

**SECOND AMENDMENT TO LEASE AGREEMENT AND ASSIGNMENT
AGREEMENT**

THIS SECOND AMENDMENT TO LEASE AGREEMENT AND ASSIGNMENT AGREEMENT (the “**Amendment**”) is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “**City**”), and **ENVIRONMENTAL LEARNING FOR KIDS**, a Colorado nonprofit corporation, whose address is P.O. Box 21679, Denver, Colorado 80221 (the “**Lessee**”).

WITNESSETH:

WHEREAS, the City and Lessee entered into a Lease Agreement and Assignment Agreement dated November 17, 2014 (Contract Control # 201418361) which was amended by a First Amendment dated December 24, 2015 (the “**Agreement**”); and

WHEREAS, the Lessee initiated the engineering/design and installation of Improvements as contemplated in, and in accordance with, the Agreement, and in particular Sub-section 1.A, Sub-section 4.A, Section 18, Exhibit B, and Section 21 of the Agreement; and

WHEREAS, the Lessee requested the City to assist in obtaining grant and other funds from other governmental entities for the purpose of covering portions of the cost of the engineering/design and installation of said Improvements; and

WHEREAS, the City provided such assistance, with the understanding that the obligation for raising all of the required funds for the Improvements still remained with the Lessee except to the extent, and upon the condition, that the City is successful in obtaining grants or other funding from other governmental entities for the purpose stated above; and

WHEREAS, the City entered a Land and Water Conservation Fund grant agreement (Grant Routing # 16-TRLG-89117 CTGG1 PMAA 2016*01974) (City Contract Control # PARKS-201628116-00) (“**LWCF Grant**”) with the State Department of Natural Resources, Division of Parks and Wildlife (“**DNR**”) for the funding of engineering and design work and the restoration of shortgrass prairie and the installation of related amenities on the Property by the Lessee in accordance with the LWCF Grant which will provide \$250,000 towards the completion of the Improvements contemplated under the Agreement; and

WHEREAS, the Lessee acknowledges that it must comply with the terms and conditions of the LWCF Grant and the Grant Restrictions as stated in the Agreement and will take the proper and necessary actions, at all times, to assure that the City is able to perform and comply

with the City's obligations under the LWCF Grant and the Grant Restrictions; and

NOW, THEREFORE, for and in consideration of the premises set forth in the recitals above and incorporated herein by reference, and the mutual covenants and agreements hereinafter contained, the City and Lessee agree as follows:

I. That the following provisions are added to the Agreement under the heading "Improvement Funding":

IMPROVEMENT FUNDING

47. **LWCF GRANT.**

A. Provided that the Lessee executes this Amendment and complies with the terms and conditions of this Amendment, the City will continue to use its best efforts to obtain the LWCF Grant, as described in the Recitals, and will take the necessary steps to execute and perform the agreement authorized by DNR for the LWCF Grant ("**LWCF Grant Agreement**"). Subject to the terms and conditions of this Amendment and the LWCF Grant Agreement, the City agrees to accept the grant funds remitted by DNR and then to distribute the grant funds to the Lessee as provided in Section 48 of this Amendment.

B. The Lessee agrees and covenants to assume all the City's liabilities, and binds itself to the City for all of the City's obligations to DNR, as set forth in the LWCF Grant Agreement. Unless a valid claim is asserted by DNR based on the sole negligence or wrongful act of the City for which liability arises under the terms of the LWCF Grant Agreement, the Lessee shall be responsible and liable to the City for any claim arising under the LWCF Grant Agreement, in the same manner and extent as the City may be responsible and liable to DNR.

C. The Lessee agrees that it will cooperate with the City in providing all information, reports and documents needed for the execution and performance of the LWCF Grant Agreement. The Lessee agrees and covenants that it will not use the LWCF Grant funds for any purpose other than the purpose authorized under the LWCF Grant Agreement. The obligation to design, construct, install, maintain and repair the improvements paid for, in whole or part, by the LWCF Grant shall be solely the responsibility of the Lessee and shall be performed in accordance with the Agreement, as amended herein, and the LWCF Grant Agreement.

D. Nothing in this Section 47 modifies or limits the rights and obligations of the Lessee under the Agreement, including with respect to the Grant Restrictions. Nothing in this

Section 47 modifies or limits the rights and obligations of the City, or the legal recourse the City has, under the Agreement.

48. **DISTRIBUTION OF LWCF GRANT FUNDS.**

A. Subject to appropriation and availability of the LWCF Grant funds, reimbursement for invoiced costs incurred by the Lessee will be paid by the City to the Lessee for the compensation made to design professionals and contractors retained by the Lessee, in accordance with the Agreement, for work on the design/engineering and installation of the Improvements contemplated under the Agreement and the LWCF Grant Agreement (the “**Work**”). As the Work progresses and invoices are submitted by the contractors to the Lessee for the Work performed, the Lessee will submit the complete and accurate invoices, along with a written and signed confirmation from the Lessee that the Work noted on the invoices has been satisfactorily performed, to the Finance Office of the Denver Department of Parks and Recreation.

B. The City reserves the right to review the Work performed before paying the Lessee from the LWCF Grant funds. All payments are subject to the prior approval of the Executive Director of Parks and Recreation.

C. All payments on invoices are intended to reimburse the Lessee for the costs it has incurred and paid for the Work. The Lessee shall be solely responsible for paying the design professionals and contractors on a timely basis and handling any disputes over payments in an appropriate and timely basis. The City shall have no responsibility for paying directly to design professionals or contractors for any Work, and, in the event that it becomes necessary under the Agreement, the LWCF Grant Agreement, or a court order, for the City to pay directly the design professionals and contractors for Work performed, the Lessee shall be in breach or default of the Agreement, as amended herein.

D. Nothing in this Section 48 modifies or limits the responsibility of the Lessee under Section 18 or Section 21 of the Agreement to pay the costs of all Work related to the Improvements contemplated under the Agreement or the LWCF Grant Agreement.

V. Except as amended herein, the Agreement is affirmed and ratified and shall remain in full force and effect.

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: FINAN-201418361-02

Contractor Name: Environmental Learning of Kids

By: *Lovetta E Pineda*

Name: Lovetta E Pineda
(please print)

Title: Executive Director
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

