print

17

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Colorado Court of Appeals, Div. III.

**David HOUSTON, Trustee of the David Houston 1997 Trust dated October 6, 1997, Plaintiff-Appellee, v. WILSON MESA RANCH HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation, Defendant-Appellant.**

14CA1086

Decided: August 13, 2015

Solomon Law Firm, P.C., Joseph A. Solomon, Telluride, Colorado, for Plaintiff-Appellee Dewhurst & Dolven, LLC, Miles M. Dewhurst, Jeffery D. Bursell, Denver, Colorado; Garfield & Hecht, PC, Mary Elizabeth Geiger, Glenwood Springs, Colorado, for Defendant-Appellant

¶1 In this dispute regarding the scope of restrictive covenants, defendant, Wilson Mesa Ranch Homeowners Association, Inc., appeals the district court's judgment on the pleadings in favor of plaintiff, David Houston, Trustee of the David Houston 1997 Trust dated October 6, 1997. We affirm.

### I. Background

¶2 Wilson Mesa Ranch is a subdivision in San Miguel County. The subdivision is subject to protective covenants that are enforced by the Association's board of trustees. The covenants provide, as relevant here, that "the lands within Wilson Mesa Ranch [are intended to] be developed and maintained as a highly desirable scenic and secluded residential area;" that all tracts designated on the recorded plats by number "shall be residential tracts;" and that "[n]o lands within Wilson Mesa Ranch shall ever be occupied or used for any commercial or business purpose nor for any noxious activity and nothing shall be done on any of said lands which is a nuisance or might become a nuisance to the owners of any of said lands."

¶3 Houston owns a single-family residence in the subdivision. Beginning in December 2012, Houston began renting out the property for short-term vacation rentals. He advertised the residence on the website of VRBO, a company that facilitates the booking of such rentals. When the board learned that Houston had been renting out the residence, it adopted an amendment ("Section 11") to its administrative procedures that prohibited Association members from renting out their properties for periods of less than thirty days without prior board approval. Section 11 also provided for a \$500 fine for each violation of this prohibition.

¶4 The board notified Houston of its adoption of Section 11 and ordered him to comply with it. Houston objected to Section 11 as an unlawful attempt to amend the covenants. The board responded that short-term rentals were a commercial use that was already prohibited under the covenants, and that Section 11 was simply adopted to clarify the board's position and set forth procedures for seeking an exception to the prohibition.

¶5 After the board denied Houston's request to continue leasing the property on a short-term basis, he took two additional rental reservations through VRBO. The board treated these reservations as anticipatory breaches of the covenants and Section 11 and fined Houston \$500 for each reservation.

¶6 Houston then filed this action, seeking a declaration that the Association could not bar the short-term rental of his property based on the commercial use prohibition in the covenants. The Association counterclaimed for a declaration that the covenants barred rentals of less than thirty days; that Section 11 was enforceable against Houston; and that Houston was in violation of the covenants and Section 11 by advertising, and taking reservations for, short-term rentals of his property. The Association also sought a permanent injunction requiring Houston to comply with the covenants and Section 11.

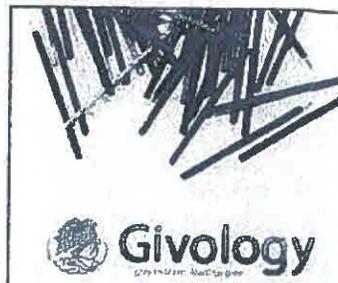
¶7 Both parties moved for judgment on the pleadings pursuant to C.R.C.P. 12(c). In a detailed written order, the district court entered judgment in favor of Houston and dismissed the Association's counterclaims. It reviewed the covenant language, found no Colorado case law that was "dispositive on the issue of whether a prohibition on commercial use bars short term rentals or conversely whether the requirement of residential use is somehow inconsistent with short term rentals," and reviewed cases from other jurisdictions that the parties had cited. The court concluded that nothing in the covenants prohibited short-term rentals, either expressly or by implication; that the covenant language was ambiguous regarding the permissibility of short-term rentals; and that, because such ambiguity required that all doubts be resolved in favor of the free and

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unrestricted use of property, the covenants did not prohibit or limit Houston's short-term vacation rentals. It also found that Section 11's "differentiation between forbidden 'short term' rentals and permitted 'long term' rentals [was] arbitrary and not plainly within the confines of the [c]ovenants;" thus, the fines imposed against Houston were not enforceable.

## II. Discussion

### A. Standards of Review and Applicable Law

¶8 Our review is *de novo*, both because the district court's judgment was a judgment on the pleadings, see *Melat, Pressman & Higbie, L.L.P. v. Rannon Law Firm, L.L.C.*, 2012 CO 61, ¶17, and because the court construed a written instrument. See *In re Estate of Foiles*, 2014 COA 104, ¶20.

¶9 We construe restrictive covenants according to their plain language, interpreting them as a whole and keeping in mind their underlying purpose. See *Evergreen Highlands Ass'n v. West*, 73 P.3d 1, 3 (Colo.2003); *Good v. Bear Canyon Ranch Ass'n*, 160 P.3d 251, 253 (Colo.App.2007). A covenant will be enforced as written if it is clear on its face. *Good*, 160 P.3d at 253. However, if there is any ambiguity or doubt as to the meaning of a covenant, we must adopt the construction that favors the unrestricted use of property. *Id.* at 253–54; see also *Double D Manor, Inc. v. Evergreen Meadows Homeowners' Ass'n*, 773 P.2d 1046, 1048 (Colo.1989).

### B. Scope of the Covenants

¶10 It is undisputed that the covenants do not expressly prohibit short-term rentals of residences within Wilson Mesa Ranch. The issue is whether such rentals are prohibited by necessary implication based on covenant language that (1) Wilson Mesa Ranch is to "be developed and maintained as a residential area," with all subdivision tracts to be "residential tracts," and that (2) "[n]o lands within Wilson Mesa Ranch shall ever be occupied or used for any commercial or business purpose." The Association contends that the district court erred in failing to construe the "commercial use" prohibition as precluding unapproved rentals of less than thirty days, and in failing to recognize that such short-term rentals are inconsistent with the covenants' "residential use" requirement. We disagree.

¶11 We are aware of no Colorado case that has addressed the meaning of prohibitions against "commercial use" or requirements of "residential use" in the context of short-term rentals of residences. With the exception of *Double D Manor*, discussed below, Colorado case law discussing these terms in other contexts affords little guidance in resolving the issue before us.

¶12 Like the district court, we find the two Colorado cases on which the Association relies—*Jackson & Co. (USA), Inc. v. Town of Avon*, 166 P.3d 297, 298–300 (Colo.App.2007), and *E.R. Southtech, Ltd. v. Arapahoe County Board of Equalization*, 972 P.2d 1057, 1059–60 (Colo.App.1998)—to be distinguishable. The Jackson division concluded that a duplex with six individual bedroom-bathroom suites, used for short-term vacation rentals, qualified as a "lodge" under the definition of that term in a municipal ordinance; thus, such short-term rentals were impermissible under the ordinance and a subdivision plat that explicitly prohibited the use of property within the residential subdivision as a lodge. There is no such explicit prohibition in the covenants here.

¶13 In *Southtech*, the division held that, for property tax purposes, rentals of space in a large housing complex for less than thirty days should be taxed as a "hotel-type commercial use," while longer rentals should be taxed as "apartment-type residential" use. The division relied on constitutional and statutory provisions that excluded "hotels and motels" from the definition of "residential real property" for property tax purposes but included "apartments" in that definition. Again, the covenants at issue here do not contain similar definitional language.

¶14 We therefore look to the plain meaning of the covenant language, and we find guidance in cases from other jurisdictions that have applied this language in situations involving short-term rentals of residential property.

#### 1. Requirement That Subdivision Tracts Be "Residential"

¶15 "Residential" is defined as "used, serving, or designed as a residence or for occupation by residents." Webster's Third New International Dictionary 1931 (2002). "Residence" means "the act or fact of abiding or dwelling in a place for some time; an act of making one's home in a place." *Id.*; see also *The American Heritage Dictionary of the English Language* 1483 (4th ed.2000) (defining "residential" as "[o]f, relating to, or having residence," or "[o]f, suitable for, or limited to residences," and defining "residence" as "[t]he place in which one lives; a dwelling," or "[t]he act or a period of residing in a place").

¶16 "Residential use," without more, has been consistently interpreted as meaning that the use of the property is for living purposes, or a dwelling, or a place of abode." *Lowden v. Bosley*, 909 A.2d 261, 267 (Md.2006); see also *Mullin v. Silvercreek Condo. Owner's Ass'n*, 195 S.W.3d 484, 490 (Mo.Ct.App.2006) (A place used for "residential purposes" is, according to its plain and ordinary meaning, "one in which people reside or dwell, or which they make their homes, as distinguished from one which is used for commercial or business purposes." (quoting *Blevins v. Barry—Lawrence Cnty. Ass'n for Retarded Citizens*, 707 S.W.2d 407, 408 (Mo.1986))).

¶17 Although "residential" unambiguously refers to use for living purposes, courts have recognized ambiguity in the term in cases involving short-term rentals or other situations where those residing in the property are living there only temporarily, not permanently. See *Yogman v. Parrott*, 937 P.2d 1019, 1021 (Or.1997) ("The ordinary meaning of 'residential' does not resolve the issue between the parties. That is so because a 'residence' can refer simply to a building used as a dwelling place, or it can refer to a place where one intends to live for a long time."); *Scott v. Walker*, 645 S.E.2d 278, 283 (Va.2007) (Restrictive covenant's requirement that lots be used for "residential purposes" was "ambiguous both as to whether a residential purpose requires an

intention to be physically present in a home for more than a transient stay and as to whether the focus of the inquiry is on the owner's use of the property or the renter's use. Moreover, if the phrase 'residential purposes' carries with it a 'duration of use' component, it is ambiguous as to when a rental of the property moves from short-term to long-term.; see also *Dunn v. Aamodt*, 695 F.3d 797, 800 (8th Cir.2012) (phrase "residential purposes" in restrictive covenant was ambiguous as to short-term rental of property). These courts concluded that, because ambiguities in restrictive covenants were to be construed in favor of the free use of property, short-term rentals were not precluded as inconsistent with residential use.

¶ 18 Other courts have found no ambiguity, reasoning that, as long as the property is used for living purposes, it does not cease being "residential" simply because such use is transitory rather than permanent. In *Lowden*, 909 A.2d at 267, the court summarized cases applying the term "residential" to a variety of structures used for habitation purposes and recognizing that the transitory or temporary nature of such use did not defeat the residential status. It concluded that "[w]hen the owner of a permanent home rents the home to a family, and that family, as tenant, resides in the home, there obviously is no violation of the [d]eclaration. While the owner may be receiving rental income, the use of the property is unquestionably 'residential'." Id. In *Pinehaven Planning Board v. Brooks*, 70 P.3d 664, 667-68 (Idaho 2003), the covenants at issue restricted the use of residential property to the construction of a single-family residence, which could not be used for commercial, industrial, or business purposes. The Idaho Supreme Court held that renting a property to people who used it for residential purposes, whether short or long term, did not violate the covenants. Id. at 668-69; see also *Slaby v. Mountain River Estates Residential Ass'n*, 100 So.3d 569, 579 (Ala.Civ.App.2012) ("[P]roperty is used for 'residential purposes' when those occupying it do so for ordinary living purposes. Thus, so long as the renters continue to relax, eat, sleep, bathe, and engage in other incidental activities they are using the [property] for residential purposes."); *Ross v. Bennett*, 203 P.3d 383, 388 (Wash.Ct.App.2008) (rejecting argument that short-term vacation rentals were distinguishable from permitted long-term rentals and concluding that: "Renting the home to people who use it for the purposes of eating, sleeping, and other residential purposes is consistent with the plain language of the [c]ovenant. The transitory or temporary nature of such use by vacation renters does not defeat the residential status.").

¶ 19 In this case, the pleadings and attached documents do not suggest that renters used Houston's residence for anything other than ordinary living purposes, and the Association does not so argue. In these circumstances, we agree with the courts that have held that mere temporary or short-term use of a residence does not preclude that use from being "residential." Moreover, even if we were to find the covenants ambiguous in this regard, we would be required to adopt the construction of "residential" that favors the free and unrestricted use of Houston's property. See *Good*, 160 P.3d at 253-54.

## 2. Prohibition Against Commercial Use

¶ 20 "Commercial" means "occupied with or engaged in commerce related to or dealing with commerce [or] having profit as the primary aim." Webster's Third New International Dictionary 456 (2002). "Commerce," in turn, means "the exchange or buying and selling of commodities esp. on a large scale," but it can also mean "dealings of any kind." Id. A "commercial use" is one "that is connected with or furthers an ongoing profit-making activity." Black's Law Dictionary 1775 (10th ed.2014).

¶ 21 As with the requirement of "residential use," the dictionary definitions of "commercial" and "commercial use" do not by themselves resolve the question of whether short-term vacation rentals are prohibited under the covenants at issue here; and the covenants do not further define those terms.

¶ 22 As in cases construing "residential use," some courts have recognized an ambiguity in the term "commercial use" when deciding whether prohibitions against commercial use apply to short-term rentals of residential property. See *Yogman*, 937 P.2d at 1021 ("commercial" use encompasses a broad range of meanings, from merely using the property in a way that generates revenue up to operating a business, such as a bed and breakfast, with profit as its primary aim); see also *Russell v. Donaldson*, 731 S.E.2d 535, 538-39 (N.C.Ct.App.2012) (where covenants did not define "business or commercial purpose," they were ambiguous as to whether short-term residential vacation rentals came within the prohibition against use of lots for such purpose; however, upon review of cases from other states, and given requirement that ambiguities be construed in favor of unrestricted use of property, court held that prohibition did not bar short-term residential vacation rentals).

¶ 23 Other courts have held that prohibitions against commercial or business uses unambiguously do not bar short-term vacation rentals of residences where a renter uses the premises for residential activities such as eating and sleeping and not for commercial activities such as running a business. In *Slaby*, a residential association claimed that property owners' short-term rentals of their cabin violated restrictive covenants prohibiting commercial use. 100 So.3d at 571. However, the court reviewed case law from other states and agreed with "the majority of other jurisdictions" that rental of the cabin for eating, sleeping, and other residential purposes did not amount to commercial use. Id. at 580-82; see also *Pinehaven Planning Bd.*, 70 P.3d at 668 ("[R]enting [defendants'] dwelling to people who use it for the purposes of eating, sleeping, and other residential purposes does not violate the prohibition on commercial and business activity as such terms are commonly understood."); *Lowden*, 909 A.2d at 267 ("The owners' receipt of rental income in no way detracts from the use of the properties as residences by the tenants."); *Mason Family Trust v. DeVaney*, 207 P.3d 1176, 1178 (N.M.Ct.App.2009) ("While [the owner's] renting of the property as a dwelling on a short-term basis may have constituted an economic endeavor on [his] part, to construe that activity as one forbidden by the language of the deed restrictions [prohibiting use for business or commercial purposes] is unreasonable and strained. Strictly and reasonably construed, the deed restrictions do not forbid short-term rental for dwelling purposes.").

¶ 24 We agree with the cases discussed above and conclude that short-term vacation rentals such as Houston's are not barred by the commercial use prohibition in the covenants. Our conclusion is consistent with the

Colorado Supreme Court's holding, in a different context, that receipt of income does not transform residential use of property into commercial use. In *Double D Manor*, the court addressed a homeowners association's challenge to use of property in the subdivision as a home for developmentally disabled children. 773 P.2d at 1046. In rejecting the association's argument that such use was not a permissible "residential use" because *Double D* used the property to earn money to pay wages and cover costs, the court stated: "Double D's receipt of funding and payment to its staff to supervise and care for the children do not transform the use of the facilities from residential to commercial." *Id.* at 1051.

¶25 Finally, we are not persuaded to reach a contrary conclusion based on the cases on which the Association relies.

¶26 *Ewing v. City of Carmel-By-The-Sea*, 286 Cal.Rptr. 382, 388 (Cal.Ct.App.1991), cited by the Association for the proposition that short-term vacation rentals are inconsistent with the residential character of a neighborhood, was addressing the validity of a municipal ordinance explicitly prohibiting rentals under thirty days in an area zoned for single-family residential use; it was not interpreting a covenant lacking any such explicit prohibition. In *Mission Shores Ass'n v. Pheil*, 83 Cal.Rptr.3d 108, 110-13 (Cal.Ct.App.2008), the amended covenants—unlike the covenants here—expressly prohibited rentals of under thirty days. Similarly, in *Munson v. Milton*, 948 S.W.2d 813, 817 (Tex.App.1997), the court relied on specific language in the covenants that defined "business use" to include "transient-type housing" as supporting a conclusion that short-term rentals were prohibited.

¶27 Finally, in concluding that short-term rentals were prohibited under the covenants at issue in *Benard v. Humble*, 990 S.W.2d 929, 930 (Tex.App.1999), the court applied a Texas statute requiring that covenant language be "liberally construe[d]." Noting the tension between the statutory requirement and the common law, the court observed:

The present case is a prime example of the dilemma: The deed restrictions in question do not explicitly contain language covering temporary renting of property. Were we to give construction against the drafter of the covenant [instead of liberally construing it], we would be required to reverse the trial court's judgment [finding that short-term rentals are prohibited].

*Id.* at 931.

¶28 Unlike Texas, Colorado adheres to the common law principle that ambiguities in covenants are construed in favor of the unrestricted use of property.

¶29 In sum, we conclude that Houston's short-term vacation rentals are not barred under the covenants.

#### C. Validity of Section 11

¶30 The Association further contends that the district court erred in concluding that Section 11, the amendment to the board's administrative procedures that precludes unapproved short-term rentals and imposes fines for violations of that prohibition, was arbitrary and thus unenforceable. We agree with the district court that Section 11 is unenforceable, although we reach that conclusion for reasons other than those stated by the district court. See *Melster v. Stout*, 2015 COA 60, ¶8 (where district court reaches correct result, its judgment may be affirmed on different grounds that are supported by the record).

¶31 The Association argues that Section 11 was adopted at a "duly called and duly conducted board meeting" to "clarify" that the [covenants'] prohibition on commercial and business uses of property prohibits the unapproved short-term rental" of lots within the subdivision. However, as set forth above, the covenants do not prohibit such rentals.

¶32 Thus, while the Association has the authority to enforce the covenants, it cannot rely on that authority to enforce a nonexistent covenant provision. For short-term vacation rentals to be prohibited, the covenants themselves must be amended. It is undisputed that the amendment procedure set forth in the covenants—which, among other things, requires a vote of three-fourths of the Association members and permits such vote only at ten-year intervals—was not followed here. The board's attempt to accomplish such amendment through its administrative procedures was unenforceable. See *Mauldin v. Panella*, 17 P.3d 837, 838-39 (Colo.App.2000) (purported amendments to restrictive covenants that would have precluded the plaintiff's proposed use of his property were invalid because they were not promulgated in compliance with covenant provisions regarding amendment procedures); *Johnson v. Howells*, 682 P.2d 504, 505 (Colo.App.1984) (same), cf. *Good*, 160 P.3d at 253-55 (where covenants allowed amendment and amendment procedures were followed, amendment prohibiting construction of guest houses and caretaker residences was valid).

#### D. Attorney Fees

¶33 Given our resolution of the issues raised in this appeal, we deny the Association's request for attorney fees under section 3823.3-123(1)(c), C.R.S.2014.

#### III. Conclusion

¶34 The judgment is affirmed.

#### FOOTNOTES

#### FOOTNOTE.

1. In a letter to the Association (which, because it was attached to Houston's verified complaint, could be considered by the district court in ruling on cross-motions under C.R.C.P. 12(c), see *Van Schaak v. Phipps*, 38

Colo.App. 140, 143, 558 P.2d 581, 584 (1976); see also C.R.C.P. 10(c)), Houston's counsel explained the use of the property as follows: The HOA also argues that the current use is a commercial use. It is not. Mr. Houston has owned his Wilson Mesa home for over twenty years. At one point, he used the home for long-term rental. After that time, he made the decision he did not want the wear and tear on the house that permanent tenants bring. As a consequence he stopped renting it and hoped to use it more. However, it became apparent without people in the house and the accompanying maintenance, the house actually suffered. Mr. Houston decided the best solution for the property was to have it used to some extent, and thus he has been leasing it out for some vacation rental use. The home is very small. Occupancy is limited to a maximum of four guests. It is typically used by a couple, or a single adult. Mr. Houston also has a local caretaker handling maintenance and other related home needs. The amount of people staying in the residence with one vehicle certainly presents less road traffic than if Mr. Houston had a permanent tenant with two vehicles. Also, Wilson Mesa is usually quite vacant. Most properties are rarely occupied second homes. Very few homes are occupied on a full time basis. Also, these are seven acre parcels and do not have neighbors wall to wall.

2. In its reply brief, the Association also cites unpublished cases from three other jurisdictions. Because these unpublished opinions are not to be used as precedent under the rules of those jurisdictions, we do not consider them.

Opinion by JUDGE VOGT \*FD\* Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1205, C.R.S. 2014.

JUDGE LICHTENSTEIN and JUDGE FOX concur.

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09 | 14 | 2015 Posted By Stephane Dupont

## Short Terms Rentals may not be Commercial Use of Property

In a recent decision [*Houston v. Wilson Mesa Ranch Homeowners Association, Inc.*, 2015 WL 4760331 (D. Colo. August 13, 2015)], the Colorado Court of Appeals held that an association's covenants stating that homes could not be occupied or used for any commercial or business purpose did not prohibit a homeowner from renting out his property for short-term vacation rentals.

A homeowner in the community advertised and rented his home for rent through the VRBO website. In response to the homeowner's actions, the association passed an amendment to its 'administrative procedures' prohibiting its members from renting out their properties for a period of less than thirty days without prior board approval and establishing a \$500 fine for violations.

The Court found that a short-term rental constitutes a residential and not commercial use of the property and found in favor of the homeowner. However, had the covenants contained a specific prohibition against short term rentals, it may have reached an opposite conclusion. Additionally, the Court found that the 'administrative procedure' adopted by the association was improper as it was contrary to the terms of the covenants. In other words, since the covenants did not prohibit short term rentals, the association could not restrict rentals absent a homeowner approved amendment to the covenants.

This case illustrates how caution needs to be utilized before an association attempt to interpret its covenants too broadly. The dispute could have been avoided had the covenants specifically prohibited short term rentals.

\* This was given to the Planning Commissioners on the night of the Planning Commission meeting (Aug. 9<sup>th</sup> 2016)



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## AGENDA ITEM COVER SHEET

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**TO:** FRUITA CITY COUNCIL AND MAYOR  
**FROM:** MARGARET SELL, FINANCE DIRECTOR/CITY CLERK  
**DATE:** SEPTEMBER 20, 2016  
**RE:** DISCUSSION AND POSSIBLE ACTION TO CONSIDER A MOTION TO CONVENE IN EXECUTIVE SESSION TO DETERMINE A POSITION RELATIVE TO A MATTER THAT MAY BE SUBJECT TO NEGOTIATION UNDER C.R.S. SECTION 24-6-402(4)(E)

<b><u>BACKGROUND</u></b>	
	The City Council has reason to convene in Executive Session to discuss an issue and determine a position relative to a matter that may be subject to negotiation. To convene in executive session, state law requires that a motion with specific language requesting the executive session be passed with 2/3 of the governing body voting in the affirmative for said motion.
<b><u>FISCAL IMPACT</u></b>	
	N/A
<b><u>APPLICABILITY TO CITY GOALS AND OBJECTIVES</u></b>	
	N/A
<b><u>OPTIONS AVAILABLE TO THE COUNCIL</u></b>	
	N/A
<b><u>RECOMMENDATION</u></b>	
	It is the recommendation of the Fruita City Staff that the Council:  <b>MOVE TO MEET IN EXECUTIVE SESSION FOR A CONFERENCE WITH CITY STAFF FOR THE PURPOSE OF DETERMINING A POSITION RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATION UNDER C.R.S SECTION 24-6-402 (4) (E).</b>

ANNOUNCEMENT NO. 1

***ANNOUNCEMENT TO BE MADE BY CHAIRMAN  
AT THE BEGINNING OF THE EXECUTIVE SESSION  
(MAKE SURE THE TAPE RECORDER IS TURNED ON;  
DO NOT TURN IT OFF DURING THE EXECUTIVE SESSION  
UNLESS SO ADVISED BY LEGAL COUNSEL.)***

It's September 20, 2016 and the time is \_\_\_\_\_. For the record, I am the Mayor, Lori Buck. As required by the Open Meetings Law, this executive session is being electronically recorded.

Also present at this executive session are the following persons:

\_\_\_\_\_.

This is an executive session for the following purpose:

**TO DETERMINE A POSITION RELATIVE TO A MATTER  
THAT MAY BE SUBJECT TO NEGOTIATION UNDER C.R.S.  
SECTION 24-6-402(4)(E).**

I caution each participant to confine all discussion to the stated purpose of the executive session, and that no formal action may occur in the executive session.

If at any point in the executive session any participant believes that the discussion is going outside the proper scope of the executive session, please interrupt the discussion and make an objection.

ANNOUNCEMENT NO. 2

***ANNOUNCEMENT TO BE MADE BY THE CHAIRMAN  
BEFORE CONCLUDING THE EXECUTIVE SESSION  
(WHILE THE TAPE RECORDER IS STILL ON)***

I hereby attest that this recording reflects the actual contents of the discussion at the executive session and has been made in lieu of any written minutes to satisfy the recording requirements of the Open Meetings Law.

\_\_\_\_\_ I will have the Deputy City Clerk retain the recording for a 90-day period.

***OR  
(if Executive Director was the  
subject of the session and  
was not present at the session)***

\_\_\_\_\_ I will retain the tape in my possession for a 90-day period.

The time is now \_\_\_\_\_, and we now conclude the executive session and return to the open meeting.

***(turn off tape and return to open meeting)***