

RESOLUTION 93-24

AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDED AND RESTATED LEASE FOR THE PROPERTY AT 261 UTE AVENUE WITH UNITED WAY OF MESA COUNTY AND/OR HOMEWARD BOUND OF THE GRAND VALLEY RESOURCE CENTER FOR HOMELESS AND OTHER VULNERABLE PERSONS


RECITALS:

On November 15, 2023, the Grand Junction City Council adopted and approved Resolution 103-23. By and with that action the City as the owner of the real property at 261 Ute Avenue, Grand Junction, Colorado, agreed to lease the Property to United Way and Homeward Bound of the Grand Valley. That agreement was memorialized by and with a Lease/License Agreement entered into by the parties on December 18, 2023. That Lease/License is referred to as the 2023 Agreement. By and with this Resolution the City Council approves an Amended and Restated Lease/License Agreement which is referred to as the 2024 Agreement.

Homeward Bound and United Way (Lessees) have been using the Property for the purposes contemplated by the 2023 Agreement, however, for a variety of reasons the 2023 Agreement is being amended and restated to provide for termination of the lease by no later than April 15, 2025, and to add certain area to the leased premises.

Homeward Bound and United Way have proposed certain operational changes, which to the extent necessary or required will be incorporated into the current operations and maintenance agreement with the City and the Lessees regarding the use of the Property and the provision of services at the Resource Center presently on the Property.

NOW THEREFORE, as provided in this Resolution, the City Council of the City of Grand Junction authorizes the Interim City Manager to execute the Amended and Restated Lease/License Agreement for and regarding the use of the real property located at 261 Ute Avenue as particularly described in the 2024 Agreement.



Abram Herman
President of the City Council

ATTEST:


Selestina Sandoval
City Clerk



AMENDED AND RESTATED LEASE/LICENSE AGREEMENT

This Amended and Restated Lease/License Agreement ("Lease" or "License") is made and entered into as of the 5th day of December 2024, by and between the City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Homeward Bound of the Grand Valley, hereinafter referred to as "Lessee". The City and the Lessee may be referred to collectively as the Parties.

Recitals.

- A. On November 15, 2023, the Grand Junction City Council adopted and approved Resolution 103-23. By and with that action the City as the owner of the real property at 261 Ute Avenue ("Property") Grand Junction, Colorado, agreed to lease the Property to the Lessee. That agreement was memorialized by and with a Lease/License Agreement entered into by the Parties on December 18, 2023. That Lease/License is referred to as the 2023 Agreement. This Amended and Restated Lease/License Agreement is referred to as the 2024 Agreement.
- B. The Lessee has been using the Property for the purposes contemplated by the 2023 Agreement, however, for a variety of reasons the Parties have agreed to enter into the 2024 Agreement by which the Lessee will conduct its operations on the Property in accordance with the Site Plan and the Beneficiary Agreement heretofore established by and between the Parties. The Beneficiary Agreement is attached hereto and incorporated herein by reference as if fully set forth.

NOW, THEREFORE, in consideration of the Recitals above and the terms, covenants and conditions contained herein, the Parties hereto agree as follows:

1. Grant and Acceptance of Lease. The City hereby Amends and Restates the 2023 Agreement as provided herein and confirms its lease of the Property to Lessee, and Lessee hereby accepts and leases the Property from the City, for the amended term stated in paragraph 2 below and for the specific purposes and uses of the Property in accordance with the terms and conditions of this 2024 Agreement.
2. Term. The term of this Lease shall commence on December 5, 2024, and shall continue through April 15, 2025, at which time this Lease shall expire, unless sooner terminated.
3. Reservations from Lease. The City reserves from this Lease and retains unto itself:
 - a. all oil, gas coal and other minerals and mineral rights underlying and/or appurtenant to the Property;
 - b. all rights to grant, sell, bargain, convey and dedicate any ownership interest(s) in and to the Property, or any division thereof, to any other party, including the conveyance of easement(s) for the City's planned reuse of the Property, so long as such action will not interfere with Lessee's use and enjoyment of the Property for the purposes set forth in this Lease and the Agreement;

c. the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, in whole or in part, even if such taking is made by and/or for the purposes of the City, or for the conveyance in lieu of condemnation. Lessee hereby assigns and transfers to the City any claim Lessee may have to compensation, including claims for damages, as a result of any condemnation.

4. No Rent.

4.1 The Parties agree that the Lessee is not required to pay the City rent; however, it is required to provide and perform certain services in support of the Award and the purposes for which the award has been given all as more particularly described in the Beneficiary Agreement. Lessee's full and faithful performance of the Agreement shall constitute due and adequate consideration for the Lessee's use of the Property.

4.2 In the event the Lessee substantially fails to perform, subject to the provisions of this 2024 Agreement, this Lease may terminate as provided in paragraph 9 and the City may immediately retake possession of the Property.

5. Lessee's Use and Occupancy of the Property. Lessee's use and occupancy of the Property shall be in accordance with the Site Plan and the Agreement.

6. Duties and Obligations of Lessee. As consideration for the Lease and to occupy and use the Property, Lessee shall, at no cost or expense to the City:

6.1 provide and perform certain services in support of the Award and the purposes for which the award has been given all as more particularly described in the Beneficiary Agreement.

6.2 Construct and maintain the pavilion facility, gates, fencing and Site improvements as shown on the Site Plan,

6.3 Maintain all aspects of the Property and keep the Property in a clean, safe, and healthy condition and in compliance with all applicable codes, ordinances, regulations, rules, and orders,

6.4 Timely pay any and all real estate, use and possessory taxes which may be levied upon and against the Property and any taxes or assessments levied against the personal property of Lessee or any other leasehold interest acquired by Lessee under the 2023 and 2024 Agreement(s),

6.5 Forever waive and forego any claim, cause of action or demand Lessee may have against the City, its officers, employees, agents and assets for injury to or destruction of any property of Lessee or any other party that may be lost, injured, destroyed or devalued as a result of the act, or failure to act, of Lessee or any other person; and to indemnify, defend and hold the City and the City's officers, employees, agents and assets harmless from any and all fines, suits, procedures, claims, damages, actions, costs and expenses of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) in any

manner arising out of or resulting from Lessee's use, occupancy, maintenance and improvement of the Property.

6.6 Not violate nor permit to be violated any code, rule, regulation or order pertaining to the use, application, transportation, and storage of any hazardous, toxic, or regulated substance or material, including, but not limited to, herbicides, pesticides, and petroleum products. Lessee agrees that any spill, excessive accumulation or violation of any code, rule, regulation or order pertaining to the use, application, transportation and storage of any such material or substance shall be reported immediately to the City. Lessee further agrees that all costs and responsibilities for cleaning, removing and abating any violation pursuant to this paragraph shall be borne solely by Lessee.

6.7 Purchase and at all times during the term of this Lease maintain in effect suitable comprehensive general liability and hazard insurance which will protect the City and the City's officers, employees, agents, and assets from liability in the event of loss of life, personal injury or property damage suffered by any person or persons on, about or using the Property, including Lessee. Such insurance policy(ies) shall have terms and amounts approved by the City's Risk Manager. Such insurance shall not be cancelable without thirty (30) days prior written notice to the City and shall be written for at least a minimum of One Million Dollars (\$1,000,000.00), combined single limit. The certificate of insurance must be deposited with the City and must designate "The City of Grand Junction, its officers, employees, agents and assets" as additional insureds. If a policy approved by the City's Risk Manager is not at all times in full force and effect during the term of this Lease, this Lease shall automatically terminate.

7. Hazardous Substances.

7.1 The term "Hazardous Substances", as used in this Lease, shall mean any substance which is: defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law enacted by any federal, state and local governmental agency or other governmental authority; a petroleum hydrocarbon, including, but not limited to, crude oil or any fraction thereof; hazardous, toxic or reproductive toxicant; regulated pursuant to any law; any pesticide or herbicide regulated under state or federal law. The term "Environmental Law", as used in this Lease, shall mean each and every federal, state, and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal state and local governmental agency or other governmental authority, pertaining to the protection of human health and safety of the environment, either now in force or hereafter enacted.

7.2 Lessee shall not cause or permit to occur by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees, or employees:

- a. any violation of any Environmental Law on, under or about the Property or arising from Lessee's use and occupancy of the Property, including, but not limited to, air, soil and groundwater conditions; or

b. the use, generation, accidental or uncontrolled release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance in violation of any federal state or local law, ordinance, or regulation either now in force or hereafter enacted.

8. Condition of the Property.

8.1 Lessee affirms that Lessee has inspected the Property and has received the Property in good order and condition. Lessee further affirms that the condition of the Property is sufficient for the purposes of Lessee. The City makes no warranties nor promises, either express or implied, that the Property is sufficient for the purposes of Lessee.

8.2 In the event the Property is damaged due to fire, flood or any other act of nature or casualty, or if the Property is damaged to the extent that it is no longer functional for the purposes of Lessee, the City shall have no obligation to repair the Property nor to otherwise make the Property usable or occupiable; damages shall be at Lessee's sole and absolute risk.

9. Default, Sublet, Termination.

9.1 Should Lessee: (a) default in the performance of Lessee's agreements, duties or obligations set forth under this Lease and such default, as determined by the City in its sole discretion constitutes a public health or safety emergency, or (b) abandon or vacate the Property, or (c) be declared bankrupt, insolvent, make an assignment for the benefit of creditors, or if a receiver is appointed, the City may, at the City's option, cancel and annul this Lease at once and enter and take possession of the Property immediately without any previous notice of intention to reenter, and such reentry shall not operate as a waiver or satisfaction, in whole or in part, of any claim or demand arising out of or connected with any breach or violation by Lessee of any covenant or agreement to be performed by Lessee. Upon reentry, the City may remove the property and personnel of Lessee and store Lessee's property in a warehouse or at a place selected by the City, at the expense of Lessee and without liability to the City. Any such reentry shall not work a forfeiture of nor shall it terminate the rent(s), fees, assessments or the covenants and agreements to be performed by Lessee for the full term of this Lease; and upon such reentry, the City may thereafter lease or sublease the Property for such rent as the City may reasonably obtain, crediting Lessee with the rent so obtained after deducting the cost reasonably incurred in such reentry, leasing or subleasing, including the costs of necessary repairs, alterations and modifications to the Property. Nothing herein shall prejudice or be to the exclusion of any other rights of the City to obtain injunctive relief based on the irreparable harm caused to the City's reversionary rights.

9.2 Except as otherwise provided in 9.1, if Lessee is in default in the performance of any term, condition, duty or obligation of this Lease, and such default does not constitute a public health or safety emergency as determined by the City in its sole discretion and any such default continues for a period of fourteen (14) days after written notice thereof is given by the City to Lessee, the City may, at its option, terminate this Lease. If Lessee fails within any such fourteen (14) day period to

remedy each and every default specified in the City's notice, this Lease shall terminate. If Lessee remedies such default, Lessee shall not thereafter have the right of fourteen (14) days to remedy with respect to a subsequent similar default, but rather, Lessee's rights shall, with respect to a subsequent similar default terminate upon the giving of notice by the City.

9.3 Lessee shall not assign or sublease this Lease or any right or privilege connected therewith, or allow any other person, except as provided herein and except the employees of Lessee, to occupy the Property or any part thereof. Any attempted assignment, sublease or permission to occupy the Property conveyed by Lessee shall be void and shall, at the option of the City, provide reasonable cause for the City to terminate this Lease. The interest of Lessee in this Lease is not to be assignable by operation of law without the formal approval of the City; however, the City may terminate this Lease on 14 days prior notice prior to expiration of the Term if the City offers the Lessee an alternative location.

10. Miscellaneous Provisions.

10.1 The City, by entering into this Lease, does not part with its entire possession of the Property, but only so far as is necessary to enable Lessee to use and occupy the Property and to carry out the duties, obligations, terms, and provisions of this Lease. The City reserves the right to at reasonable times have its officers, employees and agents enter into and upon the Property and every part thereof and to do such acts and things as may be deemed necessary for the protection of the City's interests therein.

10.2 It is expressly agreed that this Lease is one of lease and not of partnership. The City shall not be or become responsible for lost profits, lost opportunities or any debts contracted by Lessee. Lessee shall keep the Property free from any and all liens whatsoever, including, but not limited to, liens arising out of any work performed, materials furnished or obligations incurred by Lessee. Lessee shall save, indemnify and hold the City and the City's officers, employees, agents and assets harmless against all liability and loss, and against all claims or actions based upon or arising out of any claim, lien, damage or injury (including death), to persons or property caused by Lessee or sustained in connection with Lessee's performance of the duties, obligations, terms and conditions of this Lease or the conditions created thereby, or based upon any violation of any statute, ordinance, code, rule or regulation, either now in force or hereinafter enacted, and the defense of any such claims or actions, including the costs and fees of attorneys, consultants and experts. Lessee shall also save, indemnify and hold the City and the City's officers, employees, agents and assets harmless from and against all liability and loss in connection with, and shall assume full responsibility for the payment of, all federal, state and local taxes, fees or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to employees engaged by Lessee.

10.3 Lessee shall not pledge or attempt to pledge or grant or attempt to grant as collateral or security any of Lessee's interest in any portion of the Property.

10.4 As agreed to by the Parties the improvements placed upon, under or about the Property or attached to the Property by Lessee shall not be or become part of the Property and shall be the sole and separate property of the Lessee, subject to conveyance by the Lessee to City upon the expiration or termination of this Lease.

11. Surrender, Holding Over. Lessee shall, upon the expiration or termination of this Lease, peaceably surrender the Property to City in good order, condition and state of repair. In the event Lessee fails, for whatever reason, to vacate and peaceably surrender the Property upon the expiration or termination of this Lease, Lessee agrees that Lessee shall pay to the City the sum of \$100.00 per day for each and every day thereafter until Lessee has effectively vacated and surrendered the Property. The parties agree that it would be difficult to establish the actual damages to the City in the event Lessee fails to vacate and surrender the Property upon the expiration or termination of this Lease, and that said \$100.00 daily fee is an appropriate penalty amount.

12. Consideration, Enforcement, Partial Invalidity, Governing Law.

12.1 The Parties acknowledge and agree that there is adequate consideration for the making and enforcement of this Amended and Restated Lease/License (2024 Agreement) and that the Lessee has agreed to the amended terms/waives any objection to amendment for which consideration may not be separately stated or identified.

12.2 In the event the City uses its Attorney or engages an attorney to enforce the City's rights hereunder, Lessee agrees to pay any and all attorney fees, plus costs, including the costs of any experts.

12.3 The invalidity of any portion of this Lease shall not affect the validity of any other provision contained herein. In the event any provision of this Lease is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision(s).

12.4 This Lease shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce any covenant or agreement contained herein shall be in Mesa County, Colorado.

13. Notices. All notices to be given with respect to this Lease shall be in writing delivered either by United States mail or personally by hand or by courier service, as follows:

To the City:
City of Grand Junction
Attn: City Manager
250 North 5th Street
Grand Junction, CO 81501-2668

With Copy to:
City of Grand Junction
Attn: City Attorney
250 North 5th Street
Grand Junction, CO 81501-2668

To Lessee:

HOMeward BOUND OF THE GRAND VALLEY
562 29 Road
Attn: Rick Smith, Executive Director
Grand Junction, CO 81501

All notices shall be deemed given: (a) if sent by mail, when deposited in the mail, or (b) if delivered by hand or courier service, when delivered. The Parties may, by notice as provided above, designate a different address to which notice shall be given.

14. Legal Counsel/Ambiguities. The City and Lessee have each obtained the advice of its/their own legal and tax counsel regarding this Lease or has knowingly declined to do so. Therefore, the Parties agree that the rule of construing ambiguities against the drafter shall have no application to this Lease.

The Parties hereto have each executed and entered into this 2024 Agreement as the Amended and Restated Lease/License as of the day and year first above written.

Attest:

The City of Grand Junction,
a Colorado home rule municipality


Selestina Sandoval
City Clerk


Andrea Phillips
Interim City Manager

HOMeward BOUND OF THE GRAND VALLEY



Rick Smith
Executive Director

EXHIBIT A

AMENDED AND RESTATED DESCRIPTION OF THE PROPERTY

A portion of the 2nd Street, Ute Avenue and 3rd Street Rights-of-Way as dedicated on the Plat of Part of Second Division Resurvey, as Amended same as recorded at Reception Number 80773, City of Grand Junction, County of Mesa, State of Colorado being the approximate area not being used for roadway and being more particularly described as follows;

Beginning at the southwest corner of Lot 1, Block 142 of said Plat whence the northwest corner of said Lot 1 bears $N0^{\circ}03'14''E$ with all other bearings relative thereto; thence $N89^{\circ}55'37''W$ a distance of 8.02'; thence $N0^{\circ}03'14''E$ a distance of 148.60 feet; thence $N89^{\circ}59'39''E$ a distance of 432.90 feet; thence $S0^{\circ}05'51''W$ a distance of 149.20 feet; thence $N89^{\circ}55'37''W$ a distance of 22.99 feet to the southeast corner of Lot 16, Block 142 of said Plat; thence along the boundary of said Block 142 the following three (3) courses:

- 1) $N0^{\circ}05'51''E$ a distance of 126.08 feet;
- 2) $S89^{\circ}59'39''W$ a distance of 401.86 feet;
- 3) $S0^{\circ}03'14''W$ 125.52 feet to the point of beginning.

Containing 13,902 Square Feet or 0.32 Acres more or less.