

RESOLUTION NO. 10-01

**AUTHORIZING A FIVE YEAR LEASE OF CITY PROPERTY
AT 134 WEST AVENUE TO
ROCKY MOUNTAIN SER WESTERN SLOPE HEAD START PROGRAM**

WHEREAS, the City of Grand Junction is the owner of that certain real property in the City of Grand Junction, County of Mesa, State of Colorado, described as Lots 52 through 58 of Bowers Subdivision of Lot 3, Block 9 of Richard D. Mobley's First Subdivision in Section 15, Township 1 South, Range 1 West of the Ute Meridian, also known as 134 West Avenue; and

WHEREAS, Rocky Mountain SER Western Slope Head Start Program has leased said property from the City since 1973 for the purposes of providing community action programs, including early childhood education and social services to low income families; and

WHEREAS, Rocky Mountain SER Western Slope Head Start Program is desirous of entering into a new lease agreement for the purposes of continuing the operation of community action programs at 134 West Avenue.

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

That the City Manager is hereby authorized, on behalf of the City and as the act of the City, to execute and enter into the attached Lease Agreement with Rocky Mountain SER Western Slope Head Start Program.

PASSED and ADOPTED this 7th day of February, 2001.

Attest:

/s/ Gene Kinsey
President of the City Council

/s/ Stephanie Nye
City Clerk

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into as of the 1st day of February, 2001, by and between The City of Grand Junction, a Colorado home rule municipality, hereinafter referred to as "the City", and Rocky Mountain SER Western Slope Head Start Program, hereinafter referred to as "Lessee".

Recitals

- A. The City is the owner of that certain real property in the City of Grand Junction, County of Mesa, State of Colorado, described as Lots 52 through 58 of Bowers Subdivision of Lot 3, Block 9 of Richard D. Mobley's First Subdivision in Section 15, Township 1 South, Range 1 West of the Ute Meridian, also known as 134 West Avenue and hereinafter referred to as "the Property."
- B. Lessee has leased said property from the City since 1973 for the purposes of providing community action programs, including early childhood education and social services to low income families.
- C. The City has agreed to continue leasing the Property to Lessee, and Lessee has agreed to continue leasing the Property from the City, pursuant to the terms, covenants and conditions of this Lease Agreement.

NOW, THEREFORE, In consideration of the recitals above and the terms, covenants, conditions, restrictions duties and obligations contained herein, the parties agree as follows:

1. Grant of Lease. The City hereby leases the Property to Lessee, and Lessee hereby accepts and leases the Property from the City, for the term stated in Section 3 and subject to each and every other term, covenant, condition, restriction, duty and obligation stated in this Lease Agreement.
2. Reservations From Lease. The City retains and reserves unto itself:
 - (a) all oil, gas, coal and other minerals and mineral rights underlying and/or appurtenant to the Property;
 - (b) all water and water rights, ditches and ditch rights, appurtenant to and/or connected with the Property, including, but not limited to, any water and/or water rights which may have been previously used on or in connection with the Property, for whatever purpose;
 - (c) all rights to grant, sell, bargain and convey ownership interest(s) in and to the Property, or any division thereof, to any other party, including the conveyance of easements, so long as such action will not interfere with Lessee's use and quiet enjoyment of the Property for the purposes set forth in this Agreement;
 - (d) 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 any conveyance in lieu of condemnation. Lessee hereby assigns and transfers to the City any claim it may have to compensation, including claims for damages, as a result of any condemnation.

3. Term. The term of this Lease shall be for a period of Five (5) years, commencing on January February 1, 2001 and continuing through January 31, 2006, on which date this Lease shall expire.

4. Rental. Rental for the Property shall be \$1,500.00 per month; provided, however, that so long as Lessee uses the Property for community action programs authorized in this Agreement and for no other purposes, and provided further that Lessee fulfills and complies with each and every term, covenant, restriction, duty and obligation herein set forth to be kept by Lessee, such rent shall be waived by the City and shall be considered as a in-kind contribution by the City as that term is used in accordance with recognized community action programs.

5. Use and Condition of the Property.

5.1 Lessee agrees to use the Property solely for the purpose of conducting educational and social services programs to low income families and for no other purposes. Lessee's use and occupancy of the Property shall be subject to all applicable laws, rules, rulings, codes, regulations and ordinances of any governmental authority, either now in effect or hereafter enacted, having jurisdiction over the Property and Lessee's use, occupancy and operations thereon. Lessee shall not use nor permit the Property to be used for any other purpose or in any other fashion or manner contrary to this Lease or the laws, ordinances, codes or regulations of any governmental unit or agency exercising jurisdiction over the Property or any use thereon.

5.2 Prior to any renovation of any structure, any alteration to the Property or any installation or construction of any facility and/or improvements upon the Property, Lessee shall obtain the City's written approval of all plans for any such renovation, alteration, installation or construction, which approval may be withheld for any reason. It is the City's desire that the Property and the improvements thereon be aesthetically pleasing and enhance the characteristics of the neighborhood. To this end, Lessee agrees to comply with all reasonable requirements which the City may impose upon Lessee, including, but not limited to, colorings and aesthetics for equipment, facilities, landscape improvements, building materials and fencing materials. If, for whatever reason, the City does not approve of Lessee's plans, Lessee may terminate this Lease.

5.3 Lessee shall not commit nor permit waste, damage or injury to the Property.

5.4 Lessee shall maintain and repair all aspects of the Property at Lessee's sole cost and expense, including, but not limited to, the structural condition of all buildings thereon, driveways, fences, fixtures, glass, roofing, plumbing, heating and ventilation systems, security devices, the appearance and structural integrity of any improvements and landscaping, in good order, good appearance, condition and repair and in a clean, sanitary, orderly and safe condition. The City shall not be obligated nor required to repair damages to any portion or aspect of the Property, even if such damages are caused by or result from operations occurring on adjacent lands owned by the City. If Lessee refuses or neglects to commence repairs or perform maintenance work required under the terms hereof to be performed or paid for by the Lessee within thirty (30) days after written demand by the City or any other governmental authority, or if Lessee fails to complete such repairs or perform such maintenance within a reasonable time thereafter, the City may enter upon the Property and make such repairs or perform such maintenance without liability to the Lessee's operations by reason thereof, and if the City makes such repairs or performs such maintenance, Lessee shall pay to the City, on demand, the cost thereof with interest at the rate of fifteen percent (15%) per annum from the date of payment by the City for such repairs or maintenance work until paid in full by the Lessee. Any repairs made or maintenance performed by Lessee or the City shall be completed expeditiously.

5.5 Lessee has inspected the Property and accepts the Property in its present location and condition. Lessee agrees that the condition of the Property is sufficient for the purposes of the Lessee. The City makes no warranties, promises or representations, express or implied, that the Property is sufficient for the purposes of the Lessee. If the leasehold premises are damaged due to fire, flood, or other casualty, or if the Property is damaged or deteriorates to the extent where 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 the Lessee's own risk, provided, however, that in the event the Property is damaged or deteriorates to the extent where it is no longer functional for the purposes of the Lessee, the Lessee may, at its option, terminate this Lease by giving notice to the City that this Lease is to be terminated. Termination shall be effective thirty (30) days following the date of the notice of termination.

5.6 The City makes no representations or warranties regarding any hazardous, toxic or regulated substances on, under or about the Property, except to the extent that the City states that it has not deposited or caused to be deposited on, under or about the Property any hazardous, toxic or regulated substances.

6. Fees in Charges.

6.1 Lessee shall arrange and pay for, when due:

(a) all costs and expenses, including, but not limited to, deposits, use fees, interest and penalties, for utilities furnished to the Property, including, but not limited to, all electricity, natural gas, water, sewer, cable and telephone service, trash and recyclables disposal;

(b) all general real property and personal property taxes and all special assessments of any kind levied against the Property during the term of this Lease.

6.2 Lessee shall hold the City harmless from and indemnify the City against any and all costs, fees and charges associated with the Property. If Lessee shall fail to timely pay any of the foregoing, the City may, without obligation to do so, pay such amount(s) and, in such event, the amount(s) paid by the City plus interest at the rate of fifteen percent (15%) per annum from the date of such payment by the City shall be added to the amount of rent(s) due to the City from Lessee.

7. Insurance. Lessee shall purchase and at all times maintain in effect suitable comprehensive general liability and hazard insurance which will protect the City, its officers, employees and agents and assets of the City 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 and employees, agents, licensees and guests of Lessee. Such insurance policy shall have terms and amounts approved by the Risk Manager of the City. 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), combined single limit. The certificate of insurance must be deposited with the City and must designate "the City of Grand Junction, its officers, employees and agents" as additional insureds. If a policy approved by the Risk Manager of the City is not at all times in full force and effect, this Lease shall automatically terminate.

8. Nonliability of the City for Damage.

8.1 The City shall not be liable for liability or damage claims for injury to persons or property, including property of Lessee, from any cause relating to the occupancy and use of the Property by Lessee, including those arising out of damages or losses occurring on areas adjacent to the Property or easements used for the benefit of the Property during the term of this Lease or any extension thereof nor for any injury or damage to any property of Lessee from any cause. Lessee shall indemnify the City, its officers, employees and agents, and hold the City, its officers, employees and agents, harmless from all liability, loss or other damage claims or obligations resulting from any injuries, including death, or losses of any nature.

8.2 The City shall not be liable to Lessee for any damages or any loss of profits or loss of opportunities claimed by Lessee or for interruption of Lessee's business or operations resulting from fire, the elements, casualty of any kind or the closure of any public highway providing access to and from the Property.

9. Hazardous Substances.

9.1 The term "Hazardous Substances", as used in this Agreement, 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 Agreement, 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.

9.2 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, 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.

10. Environmental Clean-Up.

10.1 The following provisions shall be applicable to Lessee and to Lessee's agents, guests, invitees, contractors, licensees and employees:

(a) Lessee shall, at Lessee's sole cost and expense, comply with all Environmental Laws and laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances;

(b) Lessee shall, at Lessee's sole cost and expense, make all submissions to provide all information required by and/or to comply with all requirements of all governmental authorities ("the Authorities") under Environmental Laws and other applicable laws.

(c) Should any Authority or the City demand that a clean-up plan be prepared and that a clean-up plan be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances on, under or about the Property, Lessee shall, at Lessee's sole cost and expense, prepare and submit the required plan(s) and all related bonds and other financial assurances, and Lessee shall carry out all such clean-up plan(s) in compliance with the Authorities and all Environmental Laws and other applicable laws.

(d) Lessee shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances requested by any Authority. If Lessee fails to fulfill any duty imposed hereunder within a reasonable time, the City may do so on Lessee's behalf and, in such case, Lessee shall cooperate with the City in the preparation of all documents the City or any Authority deems necessary or appropriate to determine the applicability of Environmental Laws to the Property and Lessee's use thereof, and for compliance therewith, and Lessee shall execute all documents promptly upon the City's request. No such action by the City and no attempt made by the City to mitigate damages under any Environmental Law or other applicable law shall constitute a waiver of any of Lessee's obligations hereunder.

(e) Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

10.2 Lessee shall indemnify, defend and hold the City, its officers, employees and agents harmless from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Substances and the violation of any Environmental Law and other applicable law by Lessee and/or Lessee's agents, guests, invitees, contractors, licensees and employees that occur during the term of this Lease or any extension thereof, or from Lessee's failure to provide all information, make all submissions, and take all actions required by all Authorities under the Environmental Laws and other applicable laws. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

11. Default, Sublet, Termination, Assignment.

11.1 Should Lessee: (a) default in the performance of its agreements or obligations herein and any such default continue for a period of ninety (90) days after written notice thereof is given by the City to Lessee; 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, at the City's option, may 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) to be paid 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 or remedies which the City may have against Lessee, including, but not limited to, the right of the City to obtain injunctive relief based on the irreparable harm caused to the City's reversionary rights.

11.2 Except as otherwise provided for (automatic and immediate termination), if Lessee is in default in the performance of any term or condition of this Lease Agreement, the City may, at its option, terminate this Lease upon giving ninety (90) days written notice. If Lessee fails within any such ninety (90) 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 ninety (90) days (to remedy) with respect to a similar subsequent default, but rather, Lessee's rights shall, with respect to a subsequent similar default, terminate upon the giving of notice by the City.

11.3 Lessee shall not assign or sublease the Property, or any right or privilege connected therewith, or allow any other person, except officers, employees, agents and clientele of Lessee, to occupy the Property or any part thereof without first obtaining the written consent of the City, which consent must be approved and ratified by the City Council of the City. Any attempt to sublet, assign or transfer without the prior written consent of the City shall be void *ab initio*. In the event an assignment of this Lease or a sublease is authorized by the City, Lessee shall not be released from Lessee's obligations and duties under this Lease and this Lease shall remain in full force and effect. Any consent by the City shall not be a consent to a subsequent assignment, sublease or occupation by any other party. Any unauthorized assignment, sublease or permission to occupy 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 and ratification by the City Council of the City.

11.4 This Lease is not intended to and shall in no way preclude the City from actively marketing the Property for sale or exchange, whether through the efforts of the City, a real estate broker or any other person, nor shall this Lease prevent the City from selling, exchanging or conveying the Property to any other party; provided, however, that in the event any such sale, exchange or conveyance is made during the term of this Lease, such sale, exchange or conveyance shall be made subject to Lessee's leasehold interest in the Property. In the event of the voluntary or involuntary transfer of the City's interest in the Property, Lessee will attorn to the transferee of, or successor to, the City's interest in the Property, and recognize such transferee or successor as Lessor under this Lease.

11.5 Lessee shall not engage or allow any contractor, materialman or supplier to perform any work or supply any materials or other goods or services on any portion of the Property which could be the subject of a mechanic's lien without the prior written consent of the City.

12. Fees or Commissions. The parties to this Lease Agreement warrant that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. The City and Lessee agree to defend, indemnify and hold the other harmless from any claim for real estate brokerage commissions or finder's fees asserted by any other party claiming to be entitled to brokerage commissions or finder's fees arising out of this Lease.

13. Notices.

13.1 All notices to be given with respect to this Lease shall be in writing delivered either by United States mail or Express mail, postage prepaid, or by facsimile transmission, personally by hand or courier service, as follows:

To the City:	City of Grand Junction c/o Real Estate Manger 250 North 5th Street Grand Junction, Colorado 81501-2668 Fax: (970) 256-4022
To Lessee:	Rocky Mountain SER Western Slope Head Start Program c/o Director 835 North 26 th Street P.O. Box 1117 Grand Junction, Colorado 81502-1117 Fax: (970) 243-9322

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

14. Not a Partnership. It is expressly agreed between the parties that this Agreement is one of lease and not of partnership and that the City shall not be or become responsible for any debts contracted or incurred by Lessee. Lessee shall save, indemnify and hold the City, its officers, employees and agents 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 terms and conditions of this Agreement or the conditions created thereby, or based upon any violation of any statute, ordinance, code 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, its officers, employees and agents 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.

15. Enforcement, Partial Invalidity, Governing Law.

15.1 If the City uses the services of a city attorney, or engages another attorney or attorneys to enforce its rights hereunder, or to terminate this Agreement, or to defend a claim by Lessee or any person claiming through Lessee, and/or to remove Lessee or Lessee's personal property from the Property, Lessee agrees to pay the reasonable attorney's fees of the City in such regard, plus the costs or fees of any experts, incurred in such action.

15.2 The invalidity of any portion of this Lease Agreement shall not affect the validity of any other provision contained herein. In the event any provision of this Agreement 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 provisions.

15.3 This Agreement 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 in this Agreement shall be in Mesa County, Colorado.

16 Surrender, Holding Over. Lessee shall, upon the expiration or termination of this Lease, surrender the Property to the City in good order, condition and state of repair, reasonable wear and use excepted. In the event Lessee fails, for whatever reason, to vacate and surrender the Property upon the expiration or termination of this Lease, Lessee agrees that Lessee shall pay to the City the sum of \$500.00 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 \$500.00 daily fee is an appropriate liquidated damages amount.

17. Total Agreement; Applicable to Successors. This Lease contains the entire agreement between the parties and, except for automatic expiration or termination, cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. This Lease and the terms and conditions hereof apply to and are binding upon the successors and authorized assigns of both parties.

The parties hereto have each executed and entered into this Lease Agreement as of the day and year first above written.

Attest:

The City of Grand Junction,
a Colorado home rule municipality

City Clerk

City Manager

Lessee:

Executive Director
Rocky Mountain SER